

RECEIVED

Aug 26 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Case No. 2019-CP-23-01522

Appellate Case No. 2024-000931

Samantha Katchick Respondent,

v.

Marshall Alexander Chapman, DMD, Brooke I. Chapman, Chapman Dental, P.A., Douglas P. Schmieding, CPA, Jennings Cook & Co., CPAs, PA, and Earl A. Simmons, CPA, Defendants,

of which Marshall Alexander Chapman and Chapman Dental, P.A. are the Appellants.

RECORD ON APPEAL - VOL. 1

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
Bradford Neal Martin & Associates, PA
Post Office Box 10410
Greenville, South Carolina 29603

Joshua S. Kendrick, Esq. (SC Bar No. 70453)
Kendrick & Leonard, P.C.
Post Office Box 6938
Greenville, South Carolina 29606

Christopher S. Leonard, Esq. (SC Bar No. 80166)
Kendrick & Leonard, P.C.
Post Office Box 886
Columbia, South Carolina 29202

**Attorneys for Appellants, Marshall Alexander
Chapman, DMD and Chapman Dental, PA**

Wesley D. Few, Esq. (SC Bar No. 15565)
Wesley D. Few, LLC
Post Office Box 9398
Greenville, South Carolina 29604

**Attorney for Respondent,
Samantha Katchick**

INDEX- VOL. 1

Orders

Order of February 25, 2021	1
Order of April 16, 2021	6
Order of May 9, 2022.....	9
Order of May 15, 2024.....	15
Order of June 3, 2024.....	18
Verdict Forms	24

Pleadings

Plaintiff's Summons and Complaint filed March 25, 2019	28
Defendants' Answer and Counterclaim filed May 24, 2019	46
Defendants' Amended Answer and Counterclaim filed November 1, 2019	59
Plaintiff's Answer to Amended Counterclaim filed December 23, 2019	72
Plaintiff's Amended Complaint filed December 11, 2020	79
Defendants' Answer and Counterclaim to "Amended" Complaint filed January 20, 2021	108
Plaintiff's Answer to Amended Counterclaim filed March 11, 2021	124
Plaintiff's Second Amended Complaint filed April 16, 2021	131
Defendants' Answer and Counterclaim to Second Amended Complaint filed April 19, 2021 ...	164
Plaintiff's Answer to Amended Counterclaim filed May 12, 2021	185
Defendants' Motion for Setoff filed May 7, 2024	199
Defendants' Motion for Judgment Notwithstanding the Verdict or Alternatively for a New Trial Absolute or New Trial NISI Remittitur filed May 7, 2024.....	200
Plaintiff's Joint Response in Opposition to Motion for Setoff and Motion for New Trial, Judgment Notwithstanding the Verdict and New Trial and NISI Remittitur filed May 8, 2024	210

Transcripts

Transcript of Trial held April 22-25, 2024	217
--	-----

JIMNASIM:

Direct Examination by Mr. Few	316
Cross-Examination by Mr. Kendrick	321
Redirect Examination by Mr. Few	324

ANGELA HAWTHORNE:

Direct Examination by Mr. Few	325
Cross-Examination by Mr. Kendrick	333
Redirect Examination by Mr. Few	337
Recross-Examination by Mr. Kendrick	338

ELLIOTT TURNER:

Direct Examination by Mr. Few	341
Cross-Examination by Mr. Kendrick	350
Redirect Examination by Mr. Few	370
Recross-Examination by Mr. Kendrick	372
Further Examination by Mr. Few	375

DOUG SCHMIEDING:

Direct Examination by Mr. Few	379
Cross-Examination by Mr. Kendrick	395
Redirect Examination by Mr. Few	406
Recross-Examination by Mr. Kendrick	408

BRIAN SMITH:

Direct Examination by Mr. Few	411
Cross-Examination by Mr. Kendrick	439
Redirect Examination by Mr. Few	441
Recross-Examination by Mr. Kendrick	443

SAMANTHA LYNN KATCHICK:

Direct Examination by Mr. Few	444
Cross-Examination by Mr. Kendrick	493

INDEX- VOL. 2

Transcript of Trial Held April 22-25, 2024 (continued).....501

SARAH MCGUIRE:
Direct Examination by Mr. Few510
Cross-Examination by Mr. Leonard529

ALTHEA FAITH HOLLAND:
Direct Examination by Mr. Few537

MICHAEL FRANCIS O'SHEA:
Direct Examination by Mr. Few545
Cross-Examination by Mr. Kendrick567
Redirect Examination by Mr. Few578
Recross-Examination by Mr. Kendrick579

HARVEY EARL SIMMONS:
Direct Examination by Mr. Few582

Plaintiff Rests.....590

Motions591

BROOKE CHAPMAN:
Direct Examination by Mr. Kendrick623
Cross-Examination by Mr. Few632
Redirect Examination by Mr. Kendrick652
Recross-Examination by Mr. Few655

MARSHALL ALEXANDER CHAPMAN:
Direct Examination by Mr. Kendrick657
Cross-Examination by Mr. Few670

Defense Rests.....679
Motions680
Closing Argument by Mr. Few714
Closing Argument by Mr. Kendrick738
Further Closing Argument by Mr. Few755
Charge on the Law by the Court760
Questions from the Jury785
Verdict of the Jury792
Matters of Law797

ALTHEA FAITH HOLLAND:

Direct Examination Proffered by Mr. Few	827
Cross-Examination Proffered by Mr. Kendrick.....	844
Matters of Law.....	850
Opening Statement by Mr. Few.....	859
Opening Statement by Mr. Kendrick.....	862
<u>ALTHEA FAITH HOLLAND:</u>	
Direct Examination by Mr. Few	865
Cross-Examination by Mr. Kendrick.....	871
Plaintiff Rests.....	872
Motions	873
Matters of Law.....	880
Closing Argument by Mr. Few	900
Closing Argument by Mr. Kendrick.....	908
Charge on the Law by the Court.....	910
Verdict of the Jury	914
Grant of Ten Days to File Post Trial Motions.....	916

INDEX – VOL. 3

Trial Exhibits

Plaintiff's Exhibit 1.....	919
Plaintiff's Exhibit 2.....	920
Plaintiff's Exhibit 3.....	921
Plaintiff's Exhibit 4.....	924
Plaintiff's Exhibit 5.....	943
Plaintiff's Exhibit 6.....	954
Plaintiff's Exhibit 7.....	966
Plaintiff's Exhibit 8.....	975
Plaintiff's Exhibit 9.....	977
Plaintiff's Exhibit 10.....	978
Plaintiff's Exhibit 11.....	980
Plaintiff's Exhibit 12.....	984
Plaintiff's Exhibit 13.....	1009
Plaintiff's Exhibit 15.....	1028
Plaintiff's Exhibit 18.....	1029
Plaintiff's Exhibit 21.....	1030
Plaintiff's Exhibit 26.....	1035
Plaintiff's Exhibit 28.....	1039
Plaintiff's Exhibit 29.....	1059
Plaintiff's Exhibit 30.....	1060
Plaintiff's Exhibit 33.....	1067
Plaintiff's Exhibit 34.....	1068

Miscellaneous

Request for Transcript dated June 19, 2024.....	1069
Email from Court Reporter dated July 21, 2024.....	1071

<u>Certificate of Counsel</u>	1074
--	------

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Samantha Katchick,

Plaintiff;

v.

Marshall Alexander Chapman, DMD,
Brooke I. Chapman, Chapman Dental, P.A.,
Douglas P. Schmieding, CPA, Jennings
Cook & Co., CPA's, PA, and Earl A.
Simmons, CPA.,

Defendants.

IN THE COURT OF COMMON PLEAS,
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019CP2301522

ORDER

This matter comes before the Court upon Motions to Dismiss filed by three separate groups of Defendants and was heard via WebEx Virtual Courtroom on February 17, 2021. Participating in the hearing were counsel for their respective parties. All of the Motions related to the various causes of action asserted in the Amended Complaint filed on January 8, 2021.

STANDARD OF REVIEW

To grant a Motion to Dismiss, the court “must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Marion at 395, 645 S.E.2d 245, 248. For a Motion to Dismiss, the Court looks at the facts alleged in the light most favorable to the plaintiff to determine whether the plaintiff is entitled to relief on any legal theory. Marion at 395, 645 S.E.2d 245, 247.

ANALYSIS

I. Chapman Defendants

As to the Motion to Dismiss filed by Defendants Marshall Alexander Chapman, Brooke I. Chapman and Chapman Dental P.A. (hereinafter “Chapman Defendants”). In their Motion, Chapman Defendants seek dismissal of all causes of action as to Chapman Dental and as to all Chapman Defendants for the 2nd, 3rd, 5th, 6th, 7th and 8th causes of action.

First, the Complaint does cause some confusion because Defendant Chapman Dental, P.A. is given the reference name of “Dental” while the remaining Chapmans are given the reference name of “Chapman” and “Mrs. Chapman”. In all of the causes of action, the Amended Complaint references Chapman Defendants but makes no reference to Dental. Although this seems to be a minor issue, it is still up to Plaintiff to properly plead her causes of action. Nonetheless, the Court finds the allegations, when viewed as a whole, can be construed to cover Marshall Alexander Chapman, Brooke I. Chapman, and “Dental” under the use of Chapman Defendants and the general term Defendants.

As to the 2nd cause of action (constructive fraud); 3rd cause of action (malicious prosecution); 6th cause of action (intentional infliction of emotional distress) and 8th cause of action (civil conspiracy), the Amended Complaint sets forth sufficient allegations to survive a Motion to Dismiss. As to Defendants’ argument against the 5th cause of action for false imprisonment, our Courts have recognized a cause of action for false imprisonment against a private individual who directed the arrest by law enforcement. See *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262 (Sup. Ct. 2019). Thus, this cause of action survives Defendants’ Motion to Dismiss.

For the 7th cause of action, the Court finds the allegations do not meet the requirements for “Interference with Contract/Prospective Contract”. To assert this cause of action, Plaintiff must

allege (1) the existence of a contract; (2) the wrongdoer's knowledge of the contract; (3) the intentional procurement of its breach; (4) the absence of justification; and (5) resulting damage. See *DeBerry v. McCain*, 275 S.C. 569 (Sup. Ct. 1981). The Amended Complaint's allegations of Defendants knowledge "of the Plaintiff's existing employment and prospective employment opportunities" (§ 130) and how Defendants "attempted to procure a breach" (§ 131) do not meet the requirements for interference with a contract. Therefore, the Court grants Chapman Defendants' Motion as to the 7th Cause of Action.

II. Defendants Schmieding and Cook

As to the Motion to Dismiss filed by Defendants Douglas P. Schmieding, CPA, and Jennings Cook & Co., CPA's, PA ("Defendants Schmieding and Cook"). In their Motion, Defendants Schmieding and Cook request dismissal of the 9th cause of action (negligence) and 10th cause of action (negligent misrepresentation). As to both causes of action, there is an issue of whether Plaintiff has properly pled the recognized duty required by Defendants to third parties. But applying the standard applicable for a 12(b) (6) Motion, the Court finds Plaintiff has escaped dismissal at this point. However, the 10th cause of action for negligence contains no allegations as to Defendant Cook, so it is dismissed from this cause of action.

III. Defendant Simmons

As to the Motion to Dismiss filed by Defendant Earl A. Simmons, CPA ("Defendant Simmons"). In his motion, Defendant Simmons seeks the dismissal of the 1st cause of action (defamation), 11th cause of action (negligence) and 12th cause of action (negligent misrepresentation). As to the 1st and 11th cause of action, the Amended Complaint alleges sufficient facts to survive a Motion to Dismiss. As for the 12th Cause of Action, Defendant Simmons' Motion did not address this 12th Cause of action, but it was addressed in its supporting

memorandum. Because of a scrivener's error, the heading for the 12th cause of action referred to Defendants Schieding and Cook and not Defendant Simmons. The body of the cause of action references Defendant Simmons. Therefore, the Court will address Defendants Simmons argument for dismissal. The 12th cause of action fails to allege that Plaintiff relied on any representation made by Defendant Simmons which is required for this cause of action. See *AMA Management Corp v. Strasburger*, 309 S.C. 213 (Ct App. 1992). Therefore, Defendant Simmons' Motion to Dismiss is granted as to the 12th Cause of Action.

CONCLUSION

In summary, the Court has dismissed the 7th cause of action as to Chapman Defendants, 9th cause of action as to Defendant Cook, and 12th cause of action as to Defendant Simmons. The other grounds of Defendants' Motions to Dismiss are denied.

It is so ordered.

Judge Gravely's Signature Page to Follow



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-02-25 09:43:15 page 5 of 5

Samantha Katchick
PLAINTIFF(S)

Marshall Alexander Chapman et al
DEFENDANT(S)

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.
- 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 order (formal order to follow) Statement of Judgment by the Court:

See page 2

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/16/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court upon Plaintiff's Rule 59 Motion to Alter or Amend the Court's Order of February 25, 2021 (hereinafter "Order of Dismissal"). The hearing was held on April 1, 2021 via WebEx Virtual Courtroom. Present at the hearing were Wesley Few for Plaintiff and Ryan Gunther and Stephanie Fajardo for the respective Defendants.

This case has acquired quite a tortured procedural history and has not even passed the Motion to Dismiss phase. In the Order of Dismissal in subsection II, the Court mistakenly dismissed the 10th cause of action against Defendant Jennings Cook & Co., CPA, PA (hereinafter "Jennings Cook") (The Amended Complaint refers to this Defendant as Jennings and the Order of Dismissal refers to this Defendant as Cook. To avoid any confusion, the Court will refer to this Defendant in this Order as Jennings Cook). The Court correctly dismissed the 9th cause of action in the conclusion of the Order of Dismissal. The Court intended, and the parties agreed, that the Order of Dismissal related to the 9th cause of action for negligence against Jennings Cook. As set forth in the Order of Dismissal, the 9th cause of action of the Amended Complaint fails to contain any allegations of negligence against Jennings Cook, although Plaintiff argues that sufficient allegations are included by way of reference and incorporation. Although the Court does not feel this is sufficient, the title to the 9th Cause of action states "Negligence/Gross Negligence - Schmieding and Jennings". Despite there being no allegations against Jennings Cook in the body of the 9th cause of action, it appears that Plaintiff intended to include it. Even though, this case is starting to gray, the Court believes Plaintiff should have the opportunity to correct an obvious mistake in her pleadings, especially in light of the fact that no party would be prejudiced by an additional amendment. See *Skydive Myrtle Beach v. Horry County*, 826 S.E.2d 585 (2019).

The Order of Dismissal also dismissed the 12th cause of action as to Defendant Earl A. Simmons, CPA (hereinafter "Simmons") for failure to allege reliance, a crucial element of negligent misrepresentation. In Plaintiff's Motion, Plaintiff's counsel asserts that Simmons' initial Motion did not include grounds for dismissal of the 12th cause of action, resulting in Plaintiff not having sufficient time to properly respond. The Court would note that Simmons included this ground for dismissal in his Memorandum and it was argued at the hearing to which Plaintiff's counsel made no objection. Nonetheless, the Amended Complaint did not include the necessary elements for a negligent misrepresentation cause of action. Further, based on Plaintiff's argument, the Court does not believe that reliance can be established—but that may be a more appropriate issue on a motion for summary judgment. As stated above, the Court finds, reluctantly, that Plaintiff should have the opportunity to cure any technical deficiencies and shall have the right to file a Second Amended Complaint as to this cause of action.

Therefore, the Court orders that Plaintiff shall have 15 days from the date of this Order to file a Second Amended Complaint to address the issues with the 9th and 12th causes of action as set forth in this Order. If Plaintiff fails to file an Amended Complaint within 15 days, then the previous Order of Dismissal shall stand and the 9th cause of action shall be dismissed as to Jennings Cook and the 12th cause of action shall be dismissed as to Simmons. The remaining portions of the Order of Dismissal shall remain in full force and effect.

It is so Ordered.



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-04-16 08:44:51 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Samantha Katchick)
)
)
Plaintiff,)
)
vs.)
)
Marshall Alexander Chapman, DMD,)
Brooke I. Chapman, Chapman Dental, P.A.,)
Douglas P. Schmieding, Jennings Cook &)
Co., CPA's PA and Earl A. Simmons, CPA,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2019-CP-23-01522

ORDER

This matter is before the Court on Defendants Marshall Alexander Chapman, DMD (“Dr. Chapman”), Brooke I. Chapman, Chapman Dental, P.A., Earl Simmons, CPA, Douglas P. Schmieding, CPA, and Jennings Cook & Co.’s Motions for Summary Judgment. For the reasons set forth below, the Defendants’ motions are granted in part and denied in part.

Background

This case arises out of the termination and subsequent arrest of the Plaintiff. Plaintiff was terminated from the dental practice on March 28, 2017. On February 28, 2018, Plaintiff was arrested after defendants Dr. Alexander Chapman, and Brooke Chapman contacted the Greenville County Sheriff’s office on behalf of defendant Chapman Dental, P.A., and alleged Plaintiff had stolen approximately \$3,500 from the dental practice while employed as a front desk receptionist and bookkeeper. As part of the investigation, spreadsheets prepared by defendant Earl Simmons as well as a letter prepared by defendant Doug Schmieding were turned over to GCSO. The charges against the Plaintiff were eventually *nolle prossed* by the 13th Circuit Solicitor’s office. This case followed.

Claims

Against defendant Chapman Dental, P.A., Plaintiff brings claims for defamation per se, constructive fraud, malicious prosecution, abuse of process, false imprisonment, and intentional infliction

of emotional distress. Against defendants Dr. Alexander Chapman and Brooke Chapman, Plaintiff brings claims for defamation per se, constructive fraud, malicious prosecution, abuse of process, false imprisonment, intentional infliction of emotional distress and civil conspiracy. Against defendant Earl Simmons, Plaintiff brings claims for defamation per se, constructive fraud, malicious prosecution, intentional infliction of emotional distress, gross negligence, negligence, and negligent misrepresentation. Against defendants Doug Schmieding and Jennings & Cook, P.A., Plaintiff brings claims for gross negligence, negligence, and negligent misrepresentation.

Standard of Review

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRPC. The non-moving party must present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Discussion

Douglas Schmieding and Jennings Cook & Co.

As to Defendants Douglas Schmieding and Jennings Cook & Co., summary judgment is GRANTED on all claims brought against them by the Plaintiff. As to the negligence and gross negligence claims, the evidence shows that Schmieding believed the letter he prepared would only be used internally by Chapman Dental, and there is not testimony put forth to show otherwise. Thus, any duty owed by Schmieding and Jennings & Cook was owed to Chapman Dental and not to the Plaintiff. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). Additionally, even if there was a duty, there is no evidence that these defendants breached any duty. As to negligent misrepresentation, there is no evidence in the record of any false representation made to the Plaintiff by these Defendants, nor is there any evidence these Defendants had a pecuniary interest in making any statements, that the Plaintiff justifiably relied on any statements, or that the Plaintiff suffered a pecuniary loss as a result of any reliance. *AMA Management Corp. v. Strasburg*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).

Dr. Alexander Chapman

As to Dr. Alexander Chapman, summary judgment is GRANTED as to Plaintiff's claims for constructive fraud, abuse of process, and intentional infliction of emotional distress. As to constructive fraud, Plaintiff has not produced a scintilla of evidence that she relied on any representation made by Dr. Chapman to her detriment. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). As to abuse of process, there is not a scintilla of admissible evidence of an ulterior motive by Dr. Chapman in bringing the criminal charges against the Plaintiff. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). As to intentional infliction of emotional distress, the evidence in the record does not show that Dr. Chapman's actions were so extreme and outrageous as to exceed all possible bounds of decency and were utterly intolerable in a civilized community and that any emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it. *Folkens v. Hunt*, 290 S.C. 194, 348 SE.2d 839 (Ct. App. 1986); *Todd v. S.C. Farm Bureau*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *rev'd on other grounds* 287 S.C. 190, 336 S.E.2d 472 (1985).

Summary judgement is DENIED against Dr. Chapman as to Plaintiff's claims for defamation, malicious prosecution, false imprisonment and civil conspiracy. As to defamation, there is a scintilla of evidence that Dr. Chapman made at least one defamatory statement about the Plaintiff because he told another employee of Chapman Dental that the Plaintiff was fired because she stole money. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). As to malicious prosecution, there is a scintilla of evidence that there was a lack of probable cause in instituting the judicial proceedings because there is evidence that Greenville County Sheriff's Office did not conduct an independent investigation, but merely relied on statements made by the Chapmans in deciding to arrest and charge the Plaintiff with breach of trust. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 629 S.E.2d 642 (2006). As to false imprisonment, there is a scintilla of evidence that the Plaintiff's arrest was unlawful because it was based merely on representations made by Dr. Chapman and Brooke Chapman to GCSO. *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 790 S.E.2d 401 (Ct. App. 2016); *McBride v. Sch. Dist. Of Greenville Cty.*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). As to

civil conspiracy, there is at least a scintilla of evidence that Dr. Chapman and Brooke Chapman combined to provide law enforcement with false information in an overt act which proximately resulted in damages to the Plaintiff when she was arrested. *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

Chapman Dental, P.A.

As to Chapman Dental, P.A., summary judgment is GRANTED as to Plaintiff's claims for constructive fraud for the same reasons outlined above as to Dr. Chapman. Summary judgment is DENIED as to Plaintiff's claims for malicious prosecution and false imprisonment claims for the reasons outlined above as to Dr. Chapman.

Brooke Chapman

As to Brooke Chapman, summary judgment is GRANTED as to Plaintiff's claims for constructive fraud, abuse of process, and intentional infliction of emotional distress for the same reasons outlined above as to Dr. Chapman and Chapman Dental. Summary judgment is also GRANTED as to Plaintiff's claim for defamation because there is no evidence in the record of any statement made about the Plaintiff by this Defendant. Summary judgment is DENIED as to Plaintiff's malicious prosecution, false imprisonment and civil conspiracy claims for the same reasons outlined above as to Chapman Dental and Dr. Chapman.

Earl Simmons

As to Earl Simmons, summary judgment is GRANTED as to Plaintiff's claims for defamation, constructive fraud and intentional infliction of emotional distress for the same reasons outlined above as to Brooke Chapman. Summary judgment is also GRANTED as to Plaintiff's claims for malicious prosecution and negligent misrepresentation. As to malicious prosecution, there is not a scintilla of admissible evidence that he instigated the judicial proceedings against the Plaintiff. *Law*, 368 S.C. at 424. As to negligent misrepresentation, there is no evidence of a false representation made by this Defendant to the Plaintiff, nor is there any evidence these Defendants had a pecuniary interest in making any statements, that the Plaintiff justifiably relied on any statements, or that the Plaintiff suffered a pecuniary loss as a result of any reliance. *AMA Management Corp.*, 309 S.C. at 213. Summary judgment is DENIED as to Plaintiff's negligence

claim since there is a scintilla of evidence that this Defendant owed Plaintiff a duty to ensure his financial calculations were accurate because there is evidence he undertook the duty of preparing these financial statements, and his negligence created the risk that Plaintiff would be arrested. *Doe*, 373 S.C. at 390.

IT IS SO ORDERED.

G.D. Morgan, Jr.
Circuit Court Judge

_____, 2022
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2022-05-06 14:34:27 page 6 of 6

Samantha Katchick
PLAINTIFF(S)

Marshall Alexander Chapman et al
DEFENDANT(S)

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.
- 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 order (formal order to follow) Statement of Judgment by the Court:


See page 2 below

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/15/2024 .

Brooke I Chapman for Brooke I Chapman Chapman Dental PA for Chapman Dental PA Marshall Alexander Chapman for Marshall Alexander Chapman Brooke I Chapman for Brooke I Chapman Chapman Dental PA for Chapman Dental PA Marshall Alexander Chapman for Marshall Alexander Chapman	 <p>RECEIVED Jun 04 2024 SC Court of Appeals</p>
NAMES OF TRADITIONAL FILERS SERVED BY MAIL	

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendants' Motion for Judgment Notwithstanding the Verdict or Alternatively For a New Trial Absolute or New Trial Nisi Remittitur. Based on the evidence presented at trial, the motions are respectively denied. Defendants also have filed a Motion for Setoff. The Court grants that motion.

As to the Motion for Judgment Notwithstanding the Verdict, the Court, viewing the evidence and all reasonable inferences in the light most favorable to Defendants, finds the evidence yielded more than one inference and therefore the case was left for the jury's determination. *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E. 2d 605 (Ct. App. 2004). As to the Motion for New Trial Absolute, the Court does not find the verdict so grossly excessive that it shocks the conscience of the Court nor is it the result of passion, caprice, prejudice, partiality, corruption or improper motive. *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.* 321 S.C. 1, 466 S.E.2d 727 ((1996). As to the Motion For New Trial Nisi Remittitur, the Court does not find the verdict excessive or unduly liberal. *Waring v. Johnson*, 341 S.C. 248, 533 S.C. 906 (Ct.App. 2000).

The Court has also undertaken a review of the punitive damages award pursuant to *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E. 2d 350 (1991) and *BMW of North America v. Gore*, 517 U.S. 559 (1996) and finds the verdict does not deprive Defendants of their due process rights. In considering the *Gamble* and *Gore* factors, evidence was submitted to the jury that Plaintiff did not steal any cash from Defendants yet was fired for stealing cash, that she was arrested one year later for allegedly stealing cash based on the actions of Defendants in reporting Plaintiff to law enforcement, that the analysis and investigation conducted by Defendants in determining she stole money and to report Plaintiff to law enforcement was not thorough, that the basis of reporting Plaintiff to law enforcement for stealing was that she was the only one who had access when evidence revealed that was not true, that Plaintiff was arrested one year after she was fired, that Plaintiff was booked and put in jail after being arrested, that the charge was dismissed and expunged, that Defendant Alexander Chapman told Brian Smith and Dr. Jim Nasim that Plaintiff stole money from him and the dental practice, that Defendant's net worth was \$2,415,905. Defendants were very culpable, the harm to plaintiff was fairly severe having been arrested and defamed, the Plaintiff did not contribute to the harm, the award is reasonably related to the harm likely to result from the conduct of Defendants, the award likely will deter Defendants and others from the conduct which occurred in this case, Defendants have the ability to pay, and the punitive damages award in relation to the actual damages award is a single digit ratio.

Regarding Defendants' Motion for Setoff, the Court finds Defendants are entitled to have the award set off for any amounts paid in settlement prior to the verdict.

It is so ordered.



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-05-15 16:26:53 page 3 of 3

Samantha Katchick,

Marshall Alexander Chapman, DMD,
 Brooke I. Chapman, and Chapman
 Dental, PA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Wesley D. Few	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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 order (formal order to follow) Statement of Judgment by the Court: See page 2 below.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

RECEIVED

Jun 04 2024

SC Court of Appeals

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)
Samantha Katchick	Marshall Alexander Chapman	\$237,417.00
Samantha Katchick	Chapman Dental, P.A.	\$237,417.00
If applicable, describe the property, including tax map information and address, referenced in the order: The property known as 140 Rocky Point, Greenville, South Carolina, PIN / TMS: 0533020103200, as more specifically identified and described in that certain deed to Marshall Alexander Chapman recorded March 26, 2018 at Deed Book 2534, Pages 3807 to 3808, and that certain survey recorded in Plat Book 7-C, Plat Page 32;		

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.

Circuit Court 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:

Wesley D. Few

Joshua Snow Kendrick
Christopher S. Leonard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

The issues in this action were tried before a jury in the Court of Common Pleas before The Honorable G.D. Morgan, Jr., in a proceeding beginning on April 22 and concluding on April 25, 2024, at which time, verdicts for the Plaintiff Samantha Katchick were rendered in a total amount of \$277,417.00.

Defendants Marshall Alexander Chapman and Chapman Dental, P.A. filed post trial motions on May 6, 2024. Those post trial motions were decided by Order dated May 16, 2024, which denied all of the Defendants’ motions under Rues 50 and 59. However, the Court did grant the Defendants' Motion for Setoff, filed May 6, 2024.

In Green v. Hudgins, 441 S.C. 157, 168, 892 S.E.2d 520, 525-526 (Ct. App. 2023), the Court of Appeals stated:

Setoff comes from the principle that "there can be only one satisfaction for an injury or wrong." Hawkins v. Pathology Assocs. of Greenville, P.A., 330 S.C. 92, 113, 498 S.E.2d 395, 407 (Ct. App. 1998) (quoting Truesdale v. S.C. Highway Dep't., 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975)). By statute, a settlement with a joint tortfeasor "reduces the claim against the others to the extent of any amount stipulated by the release or the covenant." S.C. Code Ann. § 15-38-50(1) (2005). Precedent instructs that before entering judgment

on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury. Hawkins, 330 S.C. at 113, 498 S.E.2d at 406-07. When the settlement is for the same injury, the non-settling defendant's right to a setoff arises by operation of law. Ellis v. Oliver, 335 S.C. 106, 112, 515 S.E.2d 268, 271 (Ct. App. 1999).

Id.

Accordingly, it is hereby adjudged and decreed that the Plaintiff, Samantha Katchick, recover from the Defendants, Marshall Alexander Chapman and Chapman Dental, P.A., the amount of \$237,417.00.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Greenville Common Pleas

Case Caption: Samantha Katchick vs. Marshall Alexander Chapman , defendant, et al

Case Number: 2019CP2301522

Type: Order/Other

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-06-03 11:59:34 page 6 of 6

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) 13TH JUDICIAL CIRCUIT

Samantha Katchick,

) Case No: 2019-CP-23-01522

) Plaintiff,

) vs.

) **VERDICT FORM**

) Marshall Alexander Chapman, DMD, and
) Chapman Dental, P.A

) Defendants.
)
)
)
)
)
)
)
)

1. As to Plaintiff's claim for **Malicious Prosecution** against Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A., we the jury unanimously find (check A or B, and complete as appropriate):

A. For the Plaintiff against (check as appropriate):

Defendant Marshall Alexander Chapman, DMD
Defendant Chapman Dental, P.A.

 /
 /

in the amount of \$ 25,000 in special damages, and
in the amount of \$ 24,000 in general damages, and

B. For Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A.

If you answered "B" to question 1, then go to question 2; if the answer to question 1 is "A" then enter the damages amounts in the spaces above.

2. As to Plaintiff's claim for **False Imprisonment** against Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A., we the jury unanimously find (check A or B, and complete as appropriate):

A. For the Plaintiff against (check as appropriate):

Defendant Marshall Alexander Chapman, DMD
Defendant Chapman Dental, P.A.

 /
 /

in the amount of \$ 30,590 in special damages, and

in the amount of \$ 26 in general damages, and

..... B. For Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A

If you answered "B" to question 2, then go to question 3; if the answer to question 2 is "A" then enter the damages amounts in the spaces above.

3. As to Plaintiff's claim for **Defamation Per Se (by Slander)** against Defendant Marshall Alexander Chapman, we the jury unanimously find (check A or B, and complete as appropriate):

A. For the Plaintiff

in the amount of \$ 15,000 in special damages, and

in the amount of \$ 7,800 in general damages, and

..... B. For Defendant Marshall Alexander Chapman

If you answered "B" to question 3, then go to question 4; if the answer to question 3 is "A" then enter the damages amounts in the spaces above.

4. As to Plaintiff's claim for **Civil Conspiracy** against Defendants Marshall Alexander Chapman, DMD and Chapman Dental, P.A, we the jury unanimously find (check A or B, and complete as appropriate):


..... A. For the Plaintiff

in the amount of \$ _____ in special damages, and

in the amount of \$ _____ in general damages, and

B. For Defendants Marshall Alexander Chapman, DMD and Chapman Dental, P.A

If you answered "B" to question 4, then go on to complete this Verdict; if the answer to question 4 is "A" then enter the damages amounts in the spaces above.



FOREPERSON

April 24, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

)
) 13TH JUDICIAL CIRCUIT

Samantha Katchick,

)
) Case No: 2019-CP-23-01522

)
) Plaintiff,

)
) vs.

)
) **VERDICT FORM**

)
) Marshall Alexander Chapman, DMD, and
) Chapman Dental, P.A

)
) Defendants.
)
)
)
)
)
)
)
)
)
)

1. As to Plaintiff's claim for **Malicious Prosecution** against Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A., Do you find that there is clear and convincing evidence to support an award of punitive damages?

Yes ✓

No _____

2. If you checked yes to question 1, write out the amount of punitive damages here:

Punitive Damages \$ 75,000

3. As to Plaintiff's claim for **False Imprisonment** against Defendants Marshall Alexander Chapman, DMD, and Chapman Dental, P.A., Do you find that there is clear and convincing evidence to support an award of punitive damages?

Yes ✓

No _____

4. If you checked yes to question 3, write out the amount of punitive damages here:

Punitive Damages \$ 70,000

5. As to Plaintiff's claim for **Defamation Per Se (by Slander)** against Defendant Marshall Alexander Chapman, Do you find that there is clear and convincing evidence to support an award of punitive damages?

Yes

No

6. If you checked yes to question 5, write out the amount of punitive damages here:

Punitive Damages \$ 30,000

Rebecca Nix
FOREPERSON

April 25, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Samantha Katchick,) Case No: 2019-CP-23-_____

)
)
) Plaintiff,)

)
) **SUMMONS**

) vs.)

) (jury trial demanded)

)
) Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental, P.A.,)

)
) Defendants.)
)
)
_____)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their office at Post Office Box 9398, Greenville, South Carolina, 29604, within thirty (30) day after such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA KATCHICK

Greenville, South Carolina
March 25, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Samantha Katchick,) Case No: 2019-CP-23-_____

)
)
) Plaintiff,)

)
) **COMPLAINT**

) vs.)

) (jury trial demanded)

)
) Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental, P.A.,)

)
) Defendants.)
)
)
_____)

The Plaintiff above-named, complaining of these Defendants, would respectfully show:

1. This action arises out of a former employment relationship between Plaintiff Samantha Katchick and Chapman Dental, P.A. (“Dental”). Plaintiff worked for Dental for over three (3) years. After Defendant Alex Chapman (“Chapman”) hired his new wife, Defendant Brooke Chapman (“Mrs. Chapman”), to work at Dental, *all-of-the-sudden* the Chapman Defendants accused Plaintiff of stealing cash from Dental’s patient funds. The amount allegedly taken was \$3,505.19. Defendants in 2017 alleged Plaintiff stole money from Dental over the entire period of Plaintiff’s employment with Dental from 2013 to 2017. Plaintiff’s employment was then terminated in March 2017. After conclusion of a small claims civil lawsuit Dental brought against relatives of Plaintiff on or about November 2, 2017, the Chapman Defendants initiated a false, vengeful, contrived, baseless and malicious “criminal” prosecution against the Plaintiff, causing her severe emotional distress and damages, as set forth herein.

THE PARTIES

2. The Plaintiff, Samantha Katchick (“Samantha” or “Plaintiff”) is a working single mother and a resident of Greenville County, South Carolina.

3. Defendants Marshall Alexander Chapman (“Chapman”), and Defendant Brooke I. Chapman (“Brooke” or “Mrs. Chapman”), on information and belief, are married and are citizens and residents of Greenville County, South Carolina.

4. Defendant Chapman Dental, P.A. (hereafter “Dental”), on information and belief is a professional association located in Greenville County, South Carolina.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action and venue is proper in Greenville County because Defendants reside in and / or operate in Greenville County, and the Plaintiff resides in Greenville County, and also because most all of the events complained of herein occurred in Greenville County.

FACTUAL ALLEGATIONS AND CLAIMS

6. From approximately December of 2013 to March 28, 2017, Plaintiff was employed by Defendant Dental.

7. Prior to these false and malicious allegations of theft by the Defendants, Plaintiff’s only dealings with law enforcement involved traffic violations.

8. At all times during her employment with Dental, Plaintiff worked under the supervision and direction of Defendant Chapman.

9. Plaintiff’s duties included patient check in / out, patient data entry, insurance verification, receipt of patient payments and general office functions.

10. In or around January of 2017, Defendant Chapman added a new staff member, Brooke I. Chapman, who had recently been married to Chapman.

11. On information and belief, Mrs. Chapman did not want Plaintiff working with her new husband at Dental.

12. On or about March 29, 2017, Chapman terminated Plaintiff's employment with Dental.

13. Chapman claimed then that his new wife and new employee of Dental, Brooke Chapman, a former school teacher, was unable to reconcile Dental's cash deposits using a dental software package known as Eaglesoft.

14. It was based on Mrs. Chapman's initial allegations of this inability to reconcile cash deposits over a three plus year period that resulted in the Plaintiff being terminated, and later gave rise to Defendants' false and retaliatory allegations of theft by the Plaintiff.

15. During the course of Plaintiff's employment at Dental, several of the Plaintiff's family members were patients of Dental's practice and were treated by Chapman.

16. As was common for the practice, Dental agreed to receive payment over a period of time from these family members of the Plaintiff, and records of those agreements were kept in the normal course of Dental's business.

17. On or about August 4, 2017, Dental filed a Summons and Complaint in Fairview / Austin Summary Court Seeking to collect a balance owed to it by the Plaintiff's former in-laws.

18. It was well known to Chapman and to Dental that these patients were relatives or former relatives of the Plaintiff.

19. Dental's complaint against Plaintiff's in-laws sought to obtain judgement for the balance owed to Dental, despite the fact that the in-laws had been paying according to the agreed payment plan with Dental.

20. On or about November 2, 2017, the presiding judge in the summary court collection action against Plaintiff's in-laws ruled that Dental was bound by the terms of the payment plan set in place for the in-laws, and dismissed the civil collections case against in-laws. The case, case no. 2017-CV-23-10201404, is shown in public records now as "settled."

21. On or about December 7, 2017, Defendant Chapman and Dental filed a Breach of Trust complaint with the Greenville County Sherriff's Office, accusing the Plaintiff of stealing \$3,505.19 from Dental, during the course of her three (3) plus year employment.

22. As part of their criminal complaint against the Plaintiff, Chapman and Mrs. Chapman made numerous false allegations to the Greenville County Sherriff's Office Investigator(s), including that they had hired a CPA firm to conduct a so-called "forensic audit" of Dental's records.

23. The Chapman's actions led the law enforcement personnel involved to believe that the CPA firm was confirming Defendants' allegations of theft by the Plaintiff from Dental.

24. The Chapmans represented to law enforcement that their CPA firm had audited Dental's Eaglesoft records, bank records, and eventually submitted a letter from Jennings Cook & Co. CPA's, signed by a CPA, Mr. Douglas P. Schmiedling.

25. In reliance on these false and reckless allegations of theft by the Chapmans, on or about February 7, 2018, the Greenville County Sheriff's Office issued a Warrant for the arrest of Plaintiff on charges of Breach of Trust greater than \$2,000.00, less than \$10,000.00.

26. On or about February 8, 2018, Plaintiff, accompanied by her attorney David Seay, Esquire, of Greenville, South Carolina, turned herself in to the Greenville County Law Enforcement Center, was processed and released on bond.

27. At the time of this arrest for alleged theft from her former employer, Plaintiff was 34 years old, and Defendants knew she was a working single mother, and that she had no prior criminal record, apart from traffic violations.

28. After being terminated by Dental, Plaintiff sought and obtained employment with a new employer on or about April 24, 2017.

29. Shortly after the subject warrant was issued for Plaintiff's arrest in February of 2018, Chapman contacted Plaintiff's current employer and informed them, among other things, that Plaintiff had been arrested for Breach of Trust, based on his false allegations. This was a still further attempt by Chapman to cause Plaintiff emotional distress, damage, and ultimately to lose her employment there.

30. On or about April 18, 2018, the S.C. Law Enforcement Division ("SLED") visited Plaintiff's residence and left a message asking her to contact them.

31. When Plaintiff ultimately reached back out to SLED, they required her to surrender her Concealed Weapons Permit ("CWP"), pending the outcome of the criminal charges brought against her by Defendants.

32. On or about April 24, 2018, Plaintiff's criminal counsel engaged the services of Michael F. O'Shea ("O'Shea") and Forensic Research Group, Inc. ("FRGI") to review the Defendants' allegations and documents provided to the Greenville County Sherriff's Office Investigator in support of the arrest warrant by the Chapmans, Dental and their CPA firm.

33. On or about May 25, 2018, Mr. O'Shea produced an Initial Report indicating that the documents provided by Chapman, Dental and Jennings Cook & Co. CPA's to the investigator at the Greenville County Sherriff's Office in support of the arrest warrant were incomplete, misleading and provided no assurance that Plaintiff, even had sole control or access to the cash funds of Dental, as alleged by Defendants Chapman and Dental.

34. Shortly thereafter Attorney Seay provided a copy of this initial report to the 13th Circuit Solicitor's Office, and asked that the charges be dropped due to the lack of accurate or reliable supporting documentation.

35. On or about August 23, 2018, Attorney Seay notified Mr. O'Shea that, in response to his request to dismiss the case, the Solicitor's Office delivered to him a substantial quantity of new documentation, provided by the Chapmans, Dental and / or Jennings Cook & Co. CPA's.

36. On or about October 1, 2018, after reviewing all the additional provided documentation relating to the allegations in the complaint for each of the years 2014, 2015, 2016 and the first four months of 2017, Mr. O'Shea issued a Supplemental Report indicating, among other things, that comparing bank deposits to certain Eaglesoft records is a flawed method for proving anything and, if it were a reliable method, the actual addition of the alleged losses was incorrectly totaled by Defendants (and their CPA firm) by more than 30%.

37. On or about October 3, 2018, Attorney Seay and Mr. O'Shea met with representatives of the 13th Circuit Solicitor's Office to review the latest report and analysis.

38. On or about November 26, 2018, representatives of the 13th Circuit Assistant Solicitor's Office notified the criminal defense attorneys for the Plaintiff that the criminal charges brought against her by Chapman and / or Dental had been dismissed.

39. On or about November 28, 2018, Chapman texted Plaintiff requesting an opportunity to meet “and have a few beers on me” to discuss the matter.

40. On February 6, 2019, at Plaintiff’s expense, the matter was expunged from her criminal record.

41. In order to obtain the dismissal of these charges brought against her by Chapman and Dental, Plaintiff ended up employing the services of criminal defense counsel and a forensic expert.

42. The costs of retaining these professionals to defend herself, as of the filing of this action, is in excess of \$30,000.00.

43. Defendants falsely reported to law enforcement that the Plaintiff was solely responsible for all deposits of Dental.

44. Defendants falsely and/or recklessly reported alleged totals of missing cash for a period of months that extended well beyond even the time that the Plaintiff was terminated as an employee of Dental.

45. Defendants falsely reported to law enforcement that there were no discrepancies in their cash deposit records and their bank statements after the Plaintiff was terminated.

46. Defendants falsely and misleadingly reported to law enforcement only those records related to (i) cash deposits, while they each knew or should have known that their same records for (ii) checks, and (iii) debit / credit card receipts also did not match.

47. A comparison of the same methodology used by the Defendants to implicate and accuse the Plaintiff as a criminal and destroy her life over this three year period for all types of deposits, namely (i) cash, (ii) checks, and (iii) debit / credit cards, shows that the Defendants’ records are off by at least \$50,000.00.

48. A review of the initial law enforcement report shows that Mrs. Chapman was motivated by a desire to punish or retaliate against the Plaintiff for allegedly assisting her relatives / in-laws to obtain dentistry related services from Dental without paying for them.

49. On or about December 14, 2017, Mrs. Chapman represented to law enforcement that she is getting information from a local judge that handled the failed in-law collections case, when in fact, the summary court had already ruled on the matter and entered their final judgment on November 2, 2017.

50. On information and belief, Mrs. Chapman mis-represented to law enforcement the status of the in-laws collection action in numerous ways.

51. Plaintiff was not solely responsible for all deposits of Dental.

52. Defendants knew that the records of cash receipts that they relied on for their prosecution of the Plaintiff had been accessible and modifiable by many people, including other employees of Dental, during that time period, including the Chapmans.

53. As such, Defendants knew or should have known the records they relied upon for their criminal prosecution of the Plaintiff were likely inaccurate.

54. Mrs. Chapman falsely reported to law enforcement that she could provide invoices to show that Plaintiff's so-called relatives were not required to pay for services from Dental. At the time of these representations to law enforcement by Mrs. Chapman, Dental's case versus the in-laws was shown as "settled."

55. The Chapmans represented that the Plaintiff was terminated from Dental after Mrs. Chapman could not reconcile the cash deposits with the Eaglesoft records, while also representing that the Plaintiff was terminated for entering into a payment plan with her relatives that Chapman had not agreed to on behalf of Dental.

56. Having failed in their efforts to file and prosecute a civil lawsuit as against the Plaintiff's so-called relatives in summary / small claims court, the Defendants this time elected to pursue not just a civil lawsuit to recover monies they falsely accused Plaintiff of taking from Dental's cash drawer, but to have the Plaintiff arrested and put in jail.

57. Defendants wanted revenge and sought to punish the Plaintiff.

58. The Chapman Defendants and Dental all knew that Dental's cash received from patients was accessible by many Dental employees, and not just the Plaintiff.

59. Defendants and their agents reported to law enforcement that Dental's cash funds were "locked" up in Dental's office and that only Plaintiff had access to those funds.

60. Defendants' so-called accounting records for cash that they used to make out their theft allegations to law enforcement were flawed, yet Defendants represented to law enforcement those cash receipts records as being accurate.

61. The Eaglesoft software platform is a dental practice software, not a financial accounting software.

62. Defendants were motivated by a desire to punish Plaintiff related to the failed collections case against one of Dental's patients.

63. Defendants represented to law enforcement that they had a "forensic audit" from a CPA firm implicating the Plaintiff in the alleged theft of Dental's funds.

64. Defendants knew that the CPA firm had not conducted a "forensic audit."

65. In reality, Defendants asked a CPA firm to write a letter confirming Mrs. Chapman's cash calculations based upon limited information Defendants provided to the CPA.

66. On information and belief, the CPA firm had no knowledge of the Defendants' use of the letter, namely that to support their criminal allegations against the Plaintiff.

67. As a result of the above-described events, Plaintiff was arrested, charged with “breach of trust with fraudulent intent,” was required to post bond.

68. Due to the then pending felony charges, Plaintiff has suffered extreme embarrassment with her children and their schools, including being excluded from chaperoning field trips or otherwise participating in camps or other similar functions, all as a result of the false allegations of the Defendants.

69. As a further result of these false and malicious allegations, Plaintiff has been defamed and has been the subject of still further as yet undiscovered slanderous allegations about her to existing, potential and prospective employers, and has suffered severe emotional distress over the prospect of lost future employment opportunities due to the false statements from Defendants about her.

70. Plaintiff has suffered damages to include severe emotional distress, of lost wages and profits, unknown and incurable damage to her good reputation, and has been required to incur special damages in the form of attorneys’ fees, and costs of preparing her defense of the criminal charges, as well as other damages, including but not limited to expenses to investigate and determine the extent of damage to her reputation caused by Defendants.

**FOR A FIRST CAUSE OF ACTION
(Defamation *Per Se* – Alex and Brooke Chapman)**

71. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

72. As set forth herein, Defendants made numerous false and defamatory statements about the Plaintiff.

73. Defendants statements were not subject to a privilege.

74. Defendants published these statements to numerous third-parties.

75. Defendants' statements were false and defamatory *per se*, causing special harm to the Plaintiff.

76. Apart from the calculations of Chapman's new wife, a former schoolteacher, Defendants had no evidence of theft by the Plaintiff, as they maliciously alleged. Defendants had no eye-witness accounts of any monies being missing from Dental's funds.

77. As a result of these actions of the Defendants, Plaintiff's good reputation for honesty and truthfulness, as well as being a law abiding citizen has been damaged and she is entitled to recover her general and special damages, as set forth herein. Such damages include but are not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

78. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities

79. Due to the reckless and malicious nature of the Defendants' representations about the Plaintiff, accusing her of criminal activity, rising to the level of a felony, Plaintiff is also entitled to an award of punitive damages.

SECOND CAUSE OF ACTION
(Constructive Fraud – All Defendants)

80. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

81. As set forth herein, Defendants made material false representations about the Plaintiff that caused law enforcement to seek to arrest and detain the Plaintiff.

82. The Defendants knew their statements were false and showed a reckless disregard for the truth or falsity of those statements.

83. Defendants intended that their statements would be acted upon by the persons hearing the representations.

84. The hearers of these statements were ignorant of their falsity at the time they relied upon the statements as truthful.

85. The hearers had a right to rely upon the Defendants' statements.

86. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

87. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

88. Plaintiff is also entitled to an award of punitive damages.

**THIRD CAUSE OF ACTION
(Malicious Prosecution - All Defendants)**

89. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

90. Defendants' actions in instituting and then continuing criminal judicial proceedings against the Plaintiff were based on false and misleading information and were improper.

91. The subject criminal proceedings were dismissed and terminated in the Plaintiff's favor.

92. Defendant's lacked probable cause to accuse the Plaintiff of the crimes they attempted to prosecute against her.

93. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

94. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

95. Plaintiff is also entitled to an award of punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Abuse of Process – All Defendants)**

96. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

97. Defendant's had a revenge motive and an ulterior motive to pursue criminal charges against the Plaintiff with the intent of retraining her liberty and having her locked up like a dangerous criminal.

98. Defendants' actions in pursuing the criminal prosecution of the Plaintiff were not proper in the regular conduct of the proceeding.

99. As a result of these actions of the Defendants, Plaintiff is entitled to recover her actual damages, and an award of punitive damages.

**FOR A FIFTH CAUSE OF ACTION
(False Imprisonment – Mrs. Chapman and Chapman)**

100. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

101. As set forth herein, Defendants actions caused the unlawful restraint of the Plaintiff.

102. The Defendants intended to cause the restraint of the Plaintiff, and the restraint, as obtained under numerous false pretenses, was unlawful.

103. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to lost income, lost wages, loss of time, pain and suffering, physical injury or illness, loss of business or loss of employment opportunities, humiliation, embarrassment, mental suffering, mental distress, inconvenience, discomfort, and other expenses incurred and caused by the Defendants.

104. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR A SIXTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – Mrs. Chapman and Chapman)**

105. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

106. The Chapman Defendants intentionally and recklessly inflicted severe emotional distress upon the Plaintiff.

107. The Chapman Defendants conduct was certain or substantially certain to cause severe emotional distress to the Plaintiff and was intended to cause distress.

108. The Chapman Defendant's conduct, as described herein, was so extreme and outrageous as to exceed all possible bounds of decency and is atrocious and utterly intolerable in a civilized community.

109. The actions of the Chapman Defendants caused the Plaintiff's emotional distress.

110. The emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.

111. As a result of these actions of the Defendants, Plaintiff is entitled to recover her emotional distress damages caused by Defendants.

**FOR A SEVENTH CAUSE OF ACTION
(Interference with Contract / Prospective Contract – Mrs. Chapman and Chapman)**

112. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

113. The Chapman Defendants knew of the Plaintiff's existing employment and prospective employment opportunities.

114. The Chapman Defendants, on information and belief, attempted to procure a breach of the Plaintiff's employment contract without justification.

115. As a result of these actions of the Defendants, Plaintiff is entitled to recover her damages to put her in the position she would have been in but for this interference by the Defendants.

116. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy – Mrs. Chapman and Chapman)**

117. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

118. As set forth herein, the Chapman Defendants combined for the purpose of harming the Plaintiff and their actions caused the Plaintiff special damages.

119. As a result of these actions by the Chapman Defendants, Plaintiff is entitled to recover her damages that she suffered as caused by the wrongful act done in furtherance of the conspiracy and which result from it, including but not limited to damages and injury to her career and professional status, opportunities, and lost profits resulting from the conspiracy

120. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

WHEREFORE, having fully set forth its claims against the Defendants, the Plaintiff prays that the Court award it judgment as follows:

- (a) actual damages, as set forth herein;
- (b) Special damages;
- (c) Punitive damages;
- (d) Attorneys' fees;
- (e) Costs of this action and costs to defend against Defendants' false allegations;

- (f) An amount to compensate Plaintiff for the position she would have been in but for the numerous wrongful acts of the Defendants; and
- (g) For such other and further relief as the Court may deem just and proper under the circumstances presented at trial.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA KATCHICK

Greenville, South Carolina
March 25, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-1522

Samantha Katchick,

Plaintiff,

v.

Marshall Alexander Chapman, DMD,
Brooke I. Chapman, and Chapman Dental,
P.A.,

Defendant.

**ANSWER AND COUNTERCLAIM
JURY TRIAL DEMANDED**

Defendants Marshall Alexander Chapman, DMD (“Alex”), Brooke I. Chapman (“Brooke”), and Chapman Dental, P.A. (Dental), collectively “Defendants” hereby answers the Complaint of the Plaintiff and alleges as follows:

1. Each and every allegation not hereinafter specifically admitted, explained, or qualified is denied.
2. The allegations of paragraph one (1) is admitted solely in that there was an employment relationship between Plaintiff and Defendant Dental, Plaintiff worked for Dental for approximately three (3) years, Defendants discovered missing money from Dental attributable to the actions of Plaintiff in 2017, and Plaintiff was terminated from her employment with Dental in March 2017. All further allegations are denied.
3. The allegations of paragraph two (2) is admitted upon information and belief, however Defendants have no way to determine Plaintiff’s relationship status.
4. The allegations of paragraphs three (3), four (4), five (5), and six (6) are admitted.

5. The allegations of paragraph seven (7) alleging “false and malicious allegations of theft by the Defendants” are denied. The remaining allegations cannot be admitted or denied by Defendants due to lack of knowledge at this time.

6. The allegations of paragraph eight (8) is denied.

7. The allegations of paragraphs nine (9) and ten (10) are admitted.

8. The allegations of paragraph eleven (11) are denied.

9. The allegations of paragraph twelve (12) are admitted.

10. The allegations of paragraph thirteen (13) are admitted solely in that in 2017, Defendants were unable to reconcile Defendant Dental’s deposit receipts with their billing software. All remaining allegations are denied.

11. The allegations of paragraph fourteen (14) are denied.

12. The allegations of paragraph fifteen (15) are admitted.

13. The allegations are paragraph sixteen (16) are admitted solely in that Plaintiff’s family members were set up on a payment plan by Plaintiff and records kept of the payment plan. The remaining allegations are denied.

14. The allegations of paragraphs seventeen (17) and eighteen (18) are admitted.

15. The allegations of paragraph nineteen (19) are denied.

16. The allegations of paragraph twenty (20) are admitted solely in that the Presiding Judge in the summary court collection action issued a ruling that Plaintiff’s former family members and Defendant Dental would be bound by the terms of the payment plan in place with the requirement that if Plaintiff’s former family members fail to pay or stop paying Defendant Dental, a Judgment would be issued for the remaining balance against Plaintiff’s former family members. The remaining allegations are denied.

17. The allegations of paragraphs twenty-one (21), twenty-two (22), and twenty-three (23) are denied.

18. The allegations of paragraph twenty-four (24) are admitted solely in that Defendants provided a letter from Mr. Douglas P. Schmiedling to law enforcement regarding his review of Dental's records. The remaining allegations are denied.

19. The allegations of paragraph twenty-five (25) is admitted solely in that the Greenville County Sheriff's Office charged Plaintiff with Breach of Trust greater than \$2,000.00, less than \$10,000.00. The remaining allegations are denied.

20. The allegations of paragraph twenty-six (26) cannot be admitted or denied due to lack of knowledge at this time.

21. The allegations of paragraph twenty-seven (27) are denied.

22. The allegations of paragraph twenty-eight (28) cannot be admitted or denied due to lack of knowledge at this time.

23. The allegations of paragraph twenty-nine (29) are denied.

24. The allegations of paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38) cannot be admitted or denied due to lack of knowledge at this time.

25. The allegations of paragraph thirty-nine (39) are admitted.

26. The allegations of paragraphs forty (40), forty-one (41), and forty-two (42) cannot be admitted or denied due to lack of knowledge at this time.

27. The allegations of paragraphs forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), and fifty (50) are denied.

28. The allegations of paragraph fifty-one (51) are admitted solely in that for the period of time that Plaintiff and Defendant Brooke were employed at Defendant Dental, Plaintiff was not solely responsible for all deposits of Dental. The remaining allegations are denied.

29. The allegations of paragraphs fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), and sixty-six (66) are denied.

30. The allegations of paragraph sixty-seven (67) cannot be admitted or denied due to lack of knowledge at this time.

31. The allegations of paragraphs sixty-eight (68), sixty-nine (69), and seventy (70) are denied.

32. Paragraph seventy-one (71) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

33. The allegations of paragraphs seventy-two (72), seventy-three (73), seventy-four (74), seventy-five (75), seventy-six (76), seventy-seven (77), seventy-eight (78), and seventy-nine (79) are denied.

