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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Hon. J. Derham Cole, Circuit Court Judge
Trial Court Case No. 2022-CP-42-01677

Appellate Case No. 2023-001360

Taylor Chasey Robertson, ...Appellant,

v.

South Carolina Department of Public Safety,
South Carolina Highway Patrol, and Trooper Patrick J. Goshorn, ...Respondents.

RECORD ON APPEAL

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INDEX

Orders

Form 4 Order granting DEFs’ Motions to Dismiss filed on March 21, 2023	1
Formal Order granting DEFs’ Motions to Dismiss filed on June 27, 2023	5
Form 4 Order denying PLT’s Motion for Reconsideration filed on August 16, 2023	14

Pleadings

Summons and Complaint filed on May 9, 2022	18
Answer of Defendants filed on October 6, 2022	36

Motions

DEFs’ Rule 12(b) Motion to Dismiss filed on October 6, 2022	44
DEFs’ Motion to Dismiss pursuant to § 15-78-60, 70 filed on October 6, 2022.....	51
DEFs’ Motion to Allow Delayed Filing filed on October 17, 2022	53
PLT’s Motion for Reconsideration of Form 4 Order filed on May 24, 2023	55
PLT’s Amended Motion for Reconsideration filed on June 30, 2023	186

Transcripts

February 23, 2023 - Hearing.....	375
August 14, 2023 - Hearing.....	397

Other Documents

Frontpage of SCDPS Website https://scdps.sc.gov/	430
Contact Us page of SCDPS website https://scdps.sc.gov/about/contact	434
SCDPS webpage re: Service of Process https://scdps.sc.gov/general-counsel/subpoenas	435

Affidavit of Personal Service of Patrick Goshorn on September 6, 2022, and filed on September 7, 2022	437
Affidavit of Personal Service on SCDPS/SCHP via Candace Horton on September 6, 2022, and filed on September 13, 2022	438
Affidavit of Personal Service of SC AG’s Office via Jane McCrea on September 6, 2022.....	439
Affidavit of Personal Service on SCDPS SCHP via Candace Horton on September 6, 2022 filed September 21, 2022	440
Affidavit of Diana Brown filed on December 29, 2022	442
DEF Discovery Requests to PLT	444
Email from DEF re: Discovery Responses of March 3, 2023	459
E-mail from Process Server re: experience at SCDPS address dated May 19, 2023.....	460
Affidavit of Personal Service of SCDPS via Paula Davis on May 22, 2023	461
Affidavit of Jamahl Spratley signed on June 07, 2023	462
Certificate of Counsel	463

FORM 4**STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS****JUDGMENT IN A CIVIL CASE****CASE NO. 2022-CP-42-01677**Taylor Chasey **ROBERTSON**,South Carolina **DEPARTMENT** of **PUBLIC
SAFETY**, South Carolina **HIGHWAY
PATROL**, Patrick J. **GOSHORN**,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT**Attorney for :** ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached or formal order to follow ☒ Statement of Judgment by the Court:

This matter is before the Court on motion, pursuant to SCRPC, 12(b)(2), (4), and (5), of the defendants Department of Public Safety and Highway Patrol to dismiss the complaint herein, and on motion pursuant to S. C. Code Ann. Sections 15-78-60 and 15-78-70 by defendant Patrick J. Goshorn, to dismiss him as a party, and on motion of defendant's counsel to permit a delayed filing of a motion due to administrative error.

Based upon consideration of the record in this case, argument of counsel, and the applicable court rules, statutory and case law, this Court finds that the defendants **MOTIONS** should be and **ARE** therefore **GRANTED**.

Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court's consideration.

ORDER INFORMATIONThis order ☒ ends ☐ does not end the case.

Additional Information for the Clerk

:

INFORMATION FOR THE JUDGMENT INDEX**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

<u>J. DERHAM COLE, Presiding JUDGE</u>	<u>2053</u> Judge Code	<u>03/16/2023</u> Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

NICHOLAS J. BAUGHMAN, Esq.RUSSELL W. HARTER, Esq.ATTORNEY(S) FOR THE PLAINTIFF(S)ATTORNEY(S) FOR THE DEFENDANT(S)AMY W. COX, CLERK OF COURTCourt Reporter: **WEBEX**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in

ELECTRONICALLY FILED - 2023 Mar 21 3:20 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-03-21 15:14:32 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	ORDER
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

CASE HISTORY

This action was filed on May 9, 2022. The Plaintiff alleges claims against the South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn in connection with an incident which occurred on May 9, 2020. The Plaintiff alleges that the South Carolina Department of Public Safety and the South Carolina Highway Patrol are government agencies within the meaning of the South Carolina Tort Claims Act. The Complaint further alleges that at all times Patrick Goshorn acted within the scope and course of his employment and he is named in his individual and official capacities. The Complaint sets out seven (7) separate Causes of Action. The FIRST CAUSE OF ACTION alleges Negligence, Training and Supervision. The SECOND CAUSE OF ACTION alleges Negligence and Gross Negligence as to proper and adequate training and supervision of officers, and a failure to protect the right of the Plaintiff. The THIRD CAUSE OF ACTION alleges False Imprisonment, following an arrest for suspicion of DUI. The FOURTH CAUSE OF ACTION alleges Malicious Prosecution in connection with the charge of DUI

and a charge of failure to change an address on a driver=s license. The FIFTH CAUSE OF ACTION alleges Abuse of Process, claiming that the Defendants had an ulterior purpose in employing legal process against the Plaintiff. The SIXTH CAUSE OF ACTION alleges claims for Outrage and alleges that the Defendants are vicariously liable for actions within the scope and course of employment. The SEVENTH CAUSE OF ACTION alleges Gross Negligence/Recklessness in connection with Plaintiff's arrest for DUI and for improperly ticketing the Plaintiff for Failure to Change Address.

The Complaint was filed on May 9, 2020. The record reflects that there are three (3) Affidavits of Service dated September 7, 2020, indicating that service was made to Candance Horton at 10311 Wilson Blvd., Blythewood, South Carolina 29016 on September 6, 2022, to effect service on the South Carolina Department of Public Safety and the South Carolina Highway Patrol. There is also an Affidavit of Service as to the South Carolina Attorney General=s office on September 6, 2022. Patrick Goshorn was served on September 6, 2022, at 304 Hampton Ridge Drive, Greer, SC by delivery of the Summons and Complaint to his wife, as appears by an Affidavit of Service filed with the Court.

The filing history shows that the Defendants filed a 12(b) Motion to Dismiss on October 6, 2022, at 2:39 p.m., a Motion to Dismiss pursuant to S.C. Code Ann. § 15-78-60 and § 15-78-70 at 4:17 p.m. on October 6, 2022, and an Answer filed October 6, 2022, at 5:05 p.m. The Answer specifically noted that it was subject to the Rule 12 Motion previously filed. Defense counsel also filed a Motion to Allow Delayed Filing on October 17, 2022, referencing an administrative error that was thought to have occurred. The Motion to allow a delayed filing notes that defense counsel as a courtesy communicated with Plaintiff's counsel prior to the filing of the Answer to discuss the

anticipated 12(b) Motion.

These Motions came to be heard before me on February 23, 2023.

FACTUAL ALLEGATIONS

The Complaint alleges that on May 9, 2020, at approximately 2:00 a.m., Trooper Goshorn pulled the Plaintiff over for speeding, going 45 miles per hour in a 35 mph zone, following which he performed field sobriety tests and then took the Plaintiff into police custody for a breathalyzer analysis. The Complaint alleges that Ms. Robertson had a 0.01% BAC and that pursuant to S.C. Code Ann. §56-5-2950 she was conclusively presumed not under the influence of alcohol. The Complaint further alleges that the Plaintiff was also given a ticket for failure to change the address on her license. The Complaint further states that the Plaintiff was released from the Greer City Detention Center at 3:20 a.m. The Complaint further alleges that the ticket was ultimately dismissed because Patrick Goshorn was no longer with the Department of Public Safety. The claims set forth in the Complaint arise out of that incident.

DEFENDANTS= RULE 12(b) MOTION TO DISMISS

The Defendants= 12(b) Motion to Dismiss was filed October 6, 2022, at 2:39 p.m. In the 12(b) Motion, the Defendants refer to SCRCP Rule 12(b)(2)(4) and (5). Rule 12(b) allows for these defenses to be raised by answer and/or by a motion: (2) lack of jurisdiction over the person. (4) insufficiency of process (5) insufficiency of service of process. Rule 12(b)(2)(4) and (5) are also set out as defenses in the Answer filed by the Defendants.

In support of the Defendants= Motion to Dismiss pursuant to Rule 12(b), the Defendants have submitted the Affidavit of Diana Brown, who is the Human Resource Operations Manager of the South Carolina Department of Public Safety. The Affidavit of Diana Brown indicates that

Candance Horton was not an employee of either the South Carolina Department of Public Safety or the South Carolina Highway Patrol. Her affidavit further confirms that Candance Horton was never authorized to accept service on behalf of either the Department or the agency. Based on this Affidavit, the Defendants argue that there has been no proper service as to the South Carolina Department of Public Safety or the Highway Patrol.

The Defendants' Rule 12 Motion also asserts that the action has not been properly commenced and served timely pursuant to Rule 3 SCRPC and Rule 4 SCRPC. Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.

Rule 3 SCRPC addresses when an action is commenced. Rule 3(a) provides that a civil action is commenced when the Summons and Complaint are filed with the Clerk of Court, if (1) the Summons and Complaint are served within the statute of limitations in any matter prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than 120 days after filing.

The incident which is the basis of this suit occurred on May 9, 2020. S.C. Code Ann. '15-78-110 allows for a two year statute of limitations and, an action is barred unless it is commenced within two years from the date of loss absent the filing of a verified claim. The Complaint in this action was filed exactly two years from the date of the incident. The attempted service of the Complaint, on September 6, 2022, occurred exactly 120 days from the date the Complaint was filed.

For whatever reason, it appears that the Complaint was not filed until the last day to comply with the Statute of Limitations, and further, there was no attempt at service until the very last date allowed by Rule 3. In order to comply with Rule 3, to commence an action the Complaint must not only be filed within the statute of limitations, but it must be actually served within 120 days from the date of filing.

I find that the attempted service on the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol was not proper service pursuant to Rule 4, and accordingly, this action was not timely commenced as to the South Carolina Department of Public Safety, and/or the South Carolina Highway Patrol. I therefore must find that the Defendants= 12(b) Motion to Dismiss the South Carolina Department of Public Safety and the South Carolina Department of Highway Patrol should be granted.

**DEFENDANTS' MOTION PURSUANT TO S.C. CODE ANN. ' 15-78-60 AND
' 15-78-70**

The Defendants also move to dismiss the Complaint as to Patrick Goshorn. The Complaint alleges that at all times Patrick Goshorn acted within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.

S.C. Code Ann. ' 15-78-70 provides that the Tort Claims Act is the exclusive remedy of any tort committed by an employee. Section 15-78-70 provides that an employee who commits a tort while acting within the scope of his official duty is not liable except in circumstances where it is proven that an employee=s conduct constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. See also ' 15-78-60(17).

Nowhere in the Plaintiff=s Complaint is there any allegation or suggestion that Patrick Goshorn acted outside the scope and course of his official duties. Further, the Complaint nowhere makes reference to any allegation that Goshorn=s actions amounted to actual fraud, actual malice, intent to harm, and/or a crime of moral turpitude.

The Plaintiff=s FIRST CAUSE OF ACTION – “Negligent Training/Supervision/Retention” is a claim that can only lie against the South Carolina Department of Public Safety had it been timely commenced. This claim is not applicable to or viable as to Patrick Goshorn.

The SECOND CAUSE OF ACTION – “State Tort Claims Act” also alleges claims that could exist against the South Carolina Department of Public Safety and/or the Highway Patrol if brought timely. This claim, however, also is directed at South Carolina Public Safety and does not apply to Patrick Goshorn.

The Plaintiff=s THIRD CAUSE OF ACTION alleging “False Imprisonment” is again another claim that could possibly exist against the South Carolina Department of Public Safety and/or the Highway Patrol if not barred by statute [§15-78-60(23)] and/or the South Carolina Rule of Civil Procedures. In this cause of action, the Plaintiff alleges that she was unlawfully restrained, but there is no allegation that Patrick Goshorn acted with actual malice, or an intent to harm. Actual malice is not an element of a False Imprisonment claim. Accordingly, I find that Patrick Goshorn is entitled to immunity pursuant to ' 15-78-70(a)(b).

As to the Plaintiff=s FOURTH CAUSE OF ACTION for “Malicious Prosecution,” such a claim could possibly lie against the Department of Public Safety if timely brought. Again, as to the FOURTH CAUSE OF ACTION, there is no allegation that Patrick Goshorn acted with actual malice and/or an intent to harm the Plaintiff, and actual malice is not an element of a malicious

prosecution claim. For Patrick Goshorn to have individual liability his actions must amount to actual malice, and here I find he is entitled to immunity in accordance with ' 15-78-70.

The Plaintiff alleges a FIFTH CAUSE OF ACTION- “Abuse of Process.” This claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. The elements of this claim do not involve allegations of actual fraud, actual malice, intent to harm and/or crime of moral turpitude so as to deprive Patrick Goshorn of immunity under ' 15-78-70(a) and (b).

That as to Plaintiff=s SIXTH CAUSE OF ACTION – “Outrage,” again, this claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. Further, as to the Plaintiff’s SIXTH CAUSE OF ACTION, referencing physical and emotional distress, S.C. Code Ann. ' 15-78-30(f), bars any claim for intentional infliction of emotion distress. Also, as to the Plaintiff’s SIXTH CAUSE OF ACTION, there is no allegation of actual fraud, actual malice, and/or intent to harm to implicate individual liability for Patrick Goshorn. I find that the Plaintiff’s SIXTH CAUSE OF ACTION should be dismissed.

The Plaintiff=s SEVENTH CAUSE OF ACTION alleges “Gross Negligence/ Recklessness.” These allegations could possibly be viable if this action was timely commenced against the South Carolina Department of Public Safety and/or the Highway Patrol but, as to this cause of action, Patrick Goshorn has immunity in his individual capacity.

CONCLUSION

All of the claims set forth in the Plaintiff’s Complaint as are directed against the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol are dismissed because this action was never properly commenced as to those named defendants. This action

was filed on the last date before the statute of limitations would have run, and there was no attempt to effect service on the South Carolina Department of Public Safety and/or the Highway Patrol until the last day allowable by Rule 3 SCRCP. Because there was no proper service of the Summons and Complaint on either the South Carolina Department of Public Safety and/or the Highway Patrol to properly commence this action as to those entity defendants the Complaint is dismissed. As to the individual defendant, Patrick Goshorn, the claims as are alleged against him do not involve the elements of actual fraud, actual malice, and/or intent to harm and those claims are dismissed as to him.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that pursuant to SCRCP 12(b)(2)(4) and (5), the Complaint is dismissed as to the South Carolina Department of Public Safety and/or the Highway Patrol.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to S.C. Code Ann. ' 15-78-60 and ' 15-78-70, the Complaint of the Plaintiff is dismissed as to Patrick J. Goshorn.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion to allow for a delayed filing is granted.

IT IS SO ORDERED.

J. Derham Cole, Presiding Judge



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-06-26 17:47:12 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-42-01677

Taylor Chasey **ROBERTSON**,South Carolina **DEPARTMENT** of **PUBLIC**
SAFETY, South Carolina **HIGHWAY**
PATROL, Patrick J. **GOSHORN**,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT

Attorney for : ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached or formal order to follow ☒ Statement of Judgment by the Court:

This matter is before the Court on motion of the plaintiff pursuant to Rule 59(e), SCRCp, for this court to reconsider its prior order dismissing the plaintiff's complaint for lack of proper service and failing to address an oral motion by the plaintiff to amend the complaint. In support of and in opposition to the motion the parties have submitted additional memoranda and exhibits not previously considered by the court in its prior ruling.

"A party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not raised." Anonymous v. Board of Medical Examiners, 323 S.C. 260, (Ct. App.1996). To the extent that matters submitted and arguments made at the hearing on the motion to reconsider could have been submitted and made at the time of argument on the defendants' motion to dismiss was heard but were not, those submissions and arguments are refused consideration by the court as being untimely.

To the extent that it need be addressed, the plaintiff's oral motion to amend the complaint was rendered moot by the court's decision to dismiss the action for failure of the plaintiff to timely serve a party and commence the action within the statutory limitations period and therefore not considered or ruled upon by this court.

Based upon consideration of the record in this case, argument of counsel, memoranda submitted, and the applicable court rules, statutory and case law, this Court finds that the plaintiff's **MOTION** should be and **IS** therefore **DENIED**.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk

:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. Derham Cole

J. DERHAM COLE, Presiding JUDGE

2053

Judge Code

08/15/2023

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

NICHOLAS J. BAUGHMAN, Esq.

RUSSELL W. HARTER, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

AMY W. COX, CLERK OF COURT

Court Reporter: **WEBEX**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-08-15 16:33:37 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

CIVIL ACTION NO: 2022-CP-42-_____

SUMMONS
(JURY TRIAL DEMANDED)

**TO THE DEFENDANTS ABOVE NAMED: SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN**

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, which was filed in the Office of the Clerk of this Court on the below mentioned date; and to serve a copy of your answer to the Complaint upon the subscriber at their office, 600 North McDuffie Street, Post Office Box 2501, Anderson, South Carolina, within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE:

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within twenty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

SIGNATURES ON FOLLOWING PAGE

s/Nicolas J. Baughman

Nicolas J. Baughman (SC Bar # 102186)
Nicolas J. Baughman Attorney at Law, LLC
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P.O. Box 2501
Anderson, South Carolina 29621 (29622)
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F: 864-392-8276
E: nick@baughmanlawsc.com

Date: May 9, 2022

s/C. Austin McDaniel

C. Austin McDaniel (S.C. Bar #76084)
C. Austin McDaniel, Attorney at Law, LLC
523 N. Main St. Anderson, SC 29621
T: (864) 540-8135
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E: austin@austinmcdaniellaw.com

Date: May 9, 2022
Anderson, SC

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

CIVIL ACTION NO: 2022-CP-42-_____

**COMPLAINT
(JURY TRIAL DEMANDED)**

COMES NOW the Plaintiff, TAYLOR CHASEY ROBERTSON, complaining of the Defendants, SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER PATRICK J. GOSHORN, who, through her undersigned counsel, respectfully shows unto the Court as follows:

PARTIES

1. Plaintiff, Taylor Chasey Robertson (“Plaintiff”) was a citizen and resident of Greenville County, South Carolina at the time of the incident complained of herein.

2. Defendant South Carolina Department of Public Safety (“SCDPS”) is an agency of the State of South Carolina, which is headquartered in Richland County, South Carolina with its principal place of business in Richland County.

3. Defendant South Carolina Highway Patrol (“SCHP”) is an agency of the State of South Carolina, which his headquartered in Richland County, South Carolina with its principal place of business in Richland County.

4. Defendants SCDPS and SCHP are governmental agencies as defined in S.C. Code § 15-78-30(a).

5. Pursuant to S.C. Code §15-78-70(c), Defendants are statutorily liable for the acts and omissions of its fiduciaries, employees, Troopers, and/or agents acting in the course and scope of their official duties.

6. Defendant Patrick J. Goshorn (“Goshorn”) is, upon information and belief, a resident of Spartanburg County and at the time of this incident was a Trooper with the Highway Patrol, acting at all times pertinent hereto within the course and scope of his employment and under color of state law. This Defendant is sued in his individual and official capacities.

7. The events giving rise to this action took place in Spartanburg County, South Carolina.

8. Venue is proper in this Court, and this Court has both subject matter and personal jurisdiction over all claims and parties.

GENERAL STATEMENT OF FACTS

9. On May 9, 2020, Defendant Trooper Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence (“DUI”) when Ms. Robertson had consumed neither drugs nor a sufficient amount of alcohol to be intoxicated. Ms. Robertson was pulled over on May 9, 2020, at approximately 2:00 AM. In temperatures below 50 degrees Fahrenheit¹, while wearing only a thin shirt, she was subject to the standard field sobriety tests. These tests were improperly administered, and as a result, Ms. Robertson was taken into police custody based on Goshorn’s assertion that Ms. Robertson was impaired by alcohol. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the

¹ <https://www.timeanddate.com/weather/@4580599/historic?month=5&year=2020>

Datamaster machine demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson should not have been arrested and has brought suit to seek redress for her arrest for DUI when she was not impaired by drugs, alcohol, or any combination thereof.

SPECIFIC FACTUAL ALLEGATIONS

10. At the time of this incident, .

11. On May 9, 2020, at approximately 2:00AM, Ms. Robertson was pulled over by Trooper Goshorn, a Trooper employed by Defendants SCDPS and SCHP for speeding; specifically for going 48-mph in a 35-mph zone.

12. Upon information and belief, Trooper Goshorn was an employee and/or agent of Defendants SCDPS and SCHP at the time of the occurrences central to this case.

13. Despite only pulling Ms. Robertson over for allegedly speeding, Trooper Goshorn asked Plaintiff to exit her vehicle.

14. Ms. Robertson had no criminal record and it was not necessary for Plaintiff to exit the vehicle for Defendants to cite Plaintiff for driving 13 miles per hour over the speed limit—an offense only punishable by fine and for which an individual cannot be arrested. See: S.C. Code Ann. § 56-5-1520(G)(2).

15. There did not exist sufficient cause to warrant further detention of Ms. Robertson at this point.

16. Trooper Goshorn requested that Ms. Robertson perform the standard field sobriety tests (“SFSTs”).

17. Ms. Robertson told the Trooper that she suffered from a knee injury. This injury affected her ability to walk a line and stand on one leg.

18. Ms. Robertson had not been diagnosed with any specific injury by a medical physician but had been experiencing pain and stiffness for a number of weeks.

19. Furthermore, Ms. Robertson told the Trooper that she was cold, which was not an unreasonable sensation given that the temperature outside was below 50 degrees Fahrenheit.

20. Ms. Robertson acknowledged having a single glass of wine earlier in the evening.

21. The first test administered was the Horizontal Gaze Nystagmus test ("HGN").

22. HGN is a quasi-medical test employed by certified law enforcement to detect the presence of alcohol in a suspect by observing involuntary jerking of the eye. When administered correctly, based on California validation studies, there is an 88% likelihood that the suspect will produce a BAC sample of .08% or higher. To be reliable, the HGN test must be administered according to the NHTSA's strict procedures.

23. There were numerous deviations in Trooper Goshorn's administration of the HGN test here that undoubtedly compromised the validity of the test

24. Ms. Robertson remained steady during the testing procedure, as there was no rotational, side to side, or back and forth swaying. Additionally, her voice was clear, easily understood, and completely devoid from slurring. Further, she understood all commands from the Trooper and followed them appropriately. The steadiness, clarity of voice, and comprehension of commands evidence of lack of impairment that Trooper Goshorn should have noticed.

25. The administration of HGN requires a stimulus, such as a pen, which the Trooper used.

26. The stimulus is the most critical component of the HGN test because it is what the subject focuses on while the officer administers the test. As such, the stimulus must be held 12 to 15 inches from the nose and slightly above the eye level (approximately 2 inches), the stimulus must be moved smoothly across the subject's entire field of vision, at a consistent speed approximately two seconds out and two seconds in for each eye.

27. Here, Trooper Goshorn's use of the stimulus is erratic. He consistently changed the distance the stimulus was from Ms. Robertson's nose, varying from too close to her face to a distance that is well in excess of the 15-inch maximum. The height of the stimulus varies wildly from being held above the 2-inch maximum to being held way too low. Finally, the pen was not moved smoothly and at a consistent speed through her field of vision.

28. These erratic and inconsistent passes compromised the validity of the test.

29. The second SFST Trooper Goshorn administered was the Nine Step Walk and Turn test.

30. After only a couple of steps, Ms. Robertson in obvious pain, informed Trooper Goshorn that her knee was hurting too much for her to complete the test. She even offered to take a breath test to prove she was not intoxicated.

31. Finally, Trooper Goshorn administered the One Leg Stand test, which Ms. Robertson performed while visibly shivering.

32. Trooper Goshorn inappropriately relied upon the SFST results when he arrested Plaintiff for driving under the influence ("DUI").

33. Ms. Robertson did not resist arrest.

34. Trooper Goshorn had Plaintiff's vehicle towed away from the scene of the stop.

35. Trooper Goshorn transported Ms. Robertson to the Greer City Police Department to provide a breath sample on the Datamaster DMT.

36. Once at the facility, Ms. Robertson continued to cooperate fully as she had been throughout the night.

37. She willingly provided a breath sample, and the results were a 0.01 % BAC.

38. South Carolina Code Section 56-5-2950(G) provides that “the alcohol concentration at the time of the test, as shown by chemical analysis of the person’s breath or other bodily fluids, gives rise to the following: (1) if the alcohol concentration was at that time five one-hundredths of one percent or less, *it is conclusively presumed that the person was not under the influence of alcohol.*” (Emphasis added).

39. Conclusive presumptions constitute irrebuttable factual presumptions. In the case of South Carolina’s DUI statute, a person with a 0.05% or less BAC legally cannot be under the influence of alcohol.

40. Pursuant to South Carolina law, law enforcement’s observations and field sobriety tests are designed to generate reasonable suspicion that an individual is under the influence of alcohol, drugs, or a combination thereof.

41. Once toxicology verifies that an individual is not impaired by controlled substances, alcohol, or some combination thereof, there ceases to exist probable cause sufficient to justify the original arrest and continued prosecution.

42. Plaintiff also received a ticket from Trooper Goshorn for Failure to Change Address.

43. However, Plaintiff had submitted a Change of Address to the South Carolina Department of Motor Vehicles on December 6, 2018, which reflected her proper address as of the date of the subject arrest.

44. Upon receiving the results from the Datamaster DMT, Trooper Goshorn “unarrested” Plaintiff.

45. Plaintiff was then released from the jail into the back parking lot of the Greer City Detention Center, unaccompanied and unsupervised, at approximately 3:20am, where she was picked up by a friend.

46. The next morning, she had to pay the tow facility almost \$300 to have her car released to her and she had to miss a day of work.

47. The ticket number assigned to Plaintiff’s DUI arrest per the Breath Alcohol Analysis Test Report, which was sequentially numbered before her ticket for Failure to Change Address, was removed from her charge and reassigned to another individual.

48. This other individual was charged with speeding by Trooper Goshorn more than 14 hours after Plaintiff was initially stopped by Trooper Goshorn.

49. Upon information and belief, the only charge submitted by Trooper Goshorn to the Court was the ticket for Failure to Change Address.

50. Upon information and belief, this ticket was ultimately dismissed by the Court some time later due to Trooper Goshorn no longer working for the Defendants SCHP and SCDPS.

51. That he would put Ms. Robertson through the stress of being arrested for a crime when Trooper Goshorn knew or should have known Ms. Robertson was unimpaired, shocks the conscious.

52. Upon information and belief, Trooper Goshorn has, on multiple other occasions, arrested motorists for DUI when those motorists were unimpaired.

53. Furthermore, in addition to Ms. Robertson and upon information and belief, Trooper Goshorn has arrested several other motorists who registered BACs of 0.05% or less in the time he was employed by Defendants. It is unknown at this time whether any of those other motorists provided blood or urine samples that were free from drugs or poisons of concern.

54. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has been damaged. Plaintiff has endured fright, anxiety, embarrassment, humiliation, mental anguish, emotional distress, and frustration, as well as reputation damage.

55. Ms. Robertson was arrested and detained on a case for which there did not exist probable cause sufficient warrant an arrest and/or prosecution.

56. Upon information and belief, all agents, fiduciaries, employees, Troopers, and officers of Defendants SCHP and SCDPS were acting and working within the scope of their official duties at all times relevant to this complaint.

57. The acts and omissions of the Defendants constituted more than one occurrence, as the complained of acts were not merely an unfolding sequence of events which resulted from a single act of negligence. The acts and omissions of the Defendants in this case constituted multiple independent acts of negligence by the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligent Training/Supervision/Retention)

58. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

59. Defendants owed Plaintiff a duty to exercise reasonable care in the training, supervision, and retention of its police Troopers and other fiduciaries, agents, and/or employees.

60. Defendants breached their duty to Plaintiff in failing to properly train, supervise, or retain Troopers, and other fiduciaries, agents, and/or employees, including but not limited to the following:

- a. Failure to properly determine whether those fiduciaries, agents, Troopers, and/or employees' were fit for duty;
- b. Failure to properly train fiduciaries, agents, Troopers, and/or employees to perform their duties;
- c. Failure to ensure fiduciaries, agents, Troopers, and/or employees were exercising their duties in a diligent, proper, and reasonable manner;
- d. Failure to properly investigate fiduciaries, agents, Troopers, and/or employees' actions as law enforcement officers;
- e. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' charging decisions;
- f. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' decisions regarding the continued prosecution of charges for which probable cause did not exist;
- g. Failure to properly discipline fiduciaries, agents, Troopers, and/or employees for unreasonable behavior; and/or
- h. Failure to properly supervise fiduciaries, agents, Troopers, and/or employees during the course and scope of their employment.

61. Defendants' breach of duty as described above was the direct and proximate cause of injury to the Plaintiff.

62. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SECOND CAUSE OF ACTION
(State Tort Claims Act)

63. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

64. Plaintiff further alleges that Defendants, by virtue of Chapter 28, Title 15 of the SC Code of Laws, are responsible for conduct alleged above, causing harm (as set forth more fully below) to the Plaintiff, as well as the conduct of its agents, servants, fiduciaries, Troopers, and/or employees acting within the course of their employment, as set forth above; said conduct being negligent, grossly negligent, willful, and reckless, including but not limited to:

- a. The failure to hire adequate and proper personnel;
- b. The failure to properly and adequately train employees and personnel;
- c. The failure to properly and adequately supervise employees or personnel in order to ensure they were properly performing their jobs or assignments; and
- d. The failure to properly protect the rights and privileges available to the Plaintiff under the Constitution, statutes, and laws of the State of South Carolina.

65. As a result of these failures, the Plaintiff has suffered damages as set forth more fully herein below.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)

66. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

67. The Plaintiff is informed and believes that actions and inactions of the Defendants SCDPS and SCHP resulted in the intentional and unlawful restraint of the Plaintiff.

68. The Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest did not have sufficient cause to detain Plaintiff by requiring she exit her motor vehicle to perform the field sobriety tests.

69. The Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest did not have probable cause to detain or arrest Plaintiff.

70. As the employer of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest and detention, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

71. Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility.

72. The acts of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest were intentional and designed to arrest the Plaintiff.

73. The Plaintiff was unlawfully restrained, as there did not exist, at the time of her arrest, lawful justification for her arrest on either charge.

74. As a result of her wrongful detention and arrest pursuant to the deficient investigation of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution)

75. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

76. Criminal proceedings against Plaintiff were instituted for the charges of Failure to Change Address.

77. The criminal proceedings against Plaintiff were instituted at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

78. The criminal proceedings against Plaintiff were maintained despite a lack of probable cause, at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

79. The criminal proceedings were terminated in favor of Plaintiff only when Trooper Goshorn was no longer employed by the other Defendants, as it was only at that point that he was unable to prosecute the case.

80. Defendants lacked probable cause to accuse Plaintiff of the charged crimes of Failure to Change Address and DUI.

81. Defendants lacked probable cause to initially prosecute Plaintiff of the charged crimes.

82. Defendants lacked probable cause to continue to prosecute Plaintiff of the charged crimes despite the fact that she changed her address approximately 18 months before the subject incident.

83. Defendants' accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.

84. The Defendants deliberately and intentionally brought these proceedings against the Plaintiff and continued them without just cause or excuse.

85. There did not exist probable cause to substantiate the Plaintiff's charge.

86. As a result of the Defendants' institution and maintenance of criminal judicial proceedings against the Plaintiff with malice and without probable cause, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FIFTH CAUSE OF ACTION
(Abuse of Process)

87. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

88. The Plaintiff is informed and believes that the actions and inactions of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest constituted an improper use of regularly issued process.

89. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

90. The Defendants had an ulterior purpose in employing legal process against the Plaintiff.

91. The Defendants acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.

92. As a result of the Defendants' improper use of regularly issued process, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A SIXTH CAUSE OF ACTION
(Outrage)

93. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

94. The conduct of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, as set forth above, was outrageous in nature, in that such conduct was atrocious and utterly intolerable in a civilized community, and so extreme and

outrageous as to exceed all possible bounds of decency. Furthermore, such conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.

95. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, Plaintiff is informed and believes that Defendants, are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions within the scope of each's employment.

96. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence/Recklessness)

97. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

98. Upon information and belief, at all times relevant hereto and specified in this complaint, all individuals working on behalf of Defendants SCDPS and SCHP were employed by, and served as fiduciaries, Troopers, employees and/or agents of SCDPS and SCHP and were acting in the course and scope of their employment.

99. Defendants owed a duty to the public in general and to the Plaintiff in particular to use due care in fulfilling the duties of investigation, arrest, and prosecution of criminal offenses to ensure that Defendants' conduct, as exercised by their fiduciaries, Troopers, agents, and employees, conformed to applicable laws, policies, procedures, generally accepted law enforcement standards, and generally accepted prosecutorial standards.

100. Defendants failed to use due care and were grossly negligent, reckless, willful, and wanton in the following particulars:

- a. Failing to exercise due care under the circumstances;
- b. Failing to follow proper protocol and procedure for the situation;
- c. Improperly detaining Plaintiff for investigation without adequate and sufficient cause and evidence;
- d. Unwanted touching of the Plaintiff during the course of investigating her for an alleged DUI;
- e. Improperly arresting Plaintiff for DUI when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of DUI;
- f. Improperly ticketing Plaintiff for Failure to Change Address when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of Failure to Change Address; and/or
- g. Such other particulars as may be shown at trial.

101. All of the above acts and/or omissions are in violation of the common laws and statutes of the State of South Carolina, as well as the Defendants' obligations and duties to Plaintiff.

102. As a direct, foreseeable, and proximate result of the negligent, grossly negligent, reckless, willful, and wanton acts and/or omissions of the Defendants, Plaintiff has suffered injury and damages, including but not limited to: embarrassment, humiliation, mental anguish, loss of freedom, anxiety, distress, and reputational damage.

103. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

DAMAGES AND RELIEF REQUESTED

104. As a direct and proximate result of the aforesaid acts and/or omissions on the part of the Defendants, the Plaintiff has been injured and damaged in that he has been deprived of the rights, privileges and immunities afforded to the citizens of the State of South Carolina, has been wrongfully arrested and/or falsely imprisoned, has accrued expenses, has endured mental

anguish and emotional distress, humiliation, embarrassment, inconvenience, discomfort, and has been deprived of the enjoyment of life, thereby entitling her to recover actual or compensatory damages from the Defendants.

105. The Plaintiff is entitled to punitive or exemplary damages from the Defendants, as the conduct of such Defendants as set forth herein was willful, wanton, reckless and grossly negligent, as well as knowing, intentional and malicious and committed with deliberate indifference to the civil rights of the Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against all Defendants, jointly and severally, by way of compensatory damages and exemplary damages, in such an amount of the Trier of Fact may deem appropriate; for reasonable attorney's fees; for the costs and disbursements of this action; and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/Nicolas J. Baughman

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Anderson, SC

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	ANSWER OF DEFENDANTS
	)	
South Carolina Department of Public	)	<i>(Jury Trial Requested)</i>
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

Subject to the Rule 12 motion previously filed, and preserving all defenses, the Defendants, by way of Answer to the Plaintiff's Complaint would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Complaint is denied and strict proof thereof is demanded.
2. That as to the allegations of paragraph 1 of the Plaintiff's Complaint, these Defendants are without sufficient information with which to admit or deny same therefore strict proof is demanded.
3. That as to the allegations of paragraph 2 of the Plaintiff's Complaint, it is admitted that the South Carolina Department of Public Safety is a department of the State of South Carolina; otherwise, strict proof thereof is demanded.
4. That as to the allegations of paragraph 3 of the Plaintiff's Complaint strict proof thereof is demanded.
5. That as to the allegations of paragraph 4 of the Plaintiff's Complaint, reference is

craved to the response to the allegations of Paragraphs 2 and 3 above and otherwise strict proof is demanded.

6. That as to the allegations of paragraph 5 of the Plaintiff's Complaint, these Defendants crave reference to the full text of Section 15-78-70 and any and all sub-parts thereto.

7. That as to the allegations of paragraph 6 of the Plaintiff's Complaint, it is admitted that Patrick G. Goshorn at the time of this incident acted within the scope and course of his employment and within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety. That otherwise strict proof is demanded of the allegations of Paragraph 6 of the Plaintiff's Complaint.

8. That as to the allegations of paragraph 7 of the Plaintiff's Complaint, same are admitted upon information and belief.

9. That as to the allegations of paragraph 8, strict proof is demanded as to any cognizable claims as to these Defendants.

10. That as to the allegations of paragraph 9, upon information and belief Lance Corporal Goshorn stopped the Plaintiff on or about May 9, 2020 for exceeding the posted speed limit and at that time detected an order of alcohol. Upon information and belief, the Plaintiff admitted to having consumed alcohol and a Standard Field Sobriety Test was given which indicated cues for impairment. Accordingly, the Plaintiff was placed under arrest and transported to the Greer Police Department for a Datamaster Breath Alcohol Test. That following administration of the Datamaster Breath Alcohol Test upon information and belief the alcohol level detected was "less than the legal limit" and the Plaintiff was released from custody. That Lance Corporal Goshorn had probable cause to detain and arrest the Plaintiff and to administer a Field Sobriety Test and to transport her to the police department for a Breathalyzer. That the actions of Lance Corporal Goshorn in no way

violated any rights of the Plaintiff in connection with the incident referenced herein. That further upon information and belief the Plaintiff was given a ticket based on probable cause.

12. That as to the allegations of paragraphs 10 through 57 of the Complaint, except as is expressly admitted, modified or explained herein, said allegations as framed are denied and strict proof thereof is demanded. That further in response to the allegations of paragraphs 10 through 57, these Defendants incorporate by reference their response to paragraph 9 hereinabove. That further as to the allegations of paragraphs 10 through 57, it is admitted and alleged that the Plaintiff was lawfully stopped for driving in excess of the posted speed limit, that she was lawfully detained and arrested for suspicion of DUI following a Field Sobriety Test, that the Plaintiff was transported to the Greer Police Department for a breath test, and that there was probable cause for her to be detained and/or arrested. That because it was believed her alcohol level was below the legal limit she was released from custody. That otherwise strict proof is demanded of the allegations of paragraphs 10 through 57 and it is denied these Defendants in any way committed any act or omission of negligence and/or committed any act or omission to cause damage and/or injury to the plaintiff and accordingly the damages as are alleged in paragraphs 10 through 57 are denied and strict proof thereof is demanded.

13. That as to the allegations of Plaintiff's First Cause of Action consisting of paragraphs 58 through 62, same are denied and strict proof thereof is demanded.

14. That as to the allegations of Plaintiff's Second Cause of Action consisting of paragraphs 63 through 65, same are denied and strict proof thereof is demanded.

15. That as to the allegations of Plaintiff's Third Cause of Action consisting of paragraphs 66 through 74, same are denied and strict proof thereof is demanded.

16. That as to the allegations of Plaintiff's Fourth Cause of Action consisting of

paragraphs 75 through 86, same are denied and strict proof thereof is demanded.

17. That as to the allegations of Plaintiff's Fifth Cause of Action consisting of paragraphs 87 through 92, same are denied and strict proof thereof is demanded.

18. That as to the allegations of Plaintiff's Sixth Cause of Action consisting of paragraphs 93 through 96, same are denied and strict proof thereof is demanded.

19. That as to the allegations of Plaintiff's Seventh Cause of Action consisting of paragraphs 97 through 103, same are denied and strict proof thereof is demanded.

20. That as to the allegations of Plaintiff's claims for Damages and Relief consisting of paragraphs 104 and 105, same are denied and strict proof thereof is demanded.

21. That except as is admitted, modified or explained here, the allegations of the Plaintiff's Complaint are denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

22. That the Highway Patrol and Trooper Patrick Goshorn are not proper parties to this action.

FOR A THIRD DEFENSE

23. There was no malice to support any of the claims alleged in the Plaintiff's Complaint.

FOR A FOURTH DEFENSE

24. There was no abuse of process, there was no improper or ulterior motive, and there was no ill will or malice in connection with the arrest and/or detention of the Plaintiff.

FOR A FIFTH DEFENSE

25. That the Defendants plead and assert probable cause as a complete and absolute bar and/or defense to the Plaintiff's claim.

FOR A SIXTH DEFENSE

26. That the allegations of the Plaintiff's Complaint are subject to the immunities granted to the Defendants and their agents under the South Carolina Tort Claims Act. That the Defendants therefore plead and assert the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claims set forth in the Plaintiff's Complaint. That the Defendants specifically plead and assert, without limitation, all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps and/or limitations on damages as are set forth therein. That further, the Defendants plead and assert specifically, but without limitations, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(6)(23) and (25).

FOR A SEVENTH DEFENSE

27. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A EIGHTH DEFENSE

28. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-120 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR AN NINTH DEFENSE

29. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-70 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A TENTH DEFENSE

30. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-10 as an additional and affirmative defense.

FOR AN ELEVENTH DEFENSE

31. That at all times alleged, the Defendants had just cause and reason to detain the Plaintiff.

FOR A TWELFTH DEFENSE

32. That it is denied that Defendants committed any act or omission which caused any damages and/or injuries to the Plaintiff and it is denied that the Plaintiff has any cognizable claim against the Defendants.

FOR A THIRTEENTH DEFENSE

33. That the Defendants at all times acted reasonably, and did not act in bad faith or with ill will, malicious and/or corrupt motive.

FOR A FOURTEENTH DEFENSE

34. That the Defendants plead and assert the provisions of S.C. Code Ann. §15-78-30 as a complete and absolute defense and/or bar to any of the claims set forth in the Plaintiff's Complaint and further and specifically, the defendants plead and assert the provisions of S.C. Code Ann. §15-78-30(e)(f)(g) and (i) as an additional defense to the claims of the Plaintiff.

FOR AN FIFTEENTH DEFENSE

35. That the Defendants plead and assert the Public Duty Rule as a complete and absolute bar and/or defense to the allegations of the Plaintiff's Complaint.

FOR A SIXTEENTH DEFENSE

36. That further and alternatively, the Defendants plead and assert to the extent applicable, the comparative fault of the Plaintiff as a bar to and in mitigation of any alleged damages sought to be recovered by the Plaintiff.

FOR A SEVENTEENTH DEFENSE

37. That as to the Plaintiff's claim for defamation, strict proof is demanded as to any false information published by any of the Defendants.

FOR AN EIGHTEENTH DEFENSE

38. That the Defendants plead truth as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A NINETEENTH DEFENSE

39. That the Defendants plead and assert absolute privilege as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTIETH DEFENSE

40. That the Defendants plead and assert qualified and/or conditional privilege as a complete and absolute bar to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-FIRST DEFENSE

41. That the Defendants plead and assert fair comment as a bar and/or defense to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-SECOND DEFENSE

42. That the Defendants plead and assert common interest privilege as a further defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTY-THIRD DEFENSE

43. That the Defendants plead, to the extent applicable, the Statute of Limitations pursuant to S. C. Code Ann. 15-78-110, as an additional and affirmative defense.

FOR A TWENTY-FOURTH DEFENSE

44. The Defendants further assert as additional defenses Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure in that upon information and belief there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol. That upon information and belief Candace Horton is not an employee of the South Carolina Department of Public Safety.

FOR A TWENTY-FIFTH DEFENSE

45. That the defendants further assert as an additional defense that the Complaint was not served timely and properly pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure so as to commence this action against the South Carolina Department of Public Safety and the South Carolina Highway Patrol.

WHEREFORE, the Defendants pray as follows:

1. That the Plaintiff's Complaint be dismissed; and
2. That the Defendants be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
)
 Plaintiff,) *Civil Action No.: 2022-CP-42-01677*
)
 -vs-) **RULE 12(b)**
) **MOTION TO DISMISS**
)
 South Carolina Department of Public)
 Safety, South Carolina Highway Patrol, and)
 Trooper Patrick J. Goshorn,)
)
 Defendants.)

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure and pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure for an order dismissing the Complaint as to defendant South Carolina Department of Public Safety and South Carolina Highway Patrol.

The grounds for this motion are as follows:

1. The Complaint in this action was filed on May 9, 2022 and there was an attempted service on September 6, 2022 on the South Carolina Department of Public Safety and the Highway Patrol by delivery of the Summons and Complaint to Candace Horton. Candace Horton, upon information and belief, is not an employee of the South Carolina Department of Public Safety but rather an employee of the South Carolina Department of Motor Vehicles and accordingly there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.
2. Further, further upon information and belief, pursuant to Rule 4 of the South Carolina Rules of Civil Procedure service is required on the correct department and/or agency. Further upon

information and belief there has been no proper or timely service to commence this action against the South Carolina Department of Public Safety and/or the Highway Patrol pursuant to Rule 3 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022

Notary Public for South Carolina
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 3:21 P.M.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT 1000 Assembly
Street, Suite 519 Columbia SC 29201 On the 6 Day of September 2022



Process Server

Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022

Notary Public for South Carolina
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 4:04 P.M.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,
VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

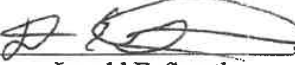
PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

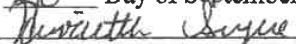
IN THIS ACTION ON, SOUTH CAROLINA DEPARTMENT OF PUBLIC
SAFETY

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina
My Commission Expires: 09/29/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,

VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

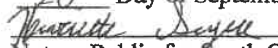
IN THIS ACTION ON, SOUTH CAROLINA
HIGHWAY PATROL

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT 10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina,
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Done

Horton.JPG



ELECTRONICALLY FILED - 2022 Oct 06 2:39 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677



CANDACE L HORTON

(803) 896-9983
CANDACE.HORTON@SCDMV.NET

DEPARTMENT OF
MOTOR VEHICLES

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	MOTION TO DISMISS
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to S. C. Code Ann. Section 15-78-60 and Section 15-78-70 to dismiss Patrick J. Goshorn as a named defendant. This motion is based upon the pleadings filed in this action, the common and statutory laws of the state of South Carolina and such other evidence as is properly before the trial judge at the time of any motion hearing.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
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ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	MOTION TO DISMISS
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to S. C. Code Ann. Section 15-78-60 and Section 15-78-70 to dismiss Patrick J. Goshorn as a named defendant. This motion is based upon the pleadings filed in this action, the common and statutory laws of the state of South Carolina and such other evidence as is properly before the trial judge at the time of any motion hearing.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
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(864) 232-1710 Facsimile
rwihar@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	MOTION TO ALLOW DELAYED
	)	FILING
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move at this time to allow for the delayed filing of the defendants' Rule 12(b) Motion to Dismiss which is dated October 6, 2022. By inadvertence this particular motion was not filed before the defendants' Answer to the plaintiff's Complaint. The defendants intended to file two motions prior to filing the Complaint, namely a 12(b) Motion to Dismiss and a Motion to Dismiss the individual defendant based on the South Carolina Tort Claims Act.

By inadvertence, the Motion to Dismiss the individual defendant was filed in duplicate and the 12(b) Motion was by inadvertence not filed on October 6, 2022.

The Answer of the defendants recited that it was "subject to the Rule 12 Motion previously filed," and as a courtesy defense counsel communicated with plaintiff's counsel prior to the filing of the Answer to discuss the anticipated 12(b) Motion.

Accordingly, the defendants respectfully request that the court allow for the delayed filing of the defendants' 12(b) Motion to Dismiss.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
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Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 17, 2022

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

TAYLOR CHASEY ROBERTSON,

PLAINTIFF,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, PATRICK J.
GOSHORN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT

CASE NO.: 2022-CP-42-01677

NOTICE AND MOTION FOR
RECONSIDERATION OF
FORM 4 ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS
AND
TO REQUEST CLARIFICATION OF
AND REITERATES PLAINTIFF'S
ORAL MOTION TO GRANT LEAVE
TO FILE AMENDED COMPLAINT

Plaintiff, by and through her undersigned attorney, hereby give notice and respectfully move this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its Form 4 Order granting Defendant's¹ Motion to Dismiss. Further, Plaintiff requests clarification of and reiterates Plaintiff's Oral Motion to be granted leave to Amend Complaint in the event the Defendant's Motion was granted. The grounds for this motion² are set forth below.

BACKGROUND AND FACTS

This case arises out of a stop and arrest which occurred at approximately 2:00AM on May 9, 2020 in Spartanburg, South Carolina. Trooper Patrick Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the Datamaster machine

¹ All Defendants may be referred to throughout this Motion in the singular or plural. Regardless of the same, any mention of Defendant or Defendants shall mean to refer to all Defendants.

² I apologize for the lack of brevity in this motion. I am well aware that quick and to the point is often preferred in motions practice. Unfortunately, I have not found a quick path to reach the points that I must make.

demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson was then “un-arrested” and left to fend for herself without her car (which had been impounded), in the cold, shortly after 3:00AM.

This lawsuit was filed against Trooper Goshorn, the South Carolina Department of Public Safety (“SCDPS”), and the South Carolina Highway Patrol (“SCHP”) (collectively “SCDPS”) on May 9th, 2022. EXHIBIT 1. Causes of Action alleged included Negligence, Gross Negligence, SC Tort Claims Act violations, False Imprisonment, Malicious Prosecution, Abuse of Process, and Outrage.

There is no dispute that Defendant Goshorn was timely served on September 6, 2022. EXHIBIT 2. Plaintiff contends that service was timely made on the South Carolina Department of Public Safety and South Carolina Highway Patrol on the same day when a process server delivered the Summons and Complaint to 10311 Wilson Blvd., Blythewood, SC 29016. EXHIBIT 3. Defendant SCDPS has this address displayed on the frontpage of its website, located at <https://scdps.sc.gov/>. EXHIBIT 4. Additionally, SCDPS specifically notes this as its “Street Address” on its Contact Us page, located at <https://scdps.sc.gov/about/contact>. EXHIBIT 5. Further, and on the same day, the SC Attorney General’s office was served with a copy of the Summons and Complaint as well. EXHIBIT 6.

Counsel for Defendants, Russell Harter, timely Answered the Summons and Complaint on October 6, 2022. EXHIBIT 7. Hours before filing the Answer, Attorney Harter also filed a 12(b) Motion to Dismiss with exhibits³ and a Motion to Dismiss as to Defendant Goshorn *in duplicate*.

³ On October 17, Attorney Harter filed a Motion to Allow Delayed Filing of the 12(b) Motion to Dismiss due to an inadvertence filing of duplicated Motions to Dismiss Defendant Goshorn from the case. EXHIBIT 17. Whether by the Court correcting the record after the fact or Mr. Harter’s mistaken fact at the time of initial filing, the record shows that the 12(b) Motion to Dismiss was filed contemporaneously with his Notice of Appearance on October 6, 2022.

EXHIBITS 8 and 9, respectively. The basis for the 12(b) Motion was that Defendant SCDPS alleged that service upon the agency was not accomplished in a timely fashion. Upon information, belief, and deductive reasoning, Defendant acknowledges that service of the summons and complaint did occur at the 10311 Wilson Blvd. address as noted above, but alleges that service was made upon a person not authorized to accept service on behalf of the SCDPS, specifically, an employee of the SC Department of Motor Vehicles (“SCDMV”), another agency that was apparently located at the same address. On December 29, Attorney Harter filed an Affidavit from an employee of SCDPS, swearing that the individual who was served with the Summons and Complaint on September 6, 2022 was not employed nor authorized to accept service on behalf of the agency. EXHIBIT 10.

After a continuance from the original January 6, 2023 hearing date, Defendants’ Motions were heard by the Honorable J. Derham Cole on February 23, 2023. No memorandums were filed, but both Defense counsel and Plaintiff’s counsel presented their respective arguments to the Court. On March 21, 2023, a Form 4 Order was filed by the Court granting all of Defendants’ Motions. EXHIBIT 11. Importantly, the Form 4 Order also stated, “Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court’s consideration.” This has not yet occurred.

It is imperative to note that on November 17, 2022, Attorney Harter’s office mailed discovery requests to Plaintiff’s Counsel’s office. EXHIBIT 12. Of particular importance, Attorney Harter signed each request, i.e., Defendant’s First Set of Interrogatories to Plaintiff and Defendant’s First Set of Requests for Production to Plaintiff, on October 6, 2022—the same day he filed the Answer and Motions. On March 3, 2023, Attorney Harter contacted Plaintiff’s counsel inquiring as to the status of the discovery responses. EXHIBIT 13.

TIMELINESS OF THIS MOTION AND SUMMARY OF ISSUES

Addressing first the timeliness of this Motion for Reconsideration, Plaintiff would argue that she has been in, and remains in, a sort of procedural limbo since the Form 4 Order was filed on March 21, 2023. Additionally, Plaintiff orally moved for leave to file an Amended Summons and Complaint during the February hearing. As previously noted, the Form 4 Order granted Defendant's Motion to Dismiss, and it indicated that a formal order was to be filed by the Defendants. As of the date of the present Motion, no formal order has been filed. Accordingly, Plaintiff posits that the Form 4 Order is NOT a Final Order. Further, given that a Final Order has neither been proposed, nor has a Final Order been entered in this matter, Plaintiff recognizes that this Motion may be premature, at worst. As such, Plaintiff reserves the right to amend and renew this Motion upon filing of a Formal Order.

When fewer than all claims have been adjudicated, "the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Rule 54(b), SCRCPP. See *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (a decree leaving some further act to be done by the court is not final); see also *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct.App. 2002) (a form order is a final order only if the circuit court indicates that nothing else remains to be done after it is signed).

Plaintiff has long awaited the formal order's filing so that the present Motion could be filed, and provide her the opportunity to plead her case at least one final time before this court. Further, as the Form 4 Order did not address the oral motion made during the February 23, 2023 hearing, she also seeks clarification as to whether or not she will be granted leave to amend her complaint. This Motion for Reconsider addresses and respectfully argues the following:

I. THE COURT ERRED IN FINDING THIS ACTION WAS NEVER COMMENCED AGAINST THE DEP'T. OF PUBLIC SAFETY.

The Court is improperly granting the Defendants' Motion to dismiss under Rules 12(b)(2) lack of jurisdiction over the person, (4) insufficiency of process, and (5) insufficiency of service of process, pursuant to the Form 4 Order.

Further, even if the Court determines that service was not accomplished, the proper remedy is not to dismiss the case, but rather to toll the statute of limitations under the doctrine of equitable tolling.

Plaintiff finds this decision granting the Defendants' Motion to Dismiss to be in error for at least three reasons. First, Plaintiff contends that service was proper under SCRCF Rule 4(d), generally, and more specifically under Rule 4(d)(5). Plaintiff believes that service on the SCDPS was technically proper as they were served at the address the agency holds out to the public to be its physical address. Second, even if service was not technically proper under 4(d)(5), it sufficiently complied with Rule 4(d)—which still constitutes proper service. Third, and regardless of whether or not service was technically proper and/or sufficiently compliant, Plaintiff believes that service was accomplished under SCRCF 4(d) and 12(h) when Defendants voluntarily appeared, thus consented to personal jurisdiction of the Court, and thereby waiving their personal jurisdiction defenses.

Plaintiff argues that the Court should find that service was proper based upon one or more of these arguments and dismiss Defendants' motions accordingly. However, even if the Court declines to find that service was proper, Plaintiff believes that the proper remedy should be to toll the statute of limitations and time to serve under the theory of equitable tolling given the SCDPS' misleading and confusing physical address. In the alternative, Plaintiff renews its oral motion of

February 23, 2023 to be granted leave to file an amended complaint in the event the Defendants Motion to Dismiss is formally granted.⁴

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

The Form 4 Order granting Defendants’ Motion to dismiss Trooper Goshorn as a party was improper.

Plaintiff assumes that this was because the Plaintiff alleged that the officer was in the course and scope of his employment at all relevant times, they are arguably immune from suit. The fatal problem with the Court’s order is that an action may be maintained against an individual government employee, even if that employee was acting in the course and scope of employment, if the employee was acting intentionally or with actual malice. The plaintiff believes she has adequately stated a claim against him, and such a dismissal at this stage, without discovery having occurred, is inappropriate under South Carolina law. In the alternative, the Plaintiff should be given leave to amend her complaint to allege that the officer was acting outside the course and scope of employment—as well as to include a claim under §1983 as orally requested in the Hearing (in the event Defendant’s Motion to Dismiss was formally granted).