34. Paragraph eighty (80) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

35. The allegations of paragraphs eighty-one (81), eighty-two (82), eighty-three (83), eighty-four (84), eighty-five (85), eighty-six (86), eighty-seven (87), and eighty-eight (88) are denied.

36. Paragraph eighty-nine (89) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

37. The allegations of paragraph ninety (90) are denied.

38. The allegations of paragraph ninety-one (91) are admitted.

39. The allegations of paragraphs ninety-two (92), ninety-three (93), ninety-four (94), and ninety-five (95) are denied.

40. Paragraph ninety-six (96) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

41. The allegations of paragraphs ninety-seven (97), ninety-eight (98), and ninety-nine (99) are denied.

42. Paragraph one hundred (100) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

43. The allegations of paragraphs one hundred and one (101), one hundred and two (102), one hundred and three (103), and one hundred and four (104) are denied.

44. Paragraph one hundred and five (105) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

45. The allegations of paragraph one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109), one hundred and ten (110), and one hundred and eleven (111) are denied.

46. Paragraph one hundred and twelve (112) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

47. The allegations of paragraphs one hundred and thirteen (113), one hundred and fourteen (114), one hundred and fifteen. (115), and one hundred and sixteen (116) are denied.

48. Paragraph one hundred and seventeen (117) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

49. The allegations of paragraphs one hundred and eighteen (118), one hundred and nineteen (119), and one hundred and twenty (120) are denied.

50. To the extent inconsistent with the foregoing, Defendants deny the WHEREFORE section of the Complaint and all subparts.

FOR A SECOND DEFENSE

51. Defendants reassert and re-allege paragraphs one (1) through fifty (50) above.

52. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

As such, Plaintiff's Complaint should be dismissed, with prejudice and with costs and fees.

FOR A THIRD DEFENSE

53. Defendants reassert and re-allege paragraphs one (1) through fifty-two (52) above.

54. Defendants would show, upon information and belief, that any statements made by them or their agents were true or substantially true, and the Defendants plead Truth as a complete defense.

FOR A FOURTH DEFENSE

55. Defendants reassert and re-allege paragraphs one (1) through fifty-four (54) above.

56. Defendants would show, upon information and belief, that the injuries and/or damage sustained by Plaintiff were the result of the sole negligence and/or actions of Plaintiff and therefore, Plaintiff cannot recover any sum whatsoever from the Defendants.

FOR A FIFTH DEFENSE

57. Defendants reassert and re-allege paragraphs one (1) through fifty-six (56) above.

58. Defendants would show that any injuries or damages sustained by Plaintiff were due to and caused by the sole negligence and acts or omissions of some persons or entities over whom Defendants exercised no authority or control for which reason Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A SIXTH DEFENSE

59. Defendants reassert and re-allege paragraphs one (1) through fifty-eight (58) above.

60. Defendants would show, upon information and belief, that the statements were proper in scope and reasonably related to appropriate business and are therefore absolutely privileged.

FOR A SEVENTH DEFENSE

61. Defendants reassert and re-allege paragraphs one (1) through sixty (60) above.

62. Defendants would show, upon information and belief, that any statements or actions on their part were reasonable with respect to time, place, and manner and in furtherance of Defendants' legitimate interest.

FOR AN EIGHTH DEFENSE

63. Defendants reassert and re-allege paragraphs one (1) through sixty-two (62) above.

64. An award or assessment of punitive or exemplary damages against Defendants as prayed for by Plaintiff in this Complaint would violate Defendants' constitutional rights under the Due Process clause of the 5th and 14th Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the 5th Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendants plead such constitutional provisions as a complete defense to any claim for punitive damages.

FOR A NINTH DEFENSE

65. Defendants reassert and re-allege paragraphs one (1) through sixty-four (64) above.

66. An award of punitive damages under South Carolina law against Defendants would violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a. The Judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantee;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based on the wealth of the defendant violates due process;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and.
- f. Plaintiff's claims for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of Defendants.

FOR A TENTH DEFENSE

67. Defendants reassert and re-allege paragraphs one (1) through sixty-six (66) above.

68. Defendants would show, upon information and belief, that any statements made in the

course of an investigation or litigation are protected from suit, and Plaintiff's Complaint is therefore barred as to Defendants.

FOR AN ELEVENTH DEFENSE

69. Defendants reassert and re-allege paragraphs one (1) through sixty-eight (68) above.

70. Defendants would show, upon information and belief, that any statements of any individuals were expressions of opinion by those individuals that are protected under the United States Constitution.

FOR A TWELFTH DEFENSE

71. Defendants reassert and re-allege paragraphs one (1) through seventy (70) above.

72. Defendants would show, upon information and belief, that the communications were made in good faith and with proper motives, and any publication was in the proper manner to the proper parties.

FOR A THIRTEENTH DEFENSE

73. Defendants reassert and re-allege paragraphs one (1) through seventy-two (72) above.

74. Defendants would show, upon information and belief, that at all times relevant hereto, Defendants, during the performance or non-performance of acts alleged in the Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and therefore, are immune from suit.

FOR A FOURTEENTH DEFENSE

75. Defendants reassert and re-allege paragraphs one (1) through seventy-four (74) above.

76. Defendants would show, upon information and belief, that the conduct of Defendants was not the proximate cause of any alleged injuries or damages under any theory advanced for which relief is requested by Plaintiff.

FOR A FIFTEENTH DEFENSE

77. Defendants reassert and re-allege paragraphs one (1) through seventy-six (76) above.

78. Defendants would show, upon information and belief, that any damages or injuries to Plaintiff were caused by the Plaintiff's own actions, omissions, and conduct in violating the law and in such other particulars as the evidence may show.

FOR A SIXTEENTH DEFENSE

79. Defendants reassert and re-allege paragraphs one (1) through seventy-eight (78) above.

80. Defendants would show, upon information and belief, that notwithstanding the fact that the criminal charge were dismissed against Plaintiff, Plaintiff was, in fact, guilty of that charge.

FOR A SEVENTEENTH DEFENSE

81. Defendants reassert and re-allege paragraphs one (1) through eighty (80) above.

82. Defendants would show, upon information and belief, that any claim for malicious prosecution is barred as probable cause was found by a court of law as to the Plaintiff's arrest and prosecution.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM TO PLAINTIFF

83. Defendants reassert and re-allege paragraphs one (1) through eighty-two (82) above.

84. Upon information and belief, Plaintiff is a citizen and resident of Greenville County, South Carolina.

85. Defendant Marshall Alexander Chapman and Defendant Brooke I. Chapman are citizens and residents of Greenville County, South Carolina.

86. Defendant Chapman Dental, P.A. is a professional association located in Greenville County, South Carolina.

87. This Court has jurisdiction over this action and venue is proper in Greenville County, South Carolina because all of the events complained of herein occurred in Greenville County, South Carolina as well as all parties reside in Greenville County, South Carolina.

88. From approximately December 2013 to March 2017, Plaintiff was employed by Defendant Dental.

89. During her employment with Defendant Dental, Plaintiff made multiple threats of getting revenge on Defendants should she ever be terminated.

90. On or about March 2017, Plaintiff was terminated from Defendant Dental as a result of multiple disciplinary issues.

91. On or about February 2018, due to the investigation of Greenville County Sheriff's Department, a warrant was signed for the arrest of Plaintiff for Breach of Trust, >\$2,000.00 and <\$10,000.00.

92. Following Plaintiff's arrest on the above referenced charges, a pre-trial hearing was held to determine the existence of probable cause for the charge against Plaintiff.

93. As a result of the above referenced pre-trial hearing, probable cause was found to exist to support the arrest and prosecution of Plaintiff.

94. On or about November 2018, upon information and belief, the Thirteenth Circuit Solicitor's Office chose to dismiss the charge against Plaintiff.

95. On or about March 25, 2019, Plaintiff filed this underlying action against Defendants providing false, misleading, and defamatory information to the Court regarding Defendants.

96. Upon information and belief and based on Plaintiff's own words during her employment with Defendant Dental, Plaintiff has an ulterior motive to pursue civil action against Defendants.

97. Plaintiff's willful use of the legal system through her filing of a Summons and Complaint in this matter is for a purpose other than what it was intended for by the law.

98. Upon information and belief, Plaintiff is attempting to utilize the legal system for revenge against, harassment of, and/or inappropriate monetary gain from Defendants.

99. Plaintiff's malicious misuse and/or perversion of the legal process of civil litigation for an unlawful purpose as detailed above, constitutes an abuse of process.

100. As a direct and proximate result of Plaintiff's above detailed actions, Defendants have suffered damages.

101. WHEREFORE, Defendants pray for a judgment against Plaintiff in a sum sufficient to compensate each of them for all ACTUAL and CONSEQUENTIAL damages that he or she has suffered, for such PUNITIVE damages that a jury may reasonably award against Plaintiff for her egregious behavior, for the attorney fees of Defendants, for the costs of this action to be taxed against Plaintiff, and for such other relief as the Court or jury deems just and proper.

RESERVATION OF DEFENSES

102. Defendants reassert and re-allege paragraphs one (1) through one-hundred (100) above.

103. Defendants reserve the right to raise additional affirmative and other defenses as well as counterclaims as may be established by discovery and evidence in this case.

S/STEPHANIE R. FAJARDO, #80159
Stephanie R. Fajardo, Esquire
The Fajardo Law Firm, LLC
1722 Main Street, Suite 302
Columbia, SC 29201
Phone: (803) 391-8980
Fax: (877) 365-5340
Attorney for the Defendants

Columbia, South Carolina
May 24, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-1522

Samantha Katchick,

Plaintiff,

v.

Marshall Alexander Chapman, DMD,
Brooke I. Chapman, and Chapman Dental,
P.A.,

Defendant.

**AMENDED
ANSWER AND COUNTERCLAIM
JURY TRIAL DEMANDED**

Defendants Marshall Alexander Chapman, DMD (“Alex”), Brooke I. Chapman (“Brooke”), and Chapman Dental, P.A. (Dental), collectively “Defendants” hereby answers the Complaint of the Plaintiff and alleges as follows:

1. Each and every allegation not hereinafter specifically admitted, explained, or qualified is denied.

2. The allegations of paragraph one (1) is admitted solely in that there was an employment relationship between Plaintiff and Defendant Dental, Plaintiff worked for Dental for approximately three (3) years, Defendants discovered missing money from Dental attributable to the actions of Plaintiff in 2017, and Plaintiff was terminated from her employment with Dental in March 2017. All further allegations are denied.

3. The allegations of paragraph two (2) is admitted upon information and belief, however Defendants have no way to determine Plaintiff’s relationship status.

4. The allegations of paragraphs three (3), four (4), five (5), and six (6) are admitted.

5. The allegations of paragraph seven (7) alleging “false and malicious allegations of theft by the Defendants” are denied. The remaining allegations cannot be admitted or denied by Defendants due to lack of knowledge at this time.

6. The allegations of paragraph eight (8) is denied.

7. The allegations of paragraphs nine (9) and ten (10) are admitted.

8. The allegations of paragraph eleven (11) are denied.

9. The allegations of paragraph twelve (12) are admitted.

10. The allegations of paragraph thirteen (13) are admitted solely in that in 2017, Defendants were unable to reconcile Defendant Dental’s deposit receipts with their billing software. All remaining allegations are denied.

11. The allegations of paragraph fourteen (14) are denied.

12. The allegations of paragraph fifteen (15) are admitted.

13. The allegations are paragraph sixteen (16) are admitted solely in that Plaintiff’s family members were set up on a payment plan by Plaintiff and records kept of the payment plan. The remaining allegations are denied.

14. The allegations of paragraphs seventeen (17) and eighteen (18) are admitted.

15. The allegations of paragraph nineteen (19) are denied.

16. The allegations of paragraph twenty (20) are admitted solely in that the Presiding Judge in the summary court collection action issued a ruling that Plaintiff’s former family members and Defendant Dental would be bound by the terms of the payment plan in place with the requirement that if Plaintiff’s former family members fail to pay or stop paying Defendant Dental, a Judgment would be issued for the remaining balance against Plaintiff’s former family members. The remaining allegations are denied.

17. The allegations of paragraphs twenty-one (21), twenty-two (22), and twenty-three (23) are denied.

18. The allegations of paragraph twenty-four (24) are admitted solely in that Defendants provided a letter from Mr. Douglas P. Schmiedling to law enforcement regarding his review of Dental's records. The remaining allegations are denied.

19. The allegations of paragraph twenty-five (25) is admitted solely in that the Greenville County Sheriff's Office charged Plaintiff with Breach of Trust greater than \$2,000.00, less than \$10,000.00. The remaining allegations are denied.

20. The allegations of paragraph twenty-six (26) cannot be admitted or denied due to lack of knowledge at this time.

21. The allegations of paragraph twenty-seven (27) are denied.

22. The allegations of paragraph twenty-eight (28) cannot be admitted or denied due to lack of knowledge at this time.

23. The allegations of paragraph twenty-nine (29) are denied.

24. The allegations of paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38) cannot be admitted or denied due to lack of knowledge at this time.

25. The allegations of paragraph thirty-nine (39) are admitted.

26. The allegations of paragraphs forty (40), forty-one (41), and forty-two (42) cannot be admitted or denied due to lack of knowledge at this time.

27. The allegations of paragraphs forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), and fifty (50) are denied.

28. The allegations of paragraph fifty-one (51) are admitted solely in that for the period of time that Plaintiff and Defendant Brooke were employed at Defendant Dental, Plaintiff was not solely responsible for all deposits of Dental. The remaining allegations are denied.

29. The allegations of paragraphs fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), and sixty-six (66) are denied.

30. The allegations of paragraph sixty-seven (67) cannot be admitted or denied due to lack of knowledge at this time.

31. The allegations of paragraphs sixty-eight (68), sixty-nine (69), and seventy (70) are denied.

32. Paragraph seventy-one (71) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

33. The allegations of paragraphs seventy-two (72), seventy-three (73), seventy-four (74), seventy-five (75), seventy-six (76), seventy-seven (77), seventy-eight (78), and seventy-nine (79) are denied.

34. Paragraph eighty (80) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

35. The allegations of paragraphs eighty-one (81), eighty-two (82), eighty-three (83), eighty-four (84), eighty-five (85), eighty-six (86), eighty-seven (87), and eighty-eight (88) are denied.

36. Paragraph eighty-nine (89) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

37. The allegations of paragraph ninety (90) are denied.

38. The allegations of paragraph ninety-one (91) are admitted.
39. The allegations of paragraphs ninety-two (92), ninety-three (93), ninety-four (94), and ninety-five (95) are denied.
40. Paragraph ninety-six (96) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.
41. The allegations of paragraphs ninety-seven (97), ninety-eight (98), and ninety-nine (99) are denied.
42. Paragraph one hundred (100) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.
43. The allegations of paragraphs one hundred and one (101), one hundred and two (102), one hundred and three (103), and one hundred and four (104) are denied.
44. Paragraph one hundred and five (105) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.
45. The allegations of paragraph one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109), one hundred and ten (110), and one hundred and eleven (111) are denied.
46. Paragraph one hundred and twelve (112) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.
47. The allegations of paragraphs one hundred and thirteen (113), one hundred and fourteen (114), one hundred and fifteen (115), and one hundred and sixteen (116) are denied.
48. Paragraph one hundred and seventeen (117) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

49. The allegations of paragraphs one hundred and eighteen (118), one hundred and nineteen (119), and one hundred and twenty (120) are denied.

50. To the extent inconsistent with the foregoing, Defendants deny the WHEREFORE section of the Complaint and all subparts.

FOR A SECOND DEFENSE

51. Defendants reassert and re-allege paragraphs one (1) through fifty (50) above.

52. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

As such, Plaintiff's Complaint should be dismissed, with prejudice and with costs and fees.

FOR A THIRD DEFENSE

53. Defendants reassert and re-allege paragraphs one (1) through fifty-two (52) above.

54. Defendants would show, upon information and belief, that any statements made by them or their agents were true or substantially true, and the Defendants plead Truth as a complete defense.

FOR A FOURTH DEFENSE

55. Defendants reassert and re-allege paragraphs one (1) through fifty-four (54) above.

56. Defendants would show, upon information and belief, that the injuries and/or damage

sustained by Plaintiff were the result of the sole negligence and/or actions of Plaintiff and therefore, Plaintiff cannot recover any sum whatsoever from the Defendants.

FOR A FIFTH DEFENSE

57. Defendants reassert and re-allege paragraphs one (1) through fifty-six (56) above.

58. Defendants would show that any injuries or damages sustained by Plaintiff were due to and caused by the sole negligence and acts or omissions of some persons or entities over

whom Defendants exercised no authority or control for which reason Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A SIXTH DEFENSE

59. Defendants reassert and re-allege paragraphs one (1) through fifty-eight (58) above.

60. Defendants would show, upon information and belief, that the statements were proper in scope and reasonably related to appropriate business and are therefore absolutely privileged.

FOR A SEVENTH DEFENSE

61. Defendants reassert and re-allege paragraphs one (1) through sixty (60) above.

62. Defendants would show, upon information and belief, that any statements or actions on their part were reasonable with respect to time, place, and manner and in furtherance of Defendants' legitimate interest.

FOR AN EIGHTH DEFENSE

63. Defendants reassert and re-allege paragraphs one (1) through sixty-two (62) above.

64. An award or assessment of punitive or exemplary damages against Defendants as prayed for by Plaintiff in this Complaint would violate Defendants' constitutional rights under the Due Process clause of the 5th and 14th Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the 5th Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendants plead such constitutional provisions as a complete defense to any claim for punitive damages.

FOR A NINTH DEFENSE

65. Defendants reassert and re-allege paragraphs one (1) through sixty-four (64) above.

66. An award of punitive damages under South Carolina law against Defendants would violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a. The Judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantee;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based on the wealth of the defendant violates due process;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and.
- f. Plaintiff's claims for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of Defendants.

FOR A TENTH DEFENSE

67. Defendants reassert and re-allege paragraphs one (1) through sixty-six (66) above.

68. Defendants would show, upon information and belief, that any statements made in the course of an investigation or litigation are protected from suit, and Plaintiff's Complaint is therefore barred as to Defendants.

FOR AN ELEVENTH DEFENSE

69. Defendants reassert and re-allege paragraphs one (1) through sixty-eight (68) above.

70. Defendants would show, upon information and belief, that any statements of any individuals were expressions of opinion by those individuals that are protected under the United States Constitution.

FOR A TWELFTH DEFENSE

71. Defendants reassert and re-allege paragraphs one (1) through seventy (70) above.

72. Defendants would show, upon information and belief, that the communications were made in good faith and with proper motives, and any publication was in the proper manner to the proper parties.

FOR A THIRTEENTH DEFENSE

73. Defendants reassert and re-allege paragraphs one (1) through seventy-two (72) above.

74. Defendants would show, upon information and belief, that at all times relevant hereto, Defendants, during the performance or non-performance of acts alleged in the Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and therefore, are immune from suit.

FOR A FOURTEENTH DEFENSE

75. Defendants reassert and re-allege paragraphs one (1) through seventy-four (74) above.

76. Defendants would show, upon information and belief, that the conduct of Defendants was not the proximate cause of any alleged injuries or damages under any theory advanced for which relief is requested by Plaintiff.

FOR A FIFTEENTH DEFENSE

77. Defendants reassert and re-allege paragraphs one (1) through seventy-six (76) above.

78. Defendants would show, upon information and belief, that any damages or injuries to Plaintiff were caused by the Plaintiff's own actions, omissions, and conduct in violating the law and in such other particulars as the evidence may show.

FOR A SIXTEENTH DEFENSE

79. Defendants reassert and re-allege paragraphs one (1) through seventy-eight (78) above.

80. Defendants would show, upon information and belief, that notwithstanding the fact that the criminal charge were dismissed against Plaintiff, Plaintiff was, in fact, guilty of that charge.

FOR A SEVENTEENTH DEFENSE

81. Defendants reassert and re-allege paragraphs one (1) through eighty (80) above.

82. Defendants would show, upon information and belief, that any claim for malicious prosecution is barred as probable cause was found by a court of law as to the Plaintiff's arrest and prosecution.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM TO PLAINTIFF

83. Defendants reassert and re-allege paragraphs one (1) through eighty-two (82) above.

84. Upon information and belief, Plaintiff is a citizen and resident of Greenville County, South Carolina.

85. Defendant Marshall Alexander Chapman and Defendant Brooke I. Chapman are citizens and residents of Greenville County, South Carolina.

86. Defendant Chapman Dental, P.A. is a professional association located in Greenville County, South Carolina.

87. This Court has jurisdiction over this action and venue is proper in Greenville County, South Carolina because all of the events complained of herein occurred in Greenville County, South Carolina as well as all parties reside in Greenville County, South Carolina.

88. From approximately December 2013 to March 2017, Plaintiff was employed by Defendant Dental.

89. During her employment with Defendant Dental, Plaintiff made multiple threats of getting revenge on Defendants should she ever be terminated. These threats included making false allegations against Defendants to licensing agencies in South Carolina.

90. On or about March 2017, Plaintiff was terminated from Defendant Dental as a result of multiple disciplinary issues.

91. On or about February 2018, due to the investigation of Greenville County Sheriff's Department, a warrant was signed for the arrest of Plaintiff for Breach of Trust, >\$2,000.00 and <\$10,000.00.

92. Following Plaintiff's arrest on the above referenced charges, a pre-trial hearing was held to determine the existence of probable cause for the charge against Plaintiff.

93. As a result of the above referenced pre-trial hearing, probable cause was found to exist to support the arrest and prosecution of Plaintiff.

94. On or about November 2018, upon information and belief, the Thirteenth Circuit Solicitor's Office chose to dismiss the charge against Plaintiff.

95. On or about March 25, 2019, Plaintiff filed this underlying action against Defendants containing false, misleading, and defamatory information to the Court regarding Defendants.

96. In addition to this current action, Defendants are informed and believe that Plaintiff has contacted the South Carolina Department of Labor, Licensing, and Regulation and made false allegations against Defendants.

97. Upon information and belief and based on Plaintiff's own words during her employment with Defendant Dental, Defendants believe Plaintiff has taken these actions solely to injure, defame, extort money, or another nefarious purpose not proper in the course of law.

98. Plaintiff's actions of filing this underlying action as well as the believed actions of Plaintiff in filing a false report to the South Carolina Department of Labor, Licensing, and Regulation have demonstrated the existence of Plaintiff's ulterior motive to pursue civil action against Defendants.

99. Plaintiff's willful use of the legal system through her filing of a Summons and Complaint in this matter as described above is for a purpose other than what it was intended for by the law in violation of the caselaw and statutes of South Carolina.

100. Upon information and belie Plaintiff is attempting to utilize the legal system for revenge against, harassment of, and/or inappropriate monetary gain from Defendants.

101. Plaintiff's malicious misuse and/or perversion of the legal process of civil litigation for an unlawful purpose as detailed above, constitutes an abuse of process.

102. As a direct and proximate result of Plaintiff's above detailed actions, Defendants have suffered damages in the payment of attorney fees and costs, court costs, investigative costs, future attorney fees and costs, court costs, expert fees, and other similar expenses.

103. WHEREFORE, Defendants pray for a judgment against Plaintiff in a sum sufficient to compensate each of them for all ACTUAL and CONSEQUENTIAL damages that he or she has suffered, for such PUNITIVE damages that a jury may reasonably award against Plaintiff for her egregious behavior, for the attorney fees of Defendants, for the costs of this action to be taxed against Plaintiff, and for such other relief as the Court or jury deems just and proper.

RESERVATION OF DEFENSES

104. Defendants reassert and re-allege paragraphs one (1) through one-hundred (100) above.

105. Defendants reserve the right to raise additional affirmative and other defenses as well as counterclaims as may be established by discovery and evidence in this case.

S/STEPHANIE R. FAJARDO, #80159
Stephanie R. Fajardo, Esquire
The Fajardo Law Firm, LLC
1722 Main Street, Suite 302
Columbia, SC 29201
Phone: (803) 391-8980
Fax: (877) 365-5340
Attorney for the Defendants

Columbia, South Carolina
October 28, 2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT)

Samantha Katchick,)

Case No: 2019-CP-23-01522)

Plaintiff,)

**PLAINTIFF’S ANSWER TO
DEFENDANTS’
AMENDED COUNTERCLAIM**

vs.)

Marshall Alexander Chapman, DMD,)
Brooke I. Chapman, and Chapman Dental,)
P.A.,)

Defendants.)

The Plaintiff Samantha Katchick (hereafter “Katchick” or “Plaintiff”), Answering Defendants’ Amended Counterclaim, filed Nov. 1, 2019 (“Counterclaim”), would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation set forth in the Counterclaim and not hereinafter specifically admitted, qualified, or explained, is denied.

FOR A SECOND DEFENSE

- 2. Plaintiff denies the allegations set forth in Paragraph 83 of the Counterclaim.
- 3. Plaintiff admits the allegations set forth in Paragraph 84 of the Counterclaim.
- 4. Plaintiff admits the allegations set forth in Paragraph 85 of the Counterclaim, on information and belief.

5. Plaintiff admits the allegations set forth in Paragraph 86 of the Counterclaim, on information and belief.

6. Answering Paragraph 87 of the Counterclaim, Plaintiff admits only so much as alleges jurisdiction and venue are proper in Greenville County. The remaining allegations of this paragraph set forth legal conclusions and do not require a response.

7. Plaintiff admits the allegations set forth in Paragraph 88 of the Counterclaim.

8. Plaintiff denies the allegations set forth in Paragraph 89 of the Counterclaim and demands proof of same.

9. Answering Paragraph 90 of the Counterclaim, Plaintiff admits only so much as the Plaintiff was terminated. The remaining allegations of this Paragraph the Plaintiff denies.

10. Answering Paragraph 91 of the Counterclaim, Plaintiff admits only so much as Greenville County issued a warrant. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

11. Answering Paragraph 92 of the Counterclaim, Plaintiff admits only so much as that there was a pre-trial hearing held. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

12. Plaintiff denies the allegations set forth in Paragraph 93 of the Counterclaim. The allegations of this paragraph set forth legal conclusions and do not require a response.

13. Answering Paragraph 94 of the Counterclaim, Plaintiff admits only so much as alleges that the charges against her were dismissed. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

14. Answering Paragraph 95 of the Counterclaim, Plaintiff admits only so much as the Plaintiff filed suit, bringing eight (8) claims, as follows: (i) Defamation *Per Se*; (ii) Constructive Fraud; (iii) Malicious Prosecution; (iv) Abuse of Process; (v) False Imprisonment; (vi) Intentional Infliction of Emotional Distress; (vii) Interference with Contract; and (viii) Civil Conspiracy. The remaining allegations of this paragraph the Plaintiff denies.

15. Plaintiff denies the allegations set forth in Paragraph 96 of the Counterclaim.

16. Answering Paragraph 97 of the Counterclaim, Plaintiff denies taking any actions for the sole purpose of injuring the Defendants. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

17. Answering Paragraph 98 of the Counterclaim, Plaintiff admits so much as alleges she filed this action. Plaintiff denies filing any reports to LLR related to the Defendants. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

18. Answering Paragraph 99 of the Counterclaim, Plaintiff admits so much as alleges she filed a Summons and Complaint in this action on March 25, 2019. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

19. Plaintiff denies the allegations set forth in Paragraphs 100 to 105 of the Counterclaim.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

20. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

21. The Counterclaim fails to state a claim upon which relief can be based and accordingly, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

22. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

23. Plaintiff would show that the statements of the Defendants put at issue in this action by the Plaintiff were truthful in all respects.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

24. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

25. Plaintiff asserts that whatever damages, if any, that were sustained by the Defendant were due to, caused solely or partly by, and were the direct and proximate result of the acts of third-parties.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

26. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

27. Plaintiff asserts the doctrine of Laches as a complete or partial bar to Defendants' Counterclaim.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

28. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

29. Plaintiff asserts Defendants' failure to mitigate damages and/or the doctrine of avoidable consequences as a complete or partial bar to the Defendants' Counterclaim.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

30. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

31. Plaintiff at all times acted in good-faith with respect to the Defendants, and upon advice of counsel in bringing her claims in this action.

FOR AN NINTH DEFENSE AS TO ALL CAUSES OF ACTION

32. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

33. To the extent any right to punitive damages are claimed by the Defendants, Plaintiff would show, upon information and belief, that the claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of

America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Plaintiff can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Defendants' claim for punitive damages violates Plaintiff's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Plaintiff's exercise of that right; the Defendants' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Defendants' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Defendants' claim for punitive damages should be dismissed.

FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION

34. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

35. As to any claim for punitive damages, Plaintiff would allege that any award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars, as provided in S.C. Code Ann. §15-32-530.

FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

36. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

37. Plaintiff reserves the right to plead additional defenses as may arise in the course of discovery in this action.

Wherefore, having fully Answered Defendants' Counterclaim, Plaintiff prays that Defendants' Counterclaim be dismissed, with costs and fees awarded to Plaintiff; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

WESLEY D. FEW, LLC

/s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
P.O. Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEY FOR PLAINTIFF SAMANTHA
KATCHICK

December 23, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Samantha Katchick,) Case No: 2019-CP-23-01522
)

Plaintiff,)

vs.)

AMENDED SUMMONS

(jury trial demanded)

Marshall Alexander Chapman, DMD, Brooke I.)
Chapman, Chapman Dental, P.A., Douglas P.)
Schmieding, CPA, Jennings Cook & Co.,)
CPA's, PA, and Earl A. Simmons, CPA,)

Defendants.)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their office at Post Office Box 9398, Greenville, South Carolina, 29604, within thirty (30) day after such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA
KATCHICK

Greenville, South Carolina

June 26, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Samantha Katchick,) Case No: 2019-CP-23-01522
)

Plaintiff,)

vs.)

**AMENDED
VERIFIED
COMPLAINT**

Marshall Alexander Chapman, DMD, Brooke I.)
Chapman, Chapman Dental, P.A., Douglas P.) (jury trial demanded)
Schmieding, CPA, Jennings Cook & Co.,)
CPA’s, PA, and Earl A. Simmons, CPA,)
Defendants.)

The Plaintiff above-named, complaining of these Defendants, would respectfully show:

1. This action arises out of a former employment relationship between Plaintiff Samantha Katchick and Chapman Dental, P.A. (“Dental”). Plaintiff worked for Dental for over three (3) years. After Defendant Alex Chapman (“Chapman”) hired his new wife, Defendant Brooke Chapman (“Mrs. Chapman”), to work at Dental, *all-of-the-sudden* the Chapman Defendants accused Plaintiff of stealing cash from Dental’s patient funds. The amount allegedly taken was \$3,505.19. Defendants in 2017 alleged Plaintiff stole money from Dental over the entire period of Plaintiff’s employment with Dental from 2013 to 2017. Plaintiff’s employment was then terminated in March 2017. After conclusion of a small claims civil lawsuit Dental brought against relatives of Plaintiff on or about November 2, 2017, the Chapman Defendants initiated a false, vengeful, contrived, baseless and malicious “criminal” prosecution against the Plaintiff, causing her severe emotional distress and damages, as set forth herein. Since filing this action, in discovery, Plaintiff has discovered that the so-called missing cash calculations were performed by Defendant Earl A. Simmons, CPA (“Simmons”), who for whatever reason would

not sign his name to his work, which the Chapman Defendants then submitted to Defendant Douglas P. Schmieding, CPA (“Schmieding”), who did sign his name on a document that was later represented as a forensic audit.

THE PARTIES

2. The Plaintiff, Samantha Katchick (“Samantha” or “Plaintiff”) is a working single mother and a resident of Greenville County, South Carolina.

3. Defendants Marshall Alexander Chapman (“Chapman”), and Defendant Brooke I. Chapman (“Brooke” or “Mrs. Chapman”), on information and belief, are married and are citizens and residents of Greenville County, South Carolina.

4. Defendant Chapman Dental, P.A. (hereafter “Dental”), on information and belief is a professional association located in Greenville County, South Carolina.

5. Defendant Douglas P. Schmieding, CPA (“Schmieding”), on information and belief, is a citizen and resident of Greenville County, South Carolina, and a Certified Public Accountant.

6. Jennings Cook & Co., CPA’s, PA (hereafter “Jennings”), on information and belief, is a professional association located in Greenville County, South Carolina.

7. Earl A. Simmons, CPA (“Simmons”), on information and belief, is a citizen and resident of Greenville County, South Carolina, and a Certified Public Accountant.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action and venue is proper in Greenville County because Defendants reside in and / or operate in Greenville County, and the Plaintiff resides in Greenville County, and also because most all of the events complained of herein occurred in Greenville County.

FACTUAL ALLEGATIONS AND CLAIMS

9. From approximately December of 2013 to March 28, 2017, Plaintiff was employed by Defendant Dental.
10. Prior to these false and malicious allegations of theft by the Defendants, Plaintiff's only dealings with law enforcement involved traffic violations.
11. At all times during her employment with Dental, Plaintiff worked under the supervision and direction of Defendant Chapman.
12. Plaintiff's duties included patient check in / out, patient data entry, insurance verification, receipt of patient payments and general office functions.
13. In or around January of 2017, Defendant Chapman added a new staff member, Brooke I. Chapman, who had recently been married to Chapman.
14. On information and belief, Mrs. Chapman did not want Plaintiff working with her new husband at Dental.
15. On or about March 29, 2017, Chapman terminated Plaintiff's employment with Dental.
16. Chapman claimed then that his new wife and new employee of Dental, Brooke Chapman, a former school teacher, was unable to reconcile Dental's cash deposits using a dental software package known as Eaglesoft.
17. It was based on Mrs. Chapman's initial allegations of this inability to reconcile cash deposits over a three plus year period that resulted in the Plaintiff being terminated, and later gave rise to Defendants' false and retaliatory allegations of theft by the Plaintiff.
18. During the course of Plaintiff's employment at Dental, several of the Plaintiff's family members were patients of Dental's practice and were treated by Chapman.

19. As was common for the practice, Dental agreed to receive payment over a period of time from these family members of the Plaintiff, and records of those agreements were kept in the normal course of Dental's business.

20. On or about August 4, 2017, Dental filed a Summons and Complaint in Fairview / Austin Summary Court Seeking to collect a balance owed to it by the Plaintiff's former in-laws.

21. It was well known to Chapman and to Dental that these patients were relatives or former relatives of the Plaintiff.

22. Dental's complaint against Plaintiff's in-laws sought to obtain judgement for the balance owed to Dental, despite the fact that the in-laws had been paying according to the agreed payment plan with Dental.

23. On or about November 2, 2017, the presiding judge in the summary court collection action against Plaintiff's in-laws ruled that Dental was bound by the terms of the payment plan set in place for the in-laws, and dismissed the civil collections case against in-laws. The case, case no. 2017-CV-23-10201404, is shown in public records now as "settled."

24. On or about Sunday, Oct. 22, 2017, at 5:32 PM, one of the Chapman Defendants sent an email to Simmons with 1 attachment, as follows: MS Excel named Cash Rec.xlsx (69 KB), showing \$2,171.09 in alleged missing cash; and stating:

Subject: software vs deposit graph

Here is the software vs deposit graph, see what you think and if we need to re-label anything!

printed the monthly day sheets and highlighted cash.

25. On or about Tuesday, Oct. 31, 2017, at 12:17 PM, Simmons sent an email with 1 attachment, as follows: MS Excel named Chapman Dental.xlsx (27 KB), showing \$2,171.09 in alleged missing cash; and stating:

Alex,

Sorry, but the graphs will confuse not make a clear picture. Attached are the monthly deposit records compared to the bank deposits. A few did not contain a day of deposit and these need to be updated.

Please look them over. If not prosecuted by the DA, they can still be taken to Small Claims Court. Your main purpose is to be able to tell employers about her behavior without being sued for defamation.

I will look through the Procedures sometime this week and get my comments back to you.

Earl

26. On or about Tuesday, Oct. 31, 2017, at 2:56 PM, the Chapman Defendants sent an email to Simmons, with no attachments, but stating as follows: "Thanks man! I'll get brooke to look at the day of deposit."

27. On or about Monday Nov. 13, 2017, at 11:15 AM, the Chapman Defendants sent an email to Simmons with 1 attachment, as follows: MS Excel named Cash Rec.xlsx (69 KB) and showing \$2,171.09 in alleged missing cash; and stating: "Original summary attached."

28. Monday, Nov. 13, 2017, at 1:59 PM, the Chapman Defendants received an email from Simmons with 3 attachments, as follows: (i) MS Word, "Report Title Chapman Dental.docx" (12 KB); (ii) MS Word, "Description of procedures ...docx" (14 KB); and (iii) MS

Excel named Chapman Dental.xlsx (27 KB) and showing \$3,505.19 in alleged missing cash; and stating:

Brooke,

Here is everything. A signature is not going to determine if the authorities choose to take action. Everything is laid out perfectly if they care to look at documentation. As I have told Alex, this is not typically a police issue at this level. it will give him a basis to call here current employer and inform him of her behavior. He just needs for them to tell him they pass due to the amount of money involved.

Please read over everything. If it is OK, I will print several copies on extremely heavy bonded paper

29. On or about Monday, Nov. 13, 2017, less than one hour after receiving the above identified email from Simmons, at 2:48 PM, an email was sent to Schmieding from Brooke Chapman with only one attachment, as follows: MS Excel named Chapman Dental Cash Comparison Bank to Computer 2014 to 2017.xlsx, and showing \$3,505.19 in alleged missing cash; and stating:

Subject: Chapman Dental Collects v Deposits

Attachments: Chapman Dental Cash Comparison Bank to Computer 2014 to 2017.xlsx

Please see attached. Let me know if you need any additional information or documentation.

Thanks!

Brooke Chapman

30. On or about Tuesday, Nov. 14, 2017, at 8:35 AM, email received from Schmieding with one attachments, as follows: Chapman Dental. PDF; and stating:

Subject: RE: Chapman Dental Collects v Deposits

Attachments: Chapman Dental.pdf

Brooke, see attached. Let me know if you need anything else.

31. The letter that Schmieding attached to send to Brooke Chapman on November 14, 2017, stated as follows:

Dr. Marshall A. Chapman
Chapman Dental, PA
101 Woodruff Place Circle
Simpsonville, SC 29681

Dear Dr. Chapman:

We have prepared a calculation of the difference between cash receipts entered into your company's accounting system and the amount cash that was deposited into the company's bank account. This calculation is for the period of January 2014 through February 2017. This calculation is based on summarized information that was provided by you.

We have calculated the amount to be \$3,505.19

Please let us know if we can be of further assistance.

Sincerely,



Douglas P. Schmieding, CPA

32. This November 14, 2017 letter from Schmieding ended up in the Greenville County Sheriff's Office file, and was referred to as a "forensic audit."

33. On information and belief, the Chapman Defendants knew that without the actions of the CPA Defendants, the Greenville County Sheriff's Office would not move forward with the subject criminal prosecution of the Plaintiff, initiated by the Chapman Defendants, and later dismissed.

34. In the transcript of the Preliminary Hearing that occurred on March 26, 2018, GCSO Investigator Turner referred to the Schmieding letter dated November 14, 2017, numerous times as a "forensic audit," despite the cross-examination questions put forth by Plaintiff's attorney, Mr. Seay.

35. On direct testimony at the Preliminary Hearing, Investigator Turner testified, inter alia, as follows: "So I got the forensic audit from them, they provided me with all the documentation."

36. Further on direct testimony at the Preliminary Hearing, Investigator Turner was asked, and testified, as follows:

Solicitor: "Are you aware of any other documents that implicate this defendant as the woman who took that money?"

Turner: "No, it was a pretty thorough forensic audit, um, of course I got a written statement from him but that was it."

37. On cross-examination by Mr. Seay, Investigator Turner testified at the Preliminary Hearing, inter alia, as follows: "As I stated before, [Alex Chapman] simply said that [the Plaintiff] was in sole control and no one else had access to it and that's as far as it went sir."

38. On or about December 7, 2017, Defendant Chapman and Dental filed a Breach of Trust complaint with the Greenville County Sherriff's Office, accusing the Plaintiff of stealing \$3,505.19 from Dental, during the course of her three (3) plus year employment.

39. As part of their criminal complaint against the Plaintiff, Chapman and Mrs. Chapman made numerous false allegations to the Greenville County Sherriff's Office Investigator(s), including that they had hired a CPA firm to conduct a so-called "forensic audit" of Dental's records.

40. The Chapman's actions led the law enforcement personnel involved to believe that the CPA firm was confirming Defendants' allegations of theft by the Plaintiff from Dental.

41. The Chapmans represented to law enforcement that their CPA firm had audited Dental's Eaglesoft records, bank records, and eventually submitted a letter from Jennings Cook & Co. CPA's, signed by a CPA, Mr. Douglas P. Schmieding.

42. In reliance on these false and reckless allegations of theft by the Chapmans, on or about February 7, 2018, the Greenville County Sheriff's Office issued a Warrant for the arrest of Plaintiff on charges of Breach of Trust greater than \$2,000.00, less than \$10,000.00.

43. On or about February 8, 2018, Plaintiff, accompanied by her attorney David Seay, Esquire, of Greenville, South Carolina, turned herself in to the Greenville County Law Enforcement Center, was processed and released on bond.

44. At the time of this arrest for alleged theft from her former employer, Plaintiff was 34 years old, and Defendants knew she was a working single mother, and that she had no prior criminal record, apart from traffic violations.

45. After being terminated by Dental, Plaintiff sought and obtained employment with a new employer on or about April 24, 2017.

46. Shortly after the subject warrant was issued for Plaintiff's arrest in February of 2018, Chapman contacted Plaintiff's current employer and informed them, among other things, that Plaintiff had been arrested for Breach of Trust, based on his false allegations. This was a still further attempt by Chapman to cause Plaintiff emotional distress, damage, and ultimately to lose her employment there.

47. On or about April 18, 2018, the S.C. Law Enforcement Division ("SLED") visited Plaintiff's residence and left a message asking her to contact them.

48. When Plaintiff ultimately reached back out to SLED, they required her to surrender her Concealed Weapons Permit (“CWP”), pending the outcome of the criminal charges brought against her by Defendants.

49. On or about April 24, 2018, Plaintiff’s criminal counsel engaged the services of Michael F. O’Shea (“O’Shea”) and Forensic Research Group, Inc.(“FRGI”) to review the Defendants’ allegations and documents provided to the Greenville County Sherriff’s Office Investigator in support of the arrest warrant by the Chapmans, Dental and their CPA firm.

50. On or about May 25, 2018, Mr. O’Shea produced an Initial Report indicating that the documents provided by Chapman, Dental and Jennings Cook & Co. CPA’s to the investigator at the Greenville County Sherriff’s Office in support of the arrest warrant were incomplete, misleading and provided no assurance that Plaintiff, even had sole control or access to the cash funds of Dental, as alleged by Defendants Chapman and Dental.

51. Shortly thereafter Attorney Seay provided a copy of this initial report to the 13th Circuit Solicitor’s Office, and asked that the charges be dropped due to the lack of accurate or reliable supporting documentation.

52. On or about August 23, 2018, Attorney Seay notified Mr. O’Shea that, in response to his request to dismiss the case, the Solicitor’s Office delivered to him a substantial quantity of new documentation, provided by the Chapmans, Dental and / or Jennings Cook & Co. CPA’s.

53. On or about October 1, 2018, after reviewing all the additional provided documentation relating to the allegations in the complaint for each of the years 2014, 2015, 2016 and the first four months of 2017, Mr. O’Shea issued a Supplemental Report indicating, among other things, that comparing bank deposits to certain Eaglesoft records is a flawed method for

proving anything and, if it were a reliable method, the actual addition of the alleged losses was incorrectly totaled by Defendants (and their CPA firm) by more than 30%.

54. On or about October 3, 2018, Attorney Seay and Mr. O'Shea met with representatives of the 13th Circuit Solicitor's Office to review the latest report and analysis.

55. On or about November 26, 2018, representatives of the 13th Circuit Assistant Solicitor's Office notified the criminal defense attorneys for the Plaintiff that the criminal charges brought against her by Chapman and / or Dental had been dismissed.

56. On or about November 28, 2018, Chapman texted Plaintiff requesting an opportunity to meet "and have a few beers on me" to discuss the matter.

57. On February 6, 2019, at Plaintiff's expense, the matter was expunged from her criminal record.

58. In order to obtain the dismissal of these charges brought against her by Chapman and Dental, Plaintiff ended up employing the services of criminal defense counsel and a forensic expert.

59. The costs of retaining these professionals to defend herself, as of the filing of this action, is in excess of \$30,000.00.

60. Defendants falsely reported to law enforcement that the Plaintiff was solely responsible for all deposits of Dental.

61. Defendants falsely and/or recklessly reported alleged totals of missing cash for a period of months that extended well beyond even the time that the Plaintiff was terminated as an employee of Dental.

62. Defendants falsely reported to law enforcement that there were no discrepancies in their cash deposit records and their bank statements after the Plaintiff was terminated.

63. Defendants falsely and misleadingly reported to law enforcement only those records related to (i) cash deposits, while they each knew or should have known that their same records for (ii) checks, and (iii) debit / credit card receipts also did not match.

64. A comparison of the same methodology used by the Defendants to implicate and accuse the Plaintiff as a criminal and destroy her life over this three year period for all types of deposits, namely (i) cash, (ii) checks, and (iii) debit / credit cards, shows that the Defendants' records are off by at least \$50,000.00.

65. A review of the initial law enforcement report shows that Mrs. Chapman was motivated by a desire to punish or retaliate against the Plaintiff for allegedly assisting her relatives / in-laws to obtain dentistry related services from Dental without paying for them.

66. On or about December 14, 2017, Mrs. Chapman represented to law enforcement that she is getting information from a local judge that handled the failed in-law collections case, when in fact, the summary court had already ruled on the matter and entered their final judgment on November 2, 2017.

67. On information and belief, Mrs. Chapman mis-represented to law enforcement the status of the in-laws collection action in numerous ways.

68. Plaintiff was not solely responsible for all deposits of Dental.

69. Defendants knew that the records of cash receipts that they relied on for their prosecution of the Plaintiff had been accessible and modifiable by many people, including other employees of Dental, during that time period, including the Chapmans.

70. As such, Defendants knew or should have known the records they relied upon for their criminal prosecution of the Plaintiff were likely inaccurate.

71. Mrs. Chapman falsely reported to law enforcement that she could provide invoices to show that Plaintiff's so-called relatives were not required to pay for services from Dental. At the time of these representations to law enforcement by Mrs. Chapman, Dental's case versus the in-laws was shown as "settled."

72. The Chapmans represented that the Plaintiff was terminated from Dental after Mrs. Chapman could not reconcile the cash deposits with the Eaglesoft records, while also representing that the Plaintiff was terminated for entering into a payment plan with her relatives that Chapman had not agreed to on behalf of Dental.

73. Having failed in their efforts to file and prosecute a civil lawsuit as against the Plaintiff's so-called relatives in summary / small claims court, the Defendants this time elected to pursue not just a civil lawsuit to recover monies they falsely accused Plaintiff of taking from Dental's cash drawer, but to have the Plaintiff arrested and put in jail.

74. Defendants wanted revenge and sought to punish the Plaintiff.

75. The Chapman Defendants and Dental all knew that Dental's cash received from patients was accessible by many Dental employees, and not just the Plaintiff.

76. Defendants and their agents reported to law enforcement that Dental's cash funds were "locked" up in Dental's office and that only Plaintiff had access to those funds.

77. Defendants' so-called accounting records for cash that they used to make out their theft allegations to law enforcement were flawed, yet Defendants represented to law enforcement those cash receipts records as being accurate.

78. The Eaglesoft software platform is a dental practice software, not a financial accounting software.

79. Defendants were motivated by a desire to punish Plaintiff related to the failed collections case against one of Dental's patients.

80. Defendants represented to law enforcement that they had a "forensic audit" from a CPA firm implicating the Plaintiff in the alleged theft of Dental's funds.

81. Defendants knew that the CPA firm had not conducted a "forensic audit."

82. In reality, Defendants asked a CPA firm to write a letter confirming Mrs. Chapman's cash calculations based upon limited information Defendants provided to the CPA.

83. On information and belief, the CPA firm had no knowledge of the Defendants' use of the letter, namely that to support their criminal allegations against the Plaintiff.

84. As a result of the above-described events, Plaintiff was arrested, charged with "breach of trust with fraudulent intent," was required to post bond.

85. Due to the then pending felony charges, Plaintiff has suffered extreme embarrassment with her children and their schools, including being excluded from chaperoning field trips or otherwise participating in camps or other similar functions, all as a result of the false allegations of the Defendants.

86. As a further result of these false and malicious allegations, Plaintiff has been defamed and has been the subject of still further as yet undiscovered slanderous allegations about her to existing, potential and prospective employers, and has suffered severe emotional distress over the prospect of lost future employment opportunities due to the false statements from Defendants about her.

87. Plaintiff has suffered damages to include severe emotional distress, of lost wages and profits, unknown and incurable damage to her good reputation, and has been required to incur special damages in the form of attorneys' fees, and costs of preparing her defense of the

criminal charges, as well as other damages, including but not limited to expenses to investigate and determine the extent of damage to her reputation caused by Defendants.

**FOR A 1ST CAUSE OF ACTION
(Defamation *Per Se* – Simmons, Alex and Brooke Chapman)**

88. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

89. As set forth herein, Defendants made numerous false and defamatory statements about the Plaintiff.

90. Defendants statements were not subject to a privilege.

91. Defendants published these statements to numerous third-parties.

92. Defendants' statements were false and defamatory *per se*, causing special harm to the Plaintiff.

93. Apart from the calculations of Chapman's new wife, a former schoolteacher, Defendants had no evidence of theft by the Plaintiff, as they maliciously alleged. Defendants had no eye-witness accounts of any monies being missing from Dental's funds.

94. As a result of these actions of the Defendants, Plaintiff's good reputation for honesty and truthfulness, as well as being a law abiding citizen has been damaged and she is entitled to recover her general and special damages, as set forth herein. Such damages include but are not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

95. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in

the criminal action, financial loss related to present or prospective employment, and career advancement opportunities

96. Due to the reckless and malicious nature of the Defendants' representations about the Plaintiff, accusing her of criminal activity, rising to the level of a felony, Plaintiff is also entitled to an award of punitive damages.

**FOR A 2ND CAUSE OF ACTION
(Constructive Fraud – Chapman Defendants)**

97. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

98. As set forth herein, Defendants made material false representations about the Plaintiff that caused law enforcement to seek to arrest and detain the Plaintiff.

99. The Defendants knew their statements were false and showed a reckless disregard for the truth or falsity of those statements.

100. Defendants intended that their statements would be acted upon by the persons hearing the representations.

101. The hearers of these statements were ignorant of their falsity at the time they relied upon the statements as truthful.

102. The hearers had a right to rely upon the Defendants' statements.

103. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

104. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

105. Plaintiff is also entitled to an award of punitive damages.

**FOR A 3RD CAUSE OF ACTION
(Malicious Prosecution - Chapman Defendants)**

106. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

107. Defendants' actions in instituting and then continuing criminal judicial proceedings against the Plaintiff were based on false and misleading information and were improper.

108. The subject criminal proceedings were dismissed and terminated in the Plaintiff's favor.

109. Defendant's lacked probable cause to accuse the Plaintiff of the crimes they attempted to prosecute against her.

110. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

111. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time,

deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

112. Plaintiff is also entitled to an award of punitive damages.

**FOR A 4TH CAUSE OF ACTION
(Abuse of Process – Chapman Defendants)**

113. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

114. Defendant's had a revenge motive and an ulterior motive to pursue criminal charges against the Plaintiff with the intent of retraining her liberty and having her locked up like a dangerous criminal.

115. Defendants' actions in pursuing the criminal prosecution of the Plaintiff were not proper in the regular conduct of the proceeding.

116. As a result of these actions of the Defendants, Plaintiff is entitled to recover her actual damages, and an award of punitive damages.

**FOR A 5TH CAUSE OF ACTION
(False Imprisonment – Mrs. Chapman and Chapman)**

117. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

118. As set forth herein, Defendants actions caused the unlawful restraint of the Plaintiff.

119. The Defendants intended to cause the restraint of the Plaintiff, and the restraint, as obtained under numerous false pretenses, was unlawful.

120. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to lost income, lost wages, loss of time, pain and suffering, physical injury or illness, loss of business or loss of employment opportunities, humiliation, embarrassment, mental suffering, mental distress, inconvenience, discomfort, and other expenses incurred and caused by the Defendants.

121. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR A 6TH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – Mrs. Chapman and Chapman)**

122. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

123. The Chapman Defendants intentionally and recklessly inflicted severe emotional distress upon the Plaintiff.

124. The Chapman Defendants conduct was certain or substantially certain to cause severe emotional distress to the Plaintiff and was intended to cause distress.

125. The Chapman Defendant's conduct, as described herein, was so extreme and outrageous as to exceed all possible bounds of decency and is atrocious and utterly intolerable in a civilized community.

126. The actions of the Chapman Defendants caused the Plaintiff's emotional distress.

127. The emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.

128. As a result of these actions of the Defendants, Plaintiff is entitled to recover her emotional distress damages caused by Defendants.

**FOR A 7TH CAUSE OF ACTION
(Interference with Contract / Prospective Contract – Mrs. Chapman and Chapman)**

129. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

130. The Chapman Defendants knew of the Plaintiff's existing employment and prospective employment opportunities.

131. The Chapman Defendants, on information and belief, attempted to procure a breach of the Plaintiff's employment contract without justification.

132. As a result of these actions of the Defendants, Plaintiff is entitled to recover her damages to put her in the position she would have been in but for this interference by the Defendants.

133. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR AN 8TH CAUSE OF ACTION
(Civil Conspiracy – Mrs. Chapman and Chapman)**

134. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

135. As set forth herein, the Chapman Defendants combined for the purpose of harming the Plaintiff and their actions caused the Plaintiff special damages.

136. As a result of these actions by the Chapman Defendants, Plaintiff is entitled to recover her damages that she suffered as caused by the wrongful act done in furtherance of the conspiracy and which result from it, including but not limited to damages and injury to her career and professional status, opportunities, and lost profits resulting from the conspiracy

137. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR A 9TH CAUSE OF ACTION
(Negligence / Gross Negligence – Schmieding and Jennings)**

138. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

139. Schmieding owed the Plaintiff a duty of due care, as he knew or should have known that the work he was signing off on was going to be used to defame the Plaintiff, and / or to have her charged for criminal acts.

140. Schmieding breached his duty by failing to exercise due care, and in numerous other respects as set forth herein, and as will be shown at trial.

141. The actions and inactions of Schmieding caused and were the proximate cause of the Plaintiff's damages.

142. The Plaintiff suffered damages as the proximate result of the Schmieding's actions and inactions.

143. Schmieding's actions and inactions constitute gross negligence, recklessness and warrant an award of punitive damages.

144. Plaintiff has suffered damages as the proximate result of Schmieding's actions and inactions and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 10TH CAUSE OF ACTION
(Negligent Misrepresentation – Schmieding and Jennings)**

145. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

146. The representations made by Schmieding and Jennings were false, as evidenced by the fact that he simply regurgitated the exact amounts provided to him by Brooke Chapman, and was apparently unaware that he was being provided with work-papers and / or information that was actually prepared by Simmons.

147. Schmieding and Jennings had a pecuniary interest in making the representations as his firm would have wanted to maintain the Chapman Defendants as a client for their tax preparation and other work.

148. Schmieding, as a CPA, owed a duty of care to the Plaintiff to ensure that his representations were accurate and truthful.

149. Schmieding and Jennings breached that duty by failing to exercise due care.

150. The Plaintiff was the victim of the Chapman Defendant's insistence and / or acquiescence in the claim that Schmieding's November 14, 2017, letter was a "forensic audit."

151. The Plaintiff suffered a pecuniary loss as the proximate result of the GCSO's reliance on the representations in Schmieding's letter from his Jennings firm.

152. Schmieding and Jennings breached this duty in numerous respects, including but not limited to by authoring, signing and sending a letter that was not even their work.

153. Schmieding's and Jennings' misrepresentations constitute gross negligence, recklessness and warrant an award of punitive damages.

154. Plaintiff has suffered a pecuniary loss as the proximate result of the representations made by Schmieding and Jennings, and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 11TH CAUSE OF ACTION
(Negligence / Gross Negligence – Simmons)**

155. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

156. Simmons owed the Plaintiff a duty of due care, as he knew that the work he was performing was going to be used to defame the Plaintiff, and to seek a criminal prosecution of her based on his unsigned “findings.”

157. Simmons breached his duty by failing to exercise due care, and in numerous other respects as set forth herein, and as will be shown at trial.