III. THE FORM 4 ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF’S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCF. Rather than continue to wait for a Formal Order that may never come, and out of an abundance of caution in ensuring that her

⁴ This amended complaint would include a cause of action for a federal §1983 action. Attorney Harter indicated that he would not be opposed to the filing of Amended Complaint, and went so far as to suggest that he would simply remove the matter to federal court if Plaintiff’s oral Motion was granted. However, Plaintiff still contends that the Defendant’s Motion(s) to Dismiss should be denied and that the case should move forward where it is.

arguments are (re)considered, Plaintiff preemptively submits this Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend judgment to preserve the issue for appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, *certiorari granted, affirmed in part, reversed in part* 403 S.C. 560, 743 S.E.2d 778.

In the present case, Plaintiff's oral motion during the hearing of February 23, 2023 seeking leave to amend in the event the court dismisses the case has not been ruled upon.

STANDARD OF REVIEW

Rule 59(e), S.C.R.C.P. provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), S.C.R.C.P. A Rule 59(e) motion is not only "a vehicle to request the trial court 'alter or amend the judgment,'" but it is also "a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772 (2004). In such a motion, a party "is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." *Id.* A party may file a motion to reconsider "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." 361 S.C. at 24, 602 S.E.2d 772. "A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

For reasons previously noted, this Motion to Reconsider may be premature. However, Plaintiff has no intention of continuing to wait for a Final Order that may never come to ensure her arguments are fully heard and considered.

DISCUSSION

I. THE COURT ERRED IN FINDING THIS ACTION WAS NEVER COMMENCED AGAINST THE DEP'T. OF PUBLIC SAFETY.

1. Service was properly made on the SCDPS under SCRCF Rule 4(d)(5) when the summons and complaint was delivered to SCDPS' physical address and when the SC Attorney General's office was personally served.

South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing. Rule 4(d) sets forth the rules for personal service when serving a summons and complaint. As the SCDPS is a state agency, Rule 4(d)(5) governs service upon a State Officer or Agency, and is controlling in the present case. It says:

[Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Addressing the second part of the rule first, Rule 4(5)(d) requires service also be made upon the SC Attorney General. Plaintiff indisputably served the Attorney General's office. The Attorney General is the State's Chief Legal Officer and the individual in State government who is responsible for guiding and arranging for the defense of State agencies facing litigation. Despite the specific method indicated by the Rule being by certified mail, service was accomplished by

personal service as the time remaining to serve the Summons and Complaint was nearly expired. In the interest of ensuring service would more definitively arrive at its intended destination on time, and rather than rely on the postal service to deliver something AND ensure the certified mail process is correctly handled⁵, Plaintiff chose to serve the Attorney General's office in a manner most likely to be successful—and at a significantly greater burden and higher cost than certified mail.

Addressing the first part of the rule next, Plaintiff unquestionably “delivered” a copy of the summons and complaint to the physical address listed publicly by the agency, i.e., the SCDPS. Defendants argue that Plaintiff's (good faith) efforts to comply with the agency “delivery” requirement of 4(d)(5) was ineffectual, seemingly based solely on the contention that it was served upon the *wrong person*. The Affidavit of Diana Brown (EXHIBIT 10) suggests that the SCDPS has certain people that are allowed to accept service. *To wit*:

The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol.

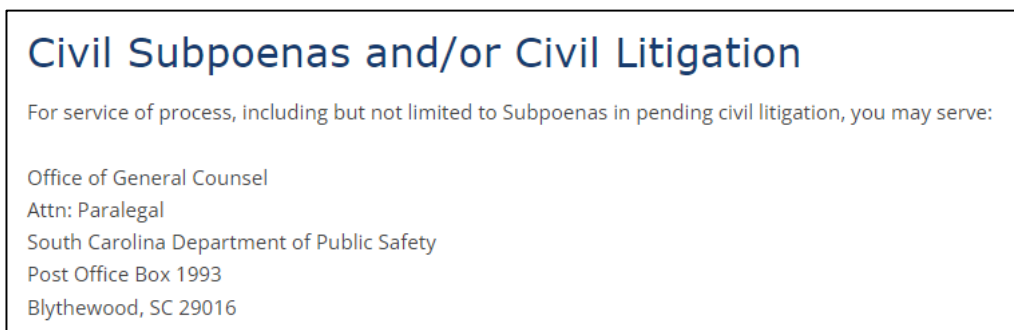
Aff. Of Diana Brown ¶ F.

Instinct begs the question: *who is the correct person?* Also, *how does one ascertain the identities of these designated employees*”? Not only that, but the last sentence makes no sense. Of course an employee of an agency would be employed by the agency. *Is this sentence meant to suggest that “the individual” could be someone other than the hypothetical “employee to accept*

⁵ Plaintiff's counsel is more than happy to provide anecdotal examples of how postal service employees, as recently as December 2022, were using the COVID-19 pandemic to excuse full compliance with the signature requirements inherent to certified mail delivery and service.

service”? It’s like saying “the blue sky is blue”, but in a way that appears more official than it really is due to the use of words like “the Department” and “must”.

But I digress. A simple search of “service of process” within the SCDPS website has only one page⁶ (EXHIBIT 14) with any information on service of process that is remotely substantive. And, as the screenshot below shows, it simply says that one “may serve” the paralegal in the General Counsel’s office, with no other guidance or the names of the “designated employees” who are authorized to accept service of process.



The SCDPS website notwithstanding, the first sentence of paragraph F from Ms. Brown’s affidavit seems to provide a more particular basis for Defendant’s positioning as to what constitutes proper service on a state agency. Accordingly, it appears that Defendant is taking the position that obtaining proper service upon a state agency under Rule 4(d)(5) is limited to delivering a summons and complaint only to “designated employees who are authorized to accept service of process on (the department’s) behalf.”

Rule 4(d)(5) does not specify “who” may accept service on behalf of a state agency. However, there are multiple subdivisions of Rule 4(d) that do indicate who may accept service on behalf of the respective persons and/or entities:

- Rule 4(d)(1) allows service to be made upon an **individual** by leaving copies “at his dwelling house or usual place of abode with some person of suitable age and discretion

⁶ <https://scdps.sc.gov/general-counsel/subpoenas>

then residing therein, or ***by delivering a copy to an agent authorized by appointment or by law to receive service of process.***” (emphasis added).

- Rule 4(d)(3) allows service to be made upon a **corporation or partnership** by delivering a copy of the summons and complaint “to an officer, a managing or general agent, or ***to any other agent authorized by appointment or by law to receive service of process . . .***” (emphasis added).
- Rule 4(d)(4) allows service to be made upon **the State of South Carolina** by delivering a copy of the summons and complaint “to the Attorney General, or ***when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official . . .***” (emphasis added).
- Rule 4(d)(6) allows service to be made upon a **Governmental Subdivision (e.g., municipal corporation, county, etc.)** by delivering a copy of the summons and complaint “***to the chief executive officer or clerk thereof,*** or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant . . .” (emphasis added).

To contrast the rules of personal service between the subdivisions above and Rule 4(d)(5), the full text of Rule 4(d)(5) is, once again, as follows:

SCRCP 4(d)(5) State Officer or Agency: [Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Now, to minimize confusion, let’s remove the parts of this rule pertaining to a State Officer (as this is not at issue), the section pertaining to service on the Attorney General (as this was previously addressed), and the last sentence—as the SCDPS is not a corporation:

[Service shall be made] upon an . . . agency of the State by delivering a copy of the summons and complaint to such . . . agency [].

Contrary to Defendant’s position, there is nothing about Rule 4(d)(5) or its “plain language” that indicates how an agency may be served (but the subdivisions listed above do indicate as much). The Rule simply doesn’t say what types of delivery are sufficient (or alternatively insufficient) to effectuate service. Further, interpreting Rule 4(d)(5) as a limitation that requires service on an agency to be made upon “designated employees who are authorized to accept service of process

on (the department's) behalf" is inconsistent with the other subdivisions of Rule 4(d). In other words, the drafters in the state legislature would have included with specificity the manner(s) in which service could be made. At least in regard to Rule 4(d)(5), if only one manner of service were acceptable (i.e., *upon designated employees who are authorized to accept service of process on (the agency's) behalf*), wouldn't the legislature have said so, just as they did in above subdivisions?⁷

Unfortunately, there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). *See also* 24 S.C. Jur. Rules of Civil Procedure § 4.2. But there are other good authorities to help discern the meaning of Rule 4(d)(5)'s requirement that a plaintiff "deliver" the summons and complaint to the state agency being sued, and those authorities strongly indicate that the manner in which the SCDPS was served was sufficient and proper.

We start with the Rules of Civil Procedure themselves. South Carolina adopted its Rules in 1985 and repealed many state statutes addressed to civil procedure matters at the same time. Nonetheless, as indicated by the Notes to the Rules, some of the subsections of Rule 4 preserved the principles of certain repealed statutes. Rule 4(d)(1), for example, expressly reserved the principles of S.C. Code Ann. § 15-9-520 (1976), which dealt with substitute service on individuals. *See* Note to Rule 4(d)(1). Rule 4(d)(5), however, did not preserve the principles of any precursor statutes; rather that subsection of the Rule "conform[ed] to the Federal Rules and clarif[ied] State practice concerning service on the State, its officers or agencies, and on political subdivisions." *See* Note to Rule 4(d)(5). In the early 1980's, the Federal Rule of Civil Procedure that SC Rule

⁷ To be clear, and for reasons set forth later in this Motion, Plaintiff is not arguing that the manner(s) by which to obtain proper service is limited only to those specific manners propounded by the germane Rule 4 sections. Rather, Plaintiff is arguing that those Rule 4 sections which do not specify the manners by which to effect service may not be limited.

4(d)(5) was patterned after also provided that service upon a government agency should be accomplished by “delivering” a copy of the suit papers to the defendant agency. *See* Notes to Federal Rule.

In the present case, the Plaintiff’s process server⁸ recalls that he went to the specific address listed by the Defendant on its public, official website as being its physical address. It was not apparent that the same specific address, without further designation (e.g., suite number, building number, etc.), was also shared by other state agencies. He entered the building, went to the front desk, informed to person at the front desk that he was there to serve the SCDPS, and was informed by the person at the front desk that she could accept the documents he was serving. Accordingly, he served her with the summons and complaint. This was accomplished within the 120-day period allowed for service, on a person who claimed she could accept service for the agency, at the address known publicly to be the address of the SCDPS.

By way of anecdotal, yet relevant experience, Plaintiff recently learned that serving process upon the SCDPS is more difficult than previously thought. In an attempt to re-serve the SCDPS (just to be able to assert that it was absolutely done, with no question as to the proper party), the (different from the first) process server informed Plaintiff’s counsel that service was difficult, as the front desk person, a person named “Grayson” informed him that he could accept service on behalf of the SCDPS. Nevertheless, at the process server’s request (and at the direction of Plaintiff’s counsel), the process server asked that a representative from the SCDPS to come down to accept service. After waiting a considerable amount of time, the process server decided to leave and try again later, as he did not trust that the front desk person was truly allowed to accept service. EXHIBIT 15. This service was ultimately recompleted (at least Plaintiff is confident that it was)

⁸ An affidavit by the process server, Jamahl Spratley, is anticipated to be sent to Plaintiff’s counsel at any moment. Plaintiff will file the affidavit with the Court upon receipt.

on May 22, upon Paula Davis, a paralegal with the SCDPS. EXHIBIT 16. Of note, Plaintiff is unable to find any employees listed within the State of SC employee list⁹ named Grayson (except for one that works for the SC Dept. of Corrections).¹⁰ Further, Plaintiff is unaware if Ms. Davis is one of SCDPS' purported "designated employees who (is) authorized to accept service of process on their behalf"—nor does the Plaintiff know of a way to confirm this.

Plaintiff contends that service was properly made upon someone located at the public physical address of the SCDPS, in a location that one would reasonably expect to be informed as to who can accept service. Aside from serving the officer and the Attorney General's office, Plaintiff took no other action to inform the SCDPS. Yet, Defendant SCDPS received notice of the lawsuit. To put this more succinctly, [Service **(was)** made] upon an . . . agency of the State by delivering a copy of the summons and complaint to such . . . agency []. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, find that Plaintiff properly served Defendant under Rule 4(d)(5), and deny the Defendant's Motion.

2. Plaintiff Sufficiently Complied with Rule 4(d)(5)

"It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant." *Fassett v. Evans*, 610 S.E.2d 841, 843 (S.C. Ct. App. 2005) (citation omitted). "The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend." *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 541 (S.C. 2014) (internal citations and quotation marks omitted); see also *Burris Chemical, Inc. v. Daniel Const. Co.*, 163 S.E.2d 618, 620 (S.C. 1968) ("The principal object of service of process is to give notice to the defendant corporation of the proceedings against

⁹ <https://webprod.cio.sc.gov/DirectWeb/searchMenu.do>

¹⁰ Plaintiff is unable to determine if any individuals with a middle name starting with "G" go by "Grayson".

it.”). It follows that Rule 4, which governs service of process, “confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *BB & T v. Taylor*, 633 S.E.2d 501, 503 (S.C. 2006) (quoting *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 899 (S.C. 1995)).

As previously stated, and something that cannot be said enough: there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). Further, South Carolina’s Rule 1 mirrors the federal rule; it states that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action.” There’s nothing just about taking an overly technical view of the service requirements of Rule 4, especially where the purported technical default caused no prejudice to the Defendant and the purposes of service were otherwise satisfied.

And in fact, the South Carolina appellate court opinions have actually taken precisely that approach to issues related to service of process (although they have not cited Rule 1 in their analyses), eschewing technical “gotcha” gamesmanship in favor of focusing on the policies and purposes underlying the service requirements. As the Fourth Circuit observed in 2010:

The South Carolina Supreme Court has noted that it will not require “exact compliance” with the rules related to service of process. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897 (1995). Instead, the court inquires into “whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* at 210, 456 S.E.2d 897.

Colleton Preparatory Acad. Inc. v. Hoover Universal, Inc., 616 F.3d 413 (4th Cir. 2010) (rejecting challenge to service where delivery was not restricted to the addressee because, under the circumstances, the defendant would have had actual and timely notice of the lawsuit and it was

undisputed that the registered agent received the lawsuit papers, notwithstanding the failure to employ restricted delivery certified mail).

As the South Carolina Supreme Court said in the *Roche* case cited by the Fourth Circuit:

Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. We have never required exacting compliance with the rules to effect service of process. See *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (when officer's return defective as to time and place of service, it can be amended to state facts); *Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended); *Miller v. Hall*, 1 Speers 1 (1842). Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

Roche v. Young Bros., Inc. of Florence, 456 S.E.2d 897, 318 S.C. 207 (S.C. 1994) (emphasis added).

Those are the principles that have continually echoed throughout the law of South Carolina, as the statement that “[e]xacting compliance with the rules is not required to effect service of process” has been quoted repeatedly in numerous appellate cases in South Carolina since *Roche*. See, e.g., *Richardson v. P.V., Inc.*, 682 S.E.2d 263, 383 S.C. 610 (S.C. 2009); *Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007) (quoting the principles from *Roche* and stating that “the efficacy and rationale behind the requirement for service of process—that the defendant has notice of the proceedings—has luculently been met in this case.” See *Roche*, 318 S.C. at 210, 456 S.E.2d at 899 (“Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.”); *Moore*, 322 S.C. at 523, 473 S.E.2d at 66 (“Rather, inquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant, and the defendant has notice of the proceedings.”). Or as now-Justice Kittredge

explained on behalf of the Court of Appeals in another case that involved a technical challenge to service:

As this issue has been framed by Appellant, its resolution would seem to entail a technical analysis of when a corporation may be said to "exist" for purposes of our civil rules governing service of process. Our rules governing service of process do not turn on parsing strict technicalities or debating murky legal abstractions. On the contrary, our supreme court has specifically held that "[w]e have never required exacting compliance with the rules to effect service of process." *Roche v. Young Bros. Inc.*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995) (citing *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900); *Saunders v. Bobo*, 2 Bailey 492 (1831); *Miller v. Hall*, 1 Speers 1 (1842)). "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche*, 318 S.C. at 210, 456 S.E.2d at 899. To establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct.App.1996). When these rules are followed, there is a presumption of proper service. *Roche*, 318 S.C. at 211, 456 S.E.2d at 900.

McCall v. Ikon, 611 S.E.2d 315, 363 S.C. 646 (S.C. App. 2005).

The Maybin Myth

In contrast to the numerous cases discussed above, perhaps the case most often used to support arguments consistent with Defendants' position is *Maybin v. Northside Correctional Center*, 891 F.2d 72, 73-4 (4th Cir. 1989). However, *Maybin* is of dubious value. In *Maybin*, Plaintiff sued her employer, which was a state agency, for discrimination. She served the attorney general of SC by mail pursuant to Rule 4(d)(5). As to the requirement that plaintiff deliver a copy of the summons and complaint to the agency, the opinion reports that the plaintiff served a particular "caseworker" at the facility. The case does not say how the caseworker was served and the Fourth Circuit's sole treatment of this issue in its opinion declared that Plaintiff's attempted service upon the caseworker was not effective service upon the agency. "Service to an agency is not legally obtained unless such service is made upon a person of suitable position and discretion

within the agency,” the Fourth Circuit said. *Maybin* cited *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (S.C.Ct.App.1987), in support of that statement.

It bears noting at the outset that *Jensen* doesn’t even say what *Maybin* said it says. In fact, whereas the issue in *Maybin* was whether service on the individual employee was effective service on the agency, the issue in *Jensen* was the reverse – whether service on the agency employer was sufficient substitute service on the individual employees who worked there. In *Jensen*, the plaintiff sued certain Doe defendants under the fictitious name statute in their individual capacities. Those defendants were employees of a state agency (DSS). The Sheriff attempted to effect service on the individual defendants by leaving the papers with an employee at the agency. The trial court “found [that the agency] was a proper agent to receive service of process for these [individual] defendants, because it was the defendants' employer at the time of the decedent's death.” The Fourth Circuit disagreed, however, because “[t]he record ... contain[ed] no evidence showing that [the agency] was the employer of the defendants at the time of the attempted service.”

While the *Jensen* Court did state in the very next sentence that “[w]ithout evidence that the defendants were served by delivery of the papers to a person of discretion employed at their present place of business, ... there is nothing in the record to show these [individual] defendants were served with process,” the Court based that statement on the “now repealed Section 15-9-520,” which was a statute providing for substitute service *on individuals*, not state agencies. *See, e.g., Collins Music Co., Inc. v. Lord*, 346 S.E.2d 724, 289 S.C. 458 (S.C. 1986) (“Under § 15-9-520 substitute service of process may be effected by personally serving a person of discretion at a defendant's residence or place of business.”). When South Carolina adopted its Rules of Civil Procedure, the Notes to Rule 4 said (and still say) that “Rule 4(d)(1),” regarding service on individuals, “preserves the requirements of Code § 15-9-520.” That statement further underscores

that *Jensen* (which was premised on § 15-9-520) was a case about an attempted substitute service on individuals, not entities or state agencies. The Notes to Rule 4(d)(5), by contrast, do not declare any intention to preserve any aspect of any prior statutes, but rather expressly declare the intent of that subsection to “conform to the Federal Rules and clarify State practice concerning service on the State, its officers or agencies, and on political subdivisions.” In short, *Jensen* was a pre-Rules of Civil Procedure case that relied on now-repealed statutes related to substitute service on individuals and certainly had nothing to say about the conditions under which a party might properly “deliver” a copy of a summons and complaint to an agency for Rule 4(d)(5) purposes.

Rejecting Strict Limitations and Selecting Good Faith

And even that’s not all. *Jensen* (and thus *Maybin* by extension) is also diametrically at odds with the manner in which the South Carolina appellate courts have addressed service of process challenges under the Rules of Civil Procedure. As noted above, in the aftermath of *Roche*’s exposition of the principles embodied in Rule 4 and the implications for any legal analysis regarding the sufficiency of service, the resounding chorus and theme of the appellate cases (since 1994 – eight years after *Jensen* and five years after *Maybin*) has been that “exacting compliance” with the Rules is not required; rather, the South Carolina courts look to a more functional approach that centers on good faith, actual notice, and sufficient compliance for a court to acquire personal jurisdiction – in other words the purposes that animate Rule 4, rather than “strict technicalities” and “murky legal abstractions.” By stark contrast, *Jensen* kicks off the conclusion of its analysis with the statement that “[c]ompliance with the service of process requirements must be strict, and approximations will not be effective.” That statement certainly does not reflect the post-*Roche* case law in the State, nor does it reflect the other policies or analysis contained above in this memo. In short, neither *Jensen* nor *Maybin* should be understood to have any enduring value at this point.

Why Bother Serving both the Attorney General and the State Agency?

Before concluding, it bears noting that there is at least one final reason for the Court not to accept the interpretation of Rule 4(d)(5) being tendered by the Defendant. That interpretation turns the relationship between the Attorney General and state agencies upside down. The Attorney General is (obviously) the State's Chief Legal Officer. South Carolina law charges him or her with the duty to defend public officers and employees in civil actions (S.C. Code § 1-7-50) and coordinate with Solicitors to provide for the representation of State institutions, and agencies with respect to civil proceedings (S.C. Code § 1-7-350). The agencies themselves cannot even hire counsel to represent the agency or as an employee without the Attorney General's approval. S.C. Code § 1-7-160, 170. (emphasis added). Read in light of this reality, it is evident that the drafters of the Rule wanted to make sure that the State's Chief Legal Officer (the one with the power, authority, and responsibility to actually do something in response to the Summons and Complaint) received notice of any lawsuits against state agencies, thus the requirement that a plaintiff be able to verify service on the attorney general by certified mail.

But as to the agency itself, the Rule says in effect, make sure you serve the Attorney General and just send the agency a copy too. *See, e.g., Morrissey v. Mayorkas* (D.C. Cir. 2021) (discussing the federal rule that South Carolina's Rule 4(d)(5) was patterned after and stating that "[b]ecause federal agencies are generally represented by the Department of Justice in litigation, the specific requirements for service on the United States provide notice to the officials who will be litigating the claims. Cf. *Light v. Wolf*, 816 F.2d 746, 750 (D.C. Cir. 1987). Rule 4's requirement to serve the Attorney General, the head of the Department of Justice, as well as the relevant U.S. Attorney, the local component of the Department, ensures the Department has notice and is able to provide a defense consistent with the broader goals of the government."'). While plaintiffs

certainly are not free to ignore the agency “delivery” requirement of Rule 4(d)(5), which Plaintiff here did not do, the most important component of Rule 4(d)(5) service is easily the requirement of service on the Attorney General; as the Rule reads, the agency “delivery” requirement is nearly an afterthought. And understandably so, given the legal structure of the rights and responsibilities of the relationship.

It should go without saying that the burden of personal service is higher and more demanding than that of service by certified mail. However, Defendant’s interpretation of Rule 4(d)(5) (which it bears repeating is not supported by the text of the Rule or any binding authority) is that service must be made on the agency in a manner consistent with 4(d)(1) and 4(d)(3) (but not 4(d)(5)), and that service on the Attorney General’s office must be by certified mail only, as opposed to the high burden/high certainty method of personal service. For the reasons stated above, that just doesn’t make sense and can’t be what the Rule’s drafters intended. Again, the most natural reading of the Rule as a whole is “make sure you serve the AG, and oh, by the way, send a copy to the agency too (ergo the lack of specificity as to either the manner of delivery or the identity of any necessary recipients).”

Unquestionable Substantial Compliance in Good Faith

Given all of the above, it is plain that Plaintiff substantially complied with Rule 4(d)(5). The Attorney General was unquestionably served. Plaintiff unquestionably delivered a copy of the Summons of the Complaint to the agency at the physical address they themselves provided to the whole world (or at least anyone with an internet connection). Oh—and Defendants’ attorney unquestionably appeared in this case and timely filed an Answer. Rule 4(d)(5) does not require only certain people within the agency to be served. And the state agency—a component of the state government—should not be allowed to mislead or confuse the public by not specifying its

physical address by way of suite or building designation, or if there is none, without informing the public that it has roommates living at the same physical address.

Even if the Court were to find some technical glitches in the service of process, those glitches were the result of a good faith effort to comply with a rule that is not specific as to either the manner of “delivery” or the characteristics of the intended recipient. There is no prejudice, and there was sufficient compliance with the Rule (even if the Court finds that compliance was not “exacting,”) to serve the purposes of Rule 4. The Defendant got notice of the litigation, timely and voluntarily appeared, **sent discovery, and even asked when he could expect our responses to his discovery requests(!)**. There was no prejudice to the Defendant.

All steps taken are sufficient to confer personal jurisdiction over a South Carolina agency in a South Carolina Court of Common Pleas. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant’s Motion to Dismiss, find that Plaintiff sufficiently complied with Rule 4(d)(5), and deny the Defendant’s Motion.

3. Service was accomplished when Defendants voluntarily appeared in the case. under SCRCP 4(d) and 12(h) when Defendants voluntarily appeared, thus consenting to personal jurisdiction of the Court and waiving their personal jurisdiction defenses.

Personal jurisdiction is a court's authority to rule and enforce a decision over the parties of a lawsuit. *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). Pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure, “[v]oluntary appearance by defendant is equivalent to personal service.” South Carolina courts have held that where a defendant appeared and asserted claims which went to the merits, in addition to his jurisdictional objection, the defendant had waived personal jurisdiction. *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). Rule 12(h)(1), SCRCP, provides a defense is waived if “it is neither made by motion under this rule or included in a responsive pleading or an amendment.” No South Carolina case

has *squarely addressed* whether personal jurisdiction is waived if a party continues to participate in litigation after challenging personal jurisdiction in their initial responsive pleading to a court. However, the language of Rule 12(h)(1) is substantially similar to the Federal Rules of Civil Procedure. In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Gardner v. Newsome Chevrolet–Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

A number of federal courts have determined “a delay in challenging personal jurisdiction by motion to dismiss may result in waiver, even where the defense was asserted in a timely answer.” *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60 (2d Cir. 1999) (citation omitted) (internal quotation and alteration marks omitted); see also *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998) (“Rule 12(h)(1)[, FRCP,] specifies the minimum steps that a party must take in order to preserve a defense.”); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296–97 (7th Cir. 1993) (finding waiver of personal jurisdiction defense by defendant's conduct, though acknowledging the waiver specifically provided for by Rule 12(h), FRCP, did not occur); *Yeldell v. Tutt*, 913 F.2d 533, 538 (8th Cir. 1990) (finding Rule 12(h), FRCP, “sets only the outer limits of waiver; it does not preclude waiver by implication.” (quoting *Marquest Med. Prods. v. EMDE Corp.*, 496 F.Supp. 1242, 1245 n.1 (D. Col. 1980))).

The Perils of Seeking Discovery (or *Be Careful What You Ask For*)

Taking a quasi-totality of the circumstances approach by considering a variety of factors, South Carolina courts have found that engaging in discovery, and specifically the act of requesting discovery for purposes non-related to issues of jurisdiction, constitutes a voluntary appearance under Rule 4(d). In *Maybank v. BB&T Corp.*, our supreme court determined a trial court acted within its discretion when it found an appellant, BB&T, a banking corporation, waived its personal

jurisdiction defense. 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016). In its answer, BB&T reserved its objection to the exercise of personal jurisdiction and subsequently moved for removal to federal court. There, the parties engaged in litigation and discovery. *Id.* BB&T's participation in the usual course of discovery, i.e., both responding to and requesting discovery from Respondent was a significant factor in determining that BB&T had waived its personal jurisdiction defense.

In another case decided just over a month ago (and after this Court filed its Form 4 Order), the SC Court of Appeals affirmed the trial court's ruling that the Respondent did not waive its personal jurisdiction defense under *Maybank. Abdulla v. S. Bank*, No. 2019-001142, 2023 WL 2939265, at *3 (S.C. Ct. App. Apr. 12, 2023). Unlike BB&T in the *Maybank* case, "(Respondent) Southern Bank **responded** to Abdulla's discovery requests to expedite the case, depositions were conducted to determine the jurisdictional issue, and Southern Bank **did not submit any discovery requests of its own.**" *Id.* (emphasis added) For these reasons, the Court of Appeals determined the personal jurisdiction defense was not waived.

The common thread between these two cases is that even if a party asserted a personal jurisdiction defense in its responsive pleadings, the submission of discovery requests for non-jurisdictional purposes (i.e. on the merits) acted as a waiver of the party's right to contest personal jurisdiction.

Plaintiff acknowledges that Defendant raised the personal jurisdiction defense in its initial pleadings. Further, contemporaneous with its Answer, Defendants did in fact move to dismiss the case on those grounds. However, on November 17, 2022, Defendants' attorney mailed to Plaintiff discovery requests that had been signed by Attorney Harter on the same date as he answered on behalf of the Defendants. EXHIBIT 12. On March 3, 2023 two weeks after the hearing for Defendants' Motion to Dismiss, Attorney Harter contacted Plaintiff's counsel inquiring as to the

status of the discovery responses. EXHIBIT 13. Unlike the Defendants in *Abdulla*, the defendants in the present case submitted discovery requests to the Plaintiff—requests that were not exclusively based on jurisdictional issues—and later inquired as to when the discovery would be produced. Additionally, these discovery requests seek information pertaining to the merits of the case, just as the *Smalls* court warned against. Further, the last line of each particular request (i.e., Interrogatories and Requests for Production) included the declarations that “These Interrogatories shall be deemed continuing so as to require supplemental responses up until and prior to trial” and “These Requests for Production of Documents shall be deemed to be continuing in nature and require supplemental response prior to trial”. EXHIBIT 12. Plaintiff has not yet submitted discovery requests to the Defendants, nor would doing so have influenced this analysis in any way. See *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) (“[A] party may not complain on appeal of error ... which his own conduct has induced.”).

I Know, But I Don’t Know-Know, You Know?

The purpose behind requiring service is a simple one. The requirements of service do “not arise from an arcane or highly technical application of the rules. Rather, [the service requirements] serve[] an essential function—ensuring that notice is properly received by all entitled to it.” *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). “A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court.” *Id.* at 652, 611 S.E.2d at 318 (quoting *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992))(emphasis added).

It is clear from Defendant’s voluntary appearance at the onset of the case and timely response to the pleadings that the Defendants were on notice of this action. More importantly, by

engaging in discovery practice, and not for the purpose of determining jurisdictional issues, Defendants have implicitly acknowledged jurisdiction of this court.

Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, find that Defendant voluntarily appeared under Rule 4(d) and/or otherwise waived its personal jurisdiction defenses, and deny the Defendant's Motion.

4. Even if the Court determines that service was not accomplished, the proper remedy here is not dismissal of the case, but to equitably toll the time to serve.

South Carolina courts have also taken issue when service was difficult to obtain due to misleading or otherwise confusing circumstances. Pursuant to S.C. Code Ann. § 15-3-530, the statute of limitations for personal injury claims is three years. Additionally, South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

In addition to statutory rules regarding tolling of the statute of limitations in personal injury claims, in conjunction with the Rules of Civil Procedure, South Carolina also recognizes the doctrine of equitable tolling. In *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009), the Court concluded "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). The *Hooper* court explains "equitable tolling is a non-statutory tolling theory which suspends a limitations period." *Hooper*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). Further, "[e]quitable tolling is judicially created; it stems

from the judiciary's inherent power to formulate rules of procedure where justice demands it” and “[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Hooper* citing *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009).

The Plaintiff in *Hooper*, the personal representative of a patient's estate, brought a wrongful death action against defendant nursing home. The patient was admitted to the nursing home in February 2003, developed severe decubitus ulcers, was hospitalized in April 2003, and died in May 2003. The complaint was timely filed in February 2006, but service was not effected until June 2006, after the three-year statute of limitations of S.C. Code Ann. § 15-3-530 had run and after the 120 time period of S.C. R. Civ. P. 3(a)(2) had run. (See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009)).

Justice May be Blind, But I Can’t See Justice. Am I the Blind One?

The estate's attorney first tried to effect service upon the agent named by the nursing home at the address supplied to the Secretary of State. When that was unsuccessful, the attorney tried to find a personal address for the agent. Further, the attorney contacted the sheriff's department on numerous occasions and was told service was being made. However, service was unsuccessful because the agent could not be found. The Defendant in *Hooper* argued it was entitled to the dismissal of *Hooper's* action because Plaintiff should have pursued alternative means of service, such as publication or service upon the Secretary of State. However, the Court found “it is important to note that a party utilizes these alternative methods of service only after first exercising reasonable or due diligence to effect service on an individual or agent.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added).

The *Hooper* court cited many examples of equitable tolling and explains jurisdictions have considered tolling in a variety of contexts and have developed differing rules for its application. However, the *Hooper* court concluded the differing situations cited in several jurisdictions did not constitute an exclusive list of circumstances that justify the application of equitable tolling. Most importantly, the *Hooper* court concluded "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper* quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Therefore, "equitable tolling may be applied where it is justified under all the circumstances ... when the interests of justice compel its use." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added). The 4th Circuit Court of Appeals cites *Hooper* in *Aikens v. Ingram*, 524 Fed. Appx. 873, 2013 U.S. App. LEXIS 8972, 2013 WL 1832083 and also adds "[l]imitation periods are designed to ensure justice by preventing surprise, but no surprise exists when defendants are already on notice of the substantive claims being brought against them."

The Right Place, the Right Time, the Right— <enter Evil Twin>

In the present case, Plaintiff attempted to serve the Defendant at the physical address listed on its publicly listed, government-funded website. Unbeknownst to the Plaintiff, Defendant SCDPS shared the address with the SCDMV, another state agency. However, the SCDPS has not made any attempts known to the Plaintiff to inform the public that service upon that particular address could be difficult, given the shared space. Further, Defendant SCDPS does not specify any designations which might have allowed Plaintiff (or the public, for that matter) to more specifically

ascertain Defendant SCDPS' specific location at the listed physical address, such as a suite or building number.

In *Hooper*, the Defendant did not provide a correct address for their registered agent. In this case, the Defendant is a state agency, and given its public status, should be clear in any and all of its public declarations, including but not limited to its listed physical address on a public, government-funded website and as to any potential misleading and/or confusing encounters one might anticipate when relying on said declarations. If the state agency is not clear on such difficulties a Plaintiff might encounter in attempting service of process, for example, such lack of clarity would prejudice the Plaintiff. There are no set rules on how to "find" a Defendant, however, the Plaintiff is required to complete reasonable and due diligence in locating and serving a Defendant prior to proceeding with service by publication. This should include service of a summons and complaint at the physical address publicly provided by a Defendant, especially a state agency, as in this case. However, this Court's decision granting Defendants Motion to Dismiss seems to ignore the South Carolina courts' purpose "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." *Hooper* at 687.

We Did What They Told Us to Do. What Else Were We Supposed to Do?

In this case, the Plaintiff sought out the state agency's physical address to ensure it would be properly served. By simply going to the agency's website and noting the physical address the agency had listed, Plaintiff was ready to put her plan into action. When the process server delivered the papers to the individual at the address provided by the agency, this individual apparently did not object, decline, or otherwise refuse service of process. Accordingly, Plaintiff justifiably believed that service was properly obtained. This belief was further justified when Defendant SCDPS, clearly on notice of the lawsuit, voluntarily appeared in the case and filed a timely

response to the pleadings. As stated in the *Hooper* case, the rules require a Plaintiff to perform reasonable and due diligence to serve the Defendant without moving forward with service by publication. Plaintiff contends this responsibility exists due to the issues of a Defendant gaining actual knowledge of a lawsuit via publication, as noted in *Hooper*. With service having been made *at the physical address provided by the Defendant* and said defendant timely responding to the pleadings, it is clear that the overall purpose of Rule 4 was achieved, that being to ensure the Defendant had actual notice of the lawsuit.

By way of analogy (and this is not an argument based on any precedence whatsoever—but I hope this Court gets the point), this whole situation is analogous to one method of fulfilling the requirements of Rule 4(d)(1)—specifically, “by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.” More than one agency resided at 10311 Wilson Blvd., Blythewood, SC 29016 (i.e., the “dwelling house or usual place of abode” of SCDPS), and the person accepting service was presumably “of suitable age and discretion,” and acting on behalf of the other agency “then residing therein.” There’s virtually no way that, on some level, be it shared bathrooms, cafeterias, vending machines, parking lot, etc., that employees of the SCDPS and SCDMV don’t interact. And the whole point of Rule 4(d)(1) is to ensure that serving a summons and complaint on someone isn’t hampered by pesky situations (like that person not being at home) by giving it to someone of proper maturity that shares the same space as the person intending to be served, with the expectation that the intended person will be given the documents. And if we’re going to analogize, let’s analogize—if corporations are people, i.e., *Citizens United*¹¹, why can’t state agencies be people too?

¹¹ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)

The Plaintiff clearly showed reasonable and due diligence in attempting to serve the Defendant. Additionally, the Plaintiff served the suit upon the Attorney General's office. Ultimately, the Defendant, with actual notice of the Summons and Complaint, responded to the same, and was aware of the substantive claims being brought against the agency. This is further evidenced by the Defendant timely filing an answer.

Equitable tolling was created to ensure fundamental practicality and fairness. The Plaintiff contends they performed their reasonable and due diligence to properly serve the Defendant in this case. Further, they don't believe the Defendant is prejudiced by surprise in this case (because they were not). Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, and in the event the Court ultimately orders that service was not obtained initially, the Plaintiff would ask that the Court toll the time to serve the Summons and Complaint, thus allowing the Plaintiff's service of May 22, 2023 to be effective (assuming this is deemed to be on the proper agency, e.g., upon a "designated employee[] who [is] authorized to accept service of process,"¹² and notwithstanding the Rules pertaining to time to file and serve), and deny the Defendant's Motion.

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

1. Overview of the Law

The South Carolina Tort Claims Act (SCTCA) does not give governmental employees absolute immunity from suit for incidents that occur during their employment. South Carolina Code Section 15-78-70(b) of the SCTCA provides that "[n]othing in this chapter may be construed

¹² For reasons set forth earlier in this Motion, Plaintiff's quoted statement is not made to argue that this is the proper type of person to be served, but rather to provide an example of the type of person Defendant has already conceded would be proper to accept service on behalf of the agency. Plaintiff obviously disagrees with such a limitation.

to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b) (emphasis added). Thus, this section of the SCTCA makes clear that "police officers whose conduct is outside the scope of their official duties or constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude are liable for their torts 'in the same manner and to the same extent as a private individual under like circumstances' without any immunity from the Act." *Shelley v. S.C. Highway Patrol*, 432 S.C. 335, 341, 852 S.E.2d 220, 223 (Ct. App. 2020); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585 (2019) ("A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm."). This section works in conjunction with Section 15-78-60(17) of the SCTCA, which provides that "[t]he governmental entity is not liable for a loss resulting from . . . employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17) (emphasis added). As such, under this scheme, an individual governmental employee is not protected by the SCTCA and may be individually liable for actions that occur outside the scope of their official duties or are committed with fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity is not liable under the SCTCA for such actions. Conversely, an individual governmental employee is immune from suit under the SCTCA for actions that are committed within the scope of their official duties and do not constitute fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity can be liable for such actions under the SCTCA.

Rule 8(e), S.C.R.C.P. allows a plaintiff to plead in the alternative and even assert inconsistent causes of action. Such alternative or inconsistent pleading with respect to individual government employees has been permitted by the South Carolina Supreme Court. In *Skydive Myrtle Beach, Inc.*, the Court held, “We find it is entirely appropriate for [the plaintiff] to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties. . . . Pleading alternative theories of recovery based on the uncertainty of whether an employee acted within the scope of his employment or his official duties is common.” *Skydive Myrtle Beach, Inc.*, 426 S.C. at 187-88, 826 S.E.2d at 591-92.

With respect to Plaintiff’s claims against the SCDPS, SCHP, and Trooper Goshorn, Plaintiff has pled in her complaint alternative theories of liability against them both in accordance with the SCTCA. Here, Plaintiff has brought seven (7) total causes of action against the Defendants: 1.) Negligence/Negligent Training/Supervision/Retention; 2.) State Tort Claims Act violations; 3.) False Imprisonment; 4.) Malicious Prosecution; 5.) Abuse of Process; 6.) Outrage; and 7.) Gross Negligence/Recklessness. As to the cause of actions for negligence/gross negligence, Plaintiff concedes that the SCDPS is the proper party for those allegations and that the STCA cause of action is more of a restatement of the law. However, with respect to the other four (4) causes of action, as set forth below, the Complaint sufficiently states claims against all Defendants, including Trooper Goshorn.

2. The Complaint Sufficiently States a Cause of Action for False Imprisonment Against Goshorn.

As set forth above, one of the exceptions to immunity under the SCTCA is if an individual officer’s conduct constituted an “intent to harm.” S.C. Code Ann. § 15-78-70(b). In her third cause of action, Plaintiff has alleged false imprisonment against all Defendants. “False imprisonment is

an intentional tort.” *Gist v. Berkeley County Sheriff’s Dept.*, 336 S.C. 611, 619, 521 S.E.2d 163 (Ct. App. 1999). “To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.” *Law v. S.C Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642, 651 (2006) (emphasis added). Plaintiff has alleged as part of her false imprisonment cause of action,

Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility. The acts . . . were intentional[.]

See Compl., ¶ 71-72.

Again, allegations that a defendant acted “for the purpose of injuring the plaintiff” satisfy this exception. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 185, 826 S.E.2d 585 (2019). In fact, even if in proving “intent” under an intentional tort, a plaintiff need not prove “intent to harm,” it could still be found by the jury that the officer acted with an intent to harm in committing the tort. See *Eldeco, Inc. v. Charleston County*, 372 S.C. 470, 642 S.E.2d 726, 732 (2007) (“Although it is true that harm may result from an intentional interference with existing or prospective contractual relations, it is not necessary that the interfering party intend such harm.”). Further, “whether the officers’ conduct constituted an intent to harm is a factual question for the jury.” *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Thus, Plaintiff has sufficiently plead the intentional tort of false imprisonment against Goshorn, and dismissal of this cause of action against him at this point is inappropriate, as it is a factual question for the jury to determine whether the false imprisonment was committed by Goshorn with an intent to harm.

3. The Complaint Sufficiently States a Cause of Action for Malicious Prosecution Against Goshorn.

Another exception in Section 15-78-70(b) is for causes of action that contain an element of “actual malice.” The “actual malice” standard under the SCTCA in Section 15-78-70(b) is defined as acting with “ill will toward the plaintiff” or acting “with conscious indifference of the plaintiff’s rights.” *Castine v. Castine*, 403 S.C. 259, 268, 743 S.E.2d 93, 97 (Ct. App. 2013).

The Complaint sets forth a malicious prosecution claim against all Defendants. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law*, 368 S.C. 424, 629 S.E.2d at 648 (emphasis added). As part of Plaintiff’s malicious prosecution claim against Defendants, Plaintiff alleges, “Defendants’ accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.” Compl., ¶ 83.

In *Brown v. Leonard*, No. 2008-UP-039 (Ct. App. Jan. 11, 2008), the South Carolina Court of Appeals examined the “actual malice” exception and held that “[a]lthough the [law enforcement agency] is entitled to statutory immunity from claims requiring a showing of malice, individual employees are not entitled to benefit from that same immunity. Otherwise, employees of organizations covered by SCTCA would have immunity from any intentional tort.” *Id.* The Court of Appeals held that the circuit court “erred in dismissing the malicious prosecution claim against [a deputy] based upon the same immunity granted to the [law enforcement agency].” *Id.*

While the Court of Appeals has subsequently held “one need not show actual malice in order to successfully maintain an action for malicious prosecution,” it also held that a showing of malice under that cause of action “does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition.” *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546,

698 S.E.2d 845, 855 (Ct. App. 2010) (emphasis added). Thus, a cause of action for malicious prosecution could possibly be maintained against the SCDPS and individual troopers simultaneously depending on if such actual malice is found or not. This determination is not made by the court at the Rule 12(b)(6) stage, as the South Carolina Supreme Court has long held that “the question of actual malice is a question of fact for a jury.” *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013) (“[T]o the extent the existence of common law actual malice becomes an issue, its existence is a question of fact that must be proven at trial.”). In other words, whether Goshorn in this case acted with actual malice or implied malice is a factual question for the jury, and thus, neither the SCDPS, nor the individual trooper, can be dismissed at the 12(b)(6) stage on immunity grounds under Section 15-78-60(17) or 15-78-70(b), respectively. See *White v. City of N. Charleston*, No. 2020-UP-231 (Ct. App. Aug. 5, 2020) (“Accordingly, the circuit court should not have granted immunity under [15-78-60(17)], as whether the officers’ conduct constituted an intent to harm is a factual question for the jury.”).

4. The Complaint Sufficiently States a Cause of Action for Abuse of Process Against Goshorn.

Plaintiff has alleged a cause of action for abuse of process against all Defendants and alleged, “The Defendants had an ulterior purpose in employing legal process against the Plaintiff [and] acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.” Compl., ¶ 90-91. “The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding.” *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211, 213 (Ct. App. 2008). The South Carolina Court of Appeals has held that abuse of process “does not require a finding of actual malice or intent to harm.” *Id.* (emphasis added). However, under an

abuse of process claim with respect to the “intent to harm” exception “harm may result from . . . ‘bad intent.’” 379 S.C. 346, 665 S.E.2d at 214. Again, under the SCTCA, the “actual malice” exception is “defined by situations where ‘defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff.’” Id. Under an abuse of process claim, the abuse may be accompanied, but “need not be accompanied by any ill will.” Again, the determination of whether the abuse of process was committed with actual malice or intent to harm is a factual question for the jury. *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013); *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Therefore, at the 12(b)(6) stage, these claims for abuse of process against Goshorn cannot be dismissed.

5. The Complaint Sufficiently States a Cause of Action for Outrage Against Goshorn.

Outrage is also known as intentional infliction of emotional distress. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 575, 780 S.E.2d 252, 260 (2015). Plaintiff’s cause of action for outrage against Trooper Goshorn in his individual capacities is allowed to proceed under South Carolina law.

Under the SCTCA, a person who has suffered “a loss caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim” against the governmental entity. S.C. Code Ann. § 15-78-50(a). However, a “loss” as defined by the SCTCA **does not include outrage**. S.C. Code Ann. § 15-78-30(f) (emphasis added). Thus, courts have found that a governmental entity is immune from suit for intentional infliction of emotional distress. *Trask v. Beaufort County*, 392 S.C. 560, 573, 709 S.E.2d 536, 542 (Ct. App. 2011).

Nevertheless, again, Section 15-78-70(b) of the SCTCA provides that “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (emphasis added). With respect to the “intent to harm” exception in Section 15-78-70(b), the South Carolina Supreme Court has held that allegations that a defendant acted “for the purpose of injuring the plaintiff” satisfy this exception. *Skydive Myrtle Beach, Inc.*, 426 S.C. at 185.

“To state a claim for [outrage], a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiffs emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d 42 (2004). Thus, in examining the SCTCA with respect to claims for outrage or intentional infliction of emotional distress against individuals, the South Carolina Supreme Court has allowed claims against individuals to proceed. In *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005), the South Carolina Supreme Court refused to reverse a trial court for denying individual county council members’ motion to dismiss claims for defamation, defamation per se, and intentional infliction of emotional distress and held as follows:

The South Carolina Tort Claims Act provides “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit . . . if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code

Ann. § 15-78-70(b) (2005). Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, the above statute would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

366 S.C. 354, 622 S.E.2d at 537-38. Likewise, in *In Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004), the plaintiff alleged the tort of outrage or intentional infliction of emotional distress against an assistant principal at a middle school, and the South Carolina Supreme Court held as to individual immunity:

We find that [the defendant's] retaliatory conduct was a continuation of his improper sexual advances toward [the plaintiff] and was a product of personal, not occupational, motives. The principle of governmental immunity is not intended to protect a defendant such as Badger who has used his authority for nothing more than to personally retaliate against an employee. In addition, section 15-78-70(b) denies governmental immunity for defendants whose actions involve actual malice and an intent to harm. We find that Badger's retaliatory conduct involved actual malice and an intention to harm Frazier.

361 S.C. at 103, 603 S.E.2d 587.

Here, in her outrage claim, Plaintiff has alleged, “. . . Furthermore, [Defendants'] conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.” Compl., ¶ 94. Thus, as the outrage claim contains an allegation of “intent to harm,” based on the above authority, the claim can proceed against Trooper Goshorn.

6. Plaintiff Should Be Afforded the Opportunity to Amend Her Complaint Before the Final Order of Dismissal.

Should the Court believe that Plaintiff's Complaint is deficient in regard to any of the claims against Trooper Goshorn, Plaintiff must be given an opportunity to amend the Complaint before the final order of dismissal is entered. The South Carolina Supreme Court holds, “[w]hen a trial court finds a complaint fails ‘to state facts sufficient to constitute a cause of action’ under

Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585 (S.C. 2019). In *Skydive*, the Supreme Court found that the trial court erred in dismissing individually named employees under the SCTCA pursuant to Rule 12(b)(6) and “failing even to consider allowing [the plaintiff] to amend its complaint.” *Id.* In so holding, the Court stated as follows regarding how claims against individual employees are to be judged at the pleading stage:

A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm. § 15-78-70(b). Therefore, although [plaintiff] alleged in its complaint that Respondents were acting as agents of the governmental entities, the facts and claims recited above set forth several plausible grounds upon which [plaintiff] could successfully allege Respondents are not entitled to immunity. It is not our role to determine whether the allegations [plaintiff] might make in an amended pleading will state a valid claim. However, we cannot definitively say it is impossible for [plaintiff] to plead a valid claim against Respondents.

426 S.C. at 187, 826 S.E.2d 585. Based on the arguments set forth above, there are certainly allegations that have been made against Trooper Goshorn that state valid claims against him. To the extent the Court disagrees, Plaintiff should be allowed the opportunity to amend her Complaint to more succinctly plead these allegations against Goshorn.

III. THE FORM 4 ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF’S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCP. Rather than continue to wait for a Formal Order that may never come, and out of an abundance of caution in ensuring that her

arguments are (re)considered, Plaintiff preemptively submits this Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend judgment to preserve the issue for appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778.

Plaintiff's counsel orally moved for leave to amend her complaint during the Hearing of February 23, 2023. Under SCRCP Rule 7(b)(1), an oral motion may be made during a hearing. Also see *Hundley ex rel. Hundley v. Rite Aid of South Carolina, Inc.* (S.C.App. 2000) 339 S.C. 285, 529 S.E.2d 45, *rehearing denied*. ("Normally, motions must be made on the record to be preserved; however, an oral motion that is later reduced to writing can preserve an issue for appeal.").

Plaintiff moved for leave to amend its summons and complaint in the event this Court granted Defendants' Motions to Dismiss. Defendants were present when oral motion was made and did not object to the filing of an amended summons and complaint. On the contrary, Defense counsel indicated that such would be agreeable by indicating what his plans would be in the event Plaintiff were granted leave to amend—specifically, that he would remove the suit to federal court. Accordingly, Defendants would not be prejudiced by this court granting leave to amend. However, if this court were to deny Plaintiff's oral motion, Plaintiff would be prejudiced by the Statute of Limitations expiring.

Such notwithstanding, Plaintiff argues that this court should reconsider its position taken in the Form 4 Order and deny Defendants' Motions to Dismiss, as Plaintiff is confident that the decision provided in the Form 4 Order was, respectfully, in error. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, and in the event that the Court still

maintains its grant of Defendant's Motion to Dismiss, allow the Plaintiff to amend her complaint to include additional causes of action, specifically that of a §1983 claim, and any other claims as discussed herein.

CONCLUSION

WHEREFORE, for the reasons stated above, the Plaintiff respectfully requests that this Court Reconsider its Form 4 Order of March 21, 2023, which dismissed the claims against all Defendants, and instead deny the Defendants' Motions to Dismiss. Alternatively, Plaintiff renews its oral motion requesting leave from the Court to file and serve an Amended Complaint in the event Defendants Motions to Dismiss are formally granted.

PLAINTIFF RESERVES THE RIGHT TO AMEND THIS MOTION IN THE EVENT A FORMAL MOTION IS SUBMITTED TO THE COURT, AS INSTRUCTED BY THE FORM 4 ORDER.

*****SIGNATURE ON FOLLOWING PAGE*****

Anderson, South Carolina
Dated: 05/23/2023

s/Nicolas J. Baughman
Nicolas J. Baughman, Esq.
Nicolas J. Baughman, Attorney at Law, LLC
Post Office Box 2501
Anderson, South Carolina 29622
Phone: (864) 332-9276
Fax: (864) 392-8276
ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA GREENVILLE COUNTY	))))	RULE 11 OF SOUTH CAROLINA RULES OF CIVIL PROCEDURE CERTIFICATION

Undersigned counsel certifies that consultation would serve no useful purpose as to the foregoing motion(s).

Respectfully submitted this 23rd day of May, 2023.

s/Nicolas J. Baughman

Nicolas J. Baughman, Esq.

Nicolas J. Baughman, Attorney at Law, LLC

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Anderson, South Carolina 29622

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ATTORNEY FOR THE PLAINTIFF

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

CIVIL ACTION NO: 2022-CP-42-_____

SUMMONS
(JURY TRIAL DEMANDED)

**TO THE DEFENDANTS ABOVE NAMED: SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN**

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, which was filed in the Office of the Clerk of this Court on the below mentioned date; and to serve a copy of your answer to the Complaint upon the subscriber at their office, 600 North McDuffie Street, Post Office Box 2501, Anderson, South Carolina, within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE:

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within twenty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

SIGNATURES ON FOLLOWING PAGE

s/Nicolas J. Baughman

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Date: May 9, 2022

s/C. Austin McDaniel

C. Austin McDaniel (S.C. Bar #76084)
C. Austin McDaniel, Attorney at Law, LLC
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Date: May 9, 2022
Anderson, SC

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

CIVIL ACTION NO: 2022-CP-42-_____

**COMPLAINT
(JURY TRIAL DEMANDED)**

COMES NOW the Plaintiff, TAYLOR CHASEY ROBERTSON, complaining of the Defendants, SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER PATRICK J. GOSHORN, who, through her undersigned counsel, respectfully shows unto the Court as follows:

PARTIES

1. Plaintiff, Taylor Chasey Robertson ("Plaintiff") was a citizen and resident of Greenville County, South Carolina at the time of the incident complained of herein.

2. Defendant South Carolina Department of Public Safety ("SCDPS") is an agency of the State of South Carolina, which is headquartered in Richland County, South Carolina with its principal place of business in Richland County.

3. Defendant South Carolina Highway Patrol ("SCHP") is an agency of the State of South Carolina, which his headquartered in Richland County, South Carolina with its principal place of business in Richland County.

4. Defendants SCDPS and SCHP are governmental agencies as defined in S.C. Code § 15-78-30(a).

5. Pursuant to S.C. Code §15-78-70(c), Defendants are statutorily liable for the acts and omissions of its fiduciaries, employees, Troopers, and/or agents acting in the course and scope of their official duties.

6. Defendant Patrick J. Goshorn (“Goshorn”) is, upon information and belief, a resident of Spartanburg County and at the time of this incident was a Trooper with the Highway Patrol, acting at all times pertinent hereto within the course and scope of his employment and under color of state law. This Defendant is sued in his individual and official capacities.

7. The events giving rise to this action took place in Spartanburg County, South Carolina.

8. Venue is proper in this Court, and this Court has both subject matter and personal jurisdiction over all claims and parties.

GENERAL STATEMENT OF FACTS

9. On May 9, 2020, Defendant Trooper Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence (“DUI”) when Ms. Robertson had consumed neither drugs nor a sufficient amount of alcohol to be intoxicated. Ms. Robertson was pulled over on May 9, 2020, at approximately 2:00 AM. In temperatures below 50 degrees Fahrenheit¹, while wearing only a thin shirt, she was subject to the standard field sobriety tests. These tests were improperly administered, and as a result, Ms. Robertson was taken into police custody based on Goshorn’s assertion that Ms. Robertson was impaired by alcohol. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the

¹ <https://www.timeanddate.com/weather/@4580599/historic?month=5&year=2020>

Datamaster machine demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson should not have been arrested and has brought suit to seek redress for her arrest for DUI when she was not impaired by drugs, alcohol, or any combination thereof.

SPECIFIC FACTUAL ALLEGATIONS

10. At the time of this incident, .

11. On May 9, 2020, at approximately 2:00AM, Ms. Robertson was pulled over by Trooper Goshorn, a Trooper employed by Defendants SCDPS and SCHP for speeding; specifically for going 48-mph in a 35-mph zone.

12. Upon information and belief, Trooper Goshorn was an employee and/or agent of Defendants SCDPS and SCHP at the time of the occurrences central to this case.

13. Despite only pulling Ms. Robertson over for allegedly speeding, Trooper Goshorn asked Plaintiff to exit her vehicle.

14. Ms. Robertson had no criminal record and it was not necessary for Plaintiff to exit the vehicle for Defendants to cite Plaintiff for driving 13 miles per hour over the speed limit—an offense only punishable by fine and for which an individual cannot be arrested. See: S.C. Code Ann. § 56-5-1520(G)(2).

15. There did not exist sufficient cause to warrant further detention of Ms. Robertson at this point.

16. Trooper Goshorn requested that Ms. Robertson perform the standard field sobriety tests (“SFSTs”).

17. Ms. Robertson told the Trooper that she suffered from a knee injury. This injury affected her ability to walk a line and stand on one leg.

18. Ms. Robertson had not been diagnosed with any specific injury by a medical physician but had been experiencing pain and stiffness for a number of weeks.

19. Furthermore, Ms. Robertson told the Trooper that she was cold, which was not an unreasonable sensation given that the temperature outside was below 50 degrees Fahrenheit.

20. Ms. Robertson acknowledged having a single glass of wine earlier in the evening.

21. The first test administered was the Horizontal Gaze Nystagmus test ("HGN").

22. HGN is a quasi-medical test employed by certified law enforcement to detect the presence of alcohol in a suspect by observing involuntary jerking of the eye. When administered correctly, based on California validation studies, there is an 88% likelihood that the suspect will produce a BAC sample of .08% or higher. To be reliable, the HGN test must be administered according to the NHTSA's strict procedures.

23. There were numerous deviations in Trooper Goshorn's administration of the HGN test here that undoubtedly compromised the validity of the test

24. Ms. Robertson remained steady during the testing procedure, as there was no rotational, side to side, or back and forth swaying. Additionally, her voice was clear, easily understood, and completely devoid from slurring. Further, she understood all commands from the Trooper and followed them appropriately. The steadiness, clarity of voice, and comprehension of commands evidence of lack of impairment that Trooper Goshorn should have noticed.

25. The administration of HGN requires a stimulus, such as a pen, which the Trooper used.

26. The stimulus is the most critical component of the HGN test because it is what the subject focuses on while the officer administers the test. As such, the stimulus must be held 12 to 15 inches from the nose and slightly above the eye level (approximately 2 inches), the stimulus must be moved smoothly across the subject's entire field of vision, at a consistent speed approximately two seconds out and two seconds in for each eye.

27. Here, Trooper Goshorn's use of the stimulus is erratic. He consistently changed the distance the stimulus was from Ms. Robertson's nose, varying from too close to her face to a distance that is well in excess of the 15-inch maximum. The height of the stimulus varies wildly from being held above the 2-inch maximum to being held way too low. Finally, the pen was not moved smoothly and at a consistent speed through her field of vision.

28. These erratic and inconsistent passes compromised the validity of the test.

29. The second SFST Trooper Goshorn administered was the Nine Step Walk and Turn test.

30. After only a couple of steps, Ms. Robertson in obvious pain, informed Trooper Goshorn that her knee was hurting too much for her to complete the test. She even offered to take a breath test to prove she was not intoxicated.

31. Finally, Trooper Goshorn administered the One Leg Stand test, which Ms. Robertson performed while visibly shivering.

32. Trooper Goshorn inappropriately relied upon the SFST results when he arrested Plaintiff for driving under the influence ("DUI").

33. Ms. Robertson did not resist arrest.

34. Trooper Goshorn had Plaintiff's vehicle towed away from the scene of the stop.

35. Trooper Goshorn transported Ms. Robertson to the Greer City Police Department to provide a breath sample on the Datamaster DMT.

36. Once at the facility, Ms. Robertson continued to cooperate fully as she had been throughout the night.

37. She willingly provided a breath sample, and the results were a 0.01 % BAC.

38. South Carolina Code Section 56-5-2950(G) provides that “the alcohol concentration at the time of the test, as shown by chemical analysis of the person’s breath or other bodily fluids, gives rise to the following: (1) if the alcohol concentration was at that time five one-hundredths of one percent or less, *it is conclusively presumed that the person was not under the influence of alcohol.*” (Emphasis added).

39. Conclusive presumptions constitute irrebuttable factual presumptions. In the case of South Carolina’s DUI statute, a person with a 0.05% or less BAC legally cannot be under the influence of alcohol.

40. Pursuant to South Carolina law, law enforcement’s observations and field sobriety tests are designed to generate reasonable suspicion that an individual is under the influence of alcohol, drugs, or a combination thereof.

41. Once toxicology verifies that an individual is not impaired by controlled substances, alcohol, or some combination thereof, there ceases to exist probable cause sufficient to justify the original arrest and continued prosecution.

42. Plaintiff also received a ticket from Trooper Goshorn for Failure to Change Address.

43. However, Plaintiff had submitted a Change of Address to the South Carolina Department of Motor Vehicles on December 6, 2018, which reflected her proper address as of the date of the subject arrest.

44. Upon receiving the results from the Datamaster DMT, Trooper Goshorn “unarrested” Plaintiff.

45. Plaintiff was then released from the jail into the back parking lot of the Greer City Detention Center, unaccompanied and unsupervised, at approximately 3:20am, where she was picked up by a friend.

46. The next morning, she had to pay the tow facility almost \$300 to have her car released to her and she had to miss a day of work.

47. The ticket number assigned to Plaintiff’s DUI arrest per the Breath Alcohol Analysis Test Report, which was sequentially numbered before her ticket for Failure to Change Address, was removed from her charge and reassigned to another individual.

48. This other individual was charged with speeding by Trooper Goshorn more than 14 hours after Plaintiff was initially stopped by Trooper Goshorn.

49. Upon information and belief, the only charge submitted by Trooper Goshorn to the Court was the ticket for Failure to Change Address.

50. Upon information and belief, this ticket was ultimately dismissed by the Court some time later due to Trooper Goshorn no longer working for the Defendants SCHP and SCDPS.

51. That he would put Ms. Robertson through the stress of being arrested for a crime when Trooper Goshorn knew or should have known Ms. Robertson was unimpaired, shocks the conscious.

52. Upon information and belief, Trooper Goshorn has, on multiple other occasions, arrested motorists for DUI when those motorists were unimpaired.

53. Furthermore, in addition to Ms. Robertson and upon information and belief, Trooper Goshorn has arrested several other motorists who registered BACs of 0.05% or less in the time he was employed by Defendants. It is unknown at this time whether any of those other motorists provided blood or urine samples that were free from drugs or poisons of concern.

54. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has been damaged. Plaintiff has endured fright, anxiety, embarrassment, humiliation, mental anguish, emotional distress, and frustration, as well as reputation damage.

55. Ms. Robertson was arrested and detained on a case for which there did not exist probable cause sufficient warrant an arrest and/or prosecution.

56. Upon information and belief, all agents, fiduciaries, employees, Troopers, and officers of Defendants SCHP and SCDPS were acting and working within the scope of their official duties at all times relevant to this complaint.

57. The acts and omissions of the Defendants constituted more than one occurrence, as the complained of acts were not merely an unfolding sequence of events which resulted from a single act of negligence. The acts and omissions of the Defendants in this case constituted multiple independent acts of negligence by the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligent Training/Supervision/Retention)

58. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

59. Defendants owed Plaintiff a duty to exercise reasonable care in the training, supervision, and retention of its police Troopers and other fiduciaries, agents, and/or employees.

60. Defendants breached their duty to Plaintiff in failing to properly train, supervise, or retain Troopers, and other fiduciaries, agents, and/or employees, including but not limited to the following:

- a. Failure to properly determine whether those fiduciaries, agents, Troopers, and/or employees' were fit for duty;
- b. Failure to properly train fiduciaries, agents, Troopers, and/or employees to perform their duties;
- c. Failure to ensure fiduciaries, agents, Troopers, and/or employees were exercising their duties in a diligent, proper, and reasonable manner;
- d. Failure to properly investigate fiduciaries, agents, Troopers, and/or employees' actions as law enforcement officers;
- e. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' charging decisions;
- f. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' decisions regarding the continued prosecution of charges for which probable cause did not exist;
- g. Failure to properly discipline fiduciaries, agents, Troopers, and/or employees for unreasonable behavior; and/or
- h. Failure to properly supervise fiduciaries, agents, Troopers, and/or employees during the course and scope of their employment.

61. Defendants' breach of duty as described above was the direct and proximate cause of injury to the Plaintiff.

62. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SECOND CAUSE OF ACTION
(State Tort Claims Act)

63. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

64. Plaintiff further alleges that Defendants, by virtue of Chapter 28, Title 15 of the SC Code of Laws, are responsible for conduct alleged above, causing harm (as set forth more fully below) to the Plaintiff, as well as the conduct of its agents, servants, fiduciaries, Troopers, and/or employees acting within the course of their employment, as set forth above; said conduct being negligent, grossly negligent, willful, and reckless, including but not limited to:

- a. The failure to hire adequate and proper personnel;
- b. The failure to properly and adequately train employees and personnel;
- c. The failure to properly and adequately supervise employees or personnel in order to ensure they were properly performing their jobs or assignments; and
- d. The failure to properly protect the rights and privileges available to the Plaintiff under the Constitution, statutes, and laws of the State of South Carolina.

65. As a result of these failures, the Plaintiff has suffered damages as set forth more fully herein below.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)

66. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

67. The Plaintiff is informed and believes that actions and inactions of the Defendants SCDPS and SCHP resulted in the intentional and unlawful restraint of the Plaintiff.

68. The Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest did not have sufficient cause to detain Plaintiff by requiring she exit her motor vehicle to perform the field sobriety tests.

69. The Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest did not have probable cause to detain or arrest Plaintiff.

70. As the employer of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest and detention, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

71. Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility.

72. The acts of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest were intentional and designed to arrest the Plaintiff.

73. The Plaintiff was unlawfully restrained, as there did not exist, at the time of her arrest, lawful justification for her arrest on either charge.

74. As a result of her wrongful detention and arrest pursuant to the deficient investigation of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution)

75. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

76. Criminal proceedings against Plaintiff were instituted for the charges of Failure to Change Address.

77. The criminal proceedings against Plaintiff were instituted at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

78. The criminal proceedings against Plaintiff were maintained despite a lack of probable cause, at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

79. The criminal proceedings were terminated in favor of Plaintiff only when Trooper Goshorn was no longer employed by the other Defendants, as it was only at that point that he was unable to prosecute the case.

80. Defendants lacked probable cause to accuse Plaintiff of the charged crimes of Failure to Change Address and DUI.

81. Defendants lacked probable cause to initially prosecute Plaintiff of the charged crimes.

82. Defendants lacked probable cause to continue to prosecute Plaintiff of the charged crimes despite the fact that she changed her address approximately 18 months before the subject incident.

83. Defendants' accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.

84. The Defendants deliberately and intentionally brought these proceedings against the Plaintiff and continued them without just cause or excuse.

85. There did not exist probable cause to substantiate the Plaintiff's charge.

86. As a result of the Defendants' institution and maintenance of criminal judicial proceedings against the Plaintiff with malice and without probable cause, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FIFTH CAUSE OF ACTION
(Abuse of Process)

87. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

88. The Plaintiff is informed and believes that the actions and inactions of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest constituted an improper use of regularly issued process.

89. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

90. The Defendants had an ulterior purpose in employing legal process against the Plaintiff.

91. The Defendants acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.

92. As a result of the Defendants' improper use of regularly issued process, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A SIXTH CAUSE OF ACTION
(Outrage)

93. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

94. The conduct of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, as set forth above, was outrageous in nature, in that such conduct was atrocious and utterly intolerable in a civilized community, and so extreme and

outrageous as to exceed all possible bounds of decency. Furthermore, such conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.

95. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, Plaintiff is informed and believes that Defendants, are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions within the scope of each's employment.

96. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence/Recklessness)

97. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

98. Upon information and belief, at all times relevant hereto and specified in this complaint, all individuals working on behalf of Defendants SCDPS and SCHP were employed by, and served as fiduciaries, Troopers, employees and/or agents of SCDPS and SCHP and were acting in the course and scope of their employment.

99. Defendants owed a duty to the public in general and to the Plaintiff in particular to use due care in fulfilling the duties of investigation, arrest, and prosecution of criminal offenses to ensure that Defendants' conduct, as exercised by their fiduciaries, Troopers, agents, and employees, conformed to applicable laws, policies, procedures, generally accepted law enforcement standards, and generally accepted prosecutorial standards.

100. Defendants failed to use due care and were grossly negligent, reckless, willful, and wanton in the following particulars:

- a. Failing to exercise due care under the circumstances;
- b. Failing to follow proper protocol and procedure for the situation;
- c. Improperly detaining Plaintiff for investigation without adequate and sufficient cause and evidence;
- d. Unwanted touching of the Plaintiff during the course of investigating her for an alleged DUI;
- e. Improperly arresting Plaintiff for DUI when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of DUI;
- f. Improperly ticketing Plaintiff for Failure to Change Address when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of Failure to Change Address; and/or
- g. Such other particulars as may be shown at trial.

101. All of the above acts and/or omissions are in violation of the common laws and statutes of the State of South Carolina, as well as the Defendants' obligations and duties to Plaintiff.

102. As a direct, foreseeable, and proximate result of the negligent, grossly negligent, reckless, willful, and wanton acts and/or omissions of the Defendants, Plaintiff has suffered injury and damages, including but not limited to: embarrassment, humiliation, mental anguish, loss of freedom, anxiety, distress, and reputational damage.

103. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

DAMAGES AND RELIEF REQUESTED

104. As a direct and proximate result of the aforesaid acts and/or omissions on the part of the Defendants, the Plaintiff has been injured and damaged in that he has been deprived of the rights, privileges and immunities afforded to the citizens of the State of South Carolina, has been wrongfully arrested and/or falsely imprisoned, has accrued expenses, has endured mental

anguish and emotional distress, humiliation, embarrassment, inconvenience, discomfort, and has been deprived of the enjoyment of life, thereby entitling her to recover actual or compensatory damages from the Defendants.

105. The Plaintiff is entitled to punitive or exemplary damages from the Defendants, as the conduct of such Defendants as set forth herein was willful, wanton, reckless and grossly negligent, as well as knowing, intentional and malicious and committed with deliberate indifference to the civil rights of the Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against all Defendants, jointly and severally, by way of compensatory damages and exemplary damages, in such an amount of the Trier of Fact may deem appropriate; for reasonable attorney's fees; for the costs and disbursements of this action; and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/Nicolas J. Baughman

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Date: May 9, 2022
Anderson, SC

s/C. Austin McDaniel

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Date: May 9, 2022
Anderson, SC

ATTORNEYS FOR PLAINTIFF

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson

Docket #2022-CP-42-01677

Plaintiff,

vs.

South Carolina Department of Public Safety,
South Carolina Highway Patrol, and Trooper
Patrick J. Goshorn

AFFIDAVIT OF PERSONAL SERVICE

Defendants.

PERSONALLY appeared before me the undersigned, who being duly sworn, says that they served Summons and Complaint in this action on **Patrick J. Goshorn** by delivering the same to:

(X) **Christine Goshorn as his wife**, a person of age and discretion residing at Defendant's residence;

And leaving with said person a copy of the same at **304 Hampton Ridge Drive Greer, South Carolina on the 6th day of September 2022 at 12:23 pm** and that Deponent knows the person so served to be the person described in this Affidavit, and that Deponent is not a party to, nor interested in the action.

SWORN TO BEFORE ME THIS

6 day of September 2022.

Gail T. Hamby
Notary Public for South Carolina

My Commission Expires: 10-14-2025

Misty Davis

Misty Davis



EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

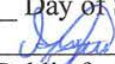
() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022


Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 3:21 P.M.



EXHIBIT 4



South Carolina

Department of Public Safety

Protecting. Educating. Serving.



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Welcome to Our Site!

The mission of the South Carolina Department of Public Safety is to protect and serve the public with the highest standard of conduct and professionalism; to save lives through educating its citizens on highway safety and diligent enforcement of laws governing traffic, motor vehicles, and commercial carriers; and to ensure a safe, secure environment for the citizens of the state of South Carolina and its visitors.

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Media Advisory - Inaugural Governor's Law Enforcement Officer of the Year Ceremony

--MEDIA ADVISORY--

The South Carolina Department of Public Safety (SCDPS) announces the following event:

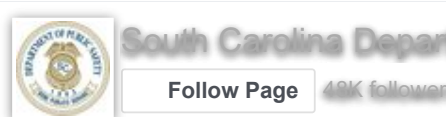
[Read Full Story.](#)

SCDPS Reports Nine Killed On South Carolina Roadways May 12 To May 14, 2023

COLUMBIA — The South Carolina Department of Public Safety announces a preliminary number of nine people killed on South Carolina roadways during the

<https://scdps.sc.gov>

Facebook



South Carolina Department of Public Safety
15 hours ago

Twitter

Tweets from
@SCDPS_PIO

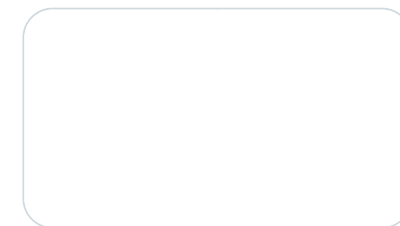
Follow

SCDPS Retweeted

Trooper T... @SC... · 14h

Thank you to St. David's Episcopal Church for inviting me to do a safety presentation for some of their members. If you want the SCHP to do a safety presentation for you, go to:

[sc.accessgov.com/dps/Forms/P
age...](https://sc.accessgov.com/dps/Forms/Page...)



9

SCD... @SCDPS_... · 15h

Motorists in Berkeley and Charleston counties will see additional enforcement over

weekend beginning Friday, May 12, at 6:00 p.m.

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South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HP)



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EXHIBIT 5


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Department of Public Safety
 Protecting. Educating. Serving.

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Contact Us

Contact Information

Street Address:
10311 Wilson Blvd.
Blythewood, SC 29016

Mailing Address:
P.O. Box 1993
Blythewood, SC 29016

SCDPS Contact Numbers

Highway Patrol Telecommunications
(803) 896-9621

South Carolina Highway Patrol
(803) 896-7920

State Transport Police
(803) 896-5500

Bureau of Protective Services
(803) 896-5442

Director's Office
(803) 896-7979

Office of Executive Affairs (Contact for General inquiries from the public)
(803) 896-8409

Office of Public Affairs
(803) 896-8747

Office of Professional Responsibility
(803) 896-8240

Division of Strategic Services and Planning
(803) 896-0122

Office of Highway Safety & Justice Programs
(803) 896-9950

Office of Human Resources
(803) 896-0274

Office of General Counsel
(803) 896-7882

Office of Information Technology
(803) 896-8001

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South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HP)



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EXHIBIT 6

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)

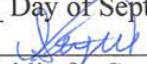
() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **1000 Assembly
Street, Suite 519 Columbia SC 29201 On the 6 Day of September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022


Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 4:04 P.M.



EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	ANSWER OF DEFENDANTS
	)	
South Carolina Department of Public	)	<i>(Jury Trial Requested)</i>
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

Subject to the Rule 12 motion previously filed, and preserving all defenses, the Defendants, by way of Answer to the Plaintiff's Complaint would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Complaint is denied and strict proof thereof is demanded.
2. That as to the allegations of paragraph 1 of the Plaintiff's Complaint, these Defendants are without sufficient information with which to admit or deny same therefore strict proof is demanded.
3. That as to the allegations of paragraph 2 of the Plaintiff's Complaint, it is admitted that the South Carolina Department of Public Safety is a department of the State of South Carolina; otherwise, strict proof thereof is demanded.
4. That as to the allegations of paragraph 3 of the Plaintiff's Complaint strict proof thereof is demanded.
5. That as to the allegations of paragraph 4 of the Plaintiff's Complaint, reference is

craved to the response to the allegations of Paragraphs 2 and 3 above and otherwise strict proof is demanded.

6. That as to the allegations of paragraph 5 of the Plaintiff's Complaint, these Defendants crave reference to the full text of Section 15-78-70 and any and all sub-parts thereto.

7. That as to the allegations of paragraph 6 of the Plaintiff's Complaint, it is admitted that Patrick G. Goshorn at the time of this incident acted within the scope and course of his employment and within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety. That otherwise strict proof is demanded of the allegations of Paragraph 6 of the Plaintiff's Complaint.

8. That as to the allegations of paragraph 7 of the Plaintiff's Complaint, same are admitted upon information and belief.

9. That as to the allegations of paragraph 8, strict proof is demanded as to any cognizable claims as to these Defendants.

10. That as to the allegations of paragraph 9, upon information and belief Lance Corporal Goshorn stopped the Plaintiff on or about May 9, 2020 for exceeding the posted speed limit and at that time detected an order of alcohol. Upon information and belief, the Plaintiff admitted to having consumed alcohol and a Standard Field Sobriety Test was given which indicated cues for impairment. Accordingly, the Plaintiff was placed under arrest and transported to the Greer Police Department for a Datamaster Breath Alcohol Test. That following administration of the Datamaster Breath Alcohol Test upon information and belief the alcohol level detected was "less than the legal limit" and the Plaintiff was released from custody. That Lance Corporal Goshorn had probable cause to detain and arrest the Plaintiff and to administer a Field Sobriety Test and to transport her to the police department for a Breathalyzer. That the actions of Lance Corporal Goshorn in no way

violated any rights of the Plaintiff in connection with the incident referenced herein. That further upon information and belief the Plaintiff was given a ticket based on probable cause.

12. That as to the allegations of paragraphs 10 through 57 of the Complaint, except as is expressly admitted, modified or explained herein, said allegations as framed are denied and strict proof thereof is demanded. That further in response to the allegations of paragraphs 10 through 57, these Defendants incorporate by reference their response to paragraph 9 hereinabove. That further as to the allegations of paragraphs 10 through 57, it is admitted and alleged that the Plaintiff was lawfully stopped for driving in excess of the posted speed limit, that she was lawfully detained and arrested for suspicion of DUI following a Field Sobriety Test, that the Plaintiff was transported to the Greer Police Department for a breath test, and that there was probable cause for her to be detained and/or arrested. That because it was believed her alcohol level was below the legal limit she was released from custody. That otherwise strict proof is demanded of the allegations of paragraphs 10 through 57 and it is denied these Defendants in any way committed any act or omission of negligence and/or committed any act or omission to cause damage and/or injury to the plaintiff and accordingly the damages as are alleged in paragraphs 10 through 57 are denied and strict proof thereof is demanded.

13. That as to the allegations of Plaintiff's First Cause of Action consisting of paragraphs 58 through 62, same are denied and strict proof thereof is demanded.

14. That as to the allegations of Plaintiff's Second Cause of Action consisting of paragraphs 63 through 65, same are denied and strict proof thereof is demanded.

15. That as to the allegations of Plaintiff's Third Cause of Action consisting of paragraphs 66 through 74, same are denied and strict proof thereof is demanded.

16. That as to the allegations of Plaintiff's Fourth Cause of Action consisting of

paragraphs 75 through 86, same are denied and strict proof thereof is demanded.

17. That as to the allegations of Plaintiff's Fifth Cause of Action consisting of paragraphs 87 through 92, same are denied and strict proof thereof is demanded.

18. That as to the allegations of Plaintiff's Sixth Cause of Action consisting of paragraphs 93 through 96, same are denied and strict proof thereof is demanded.

19. That as to the allegations of Plaintiff's Seventh Cause of Action consisting of paragraphs 97 through 103, same are denied and strict proof thereof is demanded.

20. That as to the allegations of Plaintiff's claims for Damages and Relief consisting of paragraphs 104 and 105, same are denied and strict proof thereof is demanded.

21. That except as is admitted, modified or explained here, the allegations of the Plaintiff's Complaint are denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

22. That the Highway Patrol and Trooper Patrick Goshorn are not proper parties to this action.

FOR A THIRD DEFENSE

23. There was no malice to support any of the claims alleged in the Plaintiff's Complaint.

FOR A FOURTH DEFENSE

24. There was no abuse of process, there was no improper or ulterior motive, and there was no ill will or malice in connection with the arrest and/or detention of the Plaintiff.

FOR A FIFTH DEFENSE

25. That the Defendants plead and assert probable cause as a complete and absolute bar and/or defense to the Plaintiff's claim.

FOR A SIXTH DEFENSE

26. That the allegations of the Plaintiff's Complaint are subject to the immunities granted to the Defendants and their agents under the South Carolina Tort Claims Act. That the Defendants therefore plead and assert the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claims set forth in the Plaintiff's Complaint. That the Defendants specifically plead and assert, without limitation, all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps and/or limitations on damages as are set forth therein. That further, the Defendants plead and assert specifically, but without limitations, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(6)(23) and (25).

FOR A SEVENTH DEFENSE

27. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A EIGHTH DEFENSE

28. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-120 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR AN NINTH DEFENSE

29. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-70 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A TENTH DEFENSE

30. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-10 as an additional and affirmative defense.

FOR AN ELEVENTH DEFENSE

31. That at all times alleged, the Defendants had just cause and reason to detain the Plaintiff.

FOR A TWELFTH DEFENSE

32. That it is denied that Defendants committed any act or omission which caused any damages and/or injuries to the Plaintiff and it is denied that the Plaintiff has any cognizable claim against the Defendants.

FOR A THIRTEENTH DEFENSE

33. That the Defendants at all times acted reasonably, and did not act in bad faith or with ill will, malicious and/or corrupt motive.

FOR A FOURTEENTH DEFENSE

34. That the Defendants plead and assert the provisions of S.C. Code Ann. §15-78-30 as a complete and absolute defense and/or bar to any of the claims set forth in the Plaintiff's Complaint and further and specifically, the defendants plead and assert the provisions of S.C. Code Ann. §15-78-30(e)(f)(g) and (i) as an additional defense to the claims of the Plaintiff.

FOR AN FIFTEENTH DEFENSE

35. That the Defendants plead and assert the Public Duty Rule as a complete and absolute bar and/or defense to the allegations of the Plaintiff's Complaint.

FOR A SIXTEENTH DEFENSE

36. That further and alternatively, the Defendants plead and assert to the extent applicable, the comparative fault of the Plaintiff as a bar to and in mitigation of any alleged damages sought to be recovered by the Plaintiff.

FOR A SEVENTEENTH DEFENSE

37. That as to the Plaintiff's claim for defamation, strict proof is demanded as to any false information published by any of the Defendants.

FOR AN EIGHTEENTH DEFENSE

38. That the Defendants plead truth as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A NINETEENTH DEFENSE

39. That the Defendants plead and assert absolute privilege as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTIETH DEFENSE

40. That the Defendants plead and assert qualified and/or conditional privilege as a complete and absolute bar to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-FIRST DEFENSE

41. That the Defendants plead and assert fair comment as a bar and/or defense to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-SECOND DEFENSE

42. That the Defendants plead and assert common interest privilege as a further defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTY-THIRD DEFENSE

43. That the Defendants plead, to the extent applicable, the Statute of Limitations pursuant to S. C. Code Ann. 15-78-110, as an additional and affirmative defense.

FOR A TWENTY-FOURTH DEFENSE

44. The Defendants further assert as additional defenses Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure in that upon information and belief there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol. That upon information and belief Candace Horton is not an employee of the South Carolina Department of Public Safety.

FOR A TWENTY-FIFTH DEFENSE

45. That the defendants further assert as an additional defense that the Complaint was not served timely and properly pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure so as to commence this action against the South Carolina Department of Public Safety and the South Carolina Highway Patrol.

WHEREFORE, the Defendants pray as follows:

1. That the Plaintiff's Complaint be dismissed; and
2. That the Defendants be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

EXHIBIT 8

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
) *Civil Action No.: 2022-CP-42-01677*
Plaintiff,)

-vs-)
) **RULE 12(b)**
) **MOTION TO DISMISS**
)

South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure and pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure for an order dismissing the Complaint as to defendant South Carolina Department of Public Safety and South Carolina Highway Patrol.

The grounds for this motion are as follows:

1. The Complaint in this action was filed on May 9, 2022 and there was an attempted service on September 6, 2022 on the South Carolina Department of Public Safety and the Highway Patrol by delivery of the Summons and Complaint to Candace Horton. Candace Horton, upon information and belief, is not an employee of the South Carolina Department of Public Safety but rather an employee of the South Carolina Department of Motor Vehicles and accordingly there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.

2. Further, further upon information and belief, pursuant to Rule 4 of the South Carolina Rules of Civil Procedure service is required on the correct department and/or agency. Further upon

information and belief there has been no proper or timely service to commence this action against the South Carolina Department of Public Safety and/or the Highway Patrol pursuant to Rule 3 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022

Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 3:21 P.M.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT 1000 Assembly
Street, Suite 519 Columbia SC 29201 On the 6 Day of September 2022



Process Server

Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022

Notary Public for South Carolina
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 4:04 P.M.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,
VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

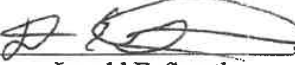
PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

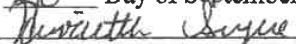
IN THIS ACTION ON, SOUTH CAROLINA DEPARTMENT OF PUBLIC
SAFETY

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina
My Commission Expires: 09/29/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,

VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

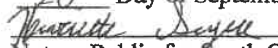
IN THIS ACTION ON, SOUTH CAROLINA
HIGHWAY PATROL

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT 10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina,
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Done

Horton.JPG



FILED ELECTRONICALLY FILED - 2022 Oct 04 2:39 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677



CANDACE L HORTON

(803) 896-9983
CANDACE.HORTON@SCDMV.NET

DEPARTMENT OF
MOTOR VEHICLES

EXHIBIT 9

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
) *Civil Action No.: 2022-CP-42-01677*
)

Plaintiff,)

-vs-)

MOTION TO DISMISS

South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to S. C. Code Ann. Section 15-78-60 and Section 15-78-70 to dismiss Patrick J. Goshorn as a named defendant. This motion is based upon the pleadings filed in this action, the common and statutory laws of the state of South Carolina and such other evidence as is properly before the trial judge at the time of any motion hearing.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
)
Plaintiff,) *Civil Action No.: 2022-CP-42-01677*
)
-vs-) **MOTION TO DISMISS**
)
South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to S. C. Code Ann. Section 15-78-60 and Section 15-78-70 to dismiss Patrick J. Goshorn as a named defendant. This motion is based upon the pleadings filed in this action, the common and statutory laws of the state of South Carolina and such other evidence as is properly before the trial judge at the time of any motion hearing.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

EXHIBIT 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2022-CP-42-01677
Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
v.	)	DIANA BROWN
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn	)	
	)	
Defendants.	)	
	)	

I, Diana Brown, certify the following:

- A. I am the Human Resources Operations Manager for the South Carolina Department of Public Safety, an agency of the State of South Carolina ("Department");
- B. The South Carolina Highway Patrol ("Patrol") is a division of the Department;
- C. In my role as Human Resources Operations Manager, I have access to the employment records of the Department and the Patrol;
- D. The Department and Patrol track employment through the South Carolina Enterprise Information System ("SCEIS"). SCEIS has been the record keeping system for the Department and the Patrol since 2010;
- E. Since SCEIS was implemented as the record keeping system for the Department and the Patrol, neither the agency nor the division has employed someone by the name of Candace Horton;
- F. The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and

roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol;

G. Insofar as Candace Horton has never been employed by the Department nor the Patrol, she has never been authorized to accept service on behalf of either.

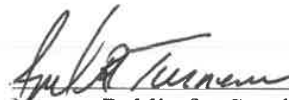
I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2022.



Diana Brown

Sworn to before me this)
29th day of December, 2022)
My Commission Expires: 4/11/2027)



Notary Public for South Carolina

EXHIBIT 11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-42-01677

Taylor Chasey **ROBERTSON**,

South Carolina **DEPARTMENT** of **PUBLIC**
SAFETY, South Carolina **HIGHWAY**
PATROL, Patrick J. **GOSHORN**,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT

Attorney for : ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached or formal order to follow ☒ Statement of Judgment by the Court:

This matter is before the Court on motion, pursuant to SCRCP, 12(b)(2), (4), and (5), of the defendants Department of Public Safety and Highway Patrol to dismiss the complaint herein, and on motion pursuant to S. C. Code Ann. Sections 15-78-60 and 15-78-70 by defendant Patrick J. Goshorn, to dismiss him as a party, and on motion of defendant's counsel to permit a delayed filing of a motion due to administrative error.

Based upon consideration of the record in this case, argument of counsel, and the applicable court rules, statutory and case law, this Court finds that the defendants **MOTIONS** should be and **ARE** therefore **GRANTED**.

Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court's consideration.

ORDER INFORMATIONThis order ☒ ends ☐ does not end the case.

Additional Information for the Clerk

:

INFORMATION FOR THE JUDGMENT INDEX**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2053	03/16/2023
J. DERHAM COLE, Presiding JUDGE	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

NICHOLAS J. BAUGHMAN, Esq.RUSSELL W. HARTER, Esq.ATTORNEY(S) FOR THE PLAINTIFF(S)ATTORNEY(S) FOR THE DEFENDANT(S)AMY W. COX, CLERK OF COURTCourt Reporter: **WEBEX**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in

those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-03-21 15:14:32 page 4 of 4

EXHIBIT 12

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) CIVIL ACTION No.: 2022-CP-42-01677

Taylor Chasey Robertson,)
Plaintiff,)
vs.) CERTIFICATE OF SERVICE
South Carolina Department of Public)
Safety, South Carolina Highway Patrol,)
and Trooper Patrick J. Goshorn,)
Defendants.)

I hereby certify that I, Patty Flanary Sanders, as paralegal to Russell W. Harter, Jr., attorney for defendants in the within action, on this the 17th day of November, 2022 served the attorneys listed hereinbelow in the above-captioned matter with copy of **Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff** by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Nicholas J. Baughman
Nicholas J. Baughman Attorney at Law, LLC
600 North mcDuffie Street
Anderson, SC 29621

C. Austin McDaniel
C. Austin McDaniel, Attorney at Law, LLC
523 N. Main Street
Anderson, SC 29621


Patty Sanders,
Paralegal to Russell W. Harter, Jr.
Chapman, Harter & Harter,
P.A. 14 Lavinia Avenue Post
Office Box 10224 Greenville,
SC 29603 864/233-4500
864/232-1710 (fax) E-mail:
rwhjr@chhlaw.net

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,)
))
Plaintiff,)
))
vs.)
))
South Carolina Department of)
Public Safety, South Carolina)
Highway Patrol, and Trooper)
Patrick J. Goshorn,)
))
Defendants.)

DEFENDANTS' FIRST SET OF
INTERROGATORIES TO
PLAINTIFF

TO: PLAINTIFF AND HER ATTORNEY(S):

The defendants request that the plaintiff answer the following Interrogatories pursuant to Rules 26, 33, and 37 of the South Carolina Rules of Civil Procedure:

INSTRUCTIONS:

A. Please make your answers to these Interrogatories in writing and under oath. Within thirty (30) days of the date of service of these Interrogatories upon you, please send copies of your answers to the undersigned attorney(s) for the defendant.

B. Every Interrogatory herein shall be deemed a continuing Interrogatory and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such Interrogatory.

C. If you object to or otherwise decline to answer any portion of any Interrogatory, provide all information called for by that portion of the Interrogatory to which you do not object

or which you do not decline to answer. If you object to any Interrogatory on the ground that it is too broad, provide such information which is concededly relevant. For those portions of any Interrogatory to which you object or to which you otherwise decline to answer, state the reason for your objection.

D. Every reference to "you" or "your" in these discovery requests refers to Plaintiff. References to "you" or "your" do not refer to plaintiff's attorney(s).

E. When an Interrogatory or any of its subparts calls for you to "specify in detail" your allegations in your Complaint, the Interrogatory calls for you to set forth each fact and identify each document which you contend supports your allegation, to identify each person who possesses knowledge of facts relating to your allegation, and to identify any other basis for your allegation.

F. The following definitions apply to all Interrogatories:

(1) Serious. The term "Serious" means such injury(ies), illness(es), sickness(es), and disease(s) that require(d) plaintiff(s) to seek professional medical advice or attention.

(2) Document. The term "Document" includes any written or graphic matter however produced or reproduced, including any copy thereof.

(3) Identify. The term "Identify" when referring:

a. to a person, means to state his or her full name, occupation, employer, and present or last known business and residential addresses and phone numbers.

b. to a public or private corporation, partnership, association, or other organization, or to a governmental agency, means to state its full name and present or last known business address and phone number.

c. to a statement, means to identify who made it, who took or recorded it, and all others, if any, present during the making thereof; to state when, where, and how it was taken or recorded; and to identify who has the present or last known possession, custody, or control thereof.

d. to a document, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; to identify the individuals to whom the original or a copy was circulated; and to identify who has the present or last known possession, custody, or control thereof.

e. to any other tangible thing, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has the present or last known possession, custody, or control thereof.

INTERROGATORIES:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in

possession of the party that relate to the claim or defense in the case.

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. With respect to each expert witness identified above, state his/her place of employment and qualification(s). Additionally, please state:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which each expert will testify;
- c. furnish a summary of the grounds of each opinion expected to be elicited from each of the experts named;
- d. state whether each expert has prepared a report or other written summary of his or her findings, opinions, or conclusions;
- e. with respect to any oral reports from proposed expert witnesses, state:
 - i) the subject matter on which the expert is expected to testify;
 - ii) the substance of the facts and opinions to which the expert is expected to testify; and

iii) a summary of the grounds for each opinion.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

8. Identify and give the substance of all written or transcribed statements, recordings, or videotapes which relate to the facts of this lawsuit or the damages you claim, given by you or any witness in this matter.

9. Please identify each and every lay or non-expert witness whom plaintiff proposes to call as a witness at the trial of this case, including the job title, employer, business and home addresses and telephone numbers of each such witness.

10. If there is included with this action a claim for economic loss, state the job from which this time was lost, giving the name, address, and telephone number of this employer; the number of hours or days lost; the duration which you contend the loss occurred; and the total economic and lost income you claim.

11. Do you contend the defendants violated any statute, code, ordinance, or regulation of any governmental entity or regulatory authority? If so, please specifically identify each such statute, code, ordinance, or regulation and the basis for any such contention.

12. Do you contend that any agent(s), employee(s), and/or representative(s) of the defendant made to you, your agent(s), and/or representative(s) any statements which you contend support the allegations made in the Complaint? If so, identify:

- a. Who made the statement(s);
- b. To whom such statement(s) were made;
- c. When and where the statement(s) were made;
- d. Who was present when the statement(s) were made;
- e. The substance of the statement(s); and
- f. State the contents of any and all conversations between the plaintiff and any employee(s), agent(s), and/or employee(s) of Defendant, specifically identify the parties to each conversation and the date of each conversation. Specify whether each conversation was in person or by telephone or other communications channel.

13. Other than this suit, have you ever been a party to a civil action lawsuit? If so, identify whether as the plaintiff or the defendant, the nature of the suit, the caption of the matter, the attorney(s) involved, and the disposition or outcome of the case.

14. Please state the names of any relatives over the age of eighteen (18) who are residents of Spartanburg County, South Carolina.

15. Describe your employment history during the past ten (10) years, including job title, employer, business address and telephone number, dates of employment,

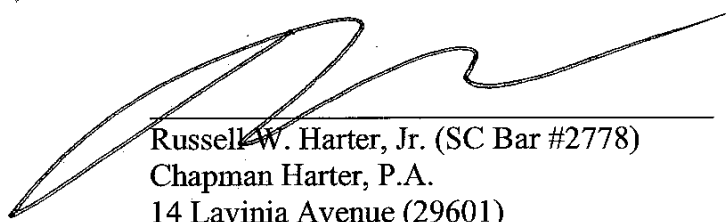
supervisor, a brief description of job duties, wage, the date and amount of any wage increases, and the reason for leaving each job.

16. Set forth the gross and net income reported by you to the Internal Revenue Service from 2015 to the present date. Attach copies of each federal and state income tax return for this 10-year period, including the W-2 forms, to these answers.

17. Other than this instance, have you ever been arrested or convicted of any crime (whether felony or misdemeanor), if so, please identify each crime, the date of arrest, the arresting authority, the court in which any criminal proceeding against him was held, and the disposition of each charge.

**These Interrogatories shall be deemed continuing so
as to require supplemental responses up until and prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr. (SC Bar #2778)

Chapman Harter, P.A.

14 Lavinia Avenue (29601)

Post Office Box 10224

Greenville, South Carolina 29603

864/233-4500 (*Phone*)

864/232-1710 (*Facsimile*)

rwhjr@chhlaw.net

ATTORNEYS FOR DEFENDANTS

Page -7-

October , 2022

6

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,)
Plaintiff,)
vs.)
South Carolina Department of) DEFENDANTS' FIRST SET OF
Public Safety, South Carolina) REQUESTS FOR PRODUCTION TO
Highway Patrol, and Trooper) PLAINTIFF
Patrick J. Goshorn,)
Defendants.)

TO: PLAINTIFF AND HER ATTORNEY(S):

YOU ARE HEREBY REQUIRED, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, to produce the following documents and tangible things in the possession, custody, or control of plaintiff for inspection and copying. Within thirty (30) days of the date of service of this Request for Production upon you, please send copies of your responses to the undersigned attorney(s) for defendants.

These requests should be considered to be continuing in nature. If, at any time during the course of the case, supplementation of your initial answers becomes necessary, you are required to so supplement your response without the filing of additional requests by defendants. If such supplemental response is not furnished, the undersigned attorney(s) will move at the time of trial to exclude from evidence any information requested and not furnished.

DEFINITIONS:

DOCUMENT. The term "document," either singular or plural, including "documentation,"

is defined as originals, or if not available, true copies, of all memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, telegrams, summaries of conversations, summaries of memoranda of meetings or conferences, lists of persons attending meetings or conferences, diaries, records or summaries of interviews, investigations or reports, summaries of negotiations, agreements, contracts, corporate rules, corporate policies, office manuals, invoices, canceled checks, journals, ledgers, file cards, index cards, indexes, deposit slips, data processing cards, computer or business machine print-outs, accountants' work papers, accountants' statements, financial statements, whether audited or unaudited, evidence of indebtedness, trust deeds, mortgage instruments, security agreements, trust agreements, loan applications, leases, documents created or reflecting a security interest, loan agreements, financial statements, speeches, public relation releases, press releases, advertisements, pamphlets, circulars, trade letters, annual or other reports, documents filed with governmental agencies, reports of experts and research personnel, drafts and preliminary copies of any of the foregoing, marginal comments appearing on any documents and all other writings and data compilations, including any written, printed, recorded, or graphic matter, photographic matter or sound reproductions, however produced or reproduced, or other tangible things upon which words or phrases are affixed or from which, by appropriate transcription, such written or tangible things may be produced, within the possession, custody, or control of plaintiff, his agent(s), servant(s), employee(s), representative(s), or counsel.

PERSON. The term "person" whether singular or plural, unless otherwise specified, means not only a natural person but also a firm, partnership, association, or corporation.

MANNER OF PRODUCTION. The documents produced pursuant to this request shall be separately produced for each paragraph of the request, or in the alternative, shall be identified

as complying with the particular paragraph or paragraphs of the request in which they are responsive.

PERIOD COVERED. Unless otherwise specifically indicated, the time frame of the documents requested is the ten-year period next preceding the date hereof, and includes future documents completed, received, or transmitted after the date hereof.

PLAINTIFF. The term "plaintiff," or any synonym thereof, is intended to and shall include and embrace, in addition to the plaintiff, her attorney(s) and all agents, servants, employees, representatives, investigators, and all others who may have obtained information for or on behalf of said plaintiff as well as all individuals, named and unnamed, who have a financial interest in the outcome of this suit.

PRIVILEGED DOCUMENTS. In the event that you wish to assert either attorney-client privilege or the work product immunity doctrine as to any documents requested by any of the following specific requests, then as to each such document, provide defendants with an identification of such document in writing, such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the names of each person to whom the original or any copy was circulated, the names appearing on any circulation list you have, and a restatement of the subject matter of each document in sufficient detail to permit a determination of the validity of such assertion in the event of a Motion to Compel, without waiving the privilege effected, and a detailed statement of the facts relied upon as a basis for the assertion of privilege or exclusion.

The documents and things to be produced by plaintiff are as follow:

REQUESTS FOR PRODUCTION

1. All documents upon which you relied in preparing each response to Defendants' First Set of Interrogatories to Plaintiff.
2. All documents identified in your answers to Defendants' First Set of Interrogatories to Plaintiff.
3. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at trial in the case in chief, for cross examination; impeachment and/or for any purpose whatsoever.
4. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at any deposition in the direct examination, for cross examination; impeachment and/or for any purpose whatsoever.
5. All documents relating or referring in any way to, or showing or constituting any contentions, causes of action, or basis of recovery that plaintiff is asserting in this lawsuit.
6. All written, recorded, filmed, transcribed, or videotaped statements of all parties and nonparty declarants pertaining to the subject matter of this lawsuit.
7. All statements, whether in written, audio, electronic, or other recorded form, that plaintiff has obtained from defendants or any employee or former employee, agent, or representative, concerning the occurrences that form any part of the basis of this lawsuit.
8. All written or recorded communications, including, but not limited to, correspondence, notices, memoranda, faxes, or any other documents, made or exchanged between the plaintiff or plaintiff's family and defendants or any of their present or former associates, employees, agents, or representatives.

9. All documents which evidence any of the damages, medical expenses, lost wages, or any claim for economic or financial loss of any kind or nature that the plaintiff is claiming in this lawsuit.

10. All documents which identify witnesses to or other persons with knowledge of the incident(s) referred to in the Plaintiff's Complaint.

11. Copies of Plaintiff's W-2's, and federal and state income tax returns from 2015 to the present date, as well as any other documents, including economic loss reports, upon which Plaintiff relies in support of any claim(s) for damages.

12. Copies of all photographs, slides, videotapes, compact discs, or other pictorial representations relevant to the allegations that form any part of the basis of this lawsuit.

13. All documents and tangible things that have been submitted to, prepared by, used by, and/or relied upon by any expert witness regarding the subject matter of this lawsuit.

14. All documents relating to any claim or demand made by the plaintiff for damages, compensation, or other benefits allegedly resulting from any injury, illness, or damage, including, but not limited to, any disability claims to any employer or governmental/regulatory agency (e.g., social security).

15. All documents that are in the care, custody, or control of the plaintiff, plaintiff's present or former agents, servants, employees, representatives, or counsel that in any way relate to the subject matter of this claim, the defendants, and/or any agent of the defendants.

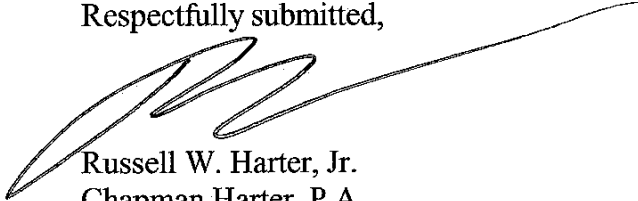
16. Copies of any and all correspondence, photographs, drawings, tapes, email, documents, and/or tangible physical evidence in possession of the plaintiff and/or his counsel that relate to the claim set forth in the Plaintiff's Complaint.

17. Copies of any and all correspondence, photographs, drawings, tapes, email,

documents, and/or tangible physical evidence concerning any party and/or witness to this case.

**These Requests for Production of Documents shall be deemed to be
continuing in nature and require supplemental response prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr.
Chapman Harter, P.A.
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500
864/232-1710 (*facsimile*)
rwhjr@chhlaw.net
ATTORNEYS FOR DEFENDANTS

October *6*, 2022

EXHIBIT 13



Baughman, Nicolas <nick@baughmanlawsc.com>

Robertson ..

1 message

Russell Harter <rwhjr@chhlaw.net>

Fri, Mar 3, 2023 at 5:14 PM

To: Nicolas Baughman <nick@baughmanlawsc.com>, "austin@austinmcdaniellaw.com" <austin@austinmcdaniellaw.com>

I served him discovery back a few months ago. Please let me know when we can get those responses. Thank you, Rusty.

Russell W. Harter, Jr.
Chapman, Harter & Harter, PA
14 Lavinia Avenue
P.O. Box 10224 (29603)
Greenville, SC 29601
Main: (864) 233-4500
Fax: (864) 232-1710

ELECTRONICALLY FILED - 2023 May 24 7:10 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677

EXHIBIT 14



South Carolina

Department of Public Safety

Protecting. Educating. Serving.

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Service of Process, Discovery, Subpoenas

Criminal Magistrate (Traffic Court) Cases

For service of process, including but not limited to discovery, Rule 5 and Brady Motions, please serve the Trooper as shown on the Uniform Traffic Ticket at the appropriate Troop office. See Troop Contact Information below:

[Troop One](#) (Clarendon, Kershaw, Lee, Lexington, Richland, Sumter)

[Troop Two](#) (Abbeville, Edgefield, Greenwood, Laurens, McCormick, Newberry, Saluda)

[Troop Three](#) (Anderson, Greenville, Oconee, Pickens, Spartanburg)

[Troop Four](#) (Cherokee, Chester, Chesterfield, Fairfield, Lancaster, Union, York)

[Troop Five](#) (Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, Williamsburg)

[Troop Six](#) (Beaufort, Berkeley, Charleston, Colleton, Dorchester, Jasper)

[Troop Seven](#) (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Hampton, Orangeburg)

[Troop Eight](#) (Criminal Interdiction Unit, Target Zero Team, Motors, Safety Improvement Team)

[Troop Nine](#) (MAIT)

Questions regarding service of process may be referred to the SCDPS Paralegal at (803) 896-7965.

[Fees for Requested](#)

[Documents](#)

[FOIA Request](#)

[Form **NEW!**](#)

Civil Subpoenas and/or Civil Litigation

For service of process, including but not limited to Subpoenas in pending civil litigation, you may serve:

Office of General Counsel
Attn: Paralegal
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, SC 29016

For civil subpoenas requesting information on automobile accidents, please include the TR-310 Accident Report with your request. This may be obtained from the [SC Department of Motor Vehicles](#) by completing [Form FR-50](#).

Questions regarding service of process may be referred to the SCDPS Paralegal at (803) 896-7965.

** Please refer to appropriate rules for service of process upon a state agency.*

*** SCRCF require tendering fees for attendance and mileage allowed by law for official travel of State officers and employees when commanding their appearance under a subpoena.*



South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HP)



[Contact Us](#)

Webmaster@scdps.gov

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EXHIBIT 15



Baughman, Nicolas <nick@baughmanlawsc.com>

Need Service by Today

steven smith <swsprocess@yahoo.com>
Reply-To: steven smith <swsprocess@yahoo.com>
To: "Baughman, Nicolas" <nick@baughmanlawsc.com>

Fri, May 19, 2023 at 3:23 PM

We attempted today, but they called someone from the DPS side but after several tries, the Front clerk intake stated he could accept. We have to go back Monday on another file and can try again. We have waited for an hour on that side and no one would have come down, after this one we are probably not going to accept any more Dept of Public safety files again. Not sure why it is so difficult, and that may have been what happened last year.

The Intake desk attendant, Grayson, stated he could accept on the DPS file but I am not sure if that is correct, so we can try again Monday when we go back to serve the DMV

Thanks

Swsprocess

701 Gervais Street

Ste. 150-006

Columbia , SC 29201

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ELECTRONICALLY FILED - 2023 May 24 7:10 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677

EXHIBIT 16

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Taylor Chasey Robertson
PLAINTIFF,

vs.

South Carolina Department of Public Safety, South
Carolina Highway Patrol, and Trooper Patrick J. Goshorn

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2022-CP-42-01677

AFFIDAVIT OF SERVICE

Service of Process on: South Carolina Department of Public Safety

The undersigned, being first duly sworn, on oath deposes and states: That s(he) is now and at all times herein mentioned a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named above, and is competent to be a witness therein.

Documents Served:

☐ LP	☐ Amended LP	☐ CARESAct
☒ Summons & Complaint	☐ Amended Summons & Complaint	☐ First Interrogatories/Defendant
☐ Notice of F/C Intervention	☐ Amended Notice of F/C Intervention	☐ First Request for Production
☐ Certificate From Exemption ADR	☐ Amended Certification From Exemption ADR	

This affiant served the above-described documents at 10311 WILSON BLVD, BLYTHEWOOD SC 29016 on the 22ND day of May, 2023 at 12:49 PM by delivering 1 copies of same to:

☐ **INDIVIDUAL SERVICE** ☐ **MET DEFENDANT AT**

☐ **SUBSTITUE SERVICE** by leaving a copy of the above-described documents at his/her usual place of abode with (relationship/paralegal): a person residing therein of suitable age and discretion who confirmed the Defendant resides at the above address and informed that person of the contents thereof.

☒ **CORPORATE OR GOVERNMENT SERVICE** by leaving a copy of this process with PAULA DAVIS (Title) PARALEGAL WITH SC DEPT OF PUBLIC SAFETY, a person authorized to accept service and informed that the person of the contents thereof.

MILITARY No

MARRIED —

HOUSE —

OWNER OCCUPIED: —

MOBILE HOME: —

MOBILE HOME PICTURES E-MAILED —

PROPERTY ADDRESS: —

COMMENTS:

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:
Age 50'S Gender Female Race B Height 5'5 Weight 160 Hair S&P Glasses NO

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that he/she is over the age of 18 and is not interested party in this action.

NAME: Ellen Crolley

Print

Ellen Crolley

Signature

05-22-2023

Date

Notary Public: Subscribed and sworn before me on this 22ND day of May in the year of 2023

Personally known to me ☒ or ☐ identified by the following document:

Notary Public for SOUTH CAROLINA

Commission Expiration: 11-4-2026

Type: —

Notary Public (Legal Signature)

EXHIBIT 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	MOTION TO ALLOW DELAYED
	)	FILING
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move at this time to allow for the delayed filing of the defendants' Rule 12(b) Motion to Dismiss which is dated October 6, 2022. By inadvertence this particular motion was not filed before the defendants' Answer to the plaintiff's Complaint. The defendants intended to file two motions prior to filing the Complaint, namely a 12(b) Motion to Dismiss and a Motion to Dismiss the individual defendant based on the South Carolina Tort Claims Act.

By inadvertence, the Motion to Dismiss the individual defendant was filed in duplicate and the 12(b) Motion was by inadvertence not filed on October 6, 2022.

The Answer of the defendants recited that it was "subject to the Rule 12 Motion previously filed," and as a courtesy defense counsel communicated with plaintiff's counsel prior to the filing of the Answer to discuss the anticipated 12(b) Motion.

Accordingly, the defendants respectfully request that the court allow for the delayed filing of the defendants' 12(b) Motion to Dismiss.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 17, 2022

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

TAYLOR CHASEY ROBERTSON,

PLAINTIFF,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, PATRICK J.
GOSHORN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT

CASE NO.: 2022-CP-42-01677

AMENDED NOTICE AND MOTION
FOR RECONSIDERATION OF
ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND
TO REQUEST CLARIFICATION OF
AND REITERATES PLAINTIFF'S
ORAL MOTION TO GRANT LEAVE
TO FILE AMENDED COMPLAINT

Plaintiff, by and through her undersigned attorney, hereby give notice and respectfully move this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its Order granting Defendants'¹ Motion to Dismiss. Further, Plaintiff requests clarification of and reiterates Plaintiff's Oral Motion to be granted leave to Amend Complaint in the event the Defendants' Motion was granted. The grounds for this motion² are set forth below. Additionally, a Table of Contents as to each section of this Motion are attached as a standalone exhibit. **EXHIBIT A.**

BACKGROUND AND FACTS

This case arises out of a stop and arrest which occurred at approximately 2:00AM on May 9, 2020 in Spartanburg, South Carolina. Trooper Patrick Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence. However, Ms.

¹ All Defendants may be referred to throughout this Motion in the singular or plural. Regardless of the same, any mention of Defendant or Defendants shall mean to refer to all Defendants.

² I apologize for the lack of brevity in this motion. I am well aware that quick and to the point is often preferred in motions practice. Unfortunately, I have not found a quick path to reach the points that I must make.

Robertson was not impaired, and breathalyzer analysis performed by the Datamaster machine demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson was then “un-arrested” and left to fend for herself without her car (which had been impounded), in the cold, shortly after 3:00AM.