158. The actions and inactions of Simmons caused and were the proximate cause of the Plaintiff’s damages.

159. The Plaintiff suffered damages as the proximate result of the Simmons’ actions and inactions.

160. Simmons’ actions and inactions constitute gross negligence, recklessness and warrant an award of punitive damages.

161. Plaintiff has suffered damages as the proximate result of Simmons’ actions and inactions and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 12TH CAUSE OF ACTION
(Negligent Misrepresentation – Schmieding and Jennings)**

162. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

163. The representations made by Simmons were reckless, and false, as evidenced by the fact that he knew the un-signed work he was doing related to the Plaintiff specifically, and

further in that he was advising the Chapmans on how to use his un-signed work to share with third-parties, including the Plaintiff's new employer and law enforcement.

164. Simmons had a pecuniary interest in making these representations.

165. Simmons, as a CPA, owed a duty of care to the Plaintiff to ensure that his representations were accurate and truthful.

166. Simmons breached that duty by failing to exercise due care.

167. The Plaintiff was the victim of Simmons' un-signed work being represented by Chapman Defendants and / or acquiescence in the claim that Simmons's work later signed off on by Schmieding was a "forensic audit."

168. The Plaintiff suffered a pecuniary loss as the proximate result of the representations made by Simmons and later signed off on by Schmieding.

169. Simmons breached this duty in numerous respects, including but not limited to by allowing his work to be used without his name, and also by allowing it to be used to suggest that the Plaintiff was "solely" responsible for all cash at the practice.

170. Simmons's misrepresentations constitute gross negligence, recklessness and warrant an award of punitive damages.

171. Plaintiff has suffered a pecuniary loss as the proximate result of the representations made by Simmons, and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

WHEREFORE, having fully set forth its claims against the Defendants, the Plaintiff prays that the Court award it judgment as follows:

- (a) actual damages, as set forth herein;
- (b) Special damages;

- (c) Punitive damages;
- (d) Attorneys' fees;
- (e) Costs of this action and costs to defend against Defendants' false allegations;
- (f) An amount to compensate Plaintiff for the position she would have been in but for the numerous wrongful acts of the Defendants; and
- (g) For such other and further relief as the Court may deem just and proper under the circumstances presented at trial.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA
KATCHICK

Greenville, South Carolina
June 26, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

13TH JUDICIAL CIRCUIT

Samantha Katchick,)
)
Plaintiff,)

Case No: 2019-CP-23-01522

vs.)

VERIFICATION

Marshall Alexander Chapman, DMD, Brooke)
I. Chapman, Chapman Dental, P.A., Douglas)
P. Schmieding, CPA, Jennings Cook & Co.,)
CPA's, PA, and Earl A. Simmons, CPA,)
)
Defendants.)

I, Samantha Katchick, being duly sworn, say that I am the Plaintiff herein, and have read the foregoing Amended Verified Complaint and know the contents thereof, and hereby verify that the allegations in the same are true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true.

SWORN to and Subscribed before me)
this _____ day of _____, 2020.)


Samantha Katchick
(Greenville, South Carolina)

Notary Public for South Carolina)
)
My Commission expires: _____)

OR
[see Certification in Lieu of Affidavit on next page]


Samantha Katchick

Greenville, South Carolina

June __, 2020

Certification in Lieu of Affidavit. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-1522

Samantha Katchick,

Plaintiff,

v.

Marshall Alexander Chapman, DMD,
Brooke I. Chapman, Chapman Dental, P.A.,
Douglas P. Schmieding, CPA, Jennings
Cook & Co., CPA's, PA, and Earl A.
Simmons, CPA.

Defendants.

**DEFENDANTS' MARSHAL ALEXANDER
CHAPMAN, DMD, BROOKE I.
CHAPMAN, AND CHAPMAN DENTAL,
P.A.'S ANSWER AND COUNTERCLAIM
TO PLAINTIFF'S AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

Defendants Marshall Alexander Chapman, DMD ("Alex"), Brooke I. Chapman ("Brooke"), and Chapman Dental, P.A. (Dental), collectively "Defendants" hereby answers the Amended Complaint of the Plaintiff and alleges as follows:

1. Each and every allegation not hereinafter specifically admitted, explained, or qualified is denied.
2. The allegations of paragraph one (1) is admitted solely in that there was an employment relationship between Plaintiff and Defendant Dental, Plaintiff worked for Dental for approximately three (3) years, Defendants discovered missing money from Dental attributable to the actions of Plaintiff in 2017, and Plaintiff was terminated from her employment with Dental in March 2017. All further allegations are denied.
3. The allegations of paragraph two (2) cannot be admitted or denied as Defendants have no knowledge of Plaintiff's employment status nor her relationship status.
4. The allegations of paragraphs three (3) and four (4) are admitted.

5. The allegations of paragraphs five (5), six (6), and seven (7) are admitted upon information and belief.

6. The allegations of paragraphs eight (8) and nine (9) are admitted.

7. The allegations of paragraphs ten (10) and eleven (11) are denied.

8. The allegations of paragraphs twelve (12) and thirteen (13) are admitted.

9. The allegations of paragraph fourteen (14) are denied and contradicted by Plaintiff's prior testimony.

10. The allegations of paragraph fifteen (15) are admitted.

11. The allegations of paragraph sixteen (16) are admitted solely in that in 2017, Defendants were unable to reconcile Defendant Dental's deposit receipts with their billing software. All remaining allegations are denied.

12. The allegations of paragraph seventeen (17) are denied and contradicted by Plaintiff's prior testimony.

13. The allegations of paragraph eighteen (18) are admitted.

14. The allegations are paragraph nineteen (19) are admitted solely in that Plaintiff's family members were set up on a payment plan by Plaintiff and some records were kept of the payment plan. The remaining allegations are denied.

15. The allegations of paragraphs twenty (20) and twenty-one (21) are admitted.

16. The allegations of paragraph twenty-two (22) are denied.

17. The allegations of paragraph twenty-three (23) are admitted solely in that the Presiding Judge in the summary court collection action issued a ruling that Plaintiff's former family members and Defendant Dental would be bound by the terms of the payment plan in place with the requirement that if Plaintiff's former family members fail to pay or stop paying Defendant Dental, a

Judgment would be issued for the remaining balance against Plaintiff's former family members. The remaining allegations are denied.

18. The allegations of paragraphs twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-two (32) are admitted solely in that they reference emails and letters that were sent and received by Defendants. The details and assumptions made in reference to these emails or letters are denied.

19. The allegations of paragraphs thirty-two (32) thirty-three (33) are denied.

20. The allegations of paragraph thirty-four (34) are denied as Defendants do not know the thoughts of Investigator Turner.

21. The allegations of paragraphs thirty-five (35) and thirty-six (36) are admitted solely in that Defendants are informed and believe that Investigator Turner testified as detailed.

22. The allegations of paragraph thirty-seven (37) are denied as Plaintiff has taken the liberty of modifying Investigator Turner's testimony.

23. The allegations of paragraphs thirty-eight (38), thirty-nine (39), and forty (40) are denied and contradicted by Plaintiff's prior testimony and/or the objective evidence of this matter.

24. The allegations of paragraph forty-one (41) are admitted solely in that Defendants provided a letter from Mr. Douglas P. Schmiedling to law enforcement regarding his review of Dental's records. The remaining allegations are denied.

25. The allegations of paragraph forty-two (42) are admitted solely in that the Greenville County Sheriff's Office charged Plaintiff with Breach of Trust greater than \$2,000.00, less than \$10,000.00. The remaining allegations are denied.

26. The allegations of paragraph forty-three (43) cannot be admitted or denied due to lack of personal knowledge.

27. The allegations of paragraph forty-four (44) are denied.

28. The allegations of paragraph forty-five (45) are admitted upon information and belief based on Plaintiff's prior testimony.

29. The allegations of paragraph forty-six (46) are denied and contradicted by Plaintiff's prior testimony.

30. The allegations of paragraphs forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55) cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony.

31. The allegations of paragraph fifty-six (56) are admitted.

32. The allegations of paragraphs fifty-seven (57) and fifty-eight (58) cannot be admitted or denied due to lack of personal knowledge.

33. The allegations of paragraph fifty-nine (59) are denied and contradicted by Plaintiff's discovery responses in this matter.

34. The allegations of paragraphs sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), and sixty-seven (67) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

35. The allegations of paragraph sixty-eight (68) are admitted solely in that for the period of time that Plaintiff and Defendant Brooke were employed at Defendant Dental, Plaintiff was not solely responsible for all deposits of Dental. The remaining allegations are denied.

36. The allegations of paragraphs sixty-nine (69), seventy (70), seventy-one (71), seventy-two (72), seventy-three (73), seventy-four (74), seventy-five (75), seventy-six (76), seventy-seven

(77), seventy-eight (78), seventy-nine (79), eighty (80), eight-one (81), and eighty-two (82) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

37. The allegations of paragraph eighty-three (83) are denied as to the insinuation that Defendants engaged in any use of documents to support criminal allegations against Plaintiff. The remaining allegations cannot be admitted or denied as it seeks the mindset of the CPA firm.

38. The allegations of paragraph eighty-four (84) are denied as the reason for Plaintiff's arrest and subsequent charge of "breach of trust with fraudulent intent" was based on the actions of an unnamed third-party.

39. The allegations of paragraphs eighty-five (85), eighty-six (86), and eighty-seven (87) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

40. Paragraph eighty-eight (88) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

41. The allegations of paragraphs eighty-nine (89), ninety (90), ninety-one (91), ninety-two (92), ninety-three (93), ninety-four (94), ninety-five (95), and ninety-six (96) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

42. Paragraph ninety-seven (97) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

43. The allegations of paragraphs ninety-eight (98), ninety-nine (99), one hundred (100), one hundred and one (101), one hundred and two (102), one hundred and three (103), one hundred and four (104), one hundred and five (105) are denied and contradicted by Plaintiff's prior testimony

in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

44. Paragraph one hundred and six (106) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

45. The allegations of paragraph one hundred and seven (107) are denied.

46. The allegations of paragraph one hundred and eight (108) are admitted.

47. The allegations of paragraphs one hundred and nine (109), one hundred and ten (110), one hundred and eleven (111), and one hundred and twelve (112) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

48. Paragraph one hundred and thirteen (113) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

49. The allegations of paragraphs one hundred and fourteen (114), one hundred and fifteen (115), and one hundred and sixteen (116) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

50. Paragraph one hundred and seventeen (117) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

51. The allegations of paragraphs one hundred and eighteen (118), one hundred and nineteen (119), one hundred and twenty (120), and one hundred and twenty-one (121) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

52. Paragraph one hundred and twenty-two (122) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

53. The allegations of paragraph one hundred and twenty-three (123), one hundred and twenty-four (124), one hundred and twenty-five (125), one hundred and twenty-six (126), one hundred and twenty-seven (127), and one hundred and twenty-eight (128) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

54. Paragraph one hundred and twenty-nine (129) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

55. The allegations of paragraphs one hundred and thirty (130), one hundred and thirty-one (131), one hundred and thirty-two (132), and one hundred and thirty-three (133) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

56. Paragraph one hundred and thirty-four (134) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

57. The allegations of paragraphs one hundred and thirty-five (135), one hundred and thirty-six (136), and one hundred and thirty-seven (137) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

58. The allegations of paragraph one hundred and thirty-eight (138) through paragraph one hundred and seventy-one (171) detail causes of actions against Defendants Schmieding, Jennings, and Simmons respectively and, as such, Defendants does admit, deny, or respond to these allegations.

59. To the extent inconsistent with the foregoing, Defendants deny the WHEREFORE section of the Amended Complaint and all subparts.

FOR A SECOND DEFENSE

60. Defendants reassert and re-allege paragraphs one (1) through fifty-nine (59) above.

61. Plaintiff's Amended Complaint contains six (6) causes of actions, to wit: 2nd Cause of Action, 3rd Cause of Action, 5th Cause of Action, 6th Cause of Action, 7th Cause of Action, and 8th Cause of Action, that fail to allege necessary details upon which Plaintiff would be entitled to any relief from these Defendants. As such, the above referenced causes of actions should be dismissed with prejudice, stricken from Plaintiff's Amended Complaint, and costs and fees awarded to Defendants.

FOR A THIRD DEFENSE

62. Defendants reassert and re-allege paragraphs one (1) through sixty-one (61) above.

63. Defendants would show, upon information and belief, that any statements made by them or their agents were true or substantially true, and the Defendants plead Truth as a complete defense.

FOR A FOURTH DEFENSE

64. Defendants reassert and re-allege paragraphs one (1) through sixty-three (63) above.

65. Defendants would show, upon information and belief, that the injuries and/or damage sustained by Plaintiff were the result of the sole negligence and/or actions of Plaintiff and therefore, Plaintiff cannot recover any sum whatsoever from the Defendants.

FOR A FIFTH DEFENSE

66. Defendants reassert and re-allege paragraphs one (1) through sixty-five (65) above.

67. Defendants would show that any injuries or damages sustained by Plaintiff were

due to and caused by the sole negligence and acts or omissions of some persons or entities over whom Defendants exercised no authority or control for which reason Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A SIXTH DEFENSE

68. Defendants reassert and re-allege paragraphs one (1) through sixty-seven (67) above.

69. Defendants would show, upon information and belief, that the statements were proper in scope and reasonably related to appropriate business and are therefore absolutely privileged.

FOR A SEVENTH DEFENSE

70. Defendants reassert and re-allege paragraphs one (1) through sixty-nine (69) above.

71. Defendants would show, upon information and belief, that any statements or actions on their part were reasonable with respect to time, place, and manner and in furtherance of Defendants' legitimate interest.

FOR AN EIGHTH DEFENSE

72. Defendants reassert and re-allege paragraphs one (1) through seventy-one (71) above.

73. An award or assessment of punitive or exemplary damages against Defendants as prayed for by Plaintiff in this Complaint would violate Defendants' constitutional rights under the Due Process clause of the 5th and 14th Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the 5th Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendants plead such constitutional provisions as a complete defense to any claim for punitive damages.

FOR A NINTH DEFENSE

74. Defendants reassert and re-allege paragraphs one (1) through seventy-three (73) above.

75. An award of punitive damages under South Carolina law against Defendants would violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a. The Judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantee;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based on the wealth of the defendant violates due process;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and.
- f. Plaintiff's claims for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of Defendants.

FOR A TENTH DEFENSE

76. Defendants reassert and re-allege paragraphs one (1) through seventy-five (75) above.

77. Defendants would show, upon information and belief, that any statements made in the course of an investigation or litigation are protected from suit, and Plaintiff's Amended Complaint is therefore barred as to Defendants.

FOR AN ELEVENTH DEFENSE

78. Defendants reassert and re-allege paragraphs one (1) through seventy-seven (77) above.

79. Defendants would show, upon information and belief, that any statements of any individuals were expressions of opinion by those individuals that are protected under the United States Constitution.

FOR A TWELFTH DEFENSE

80. Defendants reassert and re-allege paragraphs one (1) through seventy-nine (79) above.

81. Defendants would show, upon information and belief, that the communications were made in good faith and with proper motives, and any publication was in the proper manner to the proper parties.

FOR A THIRTEENTH DEFENSE

82. Defendants reassert and re-allege paragraphs one (1) through eighty-one (81) above.

83. Defendants would show, upon information and belief, that at all times relevant hereto, Defendants, during the performance or non-performance of acts alleged in the Amended Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and therefore, are immune from suit.

FOR A FOURTEENTH DEFENSE

84. Defendants reassert and re-allege paragraphs one (1) through eight-three (83) above.

85. Defendants would show, upon information and belief, that the conduct of Defendants was not the proximate cause of any alleged injuries or damages under any theory advanced for which relief is requested by Plaintiff.

FOR A FIFTEENTH DEFENSE

86. Defendants reassert and re-allege paragraphs one (1) through eighty-five (85) above.

87. Defendants would show, upon information and belief, that any damages or injuries to Plaintiff were caused by the Plaintiff's own actions, omissions, and conduct in violating the law and in such other particulars as the evidence may show.

FOR A SIXTEENTH DEFENSE

88. Defendants reassert and re-allege paragraphs one (1) through eighty-seven (87) above.

89. Defendants would show, upon information and belief, that notwithstanding the fact that the criminal charge were dismissed against Plaintiff, Plaintiff was, in fact, guilty of that charge.

FOR A SEVENTEENTH DEFENSE

90. Defendants reassert and re-allege paragraphs one (1) through eighty-nine (89) above.

91. Defendants would show, upon information and belief, that any claim for malicious prosecution is barred as probable cause was found by a court of law as to the Plaintiff's arrest and prosecution.

**FOR AN EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM TO
PLAINTIFF**

92. Defendants reassert and re-allege paragraphs one (1) through ninety-one (91) above.

93. Upon information and belief, Plaintiff is a citizen and resident of Greenville County, South Carolina.

94. Defendant Marshall Alexander Chapman and Defendant Brooke I. Chapman are citizens and residents of Greenville County, South Carolina.

95. Defendant Chapman Dental, P.A. is a professional association located in Greenville County, South Carolina.

96. This Court has jurisdiction over this action and venue is proper in Greenville County, South Carolina because all of the events complained of herein occurred in Greenville County, South Carolina as well as all parties reside in Greenville County, South Carolina.

97. From approximately December 2013 to March 2017, Plaintiff was employed by Defendant Dental.

98. During her employment with Defendant Dental, Plaintiff made multiple threats of getting revenge on Defendants should she ever be terminated.

99. On or about March 2017, Plaintiff was terminated from Defendant Dental as a result of multiple disciplinary issues.

100. On or about February 2018, due to the investigation of Greenville County Sheriff's Department, a warrant was signed for the arrest of Plaintiff for Breach of Trust, >\$2,000.00 and <\$10,000.00 by Elliott D. Turner.

101. Following Plaintiff's arrest on the above referenced charges, a pre-trial hearing was held to determine the existence of probable cause for the charge against Plaintiff.

102. As a result of the above referenced pre-trial hearing, probable cause was found to exist to support the arrest and prosecution of Plaintiff.

103. On or about November 2018, upon information and belief, the Thirteenth Circuit Solicitor's Office chose to dismiss the charge against Plaintiff.

104. On or about March 25, 2019, Plaintiff filed this underlying action against Defendants providing false, misleading, and defamatory information to the Court regarding Defendants.

105. On or about January 8, 2021, armed with the deposition testimony of Plaintiff and extensive discovery responses and information from a variety of persons, Plaintiff filed an Amended Complaint containing information contradictory to her own testimony, contradictory to her own discovery responses and the responses of the Defendants, and contradictory to the objective evidence received from the Greenville County Sheriff's Department and Thirteenth Circuit Solicitor's Office.

106. In addition to this current action, Defendants are informed and believe that Plaintiff has contacted the South Carolina Department of Labor, Licensing, and Regulation and made false allegations against Defendant.

107. Upon information and belief and based on Plaintiff's own words during her employment with Defendant Dental as well as her own words during her deposition in this matter, Plaintiff has an ulterior motive to pursue civil action against Defendants.

108. Upon information and belief and based on the above referenced details, Plaintiff has taken actions solely to injure, defame, extort money, or another nefarious purpose not proper in the course of law.

109. Plaintiff's actions of filing and amending this underlying action containing information contradictory to Plaintiff's own testimony and documents, as well as the believed actions of Plaintiff in filing a false report to the South Carolina Department of Labor, Licensing, and Regulation have demonstrated the existence of Plaintiff's ulterior motive to pursue civil action against Defendants.

110. Plaintiff's willful use of the legal system through her filing of a Summons and Complaint in this matter is for a purpose other than what it was intended for by the law in violation of the caselaw and statutes of South Carolina.

111. Plaintiff's willful use of the legal system through her filing of an Amended Summons and Complaint in this matter containing information contradictory to Plaintiff's own testimony and documents is for a purpose other than what it was intended for by the law in violation of the caselaw and statutes of South Carolina.

112. Upon information and belief, Plaintiff is attempting to utilize the legal system for revenge against, harassment of, and/or inappropriate monetary gain from Defendants.

113. Plaintiff's malicious misuse and/or perversion of the legal process of civil litigation for an unlawful purpose as detailed above, constitutes an abuse of process.

114. As a direct and proximate result of Plaintiff's above detailed actions, Defendants have suffered damages in the payment of attorney fees and costs, court costs, investigative costs, future attorney fees and costs, court costs, expert fees, and other similar expenses.

115. WHEREFORE, Defendants pray for a judgment against Plaintiff in a sum sufficient to compensate each of them for all ACTUAL and CONSEQUENTIAL damages that he or she has suffered, for such PUNITIVE damages that a jury may reasonably award against Plaintiff for her egregious behavior, for the attorney fees of Defendants, for the costs of this action to be taxed against Plaintiff, and for such other relief as the Court or jury deems just and proper.

RESERVATION OF DEFENSES

116. Defendants reassert and re-allege paragraphs one (1) through one hundred and fifteen (115) above.

117. Defendants reserve the right to raise additional affirmative and other defenses as

well as counterclaims as may be established by discovery and evidence in this case.

S/STEPHANIE R. FAJARDO, #80159

Stephanie R. Fajardo, Esquire

The Fajardo Law Firm, LLC

1722 Main Street, Suite 302

Columbia, SC 29201

Phone: (803) 391-8980

Fax: (877) 365-5340

**Attorney for Defendants Marshall
Alexander Chapman, DMD, Brooke I.
Chapman, and Chapman Dental, P.A**

Columbia, South Carolina
January 20, 2021

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GREENVILLE)

13TH JUDICIAL CIRCUIT)

Samantha Katchick,)

Case No: 2019-CP-23-01522)

Plaintiff,)

vs.)

**PLAINTIFF’S ANSWER TO
CHAPMAN DEFENDANTS’
“AMENDED”¹ COUNTERCLAIM**

Marshall Alexander Chapman, DMD,)
Brooke I. Chapman, and Chapman Dental,)
P.A.,)

Defendants.)

Subject to any necessary motions to strike these Defendants’ attempt to amend the allegations of their Counterclaim, filed Nov. 1, 2019, without first filing a motion to amend as required under S.C. R. Civ P. Rule Rule 15, the Plaintiff Samantha Katchick (hereafter “Katchick” or “Plaintiff”), Answering the Chapman Defendants’ Amended Counterclaim, filed Jan. 20, 2021 (“Counterclaim”), would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation set forth in the Counterclaim and not hereinafter specifically admitted, qualified, or explained, is denied.

FOR A SECOND DEFENSE

2. Plaintiff denies the allegations set forth in Paragraph 92 of the Counterclaim.

¹ Responses to newly added allegations, to the extent ascertainable by the undersigned, are in *italics* below indicating allegations attempted to be added without leave of Court.

3. Plaintiff admits the allegations set forth in Paragraph 93 of the Counterclaim.
4. Plaintiff admits the allegations set forth in Paragraph 94 of the Counterclaim, on information and belief.
5. Plaintiff admits the allegations set forth in Paragraph 95 of the Counterclaim, on information and belief.
6. Answering Paragraph 96 of the Counterclaim, Plaintiff admits only so much as alleges jurisdiction and venue are proper in Greenville County. The remaining allegations of this paragraph set forth legal conclusions and do not require a response.
7. Plaintiff admits the allegations set forth in Paragraph 97 of the Counterclaim.
8. Plaintiff denies the allegations set forth in Paragraph 98 of the Counterclaim and demands proof of same.
9. Answering Paragraph 99 of the Counterclaim, Plaintiff admits only so much as the Plaintiff was terminated. The remaining allegations of this Paragraph the Plaintiff denies.
10. Answering Paragraph 100 of the Counterclaim, Plaintiff admits only so much as Greenville County issued a warrant. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.
11. Answering Paragraph 101 of the Counterclaim, Plaintiff admits only so much as that there was a pre-trial hearing held. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

12. Plaintiff denies the allegations set forth in Paragraph 102 of the Counterclaim. The allegations of this paragraph set forth legal conclusions and do not require a response.

13. Answering Paragraph 103 of the Counterclaim, Plaintiff admits only so much as alleges that the charges against her were dismissed. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

14. Answering Paragraph 104 of the Counterclaim, Plaintiff admits only so much as the Plaintiff filed suit, bringing eight (8) claims, as follows: (i) Defamation *Per Se*; (ii) Constructive Fraud; (iii) Malicious Prosecution; (iv) Abuse of Process; (v) False Imprisonment; (vi) Intentional Infliction of Emotional Distress; (vii) Interference with Contract; and (viii) Civil Conspiracy. The remaining allegations of this paragraph the Plaintiff denies.

15. *Paragraph 105 is denied.*

16. Plaintiff denies the allegations set forth in Paragraph 106 of the Counterclaim.

17. *Paragraph 107 is denied.*

18. Answering Paragraph 108 of the Counterclaim, Plaintiff denies taking any actions for the sole purpose of injuring the Defendants. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

19. Answering Paragraph 109 of the Counterclaim, Plaintiff admits so much as alleges she filed this action, and obtained Court approval to file a Verified Amended Complaint. Plaintiff denies filing any reports to LLR related to the Defendants. The remaining allegations of this

paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

20. Plaintiff denies the allegations set forth in Paragraphs 111 to 117 of the Counterclaim.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

21. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

22. The Counterclaim fails to state a claim upon which relief can be based and accordingly, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

23. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

24. Plaintiff would show that the statements of the Defendants put at issue in this action by the Plaintiff were truthful in all respects.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

25. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

26. Plaintiff asserts that whatever damages, if any, that were sustained by the Defendant were due to, caused solely or partly by, and were the direct and proximate result of the acts of third-parties.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

27. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

28. Plaintiff asserts the doctrine of Laches as a complete or partial bar to Defendants' Counterclaim.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

29. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

30. Plaintiff asserts Defendants' failure to mitigate damages and/or the doctrine of avoidable consequences as a complete or partial bar to the Defendants' Counterclaim.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

31. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

32. Plaintiff at all times acted in good-faith with respect to the Defendants, and upon advice of counsel in bringing her claims in this action.

FOR AN NINTH DEFENSE AS TO ALL CAUSES OF ACTION

33. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

34. To the extent any right to punitive damages are claimed by the Defendants, Plaintiff would show, upon information and belief, that the claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Plaintiff can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Defendants' claim for punitive damages violates Plaintiff's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Plaintiff's exercise of that right; the Defendants' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Defendants' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Defendants' claim for punitive damages should be dismissed.

FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION

35. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

36. As to any claim for punitive damages, Plaintiff would allege that any award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars, as provided in S.C. Code Ann. §15-32-530.

FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

37. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

39. Plaintiff reserves the right to plead additional defenses as may arise in the course of discovery in this action.

Wherefore, having fully Answered the Chapman Defendants' improperly "Amended" Counterclaim, Plaintiff prays that these Defendants' Counterclaim be dismissed, with costs and fees awarded to Plaintiff; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

WESLEY D. FEW, LLC

/s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
P.O. Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEY FOR PLAINTIFF SAMANTHA
KATCHICK

March 11, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	13 TH JUDICIAL CIRCUIT
Samantha Katchick,	)	Case No: 2019-CP-23-01522
)	
Plaintiff,)	
	)	2nd AMENDED SUMMONS
vs.	)	(jury trial demanded)
)	
Marshall Alexander Chapman, DMD, Brooke I.)	
Chapman, Chapman Dental, P.A., Douglas P.)	
Schmieding, CPA, Jennings Cook & Co., CPA's,)	
PA, and Earl A. Simmons, CPA,)	
)	
Defendants.)	
)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their office at Post Office Box 9398, Greenville, South Carolina, 29604, within thirty (30) day after such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA KATCHICK

Greenville, South Carolina
April 16, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	13 TH JUDICIAL CIRCUIT
Samantha Katchick,	)	Case No: 2019-CP-23-01522
)	
Plaintiff,)	
	)	2nd AMENDED
vs.	)	COMPLAINT
)	
Marshall Alexander Chapman, DMD, Brooke I. Chapman, Chapman Dental, P.A., Douglas P. Schmieding, CPA, Jennings Cook & Co., CPA's, PA, and Earl A. Simmons, CPA,	)	(jury trial demanded)
)	
Defendants.)	
)	

The Plaintiff above-named, complaining of these Defendants, would respectfully show:

1. This action arises out of a former employment relationship between Plaintiff Samantha Katchick and Chapman Dental, P.A. (“Chapman Dental”). Plaintiff worked for Dental for over three (3) years. After Defendant Alex Chapman (“Alex Chapman”) hired his new wife, Defendant Brooke Chapman (“Mrs. Chapman”), to work at Dental, *all-of-the-sudden* the Chapman Defendants accused Plaintiff of stealing cash from Dental’s patient funds. The amount allegedly taken was \$3,505.19. Defendants in 2017 alleged Plaintiff stole money from Dental over the entire period of Plaintiff’s employment with Dental from 2013 to 2017. Plaintiff’s employment was then terminated in March 2017. On or about the time of conclusion of a failed small claims civil lawsuit Dental brought against relatives of Plaintiff in early November 2017, the Chapman Defendants initiated a false, vengeful, contrived, baseless and malicious “criminal” prosecution against the Plaintiff, causing her severe emotional distress, physical, emotional, and economic damages, as set forth herein. Since filing this action, in discovery, Plaintiff has

discovered that the so-called missing cash calculations were performed by Brooke Chapman's uncle, Defendant Earl A. Simmons, CPA ("Simmons"), who for whatever reason would not sign his name to his work, which the Chapman Defendants then submitted in spreadsheet form only to Defendant Douglas P. Schmieding, CPA ("Schmieding") and his firm, Jennings Cook & Co., CPA's, PA ("Jennings Cook"), who did sign his name under the Jennings Cook letterhead on a document that was later represented by the Chapman Defendants to law enforcement as a "forensic audit," which resulted in the baseless criminal prosecution of the Plaintiff.

THE PARTIES

2. The Plaintiff, Samantha Katchick ("Samantha" or "Plaintiff") is a working single mother and a resident of Greenville County, South Carolina.

3. Defendants Marshall Alexander Chapman ("Alex Chapman"), and Defendant Brooke I. Chapman ("Brooke" or "Mrs. Chapman"), on information and belief, are married and are citizens and residents of Greenville County, South Carolina.

4. Defendant Chapman Dental, P.A. (hereafter "Dental"), on information and belief is a professional association located in Greenville County, South Carolina. Defendants Alex Chapman, Mrs. Chapman and Chapman Dental are alleged to have acted in concert with each other and may collectively hereafter be referred to as the "Chapman Defendants."

5. Defendant Douglas P. Schmieding, CPA ("Schmieding"), on information and belief, is a citizen and resident of Greenville County, South Carolina, and a Certified Public Accountant.

6. Defendant Schmieding, since 1989 and at all times relevant to the claims in this action by Plaintiff was an associate, partner and /or principal owner in his firm, Defendant Jennings Cook & Co., CPA's, PA (hereafter "Jennings Cook"), which is, on information and

belief, is a professional association located in Greenville County, South Carolina. All actions of Schmieding as alleged herein are also attributable to Jennings Cook.

7. Earl A. Simmons, CPA (“Simmons”), on information and belief, is a citizen and resident of Greenville County, South Carolina, and a Certified Public Accountant.

8. Defendants Alex Chapman, Mrs. Chapman, Chapman Dental, Simmons, Schmieding and Jennings Cook may hereafter be referred to collectively as “Defendants.”

9. Simmons is the uncle of Defendant Mrs. Chapman.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action and venue is proper in Greenville County because Defendants reside in and / or operate in Greenville County, and the Plaintiff resides in Greenville County, and also because most all of the events complained of herein occurred in Greenville County.

FACTUAL ALLEGATIONS AND CLAIMS

11. From approximately December of 2013 to March 28, 2017, Plaintiff was employed by Defendant Dental.

12. Prior to these false and malicious allegations of theft by the Defendants, Plaintiff’s only dealings with law enforcement involved traffic violations.

13. At all times during her employment with Dental, Plaintiff worked under the supervision and direction of Defendant Alex Chapman.

14. Plaintiff’s duties included patient check in / out, patient data entry, insurance verification, receipt of patient payments and general office functions.

15. In or around January of 2017, Defendant Alex Chapman added a new staff member, Brooke I. Chapman, who had recently been married to Alex Chapman.

16. On information and belief, Mrs. Chapman did not want Plaintiff working with her new husband at Chapman Dental, as she knew the two had previously had a relationship.

17. On or about March 29, 2017, the Chapman Defendants terminated Plaintiff's employment with Chapman Dental.

18. Alex Chapman claimed then that his new wife and new employee of Dental, Brooke Chapman, a former school teacher, was unable to reconcile Chapman Dental's cash deposits using a dental software package known as Eaglesoft.

19. It was based on Mrs. Chapman's initial allegations of this inability to reconcile cash deposits over a three plus year period that resulted in the Plaintiff being terminated, and later gave rise to Defendants' false and retaliatory allegations of theft by the Plaintiff.

20. During the course of Plaintiff's employment at Dental, several of the Plaintiff's family members were patients of Dental's practice and were treated by Alex Chapman.

21. As was common for the practice, Chapman Dental agreed to receive payment over a period of time from these family members of the Plaintiff, and records of those agreements were kept in the normal course of its business.

22. On or about August 4, 2017, Chapman Dental filed a Summons and Complaint in Fairview / Austin Summary Court Seeking to collect a balance owed to it by the Plaintiff's former in-laws.

23. It was well known to Alex Chapman and to Chapman Dental that these patients were relatives or former relatives of the Plaintiff.

24. Chapman Dental's complaint against Plaintiff's former in-laws sought to obtain judgement for the balance owed to Chapman Dental, despite the fact that the in-laws had been paying according to the agreed payment plan with Chapman Dental.

25. On or about November 2, 2017, the presiding judge in the summary court collection action against Plaintiff's former in-laws ruled that Chapman Dental was bound by the terms of the payment plan set in place for the in-laws, and dismissed the civil collections case against in-laws. The case, case no. 2017-CV-23-10201404, is shown in public records now as "settled."

26. On or about Sunday, Oct. 22, 2017, at 5:32 PM, one of the Chapman Defendants sent an email to Simmons with 1 attachment, as follows: MS Excel named Cash Rec.xlsx (69 KB), showing \$2,171.09 in alleged missing cash; and stating:

Subject: software vs deposit graph

Here is the software vs deposit graph, see what you think and if we need to re-label anything!

printed the monthly day sheets and highlighted cash.

27. On or about Tuesday, Oct. 31, 2017, at 12:17 PM, Simmons sent an email to the Chapman Defendants with 1 attachment, as follows: MS Excel named Chapman Dental.xlsx (27 KB), showing \$2,171.09 in alleged missing cash; and stating:

Alex,

Sorry, but the graphs will confuse not make a clear picture. Attached are the monthly deposit records compared to the bank deposits. A few did not contain a day of deposit and these need to be updated.

Please look them over. If not prosecuted by the DA, they can still be taken to Small Claims Court. Your main purpose is to be able to tell employers about her behavior without being sued for defamation.

I will look through the Procedures sometime this week and get my comments back to you.

Earl

28. On or about Tuesday, Oct. 31, 2017, at 2:56 PM, the Chapman Defendants sent an email to Simmons, with no attachments, but stating as follows: "Thanks man! I'll get brooke to look at the day of deposit."

29. On or about Monday Nov. 13, 2017, at 11:15 AM, the Chapman Defendants sent an email to Simmons with 1 attachment, as follows: MS Excel named Cash Rec.xlsx (69 KB) and showing \$2,171.09 in alleged missing cash; and stating: "Original summary attached."

30. Monday, Nov. 13, 2017, at 1:59 PM, the Chapman Defendants received an email from Simmons with 3 attachments, as follows: (i) MS Word, "Report Title Chapman Dental.docx" (12 KB); (ii) MS Word, "Description of procedures ...docx" (14 KB); and (iii) MS Excel named Chapman Dental.xlsx (27 KB) and showing \$3,505.19 in alleged missing cash; and stating:

Brooke,

Here is everything. A signature is not going to determine if the authorities choose to take action. Everything is laid out perfectly if they care to look at documentation. As I have told Alex, this is not typically a police issue at this level. it will give him a basis to call here current employer and inform him of her behavior. He just needs for them to tell him they pass due to the amount of money involved.

Please read over everything. If it is OK, I will print several copies on extremely heavy bonded paper

31. On or about Monday, Nov. 13, 2017, less than one hour after receiving the above identified email from Simmons, at approximately 2:48 PM, an email was sent to Schmieding from Brooke Chapman with only one attachment, as follows: MS Excel named Chapman Dental Cash Comparison Bank to Computer 2014 to 2017.xlsx, and showing \$3,505.19 in alleged missing cash; and stating:

Subject: Chapman Dental Collects v Deposits

Attachments: Chapman Dental Cash Comparison Bank to Computer 2014 to 2017.xlsx

Please see attached. Let me know if you need any additional information or documentation.

Thanks!

Brooke Chapman

32. On or about Tuesday, Nov. 14, 2017, at 8:35 AM, email received from Schmieding with one attachments, as follows: Chapman Dental. PDF; and stating:

Subject: RE: Chapman Dental Collects v Deposits

Attachments: Chapman Dental.pdf

Brooke, see attached. Let me know if you need anything else.

33. In discovery in the lawsuit, Schmieding and his firm, Jennings Cook, have confirmed that this Nov. 14, 2017, letter was prepared by Schmieding and sent on Jennings Cook letterhead, wherein Schmieding and Jennings Cook relied entirely on the Microsoft Excel spreadsheets that the Chapman Defendants selectively flipped to him from the email they received from Simmons on Nov. 13, 2017 at 1:59 P.M.

34. For some reason, prior to sending their 2:48 P.M. email to Schmieding and Jennings Cook, the Chapman Defendants chose to leave off the email attachments identified as (i) and (ii) in the email they received from Simmons on Nov. 13, 2017, at 1:59 P.M.

35. The letter that Schmieding and Jennings Cook attached to send to Brooke Chapman on November 14, 2017, stated as follows:

Douglas P. Schmieding, CPA
Russell E. Padgett, CPA
Kevin A. Klass, CPA, CMA
Jennifer E. Neff, CPA
Wendell E. Lunsford, EA

JENNINGS COOK & CO.
A PROFESSIONAL ASSOCIATION
CERTIFIED PUBLIC ACCOUNTANTS
1212 Haywood Road • Haywood Commons
Post Office Box 25937
Greenville, South Carolina 29616
<http://www.jenningscook.com>
Telephone: (864) 297-4700
Fax: (864) 676-1502

Members
American Institute of
Certified Public Accountants
S.C. Association of
Certified Public Accountants

November 14, 2017

Dr. Marshall A. Chapman
Chapman Dental, PA
101 Woodruff Place Circle
Simpsonville, SC 29681

Dear Dr. Chapman:

We have prepared a calculation of the difference between cash receipts entered into your company's accounting system and the amount cash that was deposited into the company's bank account. This calculation is for the period of January 2014 through February 2017. This calculation is based on summarized information that was provided by you.

We have calculated the amount to be \$3,505.19

Please let us know if we can be of further assistance.

Sincerely,



Douglas P. Schmieding, CPA

36. This November 14, 2017 letter from Schmieding and Jennings Cook ended up in the Greenville County Sheriff's Office prosecution file related to the Chapman Defendants allegations against Plaintiff.

37. Alex Chapman and / or Mrs. Chapman represented falsely to the Greenville County Sheriff's Office that the letter from Schmieding and Jennings Cook was a "forensic audit."

38. On information and belief, the Chapman Defendants knew that without the actions of the CPA Defendants Schmieding, Jennings Cook and Simmons, the Greenville County Sheriff's Office would not move forward with their desired vengeful criminal prosecution of the Plaintiff, initiated by the Chapman Defendants, and later dismissed.

39. Turner, on information and belief, as an agent and officer of the Greenville County Sheriff's Office, took an oath of office swearing a duty to uphold the constitution, laws of the state of South Carolina, and to protect all citizens of Greenville County and those persons traveling to and from Greenville County.

40. As an agent and officer with the GCSO, Turner was in a position to rely on false statements from Defendants to the Plaintiff's detriment, thus making him the Plaintiff's agent for those limited purposes.

41. Turner, in fact, did rely on false statements from Defendants, resulting the improper and baseless arrest of the Plaintiff.

42. In the transcript of the Preliminary Hearing that occurred on March 26, 2018, GCSO Investigator Turner referred to the Schmieding and Jennings Cook letter dated November 14, 2017, numerous times as a "forensic audit," despite the cross-examination questions put forth by Plaintiff's attorney, Mr. Seay.

43. On direct testimony at the Preliminary Hearing, Investigator Turner testified, *inter alia*, as follows: "So I got the forensic audit from them, they provided me with all the documentation."

44. Further on direct testimony at the Preliminary Hearing, Investigator Turner was asked, and testified, as follows:

Solicitor: "Are you aware of any other documents that implicate this defendant as the woman who took that money?"

Turner: "No, it was a pretty thorough forensic audit, um, of course I got a written statement from him but that was it."

45. On cross-examination by Mr. Seay, Investigator Turner testified at the Preliminary Hearing, *inter alia*, as follows: "As I stated before, [Alex Chapman] simply said that [the Plaintiff] was in sole control and no one else had access to it and that's as far as it went sir."

46. Had the Chapman Defendants told Investigator Turner the truth of the matter, namely that the so-called "forensic audit" was actually prepared by them and / or Simmons and was not an audit, and was not even Schmieding or Jennings Cook's work, then, on information and belief, Plaintiff never would have been prosecuted by the GCSO and the 13th Circuit Solicitor's Office.

47. On or about December 7, 2017, Defendant Alex Chapman, Mrs. Chapman and Chapman Dental filed a Breach of Trust complaint with the Greenville County Sherriff's Office, accusing the Plaintiff of stealing \$3,505.19 from Chapman Dental, during the course of her three (3) plus year employment.

48. As part of their criminal complaint against the Plaintiff, the Chapman Defendants made numerous false allegations to the Greenville County Sherriff's Office Investigator(s), including that they had hired a CPA and a CPA firm to conduct a so-called "forensic audit" of Chapman Dental's records.

49. The CPA firm that the Chapman Defendants represented to law enforcement that had prepared this so-called “forensic audit,” was Jennings Cook, and the document submitted as said “forensic audit,” was signed by Schmieding on his Jennings Cook letterhead, as shown in the allegations above.

50. The Chapman’s actions led the law enforcement personnel involved, specifically Investigator Elliott Turner of the GCSO, to believe that the CPA and his CPA firm, by virtue of their Nov. 14, 2017 letter, were confirming Defendants’ allegations of theft by the Plaintiff from Chapman Dental.

51. Defendants Simmons and Schmieding each held professional licenses under South Carolina law as Certified Public Accountants, and knew or should have known that statements by them in their professional capacities would be relied upon by third-parties.

52. As set forth in the emails quoted above from Simmons, he even suggested to the Chapman Defendants how to go about presenting his work to law enforcement to seek a criminal prosecution of the Plaintiff.

53. The Chapman Defendants represented to law enforcement that their CPA and their CPA firm had audited Dental’s Eaglesoft records, bank records, and eventually submitted a letter from Jennings Cook & Co. CPA’s, signed by a CPA, Mr. Douglas P. Schmieding.

54. This statement was false and the Chapman Defendants knew or should have known it was false.

55. In reliance on these false and reckless allegations of theft by the Chapmans, on or about February 7, 2018, the Greenville County Sheriff’s Office issued a Warrant for the arrest of Plaintiff on charges of Breach of Trust greater than \$2,000.00, less than \$10,000.00.

56. On or about February 8, 2018, Plaintiff, accompanied by her attorney David Seay, Esquire, of Greenville, South Carolina, turned herself in to the Greenville County Law Enforcement Center, was processed and released on bond.

57. At the time of this arrest for alleged theft from her former employer, Plaintiff was 34 years old, and Defendants knew she was a working single mother, and that she had no prior criminal record, apart from traffic violations.

58. After being terminated by Chapman Dental, Plaintiff sought and obtained employment with a new employer on or about April 24, 2017.

59. Shortly after the subject warrant was issued for Plaintiff's arrest in February of 2018, Alex Chapman contacted Plaintiff's current employer and informed them, among other things, that Plaintiff had been arrested for Breach of Trust, based on his false allegations. This was a still further attempt by Chapman to cause Plaintiff emotional distress, damage, and ultimately to lose her employment.

60. On or about April 18, 2018, the S.C. Law Enforcement Division ("SLED") visited Plaintiff's residence and left a message asking her to contact them.

61. When Plaintiff ultimately reached back out to SLED, they required her to surrender her Concealed Weapons Permit ("CWP"), pending the outcome of the trumped-up and false criminal charges brought against her in reliance of representations made by Defendants.

62. On or about April 24, 2018, Plaintiff's criminal counsel engaged the services of Michael F. O'Shea ("O'Shea") and Forensic Research Group, Inc. ("FRGI") to review the Defendants' allegations and documents provided to the Greenville County Sherriff's Office Investigator in support of the arrest warrant by the Chapmans, Dental and their CPA firm.

63. On or about May 25, 2018, Mr. O'Shea produced an Initial Report indicating that the documents provided by Chapman, Dental and Jennings Cook & Co. CPA's to the investigator at the Greenville County Sherriff's Office in support of the arrest warrant were incomplete, misleading and provided no assurance that Plaintiff, even had sole control or access to the cash funds of Dental, as alleged by Defendants Chapman and Dental.

64. Shortly thereafter Attorney Seay provided a copy of this initial report to the 13th Circuit Solicitor's Office, and asked that the charges be dropped due to the lack of accurate or reliable supporting documentation.

65. On or about June 27, 2018, the Assistant Solicitor for the 13th Circuit Solicitor's Office contacted Schmieding about his November 14, 2017, letter sent on Jennings Cook letterhead, and stated, *inter alia*, "You submitted an audit to that business on November 14, 2017 showing that there was a \$3,505.19 loss to the company."

66. Schmieding never responded in writing to this June 27, 2018 email from the 13th Circuit Solicitor's Office.

67. Schmieding alleges, instead, he contacted the 13th Circuit Solicitor's Office, apparently by telephone only, as follows: "Defendant responded to Kluska's email by contacting Ms. Kluska and informing her that he was not involved in the prosecution of Ms. Katchick nor did he or anyone at Jennings Cook & Co. perform a forensic audit for Chapman Dental concerning this matter. Defendant further asserts that it was at this point, Defendant ceased performing accounting services for Chapman Dental." *Id.* at Resp. to Int. No. 12 (April 12, 2021).

68. On or about August 23, 2018, Attorney Seay notified Mr. O'Shea that, in response to his request to dismiss the case, the Solicitor's Office delivered to him a substantial

quantity of new documentation, provided by the Chapmans, Dental and / or Jennings Cook & Co. CPA's.

69. Because Schmieding and Jennings Cook's response to the 13th Circuit Solicitor's Office was not clear that it was not an audit, or even that he does not even perform audits, but is instead primarily a tax preparer, the prosecution continued.

70. As a further result of the continued prosecution of the Plaintiff on and after June 27, 2018 when Schmieding and Jennings Cook received the above-identified email from the 13th Circuit Solicitor's Office, Plaintiff had to continue to endure the emotional stress related to the prosecution, and was forced to incur still further expenses and attorneys' fees, including but not limited to a second report by her private investigator and forensic expert in this case, Michael F. O'Shea.

71. On or about October 1, 2018, after reviewing all the additional provided documentation relating to the allegations in the complaint for each of the years 2014, 2015, 2016 and the first four months of 2017, Mr. O'Shea issued a Supplemental Report indicating, among other things, that comparing bank deposits to certain Eaglesoft records is a flawed method for proving anything and, if it were a reliable method, the actual addition of the alleged losses was incorrectly totaled by Defendants (and their CPA firm) by more than 30%.

72. On or about October 3, 2018, Attorney Seay and Mr. O'Shea met with representatives of the 13th Circuit Solicitor's Office to review the latest report and analysis.

73. On or about November 26, 2018, representatives of the 13th Circuit Assistant Solicitor's Office notified the criminal defense attorneys for the Plaintiff that the criminal charges brought against her by Chapman and / or Dental had been dismissed.

74. On or about November 28, 2018, Alex Chapman texted Plaintiff requesting an opportunity to meet “and have a few beers on me” to discuss the matter.

75. On February 6, 2019, at Plaintiff’s expense, the matter was expunged from her criminal record.

76. Despite being expunged pursuant to South Carolina law, certain private web-sites continue to report that the Plaintiff was arrested, and this arrest was based on the reckless, false and malicious actions of the Defendants as set forth herein.

77. In order to obtain the dismissal of these charges brought against her by Chapman and Dental, Plaintiff ended up employing the services of additional criminal defense counsel and a forensic experts.

78. The costs of retaining these professionals to defend herself, as of the filing of this 2nd Amended Complaint, is well in excess of \$30,000.00.

79. Defendants, through their actions as described herein, collectively and falsely reported to law enforcement that the Plaintiff was solely responsible for all deposits of Chapman Dental.

80. Defendants Schmieding and Jennings Cook failed to correct their representations regarding the Plaintiff, even after becoming specifically aware of the prosecution’s belief that the Nov. 14, 2017 letter was a “forensic audit,” on June 27, 2018.

81. Defendants falsely and/or recklessly reported alleged totals of missing cash for a period of months that extended well beyond even the time that the Plaintiff was terminated as an employee of Dental.

82. Defendants falsely reported to law enforcement that there were no discrepancies in their cash deposit records and their bank statements after the Plaintiff was terminated.

83. Defendants falsely and misleadingly reported to law enforcement only those records related to (i) cash deposits, while they each knew or should have known that their same records for (ii) checks, and (iii) debit / credit card receipts also did not match.

84. A comparison of the same methodology used by the Defendants to implicate and accuse the Plaintiff as a criminal and destroy her life over this three-year period for all types of deposits, namely (i) cash, (ii) checks, and (iii) debit / credit cards, shows that the Defendants' records are off by at least \$50,000.00.

85. A review of the initial law enforcement report shows that Mrs. Chapman was motivated by a desire to punish or retaliate against the Plaintiff for allegedly assisting her relatives / in-laws to obtain dentistry related services from Chapman Dental without paying for them.

86. On or about December 14, 2017, Mrs. Chapman represented to law enforcement that she is getting information from a local judge that handled the failed in-law collections case, when in fact, the summary court had already ruled on the matter and entered their final judgment on November 2, 2017.

87. On information and belief, Mrs. Chapman mis-represented to law enforcement the status of the in-laws collection action in numerous ways.

88. Plaintiff was not solely responsible for all deposits of Chapman Dental, and Defendants knew or should have known that no one person could have such responsibility over a three-plus year period, as they alleged.

89. Defendants knew that the records of cash receipts that they relied on for their prosecution of the Plaintiff had been accessible and modifiable by many people, including other employees of Dental, during that time period, including the Chapmans.

90. In discovery, an existing employee of Chapman Dental, testified, *inter alia*, as follows:

3 A. Up front at the front desk.
4 Q. Okay. Was it locked?
5 A. No.
6 Q. Were the checks kept in the same envelope
7 as -- well, let me ask you this. Were the checks
8 kept in the same place as the cash?
9 A. Yes.
10 Q. Okay. So Samantha Katchick was primarily
11 responsible for the cash, but other people could have
12 access to it as well; is that right?
13 MS. FAJARDO: Object to the form.
14 THE WITNESS: I mean, it was in a drawer.
15 I guess anybody could have went in there and got
16 money.

91. This same current employee of Chapman Dental also testified that over the time period that she worked there with the Plaintiff that Alex Chapman would come in and see patients on the weekends, that he Plaintiff took some time off for vacation, and further that the Plaintiff was off every Wednesday afternoon to work a second job, as follows:

13 Q. Okay. What if -- what if somebody wanted
14 to make a payment when she wasn't working, did you
15 process any of the payments?

16 A. Dr. Chapman would be up there watching me
17 as I did it. He would show me how to do it.

18 Q. Did you process cash and checks and credit
19 cards?

20 A. Yes.

21 Q. And so what is your recollection of
22 Samantha Katchick taking Wednesday afternoons off?
23 Was that the whole time that you worked there?

24 A. Yes.

92. As such, Defendants knew or should have known the records they relied upon for their criminal prosecution of the Plaintiff were necessarily inaccurate, and that any statements that she was solely responsible over a three-plus year period for the contents an unlocked envelope kept in an unlocked drawer were false.

93. In fact, Schmieding and Jennings Cook have since acknowledged in discovery that they issued their Nov. 14, 2017 letter without even having access to or reviewing the alleged bank statements of the Chapman Defendants, as follows:

8. With respect to Your letter dates November 14, 2017, as referenced in the Complaint at Paras 30 and 31, identify all evidence, documents, or information you relied upon in preparing the letter, and state the appropriate amount of time you or your staff spent preparing the letter.

ANSWER: Defendant relied upon the excel spreadsheet provided to him by his client, Chapman Dental, which was represented to be deposits amounts from their accounting software and the Chapman Dental bank statements to determine the discrepancy amount between the two as requested by the client. Defendants do not recall the amount of time spent in preparation of this information, as Defendants did not bill for such.

94. Mrs. Chapman falsely reported to law enforcement that she could provide invoices to show that Plaintiff's so-called relatives were not required to pay for services from Dental. At the time of these representations to law enforcement by Mrs. Chapman, Dental's case versus the in-laws was shown as "settled."

95. The Chapmans represented that the Plaintiff was terminated from Dental after Mrs. Chapman could not reconcile the cash deposits with the Eaglesoft records, while also representing that the Plaintiff was terminated for entering into a payment plan with her relatives that Chapman had not agreed to on behalf of Dental.

96. Having failed in their efforts to file and prosecute a civil lawsuit as against the Plaintiff's so-called relatives in summary / small claims court, the Defendants this time elected to pursue not just a civil lawsuit to recover monies they falsely accused Plaintiff of taking from Dental's cash drawer, but to have the Plaintiff arrested and put in jail.

97. Defendants wanted revenge and sought to punish the Plaintiff.

98. The Chapman Defendants and Dental all knew that Dental's cash received from patients was accessible by many Dental employees, and not just the Plaintiff.

99. Defendants and their agents reported to law enforcement that Dental's cash funds were "locked" up in Dental's office and that only Plaintiff had access to those funds.

100. Defendants' so-called accounting records for cash that they used to make out their theft allegations to law enforcement were flawed, yet Defendants represented to law enforcement those cash receipts records as being accurate.

101. The Eaglesoft software platform is a dental practice software, not a financial accounting software.

102. Defendants were motivated by a desire to punish Plaintiff related to the failed collections case against one of Dental's patients.

103. Defendants represented to law enforcement that they had a "forensic audit" from a CPA firm implicating the Plaintiff in the alleged theft of Chapman Dental's funds.

104. Defendants knew that the CPA firm had not conducted a "forensic audit."

105. In reality, Defendants asked a CPA firm to write a letter confirming Mrs. Chapman's cash calculations based upon limited information Defendants provided to the CPA and his firm.

106. The CPA firm could have and should have had better controls on such letters making statements such as the representations included in the Nov. 14, 2017 letter from Schmieding and Jennings Cook.

107. For example, Jennings Cook could have required all such letters to be signed by two licensed CPA's and or to be reviewed and otherwise approved by more than one licensed professional accounting practitioner.

108. If Jennings Cook would have had such controls in place, a second set of eyes would have surely asked, "where are the records we are relying on for this?" and / or "why exactly are we sending this letter?"

109. Review by a second CPA at Jennigs Cook of such a letter would also have also shown that the spreadsheets, on information and belief, prepared by Simons and submitted to the Chapman Defendants, and then subsequently flipped / provided to Mr. Schmieding that he admits to relying on solely specifically referred to the Plaintiff, including stating as follows:

Note: Client Records and Bank Deposits were Maintained Solely by Samantha Katchick Until March 2017 When She was Terminated

110. As a result of the above-described events and actions and inactions of the Defendants, Plaintiff was arrested, charged with “breach of trust with fraudulent intent,” was required to post bond.

111. Due to the then pending felony charges, Plaintiff has suffered extreme embarrassment with her children and their schools, including being excluded from chaperoning field trips or otherwise participating in camps or other similar functions, all as a result of the false allegations of the Defendants.

112. As a further result of these false and malicious allegations, Plaintiff has been defamed and has been the subject of still further as yet undiscovered slanderous allegations about her to existing, potential and prospective employers, and has suffered severe emotional distress over the prospect of lost future employment opportunities due to the false statements from Defendants about her.

113. Plaintiff has suffered damages to include severe emotional distress, of lost wages and profits, unknown and incurable damage to her good reputation, and has been required to incur special damages in the form of attorneys’ fees, and costs of preparing her defense of the criminal charges, as well as other damages, including but not limited to expenses to investigate and determine the extent of damage to her reputation caused by Defendants.

114. The Plaintiff was the victim of the Chapman Defendant's insistence and / or acquiescence in the claim that Schmieding's and Jennings Cook's November 14, 2017, letter was a "forensic audit."

115. As a material part of this 2nd Amended Complaint, Plaintiff hereby incorporates by reference the Affidavit of Expert Witness, Charles W. Schulze, CPA CFF CFE, previously filed in this action on Jan. 8, 2021.

**FOR A 1ST CAUSE OF ACTION
(Defamation *Per Se* – Simmons, Alex and Brooke Chapman)**

116. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

117. As set forth herein, Defendants made numerous false and defamatory statements about the Plaintiff.

118. Defendants statements were not subject to a privilege.

119. Defendants published these statements to numerous third-parties.

120. Defendants' statements were false and defamatory *per se*, causing special harm to the Plaintiff.

121. Apart from the calculations of Chapman's new wife, a former schoolteacher, and her uncle, purporting to in secret and refusing to sign off on his own work, Defendants had no evidence of theft by the Plaintiff, as they maliciously alleged. Defendants had no eye-witness accounts of any monies being missing from Dental's funds.

122. As a result of these actions of the Defendants, Plaintiff's good reputation for honesty and truthfulness, as well as being a law abiding citizen has been damaged and she is entitled to recover her general and special damages, as set forth herein. Such damages include but are not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and

reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

123. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities

124. Due to the reckless and malicious nature of the Defendants' representations about the Plaintiff, accusing her of criminal activity, rising to the level of a felony, Plaintiff is also entitled to an award of punitive damages.

**FOR A 2ND CAUSE OF ACTION
(Constructive Fraud – Simmons and Chapman Defendants)**

125. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

126. As set forth herein, Defendants made material false representations about the Plaintiff that caused law enforcement to seek to arrest and detain the Plaintiff.

127. The Defendants knew their statements were false and showed a reckless disregard for the truth or falsity of those statements.

128. Defendants intended that their statements would be acted upon by the persons hearing the representations.

129. The hearers of these statements were ignorant of their falsity at the time they relied upon the statements as truthful.

130. The hearers had a right to rely upon the Defendants' statements.

131. The GCSO and Investigator Turner, acting as an agent of the Plaintiff and all citizens of the County, relied on these false, reckless and malicious statements of the Defendants regarding the Plaintiff.

132. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

133. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

134. Plaintiff is also entitled to an award of punitive damages.

**FOR A 3RD CAUSE OF ACTION
(Malicious Prosecution – Simmons and Chapman Defendants)**

135. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

136. Defendants' actions in instituting and then continuing criminal judicial proceedings against the Plaintiff were based on false and misleading information and were improper.

137. The subject criminal proceedings were dismissed and terminated in the Plaintiff's favor.

138. Defendant's lacked probable cause to accuse the Plaintiff of the crimes they attempted to prosecute against her.

139. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to loss of time, deprivation of her liberty, bodily pain, injury to fame and reputation, injury to health, impairment of social and community standing, actual loss and injury to property, losses to her business / career as the direct and natural result of the proceedings.

140. As a result of the Defendants' actions, Plaintiff is additionally entitled to recover for her special damages, including damages for discomfort or injury to her health, loss of time, deprivation of the society of her family, reasonable attorney fees, and attorney fees incurred in the criminal action, financial loss related to present or prospective employment, and career advancement opportunities.

141. Plaintiff is also entitled to an award of punitive damages.

**FOR A 4TH CAUSE OF ACTION
(Abuse of Process – Chapman Defendants)**

142. The Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

143. Defendant's had a revenge motive and an ulterior motive to pursue criminal charges against the Plaintiff with the intent of retraining her liberty and having her locked up like a dangerous criminal.

144. Defendants' actions in pursuing the criminal prosecution of the Plaintiff were not proper in the regular conduct of the proceeding.

145. As a result of these actions of the Defendants, Plaintiff is entitled to recover her actual damages, and an award of punitive damages.

**FOR A 5TH CAUSE OF ACTION
(False Imprisonment – Simmons and Chapman Defendants)**

146. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

147. As set forth herein, Defendants actions caused the unlawful restraint of the Plaintiff.

148. The Defendants intended to cause the restraint of the Plaintiff, and the restraint, as obtained under numerous false pretenses, was unlawful.

149. As a result of these actions of the Defendants, Plaintiff has been injured and is entitled to recover her actual damages, including but not limited to lost income, lost wages, loss of time, pain and suffering, physical injury or illness, loss of business or loss of employment opportunities, humiliation, embarrassment, mental suffering, mental distress, inconvenience, discomfort, and other expenses incurred and caused by the Defendants.

150. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR A 6TH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – Simmons, Brooke and Alex Chapman)**

151. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

152. The Defendants intentionally and recklessly inflicted severe emotional distress upon the Plaintiff.

153. The Defendants conduct was certain or substantially certain to cause severe emotional distress to the Plaintiff and was intended to cause distress.

154. The Defendant's conduct, as described herein, was so extreme and outrageous as to exceed all possible bounds of decency and is atrocious and utterly intolerable in a civilized community.

155. The actions of the Defendants caused the Plaintiff's emotional distress.

156. The emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.

157. As a result of these actions of the Defendants, Plaintiff is entitled to recover her emotional distress damages caused by Defendants.

**FOR A 7TH CAUSE OF ACTION
(Civil Conspiracy – Simmons, Alex and Brooke Chapman)**

158. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

159. As set forth herein, the Chapman Defendants combined for the purpose of harming the Plaintiff and their actions caused the Plaintiff special damages.

160. As a result of these actions by the Chapman Defendants, Plaintiff is entitled to recover her damages that she suffered as caused by the wrongful act done in furtherance of the conspiracy and which result from it, including but not limited to damages and injury to her career and professional status, opportunities, and lost profits resulting from the conspiracy

161. Due to the malicious and reckless nature of the Defendant's actions as set forth herein, Plaintiff is also entitled to an award of punitive damages.

**FOR A 8TH CAUSE OF ACTION
(Negligence / Gross Negligence – Schmieding and Jennings Cook)**

162. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

163. Schmieding and Jennings Cook owed the Plaintiff a duty of due care, as they knew or should have known that the work they were signing off on was going to be used to defame the Plaintiff, and / or to have her charged for criminal acts.

164. Schmieding and Jennings Cook breached this duty by failing to exercise due care, and in numerous other respects as set forth herein, and as will be shown at trial.

165. The actions and inactions of Schmieding and Jennings Cook caused and were a proximate cause of the Plaintiff's damages.

166. The Plaintiff suffered damages as the proximate result of the Schmieding's and Jennings Cook's actions and inactions.

167. Schmieding's and Jennings Cook's actions and inactions constitute gross negligence, recklessness and warrant an award of punitive damages.

168. Plaintiff has suffered damages as the proximate result of Schmieding's and Jennings Cook's actions and inactions and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 9TH CAUSE OF ACTION
(Negligent Misrepresentation – Schmieding and Jennings Cook)**

169. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

170. The representations made by Schmieding and Jennings Cook were false, as evidenced by the fact that the Nov. 14, 2017 letter simply regurgitated the exact amounts provided by Brooke Chapman.

171. Due to their failure to properly investigate the matter, Schmieding and Jennings Cook were apparently unaware that they were being provided with work-papers and / or

information that was actually prepared by and unidentified CPA, Simmons, who himself refused to sign off on it, knowing it was intended to be used to harm the Plaintiff.

172. Schmieding and Jennings Cook had a pecuniary interest in making the representations as their firm wanted to maintain the Chapman Defendants as a client for their tax preparation and other work.

173. Schmieding, as a CPA, and Jennings Cook, as a licensed CPA firm in South Carolina, owed a duty of care to the Plaintiff to ensure that any representations they made were accurate and truthful.

174. Schmieding and Jennings Cook breached that duty by failing to exercise due care.

175. The Plaintiff suffered a pecuniary loss as the proximate result of the GCSO's reliance on the representations in Schmieding's letter from his Jennings firm.

176. Schmieding and Jennings breached this duty in numerous respects, including but not limited to by authoring, signing and sending a letter that was not even their work.

177. Schmieding's and Jennings' misrepresentations constitute gross negligence, recklessness and warrant an award of punitive damages.

178. Plaintiff has suffered a pecuniary loss as the proximate result of the representations made by Schmieding and Jennings, and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 10TH CAUSE OF ACTION
(Negligence / Gross Negligence – Simmons)**

179. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

180. Simmons owed the Plaintiff a duty of due care, as he knew that the work he was performing was going to be used to defame the Plaintiff, and to seek a criminal prosecution of her based on his unsigned “findings.”

181. Simmons breached his duty by failing to exercise due care, and in numerous other respects as set forth herein, and as will be shown at trial.

182. The actions and inactions of Simmons caused and were the proximate cause of the Plaintiff’s damages.

183. Simmons was grossly negligent in purporting to specifically advise the Chapman Defendants on legal matters and also how to use his unsigned work to have the Plaintiff criminally prosecuted.

184. The Plaintiff suffered damages as the proximate result of the Simmons’ actions and inactions.

185. Simmons’ actions and inactions constitute gross negligence, recklessness and warrant an award of punitive damages.

186. Plaintiff has suffered damages as the proximate result of Simmons’ actions and inactions and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

**FOR A 11TH CAUSE OF ACTION
(Negligent Misrepresentation – Simmons)**

187. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

188. The representations made by Simmons were reckless, and false, as evidenced by the fact that he knew the un-signed work he was doing related to the Plaintiff specifically, and

further in that he was advising the Chapman Defendants on how to use his un-signed work to share with third-parties, including the Plaintiff's new employer and law enforcement.

189. Simmons had a pecuniary interest in making these representations.

190. Simmons, despite not maintain malpractice insurance and not working with a CPA firm, maintained his CPA license at all relevant times and sought to obtain approval from the Chapman Defendants and to further his reputation as a CPA to obtain referrals and / or recommendations for his work in the future as a licensed CPA.

191. Simmons, as a licensed CPA, owed a duty of care to the Plaintiff to ensure that his representations about her were accurate and truthful.

192. Simmons breached that duty by failing to exercise due care.

193. The Plaintiff was the victim of Simmons' un-signed work being represented by Chapman Defendants and / or acquiescence in the claim that Simmons's work later signed off on by Schmieding was a "forensic audit."

194. The Plaintiff suffered a pecuniary loss as the proximate result of the representations made by Simmons and later signed off on by Schmieding.

195. Simmons breached this duty in numerous respects, including but not limited to by allowing his work to be used without his name, and also by allowing it to be used to suggest that the Plaintiff was "solely" responsible for all cash at the practice.

196. Simmons's misrepresentations constitute gross negligence, recklessness and warrant an award of punitive damages.

197. Plaintiff has suffered a pecuniary loss as the proximate result of the representations made by Simmons, and, therefore, has been damaged in an amount to be determined by the jury, including compensatory and punitive damages.

WHEREFORE, having fully set forth her claims against the Defendants, the Plaintiff prays that the Court award judgment as follows:

- (a) actual damages, as set forth herein;
- (b) Special damages;
- (c) Punitive damages;
- (d) Attorneys' fees;
- (e) Costs of this action and costs to defend against Defendants' false allegations, and to avoid jail time based on these malicious allegations;
- (f) An amount to compensate Plaintiff for the position she would have been in but for the numerous wrongful acts of the Defendants; and
- (g) For such other and further relief as the Court may deem just and proper under the circumstances presented at trial.

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF SAMANTHA KATCHICK

April 16, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-1522

Samantha Katchick,

Plaintiff,

v.

Marshall Alexander Chapman, DMD,
Brooke I. Chapman, Chapman Dental, P.A.,
Douglas P. Schmieding, CPA, Jennings
Cook & Co., CPA's, PA, and Earl A.
Simmons, CPA.

Defendants.

**DEFENDANTS' MARSHALL
ALEXANDER CHAPMAN, DMD,
BROOKE I. CHAPMAN, AND CHAPMAN
DENTAL, P.A.'S ANSWER AND
COUNTERCLAIM TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Defendants Marshall Alexander Chapman, DMD ("Alex"), Brooke I. Chapman ("Brooke"), and Chapman Dental, P.A. (Dental), collectively "Defendants" hereby answers the Second Amended Complaint of the Plaintiff and alleges as follows:

1. Each and every allegation not hereinafter specifically admitted, explained, or qualified is denied.
2. The allegations of paragraph one (1) are admitted solely in that there was an employment relationship between Plaintiff and Defendant Dental, Plaintiff worked for Dental for approximately three (3) years, Defendants discovered missing money from Dental attributable to the actions of Plaintiff in 2017, and Plaintiff was terminated from her employment with Dental in March 2017. All further allegations are denied.
3. The allegations of paragraph two (2) cannot be admitted or denied as Defendants have no knowledge of Plaintiff's employment status nor her relationship status as alleged.
4. The allegations of paragraph three (3) are admitted.

5. Defendants object to paragraph four (4) as being amended without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are admitted solely in that Defendant Dental is a professional association located in Greenville County. All remaining allegations are denied and subject to Defendants' Motion to Strike.

6. The allegations of paragraph five (5) are admitted upon information and belief.

7. Defendants are without knowledge to admit or deny the allegations of paragraph six (6).

8. The allegations of paragraph seven (7) are admitted.

9. Defendants object to paragraphs eight (8) and nine (9) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of paragraphs eight (8) and nine (9) are admitted.

10. The allegations of paragraphs ten (10) and eleven (11) are admitted.

11. The allegations of paragraphs twelve (12) and thirteen (13) are denied.

12. The allegations of paragraphs fourteen (14) and fifteen (15) are admitted.

13. Defendants object to paragraphs sixteen (16) and seventeen (17) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and subject to Defendant's Motion to Strike.

14. The allegations of paragraph eighteen (18) are admitted solely in that in 2017, Defendants were unable to reconcile Defendant Dental's deposit receipts with their billing software. All remaining allegations are denied.

15. The allegations of paragraph nineteen (19) are denied and contradicted by Plaintiff's prior testimony.

16. The allegations of paragraph twenty (20) are admitted.

17. The allegations are paragraph twenty-one (21) are admitted solely in that Plaintiff's family members were set up on a payment plan by Plaintiff and some records were kept of the payment plan. The remaining allegations are denied.

18. The allegations of paragraphs twenty-two (22) and twenty-three (23) are admitted.

19. The allegations of paragraph twenty-four (24) are denied.

20. The allegations of paragraph twenty-five (25) are admitted solely in that the Presiding Judge in the summary court collection action issued a ruling that Plaintiff's former family members and Defendant Dental would be bound by the terms of the payment plan in place with the requirement that if Plaintiff's former family members fail to pay or stop paying Defendant Dental, a Judgment would be issued for the remaining balance against Plaintiff's former family members. The remaining allegations are denied.

21. The allegations of paragraphs twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32) are admitted solely in that they reference emails and letters that were sent and received by Defendants. The details and assumptions made in reference to these emails or letters are denied.

22. Defendants object to paragraphs thirty-three (33) and thirty-four (34) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and subject to Defendants' Motion to Strike.

23. The allegations of paragraph thirty-five (35) are admitted solely in that they reference a letter that was sent to Defendant Chapman. The details and assumptions made in reference to this letter are denied.

24. Defendants object to paragraph thirty-six (36) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations this paragraph are admitted upon information and belief. All allegations are subject to Defendants' Motion to Strike.

25. Defendants object to paragraphs thirty-seven (37) and thirty-eight (38) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and subject to Defendants' Motion to Strike.

26. Defendants object to paragraph thirty-nine (39) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations this paragraph are admitted upon information and belief. All allegations are subject to Defendants' Motion to Strike.

27. Defendants object to paragraphs forty (40) and forty-one (41) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and subject to Defendants' Motion to Strike.

28. The allegations of paragraph forty-two (42) are denied as Defendants do not know the thoughts of Investigator Turner.

29. The allegations of paragraphs forty-three (43) and forty-four (44) are admitted solely in that Defendants are informed and believe that Investigator Turner testified as detailed.

30. The allegations of paragraph forty-five (45) are denied as Plaintiff has taken the liberty of modifying Investigator Turner's testimony.

31. Defendants object to paragraphs forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and fifty-four (54) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and subject to Defendants' Motion to Strike.

32. The allegations of paragraph fifty-five (55) are admitted solely in that the Greenville County Sheriff's Office charged Plaintiff with Breach of Trust greater than \$2,000.00, less than \$10,000.00. The remaining allegations are denied.

33. The allegations of paragraph fifty-six (56) cannot be admitted or denied due to lack of personal knowledge.

34. The allegations of paragraph fifty-seven (57) are denied.

35. The allegations of paragraph fifty-eight (58) are admitted upon information and belief based on Plaintiff's prior testimony.

36. The allegations of paragraph fifty-nine (59) are denied and contradicted by Plaintiff's prior testimony.

37. The allegations of paragraph sixty (60) cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony.

38. Defendants object to paragraph sixty-one (61) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony. All allegations are subject to Defendants' Motion to Strike.

39. The allegations of paragraphs sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), sixty-seven (67), and sixty-eight (68) cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony.

40. Defendants object to paragraphs sixty-nine (69) and seventy (70) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony. All allegations are subject to Defendants' Motion to Strike.

41. The allegations of paragraphs seventy-one (71), seventy-two (72), and seventy-three (73) cannot be admitted or denied due to lack of personal knowledge and Defendants' complete lack of involvement in the arrest and prosecution of Plaintiff as supported by Plaintiff's prior testimony.

42. The allegations of paragraph seventy-four (74) are admitted.

43. The allegations of paragraph seventy-five (75) cannot be admitted or denied due to lack of personal knowledge.

44. Defendants object to paragraphs seventy-six (76) and seventy-seven (77) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied and are subject to Defendants' Motion to Strike.

45. The allegations of paragraph seventy-eight (78) are denied and contradicted by Plaintiff's discovery responses in this matter.

46. Defendants object to paragraph seventy-nine (79) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are denied and are subject to Defendants' Motion to Strike.

47. Defendants object to paragraph eighty (80) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are unable to admit or deny these allegations. All allegations are subject to Defendants' Motion to Strike.

48. The allegations of paragraphs eighty-one (81), eighty-two (82), eighty-three (83), eighty-four (84), eighty-five (85), eighty-six (86), and eighty-seven (87) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

49. Defendants object to paragraph eighty-eight (88) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are denied and are subject to Defendants' Motion to Strike.

50. The allegations of paragraph eighty-nine (89) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

51. Defendants object to paragraph ninety (90) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are admitted solely in that it is a copy and paste of a deposition of an unnamed employee of Chapman Dental. All remaining allegations are denied and are subject to Defendants' Motion to Strike.

52. Defendants object to paragraph ninety-one (91) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are admitted solely in that it is a summary and a copy and paste of a portion of a deposition of an unnamed employee of Chapman Dental not named herein. All remaining allegations are denied and are subject to Defendants' Motion to Strike.

53. Defendants object to paragraph ninety-two (92) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are denied and are subject to Defendants' Motion to Strike.

54. Defendants object to paragraph ninety-three (93) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are admitted solely in that it is a summary and a copy and paste of a portion of a discovery response of an unspecified Defendant. All remaining allegations are denied and are subject to Defendants' Motion to Strike.

55. The allegations of paragraphs ninety-four (94), ninety-five (95), ninety-six (96), ninety-seven (97), ninety-eight (98), ninety-nine (99), one hundred (100), one hundred and one (101), one hundred and two (102), one hundred and three (103), one hundred and four (104), and one hundred and five (105) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

56. Defendants object to paragraphs one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109), and one hundred and ten (110) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are denied and are subject to Defendants' Motion to Strike.

57. The allegations of paragraphs one hundred and eleven (111), one hundred and twelve (112), and one hundred and thirteen (113) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

58. Defendants object to paragraphs one hundred and fourteen (114) and one hundred and fifteen (115) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied or not requiring a response and are subject to Defendants' Motion to Strike.

59. Paragraph one hundred and sixteen (116) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

60. The allegations of paragraphs one hundred and seventeen (117), one hundred and eighteen (118), one hundred and nineteen (119), and one hundred and twenty (120) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

61. Defendants object to paragraph one hundred and twenty-one (121) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied or not requiring a response and are subject to Defendants' Motion to Strike.

62. The allegations of paragraphs one hundred and twenty-two (122), one hundred and twenty-three (123), and one hundred and twenty-four (124) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

63. Defendants object to paragraphs one hundred and twenty-five (125), one-hundred and twenty-six (126), one hundred and twenty-seven (127), one hundred and twenty-eight (128), one hundred and twenty-nine (129), one hundred and thirty (130), one hundred and thirty-one (131), one hundred and thirty-two (132), one hundred and thirty-three (133), and one hundred and thirty-four (134) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied, contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter, and are subject to Defendants' Motion to Strike.

64. Defendants object to paragraphs one hundred and thirty-five (135) one-hundred and thirty-six (136) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied, contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter, and are subject to Defendants' Motion to Strike.

65. Defendants object to paragraph one hundred and thirty-seven (137) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of this paragraph are admitted. All allegations are subject to Defendants' Motion to Strike.

66. Defendants object to paragraphs one hundred and thirty-eight (138), one hundred and thirty-nine (139), one hundred and forty (140), and one hundred and forty-one (141) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied, contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter, and are subject to Defendants' Motion to Strike.

67. Paragraph one hundred and forty-two (142) does not call for a response, but to the extent a response is required, Defendants would re-allege and incorporate all defenses.

68. The allegations of paragraphs one hundred and forty-three (143), one hundred and forty-four (144), one hundred and forty-four (144), and one hundred and forty-five (145) are denied and contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter.

69. Defendants object to paragraphs one hundred and forty-six (146), one hundred and forty-seven (147), one hundred and forty-eight (148), one hundred and forty-nine (149), one hundred and fifty (150), one hundred and fifty-one (151), one hundred and fifty-two (152), one hundred and

fifty-three (153), one hundred and fifty-four (154), one hundred and fifty-five (155), one hundred and fifty-six (156), one hundred and fifty-seven (157), one hundred and fifty-eight (158), one hundred and fifty-nine (159), one hundred and sixty (160), and one hundred and sixty-one (161) as being amended or added without consent or leave of Court. To the extent a response is required, the allegations of these paragraphs are denied, contradicted by Plaintiff's prior testimony in this matter, Plaintiff's discovery responses in this matter, or the objective evidence present in this matter, and are subject to Defendants' Motion to Strike.

70. The allegations of paragraphs one hundred and sixty-two (162) through paragraph one hundred and ninety-seven (197) detail causes of actions against Defendants Schmieding, Jennings and Cook, and Simmons respectively and, as such, Defendants does not admit, deny, or respond to these allegations. Defendants do note and object to paragraphs one hundred and eighty-three (183), one hundred and ninety (190) and one hundred and ninety-one (191) as being amended or added without consent or leave of Court. All paragraphs are subject to Defendants' Motion to Strike.

71. To the extent inconsistent with the foregoing, Defendants deny the WHEREFORE section of the Amended Complaint and all subparts.

FOR A SECOND DEFENSE

72. Defendants reassert and re-allege paragraphs one (1) through seventy-one (71) above.

73. Plaintiff's Second Amended Complaint contains six (6) causes of actions, to wit: 2nd Cause of Action, 3rd Cause of Action, 4th Cause of Action, 5th Cause of Action, 6th Cause of Action, and 7th Cause of Action, that fail to allege necessary details upon which Plaintiff would be entitled to any relief from these Defendants. This allegation is made in addition to Defendants' Motion to Strike. As such, the above referenced causes of actions should be dismissed with prejudice, stricken from Plaintiff's Second Amended Complaint, and costs and fees awarded to Defendants.

FOR A THIRD DEFENSE

74. Defendants reassert and re-allege paragraphs one (1) through seventy-three (73) above.

75. Defendants would show, upon information and belief, that any statements made by them or their agents were true or substantially true, and the Defendants plead Truth as a complete defense.

FOR A FOURTH DEFENSE

76. Defendants reassert and re-allege paragraphs one (1) through seventy-five (75) above.

77. Defendants would show, upon information and belief, that the injuries and/or damage sustained by Plaintiff were the result of the sole negligence and/or actions of Plaintiff and therefore, Plaintiff cannot recover any sum whatsoever from the Defendants.

FOR A FIFTH DEFENSE

78. Defendants reassert and re-allege paragraphs one (1) through seventy-seven (77) above.

79. Defendants would show that any injuries or damages sustained by Plaintiff were due to and caused by the sole negligence and acts or omissions of some persons or entities over whom Defendants exercised no authority or control for which reason Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A SIXTH DEFENSE

80. Defendants reassert and re-allege paragraphs one (1) through seventy-nine (79) above.

81. Defendants would show, upon information and belief, that the statements were proper in scope and reasonably related to appropriate business and are therefore absolutely privileged.

FOR A SEVENTH DEFENSE

82. Defendants reassert and re-allege paragraphs one (1) through eighty-one (81) above.

83. Defendants would show, upon information and belief, that any statements or actions on their part were reasonable with respect to time, place, and manner and in furtherance of Defendants' legitimate interest.

FOR AN EIGHTH DEFENSE

84. Defendants reassert and re-allege paragraphs one (1) through eighty-three (83) above.

85. An award or assessment of punitive or exemplary damages against Defendants as prayed for by Plaintiff in this Complaint would violate Defendants' constitutional rights under the Due Process clause of the 5th and 14th Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause of the 5th Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendants plead such constitutional provisions as a complete defense to any claim for punitive damages.

FOR A NINTH DEFENSE

86. Defendants reassert and re-allege paragraphs one (1) through eighty-five (85) above.

87. An award of punitive damages under South Carolina law against Defendants would violate the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that:

- a. The Judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantee;

- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based on the wealth of the defendant violates due process;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and.
- f. Plaintiff's claims for punitive damages violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based on the wealth of Defendants.

FOR A TENTH DEFENSE

88. Defendants reassert and re-allege paragraphs one (1) through eighty-seven (87) above.

89. Defendants would show, upon information and belief, that any statements made in the course of an investigation or litigation are protected from suit, and Plaintiff's Second Amended Complaint is therefore barred as to Defendants.

FOR AN ELEVENTH DEFENSE

90. Defendants reassert and re-allege paragraphs one (1) through eighty-nine (89) above.

91. Defendants would show, upon information and belief, that any statements of any individuals were expressions of opinion by those individuals that are protected under the United States Constitution.

FOR A TWELFTH DEFENSE

92. Defendants reassert and re-allege paragraphs one (1) through ninety-one (91) above.

93. Defendants would show, upon information and belief, that the communications were made in good faith and with proper motives, and any publication was in the proper manner to the proper parties.

FOR A THIRTEENTH DEFENSE

94. Defendants reassert and re-allege paragraphs one (1) through ninety-three (93) above.

95. Defendants would show, upon information and belief, that at all times relevant hereto, Defendants, during the performance or non-performance of acts alleged in the Amended Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and therefore, are immune from suit.

FOR A FOURTEENTH DEFENSE

96. Defendants reassert and re-allege paragraphs one (1) through ninety-five (95) above.

97. Defendants would show, upon information and belief, that the conduct of Defendants was not the proximate cause of any alleged injuries or damages under any theory advanced for which relief is requested by Plaintiff.

FOR A FIFTEENTH DEFENSE

98. Defendants reassert and re-allege paragraphs one (1) through ninety-seven (97) above.

99. Defendants would show, upon information and belief, that any damages or injuries

to Plaintiff were caused by the Plaintiff's own actions, omissions, and conduct in violating the law and in such other particulars as the evidence may show.

FOR A SIXTEENTH DEFENSE

100. Defendants reassert and re-allege paragraphs one (1) through ninety-nine (99) above.

101. Defendants would show, upon information and belief, that notwithstanding the fact that the criminal charge were dismissed against Plaintiff, Plaintiff was, in fact, guilty of that charge.

FOR A SEVENTEENTH DEFENSE

102. Defendants reassert and re-allege paragraphs one (1) through one hundred and one (101) above.

103. Defendants would show, upon information and belief, that any claim for malicious prosecution is barred as probable cause was found by a court of law as to the Plaintiff's arrest and prosecution.

FOR AN EIGHTEENTH DEFENSE

Motion to Strike

104. Defendants reassert and re-allege paragraphs one (1) through one hundred and three (103) above.

105. Defendants assert and hereby move that the following paragraphs of Plaintiff's Second Amended Complaint be stricken pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure as they are amendments or additions not consented to or allowed by this Court. Additional details as may be requested by the Court or necessary to the Court's full understanding of Plaintiff's malicious, duplicitous, and deceitful actions shall be provided at the hearing of Defendants' Motion to Strike:

a. Paragraphs 4, 8, 9, 16, 17, 33, 34, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 69, 70, 76, 77, 79, 80, 88, 90, 91, 92, 93, 106, 107, 108, 109, 110, 114, 115, 121, 125, 126, 127,

128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 183, 190, and 191.

106. Defendants would show that Plaintiff continued the inappropriate and above referenced behavior which has led to this Motion to Strike after being notified by the undersigned as to the violation of the Court's Order. Defendants are informed and believes that this Court should sanction Plaintiff for her behavior in this action as well as award attorney fees and costs to Defendants.

**FOR A NINETEENTH DEFENSE AND BY WAY OF COUNTERCLAIM TO
PLAINTIFF**

107. Defendants reassert and re-allege paragraphs one (1) through one hundred and six (106) above.

108. Defendants have, prior to the filing of Plaintiff's Second Amended Complaint, filed an Affidavit of Default and Motion for Default against Plaintiff due to her failure to timely file a responsive pleading as to Defendants' counterclaim herein. Defendants therefore include the details of this Counterclaim for convenience but with the position that Plaintiff cannot purge herself of her default by now responding.

109. Upon information and belief, Plaintiff is a citizen and resident of Greenville County, South Carolina.

110. Defendant Marshall Alexander Chapman and Defendant Brooke I. Chapman are citizens and residents of Greenville County, South Carolina.

111. Defendant Chapman Dental, P.A. is a professional association located in Greenville County, South Carolina.

112. This Court has jurisdiction over this action and venue is proper in Greenville County, South Carolina because all of the events complained of herein occurred in Greenville County, South Carolina as well as all parties reside in Greenville County, South Carolina.

113. From approximately December 2013 to March 2017, Plaintiff was employed by Defendant Dental.

114. During her employment with Defendant Dental, Plaintiff made multiple threats of getting revenge on Defendants should she ever be terminated.

115. On or about March 2017, Plaintiff was terminated from Defendant Dental as a result of multiple disciplinary issues.

116. On or about February 2018, due to the investigation of Greenville County Sheriff's Department, a warrant was signed for the arrest of Plaintiff for Breach of Trust, >\$2,000.00 and <\$10,000.00 by Elliott D. Turner.

117. Following Plaintiff's arrest on the above referenced charges, a pre-trial hearing was held to determine the existence of probable cause for the charge against Plaintiff.

118. As a result of the above referenced pre-trial hearing, probable cause was found to exist to support the arrest and prosecution of Plaintiff.

119. On or about November 2018, upon information and belief, the Thirteenth Circuit Solicitor's Office chose to dismiss the charge against Plaintiff.

120. On or about March 25, 2019, Plaintiff filed this underlying action against Defendants providing false, misleading, and defamatory information to the Court regarding Defendants.

121. On or about January 8, 2021, armed with the deposition testimony of Plaintiff and extensive discovery responses and information from a variety of persons, Plaintiff filed an

Amended Complaint containing information contradictory to her own testimony, contradictory to her own discovery responses and the responses of the Defendants, and contradictory to the objective evidence received from the Greenville County Sheriff's Department and Thirteenth Circuit Solicitor's Office.

122. In addition to this current action, Defendants are informed and believe that Plaintiff has contacted the South Carolina Department of Labor, Licensing, and Regulation and made false allegations against Defendant.

123. Upon information and belief and based on Plaintiff's own words during her employment with Defendant Dental as well as her own words during her deposition in this matter, Plaintiff has an ulterior motive to pursue civil action against Defendants.

124. Upon information and belief and based on the above referenced details, Plaintiff has taken actions solely to injure, defame, extort money, or another nefarious purpose not proper in the course of law.

125. Plaintiff's actions of filing and amending this underlying action containing information contradictory to Plaintiff's own testimony and documents, as well as the believed actions of Plaintiff in filing a false report to the South Carolina Department of Labor, Licensing, and Regulation have demonstrated the existence of Plaintiff's ulterior motive to pursue civil action against Defendants.

126. Plaintiff's willful use of the legal system through her filing of a Summons and Complaint in this matter is for a purpose other than what it was intended for by the law in violation of the caselaw and statutes of South Carolina.

127. Plaintiff's willful use of the legal system through her filing of an Amended Summons and Complaint in this matter containing information contradictory to Plaintiff's own

testimony and documents is for a purpose other than what it was intended for by the law in violation of the caselaw and statutes of South Carolina.

128. Upon information and belief, Plaintiff is attempting to utilize the legal system for revenge against, harassment of, and/or inappropriate monetary gain from Defendants.

129. Plaintiff's malicious misuse and/or perversion of the legal process of civil litigation for an unlawful purpose as detailed above, constitutes an abuse of process.

130. As a direct and proximate result of Plaintiff's above detailed actions, Defendants have suffered damages in the payment of attorney fees and costs, court costs, investigative costs, future attorney fees and costs, court costs, expert fees, and other similar expenses.

131. WHEREFORE, Defendants pray for a judgment against Plaintiff in a sum sufficient to compensate each of them for all ACTUAL and CONSEQUENTIAL damages that he or she has suffered, for such PUNITIVE damages that a jury may reasonably award against Plaintiff for her egregious behavior, for the attorney fees of Defendants, for the costs of this action to be taxed against Plaintiff, and for such other relief as the Court or jury deems just and proper.

RESERVATION OF DEFENSES

132. Defendants reassert and re-allege paragraphs one (1) through one hundred and thirty-one (131) above.

133. Defendants reserve the right to raise additional affirmative and other defenses as well as counterclaims as may be established by discovery and evidence in this case.

SIGNATURE PAGE TO FOLLOW

Columbia, South Carolina
April 29, 2021

S/STEPHANIE R. FAJARDO, #80159
Stephanie R. Fajardo, Esquire
The Fajardo Law Firm, LLC
1722 Main Street, Suite 302
Columbia, SC 29201
Phone: (803) 391-8980
Fax: (877) 365-5340
**Attorney for Defendants Marshall
Alexander Chapman, DMD, Brooke I.
Chapman, and Chapman Dental, P.A**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	13 TH JUDICIAL CIRCUIT
)	
)	
Samantha Katchick,	)	Case No: 2019-CP-23-01522
)	
Plaintiff,)	
)	
vs.	)	PLAINTIFF’S ANSWER TO
	)	CHAPMAN DEFENDANTS
	)	“AMENDED” COUNTERCLAIM
)	
Marshall Alexander Chapman, DMD,)	
Brooke I. Chapman, and Chapman Dental,)	
P.A., Douglas P. Schmieding, CPA, Jennings)	
Cook & Co., CPA’s, PA, and Earl A. Simmons,)	
CPA.)	
)	
Defendants.)	

Plaintiff Samantha Katchick (hereafter “Katchick” or “Plaintiff”), Answering Defendant Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental, P.A.’s Amended Counterclaim, filed April 29, 2021 (“Counterclaim”), would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation set forth in the Counterclaim and not hereinafter specifically admitted, qualified, or explained, is denied.

FOR A SECOND DEFENSE

2. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraphs 1 through 106, Plaintiff denies.

3. Plaintiff denies the allegations set forth in Paragraph 107 of the Counterclaim.

4. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraph 108, Plaintiff denies.

5. Plaintiff admits the allegations set forth in Paragraph 109 of the Counterclaim.

6. Plaintiff admits the allegations set forth in Paragraphs 110 and 111 of the Counterclaim, on information and belief.

7. Answering Paragraph 112 of the Counterclaim, Plaintiff admits only so much as alleges jurisdiction and venue are proper in Greenville County. The remaining allegations of this paragraph set forth legal conclusions and do not require a response.

8. Plaintiff admits the allegations set forth in Paragraph 113 of the Counterclaim.

9. Plaintiff denies the allegations set forth in Paragraph 114 of the Counterclaim and demands proof of same.

10. Answering Paragraph 115 of the Counterclaim, Plaintiff admits only so much as the Plaintiff was terminated. The remaining allegations of this Paragraph the Plaintiff denies

11. Answering Paragraph 116 of the Counterclaim, Plaintiff admits only so much as Greenville County issued a warrant. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

12. Answering Paragraph 117 of the Counterclaim, Plaintiff admits only so much as that there was a pre-trial hearing held. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

13. Plaintiff denies the allegations set forth in Paragraph 118 of the Counterclaim. The allegations of this paragraph set forth legal conclusions and do not require a response.

14. Answering Paragraph 119 of the Counterclaim, Plaintiff admits only so much as alleges that the charges against her were dismissed. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

15. Answering Paragraph 120 of the Counterclaim, Plaintiff admits only so much as the Plaintiff filed suit, bringing eight (8) claims, as follows: (i) Defamation Per Se; (ii) Constructive Fraud; (iii) Malicious Prosecution; (iv) Abuse of Process; (v) False Imprisonment; (vi) Intentional Infliction of Emotional Distress; (vii) Interference with Contract; and (viii) Civil Conspiracy. The remaining allegations of this paragraph the Plaintiff denies.

16. Answering Paragraph 121 of the Counterclaim, Plaintiff admits so much as alleges she filed this action and obtained Court approval to file a Verified Amended Complaint on January 8, 2021. Plaintiff denies filing any reports to LLR related to the Defendants. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

17. Plaintiff denies the allegations set forth in Paragraphs 122 through 130 of the Counterclaim.

18. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraphs 131 through 133, Plaintiff denies.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

19. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

20. The Counterclaim fails to state a claim upon which relief can be based and accordingly, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

21. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

22. Plaintiff would show that any statements put at issue in this action by the Defendants are privileged, and were truthful in all respects.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

23. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

24. Plaintiff asserts that whatever damages, if any, that were sustained by the Defendant were due to, caused solely or partly by, and were the direct and proximate result of the acts of third-parties.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

25. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

26. Plaintiff asserts the doctrine of Laches as a complete or partial bar to Defendants' Counterclaim.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

27. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

28. Plaintiff asserts Defendants' failure to mitigate damages and/or the doctrine of avoidable consequences as a complete or partial bar to the Defendants' Counterclaim.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

29. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

30. Plaintiff at all times acted in good-faith with respect to the Defendants, and upon advice of counsel in bringing her claims in this action.

FOR AN NINTH DEFENSE AS TO ALL CAUSES OF ACTION

31. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

32. To the extent any right to punitive damages are claimed by the Defendants, Plaintiff would show, upon information and belief, that the claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being

violated because Plaintiff can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Defendants' claim for punitive damages violates Plaintiff's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Plaintiff's exercise of that right; the Defendants' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Defendants' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Defendants' claim for punitive damages should be dismissed.

FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION

33. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

34. As to any claim for punitive damages, Plaintiff would allege that any award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars, as provided in S.C. Code Ann. § 15-32-530.

FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

33. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

34. Plaintiff reserves the right to plead additional defenses as may arise in the course of discovery in this action.

Wherefore, having fully Answered the Chapman Defendants' "Amended" Counterclaim, Plaintiff prays that these Defendants' Counterclaim be dismissed at the appropriate time, with costs and fees awarded to Plaintiff; and for such other and further relief as this Court may deem just and proper under the circumstances presented at trial, and / or after adequate discovery.

Respectfully submitted,

WESLEY D. FEW, LLC

/s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
P.O. Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEY FOR PLAINTIFF SAMANTHA
KATCHICK

May 12, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

)

13TH JUDICIAL CIRCUIT

)

)

Samantha Katchick,

)

Case No: 2019-CP-23-01522

)

Plaintiff,

)

**PLAINTIFF’S ANSWER TO
CHAPMAN DEFENDANTS
“AMENDED” COUNTERCLAIM**

vs.

)

)

Marshall Alexander Chapman, DMD,

)

Brooke I. Chapman, and Chapman Dental,

)

P.A., Douglas P. Schmieding, CPA, Jennings

)

Cook & Co., CPA’s, PA, and Earl A. Simmons,

)

CPA.

)

)

Defendants.

Plaintiff Samantha Katchick (hereafter “Katchick” or “Plaintiff”), Answering Defendant Marshall Alexander Chapman, DMD, Brooke I. Chapman, and Chapman Dental, P.A.’s Amended Counterclaim, filed April 29, 2021 (“Counterclaim”), would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation set forth in the Counterclaim and not hereinafter specifically admitted, qualified, or explained, is denied.

FOR A SECOND DEFENSE

2. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraphs 1 through 106, Plaintiff denies.

3. Plaintiff denies the allegations set forth in Paragraph 107 of the Counterclaim.

4. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraph 108, Plaintiff denies.

5. Plaintiff admits the allegations set forth in Paragraph 109 of the Counterclaim.

6. Plaintiff admits the allegations set forth in Paragraphs 110 and 111 of the Counterclaim, on information and belief.

7. Answering Paragraph 112 of the Counterclaim, Plaintiff admits only so much as alleges jurisdiction and venue are proper in Greenville County. The remaining allegations of this paragraph set forth legal conclusions and do not require a response.

8. Plaintiff admits the allegations set forth in Paragraph 113 of the Counterclaim.

9. Plaintiff denies the allegations set forth in Paragraph 114 of the Counterclaim and demands proof of same.

10. Answering Paragraph 115 of the Counterclaim, Plaintiff admits only so much as the Plaintiff was terminated. The remaining allegations of this Paragraph the Plaintiff denies

11. Answering Paragraph 116 of the Counterclaim, Plaintiff admits only so much as Greenville County issued a warrant. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

12. Answering Paragraph 117 of the Counterclaim, Plaintiff admits only so much as that there was a pre-trial hearing held. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

13. Plaintiff denies the allegations set forth in Paragraph 118 of the Counterclaim. The allegations of this paragraph set forth legal conclusions and do not require a response.

14. Answering Paragraph 119 of the Counterclaim, Plaintiff admits only so much as alleges that the charges against her were dismissed. Plaintiff is without sufficient information to admit or deny the remaining allegations of this Paragraph and, therefore, denies same.

15. Answering Paragraph 120 of the Counterclaim, Plaintiff admits only so much as the Plaintiff filed suit, bringing eight (8) claims, as follows: (i) Defamation Per Se; (ii) Constructive Fraud; (iii) Malicious Prosecution; (iv) Abuse of Process; (v) False Imprisonment; (vi) Intentional Infliction of Emotional Distress; (vii) Interference with Contract; and (viii) Civil Conspiracy. The remaining allegations of this paragraph the Plaintiff denies.

16. Answering Paragraph 121 of the Counterclaim, Plaintiff admits so much as alleges she filed this action and obtained Court approval to file a Verified Amended Complaint on January 8, 2021. Plaintiff denies filing any reports to LLR related to the Defendants. The remaining allegations of this paragraph set forth legal conclusions and do not require a response. To the extent that a response could be required to the remaining allegations of this Paragraph, Plaintiff denies.

17. Plaintiff denies the allegations set forth in Paragraphs 122 through 130 of the Counterclaim.

18. To the extent Plaintiff might be considered to be required to respond to any of the allegations in Paragraphs 131 through 133, Plaintiff denies.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

19. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

20. The Counterclaim fails to state a claim upon which relief can be based and accordingly, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

21. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

22. Plaintiff would show that any statements put at issue in this action by the Defendants are privileged, and were truthful in all respects.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

23. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

24. Plaintiff asserts that whatever damages, if any, that were sustained by the Defendant were due to, caused solely or partly by, and were the direct and proximate result of the acts of third-parties.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

25. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

26. Plaintiff asserts the doctrine of Laches as a complete or partial bar to Defendants' Counterclaim.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

27. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

28. Plaintiff asserts Defendants' failure to mitigate damages and/or the doctrine of avoidable consequences as a complete or partial bar to the Defendants' Counterclaim.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

29. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

30. Plaintiff at all times acted in good-faith with respect to the Defendants, and upon advice of counsel in bringing her claims in this action.

FOR AN NINTH DEFENSE AS TO ALL CAUSES OF ACTION

31. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

32. To the extent any right to punitive damages are claimed by the Defendants, Plaintiff would show, upon information and belief, that the claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being

violated because Plaintiff can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Defendants' claim for punitive damages violates Plaintiff's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Plaintiff's exercise of that right; the Defendants' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Defendants' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Defendants' claim for punitive damages should be dismissed.

FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION

33. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

34. As to any claim for punitive damages, Plaintiff would allege that any award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars, as provided in S.C. Code Ann. § 15-32-530.

FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION

33. Each and every allegation set forth in the preceding Paragraphs are realleged and reincorporated as fully as if set forth verbatim herein.

34. Plaintiff reserves the right to plead additional defenses as may arise in the course of discovery in this action.

Wherefore, having fully Answered the Chapman Defendants' "Amended" Counterclaim, Plaintiff prays that these Defendants' Counterclaim be dismissed at the appropriate time, with costs and fees awarded to Plaintiff; and for such other and further relief as this Court may deem just and proper under the circumstances presented at trial, and / or after adequate discovery.

Respectfully submitted,

WESLEY D. FEW, LLC

/s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
P.O. Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEY FOR PLAINTIFF SAMANTHA
KATCHICK

May 12, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SAMANTHA KATCHICK,

Plaintiff,

v.

**MARSHALL ALEXANDER
CHAPMAN, DMD and CHAPMAN
DENTAL, P.A.,**

Defendants.

IN THE COURT OF COMMON
PLEAS FOR THE THIRTEENTH
JUDICIAL CIRCUIT

Case No. 2019-CP-23-01522

**DEFENDANT'S MOTION FOR
SETOFF**

Defendants respectfully request the Court grant a setoff of prior settlements in this matter against the verdict entered against Defendants.

The right to setoff is equitable in nature and has existed in South Carolina's common law for over a century. *Green v. Bauerle*, 441 S.C. 408, 414 (Ct. App. 2023). Defendant recognizes the Plaintiff is entitled to apportion settlement in a way most advantageous to her. However, the Court should also seek to avoid a double recovery for the same damages. *Id.*

Counsel was not involved in this case at the time other Defendants settled. Therefore he requests the Defendants and the Court be provided with all settlement agreements previously entered related in any way to this case so the Court can determine: (1) if setoff is appropriate, and (2) the proper amount of any setoff.

Respectfully Submitted,

s/ Joshua Snow Kendrick

Joshua Snow Kendrick (70453)
Christopher S. Leonard (80166)
KENDRICK & LEONARD, P.C.
7 Mills Avenue (29605)
P.O. Box 6938
Greenville, SC 29606
Tel: (864) 760-4000
Josh@KendrickLeonard.com

May 6, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SAMANTHA KATCHICK,

Plaintiff,

v.

**MARSHALL ALEXANDER
CHAPMAN, DMD and CHAPMAN
DENTAL, P.A.,**

Defendants.

IN THE COURT OF COMMON
PLEAS FOR THE THIRTEENTH
JUDICIAL CIRCUIT

Case No. 2019-CP-23-01522

**DEFENDANT'S MOTION FOR
JUDGMENT
NOTWITHSTANDING THE
VERDICT
OR ALTERNATIVELY FOR A
NEW TRIAL ABSOLUTE OR
NEW TRIAL NISI REMITTITUR**

The Defendants move this Court under Rules 50(b) and 59 of the South Carolina Rules of Civil Procedure, as well as all other applicable law, for a new trial based on the jury's verdict in this case, which was excessive and unreasonable considering the evidence presented at trial. In the alternative, the Defendants request the Court adjust the verdict to reflect the evidence introduced at trial.

FACTS

This case arose from the arrest and prosecution of the Plaintiff. Plaintiff was employed by Defendants and ran the front desk of the Chapman Dental office. As part of her responsibilities, she was responsible for the collection and deposit of money paid for dental services.

As early as March of 2016, Dr. Chapman became concerned about missing money and contacted his accountant. Evidence at trial reveals he was concerned about embezzlement, despite his trust of the Plaintiff at the time. His concern arose from the difference between the money that was collected at the office and the money that was deposited into the bank. While there is no question the accounting practices at the office were not perfect, there is also no question the deposit rarely, if ever, matched the collections.

Much of the dispute at trial centered on the Plaintiff's claim that Dr. Chapman told

the police she was solely in control of the money that would need to be deposited. This was not what he told law enforcement. All the evidence at trial shows that Dr. Chapman told law enforcement Plaintiff was “solely responsible” for the collections and deposits, which was true. After receiving this information, it appears the detective responsible for the case did almost no follow up investigation. There was no testimony that Dr. Chapman did anything to overcome Detective Turner’s will or deceive him in a way that prevented him from conducting a reasonable investigation into this matter.

There is also evidence in the record Detective Turner discussed the case with the Thirteenth Circuit Solicitor who supervises the White Collar Crime Unit and she approved the seeking of a warrant.

According to the Plaintiff’s expert, the comparison between Eaglesoft, the practice management software used at Chapman Dental, and the bank deposits was not the optimal way to determine if money was missing. However, the expert also testified he could not tell whether money was missing and the only accurate way to make that determination would be an extensive audit of the activity in the software that tracked every single action taken in Eaglesoft. In other words, while the Plaintiff took great issue with Dr. Chapman using this comparison to decide money was missing, the Plaintiff’s own expert both agreed that missing money could cause the discrepancies and that even as an expert it would be difficult for him to determine what was causing the discrepancies.

The assistant solicitor spoke with the expert working on behalf of the Plaintiff and was still unable to dismiss the case. She and her supervisor (who had earlier approved the warrant) knew the expert, Mike O’Shea, but were unable to dismiss the case after talking with him. Despite the Plaintiff’s claims that Dr. Chapman was behind the prosecution, there were numerous independent parties who had the opportunity to continue or discontinue the prosecution. All those parties elected to continue with the case and there was no evidence that Dr. Chapman somehow controlled them or manipulated them into continuing a prosecution against the Plaintiff. In fact, contrary to the Plaintiff’s claims, Dr. Chapman’s only communication with anyone in law enforcement after his initial

report was in response to the inquiries, as opposed to any proactive attempts to manipulate the prosecution.

During the punitive damages stage, the Plaintiff presented one witness who purported to testify the collections and accounting at Chapman Dental were not handled according to her opinion on “best practices.” In addition to that testimony, which the Defendants had already conceded, the witness took the opportunity to change her testimony on the stand and claim Dr. Chapman was not properly paying her for the work she had done. This was directly contrary to sworn testimony she had given in front of the Court approximately 15 minutes prior. After the Court directed the jury to disregard the testimony, the witness added nothing to the punitive damages argument. It appears, however, that the jury did not disregard her testimony and allowed her improper testimony to contribute to an excessive verdict.

LEGAL STANDARD

A motion for judgment notwithstanding the verdict stems from the earlier directed verdict motion, which counsel made at both the close of the Plaintiff’s case and the close of all testimony. *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 634 n.3 (Ct. App. 2000). This Court can set the verdict aside and enter judgment “in accordance with [Defendant’s] motion to for a directed verdict...” *Id.*, quoting SCRCP, Rule 50(b).

When considering a new trial absolute, this Court has discretion to determine if the damages awarded were appropriate. *Encore Tech Grp., LLC v. Keone Trask & Clear Touch Interactive, Inc.*, 436 S.C. 289, 304 (Ct. App. 2021). A new trial based on damages can be granted when the verdict shocks the conscience and is disproportionate to the injuries, indicating the verdict was based on passion, caprice, prejudice, or some other consideration not reflected by the evidence. *Id.*, quoting *Burke v. AnMed Health*, 393 S.C. 48, 56 (Ct. App. 2011); *Becker, supra*.

While a jury verdict is entitled to substantial deference, this Court has broad power to reduce an excessive verdict. *Burke v. AnMed Health*, 393 S.C. at 56-57. When a verdict is unduly liberal, the Court can reduce the verdict. *Bailey v. Peacock*, 318 S.C. 13, 14

(1995).

ARGUMENT

1. The Court should grant judgment notwithstanding the verdict (JNOV).

a. False imprisonment

Testimony at trial clearly proved the police, the court system, and the Solicitor's Office all approved probable cause in this case and the issuance of an arrest warrant. There was no evidence Dr. Chapman misled any of the parties or proactively manipulated facts to control the outcome of the investigation.

There was no evidence there was any defect or deception by police in obtaining the arrest warrant from the magistrate. As our Supreme Court has stated, if a plaintiff suing for false arrest has shown the arrest was made under legal process that was lawfully issued and executed, [she] has proved [her]self out of court." *Carter v. Bryant*, 429 S.C. 298, 307 (Ct. App. 2020) (citing *McConnell v. Kennedy*, 29 S.C. 180, 186-87 (1888)). While much of the trial centered on the truth of the statements made by Dr. Chapman to law enforcement, there was no evidence those statements were untrue.

For example, the arrest warrant (Plaintiff's Exhibit 2) states "Alexander Chapman reported that the defendant who is a previous employee that was solely responsible for collecting money from patients and making bank deposits from January 2014 to February 2017, took \$3505.129 from the practice. The affiant has documented evidence implicating the defendant as the subject who took the cash." None of these statements are untrue. Dr. Chapman made that report, and it was Plaintiff who was responsible for the collection and deposits. While the Plaintiff tried during trial to shift "solely responsible" to "solely in control of..." there was no evidence to support anything other than the "responsible" language. As to the second statement, the "affiant" is Detective Turner. If he believed he had documented evidence and swore that to the magistrate, the statement cannot be assigned to Dr. Chapman.

A facially valid warrant, not based on any false statements, cannot be the basis for a false imprisonment cause of action in South Carolina. The police would need to have

recklessly or intentionally omitted facts from their warrant application, and even under that scenario it would be law enforcement who was liable for the damages. *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444-45 (Ct. App. 2020). The false imprisonment cause of action should be decided in Defendants' favor, notwithstanding the jury's verdict.

b. Malicious prosecution

In arguing that Dr. Chapman is responsible for the prosecution in this case, the Plaintiff holds him to a higher standard than even the police and prosecutors. It is clear in South Carolina that a citizen is not required to conduct the same type of investigation the police should conduct. *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 273 (2019).

This case is distinguishable from a case that would trigger liability under *Sunshine*. First, there was nothing untrue in Dr. Chapman's report to law enforcement. While the Plaintiff presented a different view of the report and how it should have been handled, she did not present any evidence Dr. Chapman was untruthful or omitted material facts. Much of her dispute is actually with the minimal investigation done after the report, which had nothing to do with Dr. Chapman. The differing interpretations of the information provided by Dr. Chapman do not come close to the level of "...an individual who acts in bad faith or knowingly reports incorrect information to law enforcement..." *Id.* at 274.

Additionally, even the Plaintiff's expert could not show why Dr. Chapman's belief there was missing money was malicious or unsupported by probable cause. He admitted on cross that missing money could have been the explanation for the discrepancy between the practice management software and the bank deposits. In fact, he testified the only way to determine the cause of the discrepancy would have been to spend extensive time in the practice going through every single transaction in the practice management software. He told several stories about both medical professionals and accounting professionals who formed mistaken beliefs regarding missing money. What he did not testify about was some simple way to determine what really happened. Without that evidence, Dr.

Chapman is being held to a higher standard than even the Plaintiff's own highly experienced and competent expert witness.

The malicious prosecution should be decided in Defendant's favor, notwithstanding the jury's verdict.

c. Defamation

There were only two occasions upon which the jury could find defamation: the phone call to Jim Nasim or the statement to Brian Smith. The call to Jim Nasim was made after he was aware of the arrest of Plaintiff, and it was true the Plaintiff had been arrested. Under either circumstance, the Defendant cannot be held liable for defamation, because his statements had no effect on Nasim. Nasim had already decided he was going to move Plaintiff from the front desk at his practice and the call from Chapman had nothing to do with that.

The statement to Brian Smith similarly fails. It is not clear that he knew Plaintiff or even knows her now. He did not know when or where the statement took place and could only offer vague details about the content of the statement.

Judgment in favor of the Defendant should be granted on this cause of action.

2. New trial absolute

The verdict in this matter was excessive, especially as it relates to punitive damages. As described above, Dr. Chapman reported a potential crime to the police. There is no evidence in the record he should have known he was potentially wrong about whether money was missing. To the contrary, the Plaintiff's expert witness, whom she heavily relied on in both the criminal and this civil case, could not say where the money was. He agreed there was a discrepancy but had no evidence why there was a discrepancy. It could have been because the money was lost or stolen, or it could have been some other reason. His lack of explanation is telling; the Plaintiff argued Dr. Chapman should have known no money was stolen when the Plaintiff's own expert could not make such an assertion.