This lawsuit was filed against Trooper Goshorn, the South Carolina Department of Public Safety (“SCDPS”), and the South Carolina Highway Patrol (“SCHP”) (collectively “SCDPS”) on May 9th, 2022. **EXHIBIT 1.** Causes of Action alleged included Negligence, Gross Negligence, SC Tort Claims Act violations, False Imprisonment, Malicious Prosecution, Abuse of Process, and Outrage.

There is no dispute that Defendant Goshorn was timely served on September 6, 2022. **EXHIBIT 2.** Plaintiff contends that service was timely made on the South Carolina Department of Public Safety and South Carolina Highway Patrol on the same day when a process server delivered the Summons and Complaint to 10311 Wilson Blvd., Blythewood, SC 29016. **EXHIBIT 3.** Defendant SCDPS has this address displayed on the frontpage of its website, located at <https://scdps.sc.gov/>. **EXHIBIT 4.** Additionally, SCDPS specifically notes this as its “Street Address” on its Contact Us page, located at <https://scdps.sc.gov/about/contact>. **EXHIBIT 5.** Further, and on the same day, the SC Attorney General’s office was served with a copy of the Summons and Complaint as well. **EXHIBIT 6.**

Counsel for Defendants, Russell Harter, timely Answered the Summons and Complaint on October 6, 2022. **EXHIBIT 7.** Hours before filing the Answer, Attorney Harter also filed a 12(b) Motion to Dismiss with exhibits³ and a Motion to Dismiss pursuant to S.C. Code Ann. § 15-78-60

³ On October 17, Attorney Harter filed a Motion to Allow Delayed Filing of the 12(b) Motion to Dismiss due to an inadvertence filing of duplicated Motions to Dismiss Defendant Goshorn from the case. **EXHIBIT 8.** Whether by the

and § 15-78-70 as to Defendant Goshorn *in duplicate*. **EXHIBITS 9** and **10**, respectively. The basis for the 12(b) Motion was that Defendant SCDPS alleged that service upon the agency was not accomplished in a timely fashion. Upon information, belief, and deductive reasoning, Defendant acknowledges that service of the summons and complaint did occur at the 10311 Wilson Blvd. address as noted above, but alleges that service was made upon a person not authorized to accept service on behalf of the SCDPS—specifically, an employee of the SC Department of Motor Vehicles (“SCDMV”), another agency that was apparently located at the same address. On December 29, 2022, Attorney Harter filed an Affidavit from a person allegedly employed by SCDPS, swearing that the individual who was served with the Summons and Complaint on September 6, 2022 was not employed by nor authorized to accept service on behalf of the agency. **EXHIBIT 11.**

After a continuance from the original January 6, 2023 hearing date, Defendants’ Motions were heard by the Honorable J. Derham Cole on February 23, 2023. No memorandums were filed, but both Defense counsel and Plaintiff’s counsel presented their respective arguments to the Court orally. On March 21, 2023, a Form 4 Order was filed by the Court granting all of Defendants’ Motions. **EXHIBIT 12.** The Form 4 Order also stated, “Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court’s consideration.” Following an arguably premature filing of a Motion for Reconsideration by the Plaintiff, Defendants filed a Proposed Order—which was signed by Judge Cole on June 27, 2023. **EXHIBITS 13** and **14**, respectively.

It is imperative to note that on November 17, 2022, Attorney Harter’s office mailed discovery requests to Plaintiff’s Counsel’s office. **EXHIBIT 15.** Of particular importance, Attorney Harter signed each request, i.e., Defendant’s First Set of Interrogatories to Plaintiff and

Court correcting the record after the fact or Mr. Harter’s mistaken fact at the time of initial filing, the record shows that the 12(b) Motion to Dismiss was filed contemporaneously with his Notice of Appearance on October 6, 2022.

Defendant's First Set of Requests for Production to Plaintiff, on October 6, 2022—the same day he filed the Answer and Motions. On March 3, 2023, Attorney Harter contacted Plaintiff's counsel inquiring as to the status of the discovery responses. **EXHIBIT 16.**

TIMELINESS OF THIS MOTION

Plaintiff previously filed a Motion for Reconsideration (perhaps prematurely) given that she had been in a procedural limbo of sorts since the Form 4 Order was filed on March 21, 2023. Additionally, Plaintiff orally moved for leave to file an Amended Summons and Complaint during the February 23, 2023 hearing, which was not addressed in either the Form 4 Order or the Formal Order.

Although it may be moot at this point, Plaintiff reminds this Court that the Form 4 Order filed in this case was NOT a Final Order. When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCp. See *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (a decree leaving some further act to be done by the court is not final); see also *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) (a form order is a final order only if the circuit court indicates that nothing else remains to be done after it is signed).

Plaintiff has long awaited the formal order's filing so that the present Motion could be filed and provide her the opportunity to plead her case at least one final time before this court. This Amended Motion for Reconsider addresses and respectfully argues the following:

SUMMARY OF ISSUES

- I. THE COURT ERRED IN FINDING THIS ACTION WAS NEVER COMMENCED AGAINST THE DEP'T. OF PUBLIC SAFETY.

The Court is improperly granting the Defendants' Motion to dismiss under Rules 12(b)(2) lack of jurisdiction over the person, (4) insufficiency of process, and (5) insufficiency of service of process.

Further, even if the Court determines that service was not accomplished, the proper remedy is not to dismiss the case, but rather to toll the statute of limitations under the doctrine of equitable tolling.

Plaintiff finds this decision granting the Defendants' Motion to Dismiss to be in error for at least three reasons. First, Plaintiff contends that service was proper under SCRCF Rule 4(d), generally, and more specifically under Rule 4(d)(5). Plaintiff believes that service on the SCDPS was technically proper as they were served at the address the agency holds out to the public to be its physical address. Second, even if service was not technically proper under 4(d)(5), it sufficiently complied with Rule 4(d)—which still constitutes proper service. Third, and regardless of whether or not service was technically proper and/or sufficiently compliant, Plaintiff believes that service was accomplished under SCRCF 4(d) and 12(h) when Defendants voluntarily appeared and began discovery practice, thus consenting to personal jurisdiction of the Court, and thereby waiving their personal jurisdiction defenses.

Plaintiff argues that the Court should find that service was proper based upon one or more of these arguments and dismiss Defendants' motions accordingly. However, even if the Court declines to find that service was proper, Plaintiff believes that the proper remedy should be to toll the statute of limitations and time to serve under the theory of equitable tolling given the SCDPS' misleading and confusing physical address.⁴ In the alternative, Plaintiff renews its oral motion of

⁴ Plaintiff once again served Defendant SCDPS on May 22, 2023, and directed the process server to specifically ensure an employee of the SCDPS was served. Unfortunately, there is no real way for Plaintiff to know if the person served is allowed to accept service—at least based on Defendants' interpretation of the Rules.

February 23, 2023 to be granted leave to file an amended complaint in the event the Defendants' Motion to Dismiss is formally granted.⁵

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

The Order granting Defendants' Motion to dismiss Trooper Goshorn as a party was improper.

Plaintiff assumes that this was because the Plaintiff alleged that the officer was in the course and scope of his employment at all relevant times, they are arguably immune from suit. The fatal problem with the Court's order is that an action may be maintained against an individual government employee, even if that employee was acting in the course and scope of employment, if the employee was acting intentionally or with actual malice. The plaintiff believes she has adequately stated a claim against him, and such a dismissal at this stage, without discovery having occurred, is inappropriate under South Carolina law. In the alternative, the Plaintiff should be given leave to amend her complaint to allege that the officer was acting outside the course and scope of employment—as well as to include a claim under §1983 as orally requested in the Hearing.

III. THE ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF'S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCPP. Plaintiff submits this Amended Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend the judgment to preserve the issue for

⁵ This amended complaint would include a cause of action for a federal §1983 action. Attorney Harter indicated that he would not be opposed to the filing of Amended Complaint, and went so far as to suggest that he would simply remove the matter to federal court if Plaintiff's oral Motion was granted. However, Plaintiff still contends that the Defendant's Motion(s) to Dismiss should be denied and that the case should move forward where it is.

appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, *certiorari granted, affirmed in part, reversed in part* 403 S.C. 560, 743 S.E.2d 778.

In the present case, Plaintiff's oral motion during the hearing of February 23, 2023 seeking leave to amend in the event the court dismisses the case has not been ruled upon.

STANDARD OF REVIEW

Rule 59(e), S.C.R.C.P. provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), S.C.R.C.P. A Rule 59(e) motion is not only "a vehicle to request the trial court 'alter or amend the judgment,'" but it is also "a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772 (2004). In such a motion, a party "is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." *Id.* A party may file a motion to reconsider "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." 361 S.C. at 24, 602 S.E.2d 772. "A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

DISCUSSION

I. GRANTING DEFENDANTS' RULE 12(b) MOTION TO DISMISS WAS AN ERROR.

1. Service was properly made on the SCDPS under SCRCF Rule 4(d)(5) when the summons and complaint was delivered to SCDPS' physical address and when the SC Attorney General's office was personally served.

South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing. Rule 4(d) sets forth the rules for personal service upon various entities when serving a summons and complaint.

Respectfully, the Order of June 27, 2023 cites the incorrect Rule in its analysis. *To wit:*

Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.

Formal Order, Page 4. The incorrect Rule cited is Rule 4(d)(3), which governs service on a corporation or partnership⁶—not service on a state agency such as the SCDPS. Service on a state agency is governed by Rule 4(d)(5) and is controlling in the present case. It says:

[Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

The only way 4(d)(3) would have any bearing on a State Agency would be if said agency was a corporation—which the SCDPS is not. Incorrect rule application notwithstanding, Rule 4(d)(5) still supports a finding of proper service being made.

⁶ 4(d)(3) **Corporations and Partnerships.** Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Rule 4(d)(5) – Serving the SC Attorney General

Addressing the second part of the rule first, Rule 4(5)(d) requires service also be made upon the SC Attorney General. Plaintiff indisputably served the Attorney General’s office. The Attorney General is the State’s Chief Legal Officer and the individual in State government who is responsible for guiding and arranging for the defense of State agencies facing litigation. Despite the specific method indicated by the Rule being by certified mail, service was accomplished by personal service as the time remaining to serve the Summons and Complaint was nearly expired. In the interest of ensuring service would more definitively arrive at its intended destination on time, and rather than rely on the postal service to deliver something AND ensure the certified mail process is correctly handled⁷, Plaintiff chose to serve the Attorney General’s office in a manner most likely to be successful—and at a significantly greater burden and higher cost than certified mail.

Rule 4(d)(5) – Delivering a Copy to the Agency

Addressing the first part of Rule 4(d)(5) next, Plaintiff unquestionably “delivered” a copy of the summons and complaint to the physical address listed publicly by the agency, i.e., the SCDPS. Defendants argue that Plaintiff’s (good faith) efforts to comply with the agency “delivery” requirement of 4(d)(5) was ineffectual, seemingly based solely on the contention that it was served upon the *wrong person*. The Affidavit of Diana Brown (EXHIBIT 11) suggests that the SCDPS has certain people that are allowed to accept service. *To wit*:

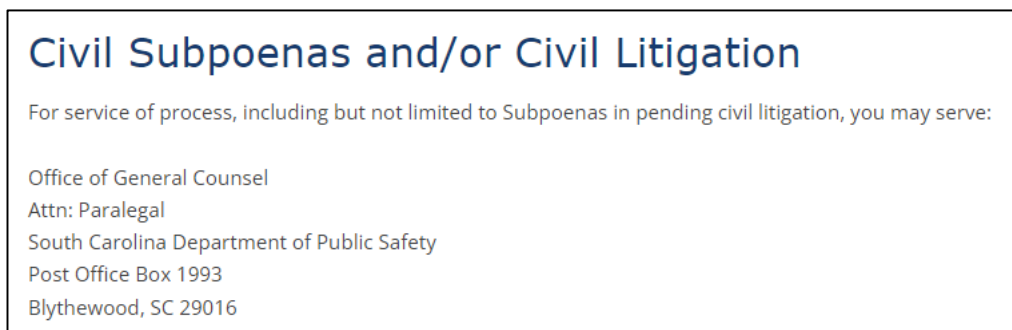
The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and

⁷ Plaintiff’s counsel is more than happy to provide anecdotal examples of how postal service employees, as recently as December 2022, were using the COVID-19 pandemic to excuse full compliance with the signature requirements inherent to certified mail delivery and service.

roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol. Aff. Of Diana Brown ¶ F.

Instinct begs the question: *who is the correct person? Also, how does one ascertain the identities of these designated employees*”? Not only that, but the last sentence makes no sense. Of course an employee of an agency would be employed by the agency. *Is this sentence meant to suggest that “the individual” could be someone other than the hypothetical “employee to accept service”*? It’s like saying “the blue sky is blue”, but in a way that appears more official than it really is due to the use of words like “the Department” and “must”.

But I digress. A simple search of “service of process” within the SCDPS website has only one page⁸ (**EXHIBIT 17**) with any information on service of process that is remotely substantive. And, as the screenshot below shows, it simply says that one “may serve” the paralegal in the General Counsel’s office, with no other guidance or the names of the “designated employees” who are authorized to accept service of process.



The SCDPS website notwithstanding, the first sentence of paragraph F from Ms. Brown’s affidavit is more in line with Defendant’s positioning as to what constitutes proper service on a state agency, which of course is that Rule 4(d)(3) controls. Accordingly, Defendant believes that

⁸ <https://scdps.sc.gov/general-counsel/subpoenas>

obtaining proper service upon a state agency is limited to delivering a summons and complaint only to “designated employees who are authorized to accept service of process on (the department’s) behalf.” This could not be more wrong.

Rule 4(d)(5) – Who is a proper person? We truly don’t know.

Again, Rule 4(d)(3) has nothing to do with service on a state agency. Further, Rule 4(d)(5) does not specify “who” may accept service on behalf of a state agency. However, there are multiple subdivisions of Rule 4(d) (including (3)) that do indicate who may accept service on behalf of the respective persons and/or entities:

- Rule 4(d)(1) allows service to be made upon an **individual** by leaving copies “at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or *by delivering a copy to an agent authorized by appointment or by law to receive service of process.*” (emphasis added).
- Rule 4(d)(3) allows service to be made upon a **corporation or partnership** by delivering a copy of the summons and complaint “to an officer, a managing or general agent, or *to any other agent authorized by appointment or by law to receive service of process . . .*” (emphasis added).
- Rule 4(d)(4) allows service to be made upon **the State of South Carolina** by delivering a copy of the summons and complaint “to the Attorney General, or *when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official . . .*” (emphasis added).
- Rule 4(d)(6) allows service to be made upon a **Governmental Subdivision (e.g., municipal corporation, county, etc.)** by delivering a copy of the summons and complaint “*to the chief executive officer or clerk thereof*, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant . . .” (emphasis added).

To contrast the rules of personal service between the subdivisions above and Rule 4(d)(5), the full text of Rule 4(d)(5) is, once again, as follows:

SCRCP 4(d)(5) State Officer or Agency: [Service shall be made] upon an officer **or agency of the State** by delivering a copy of the summons and complaint to such officer **or agency** and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Now, to minimize confusion, let's remove the parts of this rule pertaining to a State Officer (as this is not at issue), the section pertaining to service on the Attorney General (as this was previously addressed), and the last sentence—as the SCDPS is not a corporation:

[Service shall be made] upon an . . . agency of the State by delivering a copy of the summons and complaint to such . . . agency [].

Contrary to Defendant's position, there is nothing about Rule 4(d)(5) or its "plain language" that indicates how an agency may be served (but the subdivisions listed above do indicate as much). The Rule simply doesn't say what types of delivery are sufficient (or alternatively insufficient) to effectuate service. Further, interpreting Rule 4(d)(5) as a limitation that requires service on an agency to be made upon "designated employees who are authorized to accept service of process on (the department's) behalf" is inconsistent with the other subdivisions of Rule 4(d). In other words, the drafters in the state legislature would have included with specificity the manner(s) in which service could be made. At least in regard to Rule 4(d)(5), if only one manner of service were acceptable (i.e., *upon designated employees who are authorized to accept service of process on (the agency's) behalf*), wouldn't the legislature have said so, just as they did in above subdivisions?⁹

Rule 4(d)(5) – No SC Appellate Court has Touched It

Unfortunately, there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). *See also* 24 S.C. Jur. Rules of Civil Procedure § 4.2. But there are other good authorities to help discern the meaning of Rule 4(d)(5)'s requirement that a plaintiff "deliver" the summons and complaint to the state agency being sued, and those

⁹ To be clear, and for reasons set forth later in this Motion, Plaintiff is not arguing that the manner(s) by which to obtain proper service is limited only to those specific manners propounded by the germane Rule 4 sections. Rather, Plaintiff is arguing that those Rule 4 sections which do not specify the manners by which to effect service may not be limited.

authorities strongly indicate that the manner in which the SCDPS was served was sufficient and proper.

We start with the Rules of Civil Procedure themselves. South Carolina adopted its Rules in 1985 and repealed many state statutes addressed to civil procedure matters at the same time. Nonetheless, as indicated by the Notes to the Rules, some of the subsections of Rule 4 preserved the principles of certain repealed statutes. Rule 4(d)(1), for example, expressly reserved the principles of S.C. Code Ann. § 15-9-520 (1976), which dealt with substitute service on individuals. *See* Note to Rule 4(d)(1). Rule 4(d)(5), however, did not preserve the principles of any precursor statutes; rather that subsection of the Rule “conform[ed] to the Federal Rules and clarif[ied] State practice concerning service on the State, its officers or agencies, and on political subdivisions.” *See* Note to Rule 4(d)(5). In the early 1980’s, the Federal Rule of Civil Procedure that SC Rule 4(d)(5) was patterned after also provided that service upon a government agency should be accomplished by “delivering” a copy of the suit papers to the defendant agency. *See* Notes to Federal Rule.

Rule 4(d)(5) – Delivered to the Agency at their Address.

In the present case, the Plaintiff’s process server recalls that he went to the specific address listed by the Defendant on its public, official website as being its physical address. It was not apparent that the same specific address, without further designation (e.g., suite number, building number, etc.), was also shared by other state agencies. He entered the building, went to the front desk, informed to person at the front desk that he was there to serve the SCDPS, and was informed by the person at the front desk that she could accept the documents he was serving. Accordingly, he served her with the summons and complaint. This was accomplished within the 120-day period

allowed for service, on a person who claimed she could accept service for the agency, at the address known publicly to be the address of the SCDPS. **EXHIBIT 18.**

By way of an anecdotal, yet relevant experience, Plaintiff recently learned that serving process upon the SCDPS is more difficult than previously thought. In an attempt to re-serve the SCDPS (just to be able to assert that it was absolutely done, with no question as to the proper party), the (different from the first) process server informed Plaintiff's counsel that service was difficult, as the front desk person, a person named "Grayson" informed him that he could accept service on behalf of the SCDPS. Nevertheless, at the process server's request (and at the direction of Plaintiff's counsel), the process server asked that a representative from the SCDPS to come down to accept service. After waiting a considerable amount of time, the process server decided to leave and try again later, as he did not trust that the front desk person was truly allowed to accept service. **EXHIBIT 19.** This service was ultimately recompleted (at least Plaintiff is confident that it was) on May 22, upon Paula Davis, a paralegal with the SCDPS. **EXHIBIT 20.** Of note, Plaintiff is unable to find any employees listed within the State of SC employee list¹⁰ named Grayson (except for one that works for the SC Dept. of Corrections).¹¹ Further, Plaintiff is unaware if Ms. Davis is one of SCDPS' purported "designated employees who (is) authorized to accept service of process on their behalf"—nor does the Plaintiff know of a way to confirm this.

Plaintiff contends that service was properly made upon someone located at the public physical address of the SCDPS, in a location that one would reasonably expect to be informed as to who can accept service. Aside from serving the officer and the Attorney General's office, Plaintiff took no other action to inform the SCDPS. Yet, Defendant SCDPS received notice of the lawsuit. To put this more succinctly, [Service (**was**) made] upon an . . . agency of the State by

¹⁰ <https://webprod.cio.sc.gov/DirectWeb/searchMenu.do>

¹¹ Plaintiff is unable to determine if any individuals with a middle name starting with "G" go by "Grayson".

delivering a copy of the summons and complaint to such . . . agency []. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, find that Plaintiff properly served Defendant under Rule 4(d)(5), and deny the Defendant's Motion.

2. Plaintiff Sufficiently Complied with Rule 4(d)(5)

"It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant." *Fassett v. Evans*, 610 S.E.2d 841, 843 (S.C. Ct. App. 2005) (citation omitted). "The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend." *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 541 (S.C. 2014) (internal citations and quotation marks omitted); see also *Burris Chemical, Inc. v. Daniel Const. Co.*, 163 S.E.2d 618, 620 (S.C. 1968) ("The principal object of service of process is to give notice to the defendant corporation of the proceedings against it."). It follows that Rule 4, which governs service of process, "confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *BB & T v. Taylor*, 633 S.E.2d 501, 503 (S.C. 2006) (quoting *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 899 (S.C. 1995)).

As previously stated, and something that cannot be said enough: there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). Further, South Carolina's Rule 1 mirrors the federal rule; it states that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." There's nothing just about taking an overly technical view of the service requirements of Rule 4, especially where the purported technical default caused no prejudice to the Defendant and the purposes of service were otherwise satisfied.

And in fact, the South Carolina appellate court opinions have actually taken precisely that approach to issues related to service of process (although they have not cited Rule 1 in their analyses), eschewing technical “gotcha” gamesmanship in favor of focusing on the policies and purposes underlying the service requirements. As the Fourth Circuit observed in 2010:

The South Carolina Supreme Court has noted that it will not require “exacting compliance” with the rules related to service of process. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897 (1995). Instead, the court inquires into “whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* at 210, 456 S.E.2d 897.

Colleton Preparatory Acad. Inc. v. Hoover Universal, Inc., 616 F.3d 413 (4th Cir. 2010) (rejecting challenge to service where delivery was not restricted to the addressee because, under the circumstances, the defendant would have had actual and timely notice of the lawsuit and it was undisputed that the registered agent received the lawsuit papers, notwithstanding the failure to employ restricted delivery certified mail).

As the South Carolina Supreme Court said in the *Roche* case cited by the Fourth Circuit:

Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. We have never required exacting compliance with the rules to effect service of process. See *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (when officer's return defective as to time and place of service, it can be amended to state facts); *Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended); *Miller v. Hall*, 1 Speers 1 (1842). Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

Roche v. Young Bros., Inc. of Florence, 456 S.E.2d 897, 318 S.C. 207 (S.C. 1994) (emphasis added).

Those are the principles that have continually echoed throughout the law of South Carolina, as the statement that “[e]xacting compliance with the rules is not required to effect service of process” has been quoted repeatedly in numerous appellate cases in South Carolina since *Roche*. See, e.g., *Richardson v. P.V., Inc.*, 682 S.E.2d 263, 383 S.C. 610 (S.C. 2009); *Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007) (quoting the principles from *Roche* and stating that “the efficacy and rationale behind the requirement for service of process—that the defendant has notice of the proceedings—has luculently been met in this case.” See *Roche*, 318 S.C. at 210, 456 S.E.2d at 899 (“Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.”); *Moore*, 322 S.C. at 523, 473 S.E.2d at 66 (“Rather, inquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant, and the defendant has notice of the proceedings.”). Or as now-Justice Kittredge explained on behalf of the Court of Appeals in another case that involved a technical challenge to service:

As this issue has been framed by Appellant, its resolution would seem to entail a technical analysis of when a corporation may be said to “exist” for purposes of our civil rules governing service of process. Our rules governing service of process do not turn on parsing strict technicalities or debating murky legal abstractions. On the contrary, our supreme court has specifically held that “[w]e have never required exacting compliance with the rules to effect service of process.” *Roche v. Young Bros. Inc.*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995) (citing *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900); *Saunders v. Bobo*, 2 Bailey 492 (1831); *Miller v. Hall*, 1 Speers 1 (1842)). “Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Roche*, 318 S.C. at 210, 456 S.E.2d at 899. To establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct.App.1996). When these rules are followed, there is a presumption of proper service. *Roche*, 318 S.C. at 211, 456 S.E.2d at 900.

McCall v. Ikon, 611 S.E.2d 315, 363 S.C. 646 (S.C. App. 2005).

The *Maybin* Myth

In contrast to the numerous cases discussed above, perhaps the case most often used to support arguments consistent with Defendants' position is *Maybin v. Northside Correctional Center*, 891 F.2d 72, 73-4 (4th Cir. 1989). However, *Maybin* is of dubious value. In *Maybin*, Plaintiff sued her employer, which was a state agency, for discrimination. She served the attorney general of SC by mail pursuant to Rule 4(d)(5). As to the requirement that plaintiff deliver a copy of the summons and complaint to the agency, the opinion reports that the plaintiff served a particular "caseworker" at the facility. The case does not say how the caseworker was served and the Fourth Circuit's sole treatment of this issue in its opinion declared that Plaintiff's attempted service upon the caseworker was not effective service upon the agency. "Service to an agency is not legally obtained unless such service is made upon a person of suitable position and discretion within the agency," the Fourth Circuit said. *Maybin* cited *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (S.C.Ct.App.1987), in support of that statement.

It bears noting at the outset that *Jensen* doesn't even say what *Maybin* said it says. In fact, whereas the issue in *Maybin* was whether service on the individual employee was effective service on the agency, the issue in *Jensen* was the reverse – whether service on the agency employer was sufficient substitute service on the individual employees who worked there. In *Jensen*, the plaintiff sued certain Doe defendants under the fictitious name statute in their individual capacities. Those defendants were employees of a state agency (DSS). The Sheriff attempted to effect service on the individual defendants by leaving the papers with an employee at the agency. The trial court "found [that the agency] was a proper agent to receive service of process for these [individual] defendants, because it was the defendants' employer at the time of the decedent's death." The Fourth Circuit

disagreed, however, because “[t]he record ... contain[ed] no evidence showing that [the agency] was the employer of the defendants at the time of the attempted service.”

While the *Jensen* Court did state in the very next sentence that “[w]ithout evidence that the defendants were served by delivery of the papers to a person of discretion employed at their present place of business, ... there is nothing in the record to show these [individual] defendants were served with process,” the Court based that statement on the “now repealed Section 15-9-520,” which was a statute providing for substitute service *on individuals*, not state agencies. *See, e.g., Collins Music Co., Inc. v. Lord*, 346 S.E.2d 724, 289 S.C. 458 (S.C. 1986) (“Under § 15-9-520 substitute service of process may be effected by personally serving a person of discretion at a defendant's residence or place of business.”). When South Carolina adopted its Rules of Civil Procedure, the Notes to Rule 4 said (and still say) that “Rule 4(d)(1),” regarding service on individuals, “preserves the requirements of Code § 15-9-520.” That statement further underscores that *Jensen* (which was premised on § 15-9-520) was a case about an attempted substitute service on individuals, not entities or state agencies. The Notes to Rule 4(d)(5), by contrast, do not declare any intention to preserve any aspect of any prior statutes, but rather expressly declare the intent of that subsection to “conform to the Federal Rules and clarify State practice concerning service on the State, its officers or agencies, and on political subdivisions.” In short, *Jensen* was a pre-Rules of Civil Procedure case that relied on now-repealed statutes related to substitute service on individuals and certainly had nothing to say about the conditions under which a party might properly “deliver” a copy of a summons and complaint to an agency for Rule 4(d)(5) purposes.

Rejecting Strict Limitations and Selecting Good Faith

And even that’s not all. *Jensen* (and thus *Maybin* by extension) is also diametrically at odds with the manner in which the South Carolina appellate courts have addressed service of process

challenges under the Rules of Civil Procedure. As noted above, in the aftermath of *Roche*'s exposition of the principles embodied in Rule 4 and the implications for any legal analysis regarding the sufficiency of service, the resounding chorus and theme of the appellate cases (since 1994 – eight years after *Jensen* and five years after *Maybin*) has been that “exacting compliance” with the Rules is not required; rather, the South Carolina courts look to a more functional approach that centers on good faith, actual notice, and sufficient compliance for a court to acquire personal jurisdiction – in other words the purposes that animate Rule 4, rather than “strict technicalities” and “murky legal abstractions.” By stark contrast, *Jensen* kicks off the conclusion of its analysis with the statement that “[c]ompliance with the service of process requirements must be strict, and approximations will not be effective.” That statement certainly does not reflect the post-*Roche* case law in the State, nor does it reflect the other policies or analysis contained above in this memo. In short, neither *Jensen* nor *Maybin* should be understood to have any enduring value at this point.

Why Bother Serving both the Attorney General and the State Agency?

Before concluding, it bears noting that there is at least one final reason for the Court not to accept the interpretation of Rule 4(d)(5) being tendered by the Defendant. That interpretation turns the relationship between the Attorney General and state agencies upside down. The Attorney General is (obviously) the State's Chief Legal Officer. South Carolina law charges him or her with the duty to defend public officers and employees in civil actions (S.C. Code § 1-7-50) and coordinate with Solicitors to provide for the representation of State institutions, and agencies with respect to civil proceedings (S.C. Code § 1-7-350). The agencies themselves cannot even hire counsel to represent the agency or as an employee without the Attorney General's approval. S.C. Code § 1-7-160, 170. (emphasis added). Read in light of this reality, it is evident that the drafters of the Rule wanted to make sure that the State's Chief Legal Officer (the one with the power,

authority, and responsibility to actually do something in response to the Summons and Complaint) received notice of any lawsuits against state agencies, thus the requirement that a plaintiff be able to verify service on the attorney general by certified mail.

But as to the agency itself, the Rule says in effect, make sure you serve the Attorney General and just send the agency a copy too. *See, e.g., Morrissey v. Mayorkas* (D.C. Cir. 2021) (discussing the federal rule that South Carolina’s Rule 4(d)(5) was patterned after and stating that “[b]ecause federal agencies are generally represented by the Department of Justice in litigation, the specific requirements for service on the United States provide notice to the officials who will be litigating the claims. Cf. *Light v. Wolf*, 816 F.2d 746, 750 (D.C. Cir. 1987). Rule 4’s requirement to serve the Attorney General, the head of the Department of Justice, as well as the relevant U.S. Attorney, the local component of the Department, ensures the Department has notice and is able to provide a defense consistent with the broader goals of the government.”). While plaintiffs certainly are not free to ignore the agency “delivery” requirement of Rule 4(d)(5), which Plaintiff here did not do, the most important component of Rule 4(d)(5) service is easily the requirement of service on the Attorney General; as the Rule reads, the agency “delivery” requirement is nearly an afterthought. And understandably so, given the legal structure of the rights and responsibilities of the relationship.

It should go without saying that the burden of personal service is higher and more demanding than that of service by certified mail. However, Defendant’s interpretation of Rule 4(d)(5) (which it bears repeating is not supported by the text of the Rule or any binding authority) is that service must be made on the agency in a manner consistent with 4(d)(1) and 4(d)(3) (but not 4(d)(5)), and that service on the Attorney General’s office must be by certified mail only, as opposed to the high burden/high certainty method of personal service. For the reasons stated above,

that just doesn't make sense and can't be what the Rule's drafters intended. Again, the most natural reading of the Rule as a whole is "make sure you serve the AG, and oh, by the way, send a copy to the agency too (ergo the lack of specificity as to either the manner of delivery or the identity of any necessary recipients)."

Unquestionable Substantial Compliance in Good Faith

Given all of the above, it is plain that Plaintiff substantially complied with Rule 4(d)(5). The Attorney General was unquestionably served. Plaintiff unquestionably delivered a copy of the Summons of the Complaint to the agency at the physical address they themselves provided to the whole world (or at least anyone with an internet connection). Oh—and Defendants' attorney unquestionably appeared in this case and timely filed an Answer. Rule 4(d)(5) does not require only certain people within the agency to be served. And the state agency—a component of the state government—should not be allowed to mislead or confuse the public by not specifying its physical address by way of suite or building designation, or if there is none, without informing the public that it has roommates living at the same physical address.

Even if the Court were to find some technical glitches in the service of process, those glitches were the result of a good faith effort to comply with a rule that is not specific as to either the manner of "delivery" or the characteristics of the intended recipient. There is no prejudice, and there was sufficient compliance with the Rule (even if the Court finds that compliance was not "exacting,") to serve the purposes of Rule 4. The Defendant got notice of the litigation, timely and voluntarily appeared, **sent discovery, and even asked when he could expect our responses to his discovery requests(!)**. There was no prejudice to the Defendant.

All steps taken are sufficient to confer personal jurisdiction over a South Carolina agency in a South Carolina Court of Common Pleas. Accordingly, Plaintiff asks this court to reconsider

its grant of Defendant's Motion to Dismiss, find that Plaintiff sufficiently complied with Rule 4(d)(5), and deny the Defendant's Motion.

3. Service was accomplished when Defendants voluntarily appeared in the case. under SCRCP 4(d) and 12(h) when Defendants voluntarily appeared, thus consenting to personal jurisdiction of the Court and waiving their personal jurisdiction defenses.

Personal jurisdiction is a court's authority to rule and enforce a decision over the parties of a lawsuit. *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). Pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure, “[v]oluntary appearance by defendant is equivalent to personal service.” South Carolina courts have held that where a defendant appeared and asserted claims which went to the merits, in addition to his jurisdictional objection, the defendant had waived personal jurisdiction. *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). Rule 12(h)(1), SCRCP, provides a defense is waived if “it is neither made by motion under this rule or included in a responsive pleading or an amendment.” No South Carolina case has *squarely addressed* whether personal jurisdiction is waived if a party continues to participate in litigation after challenging personal jurisdiction in their initial responsive pleading to a court. However, the language of Rule 12(h)(1) is substantially similar to the Federal Rules of Civil Procedure. In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Gardner v. Newsome Chevrolet–Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

A number of federal courts have determined “a delay in challenging personal jurisdiction by motion to dismiss may result in waiver, even where the defense was asserted in a timely answer.” *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60 (2d Cir. 1999) (citation omitted) (internal quotation and alteration marks omitted); see also *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998) (“Rule 12(h)(1)[, FRCP,] specifies the minimum steps that a party must take

in order to preserve a defense.”); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296–97 (7th Cir. 1993) (finding waiver of personal jurisdiction defense by defendant's conduct, though acknowledging the waiver specifically provided for by Rule 12(h), FRCP, did not occur); *Yeldell v. Tutt*, 913 F.2d 533, 538 (8th Cir. 1990) (finding Rule 12(h), FRCP, ““sets only the outer limits of waiver; it does not preclude waiver by implication.”” (quoting *Marquest Med. Prods. v. EMDE Corp.*, 496 F.Supp. 1242, 1245 n.1 (D. Col. 1980))).

The Perils of Seeking Discovery (or *Be Careful What You Ask For*)

Taking a quasi-totality of the circumstances approach by considering a variety of factors, South Carolina courts have found that engaging in discovery, and specifically the act of requesting discovery for purposes non-related to issues of jurisdiction, constitutes a voluntary appearance under Rule 4(d). In *Maybank v. BB&T Corp.*, our supreme court determined a trial court acted within its discretion when it found an appellant, BB&T, a banking corporation, waived its personal jurisdiction defense. 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016). In its answer, BB&T reserved its objection to the exercise of personal jurisdiction and subsequently moved for removal to federal court. There, the parties engaged in litigation and discovery. *Id.* BB&T’s participation in the usual course of discovery, i.e., both responding to and requesting discovery from Respondent was a significant factor in determining that BB&T had waived its personal jurisdiction defense.

In another case decided just a few months ago (and after this Court filed its Form 4 Order), the SC Court of Appeals affirmed the trial court’s ruling that the Respondent did not waive its personal jurisdiction defense under *Maybank. Abdulla v. S. Bank*, No. 2019-001142, 2023 WL 2939265, at *3 (S.C. Ct. App. Apr. 12, 2023). Unlike BB&T in the *Maybank* case, “(Respondent) Southern Bank **responded** to Abdulla's discovery requests to expedite the case, depositions were conducted to determine the jurisdictional issue, and Southern Bank **did not submit any discovery**

requests of its own.” Id. (emphasis added) For these reasons, the Court of Appeals determined the personal jurisdiction defense was not waived.

The common thread between these two cases is that even if a party asserted a personal jurisdiction defense in its responsive pleadings, the submission of discovery requests for non-jurisdictional purposes (i.e. on the merits) acted as a waiver of the party’s right to contest personal jurisdiction.

Plaintiff acknowledges that Defendant raised the personal jurisdiction defense in its initial pleadings. Further, contemporaneous with its Answer, Defendants did in fact move to dismiss the case on those grounds. However, on November 17, 2022, Defendants’ attorney mailed to Plaintiff discovery requests that had been signed by Attorney Harter on the same date as he answered on behalf of the Defendants. **EXHIBIT 15.** On March 3, 2023 two weeks after the hearing for Defendants’ Motion to Dismiss, Attorney Harter contacted Plaintiff’s counsel inquiring as to the status of the discovery responses. **EXHIBIT 16.** Unlike the Defendants in *Abdulla*, the defendants in the present case submitted discovery requests to the Plaintiff—requests that were not exclusively based on jurisdictional issues—and later inquired as to when the discovery would be produced. Additionally, these discovery requests seek information pertaining to the merits of the case, just as the *Smalls* court warned against. Further, the last line of each particular request (i.e., Interrogatories and Requests for Production) included the declarations that “These Interrogatories shall be deemed continuing so as to require supplemental responses up until and prior to trial” and “These Requests for Production of Documents shall be deemed to be continuing in nature and require supplemental response prior to trial”. **EXHIBIT 15.** Plaintiff has not yet submitted discovery requests to the Defendants, nor would doing so have influenced this analysis in any way. See *Erickson v. Jones*

St. Publishers, LLC, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) (“[A] party may not complain on appeal of error ... which his own conduct has induced.”).

I Know, But I Don’t Know-Know, You Know?

The purpose behind requiring service is a simple one. The requirements of service do “not arise from an arcane or highly technical application of the rules. Rather, [the service requirements] serve[] an essential function—ensuring that notice is properly received by all entitled to it.” *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). “A suit at law is not a children’s game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court.” *Id.* at 652, 611 S.E.2d at 318 (quoting *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992))(emphasis added).

It is clear from Defendant’s voluntary appearance at the onset of the case and timely response to the pleadings that the Defendants were on notice of this action. More importantly, by engaging in discovery practice, and not for the purpose of determining jurisdictional issues, Defendants have implicitly acknowledged jurisdiction of this court.

Accordingly, Plaintiff asks this court to reconsider its grant of Defendant’s Motion to Dismiss, find that Defendant voluntarily appeared under Rule 4(d) and/or otherwise waived its personal jurisdiction defenses, and deny the Defendant’s Motion.

4. Even if the Court determines that service was not accomplished, the proper remedy here is not dismissal of the case, but to equitably toll the time to serve.

South Carolina courts have also taken issue when service was difficult to obtain due to misleading or otherwise confusing circumstances. Pursuant to S.C. Code Ann. § 15-3-530, the statute of limitations for personal injury claims is three years. Additionally, South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the

statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

In addition to statutory rules regarding tolling of the statute of limitations in personal injury claims, in conjunction with the Rules of Civil Procedure, South Carolina also recognizes the doctrine of equitable tolling. In *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009), the Court concluded "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). The *Hooper* court explains "equitable tolling is a non-statutory tolling theory which suspends a limitations period." *Hooper*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). Further, "[e]quitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it" and "[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Hooper* citing *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009).

The Plaintiff in *Hooper*, the personal representative of a patient's estate, brought a wrongful death action against defendant nursing home. The patient was admitted to the nursing home in February 2003, developed severe decubitus ulcers, was hospitalized in April 2003, and died in May 2003. The complaint was timely filed in February 2006, but service was not effected until June 2006, after the three-year statute of limitations of S.C. Code Ann. § 15-3-530 had run and

after the 120 time period of S.C. R. Civ. P. 3(a)(2) had run. (See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009)).

Justice May be Blind, But Justice is Also Invisible

The *Hooper* estate's attorney first tried to effect service upon the agent named by the nursing home at the address supplied to the Secretary of State. When that was unsuccessful, the attorney tried to find a personal address for the agent. Further, the attorney contacted the sheriff's department on numerous occasions and was told service was being made. However, service was unsuccessful because the agent could not be found. The Defendant in *Hooper* argued it was entitled to the dismissal of *Hooper*'s action because Plaintiff should have pursued alternative means of service, such as publication or service upon the Secretary of State. However, the Court found "it is important to note that a party utilizes these alternative methods of service only after first exercising reasonable or due diligence to effect service on an individual or agent." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added).

The *Hooper* court cited many examples of equitable tolling and explains jurisdictions have considered tolling in a variety of contexts and have developed differing rules for its application. However, the *Hooper* court concluded the differing situations cited in several jurisdictions did not constitute an exclusive list of circumstances that justify the application of equitable tolling. Most importantly, the *Hooper* court concluded "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper* quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Therefore, "equitable tolling may be applied where it is justified under all the circumstances ... when the interests of justice compel its use." *Hooper v. Ebenezer Senior*

Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added). The 4th Circuit Court of Appeals cites *Hooper* in *Aikens v. Ingram*, 524 Fed. Appx. 873, 2013 U.S. App. LEXIS 8972, 2013 WL 1832083 and also adds "[l]imitation periods are designed to ensure justice by preventing surprise, but no surprise exists when defendants are already on notice of the substantive claims being brought against them."

The Right Place, the Right Time, the Right— <enter Evil Twin>

In the present case, Plaintiff attempted to serve the Defendant at the physical address listed on its publicly listed, government-funded website. Unbeknownst to the Plaintiff, Defendant SCDPS shared the address with the SCDMV, another state agency. However, the SCDPS has not made any attempts known to the Plaintiff to inform the public that service upon that particular address could be difficult, given the shared space. Further, Defendant SCDPS does not specify any designations which might have allowed Plaintiff (or the public, for that matter) to more specifically ascertain Defendant SCDPS' specific location at the listed physical address, such as a suite or building number.

In *Hooper*, the Defendant did not provide a correct address for their registered agent. In this case, the Defendant is a state agency, and given its public status, should be clear in any and all of its public declarations, including but not limited to its listed physical address on a public, government-funded website and as to any potential misleading and/or confusing encounters one might anticipate when relying on said declarations. If the state agency is not clear on such difficulties a Plaintiff might encounter in attempting service of process, for example, such lack of clarity would prejudice the Plaintiff. There are no set rules on how to "find" a Defendant, however, the Plaintiff is required to complete reasonable and due diligence in locating and serving a Defendant prior to proceeding with service by publication. This should include service of a

summons and complaint at the physical address publicly provided by a Defendant, especially a state agency, as in this case. However, this Court's decision granting Defendants Motion to Dismiss seems to ignore the South Carolina courts' purpose "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." *Hooper* at 687.

We Did What They Told Us to Do. What Else Were We Supposed to Do?

In this case, the Plaintiff sought out the state agency's physical address to ensure it would be properly served. By simply going to the agency's website and noting the physical address the agency had listed, Plaintiff was ready to put her plan into action. When the process server delivered the papers to the individual at the address provided by the agency, this individual apparently did not object, decline, or otherwise refuse service of process. Accordingly, Plaintiff justifiably believed that service was properly obtained. This belief was further justified when Defendant SCDPS, clearly on notice of the lawsuit, voluntarily appeared in the case and filed a timely response to the pleadings. As stated in the *Hooper* case, the rules require a Plaintiff to perform reasonable and due diligence to serve the Defendant without moving forward with service by publication. Plaintiff contends this responsibility exists due to the issues of a Defendant gaining actual knowledge of a lawsuit via publication, as noted in *Hooper*. With service having been made *at the physical address provided by the Defendant* and said defendant timely responding to the pleadings, it is clear that the overall purpose of Rule 4 was achieved, that being to ensure the Defendant had actual notice of the lawsuit.

By way of analogy (and this is not an argument based on any precedence whatsoever—but I hope this Court gets the point), this whole situation is analogous to one method of fulfilling the requirements of Rule 4(d)(1)—specifically, "by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." More

than one agency resided at 10311 Wilson Blvd., Blythewood, SC 29016 (i.e., the “dwelling house or usual place of abode” of SCDPS), and the person accepting service was presumably “of suitable age and discretion,” and acting on behalf of the other agency “then residing therein.” There’s virtually no way that, on some level, be it shared bathrooms, cafeterias, vending machines, parking lot, etc., that employees of the SCDPS and SCDMV don’t interact. And the whole point of Rule 4(d)(1) is to ensure that serving a summons and complaint on someone isn’t hampered by pesky situations (like that person not being at home) by giving it to someone of proper maturity that shares the same space as the person intending to be served, with the expectation that the intended person will be given the documents. And if we’re going to analogize, let’s analogize—if corporations are people, i.e., *Citizens United*¹², why can’t state agencies be people too?

The Plaintiff clearly showed reasonable and due diligence in attempting to serve the Defendant. Additionally, the Plaintiff served the suit upon the Attorney General’s office. Ultimately, the Defendant, with actual notice of the Summons and Complaint, responded to the same, and was aware of the substantive claims being brought against the agency. This is further evidenced by the Defendant timely filing an answer.

Equitable tolling was created to ensure fundamental practicality and fairness. The Plaintiff contends they performed their reasonable and due diligence to properly serve the Defendant in this case. Further, they don’t believe the Defendant is prejudiced by surprise in this case (because they were not). Accordingly, Plaintiff asks this court to reconsider its grant of Defendant’s Motion to Dismiss, and in the event the Court ultimately orders that service was not obtained initially, the Plaintiff would ask that the Court toll the time to serve the Summons and Complaint, thus allowing the Plaintiff’s service of May 22, 2023 to be effective (assuming this is deemed to be on the proper

¹² *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)

agency, e.g., upon a “designated employee[] who [is] authorized to accept service of process,”¹³ and notwithstanding the Rules pertaining to time to file and serve), and deny the Defendant’s Motion.

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

1. Overview of the Law

The South Carolina Tort Claims Act (SCTCA) does not give governmental employees absolute immunity from suit for incidents that occur during their employment. South Carolina Code Section 15-78-70(b) of the SCTCA provides that “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (emphasis added). Thus, this section of the SCTCA makes clear that “police officers whose conduct is outside the scope of their official duties or constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude are liable for their torts ‘in the same manner and to the same extent as a private individual under like circumstances’ without any immunity from the Act.” *Shelley v. S.C. Highway Patrol*, 432 S.C. 335, 341, 852 S.E.2d 220, 223 (Ct. App. 2020); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585 (2019) (“A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm.”). This section works in conjunction with Section 15-78-60(17) of the SCTCA, which provides that “[t]he governmental entity is not liable for a loss resulting from . . . employee

¹³ For reasons set forth earlier in this Motion, Plaintiff’s quoted statement is not made to argue that this is the proper type of person to be served, but rather to provide an example of the type of person Defendant has already conceded would be proper to accept service on behalf of the agency. Plaintiff obviously disagrees with such a limitation.

conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-60(17) (emphasis added). As such, under this scheme, an individual governmental employee is not protected by the SCTCA and may be individually liable for actions that occur outside the scope of their official duties or are committed with fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity is not liable under the SCTCA for such actions. Conversely, an individual governmental employee is immune from suit under the SCTCA for actions that are committed within the scope of their official duties and do not constitute fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity can be liable for such actions under the SCTCA.

Rule 8(e), S.C.R.C.P. allows a plaintiff to plead in the alternative and even assert inconsistent causes of action. Such alternative or inconsistent pleading with respect to individual government employees has been permitted by the South Carolina Supreme Court. In *Skydive Myrtle Beach, Inc.*, the Court held, “We find it is entirely appropriate for [the plaintiff] to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties. . . . Pleading alternative theories of recovery based on the uncertainty of whether an employee acted within the scope of his employment or his official duties is common.” *Skydive Myrtle Beach, Inc.*, 426 S.C. at 187-88, 826 S.E.2d at 591-92.

With respect to Plaintiff’s claims against the SCDPS, SCHP, and Trooper Goshorn, Plaintiff has pled in her complaint alternative theories of liability against them both in accordance with the SCTCA. Here, Plaintiff has brought seven (7) total causes of action against the Defendants: 1.) Negligence/Negligent Training/Supervision/Retention; 2.) State Tort Claims Act

violations; 3.) False Imprisonment; 4.) Malicious Prosecution; 5.) Abuse of Process; 6.) Outrage; and 7.) Gross Negligence/Recklessness. As to the cause of actions for negligence/gross negligence, Plaintiff concedes that the SCDPS is the proper party for those allegations and that the STCA cause of action is more of a restatement of the law. However, with respect to the other four (4) causes of action, as set forth below, the Complaint sufficiently states claims against all Defendants, including Trooper Goshorn.

2. The Complaint Sufficiently States a Cause of Action for False Imprisonment Against Goshorn.

As set forth above, one of the exceptions to immunity under the SCTCA is if an individual officer's conduct constituted an "intent to harm." S.C. Code Ann. § 15-78-70(b). In her third cause of action, Plaintiff has alleged false imprisonment against all Defendants. "False imprisonment is an intentional tort." *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 619, 521 S.E.2d 163 (Ct. App. 1999). "To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. S.C Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642, 651 (2006) (emphasis added). Plaintiff has alleged as part of her false imprisonment cause of action,

Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility. The acts . . . were intentional[.]

See Compl., ¶ 71-72.

Again, allegations that a defendant acted "for the purpose of injuring the plaintiff" satisfy this exception. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 185, 826 S.E.2d 585 (2019). In fact, even if in proving "intent" under an intentional tort, a plaintiff need not prove

“intent to harm,” it could still be found by the jury that the officer acted with an intent to harm in committing the tort. See *Eldeco, Inc. v. Charleston County*, 372 S.C. 470, 642 S.E.2d 726, 732 (2007) (“Although it is true that harm may result from an intentional interference with existing or prospective contractual relations, it is not necessary that the interfering party intend such harm.”). Further, “whether the officers’ conduct constituted an intent to harm is a factual question for the jury.” *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Thus, Plaintiff has sufficiently plead the intentional tort of false imprisonment against Goshorn, and dismissal of this cause of action against him at this point is inappropriate, as it is a factual question for the jury to determine whether the false imprisonment was committed by Goshorn with an intent to harm.

3. The Complaint Sufficiently States a Cause of Action for Malicious Prosecution Against Goshorn.

Another exception in Section 15-78-70(b) is for causes of action that contain an element of “actual malice.” The “actual malice” standard under the SCTCA in Section 15-78-70(b) is defined as acting with “ill will toward the plaintiff” or acting “with conscious indifference of the plaintiff’s rights.” *Castine v. Castine*, 403 S.C. 259, 268, 743 S.E.2d 93, 97 (Ct. App. 2013).

The Complaint sets forth a malicious prosecution claim against all Defendants. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law*, 368 S.C. 424, 629 S.E.2d at 648 (emphasis added). As part of Plaintiff’s malicious prosecution claim against Defendants, Plaintiff alleges, “Defendants’ accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.” Compl., ¶ 83.

In *Brown v. Leonard*, No. 2008-UP-039 (Ct. App. Jan. 11, 2008), the South Carolina Court of Appeals examined the “actual malice” exception and held that “[a]lthough the [law enforcement agency] is entitled to statutory immunity from claims requiring a showing of malice, individual employees are not entitled to benefit from that same immunity. Otherwise, employees of organizations covered by SCTCA would have immunity from any intentional tort.” *Id.* The Court of Appeals held that the circuit court “erred in dismissing the malicious prosecution claim against [a deputy] based upon the same immunity granted to the [law enforcement agency].” *Id.*

While the Court of Appeals has subsequently held “one need not show actual malice in order to successfully maintain an action for malicious prosecution,” it also held that a showing of malice under that cause of action “does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition.” *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 855 (Ct. App. 2010) (emphasis added). Thus, a cause of action for malicious prosecution could possibly be maintained against the SCDPS and individual troopers simultaneously depending on if such actual malice is found or not. This determination is not made by the court at the Rule 12(b)(6) stage, as the South Carolina Supreme Court has long held that “the question of actual malice is a question of fact for a jury.” *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013) (“[T]o the extent the existence of common law actual malice becomes an issue, its existence is a question of fact that must be proven at trial.”). In other words, whether Goshorn in this case acted with actual malice or implied malice is a factual question for the jury, and thus, neither the SCDPS, nor the individual trooper, can be dismissed at the 12(b)(6) stage on immunity grounds under Section 15-78-60(17) or 15-78-70(b), respectively. See *White v. City of N. Charleston*, No. 2020-UP-231 (Ct. App. Aug. 5, 2020) (“Accordingly, the circuit court should not

have granted immunity under [15-78-60(17)], as whether the officers' conduct constituted an intent to harm is a factual question for the jury.”).

4. The Complaint Sufficiently States a Cause of Action for Abuse of Process Against Goshorn.

Plaintiff has alleged a cause of action for abuse of process against all Defendants and alleged, “The Defendants had an ulterior purpose in employing legal process against the Plaintiff [and] acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.” Compl., ¶ 90-91. “The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding.” *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211, 213 (Ct. App. 2008). The South Carolina Court of Appeals has held that abuse of process “does not require a finding of actual malice or intent to harm.” *Id.* (emphasis added). However, under an abuse of process claim with respect to the “intent to harm” exception “harm may result from . . . ‘bad intent.’” 379 S.C. 346, 665 S.E.2d at 214. Again, under the SCTCA, the “actual malice” exception is “defined by situations where ‘defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff.’” *Id.* Under an abuse of process claim, the abuse may be accompanied, but “need not be accompanied by any ill will.” Again, the determination of whether the abuse of process was committed with actual malice or intent to harm is a factual question for the jury. *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013); *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Therefore, at the 12(b)(6) stage, these claims for abuse of process against Goshorn cannot be dismissed.

5. The Complaint Sufficiently States a Cause of Action for Outrage Against Goshorn.

Outrage is also known as intentional infliction of emotional distress. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 575, 780 S.E.2d 252, 260 (2015). Plaintiff's cause of action for outrage against Trooper Goshorn in his individual capacities is allowed to proceed under South Carolina law.

Under the SCTCA, a person who has suffered "a loss caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim" against the governmental entity. S.C. Code Ann. § 15-78-50(a). However, a "loss" as defined by the SCTCA **does not include outrage**. S.C. Code Ann. § 15-78-30(f) (emphasis added). Thus, courts have found that a governmental entity is immune from suit for intentional infliction of emotional distress. *Trask v. Beaufort County*, 392 S.C. 560, 573, 709 S.E.2d 536, 542 (Ct. App. 2011).

Nevertheless, again, Section 15-78-70(b) of the SCTCA provides that "[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b) (emphasis added). With respect to the "intent to harm" exception in Section 15-78-70(b), the South Carolina Supreme Court has held that allegations that a defendant acted "for the purpose of injuring the plaintiff" satisfy this exception. *Skydive Myrtle Beach, Inc.*, 426 S.C. at 185.

"To state a claim for [outrage], a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed

all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiffs emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d 42 (2004). Thus, in examining the SCTCA with respect to claims for outrage or intentional infliction of emotional distress against individuals, the South Carolina Supreme Court has allowed claims against individuals to proceed. In *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005), the South Carolina Supreme Court refused to reverse a trial court for denying individual county council members’ motion to dismiss claims for defamation, defamation per se, and intentional infliction of emotional distress and held as follows:

The South Carolina Tort Claims Act provides “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit . . . if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (2005). Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, the above statute would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

366 S.C. 354, 622 S.E.2d at 537-38. Likewise, in *In Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004), the plaintiff alleged the tort of outrage or intentional infliction of emotional distress against an assistant principal at a middle school, and the South Carolina Supreme Court held as to individual immunity:

We find that [the defendant’s] retaliatory conduct was a continuation of his improper sexual advances toward [the plaintiff] and was a product of personal, not occupational, motives. The principle of governmental immunity is not intended to protect a defendant such as Badger who has used his authority for nothing more than to personally retaliate against an employee. In addition, section 15-78-70(b) denies governmental immunity for defendants

whose actions involve actual malice and an intent to harm. We find that Badger's retaliatory conduct involved actual malice and an intention to harm Frazier.

361 S.C. at 103, 603 S.E.2d 587.

Here, in her outrage claim, Plaintiff has alleged, “. . . Furthermore, [Defendants’] conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.” Compl., ¶ 94. Thus, as the outrage claim contains an allegation of “intent to harm,” based on the above authority, the claim can proceed against Trooper Goshorn.

6. Plaintiff Should Be Afforded the Opportunity to Amend Her Complaint Before the Final Order of Dismissal.

Should the Court believe that Plaintiff’s Complaint is deficient in regard to any of the claims against Trooper Goshorn, Plaintiff must be given an opportunity to amend the Complaint before the final order of dismissal is entered. The South Carolina Supreme Court holds, “[w]hen a trial court finds a complaint fails ‘to state facts sufficient to constitute a cause of action’ under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585 (S.C. 2019). In *Skydive*, the Supreme Court found that the trial court erred in dismissing individually named employees under the SCTCA pursuant to Rule 12(b)(6) and “failing even to consider allowing [the plaintiff] to amend its complaint.” *Id.* In so holding, the Court stated as follows regarding how claims against individual employees are to be judged at the pleading stage:

A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm. § 15-78-70(b). Therefore, although [plaintiff] alleged in its complaint that Respondents were acting as agents of the governmental entities, the facts and claims recited above set forth several plausible grounds upon which [plaintiff] could

successfully allege Respondents are not entitled to immunity. It is not our role to determine whether the allegations [plaintiff] might make in an amended pleading will state a valid claim. However, we cannot definitively say it is impossible for [plaintiff] to plead a valid claim against Respondents.

426 S.C. at 187, 826 S.E.2d 585. Based on the arguments set forth above, there are certainly allegations that have been made against Trooper Goshorn that state valid claims against him. To the extent the Court disagrees, Plaintiff should be allowed the opportunity to amend her Complaint to more succinctly plead these allegations against Goshorn.

III. THE ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF'S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCP. Rather than continue to wait for a Formal Order that may never come, and out of an abundance of caution in ensuring that her arguments are (re)considered, Plaintiff preemptively submits this Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend judgment to preserve the issue for appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778.

Plaintiff's counsel orally moved for leave to amend her complaint during the Hearing of February 23, 2023. Under SCRCP Rule 7(b)(1), an oral motion may be made during a hearing. Also see *Hundley ex rel. Hundley v. Rite Aid of South Carolina, Inc.* (S.C.App. 2000) 339 S.C. 285, 529 S.E.2d 45, *rehearing denied*. (“Normally, motions must be made on the record to be preserved; however, an oral motion that is later reduced to writing can preserve an issue for appeal.”).

Plaintiff moved for leave to amend its summons and complaint in the event this Court granted Defendants' Motions to Dismiss. Defendants were present when oral motion was made and did not object to the filing of an amended summons and complaint. On the contrary, Defense counsel indicated that such would be agreeable by indicating what his plans would be in the event Plaintiff were granted leave to amend—specifically, that he would remove the suit to federal court. Accordingly, Defendants would not be prejudiced by this court granting leave to amend. However, if this court were to deny Plaintiff's oral motion, Plaintiff would be prejudiced by the Statute of Limitations expiring.

Such notwithstanding, Plaintiff argues that this court should reconsider its position taken in the Order and deny Defendants' Motions to Dismiss, as Plaintiff is confident that the decision provided in the Order was, respectfully, in error. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, and in the event that the Court still maintains its grant of Defendant's Motion to Dismiss, deem the statute of limitations as tolled to allow the Plaintiff to amend her complaint to include additional causes of action, specifically that of a §1983 claim, and any other claims as discussed herein.

CONCLUSION

WHEREFORE, for the reasons stated above, the Plaintiff respectfully requests that this Court Reconsider its Order, which dismissed the claims against all Defendants, and instead deny the Defendants' Motions to Dismiss. Alternatively, Plaintiff renews its oral motion requesting leave from the Court to file and serve an Amended Complaint in the event Defendants Motions to Dismiss are formally granted.

*****SIGNATURE ON FOLLOWING PAGE*****

I SO MOVE.

Date: June 30, 2023
Anderson, SC

s/Nicolas J. Baughman
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Nicolas J. Baughman, Attorney at Law, LLC
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ATTORNEY FOR THE PLAINTIFF

EXHIBIT A – Table of Contents for Motion

SECTION	PAGE
BACKGROUND AND FACTS	1
TIMELINESS OF THIS MOTION	4
SUMMARY OF ISSUES	4
STANDARD OF REVIEW	7
DISCUSSION	7
I. GRANTING DEFENDANTS’ RULE 12(b) MOTION TO DISMISS WAS AN ERROR	7
1. Service was properly made on the SCDPS under SCRCF Rule 4(d)(5) when the summons and complaint was delivered to SCDPS’ physical address and when the SC Attorney General’s office was personally served.	7
Rule 4(d)(5) – Serving the SC Attorney General	9
Rule 4(d)(5) – Delivering a Copy to the Agency	9
Rule 4(d)(5) – Who is a proper person? We truly don’t know.	11
Rule 4(d)(5) – No SC Appellate Court has Touched It	12
Rule 4(d)(5) – Delivered to the Agency at their Address.	13
2. Plaintiff Sufficiently Complied with Rule 4(d)(5)	15
The <i>Maybin</i> Myth	18
Rejecting Strict Limitations and Selecting Good Faith	19
Why Bother Serving both the Attorney General and the State Agency?	20
Unquestionable Substantial Compliance in Good Faith	22
3. Service was accomplished when Defendants voluntarily appeared in the case. under SCRCF 4(d) and 12(h) when Defendants voluntarily appeared, thus consenting to personal jurisdiction of the Court and waiving their personal jurisdiction defenses	23
The Perils of Seeking Discovery (or Be Careful What You Ask For)	24
I Know, But I Don’t Know-Know, You Know?	26
4. Even if the Court determines that service was not accomplished, the proper remedy here is not dismissal of the case, but to equitably toll the time to serve	26
Justice May be Blind, But Justice is Also Invisible	28
The Right Place, the Right Time, the Right— <enter Evil Twin>	29
We Did What They Told Us to Do. What Else Were We Supposed to Do?	30
II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY	32
1. Overview of the Law	32
2. The Complaint Sufficiently States a Cause of Action for False Imprisonment Against Goshorn.	34
3. The Complaint Sufficiently States a Cause of Action for Malicious Prosecution Against Goshorn	35
4. The Complaint Sufficiently States a Cause of Action for Abuse of Process Against Goshorn	37
5. The Complaint Sufficiently States a Cause of Action for Outrage Against Goshorn	38
6. Plaintiff Should Be Afforded the Opportunity to Amend Her Complaint Before the Final Order of Dismissal	40
III. THE ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF’S COMPLAINT	41
CONCLUSION	

TABLE OF CONTENTS of EXHIBITS

EX.	DOCUMENT	PAGE
1	Summons and Complaint filed on 05/09/2022	2
2	Affidavit of Personal Service of Patrick Goshorn on 09/06/2022	21
3	Affidavit of Personal Service on SCDPS/SCHP via Candace Horton on 09/06/2022	23
4	Frontpage of SCDPS Website https://scdps.sc.gov/	25
5	Contact Us page of SCDPS website https://scdps.sc.gov/about/contact	30
6	Affidavit of Personal Service of SC AG's Office via Jane McCrea on 09/06/2022	32
7	Answer of Defendants filed on 10/06/2022	34
8	DEFs' Motion to Allow Delayed Filing filed on 10/17/2022	43
9	DEFs' Rule 12(b) Motion to Dismiss filed on 10/06/2022	46
10	DEFs' Motion to Dismiss pursuant to § 15-78-60, 70 filed on 10/06/2022	54
11	Affidavit of Diana Brown filed on 12/29/2022	57
12	Form 4 Order granting DEFs' Motions to Dismiss filed on 03/21/2023	60
13	PLT's Motion for Reconsideration of Form 4 Order filed on 05/24/2023	65
14	Formal Order granting DEFs' Motions to Dismiss filed on 06/27/2023	109
15	DEF Discovery Requests to PLT	119
16	Email from DEF re: Discovery Responses of 03/03/2023	135
17	SCDPS webpage re: Service of Process https://scdps.sc.gov/general-counsel/subpoenas	137
18	Affidavit of Jamahl Spratley signed on 06/07/2023	140
19	E-mail from Process Server re: experience at SCDPS address	142
20	Affidavit of Personal Service of SCDPS via Paula Davis on 05/22/2023	144

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

CIVIL ACTION NO: 2022-CP-42-

SUMMONS
(JURY TRIAL DEMANDED)

**TO THE DEFENDANTS ABOVE NAMED: SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN**

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, which was filed in the Office of the Clerk of this Court on the below mentioned date; and to serve a copy of your answer to the Complaint upon the subscriber at their office, 600 North McDuffie Street, Post Office Box 2501, Anderson, South Carolina, within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE:

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within twenty days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

SIGNATURES ON FOLLOWING PAGE

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Date: May 9, 2022
Anderson, SC

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

TAYLOR CHASEY ROBERTSON,

Plaintiff,

CIVIL ACTION NO: 2022-CP-42-_____

vs.

**COMPLAINT
(JURY TRIAL DEMANDED)**

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, AND TROOPER
PATRICK J. GOSHORN

Defendants.

COMES NOW the Plaintiff, TAYLOR CHASEY ROBERTSON, complaining of the Defendants, SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, AND TROOPER PATRICK J. GOSHORN, who, through her undersigned counsel, respectfully shows unto the Court as follows:

PARTIES

1. Plaintiff, Taylor Chasey Robertson (“Plaintiff”) was a citizen and resident of Greenville County, South Carolina at the time of the incident complained of herein.
2. Defendant South Carolina Department of Public Safety (“SCDPS”) is an agency of the State of South Carolina, which is headquartered in Richland County, South Carolina with its principal place of business in Richland County.
3. Defendant South Carolina Highway Patrol (“SCHP”) is an agency of the State of South Carolina, which his headquartered in Richland County, South Carolina with its principal place of business in Richland County.

4. Defendants SCDPS and SCHP are governmental agencies as defined in S.C. Code § 15-78-30(a).

5. Pursuant to S.C. Code §15-78-70(c), Defendants are statutorily liable for the acts and omissions of its fiduciaries, employees, Troopers, and/or agents acting in the course and scope of their official duties.

6. Defendant Patrick J. Goshorn (“Goshorn”) is, upon information and belief, a resident of Spartanburg County and at the time of this incident was a Trooper with the Highway Patrol, acting at all times pertinent hereto within the course and scope of his employment and under color of state law. This Defendant is sued in his individual and official capacities.

7. The events giving rise to this action took place in Spartanburg County, South Carolina.

8. Venue is proper in this Court, and this Court has both subject matter and personal jurisdiction over all claims and parties.

GENERAL STATEMENT OF FACTS

9. On May 9, 2020, Defendant Trooper Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence (“DUI”) when Ms. Robertson had consumed neither drugs nor a sufficient amount of alcohol to be intoxicated. Ms. Robertson was pulled over on May 9, 2020, at approximately 2:00 AM. In temperatures below 50 degrees Fahrenheit¹, while wearing only a thin shirt, she was subject to the standard field sobriety tests. These tests were improperly administered, and as a result, Ms. Robertson was taken into police custody based on Goshorn’s assertion that Ms. Robertson was impaired by alcohol. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the

¹ <https://www.timeanddate.com/weather/@4580599/historic?month=5&year=2020>

Datamaster machine demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson should not have been arrested and has brought suit to seek redress for her arrest for DUI when she was not impaired by drugs, alcohol, or any combination thereof.

SPECIFIC FACTUAL ALLEGATIONS

10. At the time of this incident, .

11. On May 9, 2020, at approximately 2:00AM, Ms. Robertson was pulled over by Trooper Goshorn, a Trooper employed by Defendants SCDPS and SCHP for speeding; specifically for going 48-mph in a 35-mph zone.

12. Upon information and belief, Trooper Goshorn was an employee and/or agent of Defendants SCDPS and SCHP at the time of the occurrences central to this case.

13. Despite only pulling Ms. Robertson over for allegedly speeding, Trooper Goshorn asked Plaintiff to exit her vehicle.

14. Ms. Robertson had no criminal record and it was not necessary for Plaintiff to exit the vehicle for Defendants to cite Plaintiff for driving 13 miles per hour over the speed limit—an offense only punishable by fine and for which an individual cannot be arrested. See: S.C. Code Ann. § 56-5-1520(G)(2).

15. There did not exist sufficient cause to warrant further detention of Ms. Robertson at this point.

16. Trooper Goshorn requested that Ms. Robertson perform the standard field sobriety tests (“SFSTs”).

17. Ms. Robertson told the Trooper that she suffered from a knee injury. This injury affected her ability to walk a line and stand on one leg.

18. Ms. Robertson had not been diagnosed with any specific injury by a medical physician but had been experiencing pain and stiffness for a number of weeks.

19. Furthermore, Ms. Robertson told the Trooper that she was cold, which was not an unreasonable sensation given that the temperature outside was below 50 degrees Fahrenheit.

20. Ms. Robertson acknowledged having a single glass of wine earlier in the evening.

21. The first test administered was the Horizontal Gaze Nystagmus test ("HGN").

22. HGN is a quasi-medical test employed by certified law enforcement to detect the presence of alcohol in a suspect by observing involuntary jerking of the eye. When administered correctly, based on California validation studies, there is an 88% likelihood that the suspect will produce a BAC sample of .08% or higher. To be reliable, the HGN test must be administered according to the NHTSA's strict procedures.

23. There were numerous deviations in Trooper Goshorn's administration of the HGN test here that undoubtedly compromised the validity of the test

24. Ms. Robertson remained steady during the testing procedure, as there was no rotational, side to side, or back and forth swaying. Additionally, her voice was clear, easily understood, and completely devoid from slurring. Further, she understood all commands from the Trooper and followed them appropriately. The steadiness, clarity of voice, and comprehension of commands evidence of lack of impairment that Trooper Goshorn should have noticed.

25. The administration of HGN requires a stimulus, such as a pen, which the Trooper used.

26. The stimulus is the most critical component of the HGN test because it is what the subject focuses on while the officer administers the test. As such, the stimulus must be held 12 to 15 inches from the nose and slightly above the eye level (approximately 2 inches), the stimulus must be moved smoothly across the subject's entire field of vision, at a consistent speed approximately two seconds out and two seconds in for each eye.

27. Here, Trooper Goshorn's use of the stimulus is erratic. He consistently changed the distance the stimulus was from Ms. Robertson's nose, varying from too close to her face to a distance that is well in excess of the 15-inch maximum. The height of the stimulus varies wildly from being held above the 2-inch maximum to being held way too low. Finally, the pen was not moved smoothly and at a consistent speed through her field of vision.

28. These erratic and inconsistent passes compromised the validity of the test.

29. The second SFST Trooper Goshorn administered was the Nine Step Walk and Turn test.

30. After only a couple of steps, Ms. Robertson in obvious pain, informed Trooper Goshorn that her knee was hurting too much for her to complete the test. She even offered to take a breath test to prove she was not intoxicated.

31. Finally, Trooper Goshorn administered the One Leg Stand test, which Ms. Robertson performed while visibly shivering.

32. Trooper Goshorn inappropriately relied upon the SFST results when he arrested Plaintiff for driving under the influence ("DUI").

33. Ms. Robertson did not resist arrest.

34. Trooper Goshorn had Plaintiff's vehicle towed away from the scene of the stop.

35. Trooper Goshorn transported Ms. Robertson to the Greer City Police Department to provide a breath sample on the Datamaster DMT.

36. Once at the facility, Ms. Robertson continued to cooperate fully as she had been throughout the night.

37. She willingly provided a breath sample, and the results were a 0.01 % BAC.

38. South Carolina Code Section 56-5-2950(G) provides that “the alcohol concentration at the time of the test, as shown by chemical analysis of the person’s breath or other bodily fluids, gives rise to the following: (1) if the alcohol concentration was at that time five one-hundredths of one percent or less, *it is conclusively presumed that the person was not under the influence of alcohol.*” (Emphasis added).

39. Conclusive presumptions constitute irrebuttable factual presumptions. In the case of South Carolina’s DUI statute, a person with a 0.05% or less BAC legally cannot be under the influence of alcohol.

40. Pursuant to South Carolina law, law enforcement’s observations and field sobriety tests are designed to generate reasonable suspicion that an individual is under the influence of alcohol, drugs, or a combination thereof.

41. Once toxicology verifies that an individual is not impaired by controlled substances, alcohol, or some combination thereof, there ceases to exist probable cause sufficient to justify the original arrest and continued prosecution.

42. Plaintiff also received a ticket from Trooper Goshorn for Failure to Change Address.

43. However, Plaintiff had submitted a Change of Address to the South Carolina Department of Motor Vehicles on December 6, 2018, which reflected her proper address as of the date of the subject arrest.

44. Upon receiving the results from the Datamaster DMT, Trooper Goshorn “unarrested” Plaintiff.

45. Plaintiff was then released from the jail into the back parking lot of the Greer City Detention Center, unaccompanied and unsupervised, at approximately 3:20am, where she was picked up by a friend.

46. The next morning, she had to pay the tow facility almost \$300 to have her car released to her and she had to miss a day of work.

47. The ticket number assigned to Plaintiff’s DUI arrest per the Breath Alcohol Analysis Test Report, which was sequentially numbered before her ticket for Failure to Change Address, was removed from her charge and reassigned to another individual.

48. This other individual was charged with speeding by Trooper Goshorn more than 14 hours after Plaintiff was initially stopped by Trooper Goshorn.

49. Upon information and belief, the only charge submitted by Trooper Goshorn to the Court was the ticket for Failure to Change Address.

50. Upon information and belief, this ticket was ultimately dismissed by the Court some time later due to Trooper Goshorn no longer working for the Defendants SCHP and SCDPS.

51. That he would put Ms. Robertson through the stress of being arrested for a crime when Trooper Goshorn knew or should have known Ms. Robertson was unimpaired, shocks the conscious.

52. Upon information and belief, Trooper Goshorn has, on multiple other occasions, arrested motorists for DUI when those motorists were unimpaired.

53. Furthermore, in addition to Ms. Robertson and upon information and belief, Trooper Goshorn has arrested several other motorists who registered BACs of 0.05% or less in the time he was employed by Defendants. It is unknown at this time whether any of those other motorists provided blood or urine samples that were free from drugs or poisons of concern.

54. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has been damaged. Plaintiff has endured fright, anxiety, embarrassment, humiliation, mental anguish, emotional distress, and frustration, as well as reputation damage.

55. Ms. Robertson was arrested and detained on a case for which there did not exist probable cause sufficient warrant an arrest and/or prosecution.

56. Upon information and belief, all agents, fiduciaries, employees, Troopers, and officers of Defendants SCHP and SCDPS were acting and working within the scope of their official duties at all times relevant to this complaint.

57. The acts and omissions of the Defendants constituted more than one occurrence, as the complained of acts were not merely an unfolding sequence of events which resulted from a single act of negligence. The acts and omissions of the Defendants in this case constituted multiple independent acts of negligence by the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligent Training/Supervision/Retention)

58. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

59. Defendants owed Plaintiff a duty to exercise reasonable care in the training, supervision, and retention of its police Troopers and other fiduciaries, agents, and/or employees.

60. Defendants breached their duty to Plaintiff in failing to properly train, supervise, or retain Troopers, and other fiduciaries, agents, and/or employees, including but not limited to the following:

- a. Failure to properly determine whether those fiduciaries, agents, Troopers, and/or employees' were fit for duty;
- b. Failure to properly train fiduciaries, agents, Troopers, and/or employees to perform their duties;
- c. Failure to ensure fiduciaries, agents, Troopers, and/or employees were exercising their duties in a diligent, proper, and reasonable manner;
- d. Failure to properly investigate fiduciaries, agents, Troopers, and/or employees' actions as law enforcement officers;
- e. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' charging decisions;
- f. Failure to properly monitor fiduciaries, agents, Troopers, and/or employees' decisions regarding the continued prosecution of charges for which probable cause did not exist;
- g. Failure to properly discipline fiduciaries, agents, Troopers, and/or employees for unreasonable behavior; and/or
- h. Failure to properly supervise fiduciaries, agents, Troopers, and/or employees during the course and scope of their employment.

61. Defendants' breach of duty as described above was the direct and proximate cause of injury to the Plaintiff.

62. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SECOND CAUSE OF ACTION
(State Tort Claims Act)

63. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

64. Plaintiff further alleges that Defendants, by virtue of Chapter 28, Title 15 of the SC Code of Laws, are responsible for conduct alleged above, causing harm (as set forth more fully below) to the Plaintiff, as well as the conduct of its agents, servants, fiduciaries, Troopers, and/or employees acting within the course of their employment, as set forth above; said conduct being negligent, grossly negligent, willful, and reckless, including but not limited to:

- a. The failure to hire adequate and proper personnel;
- b. The failure to properly and adequately train employees and personnel;
- c. The failure to properly and adequately supervise employees or personnel in order to ensure they were properly performing their jobs or assignments; and
- d. The failure to properly protect the rights and privileges available to the Plaintiff under the Constitution, statutes, and laws of the State of South Carolina.

65. As a result of these failures, the Plaintiff has suffered damages as set forth more fully herein below.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)

66. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

67. The Plaintiff is informed and believes that actions and inactions of the Defendants SCDPS and SCHP resulted in the intentional and unlawful restraint of the Plaintiff.

68. The Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest did not have sufficient cause to detain Plaintiff by requiring she exit her motor vehicle to perform the field sobriety tests.

69. The Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest did not have probable cause to detain or arrest Plaintiff.

70. As the employer of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest and detention, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

71. Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility.

72. The acts of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest were intentional and designed to arrest the Plaintiff.

73. The Plaintiff was unlawfully restrained, as there did not exist, at the time of her arrest, lawful justification for her arrest on either charge.

74. As a result of her wrongful detention and arrest pursuant to the deficient investigation of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FOURTH CAUSE OF ACTION
(Malicious Prosecution)

75. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

76. Criminal proceedings against Plaintiff were instituted for the charges of Failure to Change Address.

77. The criminal proceedings against Plaintiff were instituted at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

78. The criminal proceedings against Plaintiff were maintained despite a lack of probable cause, at the direction of Defendants, by and through its fiduciaries, agents, Troopers, and/or employees.

79. The criminal proceedings were terminated in favor of Plaintiff only when Trooper Goshorn was no longer employed by the other Defendants, as it was only at that point that he was unable to prosecute the case.

80. Defendants lacked probable cause to accuse Plaintiff of the charged crimes of Failure to Change Address and DUI.

81. Defendants lacked probable cause to initially prosecute Plaintiff of the charged crimes.

82. Defendants lacked probable cause to continue to prosecute Plaintiff of the charged crimes despite the fact that she changed her address approximately 18 months before the subject incident.

83. Defendants' accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.

84. The Defendants deliberately and intentionally brought these proceedings against the Plaintiff and continued them without just cause or excuse.

85. There did not exist probable cause to substantiate the Plaintiff's charge.

86. As a result of the Defendants' institution and maintenance of criminal judicial proceedings against the Plaintiff with malice and without probable cause, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A FIFTH CAUSE OF ACTION
(Abuse of Process)

87. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

88. The Plaintiff is informed and believes that the actions and inactions of Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest constituted an improper use of regularly issued process.

89. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees' responsible for Plaintiff's arrest, the Plaintiff is informed and believes that Defendants are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions and inactions.

90. The Defendants had an ulterior purpose in employing legal process against the Plaintiff.

91. The Defendants acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.

92. As a result of the Defendants' improper use of regularly issued process, the Plaintiff has suffered damages as set forth more fully hereinbelow.

FOR A SIXTH CAUSE OF ACTION
(Outrage)

93. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

94. The conduct of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, as set forth above, was outrageous in nature, in that such conduct was atrocious and utterly intolerable in a civilized community, and so extreme and

outrageous as to exceed all possible bounds of decency. Furthermore, such conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.

95. As the employer of the Defendants' fiduciaries, agents, Troopers, and/or employees responsible for Plaintiff's arrest, Plaintiff is informed and believes that Defendants, are vicariously liable for these fiduciaries, agents, Troopers, and/or employees' actions within the scope of each's employment.

96. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence/Recklessness)

97. The Plaintiff reiterates each and every allegation set forth above as fully and completely as if set forth verbatim herein.

98. Upon information and belief, at all times relevant hereto and specified in this complaint, all individuals working on behalf of Defendants SCDPS and SCHP were employed by, and served as fiduciaries, Troopers, employees and/or agents of SCDPS and SCHP and were acting in the course and scope of their employment.

99. Defendants owed a duty to the public in general and to the Plaintiff in particular to use due care in fulfilling the duties of investigation, arrest, and prosecution of criminal offenses to ensure that Defendants' conduct, as exercised by their fiduciaries, Troopers, agents, and employees, conformed to applicable laws, policies, procedures, generally accepted law enforcement standards, and generally accepted prosecutorial standards.

100. Defendants failed to use due care and were grossly negligent, reckless, willful, and wanton in the following particulars:

- a. Failing to exercise due care under the circumstances;
- b. Failing to follow proper protocol and procedure for the situation;
- c. Improperly detaining Plaintiff for investigation without adequate and sufficient cause and evidence;
- d. Unwanted touching of the Plaintiff during the course of investigating her for an alleged DUI;
- e. Improperly arresting Plaintiff for DUI when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of DUI;
- f. Improperly ticketing Plaintiff for Failure to Change Address when there did not exist facts or evidence sufficient to constitute probable cause that Plaintiff committed the crime of Failure to Change Address; and/or
- g. Such other particulars as may be shown at trial.

101. All of the above acts and/or omissions are in violation of the common laws and statutes of the State of South Carolina, as well as the Defendants' obligations and duties to Plaintiff.

102. As a direct, foreseeable, and proximate result of the negligent, grossly negligent, reckless, willful, and wanton acts and/or omissions of the Defendants, Plaintiff has suffered injury and damages, including but not limited to: embarrassment, humiliation, mental anguish, loss of freedom, anxiety, distress, and reputational damage.

103. The conduct has caused the Plaintiff to suffer injuries and damages as more particularly set forth below.

DAMAGES AND RELIEF REQUESTED

104. As a direct and proximate result of the aforesaid acts and/or omissions on the part of the Defendants, the Plaintiff has been injured and damaged in that he has been deprived of the rights, privileges and immunities afforded to the citizens of the State of South Carolina, has been wrongfully arrested and/or falsely imprisoned, has accrued expenses, has endured mental

anguish and emotional distress, humiliation, embarrassment, inconvenience, discomfort, and has been deprived of the enjoyment of life, thereby entitling her to recover actual or compensatory damages from the Defendants.

105. The Plaintiff is entitled to punitive or exemplary damages from the Defendants, as the conduct of such Defendants as set forth herein was willful, wanton, reckless and grossly negligent, as well as knowing, intentional and malicious and committed with deliberate indifference to the civil rights of the Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against all Defendants, jointly and severally, by way of compensatory damages and exemplary damages, in such an amount of the Trier of Fact may deem appropriate; for reasonable attorney's fees; for the costs and disbursements of this action; and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/Nicolas J. Baughman
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Date: May 9, 2022
Anderson, SC

s/C. Austin McDaniel
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C. Austin McDaniel, Attorney at Law, LLC
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Date: May 9, 2022
Anderson, SC

ATTORNEYS FOR PLAINTIFF

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson

Docket #2022-CP-42-01677

Plaintiff,

vs.

AFFIDAVIT OF PERSONAL SERVICE

South Carolina Department of Public Safety,
South Carolina Highway Patrol, and Trooper
Patrick J. Goshorn

Defendants.

PERSONALLY appeared before me the undersigned, who being duly sworn, says that they served Summons and Complaint in this action on Patrick J. Goshorn by delivering the same to:

(X) Christine Goshorn as his wife, a person of age and discretion residing at Defendant's residence;

And leaving with said person a copy of the same at 304 Hampton Ridge Drive Greer, South Carolina on the 6th day of September 2022 at 12:23 pm and that Deponent knows the person so served to be the person described in this Affidavit, and that Deponent is not a party to, nor interested in the action.

SWORN TO BEFORE ME THIS

6 day of September 2022.

Gail T. Hamby
Notary Public for South Carolina
My Commission Expires: 10-14-2025



Misty Davis

Misty Davis

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

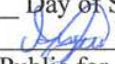
() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022


Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 3:21 P.M.



EXHIBIT 4



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South Carolina

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Media Advisory - Inaugural Governor's Law Enforcement Officer of the Year Ceremony

--MEDIA ADVISORY--

The South Carolina Department
of Public Safety (SCDPS) announces the
following event:

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SCDPS Reports Nine Killed On South Carolina Roadways May 12 To May 14, 2023

COLUMBIA — The South Carolina
Department of Public Safety announces a
preliminary number of nine people killed
on South Carolina roadways during the

<https://scdps.sc.gov>

2022-CP-42-01677

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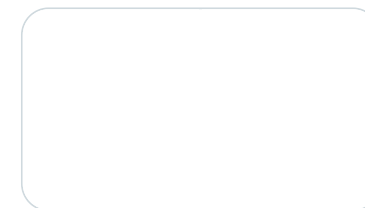
Tweets from
@SCDPS_PIO

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Trooper T... @SC... · 14h
Thank you to St. David's
Episcopal Church for inviting
me to do a safety presentation
for some of their members. If
you want the SCHP to do a
safety presentation for you, go
to:

[sc.accessgov.com/dps/Forms/P
age...](https://sc.accessgov.com/dps/Forms/Page...)



9

SCD... @SCDPS_... · 15h
Motorists in Berkeley and
Charleston counties will see
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5/19/23, 5:25 AM

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weekend beginning Friday, May 12, at 6:00 p.m.

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South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HP)



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4/4

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Contact Us

Contact Information

Street Address:

10311 Wilson Blvd.
Blythewood, SC 29016

Mailing Address:

P.O. Box 1993
Blythewood, SC 29016

SCDPS Contact Numbers

Highway Patrol Telecommunications

(803) 896-9621

South Carolina Highway Patrol

(803) 896-7920

State Transport Police

(803) 896-5500

Bureau of Protective Services

(803) 896-5442

Director's Office

(803) 896-7979

Office of Executive Affairs (Contact for General inquiries from the public)

(803) 896-8409

Office of Public Affairs

(803) 896-8747

Office of Professional Responsibility

(803) 896-8240

Division of Strategic Services and Planning

(803) 896-0122

Office of Highway Safety & Justice Programs

(803) 896-9950

Office of Human Resources

(803) 896-0274

Office of General Counsel

(803) 896-7882

Office of Information Technology

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[State Phone Directory](#)






South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HIP)



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EXHIBIT 6

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)

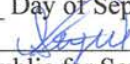
() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **1000 Assembly
Street, Suite 519 Columbia SC 29201 On the 6 Day of September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022


Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 4:04 P.M.



EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	ANSWER OF DEFENDANTS
	)	
South Carolina Department of Public	)	<i>(Jury Trial Requested)</i>
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

Subject to the Rule 12 motion previously filed, and preserving all defenses, the Defendants, by way of Answer to the Plaintiff's Complaint would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as expressly admitted, modified, or explained herein, each and every allegation of the Plaintiff's Complaint is denied and strict proof thereof is demanded.
2. That as to the allegations of paragraph 1 of the Plaintiff's Complaint, these Defendants are without sufficient information with which to admit or deny same therefore strict proof is demanded.
3. That as to the allegations of paragraph 2 of the Plaintiff's Complaint, it is admitted that the South Carolina Department of Public Safety is a department of the State of South Carolina; otherwise, strict proof thereof is demanded.
4. That as to the allegations of paragraph 3 of the Plaintiff's Complaint strict proof thereof is demanded.
5. That as to the allegations of paragraph 4 of the Plaintiff's Complaint, reference is

craved to the response to the allegations of Paragraphs 2 and 3 above and otherwise strict proof is demanded.

6. That as to the allegations of paragraph 5 of the Plaintiff's Complaint, these Defendants crave reference to the full text of Section 15-78-70 and any and all sub-parts thereto.

7. That as to the allegations of paragraph 6 of the Plaintiff's Complaint, it is admitted that Patrick G. Goshorn at the time of this incident acted within the scope and course of his employment and within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety. That otherwise strict proof is demanded of the allegations of Paragraph 6 of the Plaintiff's Complaint.

8. That as to the allegations of paragraph 7 of the Plaintiff's Complaint, same are admitted upon information and belief.

9. That as to the allegations of paragraph 8, strict proof is demanded as to any cognizable claims as to these Defendants.

10. That as to the allegations of paragraph 9, upon information and belief Lance Corporal Goshorn stopped the Plaintiff on or about May 9, 2020 for exceeding the posted speed limit and at that time detected an order of alcohol. Upon information and belief, the Plaintiff admitted to having consumed alcohol and a Standard Field Sobriety Test was given which indicated cues for impairment. Accordingly, the Plaintiff was placed under arrest and transported to the Greer Police Department for a Datamaster Breath Alcohol Test. That following administration of the Datamaster Breath Alcohol Test upon information and belief the alcohol level detected was "less than the legal limit" and the Plaintiff was released from custody. That Lance Corporal Goshorn had probable cause to detain and arrest the Plaintiff and to administer a Field Sobriety Test and to transport her to the police department for a Breathalyzer. That the actions of Lance Corporal Goshorn in no way

violated any rights of the Plaintiff in connection with the incident referenced herein. That further upon information and belief the Plaintiff was given a ticket based on probable cause.

12. That as to the allegations of paragraphs 10 through 57 of the Complaint, except as is expressly admitted, modified or explained herein, said allegations as framed are denied and strict proof thereof is demanded. That further in response to the allegations of paragraphs 10 through 57, these Defendants incorporate by reference their response to paragraph 9 hereinabove. That further as to the allegations of paragraphs 10 through 57, it is admitted and alleged that the Plaintiff was lawfully stopped for driving in excess of the posted speed limit, that she was lawfully detained and arrested for suspicion of DUI following a Field Sobriety Test, that the Plaintiff was transported to the Greer Police Department for a breath test, and that there was probable cause for her to be detained and/or arrested. That because it was believed her alcohol level was below the legal limit she was released from custody. That otherwise strict proof is demanded of the allegations of paragraphs 10 through 57 and it is denied these Defendants in any way committed any act or omission of negligence and/or committed any act or omission to cause damage and/or injury to the plaintiff and accordingly the damages as are alleged in paragraphs 10 through 57 are denied and strict proof thereof is demanded.

13. That as to the allegations of Plaintiff's First Cause of Action consisting of paragraphs 58 through 62, same are denied and strict proof thereof is demanded.

14. That as to the allegations of Plaintiff's Second Cause of Action consisting of paragraphs 63 through 65, same are denied and strict proof thereof is demanded.

15. That as to the allegations of Plaintiff's Third Cause of Action consisting of paragraphs 66 through 74, same are denied and strict proof thereof is demanded.

16. That as to the allegations of Plaintiff's Fourth Cause of Action consisting of

paragraphs 75 through 86, same are denied and strict proof thereof is demanded.

17. That as to the allegations of Plaintiff's Fifth Cause of Action consisting of paragraphs 87 through 92, same are denied and strict proof thereof is demanded.

18. That as to the allegations of Plaintiff's Sixth Cause of Action consisting of paragraphs 93 through 96, same are denied and strict proof thereof is demanded.

19. That as to the allegations of Plaintiff's Seventh Cause of Action consisting of paragraphs 97 through 103, same are denied and strict proof thereof is demanded.

20. That as to the allegations of Plaintiff's claims for Damages and Relief consisting of paragraphs 104 and 105, same are denied and strict proof thereof is demanded.

21. That except as is admitted, modified or explained here, the allegations of the Plaintiff's Complaint are denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

22. That the Highway Patrol and Trooper Patrick Goshorn are not proper parties to this action.

FOR A THIRD DEFENSE

23. There was no malice to support any of the claims alleged in the Plaintiff's Complaint.

FOR A FOURTH DEFENSE

24. There was no abuse of process, there was no improper or ulterior motive, and there was no ill will or malice in connection with the arrest and/or detention of the Plaintiff.

FOR A FIFTH DEFENSE

25. That the Defendants plead and assert probable cause as a complete and absolute bar and/or defense to the Plaintiff's claim.

FOR A SIXTH DEFENSE

26. That the allegations of the Plaintiff's Complaint are subject to the immunities granted to the Defendants and their agents under the South Carolina Tort Claims Act. That the Defendants therefore plead and assert the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claims set forth in the Plaintiff's Complaint. That the Defendants specifically plead and assert, without limitation, all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps and/or limitations on damages as are set forth therein. That further, the Defendants plead and assert specifically, but without limitations, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(6)(23) and (25).

FOR A SEVENTH DEFENSE

27. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A EIGHTH DEFENSE

28. That the Defendants plead and assert the provisions of S.C. Code Ann. § 15-78-120 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR AN NINTH DEFENSE

29. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-70 as a complete and absolute defense and/or bar to the Plaintiff's claim.

FOR A TENTH DEFENSE

30. That the Defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-10 as an additional and affirmative defense.

FOR AN ELEVENTH DEFENSE

31. That at all times alleged, the Defendants had just cause and reason to detain the Plaintiff.

FOR A TWELFTH DEFENSE

32. That it is denied that Defendants committed any act or omission which caused any damages and/or injuries to the Plaintiff and it is denied that the Plaintiff has any cognizable claim against the Defendants.

FOR A THIRTEENTH DEFENSE

33. That the Defendants at all times acted reasonably, and did not act in bad faith or with ill will, malicious and/or corrupt motive.

FOR A FOURTEENTH DEFENSE

34. That the Defendants plead and assert the provisions of S.C. Code Ann. §15-78-30 as a complete and absolute defense and/or bar to any of the claims set forth in the Plaintiff's Complaint and further and specifically, the defendants plead and assert the provisions of S.C. Code Ann. §15-78-30(e)(f)(g) and (i) as an additional defense to the claims of the Plaintiff.

FOR AN FIFTEENTH DEFENSE

35. That the Defendants plead and assert the Public Duty Rule as a complete and absolute bar and/or defense to the allegations of the Plaintiff's Complaint.

FOR A SIXTEENTH DEFENSE

36. That further and alternatively, the Defendants plead and assert to the extent applicable, the comparative fault of the Plaintiff as a bar to and in mitigation of any alleged damages sought to be recovered by the Plaintiff.

FOR A SEVENTEENTH DEFENSE

37. That as to the Plaintiff's claim for defamation, strict proof is demanded as to any false information published by any of the Defendants.

FOR AN EIGHTEENTH DEFENSE

38. That the Defendants plead truth as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A NINETEENTH DEFENSE

39. That the Defendants plead and assert absolute privilege as a complete and absolute defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTIETH DEFENSE

40. That the Defendants plead and assert qualified and/or conditional privilege as a complete and absolute bar to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-FIRST DEFENSE

41. That the Defendants plead and assert fair comment as a bar and/or defense to the allegations to the Plaintiff's Complaint.

FOR A TWENTY-SECOND DEFENSE

42. That the Defendants plead and assert common interest privilege as a further defense to the allegations of the Plaintiff's Complaint.

FOR A TWENTY-THIRD DEFENSE

43. That the Defendants plead, to the extent applicable, the Statute of Limitations pursuant to S. C. Code Ann. 15-78-110, as an additional and affirmative defense.

FOR A TWENTY-FOURTH DEFENSE

44. The Defendants further assert as additional defenses Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure in that upon information and belief there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol. That upon information and belief Candace Horton is not an employee of the South Carolina Department of Public Safety.

FOR A TWENTY-FIFTH DEFENSE

45. That the defendants further assert as an additional defense that the Complaint was not served timely and properly pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure so as to commence this action against the South Carolina Department of Public Safety and the South Carolina Highway Patrol.

WHEREFORE, the Defendants pray as follows:

1. That the Plaintiff's Complaint be dismissed; and
2. That the Defendants be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	MOTION TO ALLOW DELAYED
	)	FILING
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move at this time to allow for the delayed filing of the defendants' Rule 12(b) Motion to Dismiss which is dated October 6, 2022. By inadvertence this particular motion was not filed before the defendants' Answer to the plaintiff's Complaint. The defendants intended to file two motions prior to filing the Complaint, namely a 12(b) Motion to Dismiss and a Motion to Dismiss the individual defendant based on the South Carolina Tort Claims Act.

By inadvertence, the Motion to Dismiss the individual defendant was filed in duplicate and the 12(b) Motion was by inadvertence not filed on October 6, 2022.

The Answer of the defendants recited that it was "subject to the Rule 12 Motion previously filed," and as a courtesy defense counsel communicated with plaintiff's counsel prior to the filing of the Answer to discuss the anticipated 12(b) Motion.

Accordingly, the defendants respectfully request that the court allow for the delayed filing of the defendants' 12(b) Motion to Dismiss.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 17, 2022

EXHIBIT 9

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
) *Civil Action No.: 2022-CP-42-01677*
Plaintiff,)

-vs-

**RULE 12(b)
MOTION TO DISMISS**

South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
Defendants.)

TO: PLAINTIFF AND HER ATTORNEYS:

The defendants move pursuant to Rule 12(b)(2)(4) and (5) of the South Carolina Rules of Civil Procedure and pursuant to Rule 3 and Rule 4 of the South Carolina Rules of Civil Procedure for an order dismissing the Complaint as to defendant South Carolina Department of Public Safety and South Carolina Highway Patrol.

The grounds for this motion are as follows:

1. The Complaint in this action was filed on May 9, 2022 and there was an attempted service on September 6, 2022 on the South Carolina Department of Public Safety and the Highway Patrol by delivery of the Summons and Complaint to Candace Horton. Candace Horton, upon information and belief, is not an employee of the South Carolina Department of Public Safety but rather an employee of the South Carolina Department of Motor Vehicles and accordingly there has been no proper service as to the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.

2. Further, further upon information and belief, pursuant to Rule 4 of the South Carolina Rules of Civil Procedure service is required on the correct department and/or agency. Further upon

information and belief there has been no proper or timely service to commence this action against the South Carolina Department of Public Safety and/or the Highway Patrol pursuant to Rule 3 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

CHAPMAN HARTER, P.A.

s/Russell W. Harter, Jr.
Russell W. Harter, Jr.
14 Lavinia Avenue (29601)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 Telephone
(864) 232-1710 Facsimile
rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

Greenville, South Carolina

October 6, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
7 Day of September 2022

Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 3:21 P.M.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)

() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **1000 Assembly
Street, Suite 519 Columbia SC 29201 On the 6 Day of September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this

7 Day of September 2022

Notary Public for South Carolina

My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

Time of Service: 4:04 P.M.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,

VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

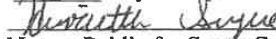
IN THIS ACTION ON, SOUTH CAROLINA DEPARTMENT OF PUBLIC
SAFETY

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**

 Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina
My Commission Expires: 09/29/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,
VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

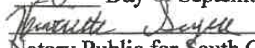
IN THIS ACTION ON, SOUTH CAROLINA
HIGHWAY PATROL

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood, SC 29016 AT 3:21P.M. AND AT SOUTH CAROLINA
ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina,
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

ELECTRONICALLY FILED - 2022 Oct 06 2:39 PM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4201677

6:20 PM Wed Oct 5

Horton.JPG

Done



CANDACE L HORTON

(803) 896-9983
CANDACE.HORTON@SCDMV.NET

DEPARTMENT OF
MOTOR VEHICLES

EXHIBIT 10

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
) *Civil Action No.: 2022-CP-42-01677*
Plaintiff,)
)
-vs-) **MOTION TO DISMISS**
)
South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
) *Civil Action No.: 2022-CP-42-01677*
Plaintiff,)
)
-vs-) **MOTION TO DISMISS**
)
South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

EXHIBIT 11

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Taylor Chasey Robertson,)
Plaintiff,)
v.)
South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-42-01677

**AFFIDAVIT OF
DIANA BROWN**

I, Diana Brown, certify the following:

- A. I am the Human Resources Operations Manager for the South Carolina Department of Public Safety, an agency of the State of South Carolina ("Department");
- B. The South Carolina Highway Patrol ("Patrol") is a division of the Department;
- C. In my role as Human Resources Operations Manager, I have access to the employment records of the Department and the Patrol;
- D. The Department and Patrol track employment through the South Carolina Enterprise Information System ("SCEIS"). SCEIS has been the record keeping system for the Department and the Patrol since 2010;
- E. Since SCEIS was implemented as the record keeping system for the Department and the Patrol, neither the agency nor the division has employed someone by the name of Candace Horton;
- F. The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and

roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol;

G. Insofar as Candace Horton has never been employed by the Department nor the Patrol, she has never been authorized to accept service on behalf of either.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2022.



Diana Brown

Sworn to before me this)

29th day of December, 2022)

My Commission Expires:)

4/11/2027)



Notary Public for South Carolina

EXHIBIT 12

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-42-01677

Taylor Chasey ROBERTSON,

South Carolina DEPARTMENT of PUBLIC
SAFETY, South Carolina HIGHWAY
PATROL, Patrick J. GOSHORN,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT

Attorney for : ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached or formal order to follow ☒ Statement of Judgment by the Court:

This matter is before the Court on motion, pursuant to SCRPC, 12(b)(2), (4), and (5), of the defendants Department of Public Safety and Highway Patrol to dismiss the complaint herein, and on motion pursuant to S. C. Code Ann. Sections 15-78-60 and 15-78-70 by defendant Patrick J. Goshorn, to dismiss him as a party, and on motion of defendant's counsel to permit a delayed filing of a motion due to administrative error.

Based upon consideration of the record in this case, argument of counsel, and the applicable court rules, statutory and case law, this Court finds that the defendants **MOTIONS** should be and **ARE** therefore **GRANTED**.

Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court's consideration.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk

:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. DERHAM COLE, Presiding JUDGE 2053 03/16/2023
Judge Code **Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

NICHOLAS J. BAUGHMAN, Esq.

RUSSELL W. HARTER, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

AMY W. COX, CLERK OF COURT

Court Reporter: **WEBEX**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-03-21 15:14:32 page 4 of 4

EXHIBIT 13

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
TAYLOR CHASEY ROBERTSON,

PLAINTIFF,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, PATRICK J.
GOSHORN,

DEFENDANTS.

**IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT**

CASE NO.: 2022-CP-42-01677

**NOTICE AND MOTION FOR
RECONSIDERATION OF
FORM 4 ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS
AND
TO REQUEST CLARIFICATION OF
AND REITERATES PLAINTIFF'S
ORAL MOTION TO GRANT LEAVE
TO FILE AMENDED COMPLAINT**

Plaintiff, by and through her undersigned attorney, hereby give notice and respectfully move this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its Form 4 Order granting Defendant's¹ Motion to Dismiss. Further, Plaintiff requests clarification of and reiterates Plaintiff's Oral Motion to be granted leave to Amend Complaint in the event the Defendant's Motion was granted. The grounds for this motion² are set forth below.

BACKGROUND AND FACTS

This case arises out of a stop and arrest which occurred at approximately 2:00AM on May 9, 2020 in Spartanburg, South Carolina. Trooper Patrick Goshorn, an employee of Defendants SCDPS and SCHP arrested Plaintiff Robertson for driving under the influence. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the Datamaster machine

¹ All Defendants may be referred to throughout this Motion in the singular or plural. Regardless of the same, any mention of Defendant or Defendants shall mean to refer to all Defendants.

² I apologize for the lack of brevity in this motion. I am well aware that quick and to the point is often preferred in motions practice. Unfortunately, I have not found a quick path to reach the points that I must make.

demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content (“BAC”). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson was then “un-arrested” and left to fend for herself without her car (which had been impounded), in the cold, shortly after 3:00AM.

This lawsuit was filed against Trooper Goshorn, the South Carolina Department of Public Safety (“SCDPS”), and the South Carolina Highway Patrol (“SCHP”) (collectively “SCDPS”) on May 9th, 2022. EXHIBIT 1. Causes of Action alleged included Negligence, Gross Negligence, SC Tort Claims Act violations, False Imprisonment, Malicious Prosecution, Abuse of Process, and Outrage.

There is no dispute that Defendant Goshorn was timely served on September 6, 2022. EXHIBIT 2. Plaintiff contends that service was timely made on the South Carolina Department of Public Safety and South Carolina Highway Patrol on the same day when a process server delivered the Summons and Complaint to 10311 Wilson Blvd., Blythewood, SC 29016. EXHIBIT 3. Defendant SCDPS has this address displayed on the frontpage of its website, located at <https://scdps.sc.gov/>. EXHIBIT 4. Additionally, SCDPS specifically notes this as its “Street Address” on its Contact Us page, located at <https://scdps.sc.gov/about/contact>. EXHIBIT 5. Further, and on the same day, the SC Attorney General’s office was served with a copy of the Summons and Complaint as well. EXHIBIT 6.

Counsel for Defendants, Russell Harter, timely Answered the Summons and Complaint on October 6, 2022. EXHIBIT 7. Hours before filing the Answer, Attorney Harter also filed a 12(b) Motion to Dismiss with exhibits³ and a Motion to Dismiss as to Defendant Goshorn *in duplicate*.

³ On October 17, Attorney Harter filed a Motion to Allow Delayed Filing of the 12(b) Motion to Dismiss due to an inadvertence filing of duplicated Motions to Dismiss Defendant Goshorn from the case. EXHIBIT 17. Whether by the Court correcting the record after the fact or Mr. Harter’s mistaken fact at the time of initial filing, the record shows that the 12(b) Motion to Dismiss was filed contemporaneously with his Notice of Appearance on October 6, 2022.

EXHIBITS 8 and 9, respectively. The basis for the 12(b) Motion was that Defendant SCDPS alleged that service upon the agency was not accomplished in a timely fashion. Upon information, belief, and deductive reasoning, Defendant acknowledges that service of the summons and complaint did occur at the 10311 Wilson Blvd. address as noted above, but alleges that service was made upon a person not authorized to accept service on behalf of the SCDPS, specifically, an employee of the SC Department of Motor Vehicles (“SCDMV”), another agency that was apparently located at the same address. On December 29, Attorney Harter filed an Affidavit from an employee of SCDPS, swearing that the individual who was served with the Summons and Complaint on September 6, 2022 was not employed nor authorized to accept service on behalf of the agency. EXHIBIT 10.

After a continuance from the original January 6, 2023 hearing date, Defendants’ Motions were heard by the Honorable J. Derham Cole on February 23, 2023. No memorandums were filed, but both Defense counsel and Plaintiff’s counsel presented their respective arguments to the Court. On March 21, 2023, a Form 4 Order was filed by the Court granting all of Defendants’ Motions. EXHIBIT 11. Importantly, the Form 4 Order also stated, “Counsel for the defendants is requested to prepare and submit a proposed formal order for the Court’s consideration.” This has not yet occurred.

It is imperative to note that on November 17, 2022, Attorney Harter’s office mailed discovery requests to Plaintiff’s Counsel’s office. EXHIBIT 12. Of particular importance, Attorney Harter signed each request, i.e., Defendant’s First Set of Interrogatories to Plaintiff and Defendant’s First Set of Requests for Production to Plaintiff, on October 6, 2022—the same day he filed the Answer and Motions. On March 3, 2023, Attorney Harter contacted Plaintiff’s counsel inquiring as to the status of the discovery responses. EXHIBIT 13.

TIMELINESS OF THIS MOTION AND SUMMARY OF ISSUES

Addressing first the timeliness of this Motion for Reconsideration, Plaintiff would argue that she has been in, and remains in, a sort of procedural limbo since the Form 4 Order was filed on March 21, 2023. Additionally, Plaintiff orally moved for leave to file an Amended Summons and Complaint during the February hearing. As previously noted, the Form 4 Order granted Defendant's Motion to Dismiss, and it indicated that a formal order was to be filed by the Defendants. As of the date of the present Motion, no formal order has been filed. Accordingly, Plaintiff posits that the Form 4 Order is NOT a Final Order. Further, given that a Final Order has neither been proposed, nor has a Final Order been entered in this matter, Plaintiff recognizes that this Motion may be premature, at worst. As such, Plaintiff reserves the right to amend and renew this Motion upon filing of a Formal Order.

When fewer than all claims have been adjudicated, "the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Rule 54(b), SCRCF. See *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (a decree leaving some further act to be done by the court is not final); see also *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct.App. 2002) (a form order is a final order only if the circuit court indicates that nothing else remains to be done after it is signed).

Plaintiff has long awaited the formal order's filing so that the present Motion could be filed, and provide her the opportunity to plead her case at least one final time before this court. Further, as the Form 4 Order did not address the oral motion made during the February 23, 2023 hearing, she also to seeks clarification as to whether or not she will be granted leave to amend her complaint. This Motion for Reconsider addresses and respectfully argues the following:

I. THE COURT ERRED IN FINDING THIS ACTION WAS NEVER COMMENCED AGAINST THE DEP'T. OF PUBLIC SAFETY.

The Court is improperly granting the Defendants' Motion to dismiss under Rules 12(b)(2) lack of jurisdiction over the person, (4) insufficiency of process, and (5) insufficiency of service of process, pursuant to the Form 4 Order.

Further, even if the Court determines that service was not accomplished, the proper remedy is not to dismiss the case, but rather to toll the statute of limitations under the doctrine of equitable tolling.

Plaintiff finds this decision granting the Defendants' Motion to Dismiss to be in error for at least three reasons. First, Plaintiff contends that service was proper under SCRCP Rule 4(d), generally, and more specifically under Rule 4(d)(5). Plaintiff believes that service on the SCDPS was technically proper as they were served at the address the agency holds out to the public to be its physical address. Second, even if service was not technically proper under 4(d)(5), it sufficiently complied with Rule 4(d)—which still constitutes proper service. Third, and regardless of whether or not service was technically proper and/or sufficiently compliant, Plaintiff believes that service was accomplished under SCRCP 4(d) and 12(h) when Defendants voluntarily appeared, thus consented to personal jurisdiction of the Court, and thereby waiving their personal jurisdiction defenses.

Plaintiff argues that the Court should find that service was proper based upon one or more of these arguments and dismiss Defendants' motions accordingly. However, even if the Court declines to find that service was proper, Plaintiff believes that the proper remedy should be to toll the statute of limitations and time to serve under the theory of equitable tolling given the SCDPS' misleading and confusing physical address. In the alternative, Plaintiff renews its oral motion of

February 23, 2023 to be granted leave to file an amended complaint in the event the Defendants Motion to Dismiss is formally granted.⁴

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

The Form 4 Order granting Defendants’ Motion to dismiss Trooper Goshorn as a party was improper.

Plaintiff assumes that this was because the Plaintiff alleged that the officer was in the course and scope of his employment at all relevant times, they are arguably immune from suit. The fatal problem with the Court’s order is that an action may be maintained against an individual government employee, even if that employee was acting in the course and scope of employment, if the employee was acting intentionally or with actual malice. The plaintiff believes she has adequately stated a claim against him, and such a dismissal at this stage, without discovery having occurred, is inappropriate under South Carolina law. In the alternative, the Plaintiff should be given leave to amend her complaint to allege that the officer was acting outside the course and scope of employment—as well as to include a claim under §1983 as orally requested in the Hearing (in the event Defendant’s Motion to Dismiss was formally granted).

III. THE FORM 4 ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF’S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCp. Rather than continue to wait for a Formal Order that may never come, and out of an abundance of caution in ensuring that her

⁴ This amended complaint would include a cause of action for a federal §1983 action. Attorney Harter indicated that he would not be opposed to the filing of Amended Complaint, and went so far as to suggest that he would simply remove the matter to federal court if Plaintiff’s oral Motion was granted. However, Plaintiff still contends that the Defendant’s Motion(s) to Dismiss should be denied and that the case should move forward where it is.

arguments are (re)considered, Plaintiff preemptively submits this Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend judgment to preserve the issue for appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, *certiorari granted, affirmed in part, reversed in part* 403 S.C. 560, 743 S.E.2d 778.

In the present case, Plaintiff's oral motion during the hearing of February 23, 2023 seeking leave to amend in the event the court dismisses the case has not been ruled upon.

STANDARD OF REVIEW

Rule 59(e), S.C.R.C.P. provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), S.C.R.C.P. A Rule 59(e) motion is not only "a vehicle to request the trial court 'alter or amend the judgment,'" but it is also "a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772 (2004). In such a motion, a party "is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." *Id.* A party may file a motion to reconsider "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." 361 S.C. at 24, 602 S.E.2d 772. "A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

For reasons previously noted, this Motion to Reconsider may be premature. However, Plaintiff has no intention of continuing to wait for a Final Order that may never come to ensure her arguments are fully heard and considered.