The facially valid arrest warrant, which has never been challenged by the Plaintiff,

and the numerous steps where law enforcement or the Solicitor's Office approved of the prosecution require this Court to consider the jury's verdict as excessive. It is clear the jury was influenced by factors beyond the evidence presented in the courtroom and awarded a verdict out of line with that evidence. A new trial should be granted on all causes of action.

There was no evidence presented at trial to warrant a punitive damages award, and certainly nothing to warrant an award of almost double the actual damages. Throughout the trial it was apparent the police and law enforcement had a part in the decision to arrest Plaintiff. Whether that decision was right or wrong based on her commission of a crime, it was certainly reasonable under the probable cause standard. Even if it was not, the police and prosecutors had the same information Dr. Chapman had and did not hesitate to arrest and prosecute the Plaintiff. A punitive damages award against Dr. Chapman serves no real purpose and is grossly excessive considering the facts in this case.

3. New trial nisi remittitur

For all the above reasons, the verdict in this case was excessive and should be reduced. Even if the Court determines the verdict in favor of the Plaintiff was proper, it should be reduced to match the evidence presented at trial.

a. False arrest

For the false arrest, there is no cause of action under these circumstances. As described above, the arrest was made on a proper arrest warrant with no false statements or reckless omissions of fact. More importantly, it was the investigator who spent three months investigating the case prior to making a decision to arrest Plaintiff. At the same time, he was the one who controlled the logistics of the arrest. There is no evidence Dr. Chapman pushed for an arrest nor did he exert any influence over the way the arrest was carried out. For those reasons, the verdict should be reduced on the false arrest cause of action.

b. Malicious prosecution

Though the Plaintiff argued at trial that Dr. Chapman kept the case going against

Plaintiff, the evidence showed otherwise. There appears to have been some minimal follow-up by the detective assigned to the case and Dr. Chapman answered his questions. Dr. Chapman did not attempt to direct the prosecution, did not become involved in the prosecution, and did not proactively do anything to further the prosecution. In fact, the Plaintiff presented no evidence of any real communication between the prosecution and Dr. Chapman. It appears the production of additional financial records was done at the request of the Solicitor's Office. There is no evidence Dr. Chapman did anything to stop the dismissal of the action and no evidence he ever influenced the malicious prosecution. The verdict on this cause of action should be reduced in line with the evidence presented.

c. Defamation

The defamation claimed in this case was minimal and the testimony vague. Nasim could not remember what he knew when or whether he took any action based on Dr. Chapman's statement to him. The damages awarded for all causes of action likely encompassed all of the damages awarded on defamation and should be reduced accordingly.

d. Punitive damages

The jury awarded \$175,000 in punitive damages on actual damages of approximately \$102,000. This is excessive based on the facts of the case. As counsel argued at the punitive damages stage, none of the factors that lead to a punitive damages award supported such an award here. Those arguments are incorporated by reference here, as well as Defendants' due process objection to punitive damages in this case.

The malicious prosecution verdict did not necessarily make a finding on malice – malice can be inferred from a lack of probable cause. While much of the evidence was geared towards Dr. Chapman having some nefarious motive for going to the police, his conduct after the meeting is telling. He did very little to follow up or inquire about the investigation, other than to answer inquiries from the detective. He did not ask when Plaintiff would be arrested, attempt to influence her arrest, or otherwise take any action to prolong the arrest and prosecution.

While the circumstances described by the Plaintiff were unfortunate, they do not warrant a punishment imposed against Dr. Chapeman and his dental practice. There is no question that multiple entities along the path to prosecution and subsequent dismissal failed to take proper steps to investigate this case. Dr. Chapman testified he believed money was taken from him but did not know who took it. This is actually consistent with at least one of the scenarios described by the expert – the discrepancy in accounting was because money was missing. No witness ever testified Plaintiff was innocent of the charges and there was no evidence presented that probable cause for her arrest did not exist. Even if the jury found that way, it is likely they considered the failings of other non-parties in awarding such an excessive punitive damages award.

Defendants respectfully request the Court reduce the punitive damages award to either zero or a minimal amount that truly reflects the conduct in this case.

CONCLUSION

Based on the arguments above, the Defendants request the Court enter judgment in favor of the Defendants on any appropriate causes of action, notwithstanding the jury's verdict. Alternatively, Defendants request a new trial absolute or nisi remittitur.

Respectfully Submitted,

s/ Joshua Snow Kendrick
Joshua Snow Kendrick (70453)
Christopher S. Leonard (80166)
KENDRICK & LEONARD, P.C.
7 Mills Avenue (29605)
P.O. Box 6938
Greenville, SC 29606
Tel: (864) 760-4000
Josh@KendrickLeonard.com

May 6, 2024
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
)
) 13TH JUDICIAL CIRCUIT
)

Samantha Katchick,

Plaintiff,

) Case No: 2019-CP-23-01522
)

vs.

) **PLAINTIFF’S JOINT RESPONSE IN**
) **OPPOSITION TO THE CHAPMAN**
) **DEFENDANTS’ [1] MOTION FOR SET**
) **OFF, AND [2] MOTION FOR NEW**
) **TRIAL, JUDGMENT NOT-**
) **WITHSTANDING THE VERDICT,**
) **AND NEW TRIAL NISI REMITTITUR**
) **UNDER RULES 50 AND 59**
)

Marshall Alexander Chapman, DMD, Brooke I.
Chapman, and Chapman Dental, P.A., Douglas
P. Schmieding, CPA, Jennings Cook & Co.,
CPA’s, PA, and Earl A. Simmons, CPA.

Defendants.

Plaintiff respectfully provides this joint response in opposition to the Defendants’ (i) Motions for Set off, and (ii) Defendants’ Motion for New Trial, Judgment Notwithstanding the Verdict, new Trial Nisi Remittitur under Rules 50(b) and 59, each filed May 6-7, 2024.¹

Standard of Review

“In ruling on a JNOV motion, the trial court construes all reasonable inferences and ambiguities in the evidence in favor of the non-moving party as to each element of the claim and must deny the motion if more than one reasonable inference emerges. If, however, the evidence could only produce one reasonable conclusion, the motion must be granted. We use the same

¹ “Defendants” as used herein refers to Marshall Alexand Chapman, DMD and Chapman Dental, P.A. Defendants filed their motions on May 6, 2024, but those filings were apparently rejected by the Clerk, so, according to counsel to Defendants, the same motions were re-filed on May 7, 2024.

yardstick as the trial court.” Carter v. Bryant, 429 S.C. 298, 314, 838 S.E.2d 523, 532 (Ct. App. 2020) (citing Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016)).

Argument Re: Legal Standards Applicable to Plaintiff’s Claim

The primary intent of this Response is to address a potentially misleading statement from the case of Carter v. Bryant as it relates to the different / private party defendant False Imprisonment claim brought in this action by Plaintiff.

In their motion for a new trial / JNOV at page 4 (arguing against the verdict in favor of Plaintiff for False Imprisonment), Defendants cite Carter v. Bryant, 429 S.C. 298, 307, 838 S.E.2d 523, 528 (Ct. App. 2020) (citing McConnell v. Kennedy, 29 S.C. 180, 186-87, 7 S.E.2d 76, 78 (1888)), for the proposition that, “[i]f a plaintiff suing for false arrest ‘has shown the arrest was made under legal process that was lawfully issued and executed, [she] has proved [her]self out of court.’” Id. Carter is distinguished from the facts of this case for at least the reason that the Malicious Prosecution and False Imprisonment claims brought by Carter were against law enforcement only. Carter, 838 S.E.2d at 526 (noting, “Following the *nolle pros* dismissal of an assault and battery of a high and aggravated nature (ABHAN) charge against him, Russell Shane Carter sued former York County Sheriff Bruce Bryant, in his official capacity as York County Sheriff, for false arrest and malicious prosecution.”).

A review of the facts at issue in Carter shows the incident involved an unknown man, Mr. Faile, attempting to gain entry into Carter’s residence at night in April 2012. Id. at 526-527. Carter eventually used a baseball bat to defend himself in the ensuing “fracas [that] occurred on his front porch.” Id. at 527. The Circuit Court in Carter found the warrant issued for Carter’s arrest was facially valid. Id. at 529 (stating, “We agree with the trial court that the arrest warrant was facially

valid.”). Carter’s contentions had nothing to do with any allegations of false information provided to law enforcement by third-parties. *Id.* (stating, Carter contended, inter alia, “Deputy Gwinn inadvertently or deliberately omitted material facts during the warrant application process that bore on probable cause, specifically facts related to Faile's aggression towards Carter while Carter was in his dwelling.”).

In contrast, Plaintiff in this action did not bring any claims against the prosecuting / law enforcement officers, namely the Greenville County Sheriff’s Office (“GCSO”). Still further, in *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 272-273, 826 S.E.2d 609, 615 (2019), our Supreme Court stated:

The notion that a private individual may face potential liability for false imprisonment is recognized in South Carolina. *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) (“The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest.”). As this Court definitively stated in *Wingate*, it is “well settled that where a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment.” *Id.*; see *Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 162 S.E. 753 (1931) (finding evidence justified the jury's conclusion theater representative's actions caused plaintiff's arrest by requesting police return plaintiff to the theater for an investigation); *Falls v. Palmetto Power & Light Co.*, 117 S.C. 327, 109 S.E. 93 (1921) (holding sufficient evidence from which the jury could conclude power company's general manager acted unreasonably and without ordinary prudence in calling for the arrest of plaintiff who sold similar goods as those stolen from power company).

Id. at 615 (underline emphasis added).

Not only has *Sunshine* not been overruled by *Carter* or any other case, but it has been recently interpreted by the Court of Appeals to continue to provide for liability of third-parties for false arrests. See e.g., *Styles v. Southeastern Grocers*, S.C. App. Unpub. LEXIS 370, *8, Appellate Case No. 2020-000818, Opinion No. 2023-UP-319 (Ct. App. 2023, Unpublished, Circuit Court Case No. 2018-CP-04-1127) (noting, “Styles clearly presented enough evidence on intentional

restraint [by Defendant Bi-Lo] to send the [False Imprisonment] case to the jury.”). While Styles did not involve an issued facially valid warrant, as did Sunshine, it could have. According to the opinion, the reason, or one reason, Lisa Styles was not arrested had to do with her providing evidence to Anderson Police Chief Burdette that the items she was accused of taking were actually donations to a local charity, the Anderson Interfaith Ministry. Id. at *2 (noting, the next day, “Styles told Police Chief Doyle Burdette that the items she took from the store were actually donations to a local charity ... [and after] an investigation, Chief Burdette took his report to a judge. The judge declined to issue an arrest warrant for Styles.”).

Defendants also cite Seabrook v. Town of Mt. Pleasant in their motion at page 5 regarding the Plaintiff’s False Imprisonment claim. Seabrook v. Town of Mount Pleasant, 432 S.C. 441, 443, 853 S.E.2d 508, 509 (Ct. App. 2020) (stating, “Bryan Seabrook brought this suit claiming the warrant for his arrest was based on a false and misleading affidavit and the Town of Mount Pleasant was liable for arresting and prosecuting him without probable cause.”). Seabrook, like Carter, is distinguished in the initial analysis because it is a case against law enforcement and does not implicate that portion of Sunshine quoted above regarding a private person’s “liability for false imprisonment.” Id. at 615.

Defendants also cite Sunshine Recycling in their Motion for New Trial / JNOV at 5, but only in regards to Plaintiff’s Malicious Prosecution claim. Id. Defendants’ motion does not set forth any grounds for altering or amending the jury’s verdicts on any of the three claims for which she obtained verdicts in her favor.

The Evidence Must be Viewed in the Light Most Favorably to Plaintiff

The evidence Plaintiff provided at trial was overwhelming in establishing facts from which the jury could have concluded, and did conclude, that Alex Chapman provided false information to Investigator Elliott Turner of the GCSO, and further that Turner relied on that information. By way of example, the Arrest Warrant (Plaintiff's Trial Exhibit 2), Investigator Turner's testimony at trial, as well as at the Preliminary Hearing on March 26, 2018, wherein the presiding concluded by stating, "Okay. Being that it's stated that Miss Katchick is and has sole control of receiving and making deposits, I deem that probable cause has been met today." (Plaintiff's Trial Exhibit 13, at page 18 of 19) (underline emphasis added).

Other evidence presented at trial also showed that Alex Chapman and Chapman Dental convinced and manipulated Investigator Turner to believe Plaintiff was the only person that could have been responsible for the discrepancy between the knowingly unreliable and unaudited EagleSoft data, and the bank statements showing cash deposited. Alex Chapman took it one step further and convinced Elliott Turner that the discrepancy was theft by his use / misuse of the Doug Schmieding letter of Nov. 14, 2017, even going so far as to include a second page to Schmieding's letter with the Plaintiff's name on it. (Plaintiff's Trial Exhibit 12, at pages 1, 21-22). Doug Schmieding testified unequivocally that he was not Chapman Dental's "expert," his "one-page" letter was not an "audit," that the Chapman's "misused" his letter, and further that he was "shocked" in June 2018 to receive the "battle of the experts" email from Assistant Solicitor Alexa Kluska asking him about his "forensic audit." (Plaintiff's Trial Exhibit 15).

Defendants' arguments in support of their motion for a new trial all necessarily involve viewing selected bits of evidence in the light most favorable to Defendants. That is not the standard

to be applied at this stage of the lawsuit. The jury heard, saw and rejected Defendants' evidence and all characterizations of it provided to them by counsel to Defendants in two Opening Statements and Two Closing Arguments.

Set Off

Plaintiff will gladly provide any details regarding the prior settlements with Doug Schmieding and his firm, Jennings Cook, as well as Earl Simmons, CPA. During Opening and / or Closing Arguments in the punitive damages phase of the trial, counsel to Defendants told the jury his client respected their verdict on actual damages and that he was going to pay it all. Defendants must be estopped from arguing anything to the contrary to that position, which was not necessary to make in arguing to the jury. *See e.g., Murray v. Estate of Murray*, 436 S.C. 99, 117, 871 S.E.2d 173, 183 (Ct. App. 2022) (noting the "application of judicial estoppel must be determined on a case-by-case basis, and must not be applied to impede the truth-seeking function of the court." (citing *Cothran v. Brown*, 357 S.C. 210, 215, 592 SE2d 629, 632 (2004)).

Here, the Defendants' motion for set off is directly inconsistent with the position it took before the jury in arguments in the punitive damages stage of the trial. *Cothran*, 592 S.E.2d at 632 (satisfying all five elements of a judicial estoppel as set forth in *Cothran*). The only one of the five elements that is even arguable in favor of Defendants is element no. 3, which requires that the "party taking the position must have been successful in maintaining that position and have received some benefit." One must presume that counsel to the Defendants made those statements, specifically promises to pay in full their actual damages verdict, to the jury for the purpose of benefitting, not harming, his clients, therefore, this element is also met.

Plaintiff would respectfully request the Court not award any set off to these Defendants, and if the Court were inclined to consider a set off claim, the Court would instead find Defendants are judicially estopped from now arguing for set off as that position is entirely contradictory to the promise made to the jury that Defendants would respect the jury's verdict on actual damages and pay it in full.

Conclusion

For the reasons set forth herein and in the record made at trial, Plaintiff respectfully requests the Court deny Defendants' motions and enter judgment in fav or of Plaintiff for the full amount awarded by the jury, as well as pre-judgment or post judgment interest as available under S.C. Code Ann. § 34-31-20(A), and / or S.C. Code Ann. § 34-31-20(B) from the date of the jury's verdict.

Respectfully Submitted,

WESLEY D. FEW, LLC

 s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
May 8, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2019-CP-23-01522

SAMANTHA KATCHICK,)
)
PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

MARSHALL ALEXANDER CHAPMAN,)
)
DMD, BROOKE I. CHAPMAN, AND)
)
CHAPMAN DENTAL, P.A.,)
)
DEFENDANTS.)

ORIGINAL

April 22, 23, 24, and 25, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., JUDGE; and a jury.

A P P E A R A N C E S:

WESLEY D. FEW, ESQ.
Attorney for the Plaintiff

JOSHUA S. KENDRICK, ESQ.
CHRISTOPHER S. LEONARD, ESQ.
Attorneys for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

Page No.

Jury
Qualification.....8
Jury Selection.....14
Pre-Trial Motions.....22
Introductory Remarks by the Court.....66
Opening Statement by Mr. Few.....72
Opening Statement by Mr. Kendrick.....90

(PW) JIM NASIM:

Direct Examination by Mr. Few.....100
Cross-Examination by Mr. Kendrick.....105
Redirect Examination by Mr. Few.....108

(PW) ANGELA HAWTHORNE:

Direct Examination by Mr. Few.....109
Cross-Examination by Mr. Kendrick.....117
Redirect Examination by Mr. Few.....121
Recross-Examination by Mr. Kendrick.....122

(PW) ELLIOTT TURNER:

Direct Examination by Mr. Few.....125
Cross-Examination by Mr. Kendrick.....134
Redirect Examination by Mr. Few.....154
Recross-Examination by Mr. Kendrick.....156
Further Examination by Mr. Few.....159

TUESDAY, APRIL 23, 2024

(PW) DOUG SCHMIEDING:

Direct Examination by Mr. Few.....163
Cross-Examination by Mr. Kendrick.....179
Redirect Examination by Mr. Few.....190
Recross-Examination by Mr. Kendrick.....192

(PW) BRIAN SMITH:

Direct Examination by Mr. Few.....195

Matters of Law.....200

INDEX (CONTINUED)Page No.(PW) BRIAN SMITH:

Cross-Examination by Mr. Kendrick.....	223
Redirect Examination by Mr. Few.....	225
Recross-Examination by Mr. Kendrick.....	227

(PW) SAMANTHA LYNN KATCHICK:

Direct Examination by Mr. Few.....	228
Cross-Examination by Mr. Kendrick.....	277

(PW) SARAH MCGUIRE:

Direct Examination by Mr. Few.....	294
Cross-Examination by Mr. Leonard.....	313

(PW) ALTHEA FAITH HOLLAND:

Direct Examination by Mr. Few.....	321
------------------------------------	-----

(PW) MICHAEL FRANCIS O'SHEA:

Direct Examination by Mr. Few.....	329
Cross-Examination by Mr. Kendrick.....	351
Redirect Examination by Mr. Few.....	362
Recross-Examination by Mr. Kendrick.....	363

(PW) HARVEY EARL SIMMONS:

Direct Examination by Mr. Few.....	366
------------------------------------	-----

Plaintiff Rests.....	374
Motions.....	375

WEDNESDAY, APRIL 24, 2024(DW) BROOKE CHAPMAN:

Direct Examination by Mr. Kendrick.....	407
Cross-Examination by Mr. Few.....	416
Redirect Examination by Mr. Kendrick.....	436
Recross-Examination by Mr. Few.....	439

(PW) MARSHALL ALEXANDER CHAPMAN:

Direct Examination by Mr. Kendrick.....	441
Cross-Examination by Mr. Few.....	454

INDEX (CONTINUED)

	<u>Page No.</u>
Defense Rests.....	463
Motions.....	464
Closing Argument by Mr. Few.....	498
Closing Argument by Mr. Kendrick.....	522
Further Closing Argument by Mr. Few.....	539
Charge on the Law by the Court.....	544
Questions from the Jury.....	569
Verdict of the Jury.....	576

THURSDAY, APRIL 25, 2024

Matters of Law.....	581
<u>(PW) ALTHEA FAITH HOLLAND (IC):</u>	
Direct Examination by Mr. Few.....	611
Cross-Examination by Mr. Kendrick.....	628
Matters of Law.....	634
Opening Statement by Mr. Few.....	643
Opening Statement by Mr. Kendrick.....	646
<u>(PW) ALTHEA FAITH HOLLAND:</u>	
Direct Examination by Mr. Few.....	649
Cross-Examination by Mr. Kendrick.....	655
Plaintiff Rests.....	656
Motions.....	657
Matters of Law.....	664
Closing Argument by Mr. Few.....	684
Closing Argument by Mr. Kendrick.....	692
Charge on the Law by the Court.....	694
Verdict of the Jury.....	698
Certificate of the Court Reporter.....	702

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Plaintiff's Exhibits)			
P-1	Mug Shot.....	64.....	64
P-2	Warrant.....	64.....	64
P-3	E-Mail dated 3/9/2016.....	64.....	64
P-4	E-Mail dated 10/22/2017.....	64.....	64
P-5	E-Mail dated 10/31/2017.....	64.....	64
P-6	E-Mail dated 11/13/2017.....	64.....	64
P-7	E-Mail dated 11/13/2017.....	64.....	64
P-8	E-Mail dated 11/14/2017.....	64.....	64
P-9	Letter dated 11/14/2017.....	64.....	64
P-10	E-Mail dated 1/31/2018.....	64.....	64
P-11	E-Mail dated 2/7/2018.....	64.....	64
P-12	Brady Response.....	64.....	64
P-13	Preliminary Hearing Transcript.....	64.....	64
P-14	Report dated 5/25/2018.....	64	
P-15	E-Mail dated 6/27/2018.....	64.....	64
P-16	Report dated 10/1/2018.....	64	
P-17	CV Updated 4/1/2024.....	64	
P-17A	Timeline.....	64	
P-18	Text Message Printout.....	64.....	64
P-19	Cease and Desist Letter dated 11/28/2018.....	64	
P-20	Cease and Desist Letter dated 11/28/2018.....	64	
P-21	Expungement.....	64.....	64
P-22	E-Mail dated 6/29/2020.....	64	
P-23	DVD-Video 1.....	64	
P-24	DVD-Video 2.....	64	
P-25	Sarah McGuire Document.....	64	
P-26	Sarah McGuire Billing Update.....	64.....	64
P-27	Sarah McGuire Supplemental.....	64	
P-28	Medical Expenses.....	64.....	64
P-29	SLED Receipt for Background Check.....	64.....	64
P-30	Net Worth Statement.....	64.....	697
P-31	Summons and Complaint.....	64	
P-32	Account Statement.....	424.....	424
P-33	Judgment.....	420.....	421
P-34	Payment Plan.....	420.....	423

INDEX (CONTINUED)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Court's Exhibits)		
C-1	Note from the Jury.....	571.....	571
C-2	Note from the Jury.....	573.....	573

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 THE COURT: All right. Anything we need to take up
3 before we tell them to send the jury up?

4 Anything from the Plaintiff?

5 MR. FEW: Nothing from the Plaintiff, Your Honor.

6 THE COURT: All right. Anything from the Defendant?

7 MR. KENDRICK: No, Your Honor.

8 THE COURT: All right. Let's bring them on up.

9 And y'all have looked --

10 Mr. Kendrick, you've looked at his voir dire and the
11 only thing we're adding is the dentistry thing?

12 MR. KENDRICK: Yes, sir. We don't have any objection
13 to those. It's just the same question I had forgot to --

14 THE COURT: Okay.

15 MR. KENDRICK: Thank you.

16 THE COURT: The remaining Defendants are the Chapman
17 Defendants and that's it; right?

18 MR. FEW: That's right, Your Honor.

19 (WHEREUPON, the jury panel entered the courtroom.)

20 THE COURT: All right. Have we got everybody?

21 THE BAILIFF: That's it, sir.

22 THE COURT: All right. Ladies and gentlemen, good to
23 see you again.

24 We are now getting ready to select the jury for my
25 first case. As I told you downstairs earlier this

1 morning, I would be presiding over a civil case. And that
2 is the case that we have here today that we're going to
3 select the jury for right now.

4 The case is entitled -- or titled Samantha Katchick
5 vs. Marshall Alexander Chapman, DMD, Brooke I. Chapman,
6 and Chapman Dental, PA.

7 Mr. Few, would you have your client stand up and face
8 the jury, please?

9 And, Mr. Kendrick, have your clients stand up, too.

10 All right. These are the parties in this case.

11 All right. Thank you very much.

12 All right. Ladies and gentlemen, this case arises
13 out of allegations that the Plaintiff was working for the
14 dental office here and was fired for allegedly stealing
15 cash. Causes of action have been brought. The Plaintiff
16 has sued the Defendants in this case and has alleged
17 that -- various causes of action for defamation, malicious
18 prosecution, false imprisonment, and civil conspiracy.

19 There's, also, a counterclaim filed by the Defendants
20 for abuse of process.

21 JURY QUALIFICATION

22 THE COURT: So is there any member of the jury panel
23 who is related by blood or marriage to any of the parties
24 in this case? If so, please, stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Does any member of the jury panel have a
2 personal or social relationship or know any of the parties
3 in this case? If so, please, stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: All right. In addition to the parties in
6 this case, potential witnesses include the following:

7 Doug Schmieding; Mike O'Shea; Sarah McGuire; Earl Simmons;
8 Jim Nasim; Brian Smith; Elliott Turner with the Greenville
9 County Sheriff's Office; Angela Hawthorn; Althea Holland,
10 Anne Tuggle, M.D.; Joshua Katchick; Debra Katchick; and
11 then again, as I said, the parties.

12 So does -- or is any member of the jury panel related
13 by blood or marriage, or have a close personal or social
14 relationship or know any of these potential witnesses that
15 I just went through? If so, please, stand.

16 Okay. Yes, ma'am. Your number?

17 PROSPECTIVE JUROR: #214.

18 THE COURT: All right. Yes, ma'am.

19 PROSPECTIVE JUROR: I believe I attend church with
20 Earl Simmons.

21 THE COURT: All right. The fact that you attend
22 church with Mr. Simmons, could you set that aside and view
23 this case solely based on the evidence, and be fair and
24 impartial to both the Plaintiff and the Defendants in this
25 case?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right. Thank you, ma'am.

3 All right. I'll ask --

4 MR. FEW: Your Honor, can we approach?

5 THE COURT: Yes.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: All right. I'm going to ask the
8 attorneys to identify yourself for the jury. We'll start
9 with the Plaintiff.

10 MR. FEW: Good morning, still.

11 I'm Wes Few. I'm the attorney for the Plaintiff. I
12 practice right here in Greenville, South Carolina.

13 MR. KENDRICK: Good morning.

14 My name is Josh Kendrick. I represent the Chapman
15 Defendants. I practice law with Kendrick & Leonard here
16 in Greenville.

17 MR. LEONARD: I'm Chris Leonard. I'm -- I run the
18 Columbia office of Kendrick & Leonard.

19 THE COURT: All right. Ladies and gentlemen, has any
20 member of the jury panel ever been represented by any of
21 these attorneys, or have a close personal or social
22 relationship with any of these attorneys, or related by
23 blood or marriage to any of these attorneys, or know any
24 of these attorneys? If so, please, stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Is there any member of the jury panel who
2 is a member of or a contributor to any group which has as
3 its primary concern the promotion of law enforcement or
4 victim's rights? And examples of these are MADD, Mother's
5 Against Drunk Drivers; CAVE, Citizens Against Violent
6 Crime; SADD, which used to be Students Against Drunk
7 Driving. Those are some -- some examples.

8 Has any member ever contributed to or been a member
9 of any of these organizations? If so, please, stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: All right. For this next question, if
12 anyone does respond to it, I'm just going to ask you to
13 stand up. And then I'll have you just come down and speak
14 to -- speak privately to me and the lawyers.

15 Has anyone on the jury panel ever been wrongfully
16 accused of a crime? Anyone on the jury panel ever been
17 wrongfully accused of a crime?

18 (WHEREUPON, there was no response.)

19 THE COURT: All right. Has anyone on the jury panel
20 ever been sued by an employee?

21 (WHEREUPON, there was no response.)

22 THE COURT: Has anyone ever been sued by a former
23 employee?

24 (WHEREUPON, there was no response.)

25 THE COURT: Does anyone have a spouse, child, or

1 close family member that is employed with a certified
2 public accountant firm, a CPA firm?

3 All right. Yes, ma'am. And your number?

4 PROSPECTIVE JUROR: #129.

5 THE COURT: All right. Yes, ma'am.

6 PROSPECTIVE JUROR: My sister is a CPA with Grant
7 Thornton.

8 THE COURT: All right. Thank you, ma'am.

9 All right. Does any member of the jury panel have a
10 spouse, a child, or close family member that is employed
11 in the field of law enforcement? If so, please, stand.

12 All right. Yes, ma'am. Your number?

13 PROSPECTIVE JUROR: #206.

14 THE COURT: All right. Tell me about your situation.

15 PROSPECTIVE JUROR: My husband worked for
16 investigations in narcotics for Laurens Sheriff's
17 Department for 27 years. And now, he's a police officer
18 for [inaudible] in Greer.

19 THE COURT: In Greer?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: All right. The fact that your husband's
22 in law enforcement, could you set that aside and view this
23 case based solely on the evidence, and be fair and
24 impartial to both the Plaintiff and the Defendants in this
25 case?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. Thank you, ma'am.

3 All right. Is there any member of the jury panel
4 that has a spouse, a child, or a family member that's
5 employed in the field of dentistry? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: All right. Has any member of the jury
8 panel formed or expressed any opinion about any issue or
9 matter involved in this case?

10 (WHEREUPON, there was no response.)

11 THE COURT: Is there any member of the jury panel
12 aware of any bias or prejudice towards either the
13 Plaintiff or the Defendants in this case? If so, please,
14 stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: And does any member of the jury panel
17 know of any reason whatsoever why he or she should not
18 serve as a juror in this case with particular emphasis
19 being placed on your ability to be fair and impartial to
20 both the Plaintiff and the Defendants in this case?

21 (WHEREUPON, there was no response.)

22 THE COURT: All right. Any additional voir dire from
23 the Plaintiff?

24 MR. FEW: No, Your Honor.

25 THE COURT: Any from the Defendants?

1 MR. KENDRICK: No, Your Honor.

2 Thank you.

3 THE COURT: All right. We will select the jury.

4 Now, ladies and gentlemen, let me just kind of tell
5 you what we're doing here. We're going to select the
6 jury. And each side gets a certain number of strikes.

7 And you may hear your number called out, but more
8 than likely, it is not your number. Your names are
9 randomly pulled by the computer and it's chronological.
10 So we start out with one, two, three, four, five, six,
11 seven, eight, nine, 10. So you may be on the list as #2,
12 but your juror number is 79.

13 So if you hear your number called out as Juror #2,
14 that -- it may -- it most likely is not -- is not you. So
15 I just wanted to let you know.

16 All right. Ms. Coker.

17 JURY SELECTION

18 THE CLERK: Using the numbers one through 20 on the
19 left, each attorney gets four strikes.

20 The Plaintiff strikes first.

21 MR. FEW: Your Honor, the Plaintiff strikes Juror
22 #22.

23 THE CLERK: One through 20 first, please.

24 THE COURT: Yeah.

25 MR. FEW: Oh, I'm sorry.

1 THE COURT: Yeah. We've got one through 20 for our
2 jury. Then we'll go 21 through 23 for our first
3 alternate. And then 24 through 26 for our second
4 alternate.

5 MR. FEW: The Plaintiff strikes Juror #3.

6 THE CLERK: Plaintiff strikes #3.

7 MR. KENDRICK: Defendant strikes #7.

8 THE CLERK: Defendant strikes #7.

9 MR. FEW: Plaintiff strikes #9.

10 THE CLERK: Plaintiff strikes #9.

11 MR. KENDRICK: Defendant strikes #8.

12 THE CLERK: Defendant strikes #8.

13 MR. FEW: Plaintiff strikes #5.

14 THE CLERK: Plaintiff strikes #5.

15 MR. KENDRICK: Defendant strikes #13.

16 THE CLERK: Defendant strikes #13.

17 MR. FEW: Plaintiff strikes #10.

18 THE CLERK: Plaintiff strikes #10.

19 MR. KENDRICK: Defendant strikes #12.

20 THE CLERK: Defendant strikes #12.

21 Now, using the numbers 21, 22, 23, you get one strike
22 each.

23 MR. FEW: Plaintiff strikes #22.

24 THE CLERK: Plaintiff strikes #22.

25 MR. KENDRICK: The Defendant waives its last

1 alternate strike.

2 THE CLERK: Do you want them to strike --

3 THE COURT: Yeah. Strike one --

4 MR. KENDRICK: Then I'll do #23.

5 THE CLERK: Defendant strikes #23.

6 Now, using the numbers 21 -- I mean, 24, 25, 26 will
7 be our second alternate.

8 Plaintiff strikes first.

9 MR. FEW: Plaintiff strikes #26.

10 THE CLERK: Plaintiff strikes #26.

11 MR. KENDRICK: Defendant strikes #24.

12 THE CLERK: Defendant strikes #24.

13 Gentlemen, I'll call these back to you.

14 Plaintiff strikes #3, #5, #9, #10, #22, and #26.

15 MR. FEW: That's right.

16 THE CLERK: Defendant strikes #7, #8, #12, #13, #23,
17 and #24.

18 MR. KENDRICK: Correct.

19 THE CLERK: Ladies and gentlemen, when I call your
20 name, please, bring your things and have a seat in our
21 jury box.

22 Katherine Dilulio.

23 (WHEREUPON, Katherine Dilulio, an Asian female, came
24 forward.)

25 THE CLERK: Rebecca Nix.

1 (WHEREUPON, Rebecca Nix, a white female, came
2 forward.)
3 THE CLERK: Christopher Jenkins.
4 (WHEREUPON, Christopher Jenkins, a white male, came
5 forward.)
6 THE CLERK: Jerry Mabry.
7 (WHEREUPON, Jerry Mabry, a white male, came forward.)
8 THE CLERK: Kenneth Davis.
9 (WHEREUPON, Kenneth Davis, a black male, came
10 forward.)
11 THE CLERK: Andrea Boyter.
12 (WHEREUPON, Andrea Boyter, a white female, came
13 forward.)
14 THE CLERK: Tajuana Norris.
15 (WHEREUPON, Tajuana Norris, a black female, came
16 forward.)
17 THE CLERK: Kristina Donahue.
18 (WHEREUPON, Kristina Donahue, a white female, came
19 forward.)
20 THE CLERK: Ramaddan Omer.
21 (WHEREUPON, Ramaddan Omer, a white male, came
22 forward.)
23 THE CLERK: Ahmad Henderson.
24 (WHEREUPON, Ahmad Henderson, a black male, came
25 forward.)

1 THE CLERK: Randolph Wile.

2 (WHEREUPON, Randolph Wile, a white male, came
3 forward.)

4 THE CLERK: Jason Kennedy.

5 (WHEREUPON, Jason Kennedy, a black male, came
6 forward.)

7 THE CLERK: Our first alternate is Mark Hardwick.

8 (WHEREUPON, Mark Hardwick, a white male, came
9 forward.)

10 THE CLERK: Our second alternate is Carolyn Jackson.

11 (WHEREUPON, Carolyn Jackson, a white female, came
12 forward.)

13 THE COURT: All right. Any motions as to the
14 selection of the jury?

15 Any from the Plaintiff?

16 MR. FEW: Nothing from the Plaintiff, Your Honor.

17 THE COURT: Any from the Defendant?

18 MR. KENDRICK: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, let me
20 address those of you who are left. I'm going to excuse
21 y'all and send you back downstairs for any additional
22 instructions.

23 Thank you.

24 (WHEREUPON, the remaining jury panel members exited the
25 courtroom.)

1 THE COURT: All right. Ladies and gentlemen, you have
2 been selected for the trial of this case. I just want -- a
3 couple of things. Lastly, our alternates. Those would be
4 those two seats up there. Next time you come in, if you'll
5 occupy those two seats right there.

6 And what I want to do -- we're going to take a lunch
7 break. And when y'all do come back or before you disperse
8 for lunch, the 12, not including the alternates, but the
9 12, I need y'all to select a jury foreperson. And that
10 person will -- doesn't have any extra weight, or get any
11 extra voting power, or anything like that. We just need
12 to select a foreperson who is sort of the liaison between
13 y'all and me. And any issues that come up or questions
14 will come through that jury foreperson.

15 So, again, it doesn't -- you don't have any
16 additional weight in your vote, one of the 12. So when
17 y'all come back from lunch, let the bailiff know who that
18 person is. And then that person will sit in the seat
19 right here where this lady is right here.

20 And I'm sorry. The alternates don't get to pick. So
21 the 12 of you that are the first 12, please, select that
22 person.

23 All right. What I'm going to do, I've got some
24 pre-trial motions and issues that I've got to deal with in
25 the case with the lawyers. So I'm going to give you an

1 extra lunch break today. So I'm going to excuse you until
2 2:15 for lunch, and then report back at that time.

3 Let me just mention a couple of things. We haven't
4 started the case yet and we haven't gotten into any
5 evidence yet. But, please, do not discuss the case at
6 all. While this case is going on, don't discuss it even
7 among yourselves. And that goes to even just saying,
8 well, I don't like what that lawyer is wearing, or I don't
9 like how that lawyer talked, or how that witness acted.
10 Don't discuss the case. You can talk about anything else,
11 the weather, sports, news, politics, anything. But just
12 don't discuss the case.

13 And that goes for when you go home tonight. Your
14 friends or family may know you're sitting on the jury.
15 They're just curious. Tell me what you're doing. What
16 kind of case have you got? What's it about? I need to
17 get you to tell them the Judge has ordered me not to talk
18 about it. You're not allowed to discuss the case
19 with anyone until I give it to you at the end of the
20 evidence.

21 So just tell them, I'll tell you all about it after
22 the trial, and you can. After this trial is over, you can
23 talk all you want to with them. So, please, don't even
24 discuss it with your family members or any friends.

25 The last thing I want to tell you is, please, don't

1 do any research on your own. I know we all have cell
2 phones and the first thing we want to do on something is
3 Google everything. We Google it. So do not Google
4 anything about this case, any party, any witness,
5 anything. Please do not do that at all.

6 This will not be on the news, or anything like that.
7 But if for some reason there was some story that came on
8 the news about it, please, turn it off and walk away. But
9 I do not anticipate this will be on the news or in the
10 news at all. But should that happen, please, do that.

11 So, please, don't discuss the case.

12 All right. So I'm going to excuse you. At 2:15,
13 when you come back, we'll swear you in and we'll start the
14 case.

15 I hope you all have a good lunch.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 12:19 p.m.)

18 THE COURT: All right. Does anybody need to take a
19 quick restroom break before we discuss motions? Does
20 anybody need to take a break?

21 MR. FEW: No, sir.

22 MR. KENDRICK: No, Your Honor.

23 THE COURT: Hollie and Lyndall, are you all good?

24 THE CLERK: Yes.

25 THE COURT REPORTER: Yes, sir.

PRE-TRIAL MOTIONS

1
2 THE COURT: Let's take up the motions. We'll start
3 with the Plaintiff. Any motions that you have?

4 MR. FEW: Your Honor, the only motions the Plaintiff
5 has before the Court is the motion in limine regarding
6 that LLR evidence. Opposing Counsel and I have spoken and
7 I don't think there's any opposition to that motion.
8 Because, as I understand it, they don't have any intention
9 of putting forward any evidence about communications with
10 LLR.

11 The other motion that we have is the motion to be
12 relieved from default, which we, also, captioned, Your
13 Honor, as a motion for judgment on the pleadings and as
14 well as a motion for summary judgment. That being that
15 the additional allegations that were added to the abuse of
16 process counterclaim, specifically, I believe in
17 paragraphs 105 and 111.

18 There was some other minor additions. But those
19 allegations had everything to do -- they were directed to
20 things that were done within the filing of the pleadings
21 in this lawsuit, which, of course, is privileged under the
22 Pond Partners case, which, actually, involves a five-acre
23 lot where Your Honor lives now and grew up. I don't know
24 if you're aware of that. But an interesting case
25 involving a lis pendens but it, also, discussed judicial

1 privilege.

2 So, Your Honor -- so for those reasons -- and in
3 addition, the reasons for default, I just want to
4 encapsulate, if I can, the timeline of what happened.
5 This was all set forth in the motion that we filed on
6 Friday that I'm making right now to be out of default.
7 Judgment on the pleadings under 12(c) and then, also, for
8 summary judgment under Rule 56(b).

9 Your Honor, the -- we had already answered the
10 counterclaim. And then in response to our amended
11 complaint -- our first amended complaint where we added
12 new Defendants and we had to get an expert affidavit from
13 Charles Shultz, who was our expert, but that's no longer
14 part of the case.

15 Without asking the Court to do -- if they could amend
16 their counterclaim, which was already pending, prior
17 Counsel to the Chapman Defendants added in these new
18 allegations that I just described. And then I neglected
19 to get my answer done. And the prior Counsel filed their
20 affidavit on March 11th at about 11:00 in the morning. I
21 think about 5:00 that day, I filed an answer to the --
22 what was their first amended counterclaim.

23 And then, Your Honor, that's where I almost forget
24 what happened. But something happened with additions we
25 made to the complaint and then we had to refile it. So

1 then they -- they filed their counterclaim again and we
2 answered it again. So we were not in default. Then we
3 were held in default. We filed an answer that day.

4 And my arguments under the factors -- the three
5 factors of lack of prejudice, meritorious defense, and
6 timely, our position is that the filing of the answer
7 cured the default. And really, Your Honor, I don't think
8 that it's proper for someone to make substantial changes
9 to their pleadings of which had already been joined and
10 answered in the case without moving the Court to do so.

11 But in any event, we had answered it. We were held
12 in default briefly. We filed a timely answer that day.
13 And as I, also, just set forth, we had previously filed a
14 motion to dismiss that counterclaim, Your Honor. Because
15 it's a really high burden to meet for abuse of process.
16 You have to identify a specific act in the course of the
17 proceeding, which was improper.

18 When they filed the counterclaim, initially, Judge
19 Kinlaw heard that motion and denied it. And -- but we
20 believe that was -- nothing has changed. They've come
21 forward with no evidence to support even what they have
22 alleged in the first part.

23 So everything that they've ever alleged fails to
24 state a claim for the same reasons of judicial privilege.
25 And that they've identified nothing that my client has

1 done or that I have done that was outside of proper
2 process of just filing and serving a complaint and serving
3 discovery.

4 And so, Your Honor, I believe those are all the
5 arguments that I have with respect to the default motion.
6 I was thinking one more thing, the summary judgment and --
7 but for all those reasons, we would ask that the default
8 be lifted and further that -- that that claim either be
9 dismissed under Rule 12(c) or dismissed under summary
10 judgment Rule 56(b) for the fact that there's no evidence
11 to support it. Certainly, there's no evidence by way
12 of -- that's required affidavit deposition testimony,
13 other than just lawyer argument.

14 THE COURT: All right. Mr. Kendrick, let me hear you
15 first on the motion to set aside the default.

16 What is your response on that?

17 MR. KENDRICK: Your Honor, obviously, I was not the
18 attorney when all this happened. But the way -- you know,
19 just the straightforward application of the rules is a
20 counterclaim was filed and it wasn't answered. I mean, it
21 seems to me to be the end of the inquiries to some degree.
22 Because I think the argument you would need to seek leave
23 of the Court to amend the counterclaim goes in the case of
24 Rule 13, it's a compulsory counterclaim. It's related to
25 a transaction underlying the lawsuit.

1 So I'm not sure how you would even do that. Because
2 you would be on one hand forced -- you have to file your
3 answer within 30 days, or an extension if that's agreed in
4 writing. But I don't think you could get leave of the
5 Court to amend the counterclaim within those days. It
6 just doesn't make sense.

7 The reason you have to amend a complaint is because
8 the complaint is the triggering document. So that's what
9 kind of starts everything. But as the complaint keeps
10 getting amended, I don't see anything in the rule that
11 would prevent a lawyer from changing the answers when they
12 file a new answer, changing their counterclaims, or
13 anything along those lines.

14 So, you know, I -- all way -- I mean, I'm not a big
15 person to hold people in default. But I don't -- number
16 one, it's not going to have a lot of affect on this trial.
17 Because I think it's to be dealt with later if you do hold
18 them in default. But the evidentiary issues I think are
19 directly related to the default. If you don't answer and
20 there is a default, you wouldn't need to produce any
21 evidence of those things. So all of those meritorious
22 defenses are waived.

23 So I think the default is correct to be entered here,
24 you know. You've got a pleading and it wasn't responded
25 to. And there's nothing in the rules that would require

1 you to -- I guess the heart of the argument is that
2 Counsel did not seek leave of the Court to amend the
3 counterclaim. I -- the only time I could see that being
4 required would be if you were doing it without a new
5 amended complaint.

6 In other words, the complaint gets filed, the answer,
7 and counterclaim. Later, someone says, okay, I want to
8 add to my counterclaim. Now, that may require leave of
9 the Court because the triggering document hasn't changed.
10 But if the Plaintiff is amending his complaint, then it
11 may very well be that the responsive pleadings change.
12 And there's nothing in the rule that would prevent that.

13 THE COURT: All right. On that issue, as far as the
14 motion to set aside, I read the entire file in this case.
15 I've read all your briefs. And just for a matter of the
16 record, I want to kind of go through the pleadings just,
17 for the record, for appellate purposes in the event that
18 should arise.

19 So my review of this file shows that on March 25th,
20 2019, we had the original summons and complaint. May the
21 24th of 2019 was the Defendant's answer and counterclaim.
22 On June the 21st, 2019 and then on June 24th, 2019, the
23 Plaintiff filed a motion to dismiss. On November the 1st
24 of 2019, the Defendants filed an amended answer and
25 counterclaim.

1 So that's the first -- right -- that's the second.
2 We have May 24th, 2019 was an answer and counterclaim.
3 November 21st was the amended answer and counterclaim.
4 And that -- it in all likelihood related to the motion to
5 dismiss. Then on November 14th of 2019, the Plaintiff
6 filed a motion to dismiss. That was denied on
7 December 18th of 2019.

8 So then on -- once that was denied on December the
9 23rd, 2019, the Plaintiff filed her reply to the
10 counterclaim on a timely basis. Then on December the 11th
11 of 2020, there was -- the Plaintiff filed a motion to
12 amend the complaint. On January the 8th of 2021, that
13 motion was granted by the Court.

14 Then on January -- also, on January the 8th of 2021,
15 the same day that the motion to amend the complaint was
16 granted, the Plaintiff filed its first amended complaint.
17 Then on January the 20th of 2021, the Defendants then
18 filed their answer and counterclaim to the amended
19 complaint. And they filed a motion to dismiss.

20 Then on February the 25th, 2021, an order was issued
21 by the Court regarding the pleadings in that case. And it
22 was re-issued by the Court on April the 16th of 2021
23 regarding the filing of a second amended complaint.

24 So in between January the 20th of 2021 when the
25 Defendants filed an answer and counterclaim to the amended

1 complaint and, also, filed a motion to dismiss between
2 that date and the April 16th, 2021 -- actually, the first
3 order by the Court was February 25th, 2021. And then the
4 order of April 16th, 2021, which was an amended order, in
5 between those dates. On March 11, 2021, the Defendants
6 filed their affidavit of default. On that same day, the
7 Plaintiff filed their reply to the amended counterclaim,
8 March 11, 2021, assuming a response to receiving the
9 affidavit of default. Then there's the order of
10 April 16th of 2021 allowing the second amended complaint.

11 And so on that same day when the order -- the
12 supplemental order was issued by the Court on April 16th,
13 2021, the second amended complaint was filed. And then on
14 April the 9th -- I mean, April 29th, 2021, the answer and
15 counterclaim to the second amended complaint was filed at
16 that time.

17 Now, stopping right there, the issue on the default
18 goes back to the answer and counterclaim to the first
19 amended complaint, which was filed on January the 20th of
20 2021. And that is the date that the motion to set aside
21 the default deals with. However, since January the 20th
22 of 2021 when the Defendants filed their answer and
23 counterclaim to the first amended complaint, additional
24 pleadings were filed, motions were filed, hearings were
25 held.

1 So, again, I then go back to where we were, the order
2 from the Court, which I believe was Judge Gravely, on
3 April 16th, 2021, ordering the second amended complaint
4 would be filed. In response, as I said earlier, on April
5 the 29th of 2021, the Defendants filed their answer and
6 counterclaim to that second amended complaint.

7 Then on May the 12th of 2021, the Plaintiff timely
8 filed her reply to the answer and amended counterclaim,
9 which goes to the second amended complaint. Then on May
10 the 13th of 2021, the Plaintiff filed a motion to further
11 amend the complaint. On July the 21st of 2021, that
12 motion was granted.

13 Now, there is a reason I've went through those dates
14 because they are relevant and important to the issue of
15 default. And so the issue of default under Rule 55, which
16 is what we have here, this is not a judgment by the
17 default under the rule. So under Rule 55, the standard
18 for granting default is good cause, a relief from default.
19 So the Court's got to look at it from the perspective of
20 Rule 55 as to whether or not there's -- there is good
21 cause.

22 And so my purpose in reciting all of those pleadings
23 is to lay the foundation for my basis and reasoning in a
24 finding that there is good cause in this case. And that
25 is mainly due to the fact that this case has been

1 thoroughly briefed, pled, answered, sued, motions filed.
2 And, also, noting that I do hear the Plaintiff -- I mean,
3 the Defendants argument that the January 20th, 2021,
4 answer and counterclaim was not answered, but the original
5 amended answer and counterclaim was answered on
6 December 23rd, 2019. The January 20th, 2021, counterclaim
7 was not answered. However, it was answered, albeit late,
8 on March the 11th, 2021.

9 Then the second amended complaint was filed on
10 April 16th, 2021. The Defendants then filed their answer
11 and counterclaim to the second amended complaint. And the
12 Plaintiff timely replied to the amended -- replied to the
13 answer and amended counterclaim to the second amended
14 complaint.

15 So, again, my purpose in going through each of those
16 pleadings and the -- the dates of those pleadings, and the
17 orders in this Court, this is not a case where I believe
18 that Rule 55 -- the purpose of Rule 55 comes into play.
19 Rule 55 and, also, Rule 60, which is a stricter standard
20 that once a judgment of default is granted is to come into
21 play when a party just does not respond to anything. That
22 is the purpose, in my opinion, that pleadings -- or
23 motions are granted holding someone in default and motions
24 to set aside are not granted.

25 In this case, this was a matter of the parties were

1 involved extensively in this case. And if you look at our
2 South Carolina cases, the basis of when the Courts look at
3 it, there are some -- there is some language in those
4 cases, mainly, Patton vs. Miller, Jordan vs. Hartford
5 Insurance that are relevant and important to me when I
6 decide these motions.

7 In Jordan vs. Hartford, Justice -- now Justice Hill
8 authorized that opinion. And I think what is important to
9 me and does have merit is his opinion that states as
10 follows, The good cause standard exists to ensure the
11 interest of justice are protected even when a party
12 missteps. So a harmless procedural footfall does not
13 spring a trap door that mindlessly jettisons innocent
14 parties out of court, regardless of the circumstances.

15 He goes on to say -- and this is a very recent case.
16 It's a 2021 case. Rules are rules and due dates matter.
17 The rule of good cause is, also, a rule. He then further
18 opines where he states, Where there is a good faith
19 mistake of fact and no attempt to thwart the judicial
20 system, there is a basis for relief.

21 And this is what really strikes at the heart as a
22 trial lawyer for 36 years and now being on the bench for
23 several years now, I can relate to this next language in
24 the opinion. These cases recognize, as we do again today,
25 that the practice of law is challenging enough without

1 having to endure the overbearing enforcement of
2 technicalities when prejudice is absent from the scene.

3 In Patton vs. Miller, which is our Supreme Court in a
4 fairly recent case as well there, 2017, states as follows,
5 The purpose of the rules is to secure justice and,
6 consequently, they reduce formalities and technical
7 technicalities. It is too late in the day and entirely
8 contrary to the spirit of the Rules of Civil Procedure for
9 decisions on the merits to be avoided on the basis of such
10 mere technicalities. The rules reject the approach that
11 pleading is a game of skill in which one misstep by
12 counsel may be decisive to the outcome and accept the
13 principle that the purpose of pleading is to facilitate a
14 proper decision on the merits.

15 And so for those reasons, I find that there is good
16 cause in this case. This is not a matter where somebody
17 just was trying to thwart the justice system and didn't do
18 anything to plead. And based on all of the pleadings --
19 and that was the purpose of me going through -- and I know
20 it was tedious. And I'm sure everybody did not want to
21 hear the dates of all these pleadings and what they were.
22 But in ruling on the motion to set aside default, it is a
23 very important ruling, a very important motion and
24 important to all parties. And so for those reasons, I
25 find there is good cause.

1 Now, under our law, once that -- that does not end
2 the inquiry. Under our case law, once the Court does find
3 good cause, the Wham factors have to be decided. There is
4 a misconception that you go right to the Wham factors to
5 determine whether or not you get relief and default under
6 Rule 55. That is incorrect.

7 And so our case law sets out that, first of all, my
8 job as trial judge is to determine whether or not there is
9 good cause under Rule 55. And I determine there is.

10 My next requirement under the rules is that I then
11 determine whether or not the Wham factors are met.

12 And that's W-H-A-M, Hollie.

13 Those are timeliness of a motion, meritorious
14 defense, and prejudice to the parties. And I do find that
15 sufficient evidence in the record indicates that those
16 three elements are met.

17 And so for those reasons, based on Rule 55 and the
18 Wham factors, I find there is good cause. And I do find
19 that there is sufficient factual evidence in the record to
20 support the three elements of the Wham -- the three Wham
21 factors in this case. So for those reasons, the motion to
22 set aside default is granted.

23 Now, as to the motion on judgment on the pleadings
24 and motion for summary judgment, reviewing the file in
25 that -- in those matters, I want to hear from you on that.

1 MR. KENDRICK: I was going to tell you, Your Honor,
2 we would withdraw that claim based on your ruling. And I
3 don't think that -- I mean, you did mention it to the
4 jury. But I don't think we need to make any big deal out
5 of it. I think we just don't talk about it anymore. We
6 are not going to go forward on the abuse of process. I
7 will withdraw the claim.

8 THE COURT: Okay.

9 MR. KENDRICK: And we can say that with prejudice, if
10 that matters. But we don't intend to pursue that claim.
11 And I've consulted with my clients on that.

12 THE COURT: So that takes care of those matters.

13 Any more from the Plaintiff? Any more motions?

14 MR. FEW: That's all from the Plaintiff, Your Honor.

15 THE COURT: Any motions from the Defense?

16 MR. KENDRICK: Your Honor, just looking at -- like I
17 believe I told you earlier, Mr. Few was kind enough to
18 send his trial exhibits to us, which I think will help. I
19 can do this however you want. There are 30 exhibits. I
20 have gone through and a number of them, I agree with and
21 would not have an objection to and would be happy to
22 pre-admit those now.

23 So if you want me to put that on the record now, I
24 can do that. I can, also, tell you the ones we have an
25 issue with because they fall into a broader category.

1 THE COURT: Let's do this, and Ms. Jenkins will
2 appreciate that y'all have agreed to some exhibits and
3 pre-marking them would be good.

4 Let's go, if you would, for the record, what exhibit
5 numbers do you agree on?

6 MR. KENDRICK: And I'm going to give you the number
7 and a brief description so that Mr. Few can verify we're
8 talking about the same thing. Exhibit No. 1 is a mugshot
9 of the Plaintiff. We have no objection to that. Exhibit
10 No. 2 is the arrest warrant. There's no objection.
11 Exhibit Nos. 3, 4, 5, and 6 are e-mails from a Defendant,
12 one -- it could be a different Defendant. We had a couple
13 different Defendants. As to Earl Simmons, who is going to
14 be a witness, we do not have any objection to those
15 e-mails coming in. Exhibits Nos. 7, 8, and 9 are either
16 e-mails or one of them is just an attachment that was in
17 an e-mail from Mr. Douglas Schmieding.

18 MR. FEW: Schmieding.

19 MR. KENDRICK: Schmieding. We have no objection to
20 any of those. Exhibit Nos. 10 and 11 are e-mails from
21 Defendant Brooke Chapman to Elliott Turner at the
22 Greenville County Sheriff's Office. We have no objection
23 to those. Exhibit No. 12 is the Brady Rule 5 response
24 from the solicitor's office. We have no objection to
25 those documents. Exhibit No. 13 is the preliminary

1 hearing transcript. We have no objection to that.
2 Exhibit No. 15 is an e-mail from the assistant solicitor
3 to Doug Schmieding. We have no objection to that.
4 Exhibit No. 18 is a text message from Alex Chapman. It's
5 alleged to be to the Plaintiff. But either way, we don't
6 have an objection to it.

7 Exhibit No. 21 is the expungement paperwork the
8 Plaintiff had done and the order. We don't have an
9 objection to that. Exhibit No. 26 are invoices to Sarah
10 McGuire, who we understand is a therapist, a licensed
11 social worker. We do not have an objection to those
12 invoices. Exhibit No. 28 is a list of Plaintiff's medical
13 expenses. We do not have an objection to that. And
14 Exhibit No. 29 appears to be a SLED receipt where the
15 Plaintiff paid the requisite fee, \$25 or \$26 to pull her
16 own RAP sheet. We do not have an objection to that.

17 THE COURT: All right. Is that correct, Mr. Few?

18 MR. FEW: Well, I'm hearing that for the first time.
19 But I've marked it down. And I am grateful for the
20 ability to, actually, find another lawyer that does this
21 before trial like I try to do generally, Your Honor.

22 THE COURT: Well, and as I said Ms. Jenkins
23 appreciates it more than any of y'all or me as well.

24 All right. So, for the record, there will be no
25 objection from the Defendants on Exhibit Nos. 1, 2, 3, 4,

1 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 26, 28, and 29.

2 MR. KENDRICK: Yes.

3 THE COURT: So those exhibits will be admitted into
4 evidence without objection.

5 (WHEREUPON, Plaintiff's Exhibit No. 1, 2, 3, 4, 5, 6,
6 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 26, 28, and 29
7 were marked for identification only.)

8 THE COURT: All right. And then now you have the
9 ones that were not identified are the ones you have
10 objections to?

11 MR. KENDRICK: Yes, sir. And I can run through those
12 briefly because they kind of fall together. And I will
13 tell you, I'm sorry I didn't do this even earlier than
14 today. Strangely enough, we're starting another trial
15 next week. It's, actually, another malicious prosecution
16 case. I'm on the Plaintiff's side and that's in federal
17 court with some deadlines. So I'm trying to juggle
18 everything or I would have been able to do this before.

19 THE COURT: That's okay. I appreciate y'all working
20 on it.

21 MR. KENDRICK: So I'll just kind of go in my mind
22 what I think is easiest. Exhibit No. 30 is a net worth
23 statement of Alex Chapman that the previous attorney had
24 before the last trial filed to bifurcate proceedings. I
25 probably didn't have a strong position on that. But as

1 I'm looking at it, I do think that is an appropriate
2 motion because they have alleged punitive damages. They
3 have a net worth statement from our client that reflects a
4 few million dollars.

5 I think there's probably some issues with the
6 admissibility of that in the case in chief because it
7 creates a prejudice to look at. For example, someone
8 might consider the amount of money stolen and they might
9 compare it to this net worth statement, even though they
10 don't come from the same time period at all.

11 We just don't think it would be admissible to prove
12 any relevant fact in the liability portion, or even in
13 what I would call the actual damages portion. So we would
14 ask that you grant that motion to bifurcate the case. And
15 then Exhibit No. 30 would only be admissible at that time.

16 THE COURT: Any response from the Plaintiff on that?

17 MR. FEW: Well, Your Honor, we're opposed to the
18 bifurcation for several reasons. But I don't have any
19 real argument with it. I think in my pre-trial brief each
20 time we filed it, I suggested when it comes up we could
21 just stipulate to the net worth as an alternative. I
22 would reserve the right, though, Your Honor, if it becomes
23 an issue with -- when that witness takes the stand to be
24 able to use that for impeachment purposes, obviously.

25 THE COURT: Well, if there's a motion under the

1 statute to bifurcate, as y'all recall in tort reform many
2 years ago, then I will grant that motion and bifurcate as
3 to any punitive damages. When a party moves for that
4 motion, then I will grant that motion.

5 So the issue of punitive damages will be bifurcated.
6 And with that, any evidence related to punitive damages
7 which would include net worth, and that is Exhibit No. 30,
8 are not to be discussed or admitted in the case of the
9 liability.

10 Now, Mr. Few, let me address your -- or let me ask
11 you your follow-up on your position there about
12 impeachment. I'm trying -- as you were mentioning it, I'm
13 trying to think of any situation that would ever come up
14 where you would be able to use a net worth statement for
15 impeachment.

16 Is there any statement -- or any scenario you think
17 that could possibly come up?

18 MR. FEW: My imagination is worn out, Your Honor.
19 Given Your Honor's ruling, I can't imagine anything until
20 we get to the second stage of the trial. And that raises
21 issues -- I guess we're going to -- I'm going to beg for
22 some guidance on how do we go about even the mention of
23 punitive damages in -- in the --

24 THE COURT: Well, here's how the procedure works,
25 when you bifurcate a case on liability and actual damages

1 and punitive damages, it is a two-phase process where the
2 first phase is the evidence can be based solely on
3 liability and actual damages. Any evidence that deals
4 solely with punitive damages is excluded.

5 So any evidence that deals solely with punitive
6 damages is to be excluded in the first phase of the trial.
7 And so the evidence -- and it's -- it's a matter of
8 counsel and the Court being mindful of what the evidence
9 is put forth. And it can only relate, again, to the
10 liability issue and the actual damages issue. Any
11 evidence that may relate anything to punitive damages is
12 not admissible in the first part of the case.

13 If there is a verdict -- so the first phase of the
14 case is put up the evidence just like a regular trial,
15 closing arguments, charge the jury. And if the jury then
16 determines there is a -- that the Plaintiff has met her
17 burden of proof and finds a verdict in favor of the
18 Plaintiff and there are actual damages, then we go to the
19 second phase of the trial and the Plaintiff puts up any
20 evidence that it may want to put up on that issue.

21 The Defendant, of course, can -- Defendants can, of
22 course, cross-examine the witnesses. And the Defendants
23 could put up evidence as well and any mitigation of that
24 as well in the second phase.

25 It very well may be just -- there may not be any

1 additional testimony. I'm not saying that there will or
2 will not be. I'm just giving you examples of what could
3 or could not happen. So it may be a matter of entering
4 the net worth or it could be a matter of putting up some
5 witnesses on the issue of punitives.

6 So the jury then gets -- you give another set of
7 arguments to the jury, a separate verdict form is given to
8 the jury. At that point, we ask, do you find based on
9 clear and convincing evidence that the elements of
10 punitive damages have been reached and if there is a
11 verdict of that.

12 So it's two separate trials, basically. The second
13 one, of course, being much shorter than the first. Some
14 trials are put up with some evidence. Some are just
15 simply put something into evidence and closing arguments
16 are made. And that's really -- it can be short and
17 simple, just depending on what the evidence is going to
18 be. And, again, the jury then determines what happens in
19 the second phase.

20 So that's the general procedure that we follow when
21 there's a bifurcation on punitive damages.

22 Yes, sir. Anything -- were you getting ready to say
23 something?

24 MR. KENDRICK: No, no. I was going to move on.

25 THE COURT: The key thing here is -- and both parties

1 need to be mindful of this and I do as well is there,
2 obviously, can be some overlap in some of the evidence.
3 And so that's where y'all need to be mindful of that and
4 that you try -- the Plaintiff needs to try to stick to the
5 liability and the actual damages.

6 But, Mr. Kendrick, obviously, there can be some
7 overlap there.

8 And I think really the heart of the issue under the
9 statute is that if there's any evidence that relates
10 solely to punitive damages, that is not to be brought into
11 the original case. And a primary example is the net
12 worth. Net worth in a case relates solely to the evidence
13 on punitive damages. I think that's a good example.
14 Whereas, there may be some other evidence that overlaps
15 that is allowed in both phases of the trial.

16 So that's the procedure that we follow in a
17 bifurcation of punitive damages.

18 Any response to that from the Plaintiff?

19 MR. FEW: Question, if I may, Your Honor. Does Your
20 Honor have a template of a verdict form that's been used
21 under the bifurcation scenario? Because, obviously, we're
22 going to have to change our verdict form to take punitives
23 out.

24 And, additionally, what is the jury going to be told
25 about that, if anything, in the case in chief on

1 liability? Because we know that some of them are going to
2 be thinking about it. And I don't want there to be
3 confusion on behalf of the jury if there is something
4 behind the next curtain or not.

5 THE COURT: Now, here -- here's the thing on that in
6 response to your question. And it's a good question.
7 Because that's a question that gets asked a lot. The
8 short answer to that is they're not told about anything.
9 They're not told about the second phase.

10 MR. FEW: Right.

11 THE COURT: So they will find out about the second
12 phase once they have rendered their verdict on the first
13 phase. And at that time, they will, most likely, believe
14 that they are done. And so, at that time, I will then
15 inform them that they are not done. And that we will go
16 to the second stage of the trial.

17 So in response -- so that's the process that goes --
18 they will not be told anything about the next stage of the
19 trial -- I mean, of the case -- of the trial. And there's
20 to be no mention of punitive damages in any part of the
21 first phase of the trial, not in opening statements, not
22 in evidence, not in argument. There's nothing to be
23 mentioned about punitive damages or a second phase.

24 Again, they will find out, depending on what their
25 verdict is. So if they render a verdict for the

1 Plaintiff, it will go to the next stage. If they do not
2 render a verdict for the Plaintiff, the case is over. So
3 it just depends on the verdict.

4 So the verdict form -- to answer your question, the
5 verdict form for the first part of the trial is,
6 basically, do you find the Plaintiff has met their burden
7 of proof? And they go through each cause of action and
8 check yes or no. If they check yes, then they go to what
9 are the damages for those causes of action?

10 So, generally speaking, that's the verdict form for
11 the first part. It's whether there is liability. Were
12 the Defendants liable? If so, there's a place for actual
13 damages. If not, they check no. If they check no on the
14 cause of action -- on all the causes of action, the case
15 is over. If they check yes for actual damages, I then
16 inform them that we're going to stage two. And it would
17 be on the issue of punitive damages.

18 And I will give them a short instruction as to why
19 we're doing this, what we're doing, and the process for
20 that. And it will be brief. It will be, basically, what
21 I'm telling you. What I've told you and explained to you
22 is what I will tell them. And we go to the next phase
23 solely on the issue of punitive damages.

24 So I hope that answers your question.

25 MR. FEW: Yes, Your Honor, it does.

1 And then we would each be able to make, basically, a
2 second closing argument on the punitive damages?

3 THE COURT: Yes. And the Defendants could put up any
4 evidence they want to in response or reply to Plaintiff's
5 evidence.

6 It's really a second phase with regular witnesses, if
7 you want to call witnesses. Again, sometimes, it may be
8 just put in the net worth and then you just give a closing
9 argument. So it just all depends on what you -- what you
10 want to do.

11 All right. So that's how the process on bifurcation
12 would work.

13 All right. Are there any -- we're still on
14 Defendants, any motions -- so I've granted the motion to
15 bifurcate.

16 MR. KENDRICK: Yes, Your Honor. These are fairly
17 simple ones. I'm going to give you some context. There's
18 a witness that's been listed named Althea Holland. She is
19 an ex-employee of the dental practice. There was -- after
20 this litigation began, there was a dispute between her and
21 Dr. Chapman. She was terminated or quit, something like
22 that.

23 So, first of all, I think there's -- there's three
24 exhibits related to her. Two of them are a video that
25 someone took of this dispute between Dr. Chapman and her

1 in the office. So our argument against those, first of
2 all, would be relevance. These are things that took place
3 after everything related to the Plaintiff's case. So I
4 don't know how they'd be relevant to her making her case.

5 Even if they were relevant, Your Honor, it would be a
6 404(b) issue. It seems like it's improper character
7 evidence to try to make Dr. Chapman look like someone who,
8 I guess, would cause trouble with an employee. I have
9 racked my brain and I cannot figure out how any of that
10 would be relevant to the case at hand. So that's
11 Exhibit Nos. 24 and 23.

12 And then Exhibit No. 22 appears to be an e-mail
13 between Mr. Few's office and prior counsel's office trying
14 to schedule Ms. Holland's deposition. So I don't really
15 know what that has to do with anything. It doesn't seem
16 to have anything else --

17 THE COURT: So Exhibit No. 22 is a deposition notice.
18 And then which one is the video? Exhibit No. 23 and
19 Exhibit No. 24?

20 MR. KENDRICK: Exhibit Nos. 23 and 24 are both
21 videos.

22 THE COURT: They're both videos?

23 MR. KENDRICK: Exhibit No. 22 is not a deposition.
24 It's just an e-mail, like, Hey, can you get us a date for
25 this employee? And then the lawyer writes back and says,

1 Yeah, we're working on it.

2 THE COURT: All right. And tell me again. So
3 there's a video -- or two videos showing an interaction
4 between Dr. Chapman and this witness?

5 MR. KENDRICK: Right. It looks like Dr. Chapman is
6 yelling at her and she's talking back. They're very
7 short. But he's asking her to leave and she leaves. And
8 it's our understanding that video was taken long after any
9 of the events in this case. And it doesn't have anything
10 to do with the events.

11 THE COURT: Mr. Few, let me hear from you. What's
12 the relevance of that?

13 MR. FEW: Sure, Your Honor. And we -- some of those
14 were listed -- really, those were primarily listed in an
15 abundance of caution almost to give advanced notice of an
16 impeachment, if it's necessary.

17 But since that time, Your Honor -- if I may approach,
18 I have another exhibit.

19 Josh, I think I sent you this by e-mail when I first
20 discovered it.

21 But what that is right there, Your Honor, is the
22 lawsuit that was filed by prior counsel to the Defendants
23 against Brian Smith, who was one of our witnesses. And
24 you'll see the allegations in here relate to paragraph
25 13 -- and, apparently, the gentleman has not yet been

1 served with this lawsuit.

2 So it -- it, certainly, is plausible that the plan
3 was that if he shows up to testify, he would get served
4 with it. If he didn't, he wouldn't. But he's under
5 subpoena. So it doesn't really matter.

6 The Defendant has attempted to become involved in
7 litigation regarding the Plaintiff in order to further
8 spread false and damaging information. That's paragraph
9 13. And then, Your Honor, paragraph 18, specifically,
10 talks about the videos.

11 So, apparently, this Brian Smith who was not deposed
12 in the case, Your Honor, he's a former friend of
13 Dr. Chapman's, as I understand it, has the videos. And so
14 that is something that makes the video -- that gives the
15 videos, certainly, potentially more relevance than they
16 had prior to this lawsuit being filed against one of
17 Plaintiff's witnesses in this case.

18 Your Honor, we identified this gentleman in a
19 supplemental discovery response probably in 2022, I think,
20 mainly for the purpose of, yet, another defamatory
21 statement having been made regarding my client. And he --
22 we've given them notice that he's anticipated to testify
23 that Dr. Chapman said he was stressed out about a lawsuit
24 near his pool, or something like that. And that the
25 lawsuit -- and that Sam stole from him. So he was

1 continuing to repeat the defamatory statement long after
2 the charges had been dismissed.

3 THE COURT: But is there anything in the videos that
4 has any of the Defendants saying anything defamatory about
5 your client?

6 MR. FEW: I don't anticipate any big fight on my part
7 to get those videos in, Your Honor.

8 THE COURT: Unless -- and now, of course, these are
9 motions in limine. And my rulings are contemporaneous --
10 of course, just a reminder, you know, it's different in
11 state court than federal court. Motions in limine, you've
12 got to renew. So make sure y'all remember to renew
13 your -- any objections.

14 But I don't find any relevance at this point on --
15 from what I hear. So I'm not going to allow it unless
16 something comes up that I hear.

17 MR. FEW: Thank you, Your Honor.

18 MR. KENDRICK: The -- all right. So the next one is
19 fairly simple, Your Honor. Exhibit Nos. 19 and 20 are
20 cease and desist letters from Mr. Few to Alex Chapman.
21 And then that's Exhibit Nos. 19 and 20 is cease and desist
22 letters from Mr. Few to Chapman Dental. Basically, it's
23 related to this text message. It included No. 18 that I
24 don't have an objection to. The lawyer then sends an
25 e-mail to Mr. Chapman that says, Don't contact our client

1 again.

2 My understanding is this is before the lawsuit was
3 filed, so he wasn't contacting a represented party. And
4 if he sent the text message, there wasn't anything in it
5 other than -- again, I'm not positive we concede that it
6 was supposed to be to Ms. Katchick. But the text message,
7 basically, says, Let's catch up over a beer and I'll pay
8 for it.

9 THE COURT: So it's a cease and desist letter from
10 Mr. Few to your clients?

11 MR. KENDRICK: Right.

12 THE COURT: Cease and desist making defamatory
13 statements?

14 MR. KENDRICK: Well, no. It just says don't contact
15 her or we're going to file for a trespass or restraining
16 order. The other mess that we get into is neither one of
17 those would be proper remedies to what they're complaining
18 about. So I just don't know why it's relevant or what it
19 has to do with anything.

20 That letter -- I don't disagree. And this is why
21 I'm -- in trying to be credible here, I mean, I don't
22 disagree that even if I don't concede that text message
23 helps their case, then I can understand why they would
24 want to try to put it in evidence and argue it's relevant.
25 But then the responding cease and desist, my client says,

1 okay.

2 THE COURT: What's the relevance of that, Mr. Few?

3 MR. FEW: Your Honor, once again, just in an
4 abundance of caution, it's not just my letter, though.
5 It's each one is a separate response from who I believe to
6 be Dr. Chapman. So there is his response to the cease and
7 desist that was --

8 THE COURT: Does the response relate to the issues --
9 the factual issues in the case?

10 MR. FEW: He says --

11 THE COURT: Well, what is the response?

12 MR. FEW: The first -- in one of them, he says, Okay,
13 Wes, a little unnecessary, but that's fine. Have a great
14 Christmas. And the other one says, Received. Thank you.
15 Merry Christmas.

16 THE COURT: All right. Unless I hear something --
17 I'm -- I'm not going to allow that, unless I hear
18 something that comes up that has some relevance. So
19 Exhibit Nos. 19 and 20 would be not admissible at this
20 point.

21 MR. KENDRICK: And then, finally, Your Honor, so this
22 is -- I'm going to lump it together and start with and
23 tell you that there's sort of various degrees of
24 complaint, if you will.

25 Exhibit No. 25 is the written expert report from

1 McGuire, who is a damages witness related to therapy that
2 Ms. Katchick has undergone. Exhibit Nos. 14 and 16 are
3 written expert reports from Mike O'Shea, who is a forensic
4 accountant, who holds an opinion about the accounting
5 records.

6 I do not take issue with their testimony. I've
7 looked at their information. I've looked up their
8 licenses. I've done my research. They appear to be
9 qualified expert witnesses. That doesn't change the fact
10 that the written report that they wrote and produced in
11 the course --

12 THE COURT: Is it part of litigation?

13 MR. KENDRICK: Yes.

14 THE COURT: Okay.

15 MR. KENDRICK: Those reports are hearsay. And to be
16 fair, Your Honor, I've got -- from a case law standpoint,
17 there's an old case from the 90s from New York, it's a
18 district case, AV [phonetic] vs. GMC, where it, basically,
19 goes to the analysis and simply says that, of course,
20 their testimony is fine and they can rely on hearsay,
21 but --

22 THE COURT: Expert reports to a lot of members of the
23 bar are not -- I see this come up. But I think,
24 Mr. Kendrick, you are right --

25 Well, I'll hear from you, Mr. Few, though, first.

1 But expert reports are hearsay. The expert can
2 testify. He can, certainly, testify to the report, which
3 is done every day in every courtroom across the country.
4 He or she can testify. But the report itself is
5 considered hearsay.

6 And so unless there's an exception under 803 or it's
7 not hearsay under 801 -- and, of course, 801(d)(1) and
8 (2), that would be your prior consistent statements or
9 admissions of a party opponent. Those are the two under
10 801 that allows them in. And I don't believe an expert
11 report falls into either one of those. And then I'm not
12 aware of any exception under 803 that allows an expert
13 report.

14 Again, it's sort of dealing with six or half of a
15 dozen, one or the other. I mean, they can testify to
16 that, but you just can't put the report in. And,
17 obviously, the basis -- I think that started out in old
18 English common law is that it prevents somebody from just
19 getting a report, putting it into evidence, and then
20 telling the Judge we rest. And there's the report. And
21 there's all you need and the case is -- our case is over.

22 So I think that's really the basis for that.

23 So, Mr. Few, though, I'll hear from you.

24 MR. FEW: No, Your Honor. I don't disagree with any
25 of that. And I don't know that I really need -- want the

1 jury back there going through expert reports.

2 There is one distinction, however. Exhibit Nos. 14
3 and 16 were prepared by Mike O'Shea before the lawsuit was
4 filed. The first one, I believe, was May 25th of 2018.
5 And the second one was October 1 of 2018.

6 So to the extent that makes a difference going
7 forward, I just wanted to clarify that for the Court, that
8 he was not retained. He was retained by her criminal
9 counsel, initially, to do some expert forensic reports
10 regarding the -- the breach of trust charge.

11 And the second report is he'll testify to -- in his
12 first report, he said if you were going to do a report
13 like this, you have to look at all of this, this, this,
14 and this. And then they dumped all of that on him. And
15 he went through it again and gave his second report.

16 THE COURT: All right.

17 MR. FEW: But I don't know that I really want the
18 jury -- that, primarily, was just for disclosure purposes.

19 THE COURT: So for purposes of Exhibit Nos. 14, 16,
20 and 25, I would not allow them in, unless something comes
21 up and they're used for any other basis. So those reports
22 will not be allowed. Certainly, they could be used -- it
23 could be used under 613.

24 MR. KENDRICK: Sure.

25 MR. FEW: 27 falls in that category as well.

1 MR. KENDRICK: I'm sorry. I didn't say 27.

2 MR. FEW: That's her supplemental report that we just
3 recently got because of the ongoing treatment.

4 THE COURT: So they're excluded under hearsay, but
5 could be used under 613, if needed.

6 MR. KENDRICK: I don't disagree that everything in
7 them, he can get up there and testify to. I just didn't
8 want them to be taken back into the jury room.

9 THE COURT: All right. What's next?

10 MR. KENDRICK: The last is Exhibit Nos. 17 and 17A.
11 So 17 is O'Shea's -- the same expert we were just talking
12 about -- his curriculum vitae. I don't know that that
13 needs to go to the jury, but I, also, don't really care
14 that much. That's just a document that I've never seen us
15 enter into evidence.

16 THE COURT: I don't allow CVs in, unless there's some
17 reason.

18 Mr. Few, I'll allow you to respond.

19 I just don't allow CVs in. Really, they should not
20 be in because they're not relevant and they're, also,
21 hearsay. It's a document. It's, also, hearsay. The
22 expert can, certainly, testify all about his CV and his --
23 his or her qualifications. But I don't allow that to go
24 back to the jury.

25 MR. FEW: No objection, Your Honor. Understood.

1 MR. KENDRICK: And then the last one, Your Honor,
2 this one I do think is probably, you know, not so much
3 seen before, but Exhibit No. 17A appears to be a timeline
4 of events. It's three pages. It was created by
5 Mr. O'Shea and kind of goes through everything that
6 happened in the underlying case.

7 My main problem is that he makes a lot of leaps of
8 logic. For example, he characterizes certain things in a
9 way in which I know the Plaintiff is going to try to
10 prove. And I think if he wants to try to testify to those
11 as an expert, but, certainly, this timeline wouldn't be
12 entered into evidence and then sent back to the jury for a
13 variety of reasons. Number one, it's hearsay. But,
14 number two, it has a number of what I would consider sort
15 of comments on the ultimate issue we have, which I don't
16 think he can necessarily testify to.

17 And, you know, I take issue with the way he's
18 characterized some of the things in here. So he may want
19 to advocate and testify that way. And Mr. Few may want to
20 argue these points. But I don't think you can enter this
21 as an actual formal exhibit and give it to the jury to
22 take back to the jury room.

23 THE COURT: Any response on that, Mr. Few?

24 MR. FEW: No objection.

25 THE COURT: I agree. He can, certainly, use that

1 while he's testifying. He can refresh his recollection
2 under 612. You can use it as a recorded recollection
3 under 803(5). Of course, as you know, under 803(5), a
4 recorded recollection, you read it into evidence, but you
5 can't put it into evidence.

6 So 17A, I would not allow that as well. But he or
7 she, whoever it is, can use that in -- as part of his
8 testimony. But it will not be admitted into evidence and
9 go back to the jury room.

10 MR. KENDRICK: That's all we have related to that,
11 Your Honor.

12 Just as a housekeeping matter, I did read Mr. Few's
13 pre-trial brief, arguably more thorough than mine. And I
14 did want to just make the point that he goes through kind
15 of the matters at issue in trial. He sort of discussed
16 the elements he thinks are in dispute. I just want to
17 point out that we don't agree to that. There are other
18 elements of those causes that we will, also, be disputing.
19 And I think that will just come out when we start trying
20 the case. But I didn't want to waive -- I don't do as
21 many pre-trial briefs as other people do. So I just
22 wanted to make sure --

23 THE COURT: I'll tell you, both of your pre-trial
24 briefs are good. Yours was, too. I mean, some just do --
25 don't do anything on it. And it really -- I mean, it

1 helps me as the trial judge. And that's why I require
2 them, you know. I just -- I want to know -- I read the
3 whole file. I read -- every case I've got, I read the
4 whole file and -- but I allow you to do the trial brief
5 because I can decipher when I'm reading the file what your
6 positions are. But I like to see what your positions are
7 and what evidentiary issues you may have. It makes things
8 go better and makes the trial go more efficient as well.

9 All right. So any other motions from the Defense?

10 MR. KENDRICK: No, Your Honor.

11 THE COURT: Anything else from the Plaintiff?

12 MR. FEW: Do you want to address 31 right now or wait
13 until the witness comes up?

14 THE COURT: What are you intending to use that for,
15 Mr. Few?

16 MR. FEW: If I need to refresh his memory.

17 THE COURT: That's one thing, refreshing his memory,
18 you can use anything to refresh somebody's recollection.
19 Now, of course, when you use 612, just keep in mind that
20 when you're refreshing recollections under 612, it's not
21 read. You show it to the jury -- I mean, the witness, see
22 if it refreshes their recollection. And you take it away
23 is what's supposed to happen. I know that doesn't happen
24 a lot.

25 And then under -- if that doesn't work and you go

1 under 803(5) for recorded recollection, then that's an
2 issue we'll have to address. Again, it doesn't go in.
3 It's read into evidence at that point.

4 The easy example of that is a police report. Law
5 enforcement officers, they look at their report. They
6 testify about the report, but it doesn't go into evidence.

7 MR. KENDRICK: Can I just respond to that, Your
8 Honor? I'm relatively known for using 613, the refresh
9 your recollection --

10 THE COURT: 612.

11 MR. KENDRICK: 612. I do it all time, obviously, not
12 enough to know the rule, though. I did not file this
13 lawsuit. I don't disagree that Dr. Chapman is the
14 Plaintiff. I didn't have anything to do with it. In
15 fact, I don't intend to serve anybody during this case.
16 And I don't intend to take any action in this lawsuit.

17 My concern is, where do we go with it? So, for
18 example, if he -- I mean, I don't know what -- because
19 even though I agree with you that any document can be used
20 to record [sic] the recollection under that section of the
21 rule, we still go into the prejudicial versus probative.
22 I can't imagine what would be in this document that might
23 trigger someone's memory. I mean, at the end of the day,
24 what's happened here is -- you know, just so you have some
25 context.

1 I am, generally, aware that Mr. Brian Smith has made
2 numerous bad reviews of Dr. Chapman's dental practice.
3 They used to be very good friends and had some kind of
4 falling out during the course of this case. And I think
5 it's not being correct that he is -- I don't think he knew
6 anybody involved in the case, other than Dr. Chapman. And
7 he's decided to become a witness.

8 So, you know, it's weird. It seems more like I would
9 want to bring up the lawsuit just to show sort of what his
10 motivation --

11 THE COURT: Well, when I first looked at it and read
12 it, I was thinking that same thing, that, if anything, it
13 would be something for cross.

14 MR. KENDRICK: But it got filed a month ago. Like I
15 said, I didn't have anything. I think the whole thing
16 that will happen when Mr. Smith testifies, if there is a
17 statement that he will make a claim he heard and he thinks
18 that statement was defamatory, then, you know, I don't
19 disagree that that's the kind of evidence that would come
20 out in the courtroom.

21 But as to him getting sued, again, by another lawyer
22 that represented Dr. Chapman prior to me -- and, again, I
23 don't mind telling you that I was aware that this lawsuit
24 got filed. But I, certainly, don't have any further
25 involvement in it. So I don't know -- I mean, you know,

1 the worry is we get into a side show where we're sort of
2 trying the Holland issue, which really just arose after
3 every event in this case. So there's just nothing --
4 nothing really to it.

5 THE COURT: Let me ask you, Mr. Few, so you're
6 intending to admit Exhibit No. 31 as an exhibit?

7 MR. FEW: Probably not, just if I need to use it to
8 refresh his memory or -- I don't intend to distract the
9 jury away from our case to look at other cases either,
10 Your Honor.

11 THE COURT: All right. Well, as y'all probably
12 figured out how I try a case, I like to keep it between
13 the ditches, just focus on the issues at hand. And don't
14 get -- I don't want to be trying another case in another
15 case. I don't want to be trying cases within cases.

16 So to the extent that that possibly could come up,
17 let's try to refrain from that. And let's just stick to
18 the issues in this case.

19 All right. Anything else from the Plaintiff?

20 MR. FEW: Nothing from the Plaintiff, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. KENDRICK: No, Your Honor.

23 THE COURT: All right. Well, we'll start back -- I
24 told the jury to come back at 2:15.

25 Let me tell y'all this, if at any time y'all need to

1 discuss anything, I'm available at any time. If y'all
2 need to get something on the record or see me in chambers,
3 whatever, but I would ask that you e-mail Mr. Umbriano, my
4 law clerk. He has his phone with him at all times and
5 checks his e-mail during the trial. And if you need to
6 address something, let me know. And I'll come in early
7 before the jury comes in, whether it's in the afternoon or
8 in the morning.

9 Because one of the big things that are important to
10 me is I don't keep a jury waiting. So I'll come in early
11 in the morning. I'll stay late at night and not eat lunch
12 if we have to to address something that we can keep the
13 jury from sitting out there. I try to keep my trials on
14 time. It doesn't always work, but I give it a shot and I
15 do the best I can.

16 The jury appreciates that, too. They don't like to
17 be sitting back there waiting. And sometimes they have
18 to. That's just part of it. And I tell them -- in my
19 opening instructions, I tell them that there may be some
20 times that they will have to sit back there waiting, but
21 not to blame y'all, but blame me. I'll take the heat for
22 it. I'll always go back after the trial and talk to them,
23 too. And they're always aware of that and appreciative
24 that we try to keep them on time.

25 So, like I say, if anything comes up and you want me

1 to come in here early or whatever, let me know, let
2 Mr. Umbriano know. It's gmorganlc@sccourts.org.

3 All right. See you at 2:15.

4 (WHEREUPON, Plaintiff's Exhibit Nos. 1, 2, 3, 4, 5,
5 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17A, 18,
6 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31
7 were marked for identification only.)

8 (WHEREUPON, Plaintiff's Exhibit Nos. 1, 2, 3, 4, 5, 6,
9 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 26, 28, and 29
10 were admitted into evidence.)

11 (WHEREUPON, a lunch break was taken.)

12 THE COURT: Anything we need to take up before we
13 bring the jury in?

14 Anything from the Plaintiff?

15 MR. FEW: No, Your Honor.

16 THE COURT: Anything from the Defendants?

17 MR. KENDRICK: Your Honor, one thing I forgot is to
18 invoke Rule 615 of the Rules of Evidence and ask that the
19 witnesses be sequestered. And, of course, if there are
20 people sitting in here that are not witnesses, they would
21 not be able to discuss what they hear in here.

22 THE COURT: Any objection from the Plaintiff?

23 MR. FEW: No objection, Your Honor. So I think,
24 yeah --

25 Debra, you'll have to --

1 THE COURT: Whoever the potential witnesses -- if you
2 have any potential witnesses --

3 MR. KENDRICK: Let me...

4 (Pause.)

5 MR. KENDRICK: Your Honor, I don't have any problem.
6 I believe the Plaintiff's mother is in here and may be a
7 witness. But based on what her role would be, I would be
8 happy to offer an exception to that.

9 THE COURT: Okay. I'll grant that exception.

10 MR. FEW: Yeah. And, Your Honor, she's not -- she
11 doesn't have any testimony regarding -- it would only be
12 the effects on the Plaintiff.

13 THE COURT: Well, I've got discretion to grant an
14 exception. And I did grant it.

15 Anything else before we bring the jury in?

16 MR. FEW: Nothing from the Plaintiff, Your Honor.

17 THE COURT: All right. Let's bring them in.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:21 p.m.)

20 THE COURT: All right. Good afternoon.

21 I hope everybody had a good afternoon.

22 All right. Ms. Coker, swear the jury.

23 THE CLERK: Ladies and gentlemen, please stand and
24 raise your right hand for the oath in this case. Your
25 response will be "I will."

1 (WHEREUPON, the jury was sworn at approximately
2 2:22 p.m.)

3 THE CLERK: Thank you.

4 Please be seated.

5 INTRODUCTORY REMARKS

6 THE COURT: All right. Ladies and gentlemen, we're
7 about to start the trial of this case. As I told you
8 earlier, this is a civil case. And, first of all, let me
9 tell you it is not like it is on TV. Trials in the real
10 world are a lot different. They're a little bit slower.
11 It's not like on TV where an incident happens and all of a
12 sudden, it goes to trial and the jury renders a verdict
13 all in an hour. So that's not the way it works in the
14 real world. So just be prepared for that. And be patient
15 with us.

16 If there are any delays or any issues, please, blame
17 it on me. Don't blame it on the parties or the lawyers.
18 I'm the one responsible for running the courtroom. And
19 there may be times where it does take a little bit longer
20 to handle some things. So, please, don't hold anything
21 against the parties or the lawyers.

22 So it is a civil trial. So what that means is the
23 Plaintiff, who has brought the lawsuit, has the burden of
24 proof. In other words, they have to prove -- or she has
25 to prove her case. And because this is a civil case, the

1 burden is what we call a preponderance of the evidence or
2 a greater weight of the evidence.

3 Y'all are probably more familiar with beyond a
4 reasonable doubt. That's for a criminal case. Proof in a
5 criminal case is much stricter and requires more, and that
6 is guilt beyond a reasonable doubt. But because this is a
7 civil case, the burden of proof that the Plaintiff has is
8 a preponderance of the evidence.

9 And the easiest way to describe that to you is with
10 the scales of justice. You may be familiar with the
11 symbol of the justice system. It's the lady of justice.
12 And she is a lady that is holding out a set of scales, two
13 sides of scales. And that's what represents your role
14 here. You are that lady of justice. And what you will do
15 is weigh the evidence.

16 So when this trial starts, those scales are even.
17 They are even before it gets started. And, as I said, the
18 Plaintiff has the burden of proof. And at the end of the
19 trial, if the Plaintiff -- and what you do is you weigh
20 the evidence. The evidence comes in and you put it on a
21 set of scales, each side, the Plaintiff one side and the
22 Defendant on the other.

23 And at the end of this trial, if after all the
24 evidence is in and those scales are still level, then the
25 Plaintiff has not met her burden of proof. Or if they

1 tilt in favor of the Defendant, the Plaintiff has not met
2 her burden of proof. However, if at the end of the trial,
3 you've weighed the evidence and the scales tilt ever so
4 slightly in favor of the Plaintiff, she has met her burden
5 of proof. So that's what we call the greater weight of
6 the evidence.

7 Let me just kind of tell you how the trial works.
8 What we're going to hear here in a few minutes after I get
9 through giving you my instructions here is that the -- the
10 attorneys will give you what we call opening statements.
11 The Plaintiff will go first. And the lawyer for the
12 Plaintiff will give his version of what he thinks the case
13 is going to be about. And then the Defendant's lawyer
14 will get up there and he will tell you his side of the
15 story and what the Defendant's position is in the case.

16 Once the opening statements are made by the lawyers,
17 then the Plaintiff, because they've got the burden of
18 proof, they go first and they will put up their case,
19 their evidence. And that evidence is in the form of -- of
20 witnesses or of documents. And all that is to be
21 considered, what I allow into evidence and allow you to
22 hear.

23 So the Plaintiff goes first. They put up their case.
24 Once the Plaintiff gets finished, the Defendants are
25 entitled to put up their case. So once they put up their

1 case and all the evidence is in, then the lawyers will get
2 back in front of you at the end of the case and give you
3 what we call closing arguments. And they will put all the
4 evidence together, put it together for you and give you
5 their arguments as to why they should prevail in this
6 case.

7 And then once that happens, once the lawyers give you
8 the closing arguments, then I will instruct you on the
9 law, and just tell you what the law is, and what you're to
10 use to apply in this case.

11 Now, I'm the one responsible for the law. I'm the
12 judge of the law. But you are, also, judges in this case.
13 You are what we call judges of the facts in the case.
14 You, and you alone, determine what the true facts are in
15 this case.

16 I can't do anything. I cannot determine any issue.
17 I don't have and will not have an opinion on the facts,
18 nor can I. I'm not allowed to. That is solely your job.
19 And nobody is going to interfere with your job. You, and
20 you alone, determine what the facts are in this case. And
21 that comes from, as I said, the witness stand right here
22 and any exhibits that may be admissible in the case.

23 In determining what the facts are, it's important
24 that you look and determine the credibility of the
25 witnesses who will testify in this case. Credibility

1 simply means believability. And you, and you alone,
2 determine that credibility as to the witnesses and the
3 exhibits that are put into this case. So you are the
4 judges of the facts in this case. And you are to
5 determine what those facts are.

6 Now, through the case, you -- through the trial here
7 this week, you'll hear objections from the lawyers. And
8 then I'll rule on those objections. Do not hold it
9 against the lawyers for making objections. That's what
10 their job is here to do. They're here to represent their
11 clients, and they will. So objections that are made are
12 just part of their job in representing their clients. Do
13 not hold anything against any of the lawyers for objecting
14 to any evidence.

15 There may be some times when I have to excuse you and
16 let you go to the jury room because I may have to take a
17 matter up outside your presence. Please be patient with
18 that. There just may be some things that I need to handle
19 that may take a little while that I need to excuse you for
20 just a little bit.

21 There may be some times, though, when I can bring
22 them up here, bring the lawyers up here and we can handle
23 it right here while you're there. And that will save us a
24 little bit of time. We're not holding anything back from
25 you intentionally. But there's a reason for me to do that

1 and I can maybe resolve something up here at the bench and
2 not have to excuse you. But, again, there may be some
3 times when I do have to excuse you.

4 Some of you may be asking, can I take notes? Well,
5 I -- my rule in my courtroom is I don't allow note taking.
6 Let me tell you why. I have found that when jurors are
7 taking notes while a witness is up on the stand, they're
8 busy trying to write down their notes and what was just
9 said. And they're not listening to what the witness is
10 currently saying. And so, oftentimes, jurors miss what's,
11 actually, going on when they're busy trying to write
12 something down on a piece of paper.

13 And, also, they may miswrite something. I know a lot
14 of people say if it's written, that's it, it's the gospel.
15 But that's not necessarily the case. So for that reason,
16 I just don't allow jurors to take note. I just find that
17 you -- you hear it better and you take it in and you are
18 able to -- to hear it and understand it better if you're
19 just paying attention to it while the witness is on the
20 stand and not worrying about trying to write anything
21 down. So that's why I don't allow that.

22 That's the process and procedure in our case. And as
23 I told you before we broke for lunch, again, even during
24 the trial, please, don't discuss the case. Don't Google
25 anything. Don't try to find out anything about the

1 parties, the lawyers, or anybody else. Just, please, wait
2 until the end of the case.

3 All right. With that said, I'll recognize the
4 Plaintiff for opening statement.

5 OPENING STATEMENTS

6 MR. FEW: Thank you, Your Honor.

7 May it please the Court.

8 Good afternoon, ladies and gentlemen.

9 So it's my privilege to represent Samantha Katchick
10 in this matter. She's a wonderful -- I call her young
11 lady because I'm a little bit older than her. She has no
12 criminal record. She had a few driving tickets prior to
13 what happened to her in February of 2018 when she was
14 arrested and charged with breach of trust over \$2,000, but
15 under \$10,000, which in South Carolina carries a penalty
16 of up to five years in jail and a fine, which I can't
17 remember right now.

18 She was arrested pursuant to a complaint that was
19 made to the sheriff's department by Mr. -- Dr. Alex
20 Chapman, who was her former employer. And the evidence
21 will show you that his wife, Brooke Chapman, who's seated
22 over there as well was involved in the communications with
23 the Greenville County Sheriff's Office Deputy Elliott
24 Turner, who will testify before you probably today about
25 the complaint that they made to him.

1 Probable cause is an issue and something you're going
2 to learn about in this case. I'm going to go over what
3 the definition of probable cause is. Mr. Kendrick is
4 going to talk about what probable cause is. But there's
5 two times that probable cause is evaluated.

6 Law enforcement is entitled to rely on information
7 that people provide to them. And you will understand in
8 this case that Dr. Chapman convinced Elliott Turner that
9 this woman was solely -- not primarily, but solely
10 responsible for all of the cash every day from 2013 when
11 she started working there until early 2017, we'll say. So
12 part of 2013, all of 2014, all of 2015, all of 2016, and
13 then she was terminated.

14 Employees from Dr. Chapman's office are going to
15 testify, one former employee and one current employee,
16 that that was not the case. Think about it. How could
17 one person be solely responsible for all of the cash?
18 They would have to put it in a bundle and take it in their
19 purse every time they go to the bathroom.

20 You're going to hear testimony that every
21 Wednesday -- not just occasionally, every Wednesday, she
22 took off at 1:00 p.m. so she could go work another job
23 that she had bartending at the Kanpai of Tokyo steakhouse
24 so that she could provide for her family and two boys as a
25 single mother.

1 So she worked there for four years. And the Judge
2 has just talked to y'all about the way you look at
3 evidence. And I want to talk a little bit about that.
4 Because we judge things all the time. Some things we can
5 judge quickly, and some things we can't judge so quickly.
6 So there will be times when we have to really listen,
7 like, when we're explaining probable cause. Or in a
8 minute, I'm going to explain to you the different types of
9 damages that are recoverable in a case like this.

10 Because when you're falsely arrested, it's not like
11 you're in a car accident and you're in the hospital and
12 you've got \$3,000 of medical bills and they just kind of
13 build out from there. The damage that was done to her was
14 emotionally. And she has done great to recover from it.

15 She got another job pretty much immediately. She was
16 fired, I think, at the end of February of 2017. They
17 didn't go to get her arrested until -- the real work,
18 apparently, started in October of 2017 when Brooke
19 Chapman's uncle by marriage, Earl Simmons, who's, also,
20 going to testify in the case, who's a CPA, started
21 preparing some reports that showed that money was missing.

22 But here's the problem, they had office software
23 called Eaglesoft. Anybody with a log in could log into
24 Eaglesoft and change an entry at any point in time. So
25 you had an unreliable source of data from the beginning.

1 And the only thing they did to make up this allegation --
2 and by the way, the allegation is that she stole \$3,505.19
3 over a three-year time period. And this is a business
4 that was bringing in \$400,000, \$500,000, maybe \$600,000 a
5 year. Okay. So the allegation is only related to the
6 cash.

7 Earl Simmons gets brought in on October 22nd of 2017.
8 And he -- they go back and forth about whether or not to
9 put it in a graph. He sends an e-mail back to the
10 practice and says, The graphs don't make any sense. And
11 then later, he says, You don't need a signature. You just
12 need to be able to take this to the police so that you can
13 call her current employer and tell them what she did.

14 So not only did they have her arrested, they did
15 everything in their power to get her fired from the new
16 job that she had. And you're going to hear from the owner
17 of the dental practice this afternoon. His name is Jim
18 Nasim. He knows Dr. Chapman. They used to work together.
19 He's going to testify that he got a phone call on his cell
20 phone and was told that she stole from the practice. As a
21 result of -- and he's a guy who buys dental practices. He
22 was a dentist, but he's, like, more of an entrepreneur.

23 As a result of that, they didn't really know what to
24 do. She was told by several people, you're going to be
25 fired. So they sent her to work in Spartanburg. And

1 that's one of the elements of her damages. Her
2 out-of-pocket are not really, really big in this case.

3 So two words, there's what we call special damages in
4 cases like this. And there's what we call general damages
5 in cases like this. So pay attention because I barely
6 understand this myself sometimes.

7 Special damages are defined as the damages that flow
8 as the result of the wrongful conduct, but don't
9 necessarily occur in every situation. Okay. I'll give
10 you an example. Somebody goes down to the sheriff's
11 department and they swear out a false allegation and they
12 get somebody arrested. But the next day, they have a
13 change of heart. And they come back and they say, awe,
14 we're going to drop those charges.

15 The person that was falsely arrested still has a
16 claim for the time that they were unlawfully detained and
17 required to go down and get booked in the detention
18 center. Okay. But they wouldn't have a special damages
19 claim for hiring an attorney to make sure they don't go to
20 jail. She does have a claim. She had to hire an
21 attorney. She hired a local attorney named Dave Seay, who
22 did an outstanding job. The charges, eventually, got
23 dismissed. But they did not get dismissed without a
24 fight.

25 Not only did -- they went to the preliminary hearing

1 and the Judge there found probable cause. But he found
2 probable cause based on the testimony that she was solely
3 responsible for doing it.

4 You're going to hear that is what Dr. Chapman worked
5 very hard to convince the Greenville County Sheriff's
6 Office Investigator Elliott Turner that she was solely
7 responsible. You're going to be convinced before the
8 evidence is done probably at the conclusion today that
9 that was not the case.

10 So then she hires a private -- an investigator -- a
11 forensic investigator. He's, actually, a guy that I've
12 known for 20 years. And that's how I got introduced in
13 the case. He called me up and said, hey, you need to look
14 at this case. So I did. And I took it. We filed the
15 case on March 25th of 2019. So we're happy to have our
16 day in court here today.

17 Mike is a certified forensic examiner. He's a
18 licensed private investigator. He's really, really good
19 at getting down into the details of receipts and things
20 that nobody else wants to do, and writing up reports about
21 what's happened. And he's done that on numerous, numerous
22 occasions. He's been appointed by the Court to be a
23 receiver over complicated businesses that needed to be
24 wound up.

25 He prepares a report in May of 2018. And he says,

1 first off, you have unreliable data from Eaglesoft, the
2 office practice software. And let me explain a little bit
3 about that. Eaglesoft is a software that is primarily
4 designed for you to make appointments, save X-rays. It
5 helps you do the things that you want to do and set up
6 procedures, and things of that nature. And it's one of
7 the two softwares that's normally used. It, also, has a
8 billing feature included in it. But it's -- like I said,
9 it's subject to change. And you'll hear plenty of that
10 from witnesses and from Mr. O'Shea.

11 So he prepares his first report. And he says -- in
12 his report, he says if you wanted to, actually, reach a
13 conclusion about an allegation like this, here's what all
14 you would have to look at. So what did the Chapmans do?
15 They didn't back down. They went and got a big pile of
16 information, a bunch of bank statements. And they took it
17 and gave it to the solicitor's office and said, Well, go
18 look at this. So he did.

19 Then he writes another report in October of 2018.
20 And he says the same thing. But he even figures out that
21 the amount of money that was missing, according to their
22 records, was really only about \$2,100, which is a bit of a
23 big deal because the Prosecutor -- it's a big deal to be
24 charged with \$2,000 and over versus \$2,000 and under
25 because the sentencing goes up to five years, as opposed

1 to a much shorter sentence.

2 But in any event, she didn't take any money.
3 They have no evidence that she took any money. This was
4 all just made up to get revenge.

5 So in November of 2018, the charges get dismissed.
6 After she, actually, had to hire yet another attorney
7 because she was afraid of what might happen. So out of an
8 abundance of caution, she hires another attorney, Ryan
9 Beasley. So she's had to hire two attorneys and one
10 forensic investigator. She's had to come out of pocket to
11 pay those people. And she's still paying on some of
12 those.

13 So I've mentioned Earl Simmons, who is Brooke
14 Chapman's uncle by marriage. After they e-mail back and
15 forth with him and he sends them, basically, the report
16 and he sends them something and he tells Dr. Chapman,
17 you -- I'm not going to sign it, but you can sign it.

18 And then they were even smarter than that. They took
19 Earl Simmons's word on November 13th, 2017, I believe, at
20 2:48 p.m. and they e-mailed it to the guy that was doing
21 their tax preparation work. And his name is Doug
22 Schmieding. And he's going to testify, hopefully, here
23 today. He's a CPA.

24 And Doug -- they wrote him -- they wanted him to
25 write a letter. Why did they want him to write a letter

1 about calculations that they had done? Well, he did it.
2 He writes a letter and he sends it back to them the next
3 day. It says, like, To whom it may concern. It's already
4 stipulated to be in evidence, so you'll see it. It,
5 basically, says based on the data that you gave me, the
6 amount of money that you said is missing is missing.

7 So he had no idea. And he'll testify he had
8 absolutely no idea that Dr. Chapman would take his letter
9 and take it to Elliott Turner at the Greenville County
10 Sheriff's Office and convince him that it's an audit.

11 Okay. Audit is a very misleading word. When a CPA
12 does an audit, there are strict, strict guidelines that
13 they follow. Doug Schmieding is going to testify it was
14 not an audit. In fact, on June the 27th of 2018, after
15 Mike O'Shea had prepared his first report, that's our
16 forensic investigator, the Prosecutor, Alexa Kluska, from
17 the Thirteenth Circuit Solicitor's Office, which is the
18 same area where you are here when the Judge said this is
19 Greenville and Pickens County. She's a prosecutor for
20 Greenville and Pickens County. She e-mails Mr. Schmieding
21 and says, Hey, you know, they have Mike O'Shea and the
22 Chapmans have you, can maybe you and Mr. O'Shea get
23 together and help me understand what's happening here?

24 Well, Mr. Schmieding calls her back, but he never
25 responded to her e-mail. There was never anything further

1 in writing. And not surprisingly, the business
2 relationship between Chapman Dental and Mr. Schmieding's
3 accounting firm, Jennings Cook, it ended not long after
4 all of that happened.

5 So the claims that we have in the case are malicious
6 prosecution. And in order to prevail on malicious
7 prosecution on any claim, the Judge is going to charge you
8 at the conclusion of the presentation of evidence and the
9 closing arguments -- rhe's already told you how the -- the
10 burden of proof we have to meet, which is to tip the
11 scales. We have to prove that an institution or
12 continuation of judicial proceedings.

13 Well, there's no doubt that the Chapmans filed the
14 complaint with the sheriff's office. They actively
15 pursued having her prosecuted. They did not take no for
16 an answer. And I think they're going to come up here and
17 say, we just went down to the sheriff's office and gave
18 them this report. And we didn't know what they were going
19 to do with it. Well, I have my doubts as to whether or
20 not you're going to find that to be credible.

21 Institution or continuation of judicial proceedings
22 by the Defendant. So it was instituted by Dr. Chapman
23 with the cooperation and the assistance of Brooke Chapman,
24 who's sending e-mails. She's e-mailing back and forth
25 with the investigator. She even tells him, Thank you for

1 all your hard work once they accomplish their goal, which
2 was to have Samantha arrested on February 8th of 2018.

3 Element three, that those proceedings were terminated
4 in Samantha's favor. Well, they were. Once the sheriff's
5 office brought the file over here to the lawyers that,
6 actually, have to take it and get a conviction, they
7 looked at it and they're like, this is no good. They
8 dismissed it. And she got her record expunged at no
9 charge.

10 Then we have to show malice in instituting the
11 proceedings. That's one of the issues that we're going to
12 have to prove, that they, actually, did this with malice.
13 And I'll get into malice later. The Judge will charge you
14 on malice. Malice, it can mean bad faith or something
15 that an ordinary person wouldn't have done.

16 Lack of probable cause. Dr. Chapman knew that
17 Samantha was not solely responsible for all the receipts
18 and deposits. Okay. She was primarily responsible
19 because she worked at the front desk. But she wasn't
20 there on Saturdays. The envelope was not locked. It was
21 kept in an unlocked drawer. You'll hear testimony about
22 that. She didn't work on Wednesdays when she went to work
23 at her other job. And on, at least, two occasions, she
24 took vacations between three and four days to go see her
25 family in Pennsylvania and to take another vacation.

1 Resulting in injury or damage. Well, if being
2 arrested based on a false allegation is not cause of
3 injury or damage, then I don't know what is.

4 Okay. False imprisonment is similar to malicious
5 prosecution, but it's a little bit different. So for
6 false imprisonment, we have to prove that the Defendant
7 restrained her. And that can include by making -- so they
8 didn't physically restrain her. We know the sheriff's
9 office did and law enforcement did. But law enforcement
10 did it based on false information that they knowingly
11 provided to law enforcement because they apparently had
12 some type of vendetta against her.

13 That the restraint was intentional. Well, it,
14 certainly, was not unintentional that Dr. Chapman took a
15 big report and went down to the sheriff's office and said,
16 This woman stole from me. Will you, please, have her
17 arrested? And then he went back and forth and back and
18 forth with them about the evidence they needed to do it.

19 And then that the restraint was unlawful. Well, for
20 the restraint to be unlawful, it just has to be without
21 probable cause.

22 And it all gets back to the word "solely." And
23 you're going to see the word solely in the arrest warrant.
24 That's what's a big deal. Because Elliott Turner, the
25 investigator, he has to go before a judge and convince the

1 judge that he has probable cause to make an arrest. That
2 just means that there is some evidence. That Judge relies
3 on what that investigator gives him. And he told him that
4 she was solely responsible, which she was not solely
5 responsible. She was primarily responsible. And she
6 never could have been solely responsible for that.

7 Okay. We, also, have claims -- not a claim, but
8 claims for defamation because there have been multiple
9 defamations. If you go down to law enforcement and you
10 make -- and by the way, making a false statement to law
11 enforcement is a crime. And I'll read you the code here
12 in a minute.

13 Slandering someone is a crime. It doesn't get
14 prosecuted very often. But a slander or a libel, making a
15 false statement about someone that damages their
16 reputation is illegal. It is illegal speech. It's not
17 allowed. In addition, conspiring to do these types of
18 things is, also, a crime.

19 Before I go to that, defamation, you may know, is
20 when you say something about somebody and it damages their
21 reputation. There are several different types of
22 defamation. The worst type of defamation is what's known
23 as actionable. And it's when you say something about
24 somebody that says that they have committed a crime of
25 moral turpitude. Well, stealing is considered a crime of

1 moral turpitude. They accused her of stealing.

2 Therefore, she's entitled to the general damages.

3 Now, I told you about the special damages earlier.

4 Special damages are things that we can kind of put a
5 number on. Like, okay, you had to go to the doctor. You
6 had to buy this prescription. You had to hire this
7 lawyer. You had to hire this forensic expert. And we can
8 put all of those in a chart. But general damages are the
9 things that no one in this room, except you can put value
10 on.

11 And general damages are the things that flow from
12 what has happened, shame. Okay. Everybody who's falsely
13 arrested feels shame. Everybody who's falsely arrested is
14 going to be humiliated. She was humiliated. She couldn't
15 go to her child's functions. Law enforcement came and
16 knocked on her door and took her concealed weapons permit.

17 And, as I said, her job found out about it. They
18 knew about it because she was missing work the day that
19 she had to go turn herself in. So they knew about it.
20 But not only that, Dr. Chapman went one step further and
21 he called Jim Nasim and said, You have an employee that
22 stole from me. He had no evidence that she had stolen
23 from him.

24 So defamation occurred when they went to the law
25 enforcement officers and gave false statements about her.

1 Everybody in that law enforcement office, even though it's
2 part of their job, was led to believe she was a thief and
3 that she was unfit for her profession. Because her
4 profession is working a front desk at a medical clinic.
5 She went to school for that, got a degree in it. And
6 shortly after that, she was hired by Dr. Chapman.

7 But he defamed her there. Then he defamed her when
8 he called Jim Nasim and said, This woman stole from me.
9 And he, also, defamed her to other people, including a
10 former friend of his when he continued to tell people that
11 she had stolen from him, even after the charges had been
12 dismissed.

13 So the false -- I won't get into the details. But
14 the defamation is when you either say something or write
15 something that damages someone's reputation. Here, we're
16 dealing with the fact that these things were said. That's
17 why we have to bring witnesses in to tell you what was
18 said, and when it was said, and what they remember about
19 it in those circumstances. If it had been done on
20 Facebook, I could just present the Facebook pages to you
21 as evidence.

22 And it's not a privileged communication. So if
23 you -- certain communications are privileged. If you go
24 home and have a discussion with your spouse, it's
25 privileged. If your company gets sued and you have a

1 meeting, then you can have communications within a small
2 framework. Those can be considered privilege. It's not a
3 privileged statement to call a third party up, Jim Nasim,
4 who you know, and tell him that this person stole from
5 you.

6 That leads us to our civil conspiracy claim. We have
7 to prove that a combination of two or more people combined
8 to do a criminal or unlawful act or a lawful act by
9 criminal or unlawful means. Once again, it just gets back
10 to was there probable cause? And then an act by one or
11 more of those in pursuance of a scheme in furtherance of
12 the object. That's some legal language I know. I
13 apologize for that. I try to avoid it.