DISCUSSION

I. THE COURT ERRED IN FINDING THIS ACTION WAS NEVER COMMENCED AGAINST THE DEP'T. OF PUBLIC SAFETY.

1. Service was properly made on the SCDPS under SCRCF Rule 4(d)(5) when the summons and complaint was delivered to SCDPS' physical address and when the SC Attorney General's office was personally served.

South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing. Rule 4(d) sets forth the rules for personal service when serving a summons and complaint. As the SCDPS is a state agency, Rule 4(d)(5) governs service upon a State Officer or Agency, and is controlling in the present case. It says:

[Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Addressing the second part of the rule first, Rule 4(5)(d) requires service also be made upon the SC Attorney General. Plaintiff indisputably served the Attorney General's office. The Attorney General is the State's Chief Legal Officer and the individual in State government who is responsible for guiding and arranging for the defense of State agencies facing litigation. Despite the specific method indicated by the Rule being by certified mail, service was accomplished by

personal service as the time remaining to serve the Summons and Complaint was nearly expired. In the interest of ensuring service would more definitively arrive at its intended destination on time, and rather than rely on the postal service to deliver something AND ensure the certified mail process is correctly handled⁵, Plaintiff chose to serve the Attorney General's office in a manner most likely to be successful—and at a significantly greater burden and higher cost than certified mail.

Addressing the first part of the rule next, Plaintiff unquestionably “delivered” a copy of the summons and complaint to the physical address listed publicly by the agency, i.e., the SCDPS. Defendants argue that Plaintiff's (good faith) efforts to comply with the agency “delivery” requirement of 4(d)(5) was ineffectual, seemingly based solely on the contention that it was served upon the *wrong person*. The Affidavit of Diana Brown (EXHIBIT 10) suggests that the SCDPS has certain people that are allowed to accept service. *To wit*:

The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol.

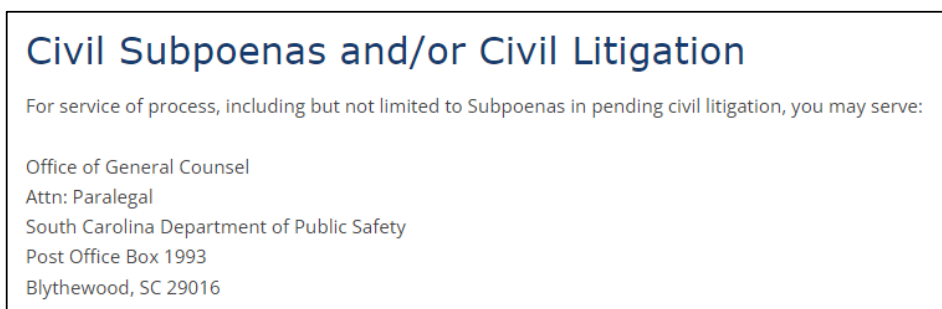
Aff. Of Diana Brown ¶ F.

Instinct begs the question: *who is the correct person? Also, how does one ascertain the identities of these designated employees*”? Not only that, but the last sentence makes no sense. Of course an employee of an agency would be employed by the agency. *Is this sentence meant to suggest that “the individual” could be someone other than the hypothetical “employee to accept*

⁵ Plaintiff's counsel is more than happy to provide anecdotal examples of how postal service employees, as recently as December 2022, were using the COVID-19 pandemic to excuse full compliance with the signature requirements inherent to certified mail delivery and service.

service”? It’s like saying “the blue sky is blue”, but in a way that appears more official than it really is due to the use of words like “the Department” and “must”.

But I digress. A simple search of “service of process” within the SCDPS website has only one page⁶ (EXHIBIT 14) with any information on service of process that is remotely substantive. And, as the screenshot below shows, it simply says that one “may serve” the paralegal in the General Counsel’s office, with no other guidance or the names of the “designated employees” who are authorized to accept service of process.



The SCDPS website notwithstanding, the first sentence of paragraph F from Ms. Brown’s affidavit seems to provide a more particular basis for Defendant’s positioning as to what constitutes proper service on a state agency. Accordingly, it appears that Defendant is taking the position that obtaining proper service upon a state agency under Rule 4(d)(5) is limited to delivering a summons and complaint only to “designated employees who are authorized to accept service of process on (the department’s) behalf.”

Rule 4(d)(5) does not specify “who” may accept service on behalf of a state agency. However, there are multiple subdivisions of Rule 4(d) that do indicate who may accept service on behalf of the respective persons and/or entities:

- Rule 4(d)(1) allows service to be made upon an **individual** by leaving copies “at his dwelling house or usual place of abode with some person of suitable age and discretion

⁶ <https://scdps.sc.gov/general-counsel/subpoenas>

then residing therein, or ***by delivering a copy to an agent authorized by appointment or by law to receive service of process.***” (emphasis added).

- Rule 4(d)(3) allows service to be made upon a **corporation or partnership** by delivering a copy of the summons and complaint “to an officer, a managing or general agent, or ***to any other agent authorized by appointment or by law to receive service of process . . .***” (emphasis added).
- Rule 4(d)(4) allows service to be made upon **the State of South Carolina** by delivering a copy of the summons and complaint “to the Attorney General, or ***when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official . . .***” (emphasis added).
- Rule 4(d)(6) allows service to be made upon a **Governmental Subdivision (e.g., municipal corporation, county, etc.)** by delivering a copy of the summons and complaint “***to the chief executive officer or clerk thereof,*** or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant . . .” (emphasis added).

To contrast the rules of personal service between the subdivisions above and Rule 4(d)(5), the full text of Rule 4(d)(5) is, once again, as follows:

SCRCP 4(d)(5) State Officer or Agency: [Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Now, to minimize confusion, let’s remove the parts of this rule pertaining to a State Officer (as this is not at issue), the section pertaining to service on the Attorney General (as this was previously addressed), and the last sentence—as the SCDPS is not a corporation:

[Service shall be made] upon an . . . agency of the State by delivering a copy of the summons and complaint to such . . . agency [].

Contrary to Defendant’s position, there is nothing about Rule 4(d)(5) or its “plain language” that indicates how an agency may be served (but the subdivisions listed above do indicate as much).

The Rule simply doesn’t say what types of delivery are sufficient (or alternatively insufficient) to effectuate service. Further, interpreting Rule 4(d)(5) as a limitation that requires service on an agency to be made upon “designated employees who are authorized to accept service of process

on (the department's) behalf" is inconsistent with the other subdivisions of Rule 4(d). In other words, the drafters in the state legislature would have included with specificity the manner(s) in which service could be made. At least in regard to Rule 4(d)(5), if only one manner of service were acceptable (i.e., *upon designated employees who are authorized to accept service of process on (the agency's) behalf*), wouldn't the legislature have said so, just as they did in above subdivisions?⁷

Unfortunately, there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). *See also* 24 S.C. Jur. Rules of Civil Procedure § 4.2. But there are other good authorities to help discern the meaning of Rule 4(d)(5)'s requirement that a plaintiff "deliver" the summons and complaint to the state agency being sued, and those authorities strongly indicate that the manner in which the SCDPS was served was sufficient and proper.

We start with the Rules of Civil Procedure themselves. South Carolina adopted its Rules in 1985 and repealed many state statutes addressed to civil procedure matters at the same time. Nonetheless, as indicated by the Notes to the Rules, some of the subsections of Rule 4 preserved the principles of certain repealed statutes. Rule 4(d)(1), for example, expressly reserved the principles of S.C. Code Ann. § 15-9-520 (1976), which dealt with substitute service on individuals. *See* Note to Rule 4(d)(1). Rule 4(d)(5), however, did not preserve the principles of any precursor statutes; rather that subsection of the Rule "conform[ed] to the Federal Rules and clarif[ied] State practice concerning service on the State, its officers or agencies, and on political subdivisions." *See* Note to Rule 4(d)(5). In the early 1980's, the Federal Rule of Civil Procedure that SC Rule

⁷ To be clear, and for reasons set forth later in this Motion, Plaintiff is not arguing that the manner(s) by which to obtain proper service is limited only to those specific manners propounded by the germane Rule 4 sections. Rather, Plaintiff is arguing that those Rule 4 sections which do not specify the manners by which to effect service may not be limited.

4(d)(5) was patterned after also provided that service upon a government agency should be accomplished by “delivering” a copy of the suit papers to the defendant agency. *See* Notes to Federal Rule.

In the present case, the Plaintiff’s process server⁸ recalls that he went to the specific address listed by the Defendant on its public, official website as being its physical address. It was not apparent that the same specific address, without further designation (e.g., suite number, building number, etc.), was also shared by other state agencies. He entered the building, went to the front desk, informed to person at the front desk that he was there to serve the SCDPS, and was informed by the person at the front desk that she could accept the documents he was serving. Accordingly, he served her with the summons and complaint. This was accomplished within the 120-day period allowed for service, on a person who claimed she could accept service for the agency, at the address known publicly to be the address of the SCDPS.

By way of anecdotal, yet relevant experience, Plaintiff recently learned that serving process upon the SCDPS is more difficult than previously thought. In an attempt to re-serve the SCDPS (just to be able to assert that it was absolutely done, with no question as to the proper party), the (different from the first) process server informed Plaintiff’s counsel that service was difficult, as the front desk person, a person named “Grayson” informed him that he could accept service on behalf of the SCDPS. Nevertheless, at the process server’s request (and at the direction of Plaintiff’s counsel), the process server asked that a representative from the SCDPS to come down to accept service. After waiting a considerable amount of time, the process server decided to leave and try again later, as he did not trust that the front desk person was truly allowed to accept service. EXHIBIT 15. This service was ultimately recompleted (at least Plaintiff is confident that it was)

⁸ An affidavit by the process server, Jamahl Spratley, is anticipated to be sent to Plaintiff’s counsel at any moment. Plaintiff will file the affidavit with the Court upon receipt.

on May 22, upon Paula Davis, a paralegal with the SCDPS. EXHIBIT 16. Of note, Plaintiff is unable to find any employees listed within the State of SC employee list⁹ named Grayson (except for one that works for the SC Dept. of Corrections).¹⁰ Further, Plaintiff is unaware if Ms. Davis is one of SCDPS' purported "designated employees who (is) authorized to accept service of process on their behalf"—nor does the Plaintiff know of a way to confirm this.

Plaintiff contends that service was properly made upon someone located at the public physical address of the SCDPS, in a location that one would reasonably expect to be informed as to who can accept service. Aside from serving the officer and the Attorney General's office, Plaintiff took no other action to inform the SCDPS. Yet, Defendant SCDPS received notice of the lawsuit. To put this more succinctly, [Service **(was)** made] upon an . . . agency of the State by delivering a copy of the summons and complaint to such . . . agency []. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, find that Plaintiff properly served Defendant under Rule 4(d)(5), and deny the Defendant's Motion.

2. Plaintiff Sufficiently Complied with Rule 4(d)(5)

"It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant." *Fassett v. Evans*, 610 S.E.2d 841, 843 (S.C. Ct. App. 2005) (citation omitted). "The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend." *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 541 (S.C. 2014) (internal citations and quotation marks omitted); see also *Burris Chemical, Inc. v. Daniel Const. Co.*, 163 S.E.2d 618, 620 (S.C. 1968) ("The principal object of service of process is to give notice to the defendant corporation of the proceedings against

⁹ <https://webprod.cio.sc.gov/DirectWeb/searchMenu.do>

¹⁰ Plaintiff is unable to determine if any individuals with a middle name starting with "G" go by "Grayson".

it.”). It follows that Rule 4, which governs service of process, “confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *BB & T v. Taylor*, 633 S.E.2d 501, 503 (S.C. 2006) (quoting *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 899 (S.C. 1995)).

As previously stated, and something that cannot be said enough: there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). Further, South Carolina’s Rule 1 mirrors the federal rule; it states that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action.” There’s nothing just about taking an overly technical view of the service requirements of Rule 4, especially where the purported technical default caused no prejudice to the Defendant and the purposes of service were otherwise satisfied.

And in fact, the South Carolina appellate court opinions have actually taken precisely that approach to issues related to service of process (although they have not cited Rule 1 in their analyses), eschewing technical “gotcha” gamesmanship in favor of focusing on the policies and purposes underlying the service requirements. As the Fourth Circuit observed in 2010:

The South Carolina Supreme Court has noted that it will not require “exacting compliance” with the rules related to service of process. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897 (1995). Instead, the court inquires into “whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* at 210, 456 S.E.2d 897.

Colleton Preparatory Acad. Inc. v. Hoover Universal, Inc., 616 F.3d 413 (4th Cir. 2010) (rejecting challenge to service where delivery was not restricted to the addressee because, under the circumstances, the defendant would have had actual and timely notice of the lawsuit and it was

undisputed that the registered agent received the lawsuit papers, notwithstanding the failure to employ restricted delivery certified mail).

As the South Carolina Supreme Court said in the *Roche* case cited by the Fourth Circuit:

Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. We have never required exacting compliance with the rules to effect service of process. See *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (when officer's return defective as to time and place of service, it can be amended to state facts); *Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended); *Miller v. Hall*, 1 Speers 1 (1842). Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

Roche v. Young Bros., Inc. of Florence, 456 S.E.2d 897, 318 S.C. 207 (S.C. 1994) (emphasis added).

Those are the principles that have continually echoed throughout the law of South Carolina, as the statement that “[e]xacting compliance with the rules is not required to effect service of process” has been quoted repeatedly in numerous appellate cases in South Carolina since *Roche*. See, e.g., *Richardson v. P.V., Inc.*, 682 S.E.2d 263, 383 S.C. 610 (S.C. 2009); *Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007) (quoting the principles from *Roche* and stating that “the efficacy and rationale behind the requirement for service of process—that the defendant has notice of the proceedings—has luculently been met in this case.” See *Roche*, 318 S.C. at 210, 456 S.E.2d at 899 (“Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.”); *Moore*, 322 S.C. at 523, 473 S.E.2d at 66 (“Rather, inquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant, and the defendant has notice of the proceedings.”). Or as now-Justice Kittredge

explained on behalf of the Court of Appeals in another case that involved a technical challenge to service:

As this issue has been framed by Appellant, its resolution would seem to entail a technical analysis of when a corporation may be said to "exist" for purposes of our civil rules governing service of process. Our rules governing service of process do not turn on parsing strict technicalities or debating murky legal abstractions. On the contrary, our supreme court has specifically held that "[w]e have never required exacting compliance with the rules to effect service of process." *Roche v. Young Bros. Inc.*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995) (citing *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900); *Saunders v. Bobo*, 2 Bailey 492 (1831); *Miller v. Hall*, 1 Speers 1 (1842)). "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche*, 318 S.C. at 210, 456 S.E.2d at 899. To establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct.App.1996). When these rules are followed, there is a presumption of proper service. *Roche*, 318 S.C. at 211, 456 S.E.2d at 900.

McCall v. Ikon, 611 S.E.2d 315, 363 S.C. 646 (S.C. App. 2005).

The Maybin Myth

In contrast to the numerous cases discussed above, perhaps the case most often used to support arguments consistent with Defendants' position is *Maybin v. Northside Correctional Center*, 891 F.2d 72, 73-4 (4th Cir. 1989). However, *Maybin* is of dubious value. In *Maybin*, Plaintiff sued her employer, which was a state agency, for discrimination. She served the attorney general of SC by mail pursuant to Rule 4(d)(5). As to the requirement that plaintiff deliver a copy of the summons and complaint to the agency, the opinion reports that the plaintiff served a particular "caseworker" at the facility. The case does not say how the caseworker was served and the Fourth Circuit's sole treatment of this issue in its opinion declared that Plaintiff's attempted service upon the caseworker was not effective service upon the agency. "Service to an agency is not legally obtained unless such service is made upon a person of suitable position and discretion

within the agency,” the Fourth Circuit said. *Maybin* cited *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (S.C.Ct.App.1987), in support of that statement.

It bears noting at the outset that *Jensen* doesn’t even say what *Maybin* said it says. In fact, whereas the issue in *Maybin* was whether service on the individual employee was effective service on the agency, the issue in *Jensen* was the reverse – whether service on the agency employer was sufficient substitute service on the individual employees who worked there. In *Jensen*, the plaintiff sued certain Doe defendants under the fictitious name statute in their individual capacities. Those defendants were employees of a state agency (DSS). The Sheriff attempted to effect service on the individual defendants by leaving the papers with an employee at the agency. The trial court “found [that the agency] was a proper agent to receive service of process for these [individual] defendants, because it was the defendants' employer at the time of the decedent's death.” The Fourth Circuit disagreed, however, because “[t]he record ... contain[ed] no evidence showing that [the agency] was the employer of the defendants at the time of the attempted service.”

While the *Jensen* Court did state in the very next sentence that “[w]ithout evidence that the defendants were served by delivery of the papers to a person of discretion employed at their present place of business, ... there is nothing in the record to show these [individual] defendants were served with process,” the Court based that statement on the “now repealed Section 15-9-520,” which was a statute providing for substitute service *on individuals*, not state agencies. *See, e.g., Collins Music Co., Inc. v. Lord*, 346 S.E.2d 724, 289 S.C. 458 (S.C. 1986) (“Under § 15-9-520 substitute service of process may be effected by personally serving a person of discretion at a defendant's residence or place of business.”). When South Carolina adopted its Rules of Civil Procedure, the Notes to Rule 4 said (and still say) that “Rule 4(d)(1),” regarding service on individuals, “preserves the requirements of Code § 15-9-520.” That statement further underscores

that *Jensen* (which was premised on § 15-9-520) was a case about an attempted substitute service on individuals, not entities or state agencies. The Notes to Rule 4(d)(5), by contrast, do not declare any intention to preserve any aspect of any prior statutes, but rather expressly declare the intent of that subsection to “conform to the Federal Rules and clarify State practice concerning service on the State, its officers or agencies, and on political subdivisions.” In short, *Jensen* was a pre-Rules of Civil Procedure case that relied on now-repealed statutes related to substitute service on individuals and certainly had nothing to say about the conditions under which a party might properly “deliver” a copy of a summons and complaint to an agency for Rule 4(d)(5) purposes.

Rejecting Strict Limitations and Selecting Good Faith

And even that’s not all. *Jensen* (and thus *Maybin* by extension) is also diametrically at odds with the manner in which the South Carolina appellate courts have addressed service of process challenges under the Rules of Civil Procedure. As noted above, in the aftermath of *Roche*’s exposition of the principles embodied in Rule 4 and the implications for any legal analysis regarding the sufficiency of service, the resounding chorus and theme of the appellate cases (since 1994 – eight years after *Jensen* and five years after *Maybin*) has been that “exacting compliance” with the Rules is not required; rather, the South Carolina courts look to a more functional approach that centers on good faith, actual notice, and sufficient compliance for a court to acquire personal jurisdiction – in other words the purposes that animate Rule 4, rather than “strict technicalities” and “murky legal abstractions.” By stark contrast, *Jensen* kicks off the conclusion of its analysis with the statement that “[c]ompliance with the service of process requirements must be strict, and approximations will not be effective.” That statement certainly does not reflect the post-*Roche* case law in the State, nor does it reflect the other policies or analysis contained above in this memo. In short, neither *Jensen* nor *Maybin* should be understood to have any enduring value at this point.

Why Bother Serving both the Attorney General and the State Agency?

Before concluding, it bears noting that there is at least one final reason for the Court not to accept the interpretation of Rule 4(d)(5) being tendered by the Defendant. That interpretation turns the relationship between the Attorney General and state agencies upside down. The Attorney General is (obviously) the State's Chief Legal Officer. South Carolina law charges him or her with the duty to defend public officers and employees in civil actions (S.C. Code § 1-7-50) and coordinate with Solicitors to provide for the representation of State institutions, and agencies with respect to civil proceedings (S.C. Code § 1-7-350). The agencies themselves cannot even hire counsel to represent the agency or as an employee without the Attorney General's approval. S.C. Code § 1-7-160, 170. (emphasis added). Read in light of this reality, it is evident that the drafters of the Rule wanted to make sure that the State's Chief Legal Officer (the one with the power, authority, and responsibility to actually do something in response to the Summons and Complaint) received notice of any lawsuits against state agencies, thus the requirement that a plaintiff be able to verify service on the attorney general by certified mail.

But as to the agency itself, the Rule says in effect, make sure you serve the Attorney General and just send the agency a copy too. *See, e.g., Morrissey v. Mayorkas* (D.C. Cir. 2021) (discussing the federal rule that South Carolina's Rule 4(d)(5) was patterned after and stating that "[b]ecause federal agencies are generally represented by the Department of Justice in litigation, the specific requirements for service on the United States provide notice to the officials who will be litigating the claims. Cf. *Light v. Wolf*, 816 F.2d 746, 750 (D.C. Cir. 1987). Rule 4's requirement to serve the Attorney General, the head of the Department of Justice, as well as the relevant U.S. Attorney, the local component of the Department, ensures the Department has notice and is able to provide a defense consistent with the broader goals of the government."). While plaintiffs

certainly are not free to ignore the agency “delivery” requirement of Rule 4(d)(5), which Plaintiff here did not do, the most important component of Rule 4(d)(5) service is easily the requirement of service on the Attorney General; as the Rule reads, the agency “delivery” requirement is nearly an afterthought. And understandably so, given the legal structure of the rights and responsibilities of the relationship.

It should go without saying that the burden of personal service is higher and more demanding than that of service by certified mail. However, Defendant’s interpretation of Rule 4(d)(5) (which it bears repeating is not supported by the text of the Rule or any binding authority) is that service must be made on the agency in a manner consistent with 4(d)(1) and 4(d)(3) (but not 4(d)(5)), and that service on the Attorney General’s office must be by certified mail only, as opposed to the high burden/high certainty method of personal service. For the reasons stated above, that just doesn’t make sense and can’t be what the Rule’s drafters intended. Again, the most natural reading of the Rule as a whole is “make sure you serve the AG, and oh, by the way, send a copy to the agency too (ergo the lack of specificity as to either the manner of delivery or the identity of any necessary recipients).”

Unquestionable Substantial Compliance in Good Faith

Given all of the above, it is plain that Plaintiff substantially complied with Rule 4(d)(5). The Attorney General was unquestionably served. Plaintiff unquestionably delivered a copy of the Summons of the Complaint to the agency at the physical address they themselves provided to the whole world (or at least anyone with an internet connection). Oh—and Defendants’ attorney unquestionably appeared in this case and timely filed an Answer. Rule 4(d)(5) does not require only certain people within the agency to be served. And the state agency—a component of the state government—should not be allowed to mislead or confuse the public by not specifying its

physical address by way of suite or building designation, or if there is none, without informing the public that it has roommates living at the same physical address.

Even if the Court were to find some technical glitches in the service of process, those glitches were the result of a good faith effort to comply with a rule that is not specific as to either the manner of “delivery” or the characteristics of the intended recipient. There is no prejudice, and there was sufficient compliance with the Rule (even if the Court finds that compliance was not “exacting,”) to serve the purposes of Rule 4. The Defendant got notice of the litigation, timely and voluntarily appeared, **sent discovery, and even asked when he could expect our responses to his discovery requests(!)**. There was no prejudice to the Defendant.

All steps taken are sufficient to confer personal jurisdiction over a South Carolina agency in a South Carolina Court of Common Pleas. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant’s Motion to Dismiss, find that Plaintiff sufficiently complied with Rule 4(d)(5), and deny the Defendant’s Motion.

3. Service was accomplished when Defendants voluntarily appeared in the case. under SCRCP 4(d) and 12(h) when Defendants voluntarily appeared, thus consenting to personal jurisdiction of the Court and waiving their personal jurisdiction defenses.

Personal jurisdiction is a court's authority to rule and enforce a decision over the parties of a lawsuit. *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). Pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure, “[v]oluntary appearance by defendant is equivalent to personal service.” South Carolina courts have held that where a defendant appeared and asserted claims which went to the merits, in addition to his jurisdictional objection, the defendant had waived personal jurisdiction. *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). Rule 12(h)(1), SCRCP, provides a defense is waived if “it is neither made by motion under this rule or included in a responsive pleading or an amendment.” No South Carolina case

has *squarely addressed* whether personal jurisdiction is waived if a party continues to participate in litigation after challenging personal jurisdiction in their initial responsive pleading to a court. However, the language of Rule 12(h)(1) is substantially similar to the Federal Rules of Civil Procedure. In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Gardner v. Newsome Chevrolet–Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

A number of federal courts have determined “a delay in challenging personal jurisdiction by motion to dismiss may result in waiver, even where the defense was asserted in a timely answer.” *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60 (2d Cir. 1999) (citation omitted) (internal quotation and alteration marks omitted); see also *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998) (“Rule 12(h)(1)[, FRCP,] specifies the minimum steps that a party must take in order to preserve a defense.”); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296–97 (7th Cir. 1993) (finding waiver of personal jurisdiction defense by defendant's conduct, though acknowledging the waiver specifically provided for by Rule 12(h), FRCP, did not occur); *Yeldell v. Tutt*, 913 F.2d 533, 538 (8th Cir. 1990) (finding Rule 12(h), FRCP, “sets only the outer limits of waiver; it does not preclude waiver by implication.” (quoting *Marquest Med. Prods. v. EMDE Corp.*, 496 F.Supp. 1242, 1245 n.1 (D. Col. 1980))).

The Perils of Seeking Discovery (or *Be Careful What You Ask For*)

Taking a quasi-totality of the circumstances approach by considering a variety of factors, South Carolina courts have found that engaging in discovery, and specifically the act of requesting discovery for purposes non-related to issues of jurisdiction, constitutes a voluntary appearance under Rule 4(d). In *Maybank v. BB&T Corp.*, our supreme court determined a trial court acted within its discretion when it found an appellant, BB&T, a banking corporation, waived its personal

jurisdiction defense. 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016). In its answer, BB&T reserved its objection to the exercise of personal jurisdiction and subsequently moved for removal to federal court. There, the parties engaged in litigation and discovery. *Id.* BB&T's participation in the usual course of discovery, i.e., both responding to and requesting discovery from Respondent was a significant factor in determining that BB&T had waived its personal jurisdiction defense.

In another case decided just over a month ago (and after this Court filed its Form 4 Order), the SC Court of Appeals affirmed the trial court's ruling that the Respondent did not waive its personal jurisdiction defense under *Maybank. Abdulla v. S. Bank*, No. 2019-001142, 2023 WL 2939265, at *3 (S.C. Ct. App. Apr. 12, 2023). Unlike BB&T in the *Maybank* case, "(Respondent) Southern Bank **responded** to Abdulla's discovery requests to expedite the case, depositions were conducted to determine the jurisdictional issue, and Southern Bank **did not submit any discovery requests of its own.**" *Id.* (emphasis added) For these reasons, the Court of Appeals determined the personal jurisdiction defense was not waived.

The common thread between these two cases is that even if a party asserted a personal jurisdiction defense in its responsive pleadings, the submission of discovery requests for non-jurisdictional purposes (i.e. on the merits) acted as a waiver of the party's right to contest personal jurisdiction.

Plaintiff acknowledges that Defendant raised the personal jurisdiction defense in its initial pleadings. Further, contemporaneous with its Answer, Defendants did in fact move to dismiss the case on those grounds. However, on November 17, 2022, Defendants' attorney mailed to Plaintiff discovery requests that had been signed by Attorney Harter on the same date as he answered on behalf of the Defendants. EXHIBIT 12. On March 3, 2023 two weeks after the hearing for Defendants' Motion to Dismiss, Attorney Harter contacted Plaintiff's counsel inquiring as to the

status of the discovery responses. EXHIBIT 13. Unlike the Defendants in *Abdulla*, the defendants in the present case submitted discovery requests to the Plaintiff—requests that were not exclusively based on jurisdictional issues—and later inquired as to when the discovery would be produced. Additionally, these discovery requests seek information pertaining to the merits of the case, just as the *Smalls* court warned against. Further, the last line of each particular request (i.e., Interrogatories and Requests for Production) included the declarations that “These Interrogatories shall be deemed continuing so as to require supplemental responses up until and prior to trial” and “These Requests for Production of Documents shall be deemed to be continuing in nature and require supplemental response prior to trial”. EXHIBIT 12. Plaintiff has not yet submitted discovery requests to the Defendants, nor would doing so have influenced this analysis in any way. See *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) (“[A] party may not complain on appeal of error ... which his own conduct has induced.”).

I Know, But I Don’t Know-Know, You Know?

The purpose behind requiring service is a simple one. The requirements of service do “not arise from an arcane or highly technical application of the rules. Rather, [the service requirements] serve[] an essential function—ensuring that notice is properly received by all entitled to it.” *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). “A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court.” *Id.* at 652, 611 S.E.2d at 318 (quoting *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992))(emphasis added).

It is clear from Defendant’s voluntary appearance at the onset of the case and timely response to the pleadings that the Defendants were on notice of this action. More importantly, by

engaging in discovery practice, and not for the purpose of determining jurisdictional issues, Defendants have implicitly acknowledged jurisdiction of this court.

Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, find that Defendant voluntarily appeared under Rule 4(d) and/or otherwise waived its personal jurisdiction defenses, and deny the Defendant's Motion.

4. Even if the Court determines that service was not accomplished, the proper remedy here is not dismissal of the case, but to equitably toll the time to serve.

South Carolina courts have also taken issue when service was difficult to obtain due to misleading or otherwise confusing circumstances. Pursuant to S.C. Code Ann. § 15-3-530, the statute of limitations for personal injury claims is three years. Additionally, South Carolina Rules of Civil Procedure Rule 3(a) indicates a civil action is commenced when the summons and complaint are filed with the clerk of court and the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

In addition to statutory rules regarding tolling of the statute of limitations in personal injury claims, in conjunction with the Rules of Civil Procedure, South Carolina also recognizes the doctrine of equitable tolling. In *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009), the Court concluded "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). The *Hooper* court explains "equitable tolling is a non-statutory tolling theory which suspends a limitations period." *Hooper*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). Further, "[e]quitable tolling is judicially created; it stems

from the judiciary's inherent power to formulate rules of procedure where justice demands it” and “[w]here a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Hooper* citing *Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009).

The Plaintiff in *Hooper*, the personal representative of a patient's estate, brought a wrongful death action against defendant nursing home. The patient was admitted to the nursing home in February 2003, developed severe decubitus ulcers, was hospitalized in April 2003, and died in May 2003. The complaint was timely filed in February 2006, but service was not effected until June 2006, after the three-year statute of limitations of S.C. Code Ann. § 15-3-530 had run and after the 120 time period of S.C. R. Civ. P. 3(a)(2) had run. (See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009)).

Justice May be Blind, But I Can’t See Justice. Am I the Blind One?

The estate's attorney first tried to effect service upon the agent named by the nursing home at the address supplied to the Secretary of State. When that was unsuccessful, the attorney tried to find a personal address for the agent. Further, the attorney contacted the sheriff's department on numerous occasions and was told service was being made. However, service was unsuccessful because the agent could not be found. The Defendant in *Hooper* argued it was entitled to the dismissal of *Hooper's* action because Plaintiff should have pursued alternative means of service, such as publication or service upon the Secretary of State. However, the Court found “it is important to note that a party utilizes these alternative methods of service only after first exercising reasonable or due diligence to effect service on an individual or agent.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added).

The *Hooper* court cited many examples of equitable tolling and explains jurisdictions have considered tolling in a variety of contexts and have developed differing rules for its application. However, the *Hooper* court concluded the differing situations cited in several jurisdictions did not constitute an exclusive list of circumstances that justify the application of equitable tolling. Most importantly, the *Hooper* court concluded "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper* quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Therefore, "equitable tolling may be applied where it is justified under all the circumstances ... when the interests of justice compel its use." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009) (Emphasis added). The 4th Circuit Court of Appeals cites *Hooper* in *Aikens v. Ingram*, 524 Fed. Appx. 873, 2013 U.S. App. LEXIS 8972, 2013 WL 1832083 and also adds "[l]imitation periods are designed to ensure justice by preventing surprise, but no surprise exists when defendants are already on notice of the substantive claims being brought against them."

The Right Place, the Right Time, the Right— <enter Evil Twin>

In the present case, Plaintiff attempted to serve the Defendant at the physical address listed on its publicly listed, government-funded website. Unbeknownst to the Plaintiff, Defendant SCDPS shared the address with the SCDMV, another state agency. However, the SCDPS has not made any attempts known to the Plaintiff to inform the public that service upon that particular address could be difficult, given the shared space. Further, Defendant SCDPS does not specify any designations which might have allowed Plaintiff (or the public, for that matter) to more specifically

ascertain Defendant SCDPS' specific location at the listed physical address, such as a suite or building number.

In *Hooper*, the Defendant did not provide a correct address for their registered agent. In this case, the Defendant is a state agency, and given its public status, should be clear in any and all of its public declarations, including but not limited to its listed physical address on a public, government-funded website and as to any potential misleading and/or confusing encounters one might anticipate when relying on said declarations. If the state agency is not clear on such difficulties a Plaintiff might encounter in attempting service of process, for example, such lack of clarity would prejudice the Plaintiff. There are no set rules on how to "find" a Defendant, however, the Plaintiff is required to complete reasonable and due diligence in locating and serving a Defendant prior to proceeding with service by publication. This should include service of a summons and complaint at the physical address publicly provided by a Defendant, especially a state agency, as in this case. However, this Court's decision granting Defendants Motion to Dismiss seems to ignore the South Carolina courts' purpose "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." *Hooper* at 687.

We Did What They Told Us to Do. What Else Were We Supposed to Do?

In this case, the Plaintiff sought out the state agency's physical address to ensure it would be properly served. By simply going to the agency's website and noting the physical address the agency had listed, Plaintiff was ready to put her plan into action. When the process server delivered the papers to the individual at the address provided by the agency, this individual apparently did not object, decline, or otherwise refuse service of process. Accordingly, Plaintiff justifiably believed that service was properly obtained. This belief was further justified when Defendant SCDPS, clearly on notice of the lawsuit, voluntarily appeared in the case and filed a timely

response to the pleadings. As stated in the *Hooper* case, the rules require a Plaintiff to perform reasonable and due diligence to serve the Defendant without moving forward with service by publication. Plaintiff contends this responsibility exists due to the issues of a Defendant gaining actual knowledge of a lawsuit via publication, as noted in *Hooper*. With service having been made *at the physical address provided by the Defendant* and said defendant timely responding to the pleadings, it is clear that the overall purpose of Rule 4 was achieved, that being to ensure the Defendant had actual notice of the lawsuit.

By way of analogy (and this is not an argument based on any precedence whatsoever—but I hope this Court gets the point), this whole situation is analogous to one method of fulfilling the requirements of Rule 4(d)(1)—specifically, “by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.” More than one agency resided at 10311 Wilson Blvd., Blythewood, SC 29016 (i.e., the “dwelling house or usual place of abode” of SCDPS), and the person accepting service was presumably “of suitable age and discretion,” and acting on behalf of the other agency “then residing therein.” There’s virtually no way that, on some level, be it shared bathrooms, cafeterias, vending machines, parking lot, etc., that employees of the SCDPS and SCDMV don’t interact. And the whole point of Rule 4(d)(1) is to ensure that serving a summons and complaint on someone isn’t hampered by pesky situations (like that person not being at home) by giving it to someone of proper maturity that shares the same space as the person intending to be served, with the expectation that the intended person will be given the documents. And if we’re going to analogize, let’s analogize—if corporations are people, i.e., *Citizens United*¹¹, why can’t state agencies be people too?

¹¹ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)

The Plaintiff clearly showed reasonable and due diligence in attempting to serve the Defendant. Additionally, the Plaintiff served the suit upon the Attorney General's office. Ultimately, the Defendant, with actual notice of the Summons and Complaint, responded to the same, and was aware of the substantive claims being brought against the agency. This is further evidenced by the Defendant timely filing an answer.

Equitable tolling was created to ensure fundamental practicality and fairness. The Plaintiff contends they performed their reasonable and due diligence to properly serve the Defendant in this case. Further, they don't believe the Defendant is prejudiced by surprise in this case (because they were not). Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, and in the event the Court ultimately orders that service was not obtained initially, the Plaintiff would ask that the Court toll the time to serve the Summons and Complaint, thus allowing the Plaintiff's service of May 22, 2023 to be effective (assuming this is deemed to be on the proper agency, e.g., upon a "designated employee[] who [is] authorized to accept service of process,"¹² and notwithstanding the Rules pertaining to time to file and serve), and deny the Defendant's Motion.

II. THE COURT ERRED IN DISMISSING TROOPER GOSHORN AS A PARTY.

1. Overview of the Law

The South Carolina Tort Claims Act (SCTCA) does not give governmental employees absolute immunity from suit for incidents that occur during their employment. South Carolina Code Section 15-78-70(b) of the SCTCA provides that "[n]othing in this chapter may be construed

¹² For reasons set forth earlier in this Motion, Plaintiff's quoted statement is not made to argue that this is the proper type of person to be served, but rather to provide an example of the type of person Defendant has already conceded would be proper to accept service on behalf of the agency. Plaintiff obviously disagrees with such a limitation.

to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b) (emphasis added). Thus, this section of the SCTCA makes clear that "police officers whose conduct is outside the scope of their official duties or constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude are liable for their torts 'in the same manner and to the same extent as a private individual under like circumstances' without any immunity from the Act." *Shelley v. S.C. Highway Patrol*, 432 S.C. 335, 341, 852 S.E.2d 220, 223 (Ct. App. 2020); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585 (2019) ("A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm."). This section works in conjunction with Section 15-78-60(17) of the SCTCA, which provides that "[t]he governmental entity is not liable for a loss resulting from . . . employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17) (emphasis added). As such, under this scheme, an individual governmental employee is not protected by the SCTCA and may be individually liable for actions that occur outside the scope of their official duties or are committed with fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity is not liable under the SCTCA for such actions. Conversely, an individual governmental employee is immune from suit under the SCTCA for actions that are committed within the scope of their official duties and do not constitute fraud, actual malice, intent to harm, or a crime involving moral turpitude, but the governmental entity can be liable for such actions under the SCTCA.

Rule 8(e), S.C.R.C.P. allows a plaintiff to plead in the alternative and even assert inconsistent causes of action. Such alternative or inconsistent pleading with respect to individual government employees has been permitted by the South Carolina Supreme Court. In *Skydive Myrtle Beach, Inc.*, the Court held, “We find it is entirely appropriate for [the plaintiff] to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties. . . . Pleading alternative theories of recovery based on the uncertainty of whether an employee acted within the scope of his employment or his official duties is common.” *Skydive Myrtle Beach, Inc.*, 426 S.C. at 187-88, 826 S.E.2d at 591-92.

With respect to Plaintiff’s claims against the SCDPS, SCHP, and Trooper Goshorn, Plaintiff has pled in her complaint alternative theories of liability against them both in accordance with the SCTCA. Here, Plaintiff has brought seven (7) total causes of action against the Defendants: 1.) Negligence/Negligent Training/Supervision/Retention; 2.) State Tort Claims Act violations; 3.) False Imprisonment; 4.) Malicious Prosecution; 5.) Abuse of Process; 6.) Outrage; and 7.) Gross Negligence/Recklessness. As to the cause of actions for negligence/gross negligence, Plaintiff concedes that the SCDPS is the proper party for those allegations and that the STCA cause of action is more of a restatement of the law. However, with respect to the other four (4) causes of action, as set forth below, the Complaint sufficiently states claims against all Defendants, including Trooper Goshorn.

2. The Complaint Sufficiently States a Cause of Action for False Imprisonment Against Goshorn.

As set forth above, one of the exceptions to immunity under the SCTCA is if an individual officer’s conduct constituted an “intent to harm.” S.C. Code Ann. § 15-78-70(b). In her third cause of action, Plaintiff has alleged false imprisonment against all Defendants. “False imprisonment is

an intentional tort.” *Gist v. Berkeley County Sheriff’s Dept.*, 336 S.C. 611, 619, 521 S.E.2d 163 (Ct. App. 1999). “To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.” *Law v. S.C Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642, 651 (2006) (emphasis added). Plaintiff has alleged as part of her false imprisonment cause of action,

Without evidence sufficient to constitute probable cause, and with evidence conclusively refuting the existence of probable cause, the Plaintiff was handcuffed and detained by the Defendants, and taken to the Greer City Detention Center for breathalyzer testing the Trooper knew or should have known was an exercise in futility. The acts . . . were intentional[.]

See Compl., ¶ 71-72.

Again, allegations that a defendant acted “for the purpose of injuring the plaintiff” satisfy this exception. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 185, 826 S.E.2d 585 (2019). In fact, even if in proving “intent” under an intentional tort, a plaintiff need not prove “intent to harm,” it could still be found by the jury that the officer acted with an intent to harm in committing the tort. See *Eldeco, Inc. v. Charleston County*, 372 S.C. 470, 642 S.E.2d 726, 732 (2007) (“Although it is true that harm may result from an intentional interference with existing or prospective contractual relations, it is not necessary that the interfering party intend such harm.”). Further, “whether the officers’ conduct constituted an intent to harm is a factual question for the jury.” *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Thus, Plaintiff has sufficiently plead the intentional tort of false imprisonment against Goshorn, and dismissal of this cause of action against him at this point is inappropriate, as it is a factual question for the jury to determine whether the false imprisonment was committed by Goshorn with an intent to harm.

3. The Complaint Sufficiently States a Cause of Action for Malicious Prosecution Against Goshorn.

Another exception in Section 15-78-70(b) is for causes of action that contain an element of “actual malice.” The “actual malice” standard under the SCTCA in Section 15-78-70(b) is defined as acting with “ill will toward the plaintiff” or acting “with conscious indifference of the plaintiff’s rights.” *Castine v. Castine*, 403 S.C. 259, 268, 743 S.E.2d 93, 97 (Ct. App. 2013).

The Complaint sets forth a malicious prosecution claim against all Defendants. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law*, 368 S.C. 424, 629 S.E.2d at 648 (emphasis added). As part of Plaintiff’s malicious prosecution claim against Defendants, Plaintiff alleges, “Defendants’ accusation, arrest, detainment, initial prosecution, and continued prosecution against Plaintiff, in the absence of probable cause, was a malicious act.” Compl., ¶ 83.

In *Brown v. Leonard*, No. 2008-UP-039 (Ct. App. Jan. 11, 2008), the South Carolina Court of Appeals examined the “actual malice” exception and held that “[a]lthough the [law enforcement agency] is entitled to statutory immunity from claims requiring a showing of malice, individual employees are not entitled to benefit from that same immunity. Otherwise, employees of organizations covered by SCTCA would have immunity from any intentional tort.” *Id.* The Court of Appeals held that the circuit court “erred in dismissing the malicious prosecution claim against [a deputy] based upon the same immunity granted to the [law enforcement agency].” *Id.*

While the Court of Appeals has subsequently held “one need not show actual malice in order to successfully maintain an action for malicious prosecution,” it also held that a showing of malice under that cause of action “does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition.” *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546,

698 S.E.2d 845, 855 (Ct. App. 2010) (emphasis added). Thus, a cause of action for malicious prosecution could possibly be maintained against the SCDPS and individual troopers simultaneously depending on if such actual malice is found or not. This determination is not made by the court at the Rule 12(b)(6) stage, as the South Carolina Supreme Court has long held that “the question of actual malice is a question of fact for a jury.” *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013) (“[T]o the extent the existence of common law actual malice becomes an issue, its existence is a question of fact that must be proven at trial.”). In other words, whether Goshorn in this case acted with actual malice or implied malice is a factual question for the jury, and thus, neither the SCDPS, nor the individual trooper, can be dismissed at the 12(b)(6) stage on immunity grounds under Section 15-78-60(17) or 15-78-70(b), respectively. See *White v. City of N. Charleston*, No. 2020-UP-231 (Ct. App. Aug. 5, 2020) (“Accordingly, the circuit court should not have granted immunity under [15-78-60(17)], as whether the officers’ conduct constituted an intent to harm is a factual question for the jury.”).

4. The Complaint Sufficiently States a Cause of Action for Abuse of Process Against Goshorn.

Plaintiff has alleged a cause of action for abuse of process against all Defendants and alleged, “The Defendants had an ulterior purpose in employing legal process against the Plaintiff [and] acted willfully in the use of process, which was improper as improvidently authorized and/or aimed at an illegitimate collateral objective.” Compl., ¶ 90-91. “The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding.” *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211, 213 (Ct. App. 2008). The South Carolina Court of Appeals has held that abuse of process “does not require a finding of actual malice or intent to harm.” *Id.* (emphasis added). However, under an

abuse of process claim with respect to the “intent to harm” exception “harm may result from . . . ‘bad intent.’” 379 S.C. 346, 665 S.E.2d at 214. Again, under the SCTCA, the “actual malice” exception is “defined by situations where ‘defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff.’” Id. Under an abuse of process claim, the abuse may be accompanied, but “need not be accompanied by any ill will.” Again, the determination of whether the abuse of process was committed with actual malice or intent to harm is a factual question for the jury. *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428, 431 (2005); *Castine v. Castine*, 403 S.C. 259, 743 S.E.2d 93, 98 (Ct. App. 2013); *White v. City of N. Charleston*, 2020-UP-231 (Ct. App. Aug. 5, 2020). Therefore, at the 12(b)(6) stage, these claims for abuse of process against Goshorn cannot be dismissed.

5. The Complaint Sufficiently States a Cause of Action for Outrage Against Goshorn.

Outrage is also known as intentional infliction of emotional distress. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 575, 780 S.E.2d 252, 260 (2015). Plaintiff's cause of action for outrage against Trooper Goshorn in his individual capacities is allowed to proceed under South Carolina law.

Under the SCTCA, a person who has suffered “a loss caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim” against the governmental entity. S.C. Code Ann. § 15-78-50(a). However, a “loss” as defined by the SCTCA **does not include outrage**. S.C. Code Ann. § 15-78-30(f) (emphasis added). Thus, courts have found that a governmental entity is immune from suit for intentional infliction of emotional distress. *Trask v. Beaufort County*, 392 S.C. 560, 573, 709 S.E.2d 536, 542 (Ct. App. 2011).

Nevertheless, again, Section 15-78-70(b) of the SCTCA provides that “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (emphasis added). With respect to the “intent to harm” exception in Section 15-78-70(b), the South Carolina Supreme Court has held that allegations that a defendant acted “for the purpose of injuring the plaintiff” satisfy this exception. *Skydive Myrtle Beach, Inc.*, 426 S.C. at 185.

“To state a claim for [outrage], a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiffs emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.” *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d 42 (2004). Thus, in examining the SCTCA with respect to claims for outrage or intentional infliction of emotional distress against individuals, the South Carolina Supreme Court has allowed claims against individuals to proceed. In *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005), the South Carolina Supreme Court refused to reverse a trial court for denying individual county council members’ motion to dismiss claims for defamation, defamation per se, and intentional infliction of emotional distress and held as follows:

The South Carolina Tort Claims Act provides “[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit . . . if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code

Ann. § 15-78-70(b) (2005). Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, the above statute would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

366 S.C. 354, 622 S.E.2d at 537-38. Likewise, in *In Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004), the plaintiff alleged the tort of outrage or intentional infliction of emotional distress against an assistant principal at a middle school, and the South Carolina Supreme Court held as to individual immunity:

We find that [the defendant's] retaliatory conduct was a continuation of his improper sexual advances toward [the plaintiff] and was a product of personal, not occupational, motives. The principle of governmental immunity is not intended to protect a defendant such as Badger who has used his authority for nothing more than to personally retaliate against an employee. In addition, section 15-78-70(b) denies governmental immunity for defendants whose actions involve actual malice and an intent to harm. We find that Badger's retaliatory conduct involved actual malice and an intention to harm Frazier.

361 S.C. at 103, 603 S.E.2d 587.

Here, in her outrage claim, Plaintiff has alleged, “. . . Furthermore, [Defendants'] conduct was willful, wanton and reckless and was certain to cause the Plaintiff to suffer both physical and emotional distress, which was so severe that no reasonable person could be expected to endure it.” Compl., ¶ 94. Thus, as the outrage claim contains an allegation of “intent to harm,” based on the above authority, the claim can proceed against Trooper Goshorn.

6. Plaintiff Should Be Afforded the Opportunity to Amend Her Complaint Before the Final Order of Dismissal.

Should the Court believe that Plaintiff's Complaint is deficient in regard to any of the claims against Trooper Goshorn, Plaintiff must be given an opportunity to amend the Complaint before the final order of dismissal is entered. The South Carolina Supreme Court holds, “[w]hen a trial court finds a complaint fails ‘to state facts sufficient to constitute a cause of action’ under

Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585 (S.C. 2019). In *Skydive*, the Supreme Court found that the trial court erred in dismissing individually named employees under the SCTCA pursuant to Rule 12(b)(6) and “failing even to consider allowing [the plaintiff] to amend its complaint.” *Id.* In so holding, the Court stated as follows regarding how claims against individual employees are to be judged at the pleading stage:

A governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm. § 15-78-70(b). Therefore, although [plaintiff] alleged in its complaint that Respondents were acting as agents of the governmental entities, the facts and claims recited above set forth several plausible grounds upon which [plaintiff] could successfully allege Respondents are not entitled to immunity. It is not our role to determine whether the allegations [plaintiff] might make in an amended pleading will state a valid claim. However, we cannot definitively say it is impossible for [plaintiff] to plead a valid claim against Respondents.

426 S.C. at 187, 826 S.E.2d 585. Based on the arguments set forth above, there are certainly allegations that have been made against Trooper Goshorn that state valid claims against him. To the extent the Court disagrees, Plaintiff should be allowed the opportunity to amend her Complaint to more succinctly plead these allegations against Goshorn.

III. THE FORM 4 ORDER DID NOT ADDRESS THE ORAL MOTION SEEKING LEAVE TO AMEND THE PLAINTIFF’S COMPLAINT.

When fewer than all claims have been adjudicated, “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 54(b), SCRCF. Rather than continue to wait for a Formal Order that may never come, and out of an abundance of caution in ensuring that her

arguments are (re)considered, Plaintiff preemptively submits this Motion pursuant to Rule 59(e). When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend judgment to preserve the issue for appeal. *Shirley's Iron Works, Inc. v. City of Union* (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778.

Plaintiff's counsel orally moved for leave to amend her complaint during the Hearing of February 23, 2023. Under SCRCP Rule 7(b)(1), an oral motion may be made during a hearing. Also see *Hundley ex rel. Hundley v. Rite Aid of South Carolina, Inc.* (S.C.App. 2000) 339 S.C. 285, 529 S.E.2d 45, *rehearing denied*. ("Normally, motions must be made on the record to be preserved; however, an oral motion that is later reduced to writing can preserve an issue for appeal.").

Plaintiff moved for leave to amend its summons and complaint in the event this Court granted Defendants' Motions to Dismiss. Defendants were present when oral motion was made and did not object to the filing of an amended summons and complaint. On the contrary, Defense counsel indicated that such would be agreeable by indicating what his plans would be in the event Plaintiff were granted leave to amend—specifically, that he would remove the suit to federal court. Accordingly, Defendants would not be prejudiced by this court granting leave to amend. However, if this court were to deny Plaintiff's oral motion, Plaintiff would be prejudiced by the Statute of Limitations expiring.

Such notwithstanding, Plaintiff argues that this court should reconsider its position taken in the Form 4 Order and deny Defendants' Motions to Dismiss, as Plaintiff is confident that the decision provided in the Form 4 Order was, respectfully, in error. Accordingly, Plaintiff asks this court to reconsider its grant of Defendant's Motion to Dismiss, and in the event that the Court still

maintains its grant of Defendant’s Motion to Dismiss, allow the Plaintiff to amend her complaint to include additional causes of action, specifically that of a §1983 claim, and any other claims as discussed herein.

CONCLUSION

WHEREFORE, for the reasons stated above, the Plaintiff respectfully requests that this Court Reconsider its Form 4 Order of March 21, 2023, which dismissed the claims against all Defendants, and instead deny the Defendants’ Motions to Dismiss. Alternatively, Plaintiff renews its oral motion requesting leave from the Court to file and serve an Amended Complaint in the event Defendants Motions to Dismiss are formally granted.

PLAINTIFF RESERVES THE RIGHT TO AMEND THIS MOTION IN THE EVENT A FORMAL MOTION IS SUBMITTED TO THE COURT, AS INSTRUCTED BY THE FORM 4 ORDER.

*****SIGNATURE ON FOLLOWING PAGE*****

Anderson, South Carolina
Dated: 05/23/2023

s/Nicolas J. Baughman
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ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	RULE 11 OF SOUTH CAROLINA
	)	RULES OF CIVIL PROCEDURE
GREENVILLE COUNTY	)	CERTIFICATION
	)	

Undersigned counsel certifies that consultation would serve no useful purpose as to the foregoing motion(s).

Respectfully submitted this 23rd day of May, 2023.

s/Nicolas J. Baughman

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ATTORNEY FOR THE PLAINTIFF

EXHIBIT 14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Taylor Chasey Robertson,	)	
	)	<i>Civil Action No.: 2022-CP-42-01677</i>
Plaintiff,	)	
	)	
-vs-	)	ORDER
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

CASE HISTORY

This action was filed on May 9, 2022. The Plaintiff alleges claims against the South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn in connection with an incident which occurred on May 9, 2020. The Plaintiff alleges that the South Carolina Department of Public Safety and the South Carolina Highway Patrol are government agencies within the meaning of the South Carolina Tort Claims Act. The Complaint further alleges that at all times Patrick Goshorn acted within the scope and course of his employment and he is named in his individual and official capacities. The Complaint sets out seven (7) separate Causes of Action. The FIRST CAUSE OF ACTION alleges Negligence, Training and Supervision. The SECOND CAUSE OF ACTION alleges Negligence and Gross Negligence as to proper and adequate training and supervision of officers, and a failure to protect the right of the Plaintiff. The THIRD CAUSE OF ACTION alleges False Imprisonment, following an arrest for suspicion of DUI. The FOURTH CAUSE OF ACTION alleges Malicious Prosecution in connection with the charge of DUI

and a charge of failure to change an address on a driver=s license. The FIFTH CAUSE OF ACTION alleges Abuse of Process, claiming that the Defendants had an ulterior purpose in employing legal process against the Plaintiff. The SIXTH CAUSE OF ACTION alleges claims for Outrage and alleges that the Defendants are vicariously liable for actions within the scope and course of employment. The SEVENTH CAUSE OF ACTION alleges Gross Negligence/Recklessness in connection with Plaintiff=s arrest for DUI and for improperly ticketing the Plaintiff for Failure to Change Address.

The Complaint was filed on May 9, 2020. The record reflects that there are three (3) Affidavits of Service dated September 7, 2020, indicating that service was made to Candance Horton at 10311 Wilson Blvd., Blythewood, South Carolina 29016 on September 6, 2022, to effect service on the South Carolina Department of Public Safety and the South Carolina Highway Patrol. There is also an Affidavit of Service as to the South Carolina Attorney General=s office on September 6, 2022. Patrick Goshorn was served on September 6, 2022, at 304 Hampton Ridge Drive, Greer, SC by delivery of the Summons and Complaint to his wife, as appears by an Affidavit of Service filed with the Court.

The filing history shows that the Defendants filed a 12(b) Motion to Dismiss on October 6, 2022, at 2:39 p.m., a Motion to Dismiss pursuant to S.C. Code Ann. § 15-78-60 and § 15-78-70 at 4:17 p.m. on October 6, 2022, and an Answer filed October 6, 2022, at 5:05 p.m. The Answer specifically noted that it was subject to the Rule 12 Motion previously filed. Defense counsel also filed a Motion to Allow Delayed Filing on October 17, 2022, referencing an administrative error that was thought to have occurred. The Motion to allow a delayed filing notes that defense counsel as a courtesy communicated with Plaintiff=s counsel prior to the filing of the Answer to discuss the

anticipated 12(b) Motion.

These Motions came to be heard before me on February 23, 2023.

FACTUAL ALLEGATIONS

The Complaint alleges that on May 9, 2020, at approximately 2:00 a.m., Trooper Goshorn pulled the Plaintiff over for speeding, going 45 miles per hour in a 35 mph zone, following which he performed field sobriety tests and then took the Plaintiff into police custody for a breathalyzer analysis. The Complaint alleges that Ms. Robertson had a 0.01% BAC and that pursuant to S.C. Code Ann. §56-5-2950 she was conclusively presumed not under the influence of alcohol. The Complaint further alleges that the Plaintiff was also given a ticket for failure to change the address on her license. The Complaint further states that the Plaintiff was released from the Greer City Detention Center at 3:20 a.m. The Complaint further alleges that the ticket was ultimately dismissed because Patrick Goshorn was no longer with the Department of Public Safety. The claims set forth in the Complaint arise out of that incident.

DEFENDANTS= RULE 12(b) MOTION TO DISMISS

The Defendants= 12(b) Motion to Dismiss was filed October 6, 2022, at 2:39 p.m. In the 12(b) Motion, the Defendants refer to SCRCF Rule 12(b)(2)(4) and (5). Rule 12(b) allows for these defenses to be raised by answer and/or by a motion: (2) lack of jurisdiction over the person. (4) insufficiency of process (5) insufficiency of service of process. Rule 12(b)(2)(4) and (5) are also set out as defenses in the Answer filed by the Defendants.

In support of the Defendants= Motion to Dismiss pursuant to Rule 12(b), the Defendants have submitted the Affidavit of Diana Brown, who is the Human Resource Operations Manager of the South Carolina Department of Public Safety. The Affidavit of Diana Brown indicates that

Candance Horton was not an employee of either the South Carolina Department of Public Safety or the South Carolina Highway Patrol. Her affidavit further confirms that Candance Horton was never authorized to accept service on behalf of either the Department or the agency. Based on this Affidavit, the Defendants argue that there has been no proper service as to the South Carolina Department of Public Safety or the Highway Patrol.

The Defendants' Rule 12 Motion also asserts that the action has not been properly commenced and served timely pursuant to Rule 3 SCRPC and Rule 4 SCRPC. Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.

Rule 3 SCRPC addresses when an action is commenced. Rule 3(a) provides that a civil action is commenced when the Summons and Complaint are filed with the Clerk of Court, if (1) the Summons and Complaint are served within the statute of limitations in any matter prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than 120 days after filing.

The incident which is the basis of this suit occurred on May 9, 2020. S.C. Code Ann. ' 15-78-110 allows for a two year statute of limitations and, an action is barred unless it is commenced within two years from the date of loss absent the filing of a verified claim. The Complaint in this action was filed exactly two years from the date of the incident. The attempted service of the Complaint, on September 6, 2022, occurred exactly 120 days from the date the Complaint was filed.

For whatever reason, it appears that the Complaint was not filed until the last day to comply with the Statute of Limitations, and further, there was no attempt at service until the very last date allowed by Rule 3. In order to comply with Rule 3, to commence an action the Complaint must not only be filed within the statute of limitations, but it must be actually served within 120 days from the date of filing.

I find that the attempted service on the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol was not proper service pursuant to Rule 4, and accordingly, this action was not timely commenced as to the South Carolina Department of Public Safety, and/or the South Carolina Highway Patrol. I therefore must find that the Defendants= 12(b) Motion to Dismiss the South Carolina Department of Public Safety and the South Carolina Department of Highway Patrol should be granted.

**DEFENDANTS' MOTION PURSUANT TO S.C. CODE ANN. ' 15-78-60 AND
' 15-78-70**

The Defendants also move to dismiss the Complaint as to Patrick Goshorn. The Complaint alleges that at all times Patrick Goshorn acted within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.

S.C. Code Ann. ' 15-78-70 provides that the Tort Claims Act is the exclusive remedy of any tort committed by an employee. Section 15-78-70 provides that an employee who commits a tort while acting within the scope of his official duty is not liable except in circumstances where it is proven that an employee=s conduct constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. See also ' 15-78-60(17).

Nowhere in the Plaintiff=s Complaint is there any allegation or suggestion that Patrick Goshorn acted outside the scope and course of his official duties. Further, the Complaint nowhere makes reference to any allegation that Goshorn=s actions amounted to actual fraud, actual malice, intent to harm, and/or a crime of moral turpitude.

The Plaintiff=s FIRST CAUSE OF ACTION – “Negligent Training/Supervision/Retention” is a claim that can only lie against the South Carolina Department of Public Safety had it been timely commenced. This claim is not applicable to or viable as to Patrick Goshorn.

The SECOND CAUSE OF ACTION – “State Tort Claims Act” also alleges claims that could exist against the South Carolina Department of Public Safety and/or the Highway Patrol if brought timely. This claim, however, also is directed at South Carolina Public Safety and does not apply to Patrick Goshorn.

The Plaintiff=s THIRD CAUSE OF ACTION alleging “False Imprisonment” is again another claim that could possibly exist against the South Carolina Department of Public Safety and/or the Highway Patrol if not barred by statute [§15-78-60(23)] and/or the South Carolina Rule of Civil Procedures. In this cause of action, the Plaintiff alleges that she was unlawfully restrained, but there is no allegation that Patrick Goshorn acted with actual malice, or an intent to harm. Actual malice is not an element of a False Imprisonment claim. Accordingly, I find that Patrick Goshorn is entitled to immunity pursuant to ' 15-78-70(a)(b).

As to the Plaintiff=s FOURTH CAUSE OF ACTION for “Malicious Prosecution,” such a claim could possibly lie against the Department of Public Safety if timely brought. Again, as to the FOURTH CAUSE OF ACTION, there is no allegation that Patrick Goshorn acted with actual malice and/or an intent to harm the Plaintiff, and actual malice is not an element of a malicious

prosecution claim. For Patrick Goshorn to have individual liability his actions must amount to actual malice, and here I find he is entitled to immunity in accordance with ' 15-78-70.

The Plaintiff alleges a FIFTH CAUSE OF ACTION- “Abuse of Process.” This claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. The elements of this claim do not involve allegations of actual fraud, actual malice, intent to harm and/or crime of moral turpitude so as to deprive Patrick Goshorn of immunity under ' 15-78-70(a) and (b).

That as to Plaintiff=s SIXTH CAUSE OF ACTION – “Outrage,” again, this claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. Further, as to the Plaintiff’s SIXTH CAUSE OF ACTION, referencing physical and emotional distress, S.C. Code Ann. ' 15-78-30(f), bars any claim for intentional infliction of emotion distress. Also, as to the Plaintiff’s SIXTH CAUSE OF ACTION, there is no allegation of actual fraud, actual malice, and/or intent to harm to implicate individual liability for Patrick Goshorn. I find that the Plaintiff’s SIXTH CAUSE OF ACTION should be dismissed.

The Plaintiff=s SEVENTH CAUSE OF ACTION alleges “Gross Negligence/ Recklessness.” These allegations could possibly be viable if this action was timely commenced against the South Carolina Department of Public Safety and/or the Highway Patrol but, as to this cause of action, Patrick Goshorn has immunity in his individual capacity.

CONCLUSION

All of the claims set forth in the Plaintiff’s Complaint as are directed against the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol are dismissed because this action was never properly commenced as to those named defendants. This action

was filed on the last date before the statute of limitations would have run, and there was no attempt to effect service on the South Carolina Department of Public Safety and/or the Highway Patrol until the last day allowable by Rule 3 SCRCP. Because there was no proper service of the Summons and Complaint on either the South Carolina Department of Public Safety and/or the Highway Patrol to properly commence this action as to those entity defendants the Complaint is dismissed. As to the individual defendant, Patrick Goshorn, the claims as are alleged against him do not involve the elements of actual fraud, actual malice, and/or intent to harm and those claims are dismissed as to him.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that pursuant to SCRCP 12(b)(2)(4) and (5), the Complaint is dismissed as to the South Carolina Department of Public Safety and/or the Highway Patrol.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to S.C. Code Ann. ' 15-78-60 and ' 15-78-70, the Complaint of the Plaintiff is dismissed as to Patrick J. Goshorn.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion to allow for a delayed filing is granted.

IT IS SO ORDERED.

J. Derham Cole, Presiding Judge



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2023-06-26 17:47:12 page 9 of 9

EXHIBIT 15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION No.: 2022-CP-42-01677
	)	
Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol,	)	
and Trooper Patrick J. Goshorn,	)	
	)	
Defendants.	)	

I hereby certify that I, Patty Flanary Sanders, as paralegal to Russell W. Harter, Jr., attorney for defendants in the within action, on this the 17th day of November, 2022 served the attorneys listed hereinbelow in the above-captioned matter with copy of **Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff** by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Nicolas J. Baughman
 Nicholas J. Baughman Attorney at Law, LLC
 600 North McDuffie Street
 Anderson, SC 29621

C. Austin McDaniel
 C. Austin McDaniel, Attorney at Law, LLC
 523 N. Main Street
 Anderson, SC 29621


 Patty Sanders,
 Paralegal to Russell W. Harter, Jr.
 Chapman, Harter & Harter,
 P.A. 14 Lavinia Avenue Post
 Office Box 10224 Greenville,
 SC 29603 864/233-4500
 864/232-1710 (fax) E-mail:
rwhjr@chhlaw.net

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF SPARTANBURG) CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,)
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Department of) DEFENDANTS' FIRST SET OF
 Public Safety, South Carolina) INTERROGATORIES TO
 Highway Patrol, and Trooper) PLAINTIFF
 Patrick J. Goshorn,)
)
 Defendants.)

TO: PLAINTIFF AND HER ATTORNEY(S):

The defendants request that the plaintiff answer the following Interrogatories pursuant to Rules 26, 33, and 37 of the South Carolina Rules of Civil Procedure:

INSTRUCTIONS:

A. Please make your answers to these Interrogatories in writing and under oath. Within thirty (30) days of the date of service of these Interrogatories upon you, please send copies of your answers to the undersigned attorney(s) for the defendant.

B. Every Interrogatory herein shall be deemed a continuing Interrogatory and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such Interrogatory.

C. If you object to or otherwise decline to answer any portion of any Interrogatory, provide all information called for by that portion of the Interrogatory to which you do not object

or which you do not decline to answer. If you object to any Interrogatory on the ground that it is too broad, provide such information which is concededly relevant. For those portions of any Interrogatory to which you object or to which you otherwise decline to answer, state the reason for your objection.

D. Every reference to "you" or "your" in these discovery requests refers to Plaintiff. References to "you" or "your" do not refer to plaintiff's attorney(s).

E. When an Interrogatory or any of its subparts calls for you to "specify in detail" your allegations in your Complaint, the Interrogatory calls for you to set forth each fact and identify each document which you contend supports your allegation, to identify each person who possesses knowledge of facts relating to your allegation, and to identify any other basis for your allegation.

F. The following definitions apply to all Interrogatories:

(1) Serious. The term "Serious" means such injury(ies), illness(es), sickness(es), and disease(s) that require(d) plaintiff(s) to seek professional medical advice or attention.

(2) Document. The term "Document" includes any written or graphic matter however produced or reproduced, including any copy thereof.

(3) Identify. The term "Identify" when referring:

a. to a person, means to state his or her full name, occupation, employer, and present or last known business and residential addresses and phone numbers.

b. to a public or private corporation, partnership, association, or other organization, or to a governmental agency, means to state its full name and present or last known business address and phone number.

c. to a statement, means to identify who made it, who took or recorded it, and all others, if any, present during the making thereof; to state when, where, and how it was taken or recorded; and to identify who has the present or last known possession, custody, or control thereof.

d. to a document, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; to identify the individuals to whom the original or a copy was circulated; and to identify who has the present or last known possession, custody, or control thereof.

e. to any other tangible thing, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has the present or last known possession, custody, or control thereof.

INTERROGATORIES:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in

possession of the party that relate to the claim or defense in the case.

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. With respect to each expert witness identified above, state his/her place of employment and qualification(s). Additionally, please state:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which each expert will testify;
- c. furnish a summary of the grounds of each opinion expected to be elicited from each of the experts named;
- d. state whether each expert has prepared a report or other written summary of his or her findings, opinions, or conclusions;
- e. with respect to any oral reports from proposed expert witnesses, state:
 - i) the subject matter on which the expert is expected to testify;
 - ii) the substance of the facts and opinions to which the expert is expected to testify; and

iii) a summary of the grounds for each opinion.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

8. Identify and give the substance of all written or transcribed statements, recordings, or videotapes which relate to the facts of this lawsuit or the damages you claim, given by you or any witness in this matter.

9. Please identify each and every lay or non-expert witness whom plaintiff proposes to call as a witness at the trial of this case, including the job title, employer, business and home addresses and telephone numbers of each such witness.

10. If there is included with this action a claim for economic loss, state the job from which this time was lost, giving the name, address, and telephone number of this employer; the number of hours or days lost; the duration which you contend the loss occurred; and the total economic and lost income you claim.

11. Do you contend the defendants violated any statute, code, ordinance, or regulation of any governmental entity or regulatory authority? If so, please specifically identify each such statute, code, ordinance, or regulation and the basis for any such contention.

12. Do you contend that any agent(s), employee(s), and/or representative(s) of the defendant made to you, your agent(s), and/or representative(s) any statements which you contend support the allegations made in the Complaint? If so, identify:

- a. Who made the statement(s);
- b. To whom such statement(s) were made;
- c. When and where the statement(s) were made;
- d. Who was present when the statement(s) were made;
- e. The substance of the statement(s); and
- f. State the contents of any and all conversations between the plaintiff and any employee(s), agent(s), and/or employee(s) of Defendant, specifically identify the parties to each conversation and the date of each conversation. Specify whether each conversation was in person or by telephone or other communications channel.

13. Other than this suit, have you ever been a party to a civil action lawsuit? If so, identify whether as the plaintiff or the defendant, the nature of the suit, the caption of the matter, the attorney(s) involved, and the disposition or outcome of the case.

14. Please state the names of any relatives over the age of eighteen (18) who are residents of Spartanburg County, South Carolina.

15. Describe your employment history during the past ten (10) years, including job title, employer, business address and telephone number, dates of employment,

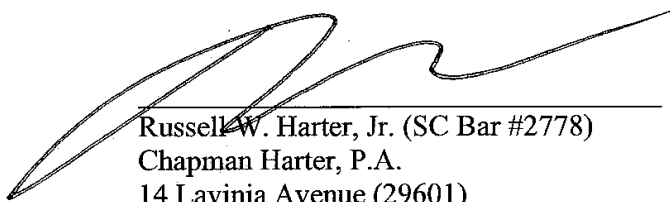
supervisor, a brief description of job duties, wage, the date and amount of any wage increases, and the reason for leaving each job.

16. Set forth the gross and net income reported by you to the Internal Revenue Service from 2015 to the present date. Attach copies of each federal and state income tax return for this 10-year period, including the W-2 forms, to these answers.

17. Other than this instance, have you ever been arrested or convicted of any crime (whether felony or misdemeanor), if so, please identify each crime, the date of arrest, the arresting authority, the court in which any criminal proceeding against him was held, and the disposition of each charge.

**These Interrogatories shall be deemed continuing so
as to require supplemental responses up until and prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr. (SC Bar #2778)
Chapman Harter, P.A.
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500 (*Phone*)
864/232-1710 (*Facsimile*)
rwhjr@chhlaw.net
ATTORNEYS FOR DEFENDANTS

Page -7-

October , 2022

A handwritten signature, possibly reading "G", is written in black ink below the date.

Page -8-

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,)
Plaintiff,)
vs.)
South Carolina Department of)
Public Safety, South Carolina)
Highway Patrol, and Trooper)
Patrick J. Goshorn,)
Defendants.)

DEFENDANTS' FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFF

TO: PLAINTIFF AND HER ATTORNEY(S):

YOU ARE HEREBY REQUIRED, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, to produce the following documents and tangible things in the possession, custody, or control of plaintiff for inspection and copying. Within thirty (30) days of the date of service of this Request for Production upon you, please send copies of your responses to the undersigned attorney(s) for defendants.

These requests should be considered to be continuing in nature. If, at any time during the course of the case, supplementation of your initial answers becomes necessary, you are required to so supplement your response without the filing of additional requests by defendants. If such supplemental response is not furnished, the undersigned attorney(s) will move at the time of trial to exclude from evidence any information requested and not furnished.

DEFINITIONS:

DOCUMENT. The term "document," either singular or plural, including "documentation,"

is defined as originals, or if not available, true copies, of all memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, telegrams, summaries of conversations, summaries of memoranda of meetings or conferences, lists of persons attending meetings or conferences, diaries, records or summaries of interviews, investigations or reports, summaries of negotiations, agreements, contracts, corporate rules, corporate policies, office manuals, invoices, canceled checks, journals, ledgers, file cards, index cards, indexes, deposit slips, data processing cards, computer or business machine print-outs, accountants' work papers, accountants' statements, financial statements, whether audited or unaudited, evidence of indebtedness, trust deeds, mortgage instruments, security agreements, trust agreements, loan applications, leases, documents created or reflecting a security interest, loan agreements, financial statements, speeches, public relation releases, press releases, advertisements, pamphlets, circulars, trade letters, annual or other reports, documents filed with governmental agencies, reports of experts and research personnel, drafts and preliminary copies of any of the foregoing, marginal comments appearing on any documents and all other writings and data compilations, including any written, printed, recorded, or graphic matter, photographic matter or sound reproductions, however produced or reproduced, or other tangible things upon which words or phrases are affixed or from which, by appropriate transcription, such written or tangible things may be produced, within the possession, custody, or control of plaintiff, his agent(s), servant(s), employee(s), representative(s), or counsel.

PERSON. The term "person" whether singular or plural, unless otherwise specified, means not only a natural person but also a firm, partnership, association, or corporation.

MANNER OF PRODUCTION. The documents produced pursuant to this request shall be separately produced for each paragraph of the request, or in the alternative, shall be identified

as complying with the particular paragraph or paragraphs of the request in which they are responsive.

PERIOD COVERED. Unless otherwise specifically indicated, the time frame of the documents requested is the ten-year period next preceding the date hereof, and includes future documents completed, received, or transmitted after the date hereof.

PLAINTIFF. The term "plaintiff," or any synonym thereof, is intended to and shall include and embrace, in addition to the plaintiff, her attorney(s) and all agents, servants, employees, representatives, investigators, and all others who may have obtained information for or on behalf of said plaintiff as well as all individuals, named and unnamed, who have a financial interest in the outcome of this suit.

PRIVILEGED DOCUMENTS. In the event that you wish to assert either attorney-client privilege or the work product immunity doctrine as to any documents requested by any of the following specific requests, then as to each such document, provide defendants with an identification of such document in writing, such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the names of each person to whom the original or any copy was circulated, the names appearing on any circulation list you have, and a restatement of the subject matter of each document in sufficient detail to permit a determination of the validity of such assertion in the event of a Motion to Compel, without waiving the privilege effected, and a detailed statement of the facts relied upon as a basis for the assertion of privilege or exclusion.

The documents and things to be produced by plaintiff are as follow:

REQUESTS FOR PRODUCTION

1. All documents upon which you relied in preparing each response to Defendants' First Set of Interrogatories to Plaintiff.
2. All documents identified in your answers to Defendants' First Set of Interrogatories to Plaintiff.
3. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at trial in the case in chief, for cross examination; impeachment and/or for any purpose whatsoever.
4. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at any deposition in the direct examination, for cross examination; impeachment and/or for any purpose whatsoever.
5. All documents relating or referring in any way to, or showing or constituting any contentions, causes of action, or basis of recovery that plaintiff is asserting in this lawsuit.
6. All written, recorded, filmed, transcribed, or videotaped statements of all parties and nonparty declarants pertaining to the subject matter of this lawsuit.
7. All statements, whether in written, audio, electronic, or other recorded form, that plaintiff has obtained from defendants or any employee or former employee, agent, or representative, concerning the occurrences that form any part of the basis of this lawsuit.
8. All written or recorded communications, including, but not limited to, correspondence, notices, memoranda, faxes, or any other documents, made or exchanged between the plaintiff or plaintiff's family and defendants or any of their present or former associates, employees, agents, or representatives.

9. All documents which evidence any of the damages, medical expenses, lost wages, or any claim for economic or financial loss of any kind or nature that the plaintiff is claiming in this lawsuit.

10. All documents which identify witnesses to or other persons with knowledge of the incident(s) referred to in the Plaintiff's Complaint.

11. Copies of Plaintiff's W-2's, and federal and state income tax returns from 2015 to the present date, as well as any other documents, including economic loss reports, upon which Plaintiff relies in support of any claim(s) for damages.

12. Copies of all photographs, slides, videotapes, compact discs, or other pictorial representations relevant to the allegations that form any part of the basis of this lawsuit.

13. All documents and tangible things that have been submitted to, prepared by, used by, and/or relied upon by any expert witness regarding the subject matter of this lawsuit.

14. All documents relating to any claim or demand made by the plaintiff for damages, compensation, or other benefits allegedly resulting from any injury, illness, or damage, including, but not limited to, any disability claims to any employer or governmental/regulatory agency (e.g., social security).

15. All documents that are in the care, custody, or control of the plaintiff, plaintiff's present or former agents, servants, employees, representatives, or counsel that in any way relate to the subject matter of this claim, the defendants, and/or any agent of the defendants.

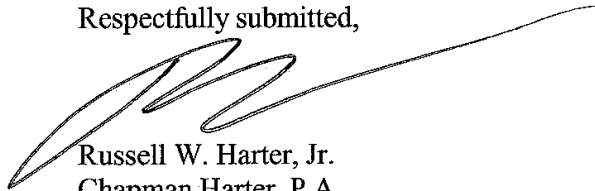
16. Copies of any and all correspondence, photographs, drawings, tapes, email, documents, and/or tangible physical evidence in possession of the plaintiff and/or his counsel that relate to the claim set forth in the Plaintiff's Complaint.

17. Copies of any and all correspondence, photographs, drawings, tapes, email,

documents, and/or tangible physical evidence concerning any party and/or witness to this case.

**These Requests for Production of Documents shall be deemed to be
continuing in nature and require supplemental response prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr.
Chapman Harter, P.A.
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500
864/232-1710 (*facsimile*)
rwhjr@chhlaw.net
ATTORNEYS FOR DEFENDANTS

October *6*, 2022

Page -6-

EXHIBIT 16

5/19/23, 3:00 AM

Nicolas J Baughman, Attorney at Law, LLC Mail - Robertson ..



Baughman, Nicolas <nick@baughmanlawsc.com>

Robertson ..

1 message

Russell Harter <rwhjr@chhlaw.net>

Fri, Mar 3, 2023 at 5:14 PM

To: Nicolas Baughman <nick@baughmanlawsc.com>, "austin@austinmcdaniellaw.com" <austin@austinmcdaniellaw.com>

I served him discovery back a few months ago. Please let me know when we can get those responses. Thank you, Rusty.

Russell W. Harter, Jr.
Chapman, Harter & Harter, PA
14 Lavinia Avenue
P.O. Box 10224 (29603)
Greenville, SC 29601
Main: (864) 233-4500
Fax: (864) 232-1710

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EXHIBIT 17


[Online Services](#) | [Agency Listing](#)

[Contact Us](#)



South Carolina
Department of Public Safety
 Protecting. Educating. Serving.



Menu

[About Us](#)
[Our Organization](#)
[News](#)
[Careers](#)
[Services](#)
[Resources](#)

[Home](#) » Service of Process, Discovery, Subpoenas

Service of Process, Discovery, Subpoenas

Criminal Magistrate (Traffic Court) Cases

For service of process, including but not limited to discovery, Rule 5 and Brady Motions, please serve the Trooper as shown on the Uniform Traffic Ticket at the appropriate Troop office. See Troop Contact Information below:

[Troop One](#) (Clarendon, Kershaw, Lee, Lexington, Richland, Sumter)

[Troop Two](#) (Abbeville, Edgefield, Greenwood, Laurens, McCormick, Newberry, Saluda)

[Troop Three](#) (Anderson, Greenville, Oconee, Pickens, Spartanburg)

[Troop Four](#) (Cherokee, Chester, Chesterfield, Fairfield, Lancaster, Union, York)

[Troop Five](#) (Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, Williamsburg)

[Troop Six](#) (Beaufort, Berkeley, Charleston, Colleton, Dorchester, Jasper)

[Troop Seven](#) (Aiken, Allendale, Bamberg, Barnwell, Calhoun, Hampton, Orangeburg)

[Troop Eight](#) (Criminal Interdiction Unit, Target Zero Team, Motors, Safety Improvement Team)

[Troop Nine](#) (MAIT)

Questions regarding service of process may be referred to the SCDPS Paralegal at (803) 896-7965.

[Fees for Requested Documents](#)
[FOIA Request Form **NEW!**](#)

Civil Subpoenas and/or Civil Litigation

For service of process, including but not limited to Subpoenas in pending civil litigation, you may serve:

Office of General Counsel
Attn: Paralegal
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, SC 29016

For civil subpoenas requesting information on automobile accidents, please include the TR-310 Accident Report with your request. This may be obtained from the [SC Department of Motor Vehicles](#) by completing [Form FR-50](#).

Questions regarding service of process may be referred to the SCDPS Paralegal at (803) 896-7965.

** Please refer to appropriate rules for service of process upon a state agency.*

*** SCRCF require tendering fees for attendance and mileage allowed by law for official travel of State officers and employees when commanding their appearance under a subpoena.*



South Carolina Department of Public Safety
10311 Wilson Boulevard
Post Office Box 1993
Blythewood, SC 29016
TTY 711
Roadway Emergency: Dial *47 (*HP)



[Contact Us](#)
Webmaster@scdps.gov
[Privacy Statement](#)

[SC.GOV Home](#) | [SC.GOV Policies](#) | [Help Center](#) | [Contact SC.GOV](#) | [Download Adobe Reader](#)

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EXHIBIT 18

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

TAYLOR CHASEY ROBERTSON,

PLAINTIFF,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, PATRICK J.
GOSHORN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT

CASE NO.: 2022-CP-42-01677

AFFIDAVIT OF JAMAHL SPRATLEY

I, Jamahl Spratley, certify the following:

- A. I am a process server for You've Been Served LLC;
- B. I was assigned to serve the South Carolina Department of Public Safety / South Carolina Highway Patrol on September 6, 2022;
- C. The attorney that hired my employer provided the address for service, which was at 10311 Wilson Blvd Blythewood SC 29016;
- D. I confirmed that this address was correct;
- E. When I arrived at 10311 Wilson Boulevard, I entered the building and approached the front desk just inside the building;
- F. I informed the person at the front desk that I was there to serve the Department of Public Safety;
- G. The front desk person informed me that she could accept service on their behalf.
- H. The front desk person identified herself as Candace Horton, and I served her.

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection.

SWORN to me this <u>7th</u> day of <u>June</u> 2023.
<u>Whitlatch, Jayne</u>
NOTARY PUBLIC FOR STATE OF <u>SC</u>
My commission expires: <u>09/28/2027</u>

Jamahl Spratley

Date 6-7-2023



EXHIBIT 19

5/23/23, 11:25 AM

Nicolas J Baughman, Attorney at Law, LLC Mail - Need Service by Today



Baughman, Nicolas <nick@baughmanlawsc.com>

Need Service by Today

steven smith <swsprocess@yahoo.com>

Fri, May 19, 2023 at 3:23 PM

Reply-To: steven smith <swsprocess@yahoo.com>

To: "Baughman, Nicolas" <nick@baughmanlawsc.com>

We attempted today, but they called someone from the DPS side but after several tries, the Front clerk intake stated he could accept. We have to go back Monday on another file and can try again. We have waited for an hour on that side and no one would have come down, after this one we are probably not going to accept any more Dept of Public safety files again. Not sure why it is so difficult, and that may have been what happened last year.

The Intake desk attendant, Grayson, stated he could accept on the DPS file but I am not sure if that is correct, so we can try again Monday when we go back to serve the DMV

Thanks

Swsprocess

701 Gervais Street

Ste. 150-006

Columbia , SC 29201

803-917-2959

swsprocess@yahoo.com

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. This information is confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

[Quoted text hidden]

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EXHIBIT 20

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Taylor Chasey Robertson
PLAINTIFF,

vs.

South Carolina Department of Public Safety, South
Carolina Highway Patrol, and Trooper Patrick J. Goshorn

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2022-CP-42-01677

AFFIDAVIT OF SERVICE

Service of Process on: South Carolina Department of Public Safety

The undersigned, being first duly sworn, on oath deposes and states: That s(he) is now and at all times herein mentioned a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named above, and is competent to be a witness therein.

Documents Served:

☐ LP	☐ Amended LP	☐ CARESact
☒ Summons & Complaint	☐ Amended Summons & Complaint	☐ First Interrogatories/Defendant
☐ Notice of F/C Intervention	☐ Amended Notice of F/C Intervention	☐ First Request for Production
☐ Certificate From Exemption ADR	☐ Amended Certification From Exemption ADR	

This affiant served the above-described documents at 10311 WILSON BLVD, BLYTHEWOOD SC 29016 on the 22ND day of May, 2023 at 12:49 PM by delivering 1 copies of same to:

☐ INDIVIDUAL SERVICE ☐ MET DEFENDANT AT

☐ SUBSTITUE SERVICE by leaving a copy of the above-described documents at his/her usual place of abode with (relationship/paralegal): a person residing therein of suitable age and discretion who confirmed the Defendant resides at the above address and informed that person of the contents thereof.

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NAME: Ellen Crolley Ellen Crolley 05-22-2023
Print Signature Date

Notary Public: Subscribed and sworn before me on this 22ND day of May in the year of 2023
Personally known to me ☒ or ☐ identified by the following document:

Notary Public for SOUTH CAROLINA
Commission Expiration: 11-4-2026

Type:

Ellen Crolley
Notary Public (Legal Signature)



State of South Carolina	)	In the Court of Common Pleas
	)	Seventh Judicial Circuit
County of Spartanburg	)	Case No. 2022-CP-42-01677
	)	
	)	
Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
S.C. Dept. of Public Safety	)	
and Patrick Goshorn,	)	
	)	
Defendants.	)	
	)	

February 23, 2023
Via WebEx

B E F O R E:

The Honorable J. Derham Cole, Judge

A P P E A R A N C E S:

Nicolas Baughman, Esquire
Attorney for the Plaintiff

Russell Harter, Esquire
Attorney for the Defendants

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Dismiss Defendant Public Safety.....	6
Motion to Dismiss Defendant Goshorn.....	9
Under Advisement.....	21
Court Reporter Certification.....	22

1
2
3
4
5
6
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8
9
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said
[inaudible]		unable to hear or understand due to audio volume or quality/interference

1 FEBRUARY 23, 2023

2 (WHEREUPON, the proceedings began via WebEx.)

3 THE COURT: Next is 2022-01677, Robertson versus the
4 Department of Public Safety.

5 MR. HARTER: Good morning, Judge.

6 THE COURT: Good morning.

7 MR. HARTER: I appreciate the way you handled those other
8 matters a while ago.

9 THE COURT: Bless you, son.

10 MR. HARTER: They'll thank you one day maybe.

11 THE COURT: Sir?

12 MR. HARTER: They'll thank you one day maybe, you know.

13 THE COURT: Oh. Well, we'll see.

14 All right. What y'all got?

15 MR. HARTER: Judge, I represent Public Safety and Patrick
16 Goshorn. I've got a couple of motions to dismiss, and I'm
17 ready to go ahead with it. Judge, this is --

18 Nicolas, are you --

19 Is Nicolas on here?

20 THE COURT: I'm sorry.

21 MR. HARTER: Okay. I'm sorry, Nicolas. I hadn't met you
22 face to face. I figured that was you. Good.

23 THE COURT: Mr. Baughman, you're here on behalf of the
24 plaintiff? I don't know any sign language, so you're going to
25 have to speak out.

1 MR. HARTER: I'll just say what his position is, Judge.
2 How about that?

3 THE COURT: I'm sure you could, but probably wouldn't get
4 it right.

5 MR. BAUGHMAN: Can you hear me now?

6 THE COURT: Barely.

7 MR. BAUGHMAN: It wouldn't let me test earlier for some
8 reason. Now I'm -- let's see.

9 THE COURT: All right. Let's take a -- let's take five
10 minutes and, Mr. Baughman, you get -- get your tech people, if
11 that's not you, to fix your volume.

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 THE COURT: Did we get it fixed? I see Mr. Baughman's
15 name, but he's not there.

16 MR. HARTER: How are things over your way, Judge?

17 THE COURT: It's not too bad. Have you been over here to
18 see the new courthouse?

19 MR. HARTER: I have not. I have not.

20 THE COURT: You need to come look at it. It's quite
21 impressive. Quite impressive. It's bigger than the
22 Greenville federal courthouse.

23 MR. HARTER: Really?

24 THE COURT: A lot bigger. Yeah, it's quite impressive.

25 MR. HARTER: Man, man.

1 THE COURT: You need to come over and have a look.
2 MR. HARTER: Well, I will. I need to get over there
3 then.
4 THE COURT: All right.
5 MR. BAUGHMAN: Can y'all hear me now?
6 THE COURT: Mr. Baughman is back. Yeah, I can hear you
7 now.
8 MR. BAUGHMAN: I just called in. I figured that'd be
9 easier.
10 THE COURT: Oh. Well, that works. Drinking on the job?
11 MR. BAUGHMAN: Yes, sir.
12 THE COURT: All right. Mr. Harter?
13 MR. HARTER: Thank you, Judge. You know, it's always
14 hard, these virtual hearings, because if you did it as long as
15 I did, it seems like you argue better standing up than you do
16 sitting down. But anyway, so I hope I don't miss anything.
17 THE COURT: Well, but the advantage for me is, you see, I
18 can -- I can mute it and turn it off.
19 MR. HARTER: That's exactly right.
20 THE COURT: And I can stop the video.
21 MR. HARTER: And I probably -- you've probably done that
22 before. So anyway, Judge --
23 THE COURT: I would never do that to you.
24 MR. HARTER: I represent the defendants in this case,
25 Department of Public Safety and Patrick Goshorn, who was a

1 former trooper, and here's what we've got.

2 This -- this incident occurred on May the 9th of 2020.
3 This lady, the plaintiff, was pulled over by my client,
4 Patrick Goshorn. He suspected she might be under the
5 influence. He did some field sobriety tests and -- and took
6 her in for a breathalyzer.

7 And this was at 2 a.m. that morning, and then he took her
8 in for a breathalyzer. She blew a .01, if I'm not mistaken.
9 So he then did not order a tox -- toxicology screen or
10 anything else, and then he just released her at 3:20 a.m. And
11 she was released to the -- at the Greer Detention Center. I
12 mean, the jail at Greer. He also gave her a ticket for
13 failing to change her address.

14 All right. This incident happened on May the 9th of
15 2020. Now, this case got filed on May the 9th of 2022, and it
16 alleges state law claims of multiple causes of action.

17 One was negligent training and supervision and retention.
18 A second cause of action is a state court action on the Tort
19 Claims Act. The third cause of action was false imprisonment.
20 The fourth was malicious prosecution. The fifth was abuse of
21 process, sixth cause of action for outrage, and a seventh
22 cause of action for gross negligence.

23 Now, those things were -- that case was filed, I mean,
24 right on the cusp of the two-year statute of limitations for a
25 Tort Claims Act. I mean, right as close as you can get. It

1 was -- again, the incident happened on May the 9th of 2020,
2 and the case was filed on May the 9th of 2022.

3 Then, after that, the -- the complaints got served or
4 there was attempted service on September 6th of 2022. And
5 based on what we've got, there was a process server who went
6 to -- to Wilson Boulevard in Blythewood and left a summons and
7 complaint with Candace -- I believe it's Candace Horton there
8 in the lobby. There was a service on the Attorney General's
9 Office on that date, and then there was service on Patrick
10 Goshorn's wife at his residence -- or I believe it's his
11 residence -- on September 6th, 2020.

12 That was on the 120th day from the date of filing, and I
13 don't know why all these -- this time frame, but in any case,
14 the case gets filed right on the eve of the stat -- right at
15 the time of the statute running. And then, as you know, under
16 Rule 3, a complaint is supposed to be served within 120 days
17 from the date of filing.

18 Well, I get the case. And when I get the case, the
19 General Counsel's Office at Public Safety points out to me,
20 Rusty, Candace Horton is not an employee or agent of Public
21 Safety. She's not an employee of the Public Safety -- Public
22 Safety, nor the Highway Patrol, and there's an -- in the file,
23 there's an affidavit of Diana Brown which confirms this, that
24 that -- that Ms. Horton is not an S.C. Department of Public
25 Safety person.

1 So the issue presented in one of the motions and the
2 issue we have here today is the inadequacy or the failure to
3 properly serve Public Safety. And, you know, sometimes,
4 Judge, that don't make any difference because there's, you
5 know, ways to fix that.

6 Well, in this case, there -- I submit there's not a way
7 to fix that. And I will tell you before I filed my pleadings
8 in this case and -- and set that out as an issue, I -- I
9 called Nicolas. I -- I have never had a case with Nicolas
10 before, but I wanted him to know up front kind of what -- what
11 our position was about S.C. Public Safety.

12 So I think one -- one of my motions here today is to
13 dismiss the claim as to Public Safety because there has been
14 no proper service on Public Safety. The -- the -- the time
15 for properly filing and serving -- I mean, he filed it in
16 time, but there was no proper service over Public Safety.

17 And for that reason based on Rule 3 and based on the fact
18 there's never been any proper service on Public Safety, I
19 think, respectfully, Public Safety gets dismissed from the
20 case, Judge. Now, that's one of my motions, and I will tell
21 you I -- we actually intended to file this motion and we
22 raised all this in the answer as well. Okay?

23 But also my -- my second motion or the second issue
24 relates to the claims as are there are alleged against Patrick
25 Goshorn. Under paragraph 6 of the complaint, I believe I'm

1 wording it correctly that the -- the paragraph 6 alleges that
2 Goshorn at all times acted within the scope and course of his
3 employment and under color of state law.

4 So there again, the Tort Claims Act -- and I know you
5 know that stuff very well. Under 15-78-60 and 15-78-70, there
6 is immunity to an individual officer, in this case to -- to --
7 to Trooper Goshorn, except to the extent he acts outside the
8 scope and course of his official duties or his conduct amounts
9 to actual fraud, actual malice, intent to harm, or a crime of
10 moral turpitude.

11 Now, I very much like to be able to take the position
12 that when somebody alleges that the -- that an officer or a
13 trooper or anybody has acted within the scope and course of
14 their official duties, that that slams the door on any claim
15 against the individual officer. I very much like to argue
16 that, and I think that is one way that the statute could be
17 interpreted.

18 But I believe in all fairness if -- if -- if an -- if an
19 individual -- if an officer -- if the statute says "or" that
20 he -- he or she engaged in conduct that amounts to actual
21 fraud, actual malice, intent to harm, and a crime of moral
22 turpitude, I guess I've got to concede that could still live
23 against the individual officer.

24 Now again, coming back, they served Goshorn on September
25 the 6th or whatever. They got him served within time. Again,

1 on the last date, they got him served within time.

2 So here -- here's where I think we are, Judge. Here's
3 where I think, you know, my position is, is that any claim --
4 the only claims that could live are claims against Trooper
5 Goshorn individually if those claims amount to actual malice,
6 actual intent to -- actual fraud, actual malice, intent to
7 harm, and/or a crime of moral turpitude.

8 And respectfully, as to the cause of action -- the first
9 cause of action, which was for training, supervision, and
10 retention, I think that goes out the window. That can't go
11 against Goshorn.

12 The second cause of action, a state law claim, can't go
13 against Goshorn. The false arrest claim can't go against
14 Goshorn.

15 Now, the malicious prosecution claim could possibly live
16 because it involves malice. So I guess I've got to
17 acknowledge that claim could possibly live against Goshorn,
18 and we deal with that another day.

19 The claim for abuse of process, I think that, outrage,
20 and gross negligence are out. You know, you could make a
21 claim that the abuse of process is in, but I really think the
22 only claim that lives now clearly under the Tort Claims Act
23 under Section 15-78-70, 15-78-60, is the -- the claim against
24 Goshorn for malicious prosecution because it involves malice.

25 And, Judge, that's my position. I don't know if you have

1 any questions. I'll be glad to try to answer them, but you
2 know, I think that's where we are with this.

3 THE COURT: All right.

4 MR. HARTER: And I also want to tell you I brought -- you
5 know, before I went and filed these -- this stuff in my
6 response, I called Mr. Baughman to give him a heads up this is
7 what, you know, this was. I just wanted to do that. This is
8 what I'm -- what I'm raising in this case.

9 THE COURT: All right.

10 MR. HARTER: So that's it, Your Honor.

11 THE COURT: Well, thank you.

12 Mr. Baughman?

13 MR. BAUGHMAN: Thank you, Judge. May it please the
14 Court.

15 Yes, Mr. Harter did reach out to me and, for what it's
16 worth, I was awfully appreciative of his call. It gave me an
17 opportunity to dig into an area that -- that I have yet to
18 really immerse myself in. And in doing so, I believe I've
19 discovered a couple of things that -- that would cause me to
20 disagree with Mr. Harter's position on -- on a handful of
21 these -- a handful of the issues raised in his motions.

22 I guess speaking first to the service on an agency, the
23 Department of Public Service, I will acknowledge that the
24 process server did serve a Candace Horton, who we -- we have
25 learned is employed with the Department of Motor Vehicles.

1 What is frustrating about that is the fact that the South
2 Carolina Department of Public Service -- their official
3 address is listed as 10311 Wilson Boulevard, Blythewood, South
4 Carolina 29016. That is the address provided on their website
5 for their street address, their contact information.
6 Presumably that's the address where service would be made as
7 it is -- that is their street address. That is their main
8 address. It does not provide any suites or -- or buildings or
9 any other differentiating information to tell us that there is
10 any other business or agency located on that address.

11 Since -- you know, since the service was attempted there
12 and I would argue was made there, we've learned that the --
13 the Blythewood Department of Motor Vehicles lists on their --
14 list on their website conflicting addresses. One of them, of
15 course, is the same address, 10311 Wilson Boulevard in
16 Blythewood, South Carolina. That is listed as the primary
17 address on the Blythewood website, and the bottom footer of
18 their website lists Building C. Of course, when we were, you
19 know, researching the address for the Department of Public
20 Safety, we were not researching the address for the Department
21 of Motor Vehicles or else we might have noticed that, oh,
22 there's a different building at this address.

23 So when my process server went out, the information
24 provided was the information provided by the agency itself.
25 The South Carolina -- the state agency gave the address to

1 their location, which I would argue is misleading, you know,
2 in its own right, but I'm not saying that because they have
3 that, that that's the be all, end all.

4 We did serve the Attorney General's Office at the same
5 time, and Mr. Harter was retained and -- and they did respond
6 to this lawsuit in a timely manner. They were made aware of
7 it.

8 I understand there are, you know, exceptions when you,
9 you know, raise these issues in motions prior to -- to the
10 answer, which Mr. Harter has done, and I'm certainly not going
11 to hold the dual motion to dismiss Mr. -- the officer against
12 him because Lord knows I've made similar errors before. So, I
13 mean, I've got no problem with that, the other motion he had
14 raised too for the delayed filing.

15 But going back to the heart of Rule 4, Rule 4(d)(5)
16 applying to an officer or agent of the state, we -- we served
17 the agency at the address that we were provided by their own
18 website, and then we -- we did serve the Attorney General. As
19 opposed to by registered or certified mail, we felt it would
20 be more efficient, given our time -- our lack of time
21 remaining to serve them at their location, and that is what we
22 intended to do.

23 The -- the point of Rule 4 is noted in various South
24 Carolina cases, but it -- it serves two purposes. It confers
25 personal jurisdiction on the Court, and it shows the defendant

1 reasonable notice of this action.

2 You know, it -- it's also been said that exacting
3 compliance with rules is not required to effect service of
4 process. Inquiry must be made as to whether the plaintiff has
5 sufficiently complied with the rules such that the Court has
6 personal jurisdiction over the defendant, which the Court
7 obviously does with it being a state agency at a location here
8 in South Carolina, and the defendant has notice of the
9 proceedings, which notice -- they received notice of these
10 proceedings. This was noted in the *Fassett v. Evans* case, but
11 I know it's noted in other cases as well.

12 You know, we believe that we provided sufficient notice,
13 and it might not have been exactly in compliance, so to say,
14 but the point was dismissing this case against the Department
15 of Public Safety would be tantamount to dismissing it on a --
16 on a -- on a technicality or just -- everything that needed to
17 be done, everything that Rule 4 -- you know, the whole point
18 of Rule 4 is to make sure they have notice, proper notice.
19 All of that was accomplished in this case, and we would -- you
20 know, obviously, I would suggest that we did provide that
21 notice.

22 As to the motion to dismiss the officer and -- I
23 apologize -- Officer Goshorn, I agree to an extent that the
24 first cause of action, the torts claim and the negligent
25 hiring and supervision, I agree that would -- that would not

1 apply to him.

2 However, I do disagree that false imprisonment would not.
3 False imprisonment is a -- is an intentional tort. I believe
4 that would fall under one of the -- the exceptions, just as
5 malicious prosecution would. And -- and I believe that the
6 abuse of process would also, you know, fall under that
7 category as well.

8 Your Honor, we would ask that you find that the service
9 was properly made in this case against the Department of
10 Public Safety, and -- and I would throw this out there as
11 well.

12 In the event that Your Honor does not make that finding,
13 in the interest of efficiency, rather than -- than dismiss the
14 case immediately, I would ask for leave to amend the complaint
15 to include a 1983 cause of action, as the statute of
16 limitations has not tolled on that claim. Of course, it's a
17 federal claim. We believe that that would still be a claim
18 that's -- you know, that we could bring in this matter and,
19 again, I just ask for that in the interest of efficiency.

20 If -- if -- if it's preferable that the -- if you deny
21 our position that, you know, we would just need to refile it,
22 so be it. That's what we would do.

23 And that's all I have right now, Your Honor. Thank you
24 for your time.

25 THE COURT: Mr. Harter?

1 MR. HARTER: All right. Your Honor, very briefly, you
2 know, I understand what -- I think I understand what Nicolas
3 is trying to argue, but I mean, Rule 4(d)(5) is what it is.
4 The way you accomplish service of process is upon an officer
5 or agency of the state by delivering a copy of the summons and
6 complaint to such officer or agency, and by sending a copy of
7 the complaint to -- and sending a copy of the complaint to the
8 Attorney General, blah, blah, blah. They ain't served an
9 officer or agency, an officer of the -- the Department of
10 Public Safety.

11 And also that has to be read in tandem with Rule 4(d)(3),
12 which is service on a corporation, and it says upon a
13 corporation or upon a corporate partnership or other
14 unincorporated association which is subject to suit under a
15 common name, by delivering a copy of the summons and complaint
16 to an officer, a managing or general agent, or to an agent
17 authorized to or appointed by law to receive service of
18 process, blah, blah.

19 That didn't happen here, you know, and I -- that it --
20 but it is what it is. These are the facts, and, you know, the
21 -- there's no cure to this because we have this time frame of
22 all this, you know, happening right on the cusp of -- of
23 deadlines.

24 And, you know, if -- if -- if Mr. Baughman wants to file
25 a motion to amend the complaint, I mean, you know, he --

1 that's something he can do. And, you know, Judge, I mean, I
2 think you probably know what I'm going to do if he does that,
3 you know, and you might -- I might be out of your hair because
4 I'm probably going to file a notice of removal, and we're
5 probably going to go across the street, and -- and to that --

6 THE COURT: Well, that would -- that would hurt. That
7 would hurt my feelings.

8 MR. HARTER: I know that. I know that. We get -- I get
9 to go across the street and --

10 THE COURT: You might have to go to Greenville.

11 MR. HARTER: That's right. That's true. You know,
12 that's true. But that -- that's where we'll be. And I -- you
13 know, I live in that world a good bit, too, as you probably
14 know. But anyway, that's -- that's pretty much all I got to
15 say.

16 THE COURT: All right. Tell me what -- what causes of
17 action as against the individual are y'all agreeing are to be
18 dismissed? I thought I heard some agreement in there
19 somewhere.

20 MR. HARTER: Nick, I thought --

21 MR. BAUGHMAN: I believe malicious prosecution for sure.
22 I believe false imprisonment being an intentional tort would
23 be a viable claim.

24 THE COURT: No. I said which ones -- which ones y'all
25 are agreeing should be out.

1 MR. BAUGHMAN: So should be out. I'm sorry. The
2 negligent hiring and supervision as to the officer, he should
3 -- I believe he should be out.

4 THE COURT: All right.

5 MR. BAUGHMAN: The state Tort Claims Act for the second
6 one.

7 THE COURT: Okay.

8 MR. BAUGHMAN: Your Honor, I believe the outrage argument
9 would probably be difficult on my end, as would the gross
10 negligence and recklessness.

11 THE COURT: All right. So what you contend should remain
12 is the false imprisonment, malicious prosecution, and abuse of
13 process?

14 MR. BAUGHMAN: As to the officer solely, yes, Your Honor.

15 THE COURT: Right. Yeah.

16 MR. HARTER: Nicolas, you're really serious about abuse
17 of process? Ulterior motive?

18 I don't mean to -- I'm -- I'm just kind of ask -- ask --
19 asking him to renegotiate that, you know.

20 MR. BAUGHMAN: I am, and that goes more to the, I guess,
21 evidence we've discovered through FOIA investigations and that
22 sort of thing.

23 MR. HARTER: Okay. Okay. That's okay. We'll save that
24 --

25 THE COURT: All right.

1 MR. HARTER: -- to another day.

2 THE COURT: Anything else? Anything else y'all need to
3 tell me?

4 MR. HARTER: I apologize. I'm sorry.

5 THE COURT: That's okay. Is there anything else y'all
6 need to tell me?

7 MR. HARTER: Nothing on my end, Your Honor.

8 MR. BAUGHMAN: I -- the only other thing on my end would
9 be I -- I know I'm in the very small minority when I say this,
10 but I don't feel that 4(d)(3) is necessarily applicable to --
11 is something that you read in tandem with 4(d)(5), simply
12 because the 4(d)(5) is very specific state officer or agency,
13 and the South Carolina Department of Public Safety is a -- is
14 a state agency.

15 I mean, that is -- I mean, could you argue it's an
16 unincorporated association? I suppose, but it's -- it's --
17 it's noted specifically as a state agency, and I don't -- I
18 know that there's the *Jensen v. Doe* case that -- that's cited
19 in -- I believe it's the *Maybin* case, that it should be made
20 on a -- on a person authorized, but I disagree with that as
21 well.

22 I feel that that is because I don't believe that (d)(3)
23 applies as it's speaking of non-state agencies, or else I
24 think that the legislators would have written specifically
25 state agency. I think that that is -- respectfully to those

1 that came before me, I think that that is a mistake that that
2 -- that -- that *Maybin* uses that connection. I think it's
3 *Maybin* uses that connection to -- to require service be made
4 upon that particular -- on a person authorized.

5 But the whole point of the *Jensen v. Doe* case was two
6 people that were employed with the agency that were no longer
7 employed there. So while the agency was served, they were --
8 the people that worked there couldn't be served because they
9 no longer worked there. At the time of the incident, they did
10 work there, and then at the time of service, they did not work
11 there. And I feel like that got -- that crossed a lot of
12 wires in translation after the fact.

13 And that's all I have for that, Your Honor.

14 THE COURT: All right. I'll review and issue an order.

15 MR. HARTER: Thank you, Judge.

16 THE COURT: Thank you.

17 MR. BAUGHMAN: Thank you, Judge.

18 THE COURT: Thank you.

19 (WHEREUPON, the proceedings ended.)

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21 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	In the Court of Common Pleas
	)	Seventh Judicial Circuit
County of Spartanburg	)	Case No. 2022-CP-42-01677
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	)	
Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
S.C. Dept. of Public Safety	)	
and Patrick Goshorn,	)	
	)	
Defendants.	)	
	)	

August 14, 2023
Via WebEx

B E F O R E:

The Honorable J. Derham Cole, Judge

A P P E A R A N C E S:

Nicolas Baughman, Esquire
Attorney for the Plaintiff

Russell Harter, Esquire
Attorney for the Defendant

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Krystal J. Smith
Official Circuit Court Reporter III

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Reconsider.....	5
Under Advisement.....	32
Court Reporter Certification.....	33

1
2
3
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

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1 FEBRUARY 23, 2023

2 (WHEREUPON, the proceedings began via WebEx.)

3 THE COURT: Good morning. Can everybody hear me okay?

4 UNIDENTIFIED FEMALE: Yes, sir.

5 THE COURT: All right. Good. We're here on Case Number
6 2022-CP-42-01677, Robertson versus the South Carolina
7 Department of Public Safety. Mr. Baughman and Mr. Harter?

8 MR. HARTER: Yes, sir. How do I get in?

9 MR. BAUGHMAN: Yes, sir.

10 MR. HARTER: How do I get in? Am I in?

11 THE COURT: You're in.

12 MR. HARTER: Okay.

13 THE COURT: I mean, I see you and hear you.

14 MR. HARTER: Okay. Good.

15 THE COURT: Well, no, I don't see you, but I hear you.

16 MR. HARTER: I can't hear. I can't see my -- can you
17 figure it out?

18 UNIDENTIFIED FEMALE: No.

19 MR. HARTER: What do I need?

20 UNIDENTIFIED FEMALE: Can you get up and move?

21 THE COURT: Have you got your -- you got your camera
22 thing closed? Or start video?

23 UNIDENTIFIED FEMALE: Move this thing down here. Can you
24 move that?

25 MR. HARTER: I don't know. I don't know if I can move

1 that.

2 MR. BAUGHMAN: While we're getting situated, can you hear
3 me all right?

4 THE COURT: I can.

5 MR. BAUGHMAN: Okay.

6 UNIDENTIFIED FEMALE: There it is.

7 MR. HARTER: Sorry, Judge.

8 THE COURT: That's all right.

9 All right. Mr. Baughman, this is your motion.

10 MR. BAUGHMAN: Yes, Judge. Thank you. May it please the
11 Court. I'll try to keep this much briefer than my memo on
12 this, which I should be able to handily do.

13 I -- we are here today because we would like the Court to
14 reconsider its grant of defendants' motion to dismiss this
15 case, also requesting clarification of an oral motion that we
16 made at the -- at the hearing before, which was held back -- I
17 can't remember what date it was, Your Honor, but I know it's
18 in the record.

19 The first thing I want to address simply is -- is the
20 order itself. There is what we believe to be a -- the
21 applicable rule is incorrectly stated on the order.

22 I'm sorry?

23 THE COURT: I didn't say anything.

24 MR. BAUGHMAN: Oh, okay. We -- I believe it's page 4.

25 I'm sorry. Not page 4. It's -- yes, page 4 of the order

1 states that Rule 4(d) provides that when a state agency is a
2 defendant, the service is made by delivering the summons and
3 complaint to the officer or agency, and in keeping with Rule
4 (d)(3), which provides that the summons and complaint be
5 served to an officer, managing or general agent, or an agent
6 authorized by appointment of law to receive service of
7 process.

8 Your Honor, 4(d)(3) applies to corporations and
9 partnerships. 4(d)(5) applies to state agencies and, in fact,
10 state agencies -- methods of service to state agencies states
11 that service should be delivered to the agency and certified
12 mail should be sent to the Attorney General's Office.

13 This order does not address any issues with the Attorney
14 General's Office or service in that regard, although for the
15 record, you know, we did serve the Attorney General's Office
16 personally, not via certified mail, and there were various
17 reasons for that. Most importantly, we wanted to ensure it
18 was done correctly and, of course, the South Carolina
19 Department of Public Safety still received notice of this
20 lawsuit and complaint.

21 The next point I want to address on this is just kind of
22 building a little more on these last couple of the issues I
23 brought up. And again addressing the Attorney General's
24 Office, while service on the Attorney General's office
25 specifically says certified mail, there's nothing to specify

1 the manner in which the South Carolina Department of Public
2 Safety should be served.

3 The website provides an alternate means, or you could say
4 alternate. It provides a means of servicing by saying you may
5 serve the Office of General Counsel. It doesn't say you must
6 serve, but it does state you may serve attention paralegal.
7 Again, the rule says nothing about serving the agency via
8 certified mail.

9 Further, nothing in the Rule 4(d)(5) suggests there's a
10 proper person or a designated employee that should be named by
11 the state to accept service on behalf of the agency, and this
12 is in contrast with the other rules of service, 4(d)(1), (3),
13 (4), and (6). They all indicate a specific type of person
14 that may accept service, and I believe in some cases must
15 accept service, but (5), the one that's applicable to state
16 agencies, does not specify any specific person. And then --

17 THE COURT: Excuse me just a minute.

18 MR. BAUGHMAN: Yes.

19 THE COURT: Are you -- are you referring to Rules 45 and
20 41?

21 MR. BAUGHMAN: No, 4(d)(5) and --

22 THE COURT: Oh, I'm sorry. I misunderstood. I thought
23 you said 45 and 41.

24 MR. BAUGHMAN: Oh, I'm sorry. No, 4(d)(5) and -- and I
25 was saying 4(d)(1), 4(d)(3), 4(d)(4), and 4(d)(6) all

1 indicate, you know, a specific type of person that should be
2 receiving service on behalf of that entity that is -- that is
3 to be served, whereas (5) -- Rule 4(d)(5) just -- it basically
4 says deliver to the agency, and it does not specify any type
5 of person.