14 Here's what probable cause is, ladies and gentlemen,
15 probable cause is defined as a good faith belief that a
16 person is guilty of a crime when this belief rests on such
17 grounds as would deuce an ordinarily prudent and cautious
18 man under the circumstance to believe likewise. He made
19 up his mind that she had stolen because, I don't know, he
20 can tell you why he did that on the witness stand. He
21 manipulated Uncle Earl. He manipulated Doug Schmieding.
22 He manipulated Elliott Turner. And he had her arrested
23 and made her life absolutely miserable.

24 She went 293 days not knowing if she was going to go
25 to jail for these charges, not knowing if she could afford

1 to hire the next lawyer, not knowing what was going to
2 happen, being tormented, being humiliated, not being able
3 to have a concealed weapons permit, not being able to go
4 to her kids school functions.

5 The civil conspiracy claim requires that something be
6 done that's unlawful. I'm just going to hold these up.
7 Slander and libel is a crime under South Carolina code
8 16-17-150. That's a statutory crime.

9 Now, what we have here today are what are called
10 common law claims. But this is under the criminal code.
11 Anything under Title 16 is criminal code. False
12 statements to law enforcement. It is unlawful for a
13 person to knowingly make a false statement to a law
14 enforcement officer concerning the alleged commission of a
15 crime by another, as it should be.

16 The crime of conspiracy is a statutory offense in
17 this state. It requires a combination between two or more
18 persons for the purpose of accomplishing a criminal or
19 unlawful object, or an object neither criminal nor
20 unlawful by criminal or unlawful means. Making a false
21 statement to law enforcement is -- is a crime. That's
22 what was done here.

23 So we're going to ask you to award her all of her
24 special damages, which is all of her out-of-pocket
25 damages. And when she takes the stand, it's going to be a

1 little bit detailed. Because we've gone through and
2 marked where certain prescriptions that she's paid for
3 were required by the treatment that she had to get after
4 all this happened that she wasn't previously doing it.
5 And that's going to be in the special damages category.

6 But you get to decide. You get to decide how to
7 compensate someone for the humiliation and the shame. And
8 I can't even really begin to explain it. A person with no
9 criminal record, other than a few little traffic tickets.
10 She still doesn't have a criminal record. She still has
11 her job. The new employer, after sending her to
12 Spartanburg for six months and they cut her pay, they even
13 cut her pay, but where they sent her to work in
14 Spartanburg, she could only work about 20 hours a week
15 where she had been working 35 hours a week.

16 So, again, these are not massive numbers that are in
17 the special damages category, but they are numbers. She
18 had to pay for gas to go over there. She had to miss out
19 on -- you're, also, going to hear testimony from Sam that
20 at one point, it was so overwhelming that she quit working
21 her job at Kanpai Tokyo. She, eventually, went back, but
22 she's not working there any more. So she wasn't able to
23 do that, to work there for that reason as well.

24 So we're going to put up our case. I'm going to put
25 it up as fast as I can. My plan today is to call

1 witnesses that are going to be short witnesses. A lot of
2 times, you start a case by calling the Plaintiff. But I'm
3 going to call some witnesses that can give you some flavor
4 and some insight as to what was going on here. Hopefully,
5 they're going to get up and get down pretty quickly.

6 When we finish with all of our -- presenting our
7 evidence, I hope that you will find that I have proven to
8 you all of these elements that I have gone over on these
9 claims. And we will ask you to hear the Judge's charge
10 and go into the jury room and render a verdict in favor of
11 Samantha Katchick.

12 Thank you very much.

13 THE COURT: The Defense is recognized.

14 MR. KENDRICK: Thank you, Judge.

15 So I disagree with a lot of the things that Mr. Few
16 just told you. And that's probably not a surprise because
17 that's why you're here. For centuries, when citizens of
18 this country disagree on facts, we call other people to
19 come in and decide what happened.

20 So what you have just heard are a lot of big
21 promises. There's going to have to be a lot of proof to
22 back this up. What I'm not going to do as I sit up here
23 is run through any kind of legal language for you.
24 Because I feel like maybe, as jurors, what happens a lot
25 of times is we try to become professors. We talk at you.

1 We try to tell you all these different legal words that we
2 don't deal with in common day-to-day life.

3 So what I'm going to try to do is tell you the story
4 and tell you what your job is, what questions you're
5 supposed to answer, what truth you're supposed to see with
6 the kind of language we use every day in conversations so
7 that you can become part of this process and you can
8 render an actual true verdict. We get beat up as lawyers
9 a lot for being tricky or throwing smoke screens and never
10 quite saying what we mean. So I want to try to avoid
11 that.

12 The heart of this dispute is really whether or not
13 Dr. Chapman believed that the Plaintiff had taken money
14 from him. It is not whether she, actually, took that
15 money. That is a question that while it might take place
16 in this courthouse or in a different courtroom with
17 different lawyers under a different system. That's the
18 criminal system. That's the system that requires a series
19 of events to take place. It has a number of protections.
20 It doesn't make any difference whether she took the money
21 or not. What matters is did Dr. Chapman and Ms. Chapman
22 believed she took the money.

23 So in this case, what you will hear and what you will
24 see is that there was a problem with the accounting. Now,
25 whether that problem has to do with this Eaglesoft

1 software, whether it has to do with the way things were
2 entered into that computer, whether it has to do with the
3 way payments were handled, or whether it has to do with
4 money going missing really doesn't matter.

5 Because there won't be any dispute that prior to any
6 of these things happening, what the accounting records
7 showed had been brought into that practice and what had
8 been put in the bank did not match up. 2,000, 3,000, we
9 can sneeze at that number, but that's a significant amount
10 of money. That money isn't making it to the bank.

11 So Dr. Chapman, who is a dentist -- he can clean your
12 teeth. He can do a root canal on you. But he's not an
13 accountant. So he calls an accountant and says, Look at
14 these numbers and tell me am I seeing what I think I'm
15 seeing.

16 And you will see in that initial contact before any
17 of this happened that he trusted the Plaintiff. If he
18 doesn't think the Plaintiff would take money from him, the
19 amount has to add up. The numbers have got to make sense.
20 The amount of money that comes into Chapman Dental needs
21 to be deposited into the Chapman Dental bank account.

22 As he's looking into these numbers and he begins to
23 see that the numbers don't match up. He starts to believe
24 that the Plaintiff is responsible for that. Keep in mind,
25 I didn't say she took that money. Because I'm not going

1 to make that an issue in this trial because it isn't an
2 issue. I will respect the criminal system that dismissed
3 the charges against her. You're not here to decide
4 whether she took the money or not. You're here to decide
5 whether he believed she took it and whether that was a
6 belief he held in good faith. So whether that money is
7 missing on paper or really missing -- there's very little
8 dispute that a number of accountants have shown that the
9 two numbers didn't match up.

10 So as he continues to look into that, he terminates
11 the Plaintiff. He keeps looking at it. Because you will
12 find that he's not sure what has happened with this money.
13 He's continuing to look at it. He finds other problems
14 arise based on her work there. He finds reasons to
15 distrust her, valid reasons. He, eventually, reaches the
16 conclusion that this money that's not matching up was
17 taken by her. These accountants you've heard about are
18 responding to him saying, Am I looking at these numbers
19 correctly? Is this math correct? And they reach the
20 obvious mathematical conclusion, no, they're not. And he
21 goes to the police.

22 You will hear and you will see what that involved.
23 What the Plaintiff has told you is that he has this
24 involvement in the case as though he has locked step with
25 the investigator, that he's there to help with the

1 prosecution. And that isn't true. The checks that exist
2 in our criminal system are carried through in this case.

3 What he does is brings this mismatch of numbers to
4 the investigator. He brings it to the investigator and he
5 says she was solely responsible for the payments and the
6 deposits. That is true. That will be one of the hearts
7 of our dispute.

8 Because what the Plaintiff is going to try to
9 convince you of is there was just no way she could have
10 been responsible for all this. And because of that, there
11 was never a reason to arrest her. There was never any
12 belief that she took this money. The police were told
13 that.

14 You will hear about prosecutors that looked into
15 that. You'll hear about a judge -- two judges that looked
16 into that. And at each step if the real question here was
17 so simple as to say was she or was she not solely
18 responsible or solely in control, or however the Plaintiff
19 wants to frame it. You'll see in writing what the real
20 wording was. You'll hear from the investigator what she
21 said it was. She was, in fact, responsible for the
22 payments. She was, in fact, responsible for the deposits.

23 If the question was, was she the only one that had
24 control over them, she could have told that to the
25 investigator. The lawyer could have told that to the

1 Prosecutor. But, instead, the story you just heard
2 represents the complexity of what she was charged with and
3 how difficult it was to determine where this money,
4 actually, went.

5 You heard she hired a lawyer and she hired a forensic
6 accountant, not just a regular forensic accountant. You
7 will hear from him. He's an impressive person. And,
8 initially, when he looks in the records, he says, I don't
9 think we can reach a conclusion. What he doesn't say is
10 there's no question she didn't take this money. He gets
11 more information.

12 But this is not a situation where Dr. Chapman or
13 Ms. Chapman are calling up to the police station finding
14 out what's going on. After they go and make the initial
15 report -- and let me clarify something, it's a report they
16 make. Framing it as some kind of complaint sounds very
17 formal. It sounds like you've gone and filed something in
18 a courthouse. That's not what they did. They went up and
19 talked to the investigator. And I assume the investigator
20 will tell you that his job is to investigate these
21 complaints.

22 And I will take this liberty. Mr. Few told you about
23 practicing law for 20 years. I've been practicing law for
24 the same time. And I have primarily handled criminal
25 cases in my career. And I can tell you that what you're

1 going to hear is that when the information is provided to
2 the investigator, that in many ways ends the Chapmans
3 involvement and responsibility. So what happens next is
4 not at all them constantly trying to see what's going on.
5 What's happening is the investigator says, Hey, can you
6 send me something else? And they send it to him.

7 But you're going to hear in the evidence in this
8 case -- it's already admitted -- that the investigator
9 talks to the head of the white color unit at this
10 solicitor's office in this courthouse. Then he talks to a
11 magistrate. He goes in front of a magistrate. And that
12 at each of these steps no one says, hey, this seems like a
13 simple case. I don't think you have one, so let's don't
14 do it.

15 So what you're going to be called upon to find is not
16 whether or not the Plaintiff went through a difficult
17 time. Because I have in 20 years still not represented a
18 person who was arrested and prosecuted that didn't go
19 through a difficult time. That isn't the question.

20 I used to get really nervous telling jury's things
21 like that. Because if you don't believe me or you don't
22 want to do that, then I have entered an era where there's
23 no telling what could happen. But the comfort I take in
24 this courtroom is that when you swear to a judge, I, right
25 or wrong, still believe that means something, your word,

1 your sworn oath matters and whether you follow it. I
2 think people do.

3 When you swear to do what the Judge instructs you to
4 do, it means that you aren't going to look at the
5 unfortunateness in this situation. You're not going to
6 decide that things were difficult for the Plaintiff. What
7 you're going to think about is whether or not Dr. and
8 Ms. Chapman believed that this money had been taken from
9 them. And if they did, it's not if they were wrong. It
10 matters if they had a reason to believe it. And that's
11 what you're going to hear.

12 The rest of the causes of action is defamation. And
13 one of the things about defamation is it doesn't mean any
14 bad thing you say about somebody. I noticed in opening
15 argument that the Plaintiff freely admits -- and I think
16 this is noble and right -- that the day of the arrest the
17 practice that she worked at knew about it. She wasn't
18 there. And they found out because she got arrested. So
19 if there was a phone call at some later time to repeat the
20 same information, it wouldn't have had any effect. They
21 already knew about it.

22 If -- if there was a time where something was
23 described, if a lawsuit that's been going on for many
24 years that the Plaintiff brought, as is her right, if that
25 gets described to somebody, that's not defamation. You

1 have to have a defamatory meaning. You need to pay
2 attention to the people that will tell you what they
3 heard, what they remember, when they heard it, why they
4 heard it.

5 Civil conspiracy is something that the law throws
6 about. The old Latin meaning is we grieve together. And
7 what it is expanded to under the law is an agreement to
8 accomplish something. In this case, a sinister purpose, a
9 lawful act unlawfully or an unlawful act.

10 But the Plaintiff's attorney has shown you a couple
11 of South Carolina criminal codes that he says form the
12 basis for civil conspiracy. But, again, the system we
13 live under has police officers who, clearly, took these
14 reports and have not gone back and said you lied to us,
15 you didn't tell us the truth. Because, in fact, that
16 never happened.

17 It is a hundred percent true that the statement that
18 the Plaintiff is solely responsible -- and that's the word
19 that's going to matter, responsible. If control was the
20 word, there might have been an argument. I'm not
21 necessarily sure that that's even true, but solely
22 responsible. And they won't dispute that. And if the
23 employees get up here and dispute that, they've previously
24 testified under oath to something different and we'll show
25 that.

1 So at the end of the day, I don't like this
2 situation. I have a heart that is probably different from
3 some of the people around me and different from lawyers,
4 but I don't like people being arrested. I don't like
5 people being prosecuted. I don't like people having to go
6 through the system. But that's not why we're here.

7 The question is, was that situation caused by a
8 malicious act by these two folks, Dr. Chapman and his
9 wife? He is a local dentist who owns a practice out on
10 Woodruff Road. His wife works for him. Did they have
11 malice in their heart? You heard the words vendetta. But
12 then you heard I don't know why. And that's the truth.
13 No one knows why. There was no malice and there was no
14 vendetta. There was a question.

15 When the question involves thousands of missing
16 dollars, is it unreasonable to take that question to the
17 white collar crime investigator at the Greenville County
18 Sheriff's Office? So was it unreasonable for him to seek
19 advice from the head of the white collar prosecution unit,
20 to seek a warrant from a magistrate judge? Because each
21 one of those steps become reasonable and get further and
22 further away from the Chapmans. Right or wrong, that
23 doesn't trigger liability in this case.

24 After this is over, I will come back and speak to you
25 again. And we'll talk about what we've heard. I don't

1 know what we will hear. We'll talk about what we've
2 heard. And we will decide, did they maliciously,
3 unlawfully do the things they've been accused of? If they
4 did not, then you'll find for the Defendants, and that
5 will be that. It has nothing to do with the
6 unpleasantness of what the Plaintiff went through. It has
7 to do with the Defendants belief and their intent.

8 Thank you.

9 THE COURT: All right. The Plaintiff may call their
10 first witness.

11 MR. FEW: Thank you, Your Honor.

12 The Plaintiff calls Jim Nasim.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 JIM NASIM,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: State your name, please.

19 THE WITNESS: Jim Nasim.

20 THE CLERK: Thank you.

21 Please be seated.

22 DIRECT EXAMINATION

23 BY MR. FEW:

24 Q Good afternoon, Mr. Nasim.

25 I'm Wes Few. I believe we've spoken on the phone.

1 But to my recollection just a moment ago is the first time
2 we've ever met in person.

3 A Yes, sir.

4 THE COURT: Mr. Nasim, can you scoot up there?

5 THE WITNESS: Is that better?

6 THE COURT: Thank you, sir.

7 BY MR. FEW:

8 Q Do you recognize the young lady, Samantha Katchick?

9 A I do.

10 Q She works for one of your companies?

11 A Yes.

12 Q Do you know about how long she's been working there?

13 A Five or six years, I believe.

14 Q Do you recognize Dr. Chapman over there?

15 A I do.

16 Q How do you know him?

17 A I do a lot of mergers and acquisitions for dental
18 practices. And I bought a couple of practices from a
19 doctor over in the Easley area and Dr. Chapman was working
20 at one of those practices. So I interviewed him about
21 staying on as an opportunity. I think we met twice in
22 person.

23 Q Okay. And so you are involved in the dental practice
24 business today; is that right?

25 A Yes.

1 Q And are you, also, a dentist?

2 A I am.

3 Q Do you still work on teeth?

4 A No. I practiced about 35 years. And I primarily do
5 mergers and acquisitions for my dental company that I
6 started back in 2012.

7 Q And you mentioned to me earlier today, how many
8 employees work for the companies that you own?

9 A About 600.

10 Q And so without further ado, when was the last time
11 you can recall speaking to Dr. Chapman?

12 A I think the last time I spoke to him was five or six
13 years ago. It's very gray in terms of the specifics, only
14 because it's been so long. I got a message from my HR
15 department that we had an employee that had been asked to
16 come downtown. They were going to be arrested.

17 Being a larger company, we try to be very careful. I
18 said, well, let's apprise things. We don't want to
19 relieve the person of their job just because they've been
20 accused of something. Let's have the HR department manage
21 it and go from there.

22 So at some point, I'm very vague as to when, I
23 believe Dr. Chapman called me and said I don't know if
24 you're aware of it, that girl that works for you, I've
25 caught her stealing from me. I just wanted you to be

1 aware of it.

2 Q Is that about all you can recall about the situation?

3 A Pretty much. I don't think there was a whole lot
4 more that I was privy to, other than that. I know that --
5 I remember they called the office, the police department.
6 They had Samantha come downtown to be arrested, or
7 whatever.

8 I told my regional manager to apprise the situation.
9 We may move her out of there for a period of time. We
10 didn't want to relieve her of her job, but we needed to be
11 aware of what's going on. But in all reality, just
12 because someone calls me and tells me that people have
13 been stealing from them, that doesn't give me any grounds
14 to relieve a person of their job until we understand more
15 of what's going on, specifically. And then it kind of
16 went silent after that for a period of time.

17 Q From what you had known about your past dealings with
18 Dr. Chapman, did you consider him a reliable source of
19 information?

20 A You know, like I said, we spoke twice. We had
21 interviewed him once for a position in the job that he
22 already had with Dr. Pasui. I had bought Dr. Pasui's
23 practices, one in Liberty, one in Powdersville, and then
24 one in Easley. And at the time, we had his resume and
25 talked to him. I didn't have a lot more information than

1 to know that he was a dentist we were interested in hiring
2 only because he was presently working in the office that
3 we were buying. I didn't have -- we did interview him for
4 another position because we had a resume from him. My
5 other partner, Dr. John Dunbar, at the time, said, This
6 seems like a guy we can use to hire. But it never did
7 really go any further than that.

8 Q So your recollection is that she was put into a
9 different type of position within your company as a
10 result?

11 A I think temporarily, yeah, as I recall. But we --
12 it's very difficult to remember exactly what happened. I
13 just know that I found out that it happened. I
14 coordinated it about the same time I got that one phone
15 call and we kind of handed it off. Unfortunately, that HR
16 director is no longer part of the company. But I think we
17 handled it fine.

18 She ended up staying. I think we put her temporarily
19 somewhere for a bit and maybe even did a temporary
20 suspension with pay, or something like that, as I recall,
21 until things were resolved and she was vouched for by
22 another employee. And we brought her back in.

23 Like I said, that was just a call that I got. What I
24 did with it is I didn't do a whole lot with it, other than
25 make the assumption that we needed to followup through the

1 end. As an independent dentist, had it been my own
2 practice, I may have acted differently. But because we
3 have so many people in HR, we promptly handled it in a way
4 that it's supposed to be handled.

5 Q Do you know if there's been any other issues with her
6 employment since then?

7 A No, not at all.

8 MR. FEW: Mr. Nasim, thank you for coming here today.
9 That's all the questions I have for you.

10 THE COURT: All right. Cross.

11 MR. KENDRICK: Just briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. KENDRICK:

14 Q Good afternoon, Dr. Nasim.

15 A Howdy.

16 Q I'm Josh Kendrick. I think we spoke on the phone
17 last week.

18 A Yes, sir.

19 Q I'll be quick and get you back to your mergers and
20 acquisitions.

21 So the conversation that you had originally with
22 Dr. Chapman when you interviewed him, that was when you
23 were buying Dr. Pasui's practice?

24 A As I recall, yes.

25 Q And the next thing that Dr. Chapman did was start

1 Chapman Dental, his own practice?

2 A Yeah. I think we vetted him twice, actually. Once
3 earlier while he was working for Dr. Pasui. And then we
4 vetted him a second time once we acquired Dr. Pasui's
5 practice in Powdersville to get him to stay on. We
6 offered him a partnership, but I think he decided to move
7 on and do his own thing.

8 Q Would it sound fair that that was 10 or more years
9 ago that that happened?

10 A At least, between five and 10.

11 Q Okay. The series of events -- the phone call you got
12 was not new information for you; right? You already knew
13 she had been arrested?

14 A It was pretty close to the same time.

15 Q But prior to receiving that, I think you told us she
16 got arrested on a day when she was supposed to work, or
17 someone from work --

18 A As I recall, yes.

19 Q So the information that she had been arrested was
20 kind of known information prior to you receiving the phone
21 call; right?

22 A Yeah. For me to tell you whether he called me to
23 tell me that she had been stealing from him or when she
24 got arrested, I could not tell you which happened --

25 Q Right.

1 A -- at what particular time.

2 Q And just to be clear, I'm not going to have you just
3 repeat your testimony. But you turned that over to the
4 corporate department. And they didn't fire her, they just
5 simply changed her duties; right?

6 A Yes.

7 Q And they moved her to a different location?

8 A I think either temporarily to another location or
9 changed her job description for a period of time. And
10 then she came back after some period of time.

11 Q And after that period of time, she came back in to
12 the same position and place she had been before?

13 A I believe so. She was very new with us when all this
14 happened. I mean, it's probably -- I don't know the exact
15 timing. But I would think it was probably within the
16 first couple of months that this all happened that she
17 came in with us.

18 Q Do you remember when you hired her?

19 A No.

20 Q That's probably not your --

21 A No. My regional manager would have hired her, but I
22 don't know the timing.

23 MR. KENDRICK: Your Honor, I beg the Court's
24 indulgence.

25 (Pause.)

1 MR. KENDRICK: That's all I have.

2 Thank you very much.

3 THE COURT: All right. Redirect?

4 MR. FEW: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. FEW:

7 Q Mr. Nasim, when Dr. Chapman called you, he didn't say
8 she's been arrested, he told you that she stole from him?

9 A Yes.

10 Q He -- did you understand him to say that she was
11 guilty of stealing from him?

12 A I -- the exact words, I don't recall. But it was
13 more along the lines of she's stolen from the office. I
14 wanted to make you aware of it.

15 Q He didn't just call you up and say someone that works
16 for you has been arrested?

17 A No.

18 Q He said --

19 A He said, I caught her stealing from my office. And I
20 thought you needed to know.

21 MR. FEW: Thank you.

22 That's all the questions I have.

23 THE COURT: All right. Any recross.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. Dr. Nasim, you may step down.

1 THE WITNESS: Thanks.

2 THE COURT: All right. Next witness.

3 MR. FEW: The next witness is Angela Hawthorne.

4 THE COURT: Ma'am, if you'll come up here.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 ANGELA HAWTHORNE,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: State your name, please.

11 THE WITNESS: Angela Hawthorne.

12 THE CLERK: Thank you.

13 Please be seated.

14 DIRECT EXAMINATION

15 BY MR. FEW:

16 Q Good afternoon, Ms. Hawthorne. I'm Wes Few.

17 I know we took your deposition once before, but I
18 honestly can't remember, was it Zoom or live?

19 A Zoom.

20 Q Okay. So this might be the first time we've met in
21 person.

22 A Yes.

23 Q Tell the jury where you work right now.

24 A Chapman Dental.

25 Q And where did you work in -- when did you start

1 working there? Sometime in 2014?

2 A Yes.

3 Q Okay. And when you started working there, was
4 Samantha Katchick already working there?

5 A Yes.

6 Q What was her role in the practice?

7 A Front desk.

8 Q And who else was working there at the time, other
9 than Dr. Chapman, and Samantha Katchick, and yourself?

10 A I'm trying to think. I can't think of the
11 hygienist's name at the moment. I think her name was
12 Tiffany. I don't remember her name.

13 Q Is it fair to say that at that time, there was four
14 or five, maybe six people working most days?

15 A No.

16 Q How many would it have been?

17 A It would have been me, Samantha, a hygienist, and
18 Dr. Chapman.

19 Q So four employees?

20 A Yes.

21 Q And tell the jury -- explain to the jury the
22 difference between what you do for Dr. Chapman and what a
23 dental hygienist does in the practice?

24 A A dental hygienist, all they, mainly, do is clean
25 teeth. What I do is assist the doctor with patients.

1 Q What was your relationship like with Samantha
2 Katchick when she worked for the practice?

3 A It was good, great.

4 Q Y'all were -- did y'all get together outside of work
5 ever any time?

6 A No. Well, one time we went over to somebody's house
7 to eat dinner.

8 Q What did you -- did you consider her to be a friend?

9 A Yes.

10 Q Did you consider her to be a nice person?

11 A Yes.

12 Q What do you recall about -- she, eventually, was
13 terminated by Chapman Dental; right?

14 A Yes.

15 Q Do you know why?

16 A From what I heard, she stole some money.

17 Q Who told you she stole money?

18 A Samantha.

19 Q Who else told you she stole money?

20 A Dr. Chapman.

21 Q And let me back up for a second. My memory fades.
22 Tell us about Samantha telling you about her termination.

23 A I was on my way to work that morning. She called me
24 and told me that she no longer worked there and that

25 Dr. Chapman told her she was fired because she stole some

1 money.

2 Q And what was your reaction?

3 A I was shocked.

4 Q Why were you shocked?

5 A I -- I just -- I just couldn't believe it.

6 Q Now, Samantha's job was at the front desk; right?

7 A Yes.

8 Q So she primarily was the one that would take payments
9 and enter things into Eaglesoft; is that a fair statement?

10 A Yes.

11 Q Do you remember if she ever took vacation?

12 A The only time we took vacation was when Dr. Chapman
13 was out. When he told us we was going to be closed for
14 vacation, that's the only time.

15 Q You don't remember when she took vacation for eye
16 surgery?

17 A Oh, yeah. She was out a few days for that.

18 Q And the practice was still in business; right?

19 A Yes.

20 Q The practice didn't shut down for her to have eye
21 surgery, did it?

22 A No.

23 Q And then do you remember when she took a trip to
24 Pennsylvania to be with her family?

25 A Yes.

1 Q And what do you recall she did every Wednesday?

2 A She would go to her second job at Dragon Den.

3 Q Did you have a log in to Eaglesoft?

4 A Yes.

5 Q What could you do once you had logged into the
6 system? Could you put in the fact that X-rays were taken?

7 A Yes.

8 Q Could you log payments that were made in Samantha's
9 absence?

10 A Yes. If Samantha didn't log out, yes.

11 Q Where was the cash kept?

12 A Up front at the front desk in a drawer.

13 Q In, like, a brown zippered envelope, I believe;
14 right?

15 A Yes.

16 Q Was it locked?

17 A No.

18 Q Was the drawer locked?

19 A No.

20 Q Did Dr. Chapman work on Saturdays?

21 A He did some Saturdays, yes.

22 Q And you, in fact, helped him out once or twice on a
23 Saturday, as I recall.

24 A No, not then.

25 Q You didn't?

1 A No.

2 Q Do you know if Samantha worked on Saturdays?

3 A Not that I know of, no.

4 Q Do you know what an end-of-day report is?

5 A Yes.

6 Q What is it? Tell the jury.

7 A It shows what all was done during that day, what was
8 done on each person, how much everything cost and
9 everything, gave you a total of what was done for that
10 day.

11 Q Would it include how many -- how much was received,
12 for example?

13 A Yes.

14 Q By check?

15 A Yes, check, insurance checks, cash, whatever.

16 Q And then is there, also, something known as an
17 end-of-week report?

18 A I'm not sure about that. I know an end-of-month
19 report.

20 Q Okay. And how did you come to learn about the fact
21 that dental practices sometimes create and use these end
22 of day and end of month reports?

23 A Because I used to work at another dentist office and
24 we would run an end-of-day report and end-of-month report
25 at another dentist office I worked at.

1 Q That was Hall and Hill?

2 A Yes.

3 Q And you work there for how long?

4 A Oh, gosh, it was years. I can't --

5 Q Was it almost 20 years?

6 A I'm trying to think. I started there when I was
7 right out of Greenville Tech. I think I was about
8 20 years old. So it's been a while. I'd say about
9 15 years.

10 Q What was the purpose of the end-of-day reports when
11 you were working at the prior dentist office?

12 A To keep up with what was done that day and what was
13 collected as far as payments from patients, and what was
14 received from insurance companies, you know, as far as
15 insurance checks.

16 Q Did -- did Dr. Chapman's dentist practice use these
17 end-of-day reports during the same period Samantha worked
18 there?

19 A As far as I know, no.

20 Q Did you think that was unusual?

21 A Yes.

22 Q When Samantha was working at the job she had on
23 Wednesday afternoons, the dental practice was still open
24 and seeing patients; right?

25 A Yes.

1 Q And if anybody came in and paid cash, somebody other
2 than her would have had to have logged that entry into
3 Eaglesoft and put the cash in the envelope; right?

4 A Yes.

5 Q And that same person would have had access to that
6 envelope when Sam wasn't there; correct?

7 A Correct.

8 Q So she was not solely responsible for the contents of
9 that cash envelope on a 24-hour, seven-day-a-week basis,
10 was she?

11 A I think that would be Dr. Chapman in charge of
12 what -- of who paid cash and all that when she wasn't
13 there.

14 Q He had access to it many times on Saturdays when he
15 was seeing patients and she wasn't there; right?

16 A I don't know. I wasn't there on Saturdays. I don't
17 know.

18 Q That's very fair. I understand. You weren't there
19 on Saturdays, but you do know he worked on Saturdays
20 fairly regularly; right?

21 A Not regularly.

22 Q But he did see patients on Saturdays?

23 A Yes.

24 Q And do you have any knowledge that Sam was ever there
25 on Saturdays?

1 A I have no knowledge.

2 Q Did you go to Dr. Chapman and ask him why Sam was
3 terminated?

4 A Yes.

5 Q And why did you do that?

6 A Because I thought Samantha was doing well there. I
7 liked Samantha. She was a friend.

8 Q Do you believe that she stole any money from the
9 practice?

10 A Me personally, no.

11 Q Are you aware of any facts that would lead you to
12 believe that she stole any money from the practice?

13 A No.

14 Q Have you ever heard Dr. Chapman or anybody else
15 continue to say that she stole money from the practice?

16 A No.

17 MR. FEW: Thank you so much.

18 That's all the questions I have.

19 THE COURT: All right. Cross.

20 MR. KENDRICK: Thank you.

21 CROSS-EXAMINATION

22 BY MR. KENDRICK:

23 Q Good afternoon, Ms. Hawthorne.

24 A Good afternoon.

25 Q My name is Josh Kendrick. I represent the dental

1 practice. You and I have never met; right?

2 A No, we haven't.

3 Q And you're still an employee at the dental practice;
4 right?

5 A Yes.

6 Q I want to talk to you just briefly about this payment
7 process. You said there were four people at the practice
8 primarily, you, Dr. Chapman, a dental hygienist, and
9 Ms. Katchick?

10 A Yes.

11 Q The dental hygienist has kind of a specialized role
12 there, at least, at that time; right?

13 A Yes.

14 Q They're involved with people's mouths, if you will?

15 A Yes.

16 Q You didn't see them doing a lot of administrative
17 work, like appointments and things; correct?

18 A The hygienist usually makes the appointments, and
19 that's about it.

20 Q That's about it. Okay.

21 A Uh-huh.

22 Q So when it came to taking these payments, that's not
23 something the hygienist did?

24 A No.

25 Q So the three people that might have taken payments

1 would have been Ms. Katchick?

2 A Uh-huh.

3 Q Yourself?

4 A Yes.

5 Q Or Dr. Chapman?

6 A Yes.

7 Q And I was looking at your deposition testimony. And
8 it sounded like -- and I wasn't there because I didn't
9 represent the practice at the time, so pardon me. But it
10 sounds like what you previously testified to is that when
11 you took a payment, that was unusual. And Dr. Chapman was
12 standing right there with you; right?

13 A Sometimes, yes.

14 Q Okay. But when Ms. Katchick wasn't there, then
15 sometimes Dr. Chapman would take the payment; right?

16 A Yes.

17 Q And then sometimes you would take the payment?

18 A Yes. That was usually on Wednesday afternoons when
19 Samantha had to go to her other job.

20 Q Did you ever take the money to the bank?

21 A No.

22 Q Did you ever fill out a deposit slip?

23 A No.

24 Q So if you were taking a payment, you would enter it
25 into the computer?

1 A Yes, enter it into the computer.

2 Q Okay. So -- and I just want to make sure. And I
3 know this sounds simple. I'm sorry. Sometimes, that's
4 part of what we have to do. But your teeth get cleaned
5 and it costs \$200. I'm just making that number up. I
6 don't really know how much that costs. So someone walks
7 in and gives you \$200 cash. So you would enter into
8 Eaglesoft that \$200 has been paid for the procedure;
9 right?

10 A Yes.

11 Q And then the expectation is that the \$200 would end
12 up in the Chapman Dental bank account?

13 A Yes.

14 Q You had nothing to do with getting the money from the
15 office to the bank account?

16 A No.

17 Q And I believe you testified previously, but tell me
18 if this isn't correct, but it was Ms. Katchick's job to
19 take money from inside the practice to the bank account?

20 A Yes. She would take it sometimes.

21 Q Sometimes. Who else took it?

22 A Well, if we was real busy, sometimes Dr. Chapman
23 would run it up to the practice -- I mean, up to the bank.

24 Q So the other person that might have had some role in
25 taking money to the bank would have been the owner of the

1 practice; right?

2 A Yes.

3 Q Okay. So is it fair to say that outside of
4 Dr. Chapman, it was Ms. Katchick who was responsible for
5 taking the payments and putting them in the bank?

6 A Yes.

7 Q Unless you took a payment?

8 A Yes, unless I took a payment. And that's all I did.
9 I never took the deposit to the bank at all.

10 MR. KENDRICK: I beg the Court's indulgence.

11 (Pause.)

12 MR. KENDRICK: That's all I have, Your Honor.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. FEW:

16 Q Ms. Hawthorne, you know Brooke Chapman; right?

17 A Yes.

18 Q Did she ever work at the practice?

19 A Yes.

20 Q When did she start working at the practice?

21 MR. KENDRICK: Your Honor, just to save time, I
22 didn't bring up anything about this. So for redirect, I
23 think it would be something new that I brought up in
24 cross.

25 THE COURT: Let me hear what -- hear where you're

1 going. Just remember redirect has to be on cross. Let me
2 hear where you're going. I'll overrule it for now.

3 BY MR. FEW:

4 Q Approximately what year did Brooke Chapman start
5 working at the practice?

6 A I know I started in 2014. I -- I don't know.

7 Q Did she ever work at the practice when Sam was still
8 working at the practice?

9 A Yes.

10 Q Did she have an Eaglesoft log in?

11 A Yes.

12 Q Do you know if she ever took in payments?

13 A Yes.

14 MR. FEW: That's all the questions I have.

15 THE COURT: All right. Any recross?

16 MR. KENDRICK: Yes.

17 RE CROSS-EXAMINATION

18 BY MR. KENDRICK:

19 Q Ms. Chapman started working at the dental practice
20 shortly before Ms. Katchick was terminated; right?

21 A Yes.

22 Q And the overlap was not very long, was it?

23 A No.

24 Q And at the time, Ms. Chapman was married to
25 Dr. Chapman; right?

1 A That's a good question. I'm not sure. I think --
2 were they married?

3 Q What would she have gone by? Her last name is
4 Chapman because she married Dr. Chapman.

5 A Yes. That's correct. But I'm trying to think was
6 she married to him when she started there. I'm trying to
7 think. I don't know.

8 Q I'll tell you what, this was in -- January through
9 March of 2017 sounds about like when all this happened?

10 MR. FEW: Objection, Your Honor.

11 THE COURT: What's the basis?

12 MR. FEW: He's giving her the answer that he wants
13 about when she worked there.

14 THE COURT: So leading?

15 MR. FEW: It's leading. It's on cross.

16 THE COURT: You're on cross. Overruled.

17 BY MR. KENDRICK:

18 Q It's okay. I'll put somebody on the spot and ask
19 them when they married later.

20 A Okay.

21 MR. KENDRICK: That's all I have, Ms. Hawthorne.

22 Thank you.

23 THE COURT: You may step down.

24 Thank you.

25 THE WITNESS: Okay.

1 THE COURT: All right. Next witness.

2 MR. FEW: Oh, next witness, Investigator Elliott
3 Turner with the Greenville County Sheriff's Office.

4 THE COURT: Let me see the lawyers up here.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to take our afternoon break. Please don't discuss
8 the case. And I'll have you back out here in a little
9 bit.

10 Thank you.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 3:44 p.m.)

13 THE COURT: All right. We'll be in recess.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Bring the jury in.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:03 p.m.)

18 THE COURT: Plaintiff, call your next witness.

19 MR. FEW: The Plaintiff calls Investigator Elliott
20 Turner.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 ELLIOTT TURNER,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: State your name, please.

2 THE WITNESS: Elliott Turner.

3 THE CLERK: Thank you.

4 Please be seated.

5 DIRECT EXAMINATION

6 BY MR. FEW:

7 Q Good afternoon, Mr. Turner.

8 How are you doing today?

9 A Good.

10 Q Tell the jury a little about yourself, what you do?

11 A I work for the Greenville County Sheriff's Office in
12 white color crimes. I've been there since about 2016.

13 And I'm still there.

14 As far as my involvement and how I became involved
15 with this --

16 Q We'll get to that.

17 A Okay.

18 Q So do you recall -- we took your deposition in this
19 case. Do you remember that?

20 A Correct.

21 Q You and I met before?

22 A Yes.

23 Q Was that in person or was it by Zoom?

24 A It was in person at your office.

25 Q Okay. Good. So what do you remember about the

1 prosecution of Samantha Katchick?

2 A As far as when it was brought to me, it was in 2017.
3 Dr. Chapman brought a complaint to me. It was a breach of
4 trust complaint.

5 A former employee, Ms. Katchick, worked for him in
6 his office and a new employee was brought in and was doing
7 some bookkeeping. And they found some inconsistencies.
8 And they brought -- it was my understand they brought that
9 to the attention of an accountant.

10 And I was given records, basically, showing where
11 they had gone through comparing the database that they
12 used where they were taking cash payments in and compared
13 it to what, actually, reached the bank. And there was a
14 deficit. I want to say it was around \$3,500 over the
15 course of a few years that Ms. Katchick was working there.

16 So I took that information. And I got a statement
17 from Dr. Chapman. And I kind of made sure that she was
18 the only one that would have been in that position, that
19 there weren't others that we should have been looking at
20 as possibilities. And he gave me a statement, basically,
21 saying that, yeah, she could have been the only option as
22 being able to take the money.

23 So with that, I reached out to her to try to see if
24 she would come in and give me an interview. She -- that
25 never came to fruition. So with what I had, I took his

1 statement and the information that was provided to me and
2 got a warrant for her.

3 Q Okay. Let's -- let me analyze -- fill in some gaps
4 on that.

5 A Sure.

6 Q The new employee that you referred to that came into
7 the practice and started looking at financials, do you
8 know who that was?

9 A It was what I came to find out was his wife.

10 Q Brooke Chapman?

11 A Yes.

12 Q Did you interact with Brooke Chapman at all?

13 A A little bit, yeah.

14 Q Did you ever meet with her in person?

15 A I don't recall meeting with her. But it's been a
16 while.

17 Q And you --

18 A It's possible she may have brought some records in,
19 but I don't recall.

20 Q You referred, I believe, to a data system. Are you
21 referring to the Eaglesoft Practice Management system they
22 used?

23 A That's right.

24 Q And I believe you said it was your understanding that
25 the data that was in Eaglesoft is what formed the basis of

1 the discrepancy that --

2 A That's correct. It was my understanding it was that
3 against the bank accounts that came up with a deficit.

4 Q And Dr. Chapman, did he leave any doubt in your mind
5 that anybody else could have been responsible for that
6 discrepancy?

7 A No.

8 Q Do you recall what kind of conversations you had with
9 him in order to satisfy yourself that that was the case?

10 A Well, I asked him point blank. Because in a
11 situation like that, I want to make sure there's not
12 somebody else we should be looking at, or there's not
13 other options and make sure we're charging the right
14 person. So we had that conversation.

15 Q And he satisfied you that it was not possible that it
16 could have been anybody else?

17 A That's correct.

18 Q Did he at any point in time tell you that Samantha
19 made most of the payments?

20 A It's possible, yes.

21 Q Did he tell you that the system that he was working
22 with should be pretty accurate?

23 A It was my understanding that it was an accurate
24 system, that there weren't any deficiencies with it.

25 Q That it was a hundred percent accurate system,

1 Eaglesoft?

2 A Right.

3 Q And that Samantha was responsible for all of the cash
4 entries made into the Eaglesoft system?

5 A That's correct.

6 Q And that was the basis of you seeking the warrant and
7 having her arrested?

8 A Yes.

9 Q Did you have any involvement in the matter -- what
10 involvement do you recall having, if any, after the arrest
11 was made?

12 A Well, of course, we had the preliminary hearing.
13 That was pretty much it. It goes to the solicitor's
14 office after that. I don't have a lot of involvement.

15 Q And the preliminary hearing, I believe, was on, like,
16 March 26th of 2018. Does that sound right?

17 A It could have been.

18 Q She was arrested on February 8th?

19 A That sounds about right.

20 Q Did you process her through the arrest?

21 A No. I had no interaction with her, other than our
22 phone call.

23 Q And before I move to that, at the preliminary
24 hearing, do you recall what the Judge's conclusion was?

25 A Well, it was bound over.

1 Q Meaning that the case was not dismissed?

2 A Right.

3 Q And do you recall what the Judge had to say about why
4 it was bound over?

5 A I don't, no.

6 Q I want to -- this is already admitted into evidence.
7 And you can only see portions of it. But does this look
8 like the warrant that was signed?

9 A Yes.

10 Q And it says the affiant has a report of a breach of
11 trust that occurred at Chapman Dental at 101 Woodruff
12 Circle in Simpsonville where the complainant, Alexander
13 Chapman, reported that the Defendant, who was a previous
14 employee that was solely responsible for collecting money
15 from patients and making bank deposits from January 2014
16 to February of 2017, took \$3,505.19 from the practice.
17 You typed this up?

18 A I did.

19 Q And the affiant, that's you; right?

20 A That's correct.

21 Q Because you signed this?

22 A Right.

23 Q And then the complainant that you refer to is Alex
24 Chapman?

25 A Dr. Chapman.

1 Q And then you said the affiant has documented evidence
2 implicating the Defendant as the subject who took the
3 cash. This offense occurred in the primary jurisdiction
4 of Greenville County. What -- tell the jury what you can
5 recall you were referring to when you said there was
6 documented evidence.

7 A Documented evidence in that case would have been the
8 records that were provided to me from the accountant, as
9 well as Dr. Chapman's statements. Anything that I've
10 compiled that would have been in my case file would have
11 been documented evidence, that's what's compiled of in
12 this case.

13 Q Do you recall the existence of what, I think, was
14 referred to as a CPA letter?

15 A Yes.

16 Q Do you remember who it was from?

17 A No. I'd have to take a look at it to recall the
18 name.

19 MR. FEW: This is the part where I start fumbling,
20 ladies and gentlemen. So bear with me.

21 BY MR. FEW:

22 Q This is from Exhibit No. 12. Can you see that,
23 Mr. Turner?

24 A I can. So Douglas Schmieding.

25 Q I believe it's pronounced "Schmieding"?

1 A Schmieding.

2 Q And did you -- there's reference in the preliminary
3 hearing transcript of something being an audit. Is this
4 what you were led to believe was an audit?

5 A That's what I took it to be, yes.

6 Q Did Alex Chapman have anything to do with telling you
7 that this was an audit from his CPA?

8 A That's how it was presented to me, as I recall.

9 Q And, as I recall, you were under the belief that this
10 next page was part of Mr. Schmieding's letter; is that
11 right?

12 A It was given to me all at the same time --

13 Q I guess --

14 A -- as a package, so.

15 Q You thought that Mr. Schmieding had a letter along
16 with calculations to go with it?

17 A That was my interpretation, yes.

18 Q You were led to believe it was a two-page letter?

19 A That would make sense if it was altogether, yeah.

20 Q What's your recollection about how -- about whether
21 or not this was something that was just handed over to you
22 for you to do what with it or did -- do you recall if the
23 Chapmans wanted Samantha Katchick arrested?

24 A Well, they brought it to me. I mean, they seemed to
25 be eager to have it looked at. Any time somebody brings a

1 complaint, that's the intention.

2 Q Yeah. And they followed up with you to provide other
3 information. Do you recall that?

4 A Yeah. They were very communicative, e-mails back and
5 forth from what I recall.

6 Q E-mails from Brooke Chapman, as well as Alex Chapman?

7 A That's correct.

8 Q I'm really fumbling now.

9 This is Plaintiff's Exhibit 10. This appears to be
10 an e-mail from Brooke Chapman to you dated January 31st of
11 2018?

12 A That's correct.

13 Q And then she set forth a timeline of events. And
14 there's reference to this Burras family. Do you know what
15 that had to do with anything?

16 A If I recall correctly, it was -- there was a familial
17 relation between Ms. Katchick and them. And there was an
18 account being set up. And there was some civil litigation
19 going on with that.

20 Q Well, what -- do you recall what the Chapmans were
21 trying to tell you with giving you this other information?
22 Were they alleging that Samantha Katchick had taken money
23 somehow by virtue of her relatives?

24 A Well, they were -- I think they were just bringing it
25 to my attention that there were other accounts that were

1 being set up allegedly by her where, basically, family
2 were getting free services. I didn't delve into that as
3 much. I focused on the -- the money that she could have
4 taken.

5 Q Were you at any time told about a gentleman named
6 Earl Simmons?

7 A It doesn't ring a bell.

8 Q Would it have had any influence on your investigation
9 if you had been made aware that Dr. Chapman and the
10 Plaintiff may have had a relationship other than just an
11 employee/employer relationship?

12 A Yes.

13 MR. FEW: That's all the questions I have,
14 Mr. Turner. Please answer any questions --

15 THE COURT: All right. Cross.

16 MR. KENDRICK: Judge, I want to make sure I turn this
17 on correctly before I -- I don't know how to use this thing.

18 THE COURT: Have you got it on?

19 MR. KENDRICK: Yeah.

20 THE COURT: It takes a second.

21 THE CLERK: You hit the down button, and then menu,
22 and then exit.

23 CROSS-EXAMINATION

24 BY MR. KENDRICK:

25 Q Investigator Turner, how are you doing?

1 A Very good.

2 Q I'm going to stand right here so I can show you some
3 stuff and kind of go through some things. You did a
4 pretty accurate job investigating this case; would you
5 agree with me?

6 A I felt like I did with the information I was given.

7 Q Yeah. And I want to talk to you about some of that
8 stuff. So I'm going to show you what was -- just bear
9 with me. I'm sorry.

10 There we go. All right. So let's -- let's start
11 with the arrest warrant. Can you read that?

12 A It's a little blurry.

13 Q Let me --

14 A That's better.

15 Q So this is Exhibit No. 2, which we've previously
16 admitted by agreement. And in this, you -- I want you to
17 go -- if you look at the second line. Alexander Chapman
18 reported that the Defendant, who is a previous employee
19 that was solely responsible for collecting money from
20 patients and making bank deposits.

21 So when we talk about what responsibility
22 Ms. Katchick had, we have two things. We have both
23 collecting money and making the bank deposits?

24 A Yes.

25 Q And you have been a white collar investigator for a

1 long time; right?

2 A Since 2016.

3 Q And prior to law enforcement, you, actually, worked
4 at a bank; right?

5 A Correct.

6 Q So you're well versed in how financial transactions
7 work?

8 A Correct.

9 Q Is it fair to say that the concern was who was
10 responsible for taking the money out of the building to
11 the bank account?

12 A Yes. And that was my understanding, that she was
13 solely responsible.

14 Q For the money leaving the office and going to
15 whatever bank Chapman Dental banked with?

16 A That's correct.

17 Q According to the records they had, that appeared to
18 be where the inconsistencies were?

19 A Correct.

20 Q And I think you even said on direct that when they
21 brought the complaint to you, they said, We found
22 inconsistencies in the collections versus the deposits;
23 right?

24 A Correct.

25 Q And then it looks like there is a number there which

1 says \$3,505.19; right?

2 A Correct.

3 Q And that number was based on -- we can talk about
4 audits, and things like that. But, essentially, it was
5 based on a mathematical equation; right?

6 A Right.

7 Q The amount of money that appeared to have been
8 collected in the office was not consistent with the amount
9 of money that ended up in the bank?

10 A That's correct.

11 Q And the difference is what you put in there based on
12 the spreadsheets; right?

13 A That's right.

14 Q And then in your last line where you say you've got
15 documented evidence implicating the Defendant, that's
16 true; right?

17 A That's correct.

18 Q And the evidence you have implicating her is that she
19 took the deposits to the bank; right?

20 A That's right.

21 Q And those don't appear to be adding up to the amount
22 collected; right?

23 A Right.

24 Q And what you're doing here is establishing probable
25 cause for a crime; right?

1 A That's right.

2 Q That's a very low bar in the criminal justice system;
3 right?

4 A It's the standard that we have to meet, yeah.

5 Q Well -- and I'm sorry. That was a terrible question.

6 Just in case the jury is not familiar with this, you
7 might develop probable cause on someone when you
8 investigate them, but that, certainly, doesn't mean
9 they're going to be convicted beyond a reasonable doubt;
10 right?

11 A That's correct.

12 Q And that's not necessarily your job, is it?

13 A No. You try to get as much as possible to get to
14 that point to be prosecuted. But it's not always the
15 case.

16 Q So -- so based on what we've talked about -- and this
17 is a perfectly accurate paragraph you've written here;
18 right?

19 A Yes.

20 Q And this is a -- the least efficient grounds to
21 arrest somebody; correct?

22 A Absolutely.

23 Q And you attempted to talk to Ms. Katchick; right?

24 A Right.

25 Q And she doesn't have any responsibility under our

1 system to talk to you; right?

2 A Not at all.

3 Q But people do come talk to you, don't they?

4 A Absolutely.

5 Q And white color is a little bit different than some
6 of the more violent or drug crimes, isn't it?

7 A Yes.

8 Q And a lot of what I assume you deal with are business
9 disputes, financial transactions?

10 A That's correct.

11 Q Things that could potentially get confusing,
12 depending on how you looked at it; right?

13 A Absolutely.

14 Q So it wouldn't be as uncommon in your role as a white
15 collar investigator for a suspect to come in and say, I'll
16 be happy to sit down and tell you my story; right?

17 A Right.

18 Q And I assume you, also, have lawyers that come and
19 talk to you and say, I will on behalf of my client come
20 speak to you; right?

21 A That's correct.

22 Q And they'll kind of tell you the person's side of the
23 story and give you extra information; right?

24 A Correct.

25 Q Have -- have you today discovered information that a

1 different person, besides Ms. Katchick, was responsible
2 for taking money to the bank?

3 A No.

4 Q Okay. And I totally understand that the money was
5 not locked up in a safe; right?

6 A No. I don't recall. But I want to say it was in a
7 drawer, or something in the office.

8 Q Right. And that's not inconsistent with what you've
9 written in your warrant. Because what you've written in
10 here is that there's a person that collects the money and
11 takes it to the bank?

12 A Correct.

13 Q And that's where the discrepancy occurs is as it gets
14 to the bank?

15 A That's correct.

16 Q Now, I'm going to -- we have entered as Exhibit
17 No. 12 by agreement what I would refer to as a Rule 5
18 disclosure. Are you familiar with that?

19 A No, I'm not.

20 Q When you are investigating a case, does the
21 Prosecutor ever call you and say, hey, can you send me
22 your case file?

23 A No.

24 Q Does the Prosecutor ever collect evidence from you?

25 A Well, the Prosecutor -- I'm sorry. Yes. They've

1 already got -- switched around here.

2 Q Me, too.

3 A Yes. They'll have access to my case file and be able
4 to look at that. If they have any questions, we'll
5 communicate.

6 Q And you are aware that what happens with your report
7 is it ends up going to the Defendant, and going to the
8 Prosecutor's office, and that kind of becomes the basis
9 for the case; right?

10 A Right.

11 Q So I'm going to show you some parts of your incident
12 report that we've entered. And I underlined it in red,
13 not you. But here, you're describing your initial meeting
14 with Dr. Chapman; right?

15 A Correct.

16 Q And this not a recorded meeting; right?

17 A No.

18 Q And what you're doing is -- you're not sitting there
19 filling this out as he's talking to you; right?

20 A Not likely. That's probably I was taking notes and
21 what I'll do is generate the report.

22 Q Okay. So if you'll look at the first thing
23 underlined, it says, Katchick was solely responsible for
24 receiving payments, to include cash, from patients and
25 making bank deposits?

1 A Correct.

2 Q And, again, I want to just make sure I'm
3 understanding in the context what we're now looking at is
4 that the discrepancies you were given were bank deposits;
5 right?

6 A Correct.

7 Q Because, for example, if someone had taken the money
8 and not entered it into the system, then that is -- that
9 wouldn't have been reflected in the information you had;
10 right?

11 A Right.

12 Q So someone could say, I'm going to take a hundred
13 bucks and put it in my pocket. I'm not going to enter it
14 into the accounting system. But there would be no
15 discrepancy at the bank about this; right?

16 A Right. It was the accounting system that they were
17 using to balance against the bank statements.

18 Q And what -- what was reported to you is that when
19 they were trying to reconcile these cash receipts against
20 the accounting program, they found discrepancies?

21 A Correct.

22 Q Now, you were told by one of the Chapmans that there
23 were issues when Ms. Katchick worked there with her
24 setting up transactions for family members that were not
25 approved; right?

1 A Correct.

2 Q And Mr. Few went through the fact that Brooke Chapman
3 sent you sort of a timeline of all those events; right?

4 A Right.

5 Q And if you look at -- I'm just going to call this --
6 we'll say Page 11. You can see it kind of down in the
7 corner. And this is where she describes that this family
8 has a large account balance. There have been adjustments
9 that were not approved, a payment plan not approved;
10 right?

11 A Right.

12 Q And, in fact, she goes on to tell you that,
13 ultimately, there was some contact with the people, but
14 the card was declined, no further contact, collection
15 started?

16 A Correct.

17 Q But she didn't necessarily give you that detailed
18 information independently; right?

19 A Well, it was her and Dr. Chapman.

20 Q Well, and let me clarify for you why she gave you
21 that information, based on the incident report. If you
22 look at the previous page -- and I'll show down in the
23 corner, Page 10. And this is, again, part of Exhibit
24 No. 12, the Rule 5 response.

25 You contacted Judge Ford to ask about the civil case

1 between the Chapmans and the family; right?

2 A That's right.

3 Q And what Judge Ford told you was that he remembered
4 the case involving one of the family members where
5 services were provided by Chapman Dental, but the money
6 wasn't collected by Katchick; right?

7 A Correct.

8 Q This is prior to you getting that detailed timeline
9 from Ms. Chapman, based on your incident report; right?

10 A Yes.

11 Q Because you enter this chronologically?

12 A Right.

13 Q So if we look down -- and, again, this is not your
14 scribbles, it's my star with the red underlining.

15 The reason you asked her for that information was
16 because you consulted with Sylvia Harrison about this
17 case; right?

18 A Correct.

19 Q And Sylvia Harrison is the long-time head of the
20 white color unit at the Thirteenth Circuit Solicitor's
21 Office; right?

22 A Correct.

23 Q She is a Prosecutor; right?

24 A Yes.

25 Q And at this stage of your investigation, no one had

1 formally made any decision on probable cause; right?

2 A That's correct.

3 Q So any advice that you were getting or information
4 you were seeking is in pursuit of probable cause; right?

5 A Correct.

6 Q Because if you hit a dead end with that and don't
7 ever get the probable cause, you close your file and move
8 on to your next case; right?

9 A That's right.

10 Q You don't have time to make a case where there is no
11 probable cause; right?

12 A Correct.

13 Q But, like you testified to earlier, one of the things
14 that happens in your particular type of crime you're
15 investigating is it is not as clear-cut as something like
16 a possession of cocaine or a murder case; right?

17 A Right.

18 Q You've got to kind of delve into why things happened?

19 A Correct.

20 Q And one of the ways you might support probable cause
21 in your mind is to call the head of the white collar unit
22 to discuss the case; right?

23 A That's right.

24 Q And that happened here. Because when you talked to
25 her, she said, I'm comfortable with this warrant being

1 signed for breach of trust if additional documentation
2 could be obtained showing where services were rendered to
3 Katchick's family without Katchick retaining payment?