6 And it's not to say that that's -- that there shouldn't
7 be some type of structure in place. The point is -- and I
8 guess you can analogize it to registered agents for private
9 businesses. You know, the private business registered with
10 the state would name a registered agent, and that's who we
11 would know to -- to serve, but the state agencies apparently
12 do not have to name a specific person.

13 So we're going in blind when we're trying to serve some
14 of these places. We -- we may serve an employee who is not,
15 quote/unquote, authorized to accept service without knowing so
16 because there's no way for us -- and I say us. I mean the
17 general public to know unless we're in that world, in that
18 zone.

19 And further, I know Rusty is going to be discussing the
20 affidavits that he had filed, but -- but just to touch on one
21 of them, the affidavit of Paula Davis Abney, who is, I
22 understand, a paralegal in the Department of Public Safety's
23 General Counsel Office. The copy of the summons that's
24 attached, which -- which I believe is probably the summons
25 that was delivered by -- by the process server we hired back

1 in September of last year, I think it raises more questions
2 than it provides answers. While it does indicate in a couple
3 of stamps that the South Carolina Department of Motor Vehicles
4 had received this back on September 6th and September 7th in
5 the DMV General Counsel's Office, it also notes that this was
6 received on September 6th, 2022, from the lobby mail.

7 And I understand that -- and this has been one of the --
8 our major arguments throughout both our motion and -- and even
9 before this, these -- the South Carolina Department of Motor
10 Vehicles and the South County Department of Public Safety are
11 located at the exact same address. They share a lobby.

12 Again, we're going to that address, you know, and we're
13 looking online or whatever we can to determine the specific
14 address for this agency. There's nothing to indicate that it
15 shares the address with another agency. And, you know, our
16 process server is there. They're going in saying we're here
17 at this address, we need to serve this, and it's being
18 accepted.

19 And with lobby mail, we don't know if the lobby is
20 supposed to split this up between the different agencies.
21 However you want to look at it, you know, we took it to that
22 address, and it was -- it was served there, but we can -- we
23 can address more if you have any questions about that later.

24 But I think the last thing I want to say on this
25 particular point is, you know, with the other subparts of Rule

1 4(d) where they specify these -- these types of persons that
2 are allowed to take service, why did the legislature not ever
3 specifically note a person in 4(d)(5) to -- to be able to
4 accept service? And I don't know the answer to that, but the
5 fact of the matter is they did not. They simply indicated it
6 should be delivered.

7 Another point I want to make on this is this particular
8 Rule 4(d)(5) when controlling service on a state agency has
9 never been addressed by a South Carolina appellate court. As
10 far as proper service, zero case law on it.

11 And to the extent that you may have heard there's an old
12 case, *Maybin*, that back in the 80s, there was a federal case.
13 It -- it cites another case, *Jensen*, but -- but it doesn't
14 even say what *Jensen* says it says. It says, basically, it's
15 determining service on a state agency based on the arguments
16 that are being made by the defendant in this case, but the
17 *Jensen* case does not say that there's a specific person or it
18 doesn't address the proper rule itself.

19 But going -- but going back to delivery at this address,
20 the -- we have no doubt that this summons and complaint was
21 delivered at that particular address, and this leads into an
22 argument that's been made on sufficient compliance. They --
23 if you were to assume that the service was valid, you know,
24 that their answer was timely, and they're saying it wasn't
25 valid, but their answer was still timely. They received

1 notice. They -- they responded.

2 Counsel for the defendant actually reached out to me
3 beforehand to inform me of the -- the motions that were going
4 to be made. So I was -- I was not surprised at that time, but
5 even that there is case law that addresses sufficient
6 compliance and -- and serving entities, and basically it -- it
7 talks about that we're not trying to play a game of gotcha.

8 We're not -- we're trying to ensure that -- that justice
9 is -- is done in these cases and, you know, we don't have to
10 have exacting compliance. That's *Roche v. Young Brothers*.
11 The Court should inquire as to whether or not the plaintiffs
12 sufficiently complied with the rules such that the Court had
13 personal jurisdiction of the defendant and the defendant has
14 notice of the proceedings.

15 We sufficiently complied, I would argue, delivered to the
16 address provided. Defendant received notice of proceedings,
17 and in a lot of ways that -- we believe that that was done
18 more so via the Attorney General's Office.

19 And just a couple of points on that that I think are
20 hugely important that I addressed in this memo is service on
21 the Attorney General's Office is arguably more important than
22 service on the entity itself because the agency itself can --
23 can receive the service, but they still have to go to the
24 Attorney General's Office to receive approval for hiring of
25 counsel to defend these cases.

1 That's found in State Code 1-7-160 and 1-7-170. So
2 before the agency can even hire counsel, they have to go
3 through the Attorney General's Office and make sure the
4 Attorney General's Office is aware, and the Attorney General's
5 Office was absolutely served in this case. I don't think
6 there's any dispute as to whether or not they were -- that
7 service was made.

8 You can argue over whether or not -- because it wasn't
9 strictly in compliance with the Rule 4(d), that it should be
10 made by certified mail, that's an argument, I suppose, but I
11 just don't see how justice is advanced when you are personally
12 serving an entity and they are receiving service, you know,
13 without a doubt.

14 It's -- and the reason we did that again, we were close
15 to running out of time, but also, we -- we've had experiences
16 with the U.S. Postal Service, especially since Covid, whereas
17 we have tried to serve entities and individuals via certified
18 mail, and a lot of times an employee of the Postal Service
19 would write Covid-19 or C-19 on the green card and -- and
20 expect that to be considered good service, and I can provide a
21 couple of examples of that.

22 And I know that's not, you know, any kind of, you know,
23 precedential law or anything in regards to whether or not it's
24 good or not, but it's -- we felt that personal service would
25 be a more safe and secure way and understand that we often

1 would have an extra five days when we're serving mail via
2 certified mail and we probably would have been fine to do so,
3 but we just didn't want to take that chance.

4 Again, most of the courts, like the *Roche* court, have --
5 have based their findings on whether or not there was
6 sufficient compliance or whether there was actual notice and,
7 I mean, that was -- this was a good faith effort. There was
8 -- we don't believe there was any prejudice to the defendant
9 because they did receive it timely.

10 Further, we -- even if the Court were to find that that
11 wasn't good service, we believe that their appearance would
12 mean they voluntarily waived certain defenses. Now, we know
13 that they had filed a motion contemporaneously with the
14 answer, actually slightly before, which I think was, you know,
15 in accordance with the rules, but defense counsel also sought
16 discovery and even asked when it was coming. And this -- you
17 know, they were taking more steps beyond simply trying to get
18 the case dismissed. They were consenting to the jurisdiction
19 in our -- in our opinion.

20 And further, just -- again, even if -- even if both of
21 those aren't considered by the Court, it would be good service
22 or waiving defenses or having voluntarily appeared, you know,
23 we believe that the Court should toll this -- toll the statute
24 of limitations, given the -- I guess, the excessive way we've
25 had to -- to get to this point where we've had this hearing to

1 have our -- have the decision reconsidered.

2 There's a case that's addressed in our memo. The *Hoover*
3 case dealt with the incorrect address for a registered agent,
4 but it wasn't necessarily the plaintiff's fault that the
5 registered agent put down the wrong address. And there's no
6 indication in our case to draw an analogy that -- that this --
7 this state agency would share an address with another state
8 agency. Nothing on the website indicated as much.

9 The only way we would have known is if we would have
10 looked up the South Carolina Department of Motor Vehicles'
11 website at the same time, but we had no reason to do so
12 because we weren't suing the Department of Motor Vehicles. We
13 had no idea that they were even in the same location.

14 Now, if you do look at their website, it indicates -- it
15 specifies there's a building. I believe it's Building D. I
16 could be mistaken on that, but it at least designates a
17 section of that address belonging to them, whereas the
18 Department of Public Safety does not.

19 And again, I believe that defense counsel is going to
20 touch on this other affidavit that was submitted by Marcus
21 Gore, who is general counsel of the Department of Public
22 Safety. And what they've done is they have compiled various
23 affidavits of services from various cases around the state
24 where certain people within the Department had -- were
25 authorized and designated to accept service on behalf of the

1 agency. And since the same three people from -- from what
2 we've gathered from this, just to show that that's -- that's
3 how it's often done.

4 Earlier this morning -- and I had informed defense
5 counsel I'd be sending this. I was hoping to last night, but
6 prior arrangements had gotten in the way. But early this
7 morning I forwarded three different packets and I filed them
8 on the e-filing system, although I don't think they've been
9 processed yet, but I also sent them to the Court.

10 There are -- we just picked three coming from Orangeburg,
11 one from Richland, from counties that were represented in this
12 affidavit, and the -- the final title, *Shuler*, for example,
13 the Department of Public Safety was served by certified mail.
14 It wasn't addressed, you know, a hundred percent the way it
15 says to on the website, and it was -- service was accepted by
16 a name that we can't even read, but it does not appear to be
17 any of the names provided in the affidavit by Marcus Gore.

18 In the -- the case that I've got titled *Goodman*, it
19 appears that only the Attorney General's Office was served via
20 certified mail, yet the service was not disputed in that case.
21 There's -- there's no motion to dismiss. The answer doesn't
22 even address service, but again, only the Attorney General's
23 Office was served, which I think supports what we were stating
24 earlier, that it's arguably more important since they're the
25 ones that have to authorize counsel for the agency anyway.

1 And finally, the -- the case with *Akeem Stokes v.*
2 *Orangeburg Department of Public Safety, etc.*, I think is most
3 important here because the trooper at Troop 7 in Orangeburg
4 County was the person served, not -- not a person authorized
5 by the General Counsel's Office of the Department of Public
6 Safety, but a trooper in Orangeburg who worked for the Highway
7 Patrol, and service wasn't contested in that case, either.
8 And so I think that just goes to show that, you know -- that,
9 you know, delivery of the summons and complaint was sufficient
10 in those cases, you know, just as we believe it was sufficient
11 in our case.

12 And just to quickly address the last couple of points in
13 our memo, as far as the dismissal of Trooper Goshorn, we
14 believe that the issues as to whether or not he has -- you
15 know, if he has immunity or what -- or not would -- would be a
16 jury question. There's -- we haven't conducted any discovery
17 yet.

18 We -- we -- we believe that we have alleged properly what
19 we needed to allege as far as what he did and whether or not
20 it could be deemed as actual malice or something else that
21 would qualify to remove any type of immunity, and we believe
22 that, you know, those are issues that a jury should determine.
23 You know, if a jury determined there was no actual malice or
24 something else, then, you know, obviously we would abide by
25 that, but we believe it should at least be something that we

1 could discuss.

2 And finally, at the hearing we had, we had asked that the
3 Court grant us leave to amend the summons and complaint. We
4 still firmly believe that all the facts as alleged in this
5 case and then the -- the method of service was proper, and we
6 -- we stand behind that a hundred percent, but, you know, we
7 -- we did not get a ruling on that particular aspect of the
8 previous hearing.

9 THE COURT: Which -- what is that? A ruling?

10 MR. BAUGHMAN: We -- we did not get -- we had asked the
11 Court to grant us leave to amend our complaint to add a cause
12 of action for a 1983 cause of action if the -- if the Court
13 found that service was not proper in the previous hearing, and
14 that was -- that was not ruled on in either the Form 4 or the
15 order that was submitted by the defendants' counsel a couple
16 months ago.

17 THE COURT: Well, why would I rule on a motion to amend
18 if I dismiss the cause of action?

19 MR. BAUGHMAN: Well, Your Honor, it's -- obviously, it's
20 up to you if you were going to rule on that, but any oral
21 motion --

22 THE COURT: No, no. You -- you misunderstand my
23 question.

24 MR. BAUGHMAN: Okay.

25 THE COURT: The question is why would I rule on that if

1 I'm dismissing the complaint over service?

2 MR. BAUGHMAN: Well, we --

3 THE COURT: Not upon -- not -- not failure to state facts
4 sufficient to constitute a cause of action. I dismissed the
5 complaint for lack of service. So why would I rule on a
6 motion to amend the complaint? How would that -- how would
7 that fix the service issue?

8 MR. BAUGHMAN: That's a fair question, one that I cannot
9 think of an answer off the top of my head.

10 THE COURT: Well, I can't either.

11 MR. BAUGHMAN: Fair enough. And that -- all that is the
12 basis for our motion here today and, you know, we just hope
13 that the Court would reconsider its order finding there was no
14 service and reverse that and allow this case to move forward.

15 THE COURT: All right. Mr. Harter?

16 MR. HARTER: Thank you, Judge.

17 Nicolas.

18 Judge, let me give a little teeny bit of background. I
19 know, you know, you know what this case is about.

20 Just briefly, this plaintiff was pulled over on May the
21 9th at 2:00 a.m. The trooper, Goshorn, pulled her over for
22 her driving. She was apparently driving 48 in a 35. Pulled
23 her over. He did a field sobriety test, and then she was
24 taken to the Greer Police Department for a breathalyzer. She
25 blew a 0.01 on the breathalyzer. Trooper Goshorn released

1 her. That they kind of un-arrested her at 3:20. So she was
2 actually detained for about an hour and 20 minutes, and that's
3 what this case is about.

4 Now, the case -- the incident happened on May the 9th of
5 2020. This complaint was filed on May the 9th of 2022. It's
6 as close as you can get to the statute of limitations, and
7 that -- that will come into play, I think, later in the case
8 in the argument.

9 And -- and in the -- and in the complaint, they allege
10 Trooper Goshorn is acting within the scope and course of his
11 employment, and they lay out seven different causes of action.
12 And when we -- we filed our motion to dismiss Trooper Goshorn
13 and our motion to dismiss for lack of service on DPS, and it's
14 our position then and now that there was no timely service on
15 DPS and no proper service on DPS.

16 Now -- now, when we argued -- and a -- and a little bit
17 of history too, Judge. The incident happened on May the 9th
18 of 2022 -- of 2020, I'm sorry. The case was filed on the last
19 day of the statute of limitations on May 9 of 2020 [sic], and
20 then no effort was made at all to serve this complaint until
21 September 6th of 2022. And if I might count right, that is
22 119 days from the date of filing.

23 Now, I don't know why, you know, this -- there was no
24 attempt to serve this within the 120-day rule, as is laid out
25 by the court in Rule -- in Rule 3, but apparently, there was a

1 strategy to file it on the last minute and to serve it or
2 attempt to serve it at the last minute.

3 And what happened here -- and this is the unfortunate
4 thing, is because of that strategy, we couldn't fix this. You
5 know, I couldn't call them up and say, Nick, you know, we've
6 got a service issue here. I couldn't fix it. Okay? And --
7 and there was no proper service against -- with respect to
8 DPS, and this is why.

9 And as part of their -- what they -- what they did is
10 this process server named Spratley, according to the
11 affidavit, went to serve this complaint on September 6th of
12 2022. He apparently went to the Attorney General's Office and
13 dropped off the complaint. He apparently went to the
14 Blythewood address of Public Safety and Motor Vehicle, and he
15 dropped off the complaint there.

16 But he dropped off the complaint, and this is -- he notes
17 -- if you will look at their motion to reconsider, Exhibit
18 Number 49, it says that Spratley left the summons and
19 complaint on September 6th at Blythewood to Candace Horton of
20 Branch Services. It doesn't provide any details as to who she
21 is, what she is, what her position is. Nothing, nothing,
22 nothing. And as the affidavit that we submitted at the time
23 of this motion hearing initially pointed out, that Candace
24 Horton was not an employee of DPS. She was an employee of the
25 Department of Motor Vehicles, which is a separate agency, as

1 you know.

2 So there was -- and at the time of this motion hearing
3 back when we did it, Judge, the plaintiff didn't submit
4 anything. What you had in front of you was this affidavit,
5 the pleadings, the arguments, and our affidavit that Mrs.
6 Horton was not a proper defendant -- a proper person to
7 receive service.

8 But also -- and really what happened here, Judge, I
9 believe, is that there's a mistake. A process server made a
10 mistake. And I'm sorry, but he made the mistake on the very
11 last day and too late for anything to be -- to be fixed, and
12 the plaintiff is kind of stuck with that.

13 Also, as part of the submission that the plaintiff has
14 made in their motion to reconsider, there's also another
15 affidavit of Spratley. It is dated also on -- that -- that
16 says also on September 6th, he served -- he served -- and this
17 is Exhibit Number 52. He says he served by personal delivery.
18 By personal delivery, he served Candace Horton at Blythewood
19 and at Assembly Street. This affidavit is worded so that he
20 served her at both places, I mean. Anyway, I think we know
21 that probably didn't or couldn't happen.

22 But in any case, there's -- there was nothing. There was
23 no service at all that was done within the time frame that's
24 allowed to bring this case and start this case against a
25 government entity, and -- and -- and -- and so there's --

1 there's -- there's no service, no sufficient service with
2 respect to the Department of Public Safety or the Highway
3 Patrol and that there was no timely service.

4 And I know there's -- there's some case law out there
5 with dicta about stuff, but, Judge, service at this point in
6 time, when you are on the brink of the statute of limitations
7 running, I mean, service is either good or it's bad. It's
8 like being pregnant. You either are or you ain't. And -- and
9 based on the record in front of you and everything we've seen,
10 this was not good service on behalf of Public Safety, and it
11 was not timely filed.

12 Now, there's a -- very much a 42-page, you know,
13 editorial that -- that -- that Nicolas has put together to
14 discuss service and discuss this subject, but you know, I
15 don't believe there's any case in that submission that says,
16 well, if you don't make good service, it's still okay, we can
17 fix it. You can collect -- correct scrivener's errors or
18 maybe mistakes about an address, but I don't think there's any
19 case law that says you can correct service on the wrong
20 person.

21 The fact is that I'm sorry, but this was fatal, and it
22 was fatal at the last -- the last -- the last second. General
23 counsel for DPS couldn't do anything about it. I couldn't do
24 anything about it. I mean, we got it on the -- after the last
25 day and -- and -- and there are -- there are service rules

1 that -- that we've got the rule provides and under the South
2 Carolina Rules of civil Procedure. The service rules fall
3 under Rule 4, process, and Rule 4(d) as in dog (3), Rule 4(d)
4 as in dog (4), Rule 4(d) as in dog (5) all -- all apply here
5 and are tangled together, but -- but all of those rules
6 require that somebody from the agency or the department get
7 the pleadings, be served, and that didn't happen here.

8 And -- and I sent you something, Judge, late, late, late.
9 I think it actually went out this morning. I sent it to Nick
10 on Friday. He's referred to it and -- and -- and I put it out
11 there so that we would know and could trace exactly what
12 happened here.

13 But the filed summons and complaint that got processed
14 shows that it was delivered to the lobby mail on September
15 6th, 2022. It shows that it went to Department of Motor
16 Vehicles on September 6th, 2022, and then it went to the
17 General Counsel's office of the Department of Motor Vehicles
18 on September 7th of 2022. And then, finally, it got to the
19 Department -- I'm sorry -- to the Office of General Counsel of
20 DPS on September 12th, 2022, and that is an affidavit from
21 Paula Abney -- Paula Davis that we sent.

22 This thing never got to the Department of Public Safety
23 on time. The rule requires that it be served properly. The
24 rule also requires that there be -- that -- that there be
25 service within 120 days from the date of filing. For whatever

1 reason, they waited until the last -- last second to try --
2 even try to serve anything like this.

3 And you know, Judge, doing this work, you pick your
4 battles. You know, I get a complaint in and -- and this is my
5 -- I mean, if it ain't good service but there's plenty of time
6 left on the statute, what am I -- what have I gained by -- by
7 -- by raising that and fighting that battle if I know it's
8 something that can be fixed?

9 But in this case, this is critical to our defense. I am
10 -- I'm committing malpractice if I don't call this out. This
11 is not like one where I can call Marc and say, Marc, there's
12 no service; right? But, you know, I'm going to go ahead and,
13 you know, file an answer and not raise it. We can fix it
14 because they -- if I just raise it, they'll -- they'll go fix
15 it.

16 They can't do that here. They didn't do that here. They
17 didn't give them an -- themselves an opportunity to do that or
18 me an opportunity to do that. And so -- so, frankly, it was
19 just never served on time and -- and it -- and it was -- it
20 was never served on the right person.

21 And Nick's right, I did. Judge, I called him. I said,
22 look, this is what I've got to do. This is what's coming
23 across the bow and -- but if it was some way to fix it, we
24 would have tried to do that, but unfortunately, these facts
25 and this record sticks us with -- with -- with this.

1 And then, you know, also revealing is this. Now, again,
2 this case was filed in May of 20 -- May of 20 -- 2022. All
3 right. On May 22nd of 2023 -- May 2nd of 2023, they did --
4 they -- they served us again. And on this -- this -- and this
5 is part of of their record, their motion to reconsider, and
6 this is Exhibit 145, Judge. This is Exhibit 145, and Exhibit
7 145 is -- it is an affidavit that -- that -- that's signed by
8 Ellen Crowley, if I'm not -- Ellen Crowley.

9 And Ellen Crowley's affidavit -- they did it right here,
10 but they did it right too late. On May -- this affidavit,
11 which is Exhibit 145, recites that Ellen Crowley went to DPS
12 or went to the Blythewood address on May 22nd at 12:49, and it
13 -- and it -- and she checks the box. She checks corporate or
14 government service. She checks the box, leaving a copy of
15 this process with Paula Davis, title paralegal with S.C.
16 Department of Public Safety, a person authorized to accept
17 service, and informed that person of its contents.

18 That affidavit goes down description of the person to
19 whom this process was left is as follows. Age, 50. Gender,
20 female. Race, black. Height, five five. Weight, 160. Hair,
21 S&P. Glasses, no. And it's signed by Ellen Crowley. This --
22 this was -- this is the -- this proves that you can do it, and
23 this is the way to do it.

24 But until then, there was no proper service and there was
25 no attempt again to serve it. I just think, Judge, that's

1 revealing as to how process is supposed to be served, should
2 have been served, but unfortunately, it was served too late.

3 In the affidavit I put together for Marc Gore to sign, I
4 mean, DPS gets -- they get sued a lot, Judge, as you probably
5 know. You -- I think you've done some cases with that, but
6 DPS gets sued a lot and, I mean, they -- there's a -- when
7 they do, you know, their -- lawyers serve the complaints on
8 them and -- and we provided you with affidavits of -- of -- of
9 other cases where people were able to serve DPS, and we don't
10 have these issues.

11 Now, Nick did send us this morning some -- and he
12 referred to some -- some service affidavits that he has picked
13 up or identified in some other cases. I would note for you
14 for your information, Judge, these were -- these were times
15 that -- that -- that DPS was served by mail. You know, they
16 used certified mail to serve them.

17 I don't know whether they can even use certified mail,
18 but those were cases where certified mail was used, and those
19 lawyers in those cases decided, well, they'll assert that
20 defense or not, I don't know. You know, but -- but all I'm
21 saying is that this -- this is instructive as to other ways
22 that service can be. That was not done in this case.

23 And again, Judge, I've done this for a while, and I don't
24 pick these battles unless I feel like I have to, you know, but
25 -- but the circumstances put us where these issues were -- the

1 die was cast before the complaint ever got to anybody at DPS
2 or Public Safety. I mean, it's Public Safety. The die was
3 cast before this complaint ever got to Public Safety or to me.

4 We're stuck with the record we have here, and -- and I
5 submit that your order was correct. I mean, again, I know,
6 you know, there -- there's a standard that controls motions to
7 reconsider. I don't think you just get to go back and say,
8 hey, give me a rerun because I don't like what happened.

9 I mean, there are parameters with that. I don't think
10 you've overlooked anything. I don't think you've missed --
11 ignored any arguments that anybody's made. I don't think
12 there's any basis upon which there's any need for you to
13 reconsider or change your ruling on this. I mean, it's now --
14 if anything, it should be or I hope more abundantly clear that
15 there was a failure of service of process on DPS, and it was
16 not done timely.

17 Now, I do need to touch on this. Nick has suggested that
18 there would be some grounds for a ruling that because I sent
19 him some discovery that that would be a waiver of any argument
20 that -- that we have as to personal jurisdiction. I don't
21 believe that is even close to being a valid argument, Judge.

22 He is referring to a case that was decided by Judge Hearn
23 sometime back, and that is the *Maybank v. BB&T* case. And in
24 that case, the -- the issue involved some business kind of
25 claim, and the bank asserted personal jurisdiction but then

1 participated in litigation for two and a half years, and then
2 one month before trial said, oh, we don't have personal
3 jurisdiction here. And Judge Hearn said, no, our discretion
4 is that you -- you have waived that. So I -- respectfully, I
5 think that argument as -- as applies to the facts here is --
6 is -- is -- is beyond even a stretch.

7 And also, Judge, as to the -- the issues with -- with
8 Patrick Goshorn, you know, I think when we argued this motion,
9 I said, you know, there could be some -- there could be some
10 arguments out there about the personal liabilities as relate
11 to Goshorn. They didn't make them. I don't recall that Mr.
12 Baughman made arguments that would implicate Goshorn as a --
13 as a personal defendant in this case and -- and allow these
14 claims to move against him.

15 The complaint refers -- says in paragraph 6 that -- that
16 -- that Goshorn acted within the scope and course of his
17 employment. We -- he -- he acted within the scope and course
18 of his official duties, and as -- as you know, the Tort Claims
19 Act says you can -- an individual can be liable if -- if they
20 act outside the scope and course of their official duties or
21 if they engage in conduct that amounts to actual malice,
22 intent to harm, and/or a crime of moral turpitude.

23 And -- and, respectfully, in this case I don't believe
24 that there's any allegation or valid argument that Trooper
25 Goshorn acted with actual malice or intent to harm. And --

1 and what's -- what I think is significant here, Judge, is that
2 intent to harm is different from intent to act. Intent to
3 harm is different from intent to act.

4 I might be the little boy playing with matches and
5 fireworks and I intend to set off a firework, but I catch my
6 neighbor's house on fire. I intended to play with fireworks,
7 but I certainly didn't intend for the house to be caught on
8 fire. There's a difference, and I think the statute addresses
9 that between intent to harm and an intentional act.

10 Respectfully, Judge, I believe that, you know, your order
11 is correct in its findings. I do -- I do -- and I do believe
12 that there's been, unfortunately, a lack of proper service and
13 a lack of timely service and -- as to DPS, and so I
14 respectfully ask that you deny the plaintiff's motion. I'll
15 be glad to answer any questions you might have.

16 THE COURT: Mr. Baughman?

17 MR. BAUGHMAN: Thank you, Your Honor. Obviously, we
18 stand behind our memo, but just to address a couple of -- of
19 points.

20 Mr. Harter indicated there's no cases to say that, you
21 know, our position is proper. He's correct. There's no cases
22 whatsoever regarding 4(d)(4), (d)(5), none whatsoever.
23 There's a lot of cases that -- a lot of cases more recently
24 than -- than before that are in favor of -- of expanding and
25 broadening some of these rules, as opposed to strict

1 limitations of -- of these service rules to assure that
2 justice is met.

3 But I would also say that there is no cases to indicate
4 that what he said that Rule 4(d)(1), (3), (4), (5) work
5 together. There is -- I've seen no case law, no statutory law
6 that really -- if that were the case, then why didn't the
7 legislators simply say all these rules should be read together
8 specifically?

9 They gave each subsection different rules for -- for
10 different reasons depending on the entity that was to be
11 served, and that's why we -- we stand absolutely firm that
12 4(d)(3) has no applicability whatsoever in this case. Simply,
13 4(d)(5) is the controlling rule in this matter.

14 As far as just to touch again on the lobby mail stamp on
15 this exhibit where -- from the affidavit of Paula Davis Abney
16 that was submitted last week, again, I would reiterate that
17 that's -- that's raised more questions than answers because it
18 doesn't say DMV lobby mail, it doesn't say DPS lobby mail. It
19 simply says lobby mail.

20 And was there a failure by the process server to serve
21 the right entity? Maybe, maybe not if service is made in the
22 lobby. Perhaps the lobby gave the summons and complaint to --
23 or directed them to the wrong person. I don't know. I don't
24 know.

25 I know that on these affidavits that, yes, Ms. Candace

1 Horton from the DMV is the person that signed for it, but if
2 -- if the Court would -- in reviewing my memo will note that
3 we include a couple of exhibits regarding this more recent
4 attempt at service just to -- just to ensure that service was
5 done, first and foremost, to address the getting it correct
6 this time and making sure it's with Paula Davis.

7 When -- when we sent a process server back out there, we
8 specifically informed them that this is a -- this address has
9 two different state agencies, and they need to ensure because
10 it's not as -- as -- it's not very clear cut that there are
11 two separate agencies. They need to ensure that they are only
12 talking to someone from the Department of Public Safety.

13 And one of the exhibits that we had included, which was
14 Exhibit 19, I believe, which is found on page 142 of our
15 exhibits, was the email --

16 THE COURT: Can I -- can I ask a question?

17 MR. BAUGHMAN: Yes.

18 THE COURT: Are there -- are there really 145 exhibits
19 attached to that motion?

20 MR. BAUGHMAN: Well, I believe he was referring to the
21 page numbers, and I should have been more clear on the page
22 numbers of my exhibits. They're broken up. There's 145 pages
23 of 20 exhibits, but I should have put -- in the bottom right
24 corner it says plaintiff's motion to reconsider, Exhibit 143
25 is where I'm at right now. I should have put page 143 to be

1 more specific, and I apologize. I should have made that more
2 clear when I was --

3 THE COURT: All right. That's all right.

4 MR. BAUGHMAN: -- putting this together.

5 But on that particular exhibit, you know, it's an email
6 from SWS Process indicating the desk attendant, Grayson, said
7 he could accept on the DPS file. We don't know who Grayson
8 is. Grayson -- Grayson is certainly not one of the people
9 listed in Marcus Gore's affidavit, and we just -- we don't
10 know. It makes it more convoluted and more confusing as far
11 as serving that particular agency, but I was very specific in
12 ensuring that they waited for somebody from the Department of
13 Public Safety to come down.

14 Again, we stand firmly on our memo, and I'm happy to
15 answer any other questions you may have.

16 THE COURT: All right. I will review the memo, and then
17 I'll issue an order. Okay?

18 MR. HARTE: All right.

19 MR. BAUGHMAN: Thank you, Judge.

20 THE COURT: Thank you all.

21 MR. HARTE: Thank you, Judge.

22 (WHEREUPON, the proceedings ended.)

23

24 --- END REQUESTED TRANSCRIPT ---

25



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Department of Public Safety

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Street Address:
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Mailing Address:
P.O. Box 1993
Blythewood, SC 29016

SCDPS Contact Numbers

- Highway Patrol Telecommunications**
(803) 896-9621
- South Carolina Highway Patrol**
(803) 896-7920
- State Transport Police**
(803) 896-5500
- Bureau of Protective Services**
(803) 896-5442
- Director's Office**
(803) 896-7979
- Office of Executive Affairs** (Contact for General inquiries from the public)
(803) 896-8409
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South Carolina Department of Public Safety
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Blythewood, SC 29016

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson

Docket #2022-CP-42-01677

Plaintiff,

vs.

South Carolina Department of Public Safety,
South Carolina Highway Patrol, and Trooper
Patrick J. Goshorn

AFFIDAVIT OF PERSONAL SERVICE

Defendants.

PERSONALLY appeared before me the undersigned, who being duly sworn, says that they served Summons and Complaint in this action on **Patrick J. Goshorn** by delivering the same to:

(X) **Christine Goshorn as his wife**, a person of age and discretion residing at Defendant's residence;

And leaving with said person a copy of the same at **304 Hampton Ridge Drive Greer, South Carolina on the 6th day of September 2022 at 12:23 pm** and that Deponent knows the person so served to be the person described in this Affidavit, and that Deponent is not a party to, nor interested in the action.

SWORN TO BEFORE ME THIS

6 day of September 2022.

Gail T. Hamby
Notary Public for South Carolina

My Commission Expires: 10-14-2025



A handwritten signature in blue ink that reads "Misty Davis".

Misty Davis

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Department of Public Safety/ SC Highway
Patrol

(X) By personal delivery to: Candance Horton (Branch Services)

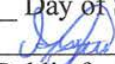
() Registered Agent for:

() By delivery to: A person of suitable age and discretion residing in the residence

AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
Blvd Blythewood SC 29016 On the 6 Day of September 2022**

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Jamahl E. Spratley

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Time of Service: 3:21 P.M.



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.: 2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN

Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
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(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, South Carolina Attorney Generals Office Rembert Dennis
Building

(X) By personal delivery to: Jane McCrea (Receptionist)

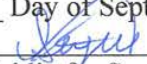
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,
VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

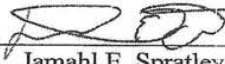
PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
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(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

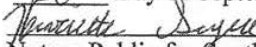
IN THIS ACTION ON, SOUTH CAROLINA
HIGHWAY PATROL

(X) By personal delivery to: Candance Horton (Branch Services)
() Registered Agent for:
() By delivery to: A person of suitable age and discretion residing in the residence

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ATTORNEY GENERALS OFFICE REMBERT DENNIS BUILDING, 1000
Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**

 , Process Server
Jamahl E. Spratley

SWORN TO before me this
20 Day of September 2022


Notary Public for South Carolina,
My Commission Expires: 09/28/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION No.:2022CP4201677

AFFIDAVIT OF SERVICE

TAYLOR CHASEY ROBERTSON
Plaintiff,
VS.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL AND TROOPER
PATRICK J. GOSHORN
Defendants.

PERSONALLY, APPEARED BEFORE ME, THE UNDERSIGNED, WHO
BEING DULY SWORN, SAYS THAT HE/SHE SERVED:

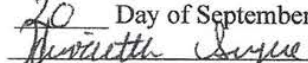
(X) SUMMONS (JURY TRIAL DEMANDED)
(X) COMPLAINT (JURY TRIAL DEMANDED)

IN THIS ACTION ON, SOUTH CAROLINA DEPARTMENT OF PUBLIC
SAFETY

(X) By personal delivery to: Candance Horton (Branch Services)
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AND LEAVING WITH HIM /SHE COPIES OF THE SAME AT **10311 Wilson
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Assembly Street, Suite 519 Columbia SC 29201 AT 4:04 P.M. On the 6 Day of
September 2022**


Jamahl E. Spratley, Process Server

SWORN TO before me this
20 Day of September 2022

Notary Public for South Carolina
My Commission Expires: 09/29/2027

Served for: Nicolas J. Baughman,
Attorney at Law, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2022-CP-42-01677
Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
v.	)	DIANA BROWN
	)	
South Carolina Department of Public	)	
Safety, South Carolina Highway Patrol, and	)	
Trooper Patrick J. Goshorn	)	
	)	
Defendants.	)	
	)	

I, Diana Brown, certify the following:

- A. I am the Human Resources Operations Manager for the South Carolina Department of Public Safety, an agency of the State of South Carolina ("Department");
- B. The South Carolina Highway Patrol ("Patrol") is a division of the Department;
- C. In my role as Human Resources Operations Manager, I have access to the employment records of the Department and the Patrol;
- D. The Department and Patrol track employment through the South Carolina Enterprise Information System ("SCEIS"). SCEIS has been the record keeping system for the Department and the Patrol since 2010;
- E. Since SCEIS was implemented as the record keeping system for the Department and the Patrol, neither the agency nor the division has employed someone by the name of Candace Horton;
- F. The Department and the Patrol have designated employees who are authorized to accept service of process on their behalf. These employees change over time as employees and

roles change. However, in order for any employee to accept service on behalf of the Department or the Patrol, the individual must be employed by the Department or the Patrol;

G. Insofar as Candace Horton has never been employed by the Department nor the Patrol, she has never been authorized to accept service on behalf of either.

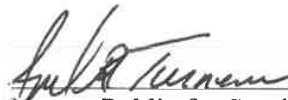
I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2022.



Diana Brown

Sworn to before me this)
29th day of December, 2022)
My Commission Expires: 4/11/2027)



Notary Public for South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) CIVIL ACTION No.: 2022-CP-42-01677

Taylor Chasey Robertson,

Plaintiff,

vs.

South Carolina Department of Public
Safety, South Carolina Highway Patrol,
and Trooper Patrick J. Goshorn,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I, Patty Flanary Sanders, as paralegal to Russell W. Harter, Jr., attorney for defendants in the within action, on this the 17th day of November, 2022 served the attorneys listed hereinbelow in the above-captioned matter with copy of **Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff** by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Nicholas J. Baughman
Nicholas J. Baughman Attorney at Law, LLC
600 North McDuffie Street
Anderson, SC 29621

C. Austin McDaniel
C. Austin McDaniel, Attorney at Law, LLC
523 N. Main Street
Anderson, SC 29621


Patty Sanders,
Paralegal to Russell W. Harter, Jr.
Chapman, Harter & Harter,
P.A. 14 Lavinia Avenue Post
Office Box 10224 Greenville,
SC 29603 864/233-4500
864/232-1710 (fax) E-mail:
rwhjr@chhlaw.net

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,)
)
Plaintiff,)
)
vs.)
)
South Carolina Department of)
Public Safety, South Carolina)
Highway Patrol, and Trooper)
Patrick J. Goshorn,)
)
Defendants.)

DEFENDANTS' FIRST SET OF
INTERROGATORIES TO
PLAINTIFF

TO: PLAINTIFF AND HER ATTORNEY(S):

The defendants request that the plaintiff answer the following Interrogatories pursuant to Rules 26, 33, and 37 of the South Carolina Rules of Civil Procedure:

INSTRUCTIONS:

A. Please make your answers to these Interrogatories in writing and under oath. Within thirty (30) days of the date of service of these Interrogatories upon you, please send copies of your answers to the undersigned attorney(s) for the defendant.

B. Every Interrogatory herein shall be deemed a continuing Interrogatory and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such Interrogatory.

C. If you object to or otherwise decline to answer any portion of any Interrogatory, provide all information called for by that portion of the Interrogatory to which you do not object

or which you do not decline to answer. If you object to any Interrogatory on the ground that it is too broad, provide such information which is concededly relevant. For those portions of any Interrogatory to which you object or to which you otherwise decline to answer, state the reason for your objection.

D. Every reference to "you" or "your" in these discovery requests refers to Plaintiff. References to "you" or "your" do not refer to plaintiff's attorney(s).

E. When an Interrogatory or any of its subparts calls for you to "specify in detail" your allegations in your Complaint, the Interrogatory calls for you to set forth each fact and identify each document which you contend supports your allegation, to identify each person who possesses knowledge of facts relating to your allegation, and to identify any other basis for your allegation.

F. The following definitions apply to all Interrogatories:

(1) Serious. The term "Serious" means such injury(ies), illness(es), sickness(es), and disease(s) that require(d) plaintiff(s) to seek professional medical advice or attention.

(2) Document. The term "Document" includes any written or graphic matter however produced or reproduced, including any copy thereof.

(3) Identify. The term "Identify" when referring:

a. to a person, means to state his or her full name, occupation, employer, and present or last known business and residential addresses and phone numbers.

b. to a public or private corporation, partnership, association, or other organization, or to a governmental agency, means to state its full name and present or last known business address and phone number.

c. to a statement, means to identify who made it, who took or recorded it, and all others, if any, present during the making thereof; to state when, where, and how it was taken or recorded; and to identify who has the present or last known possession, custody, or control thereof.

d. to a document, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; to identify the individuals to whom the original or a copy was circulated; and to identify who has the present or last known possession, custody, or control thereof.

e. to any other tangible thing, means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has the present or last known possession, custody, or control thereof.

INTERROGATORIES:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in

possession of the party that relate to the claim or defense in the case.

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. With respect to each expert witness identified above, state his/her place of employment and qualification(s). Additionally, please state:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which each expert will testify;
- c. furnish a summary of the grounds of each opinion expected to be elicited from each of the experts named;
- d. state whether each expert has prepared a report or other written summary of his or her findings, opinions, or conclusions;
- e. with respect to any oral reports from proposed expert witnesses, state:
 - i) the subject matter on which the expert is expected to testify;
 - ii) the substance of the facts and opinions to which the expert is expected to testify; and

iii) a summary of the grounds for each opinion.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

8. Identify and give the substance of all written or transcribed statements, recordings, or videotapes which relate to the facts of this lawsuit or the damages you claim, given by you or any witness in this matter.

9. Please identify each and every lay or non-expert witness whom plaintiff proposes to call as a witness at the trial of this case, including the job title, employer, business and home addresses and telephone numbers of each such witness.

10. If there is included with this action a claim for economic loss, state the job from which this time was lost, giving the name, address, and telephone number of this employer; the number of hours or days lost; the duration which you contend the loss occurred; and the total economic and lost income you claim.

11. Do you contend the defendants violated any statute, code, ordinance, or regulation of any governmental entity or regulatory authority? If so, please specifically identify each such statute, code, ordinance, or regulation and the basis for any such contention.

12. Do you contend that any agent(s), employee(s), and/or representative(s) of the defendant made to you, your agent(s), and/or representative(s) any statements which you contend support the allegations made in the Complaint? If so, identify:

- a. Who made the statement(s);
- b. To whom such statement(s) were made;
- c. When and where the statement(s) were made;
- d. Who was present when the statement(s) were made;
- e. The substance of the statement(s); and
- f. State the contents of any and all conversations between the plaintiff and any employee(s), agent(s), and/or employee(s) of Defendant, specifically identify the parties to each conversation and the date of each conversation. Specify whether each conversation was in person or by telephone or other communications channel.

13. Other than this suit, have you ever been a party to a civil action lawsuit? If so, identify whether as the plaintiff or the defendant, the nature of the suit, the caption of the matter, the attorney(s) involved, and the disposition or outcome of the case.

14. Please state the names of any relatives over the age of eighteen (18) who are residents of Spartanburg County, South Carolina.

15. Describe your employment history during the past ten (10) years, including job title, employer, business address and telephone number, dates of employment,

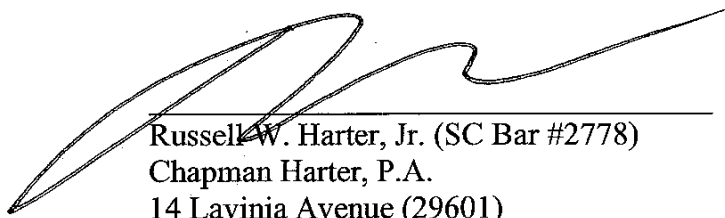
supervisor, a brief description of job duties, wage, the date and amount of any wage increases, and the reason for leaving each job.

16. Set forth the gross and net income reported by you to the Internal Revenue Service from 2015 to the present date. Attach copies of each federal and state income tax return for this 10-year period, including the W-2 forms, to these answers.

17. Other than this instance, have you ever been arrested or convicted of any crime (whether felony or misdemeanor), if so, please identify each crime, the date of arrest, the arresting authority, the court in which any criminal proceeding against him was held, and the disposition of each charge.

**These Interrogatories shall be deemed continuing so
as to require supplemental responses up until and prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr. (SC Bar #2778)

Chapman Harter, P.A.

14 Lavinia Avenue (29601)

Post Office Box 10224

Greenville, South Carolina 29603

864/233-4500 (*Phone*)

864/232-1710 (*Facsimile*)

rwhjr@chhlaw.net

ATTORNEYS FOR DEFENDANTS

Page -7-

October , 2022

A handwritten signature, possibly reading 'C', is written below the date.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	CIVIL ACTION NO.: 2022-CP-42-01677

Taylor Chasey Robertson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
South Carolina Department of	)	DEFENDANTS' FIRST SET OF
Public Safety, South Carolina	)	REQUESTS FOR PRODUCTION TO
Highway Patrol, and Trooper	)	PLAINTIFF
Patrick J. Goshorn,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEY(S):

YOU ARE HEREBY REQUIRED, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, to produce the following documents and tangible things in the possession, custody, or control of plaintiff for inspection and copying. Within thirty (30) days of the date of service of this Request for Production upon you, please send copies of your responses to the undersigned attorney(s) for defendants.

These requests should be considered to be continuing in nature. If, at any time during the course of the case, supplementation of your initial answers becomes necessary, you are required to so supplement your response without the filing of additional requests by defendants. If such supplemental response is not furnished, the undersigned attorney(s) will move at the time of trial to exclude from evidence any information requested and not furnished.

DEFINITIONS:

DOCUMENT. The term "document," either singular or plural, including "documentation,"

is defined as originals, or if not available, true copies, of all memoranda, reports, appraisals, evaluations, correspondence, communications, inter-office communications, intra-office memoranda, inter-company communications, telegrams, summaries of conversations, summaries of memoranda of meetings or conferences, lists of persons attending meetings or conferences, diaries, records or summaries of interviews, investigations or reports, summaries of negotiations, agreements, contracts, corporate rules, corporate policies, office manuals, invoices, canceled checks, journals, ledgers, file cards, index cards, indexes, deposit slips, data processing cards, computer or business machine print-outs, accountants' work papers, accountants' statements, financial statements, whether audited or unaudited, evidence of indebtedness, trust deeds, mortgage instruments, security agreements, trust agreements, loan applications, leases, documents created or reflecting a security interest, loan agreements, financial statements, speeches, public relation releases, press releases, advertisements, pamphlets, circulars, trade letters, annual or other reports, documents filed with governmental agencies, reports of experts and research personnel, drafts and preliminary copies of any of the foregoing, marginal comments appearing on any documents and all other writings and data compilations, including any written, printed, recorded, or graphic matter, photographic matter or sound reproductions, however produced or reproduced, or other tangible things upon which words or phrases are affixed or from which, by appropriate transcription, such written or tangible things may be produced, within the possession, custody, or control of plaintiff, his agent(s), servant(s), employee(s), representative(s), or counsel.

PERSON. The term "person" whether singular or plural, unless otherwise specified, means not only a natural person but also a firm, partnership, association, or corporation.

MANNER OF PRODUCTION. The documents produced pursuant to this request shall be separately produced for each paragraph of the request, or in the alternative, shall be identified

as complying with the particular paragraph or paragraphs of the request in which they are responsive.

PERIOD COVERED. Unless otherwise specifically indicated, the time frame of the documents requested is the ten-year period next preceding the date hereof, and includes future documents completed, received, or transmitted after the date hereof.

PLAINTIFF. The term "plaintiff," or any synonym thereof, is intended to and shall include and embrace, in addition to the plaintiff, her attorney(s) and all agents, servants, employees, representatives, investigators, and all others who may have obtained information for or on behalf of said plaintiff as well as all individuals, named and unnamed, who have a financial interest in the outcome of this suit.

PRIVILEGED DOCUMENTS. In the event that you wish to assert either attorney-client privilege or the work product immunity doctrine as to any documents requested by any of the following specific requests, then as to each such document, provide defendants with an identification of such document in writing, such identification to include: the nature of the document, the sender, the author, the recipient, the recipient of each copy, the names of each person to whom the original or any copy was circulated, the names appearing on any circulation list you have, and a restatement of the subject matter of each document in sufficient detail to permit a determination of the validity of such assertion in the event of a Motion to Compel, without waiving the privilege effected, and a detailed statement of the facts relied upon as a basis for the assertion of privilege or exclusion.

The documents and things to be produced by plaintiff are as follow:

REQUESTS FOR PRODUCTION

1. All documents upon which you relied in preparing each response to Defendants' First Set of Interrogatories to Plaintiff.
2. All documents identified in your answers to Defendants' First Set of Interrogatories to Plaintiff.
3. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at trial in the case in chief, for cross examination; impeachment and/or for any purpose whatsoever.
4. Any and all documents, photographs, diagrams, sketches, and/or drawings which plaintiff intends to utilize at any deposition in the direct examination, for cross examination; impeachment and/or for any purpose whatsoever.
5. All documents relating or referring in any way to, or showing or constituting any contentions, causes of action, or basis of recovery that plaintiff is asserting in this lawsuit.
6. All written, recorded, filmed, transcribed, or videotaped statements of all parties and nonparty declarants pertaining to the subject matter of this lawsuit.
7. All statements, whether in written, audio, electronic, or other recorded form, that plaintiff has obtained from defendants or any employee or former employee, agent, or representative, concerning the occurrences that form any part of the basis of this lawsuit.
8. All written or recorded communications, including, but not limited to, correspondence, notices, memoranda, faxes, or any other documents, made or exchanged between the plaintiff or plaintiff's family and defendants or any of their present or former associates, employees, agents, or representatives.

9. All documents which evidence any of the damages, medical expenses, lost wages, or any claim for economic or financial loss of any kind or nature that the plaintiff is claiming in this lawsuit.

10. All documents which identify witnesses to or other persons with knowledge of the incident(s) referred to in the Plaintiff's Complaint.

11. Copies of Plaintiff's W-2's, and federal and state income tax returns from 2015 to the present date, as well as any other documents, including economic loss reports, upon which Plaintiff relies in support of any claim(s) for damages.

12. Copies of all photographs, slides, videotapes, compact discs, or other pictorial representations relevant to the allegations that form any part of the basis of this lawsuit.

13. All documents and tangible things that have been submitted to, prepared by, used by, and/or relied upon by any expert witness regarding the subject matter of this lawsuit.

14. All documents relating to any claim or demand made by the plaintiff for damages, compensation, or other benefits allegedly resulting from any injury, illness, or damage, including, but not limited to, any disability claims to any employer or governmental/regulatory agency (e.g., social security).

15. All documents that are in the care, custody, or control of the plaintiff, plaintiff's present or former agents, servants, employees, representatives, or counsel that in any way relate to the subject matter of this claim, the defendants, and/or any agent of the defendants.

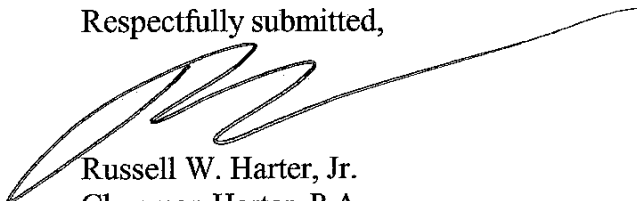
16. Copies of any and all correspondence, photographs, drawings, tapes, email, documents, and/or tangible physical evidence in possession of the plaintiff and/or his counsel that relate to the claim set forth in the Plaintiff's Complaint.

17. Copies of any and all correspondence, photographs, drawings, tapes, email,

documents, and/or tangible physical evidence concerning any party and/or witness to this case.

**These Requests for Production of Documents shall be deemed to be
continuing in nature and require supplemental response prior to trial.**

Respectfully submitted,



Russell W. Harter, Jr.
Chapman Harter, P.A.
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500
864/232-1710 (*facsimile*)
rwhjr@chhlaw.net
ATTORNEYS FOR DEFENDANTS

October *6*, 2022



Baughman, Nicolas <nick@baughmanlawsc.com>

Robertson ..

1 message

Russell Harter <rwhjr@chhlaw.net>

Fri, Mar 3, 2023 at 5:14 PM

To: Nicolas Baughman <nick@baughmanlawsc.com>, "austin@austinmcdaniellaw.com" <austin@austinmcdaniellaw.com>

I served him discovery back a few months ago. Please let me know when we can get those responses. Thank you, Rusty.

Russell W. Harter, Jr.
Chapman, Harter & Harter, PA
14 Lavinia Avenue
P.O. Box 10224 (29603)
Greenville, SC 29601
Main: (864) 233-4500
Fax: (864) 232-1710



Baughman, Nicolas <nick@baughmanlawsc.com>

Need Service by Today

steven smith <swsprocess@yahoo.com>
Reply-To: steven smith <swsprocess@yahoo.com>
To: "Baughman, Nicolas" <nick@baughmanlawsc.com>

Fri, May 19, 2023 at 3:23 PM

We attempted today, but they called someone from the DPS side but after several tries, the Front clerk intake stated he could accept. We have to go back Monday on another file and can try again. We have waited for an hour on that side and no one would have come down, after this one we are probably not going to accept any more Dept of Public safety files again. Not sure why it is so difficult, and that may have been what happened last year.

The Intake desk attendant, Grayson, stated he could accept on the DPS file but I am not sure if that is correct, so we can try again Monday when we go back to serve the DMV

Thanks

Swsprocess

701 Gervais Street

Ste. 150-006

Columbia , SC 29201

803-917-2959

swsprocess@yahoo.com

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. This information is confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

[Quoted text hidden]

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Taylor Chasey Robertson
PLAINTIFF,

C/A NO: 2022-CP-42-01677

vs.

AFFIDAVIT OF SERVICE

South Carolina Department of Public Safety, South
Carolina Highway Patrol, and Trooper Patrick J. Goshorn

DEFENDANT(S).

Service of Process on: South Carolina Department of Public Safety

The undersigned, being first duly sworn, on oath deposes and states: That s(he) is now and at all times herein mentioned a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named above, and is competent to be a witness therein.

Documents Served:

☐ LP	☐ Amended LP	☐ CARESAct
☒ Summons & Complaint	☐ Amended Summons & Complaint	☐ First Interrogatories/Defendant
☐ Notice of F/C Intervention	☐ Amended Notice of F/C Intervention	☐ First Request for Production
☐ Certificate From Exemption ADR	☐ Amended Certification From Exemption ADR	

This affiant served the above-described documents at 10311 WILSON BLVD, BLYTHEWOOD SC 29016 on the 22ND day of May, 2023 at 12:49 PM by delivering 1 copies of same to:

☐ **INDIVIDUAL SERVICE** ☐ **MET DEFENDANT AT**

☐ **SUBSTITUE SERVICE** by leaving a copy of the above-described documents at his/her usual place of abode with (relationship/paralegal): a person residing therein of suitable age and discretion who confirmed the Defendant resides at the above address and informed that person of the contents thereof.

☒ **CORPORATE OR GOVERNMENT SERVICE** by leaving a copy of this process with PAULA DAVIS (Title) PARALEGAL WITH SC DEPT OF PUBLIC SAFETY, a person authorized to accept service and informed that the person of the contents thereof.

MILITARY No MOBILE HOME PICTURES E-MAILED ---
MARRIED ---
HOUSE --- PROPERTY ADDRESS: ---
OWNER OCCUPIED: ---
MOBILE HOME: --- COMMENTS: ---

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:
Age 50'S Gender Female Race B Height 5'5 Weight 160 Hair S&P Glasses NO

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that he/she is over the age of 18 and is not interested party in this action.

NAME: Ellen Crolley Ellen Crolley 05-22-2023
Print Signature Date

Notary Public: Subscribed and sworn before me on this 22ND day of May in the year of 2023

Personally known to me ☒ or ☐ identified by the following document:

Notary Public for SOUTH CAROLINA
Commission Expiration: 11-4-2026

Type: ---

Notary Public (Legal Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

TAYLOR CHASEY ROBERTSON,

PLAINTIFF,

VS.

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY, SOUTH CAROLINA
HIGHWAY PATROL, PATRICK J.
GOSHORN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT

CASE NO.: 2022-CP-42-01677

AFFIDAVIT OF JAMAHL SPRATLEY

I, Jamahl Spratley, certify the following:

- A. I am a process server for You've Been Served LLC;
- B. I was assigned to serve the South Carolina Department of Public Safety / South Carolina Highway Patrol on September 6, 2022;
- C. The attorney that hired my employer provided the address for service, which was at 10311 Wilson Blvd Blythewood SC 29016;
- D. I confirmed that this address was correct;
- E. When I arrived at 10311 Wilson Boulevard, I entered the building and approached the front desk just inside the building;
- F. I informed the person at the front desk that I was there to serve the Department of Public Safety;
- G. The front desk person informed me that she could accept service on their behalf.
- H. The front desk person identified herself as Candace Horton, and I served her.

I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection.

SWORN to me this 7th day of
June 2023.

Maritza Lopez
NOTARY PUBLIC FOR STATE OF SC
My commission expires: 09/28/2027

Jamahl Spratley

Date

6-7-2023

RECEIVED

Sep 10 2024

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: September 3, 2024

s/ Nicolas J. Baughman

Nicolas J. Baughman, Esq.

S.C. Bar No. 102186

Nicolas J. Baughman, Attorney at Law, LLC

600 North McDuffie Street

Post Office Box 2501

Anderson, South Carolina 29621 (29622)

Phone: (864) 332-9276

Fax: (864) 392-8276

Email: nick@baughmanlawsc.com

Attorney for Appellant