4 A Correct.

5 Q And that's, obviously, an accurate reporting you made
6 in your report; right?

7 A Yes.

8 Q So that conversation occurred?

9 A Correct.

10 Q So when you talked to Ms. Harrison, did you explain
11 that you had information that the person making the
12 deposits for Chapman Dental was Samantha Katchick?

13 A Yes.

14 Q And that no one else made those deposits?

15 A Correct.

16 Q And now, there's been some discussion about whether
17 other people took payments; right?

18 A I don't recall. I couldn't answer to that at this
19 point. It's been so long.

20 Q And you during the questioning -- I mean, you --
21 Dr. Chapman brings you the report; right?

22 A Right.

23 Q So you wouldn't -- Dr. Chapman can't steal money from
24 himself; right?

25 A Correct.

1 Q And then you've got Ms. Katchick?

2 A Yeah.

3 Q And he says she's the one that makes the deposits;
4 right?

5 A Right.

6 Q And you've never learned anything to date that that's
7 not true?

8 A No.

9 Q And it sounds like shortly before she -- Ms. Katchick
10 was terminated, Ms. Chapman arrived to work there?

11 A Correct.

12 Q And she is Dr. Chapman's wife?

13 A Correct.

14 Q And was there anybody else that you knew of that
15 worked there?

16 A Yeah. There were other people. I asked that. There
17 were other people that worked there, but I have -- my
18 understanding is none of them would have had -- would have
19 been touching that cash, or would have been involved in
20 the receipt of cash and getting it to the bank.

21 Q And that's one of the things that -- and I know I
22 sound like I'm harping on this. But we're talking
23 about -- when you're talking about breach of trust, the
24 difference between a breach of trust and a larceny is that
25 the person takes possession of the cash with permission;

1 right?

2 A Correct.

3 Q And it's where it goes after that becomes the breach
4 of trust; right?

5 A Right.

6 Q So larceny would be if I said, give me your 20 bucks
7 and I stole it out of your pocket. But breach of trust
8 would be I had some reason to get it and you didn't end up
9 with it?

10 A Correct.

11 Q So embezzlement is the common term for it; right?

12 A Right.

13 Q And where that would occur, again, would not be in
14 the collection, unless they didn't put it into the system,
15 but going to the bank; right?

16 A Correct.

17 Q I'm not going to put this money in the bank account,
18 I'm going to keep it to for myself.

19 A Right. It didn't make it to the proper destination.

20 Q So the person that would become your prime suspect
21 for this crime would be not just anybody who might have
22 taken a payment at the office, but, specifically, the
23 person responsible for going to the bank to put the bank
24 money in; right?

25 A That's right. It -- again, she was solely

1 responsible is what it was -- what I was led to believe.

2 Q And when you say "led to believe," you don't have any
3 information even as you sit here today that some other
4 person was responsible for taking the money to the bank?

5 A No.

6 Q So even if you were incorrect -- and I guess maybe
7 let me clarify that. You can't really be incorrect in
8 reaching the determination of probable cause if you
9 believe she on the way to the bank took the money; right?

10 A Right. If the information I've been given leads to
11 that, that's where the probable cause comes in and that's
12 it.

13 Q And -- and there's much that has been made about
14 whether that information was accurate or not. But even
15 sometimes, you can receive accurate information as a white
16 collar investigator and you can reach a conclusion that
17 may, in fact, not support a later prosecution; right?

18 A Correct.

19 Q And that's okay. It happens all the time, doesn't
20 it?

21 A Right.

22 Q And it may be that even you were wrong, that you
23 thought someone had taken money based on all the
24 information you had and, no, they didn't. But you haven't
25 done anything wrong; right? You didn't violate any kind

1 of oath; correct?

2 A No.

3 Q I mean, sometimes, people make -- I'm not saying you
4 made a mistake. I'm just saying what information you had
5 as you sit here today remains accurate; right? You never
6 found anything to make you think differently?

7 A No. The point I got to was the probable cause, that
8 was it after that. There was no other -- I didn't receive
9 any other information as far as other possibilities, other
10 possible suspects.

11 Q Okay. And if there were no other possible suspects,
12 then you had the prime suspect; right?

13 A Yes. That's correct.

14 Q And any information -- so you -- you -- when you
15 consult on that probable cause decision, you talk to the
16 Prosecutor; right?

17 A Not always. I did in that situation.

18 Q Okay. And that made you, I'm sure, feel some
19 confidence in signing a warrant; right? That the head of
20 the white collar crimes unit agreed with your conclusion?

21 A Yeah. I mean, I definitely need -- the input I had
22 was definitely part of it.

23 Q And I think Mr. Few -- maybe he didn't. If he
24 didn't, I'm wrong. But I think he talked about the ruling
25 on -- by -- in the preliminary hearing, and that's in

1 Exhibit No. 13. And what the Judge says there is she has
2 sole control of receiving and making deposits?

3 A Correct.

4 Q But the critical part about that for your
5 investigation and your arrest is the making deposits part;
6 right?

7 A Right. Exactly, making it into his bank account, the
8 business account.

9 Q For example, if you had gotten information that she
10 was solely responsible for taking payments, but who knows
11 who brought it to the bank, you would have reached a
12 different conclusion; right?

13 A Yeah, I probably would have. Again, that's why I was
14 adamant about making sure that I understood that there
15 weren't multiple people involved in the receipt and making
16 it to the bank.

17 MR. KENDRICK: Okay. I beg the Court's indulgence.

18 (Pause.)

19 BY MR. KENDRICK:

20 Q So in your report that we looked at, you kind of go
21 through the communications you had with the Chapmans;
22 right?

23 A Correct.

24 Q And I think the word you used on direct is they were
25 "responsive"?

1 A Yes.

2 Q And many of the times, you were reaching out to them
3 to ask for further information as you might do in your
4 investigation; right?

5 A Sure.

6 Q So it wouldn't be strange for them to respond; right?
7 You would expect that?

8 A No. It was an open line of communication.

9 Q Okay. You're doing a thorough job here. So one of
10 the things you, also, do is reach out to the suspect;
11 right?

12 A Yes.

13 Q And you're going to let her tell you any information
14 that she wants to to help you reach a conclusion; right?

15 A Correct.

16 Q And it's, certainly, possible, as an investigator,
17 that sometimes someone will tell you something, even a
18 suspect, that might make you revisit your conclusions;
19 right?

20 A Yes.

21 Q And there's nothing wrong with that either, is there?

22 A No.

23 Q Sometimes you have a person saying one thing as an
24 accuser and another thing as the accused, and you put
25 those together and figure out where to end up; right?

1 A That's correct.

2 Q Not a very uncommon thing in your line of
3 investigations?

4 A Not at all.

5 Q So when you called Ms. Katchick -- this is part of
6 this exhibit we've been looking at that's been entered
7 into evidence. But it appears she was fairly difficult
8 with you on that telephone call; right?

9 A That's correct.

10 Q So you said it was kind of difficult to speak with
11 her and she was being belligerent on the phone?

12 A That's correct. That's what I documented.

13 Q She kept asking you the same question over and over
14 again. And then she would kind of go on and be like, Is
15 this about the dental place; right?

16 A Yes.

17 Q You were, obviously, clear with her that that's what
18 you were asking her about; right?

19 A That's correct.

20 Q And I don't think I'm wrong. I can tell from you on
21 the stand, you're a fairly calm investigator; right?

22 A Yes.

23 Q So you just had a conversation with her and gave her
24 opportunities; right?

25 A That's right.

1 Q And she -- she didn't tell you anything; right?

2 A No. That conversation wasn't productive.

3 Q And if you call a suspect who says, I want to assert
4 my right to remain silent, that's not abnormal, is it?

5 A No. That's fine.

6 Q Or I want to hire a lawyer before I speak with you?

7 A That's common.

8 Q In fact, it might not even make it in the report;
9 right?

10 A That's correct.

11 Q So in this particular report, the conversation you
12 had with her with the belligerence, and not wanting to
13 talk to you, and the confusion was significant enough for
14 you to put this paragraph into your incident report so
15 that it is documented for a later case; right?

16 A That's correct.

17 MR. KENDRICK: Investigator, I appreciate your time
18 today.

19 THE WITNESS: Absolutely.

20 THE COURT: All right. Redirect.

21 REDIRECT EXAMINATION

22 BY MR. FEW:

23 Q Investigator Turner, the discussion that you had with
24 Sylvia Harrison, the head of white color crime, about the
25 Burras family, that had nothing to do with what you signed

1 the warrant for, did it?

2 A No. I -- again, I didn't focus as much on the -- the
3 accounts that were set up. I focused more on the 35 --
4 the theft of the \$3,500.

5 Q Which was based on Eaglesoft records compared to bank
6 statements?

7 A Correct.

8 Q So all these questions about Sylvia Harrison
9 approving some kind of warrant, that was with respect to
10 something that you were investigating that was totally
11 different?

12 A Well, if I was speaking with her, it would have been
13 about the overall case, in general.

14 Q But did you ever get any evidence that whatever she
15 said could have supported a warrant -- was supporting a
16 warrant?

17 A Are you asking --

18 Q You didn't. Because the only thing you indicted
19 on -- or the only thing you signed the warrant on was
20 whether or not she was solely responsible --

21 MR. FEW: Can I put this back up, Your Honor?

22 (WHEREUPON, there was no response.)

23 BY MR. FEW:

24 Q I mean, let's read this sentence, Solely responsible
25 for collecting money from patients and making bank

1 deposits?

2 A That's correct.

3 Q So you were -- and when the words "led to believe"
4 were used just a minute ago, everything that you were led
5 to believe with any respect to this file was by either
6 Alex Chapman or Brooke Chapman, wasn't it?

7 A Correct.

8 Q And they led -- you signed this warrant because they
9 convinced you that she collected every single dollar of
10 cash from the time period that they started doing that
11 investigation until the time period that they concluded
12 it?

13 A That's correct.

14 MR. FEW: That's all the questions I have.

15 THE COURT: All right. Any recross?

16 MR. KENDRICK: Yes.

17 RECROSS-EXAMINATION

18 BY MR. KENDRICK:

19 Q So that's just a little bit different than what we
20 talked about. Sorry to rehash old ground. But I asked
21 you, did the idea of who collected the money is not the
22 important part because that's not where the discrepancy
23 arose; right? The discrepancy arose at the deposit stage?

24 A The -- the issue is with the entire process. I
25 was -- it was reported that one employee was responsible

1 for taking in money and getting it to the bank. That
2 was -- that was -- the entire process is what we were
3 looking at.

4 Q Right. Because if one person has the responsibility
5 of collecting money and making deposits, then that's the
6 person you look to if there's a discrepancy; right?

7 A Correct.

8 Q So when -- I mean, when you -- you're not
9 investigating a second case; right? You're investigating
10 this case; right?

11 A That's correct.

12 Q And what Ms. Harrison is saying is if there's
13 dishonesty in the process, then I'm going to feel
14 comfortable with you getting this warrant; right?

15 MR. FEW: I object to the form, Your Honor. Calls
16 for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: Can you ask that again?

19 BY MR. KENDRICK:

20 Q Yeah. So what the Plaintiff's lawyer was saying is
21 what you're having a conversation with Sylvia about is
22 something totally different from this case. And I think
23 you're answer was, No, I'm talking about the overall case;
24 right?

25 A Correct.

1 Q So when you called Ms. Harrison, you didn't call her
2 to say, I have a second unrelated case I want to
3 investigate that no one is asking me to investigate.
4 You're investigating this case and the money process;
5 right?

6 A That's correct.

7 Q And you tell her, according to this report, about
8 your case; right?

9 A Correct.

10 Q And you, also, have come into this information from
11 your call to Judge Ford that there was an allegation that
12 Ms. Katchick had family members who were receiving
13 services at the dental clinic -- or dental office and not
14 paying for them; right?

15 A Correct.

16 Q And she was the one who was in charge of those
17 collections; right?

18 A Correct.

19 Q So you now have a concern about honesty in the
20 collection process; right?

21 A Correct.

22 Q And you explain that to the Prosecutor?

23 A That's right.

24 Q And the Prosecutor tells you, based on what you've
25 told her, that she thinks a warrant is appropriate?

1 A That's correct.

2 Q And it's not anything to do with being led to
3 believe. There was, in fact, one person who was
4 responsible for collecting the money and getting it to the
5 bank; right?

6 A That's what was being reported to me.

7 Q But no one ever said to you that only one person ever
8 has access to this money; right?

9 A No. I believe it was in an open office. That was
10 the only -- again, I had this conversation with them. But
11 that would have been the only viable option. There were
12 no other options that could have been responsible for
13 taking the money.

14 Q Right. Because the money, again, was taken on the
15 way to the bank, it doesn't make it into the bank; right?

16 A Correct.

17 MR. KENDRICK: Thank you.

18 THE COURT: Any redirect [sic]?

19 MR. FEW: Just one second, Your Honor.

20 FURTHER EXAMINATION

21 BY MR. FEW:

22 Q This is Page 10 of Exhibit No. 12, which is in the
23 Brady, the discovery. I just want to be clear on this --

24 MR. KENDRICK: Your Honor, I don't know what he's
25 going to ask. I just know my recross was directly related

1 to his redirect. I just don't want to ping-pong all day.

2 THE COURT: Yeah. Make sure it's related solely to
3 what his recross was.

4 MR. FEW: He asked questions about what Judge Ford
5 had to say, and that's what I want to ask.

6 THE COURT: I'll allow it.

7 BY MR. FEW:

8 Q So if you read this, Judge Ford -- he was just
9 telling you what he recalled the case was about. You
10 didn't even get a copy of any order that was issued in the
11 case or any final decision; isn't that right?

12 A No. I don't recall getting anything like that. It
13 was just a conversation that we had. I was just following
14 up.

15 Q So if that case was, actually, about a failed payment
16 plan that Samantha Katchick set up for the Burras family,
17 then it wouldn't have anything to do with anybody getting
18 services without paying for it, would it?

19 A No.

20 MR. FEW: That's all the questions I have.

21 THE COURT: All right. You may step down.

22 Thank you, sir.

23 THE WITNESS: All right. Thank you, sir.

24 THE COURT: All right. Ladies and gentlemen, I
25 believe that's going to be it for today. So I'm going to

1 excuse you for the rest of the day. Let's report back
2 tomorrow morning at 9:30. And as I've told you, please,
3 don't discuss the case, even if somebody asks you tonight.
4 So, please, don't discuss the case.

5 I'll see you at 9:30 in the morning. I hope all of
6 you have a good night.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 4:51 p.m.)

9 THE COURT: All right. Anything we need to take up
10 before we adjourn for the day?

11 Anything from the Plaintiff?

12 MR. FEW: Nothing from the Plaintiff.

13 THE COURT: Anything from the Defendant?

14 MR. KENDRICK: No, Your Honor.

15 THE COURT: All right. We'll see you tomorrow
16 morning at 9:30.

17 (WHEREUPON, the proceedings were concluded at
18 approximately 4:52 p.m. to be reconvened on
19 Tuesday, April 23, 2024.)

20

21

22

23

24

25

1 TUESDAY APRIL 23, 2024

2 THE COURT: Anything we need to take up before we
3 bring in the jury?

4 Anything from the Plaintiff?

5 MR. FEW: Nothing from the Plaintiff, Your Honor.

6 THE COURT: Anything from the Defendant?

7 MR. KENDRICK: I think Dr. Chapman just ran to the
8 restroom.

9 THE COURT: I'll wait for him.

10 MR. KENDRICK: Sorry about that, Judge.

11 THE COURT: I'm a little early.

12 (Pause.)

13 THE COURT: All right. Let's bring them in.

14 (WHEREUPON, the jury came into open court at
15 approximately 9:36 a.m.)

16 THE COURT: Good morning, ladies and gentlemen. I
17 hope all of you had a good night.

18 We are ready to proceed with day two.

19 All right. Plaintiff, you may call your next
20 witness.

21 MR. FEW: Thank you, Your Honor.

22 May it please the Court.

23 The Plaintiff calls Doug Schmieding.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 DOUG SCHMIEDING,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name, please.

5 THE WITNESS: Doug Schmieding.

6 THE CLERK: Thank you.

7 Please be seated.

8 DIRECT EXAMINATION

9 BY MR. FEW:

10 Q God morning, Mr. Schmieding.

11 How are you doing today?

12 A Doing fine.

13 Q Good. Tell the jury what you do for a living.

14 A I'm a CPA.

15 Q And how long have you been a CPA?

16 A 40 years.

17 Q And as a part of your career as a CPA, what type of
18 work do you, typically, do?

19 A We do a lot of different types of work. But, mainly,
20 tax returns and -- and audit compilations, reviews,
21 financial statements.

22 Q And you say "we," you're with a firm called Jennings
23 Cook; right?

24 A Correct.

25 Q How long have you been working there?

1 A Since 1990. So 30 something years.

2 Q You're a partner, you're an owner in that firm now?

3 A Correct.

4 Q Do you know Mr. -- Dr. Alex Chapman seated over here
5 to my far right?

6 A I do.

7 Q How do you know him?

8 A He became a client -- his dental practice somewhere
9 around 2013.

10 Q And when you say "client," that means that he could
11 have requested your firm, or you, or anybody to do any of
12 the types of services that you just described?

13 A Correct.

14 Q However, based on your memory, what kind of work did
15 you do -- or your firm do primarily for Dr. Chapman and
16 his practice?

17 A So we did bookkeeping services, and corporate tax
18 returns, and their individual tax returns.

19 Q You didn't do any audit work for them?

20 A No.

21 Q Have you ever heard of a gentleman named Earl
22 Simmons?

23 A Well, I have now, yeah.

24 Q Did you know him -- who he was prior to November 14th
25 of 2017?

1 A No.

2 Q Have you ever heard of a gentleman named Mike O'Shea?

3 A No.

4 Q And let me show you some exhibits that have been
5 entered into evidence. The first one is Exhibit No. 3.

6 MR. FEW: And, Josh, I've got some highlighting on
7 here. You don't mind --

8 MR. KENDRICK: Not at all.

9 BY MR. FEW:

10 Q The -- is Ruth Stevens somebody you know?

11 A She used to work with us, yes.

12 Q Okay. And she worked with your firm -- I'm trying to
13 get to the top. This is an e-mail from Ruth Stevens to
14 Alex Chapman dated March 10th of 2016. Can you see that?

15 A I can.

16 Q And that's the first page of the e-mail. And the
17 third page -- we're going to go backwards. It starts --
18 the e-mail chain, which has a subject line report from
19 Chapman Dental, PA. Can you look at this and tell the
20 jury, based on your knowledge, what's going on in your
21 firm? And this woman works for you; right?

22 A Correct.

23 Q What was going on here on March 9th of 2016?

24 A So we did the bookkeeping, which we would provide
25 financial statements on a monthly basis for the dental

1 practice. And so this looks like she was attaching the
2 balance sheet to compare for -- to -- sent to Dr. Chapman
3 and for him to compare and import.

4 Q And so that level8drummer@gmail, is that Dr. Chapman?

5 A Correct.

6 Q So then let's go to the second page of this e-mail.
7 And there was an attachment here. That's what I wanted to
8 see. So she sent him an attachment that looks like it was
9 39 kilobytes?

10 A Correct.

11 Q And then the second page, there's a response from
12 Alex Chapman on March the 9th of 2016. And he said, Thank
13 you. Did Samantha talk to you about the Eaglesoft versus
14 QuickBooks deposits. Do you see that?

15 A I do.

16 Q Do you know what he's talking about there?

17 A I didn't at the time, but I do now. So you'll see
18 further in this e-mail, there was some discussions about
19 their QuickBooks deposits, which is what we would be doing
20 on our side, which we take from the bank statements. So
21 the money that went into the bank statements, that's
22 considered revenue. That's how we showed their revenue,
23 what was deposited in the bank statement.

24 And -- and so they, also, have a software system
25 outside of QuickBooks that -- I'm not sure exactly what

1 they were doing with it. I'm assuming they were doing
2 billings, and invoicing, and so forth, and recording the
3 deposits, and recording the revenue. And they were -- so
4 it says, Did Samantha talk to you about the Eaglesoft
5 versus QuickBooks deposits? Evidently, there was some
6 discrepancy between the two.

7 Q And, evidently, Alex Chapman was aware of it on
8 March the 9th of 2016?

9 A Correct.

10 Q And then it looks like then Ruth responds and says, I
11 have not heard anything, other than she was going to go
12 back and research?

13 A Correct.

14 Q And then later that day on March 9th at 2:55 p.m.,
15 Dr. Chapman responds and says, I'll ask her to contact you
16 tomorrow. I want to make sure everything adds up. And
17 then he asks a series of questions here. There have been
18 no accumulated discrepancies in the past, have there? As
19 in, other than this amount you mentioned, every nickel has
20 been accounted for previously? And then, finally, he
21 says, Just making sure there is no embezzlement or deposit
22 problems.

23 Do you see that?

24 A I do.

25 Q Were you made aware of this inquiry he was putting to

1 your company?

2 A Not at this time, no.

3 Q And so Ruth -- what was Ruth's -- Ruth Stevens, what
4 was her role? Was she a CPA?

5 A No.

6 Q Did she have a significant amount of training, or
7 what was her level of training and experience in the field
8 of the accounting practice?

9 A Okay. She was a very good accountant. So she wasn't
10 a CPA. But we have a bookkeeping department, which most
11 of the time, they're not CPAs, but they're very good
12 accountants. And -- and so they work in our bookkeeping
13 department and help clients generate their books, get
14 their books straight.

15 And then we issue financial statements on a monthly
16 basis or quarterly basis, depending on what service they
17 want. And I review the financial statements before they
18 go out.

19 Q So Ruth is not just -- she's not your secretary, or
20 someone like that. She's -- she's -- has a more
21 production-related role in the bookkeeping and accounting
22 department with your firm?

23 A Yeah. She has an in-depth knowledge of accounting, a
24 very good accountant.

25 Q Do you recall about how much experience she would

1 have had in the year 2016?

2 A Probably, at least, 15 years.

3 Q And then Dr. Chapman responds -- let me take this
4 off. The -- he responds and says -- no, she responds.

5 Sorry, folks. It's hard to follow this small print.

6 She responds fairly in-depth and says, I look at it
7 every month. First paragraph, she says, All adjustments
8 are being entered correctly, or are going in as payments.
9 These things could cause differences.

10 So -- and your -- I understand your testimony is that
11 QuickBooks -- the QuickBooks information that Ruth is
12 reviewing comes off of the bank statements?

13 A That's not exactly right. But -- but -- so we were
14 doing bookkeeping services. And our services, basically,
15 were we would get the bank statements. We would --
16 anything that was deposited -- and we would ask this very
17 first up-front to make sure any deposits that aren't
18 revenue, let us know. Okay.

19 So, otherwise, everything that goes in the bank is
20 revenue. And that's how we -- how we did the bookkeeping.
21 We would record off the bank statements. And then we
22 would record off their check disbursements, register
23 all -- all the expenses. We recorded off their
24 disbursements register. And then we kind of created the
25 QuickBooks.

1 Q Okay. So the QuickBooks was created by your firm?

2 A Correct.

3 Q And then what about -- did your firm have any
4 involvement in the Eaglesoft financial records?

5 A Not at all.

6 Q And then she says, Is Samantha the only one who makes
7 all the entries into Eaglesoft? Do you see that?

8 A I do.

9 Q And then she refers to a day sheet right here. Do
10 you see that?

11 A I do.

12 Q Would that be the same thing as what would be known
13 as an end-of-day report?

14 A You know, I don't really know in this context. I'm
15 not sure what the day sheet meant, but probably
16 something -- daily reports that they did internally. This
17 was outside of the bookkeeping. This is nothing that we
18 would generate.

19 Q Were you involved in the -- this bookkeeping aspect?

20 A Not really. You know, I review the financial
21 statements when they're done.

22 Q Okay.

23 A You can sometimes spot issues, but I don't get into
24 the details, no.

25 Q So when Dr. Chapman asked these questions on Page 2,

1 There have been no accumulated --

2 A I can't see that.

3 Q I'm sorry. No accumulated discrepancies in the past.
4 And then, Other than this amount, every nickel. That's
5 not what Ruth was being paid to do, is it?

6 A Correct. No, not at all.

7 Q And then Dr. Chapman responded on March the 9th again
8 to the inquiry and he says, Samantha enters most of the
9 payments and walks most things out. Do you see that?

10 A I do.

11 Q And then he says, As far as deposits, she tries to do
12 an end-of-month deposit every month. Do you see that?

13 A I do.

14 Q And then below here, he says, Eaglesoft collections
15 should be pretty accurate. Do you see that?

16 A I do.

17 Q And it's your testimony that your firm had nothing to
18 do with the Eaglesoft records?

19 A Correct.

20 Q That was a data set that was presumedly prepared by
21 the people that worked at Chapman Dental?

22 A Correct. They used that software for whatever
23 reasons, yeah.

24 Q Now, at some point in time, were you requested by
25 Brooke Chapman to prepare a letter regarding some

1 discrepancies?

2 A Correct.

3 Q What do you remember about that?

4 A So I knew at this time that there were some
5 discrepancies that they would like to try to figure out,
6 you know, why my Eaglesoft software doesn't match up with
7 the bank deposits.

8 Q So would it be accurate to say that that issue was
9 comparing Chapman Dental's records to the bank deposit
10 records?

11 A Correct.

12 Q And they were banking at Southern First; is that
13 right?

14 A I don't remember.

15 Q But the financial statements that were used -- were
16 the financial statements used to prepare the tax returns
17 at the end of year?

18 A We use them -- yes, the trial balance, correct.

19 Q So the bookkeeping function that your firm was
20 providing, also, helped y'all have an accurate data set to
21 file tax returns at the end of the year?

22 A Correct.

23 Q You didn't file tax returns off of Eaglesoft?

24 A No.

25 Q I'm going to show you an e-mail that's been marked as

1 Exhibit No. 7 and entered into evidence. This is -- take
2 a minute to look at that. And tell me if you recognize
3 it.

4 A I do.

5 Q And who's it from?

6 A Brooke Chapman.

7 Q And what's the date on it?

8 A November 13th, 2017.

9 Q What communications do you recall having had with
10 Brooke Chapman prior to receiving this e-mail?

11 A So she had called and said, you know, We're having
12 this issue with the Eaglesoft software deposits versus the
13 bank statement collections. And we're trying to resolve
14 the issue, which is what we were hoping they would try to
15 do. And can I send you -- can I send you our Eaglesoft
16 software deposit listing? And can you compare it to the
17 bank statements and send me a letter with the differences?

18 Q Did she tell you why she wanted you to give them a
19 letter?

20 A The only thing she said was that it sounds better
21 coming from you. And I'm assuming that she was talking
22 about working with the people there at the office.

23 Q Was that letter an audit?

24 A No.

25 Q Did you consider yourself to be some sort of expert

1 witness for the Chapmans on that issue at that point in
2 time?

3 A No.

4 Q I'm going to show you what's marked as Exhibit No. 8.
5 And this is -- initially, these -- this is a response from
6 you dated the next morning, it looks like, November 14th
7 at 8:35 a.m.?

8 A Yes.

9 Q Do you recognize that e-mail?

10 A I do.

11 Q And then this I'll represent to you is Page 2 of --
12 or was the attachment to the e-mail that you sent. Does
13 this look like the letter that you prepared, per Brooke
14 Chapman's request?

15 A It does, yeah.

16 Q And you say, We have prepared a calculation of the
17 difference between the cash receipts entered into your
18 company's accounting system and the amount of cash that
19 was deposited into the company's bank account; right?
20 That's what it said?

21 A Correct.

22 Q This calculation is for the period of January 2014
23 through February of 2017.

24 A Correct.

25 Q This calculation is based on summarized information

1 that was provided by you?

2 A Correct.

3 Q And when you say -- when you refer to "your company's
4 accounting system," you're referring to Eaglesoft?

5 A I would assume so, yes.

6 Q You may not have known that at the time?

7 A Right.

8 Q But you've now come to learn that's what it probably
9 was?

10 A Correct.

11 Q It was not based on the data that your company was
12 maintaining as a part of what they were paying you to do
13 for accurate bookkeeping services, was it?

14 A No.

15 Q Now, did you have any attachments to this letter?

16 A No.

17 Q If you did, would you have put enclosures or
18 something like that at the bottom to indicate?

19 A Yes.

20 Q So you're certain there was no attachments to this
21 letter when you sent it?

22 A A hundred percent certain.

23 Q Now, I'm going to show you what's marked as -- this
24 is Exhibit No. 9. This is just the letter itself. And,
25 again, the -- the -- what they asked you to look at was

1 comparing their data versus the bank data?

2 A Their data versus what was deposited in the bank
3 account, yes.

4 Q Now, the QuickBooks data that Ruth or whoever was
5 maintaining at your firm as a part of the bookkeeping
6 services, at any point in time, anybody with log-in
7 credentials could log into that QuickBooks system for the
8 Chapman Dental account and make adjustments; isn't that
9 right?

10 A They could, I would assume. I don't know.

11 Q That wasn't part of what you did?

12 A Right.

13 Q You have a general understanding about how a program
14 like that works; right?

15 A Correct.

16 Q But if you couldn't log in and make changes, there
17 would be no point in having it; right?

18 A Yeah. I mean, you can password protect it.

19 Q If you wanted to lock -- like, if it was a final
20 report, you could look it up somehow?

21 A You could, yeah.

22 Q And so, presumably, the Eaglesoft data that the
23 Chapmans had, anybody at Chapman Dental could have gone in
24 and made changes and adjustments to the information they
25 had in there about checks they received, cash that they

1 received, credit card payments they received?

2 A I have no knowledge of that. I have no -- no -- no
3 way of knowing.

4 Q Now, I'm going to show you what's marked as Exhibit
5 No. 15. And you can see at the top of this is an e-mail
6 from AlexaKluska@GreenvilleCounty.org to you dated
7 June 27th of 2018. Do you remember receiving this e-mail?

8 A I do.

9 Q And what did you do in response to receiving this
10 e-mail?

11 A Well, I pulled my letter up that I had written and
12 immediately called her back.

13 Q And what do you recall about the substance of that
14 conversation?

15 A I was -- told her certainly -- because she talks
16 about you submitted an audit battle of experts. And, you
17 know, we didn't submit an audit. And I'm not an expert in
18 this situation. And I had, basically, you know, no
19 knowledge of this was being done. And -- and it was all
20 taken out of context.

21 Q Prior to receiving this e-mail, did you have any idea
22 that your letter of November 14th of 2017 had been used
23 and submitted to law enforcement in order to have Samantha
24 Katchick prosecuted for breach of trust?

25 A No.

1 Q What was your reaction when you discovered that had
2 happened?

3 A I was pretty shocked.

4 Q And does your firm still perform bookkeeping services
5 for Chapman Dental?

6 A No.

7 Q And approximately when did that relationship come to
8 an end?

9 A Well, we stopped receiving the bookkeeping
10 information after that -- the letter that I had prepared.
11 So we've never received anything else from them. And
12 then, obviously, when I got this letter, I kind of
13 realized why.

14 Q So -- so your firm provided bookkeeping services and
15 tax preparation services for Chapman Dental from, I
16 believe you said, 2013 to about 2018?

17 A Yeah, something like that.

18 Q Somewhere around there. Whenever it started, it
19 ended in 2018?

20 A Right.

21 Q Now, with respect to the letter and the discrepancies
22 between Eaglesoft and whatever was in the Southern First
23 Bank statements, as we sit here today, do you have any
24 idea why there's a difference between those numbers?

25 A No.

1 Q Do you feel like that you could draw any conclusions
2 from the fact that there's a discrepancy between those
3 numbers?

4 A No.

5 MR. FEW: Thank you, Mr. Schmieding.

6 That's all the questions I have.

7 THE COURT: Cross.

8 MR. KENDRICK: Yes.

9 CROSS-EXAMINATION

10 Q Mr. Schmeeding --

11 A Schmieding.

12 Q Mr. Schmieding, before we get going, we'll start
13 where Mr. Few ended. Could anyone explain the
14 discrepancies between the bank records and the Eaglesoft
15 computer?

16 A I don't know.

17 Q There's a variety of reasons why there would be those
18 discrepancies; right?

19 A I would assume.

20 Q So your company in the years we're talking about --
21 the Exhibit No. 3 e-mail that you just looked at between
22 Ms. Stevens and Dr. Chapman was in March of 2016?

23 A Okay.

24 Q And -- and are you aware Ms. Katchick was terminated
25 in March of 2017, a year later?

1 A I have no knowledge of that.

2 THE COURT: Mr. Schmieding, would you scoot up a
3 little bit and speak in the microphone?

4 Thank you, sir.

5 BY MR. KENDRICK:

6 Q So that I understand this correctly -- accounting is
7 not my forte. But the bookkeeping services that you do
8 would be kind of keeping track of what the bank statements
9 say is happening at the business; right?

10 A That's -- in this circumstance, we used the bank
11 statements to record the revenue and expenses, correct.

12 Q And you use QuickBooks to do that; right?

13 A We do.

14 Q Now -- and I don't know the answer to this. So
15 are -- is Ruth, at the time, entering the information into
16 QuickBooks to generate the reports, or are you getting
17 those from somewhere else and comparing them?

18 A So I'm not sure, you know, which -- how it was done
19 with this particular client, you know. We have many, many
20 bookkeeping clients. It's possible that -- that Chapman
21 Dental did enter some information in the QuickBooks. I
22 don't know. Sometimes, we get it that way. Sometimes, we
23 don't. So I don't know exactly how that was done.

24 Q So it's possible that it could be Ms. Stevens who is
25 entering the information into QuickBooks; right?

1 A We don't normally enter it into QuickBooks if the
2 client doesn't use QuickBooks. So it just depends, you
3 know. It's hard for me to say.

4 Q And what it sounds like is happening from your
5 testimony and from these letters is that QuickBooks is a
6 reflection of what the bank says is there; right?

7 A So, you know, you're going to need to stop using the
8 word "QuickBooks" because it's not quite right. So we
9 reconcile the bank when we do the bookkeeping services.
10 We recognize every deposit and every withdrawal from the
11 bank statement.

12 So -- so we are reconciling it, yes, and then
13 entering it in whatever software it may be, QuickBooks or
14 our software.

15 Q Okay. So what you're doing is making sure that, I
16 guess, all the transactions in the bank are properly
17 entered; right?

18 A Exactly.

19 Q What Eaglesoft, apparently, was doing was sort of the
20 money that comes from the patient to the dental practice
21 was recording that or, at least, that was the idea; right?

22 A I have no idea.

23 Q Okay. And that answers my next question. You don't
24 really know what Eaglesoft was; right?

25 A Exactly.

1 Q So if there's a difference between the Eaglesoft
2 collections and the bank statements, you don't have any
3 idea why that would have happened; right?

4 A Correct.

5 Q But it does sound like in March of 2016 -- and I
6 can -- I don't like messing with this machine because I
7 don't know how to work it very well. But let me see if I
8 can pull Exhibit No. 3 back up for you.

9 All right. So in this exchange, if you look at the
10 bottom of your screen where it's underlined -- actually,
11 if you look at all these red parts, it sounds like
12 Ms. Stevens is contemplating that someone is going to call
13 her to talk about the discrepancies in the accounting
14 software; right?

15 A It sounds like it, yeah.

16 Q And this is in March of 2016. And what her concern
17 appears to be is there is a discrepancy; right?

18 A Correct.

19 Q And what Dr. Chapman's concern appears to be is,
20 also, that there's a discrepancy; right?

21 A Right.

22 Q But he doesn't jump to the conclusion that anyone is
23 stealing from him; right?

24 A Correct.

25 Q He's just worried that could be the case?

1 A Correct.

2 Q But he tells Ms. Stevens that he trusts -- and when
3 he says the front desk girl, can we agree that's
4 Ms. Katchick?

5 A If you say so.

6 Q Well, just by the context of these e-mails,
7 Ms. Stevens is e-mailing with Dr. Chapman and the name
8 they're referring to is Samantha; right?

9 A I can't say that.

10 Q Okay. How about if you look at the top and you see
11 the underlined? Can you just tell me what name I've
12 underlined right under the subject line?

13 A Samantha enters most of the payments.

14 Q So a year before her termination, what your office --
15 and I know it wasn't you. But what your office is doing
16 is discussing with the doctor that there is a discrepancy
17 in the amount of money collected versus what is being
18 deposited in the bank; right?

19 A Correct.

20 Q And the idea is to get to the bottom of that
21 discrepancy and remove it; right?

22 A Correct.

23 Q And this conversation -- the reason that Ms. Stevens
24 would want to talk to an employee would be to explain how
25 to make sure everything is done correctly to avoid the

1 discrepancy; right?

2 A Yeah. I won't say everything is done correctly. But
3 let's figure out why there's a difference between the two.
4 There's an answer, but we've just got to go figure it out.

5 Q Right. And if you read these e-mails, it definitely
6 appears to be that that's what they're trying to do;
7 right?

8 A Well, nobody asked us to do it. So it sounds like
9 they're trying to do it, correct. Chapman Dental practice
10 is trying to do it.

11 Q But it wouldn't be unexpected that if you were trying
12 to figure out if there was a discrepancy that you would
13 ask the accountant; right?

14 A Nobody asked us to dig into it, let's put it that
15 way.

16 Q Sure.

17 A We just told them there's a discrepancy. And that's
18 as far as we went.

19 Q Right. And I don't disagree with that. And, in
20 fact, at the top of this e-mail, it looks like what Ruth
21 says is, I'm not trying to imply anything odd is
22 happening; right?

23 A Correct.

24 Q She just wants to try to fix it?

25 A Correct.

1 Q Because if you have these discrepancies, you can't
2 keep track of the money; right?

3 A Absolutely.

4 Q I mean, if we collect money at a business and the
5 money goes into the bank account and the numbers don't
6 match up, then that's how money gets lost; right?

7 A Could be.

8 Q I mean, that's the basic principle of accounting is
9 that you balance -- you use the term reconcile; right?

10 A Correct.

11 Q But what we want is to make sure the dollars coming
12 in match the dollars being deposited?

13 A It makes sense.

14 Q So when you sent the letter to the Chapmans -- and if
15 you'll give me a second. That letter, basically, was you
16 doing a mathematical calculation; right?

17 A Correct.

18 Q And you're an accountant, so I assume that that's a
19 pretty basic function for you; right?

20 A Correct.

21 Q You're good at math?

22 A Correct.

23 Q We have systems that, also, ensure that -- right. So
24 in this letter that you have written to him, the letter
25 says that you have prepared a calculation of the

1 difference between the cash receipts entered into the
2 accounting system and then what cash made it to the bank;
3 right?

4 A The company's accounting system and what was
5 deposited in the bank, correct.

6 Q Absolutely. And you just took those two numbers and
7 told them what the difference was; right?

8 A Correct.

9 Q And that letter is absolutely accurate, isn't it?

10 A I -- from the information that was provided to me --

11 Q Okay.

12 A -- to use to prepare that calculation of the
13 difference in the bank. It depends on if that information
14 provided to me is correct.

15 Q Right. And where did the information come from, if
16 you know?

17 A Brooke Chapman.

18 Q Okay. But do you know where she got it from?

19 A No.

20 Q Okay. But you had enough confidence to write that
21 letter that there were two sets of numbers; right?

22 A Correct.

23 Q And when you -- I know when you talked about your
24 conversation with the assistant solicitor, you said the
25 letter had been taken out of context?

1 A Correct.

2 Q But the context in which you gave it was that you
3 were asked to do a mathematical calculation. And that's
4 what's in the letter; right?

5 A Correct.

6 Q So whatever context was created later isn't something
7 you were aware of; right?

8 A Correct.

9 Q Okay. So the conversation you had with the
10 Thirteenth Circuit Solicitor's Office was in June of -- I
11 think you said 2018, something like that. Does that sound
12 right?

13 A I -- you would have to pull that letter back up.

14 Q Let's do it. I'm sorry. I should have done that
15 first.

16 I'll show you what has been entered into evidence as
17 Exhibit No. 15. On June 27th of 2018, Ms. Kluska sends
18 you the e-mail --

19 A I can't see that.

20 Q I'm sorry. I didn't move it down far enough.
21 Does that look right?

22 A Correct.

23 Q And she has contacted you about the fact that the
24 information she has from you and the information she has
25 from O'Shea don't really give her any confidence in what

1 she should do; right?

2 A Yeah. She's saying that one person is saying there's
3 an issue and -- but she was taking mine and saying, hey,
4 that's an audit. You've done an audit. And we've got to
5 figure out what -- why there's a difference between you
6 and this other person.

7 Q And you corrected her right away on June the 27th of
8 2018 to say, no, this is not an audit?

9 A Correct.

10 Q And that's because in your world as an accountant, an
11 audit has a specific meaning; right?

12 A Absolutely.

13 Q So if I say, hey, I think I'm going to audit my
14 household expenses, it doesn't mean the same thing as if
15 you, as a CP, say I will perform an audit for, you know,
16 business X, Y, Z; right?

17 A Correct.

18 Q It has a specific meaning under the accounting
19 principles?

20 A Correct.

21 Q And you corrected her about that on June 27th?

22 A Correct.

23 Q But I assume you still stood by the fact that the
24 calculations you did, based on the information you had,
25 were correct; right?

1 A Based on the information that was provided to me,
2 that was correct, yeah.

3 Q And -- and I'm -- I don't know the answer to this,
4 but I've heard you say a couple of times "based on the
5 information provided to me," which kind of sounds like
6 maybe some doubtfulness. Do you have some reason to think
7 the information you were given was inaccurate?

8 A No.

9 Q Okay. And what, ultimately, they were trying to do
10 was determine if there was any money missing; right?

11 A Correct.

12 Q And do you know Mr. O'Shea?

13 A No.

14 Q Were you provided with Mr. O'Shea's report?

15 A No.

16 Q What that e-mail doesn't say is I looked at your
17 calculation and I've read Mr. O'Shea's report and you're
18 wrong. She didn't say that; right?

19 A I'd have to read it.

20 Q Sure.

21 A My issues are just read the e-mail.

22 Q Right. And when I read that e-mail, I don't mind
23 telling you because I've read it a few times, she's not
24 telling you that you were incorrect. In fact, she says we
25 want to try to figure out these discrepancies. And I'm

1 wondering if you would be okay talking to Mr. O'Shea?

2 A Correct.

3 Q So even based on Mr. O'Shea's report versus your
4 letter, she's not decided that something incorrect or
5 wrong has happened; right?

6 A That's correct.

7 Q She's still investigating?

8 A Correct.

9 MR. KENDRICK: Your Honor, that's all I have.

10 Thank you very much.

11 THE COURT: All right. Any redirect?

12 MR. FEW: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. FEW:

15 Q Mr. Schmieding, I'm going to put up the copy of your
16 letter as it is included in the solicitor's file. And
17 this is Page 21 of Exhibit No. 12. Does that appear to be
18 the same letter that you sent?

19 A Correct.

20 Q When you wrote this letter, did you have any
21 intention of suggesting that any individual had -- could
22 be responsible for the discrepancy?

23 A Absolutely --

24 MR. KENDRICK: Your Honor, I'm going to object to the
25 scope. I know the answer because he already said it.

1 What I don't want to do is keep having every time I sit
2 down, we just ask the same question over. It's going to
3 take forever. I think redirect would be if I brought up
4 some new thing in cross-examination. I, certainly, want
5 the Plaintiff to be able to address it. I think it's
6 unfair to just keep -- every time I say something, we just
7 redo the direct. And yesterday, we went to re, re,
8 redirect. And I just think there's a deficiency problem
9 here.

10 THE COURT: Mr. Few.

11 MR. FEW: Well, Your Honor, opposing counsel just
12 asked questions about the two different systems. He asked
13 him all types of questions about this letter and what he
14 meant by this letter. He asked him if it was accurate.
15 And I'm just asking -- and he's asking if it suggested
16 that my client had anything to do with the discrepancies.

17 THE COURT: All right. The objection on those
18 grounds is overruled.

19 MR. FEW: Thank you, Your Honor.

20 BY MR. FEW:

21 Q Mr. Schmieding, I'm going to show you what is
22 Exhibit -- Page 2 -- or Page 22 of Exhibit No. 12, which
23 is the solicitor's office response regarding the criminal
24 charges. And have you ever seen this chart right here?

25 A I have not.

1 Q Did you prepare this chart?

2 A No.

3 Q And attach it to your letter?

4 A No.

5 Q So if I were to tell you that the solicitor's office
6 investigator has testified that he considered your letter
7 to be a two-page letter and that that included this
8 statement right here that says, Note client records and
9 bank deposits were maintained solely by Samantha Katchick,
10 what would be your reaction to that?

11 A We did not prepare that.

12 Q What's your reaction to the -- to learning that this
13 attachment was put on your letter with my client's name on
14 it?

15 A It's completely incorrect.

16 Q It's a complete misuse of the letter that you wrote,
17 isn't it?

18 A Exactly.

19 MR. FEW: Thank you.

20 No further questions.

21 RE CROSS-EXAMINATION

22 BY MR. KENDRICK:

23 Q Well, it's only a complete misuse of the letter if
24 you accept the premise of the question that the
25 Plaintiff's lawyer just gave you; right?

1 A Attaching that to my letter is completely wrong.

2 Q So how was it attached to your letter?

3 A Oh, I have no idea.

4 Q So you have just testified to this jury in response
5 to the Plaintiff's question that there's been a misuse of
6 your letter, even though you don't, actually, know how
7 those two things were put together, do you?

8 A No.

9 Q So if, in fact, your letter showed a difference of
10 \$3,505.19 and then Dr. Chapman, also, gave them records
11 that showed that was the discrepancy they were concerned
12 about, that's a misuse of your letter?

13 A No.

14 Q Okay. If the investigator had called you and said,
15 hey, Mr. Schmieding, I work for the Greenville County
16 Sheriff's Office white collar unit and I'm verifying some
17 things. Did you send both of these pages? What would you
18 have said?

19 A No.

20 Q So it wouldn't even be an issue today, would it?

21 A Correct.

22 Q But you don't agree that \$3,505.19 is the discrepancy
23 you put in your letter; right?

24 A Correct.

25 Q You're an honest man and you're a good accountant;

1 right?

2 A Correct.

3 Q So that is the correct discrepancy amount; right?

4 A Based on the information that was provided to me,
5 correct.

6 Q But that's what I'm saying. When you do math to
7 verify a calculation and then there's, also, another set
8 of calculations and it's the same number, what is -- I'm
9 curious about why that's so sinister?

10 A I'm not saying it's sinister.

11 Q Right. And it's not even a misuse, is it? Because
12 it's only a misuse if you accept this premise that there
13 was some attachment; right?

14 A Correct.

15 Q But you don't know if it was attached or if it was
16 just your letter and then the next piece of paper in the
17 information given to the police were the calculations that
18 matched what you found; right?

19 A Correct.

20 Q Because if I told you that I had found a discrepancy
21 that I know, based on a long history of knowing myself and
22 that I'm not the best at math and I wanted you to verify
23 my calculations, that would, in fact, be a thing an
24 accountant would do; right?

25 A Possibly.

1 MR. KENDRICK: Thank you.

2 THE COURT: All right. You may step down, sir.

3 Thank you.

4 Next witness.

5 MR. FEW: The Plaintiff calls Brian Smith, Your
6 Honor.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 BRIAN SMITH,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: State your name.

13 THE WITNESS: My name is Brian Smith.

14 THE CLERK: Thank you.

15 Please be seated.

16 THE WITNESS: Sure.

17 Here?

18 THE BAILIFF: Yes.

19 DIRECT EXAMINATION

20 BY MR. FEW:

21 Q Good morning, Mr. Smith.

22 How are you doing today?

23 A Morning. Doing well for a Tuesday.

24 Q Where do you live?

25 A I live in Spartanburg County.

1 Q Okay. And do you know Alex Chapman?

2 A Yes.

3 Q How long have you known Alex Chapman?

4 A I think it's been about 10 years, 2015 or '16 for
5 sure.

6 Q And what was -- what type of relationship did y'all
7 have? Was it professional? Was it business? Was it
8 personal?

9 A It was professional with his dentistry. And it was,
10 also, personal.

11 Q So he was your dentist?

12 A Yes.

13 Q And so -- so did a relationship start as you being a
14 patient of the practice?

15 A No. It started more of -- we're both car people. So
16 we met in a car club that I found out [sic]. And we
17 became friends a little bit. Then after that, I was a
18 patient of his dentistry.

19 Q So you think you met him in the car club sometime
20 around 2014?

21 A Correct.

22 Q So y'all had a friendly relationship before you
23 became a patient of the practice?

24 A Correct.

25 Q What type of things did y'all do together over the

1 years, like, go to races? Or just tell the jury what kind
2 of things y'all did as friends.

3 A Yeah. Let's see. We -- I think, at first, we did --
4 we just met at these car groups. We would just hang out
5 and talk. And he was always into driving cars on tracks.
6 So he got me into that. So we did a lot of that. I would
7 go to his house. We would have barbecues and basic friend
8 stuff like that.

9 Q So when you say you went to a track, where would that
10 occur?

11 A Most of the time, we went to Savannah, Georgia --
12 near Savannah, Georgia. There's a track there that I've
13 driven with him, at least, five or six times.

14 Q Did you have a car that you would race on these
15 tracks?

16 A Uh-huh.

17 Q What kind of car did you have?

18 A It's a BMW. It's an older three series.

19 Q And then did Dr. Chapman have a car?

20 A He did. He's had a couple. He's had a BMW M3 for a
21 while and then in more recent years, a Corvette.

22 Q And then did -- how did y'all get -- you had to
23 transport your cars all the way down to Savannah to do
24 these things?

25 A Correct. They're road legal.

1 Q So you would just drive the car down there?

2 A Uh-huh.

3 Q Would y'all stay in the same hotels, or anything like
4 that?

5 A Yes, if we didn't come back to Greenville.
6 Sometimes, there's an event close enough that we wouldn't
7 get a hotel.

8 Q Go out to dinner together, that kind of thing?

9 A Uh-huh.

10 Q So y'all were -- y'all were pretty close friends, I
11 guess?

12 A Absolutely.

13 Q All right. At any point in time -- are you still
14 friends with Dr. Chapman?

15 A No.

16 Q Okay. And what -- what -- looking back on it, can
17 you identify what you think was the precipitating event or
18 series of events that led to the demise of the
19 relationship?

20 MR. KENDRICK: Your Honor, can we approach?

21 THE COURT: Yeah.

22 (WHEREUPON, a bench conference was held.)

23 MR. FEW: So I'm sorry, Your Honor. Is that last
24 question still pending?

25 THE COURT: Last question is still pending.

1 BY MR. FEW:

2 Q So just without going into details, approximately
3 when did the relationship end?

4 A It was around the middle of 2020.

5 Q All right. And was anything -- well, let me ask you
6 this first. Have you ever heard Dr. Chapman make any
7 statements about Samantha Katchick?

8 A Yes.

9 Q Okay. And where did that occur?

10 A That happened at his home, Chapman's home.

11 Q Do you remember approximately when it was?

12 A It was approximately 2019.

13 Q And what do you recall him saying?

14 A I recall him saying that Samantha had stolen money.
15 And that she was the former front office lady for Chapman
16 Dental. That's what he said at his house.

17 Q Did you know Samantha from having gone in as a
18 patient?

19 A We never talked, but I knew of her.

20 Q And have you come to learn of any action taken by
21 Dr. Chapman in regards to you in the last month or so?

22 MR. KENDRICK: Your Honor, I'm going to object to
23 this.

24 THE COURT: What's the basis?

25 MR. KENDRICK: Relevancy. I mean, he's here to, I

1 guess, tell his story about the statements. I think he's,
2 also, here for other purposes. And I don't -- I think we
3 should take it up outside the presence --

4 THE COURT: Yeah.

5 All right. Ladies and gentlemen, I'm going to excuse
6 y'all for a little bit. I've got a matter to take up.

7 Thank you.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 10:29 a.m.)

10 MR. KENDRICK: Your Honor, I'd ask that we excuse the
11 witness, please.

12 MR. FEW: That's fine.

13 THE COURT: If you would, please, step outside.

14 Mr. Halberg, when you get a chance, ask the
15 gentleman -- the last gentleman if there's any
16 accommodation -- anything he needs while he's sitting
17 there. If he needs to stand up some or if he needs --

18 THE BAILIFF: Is he falling asleep?

19 THE COURT: No.

20 THE BAILIFF: Can we move him more toward the end?

21 THE COURT: I want to make sure -- ask him if there's
22 anything he needs -- if he needs --

23 THE BAILIFF: Maybe put another chair out here.

24 THE COURT: I just want to accommodate him.

25 THE BAILIFF: Right. Yes, sir.

1 THE COURT: Just whatever he needs. I just want to
2 make sure he's taken care of. If he needs to periodically
3 stand up or whatever he needs. I just want to make sure
4 he's taken care of.

5 THE BAILIFF: Yes, sir.

6 THE COURT: All right. Let me hear from you,
7 Mr. Kendrick.

8 MR. KENDRICK: Well, the first issue, Your Honor --
9 and I'm going to say this just based on just so we have
10 context. I'm trying to find -- if Mr. Few knows it better
11 than me -- I'm trying to find exactly where in the
12 complaint he references this statement that -- that
13 Mr. Smith is about to testify about -- or did testify
14 about --

15 THE COURT: Well, let me ask you this, what is --
16 what are you getting ready to elicit from him?

17 MR. FEW: All I'm going to do is establish that he
18 has been sued subsequent to the finding -- the allegations
19 say that he's interfered in this case.

20 MR. KENDRICK: He hasn't been served. So I don't
21 know if he knows that. But I think we're getting ready to
22 spend a whole bunch of time this morning going over
23 exactly who Mr. Smith is. Mr. Smith has inserted himself
24 in this case. Mr. Smith doesn't know Ms. Katchick.

25 Mr. Smith when he found out the lawsuit was going on

1 came to be a part of it. And I wasn't really planning on
2 spending a bunch of time going into that, even though it's
3 probably proper.

4 I guess my concern is we talked about the lawsuit at
5 the beginning of the case. And I get it, whatever ruling
6 you made. So my objection to that lawsuit is the same as,
7 you know, there's clearly a history between Mr. Smith and
8 Mr. Chapman.

9 I know from doing my own research that Mr. Smith is
10 angry with Dr. Chapman. And that's why he's here. But to
11 keep things clean, I think if he wants to testify about
12 what he just said, then I suppose -- again, I'm trying to
13 find where that allegation was made. And maybe I'm
14 looking at the wrong --

15 MR. FEW: Which complaint are you looking at?

16 MR. KENDRICK: Second amended.

17 MR. FEW: Well, I didn't know he made this statement.
18 We only found out about it after. That's what happens
19 when there's a slander and not a liable. I mean, you
20 don't have people just --

21 THE COURT: Y'all need to --

22 MR. FEW: I'm sorry, Your Honor. I'm very sorry.
23 You know, it's not in our complaint because I -- I met
24 this gentleman on the day of the rule to show cause
25 hearing. I went back through my notes earlier today and

1 it was September 14th of 2023.

2 Afterwards, I had heard about him. Sam knew him from
3 when he came to the practice. She knew they were friends.
4 Dr. Chapman had a dog down there. She worked there three
5 and a half years.

6 I went into that room right there and I interviewed
7 him to find out if he had any information that was useful
8 to this case. I discovered that he heard that Dr. Chapman
9 said that my client -- said my client stole from him. I
10 said, Well, that's not something that comes along every
11 day. So it fits the pattern of everything else in our
12 case.

13 So -- but for them suing him on March 26th, Your
14 Honor, which is, like, four days after we became the date
15 certain on this thing -- but for them suing him, I
16 wouldn't be asking him these questions. But they brought
17 this up. They're the ones that sued him. It's, clearly,
18 some form of witness intimidation. And they say that he's
19 inserting himself in this lawsuit, you know. I didn't
20 want to be asking him questions about this lawsuit.
21 They're the ones that sued him.

22 MR. KENDRICK: If I can respond.

23 So our previous collegial relationship is about to
24 end if I'm being accused of witness intimidation.

25 MR. FEW: No, not you, not you. I'm sorry.

1 MR. KENDRICK: Well, I'm "them." When we're in this
2 courtroom and you say "them," you're talking about me.
3 And I represent Dr. Chapman. I speak for him. My name is
4 not on that lawsuit. No one asked me if we could file it.

5 I will tell you, I went back -- because I'm not going
6 to let my client do something he shouldn't do. And I
7 looked at the basis for the lawsuit. It's legitimate.
8 Mr. Smith may very well be in a bad spot down the road.
9 But be that as it may.

10 I now move to strike his testimony and ask you to
11 direct the jury to disregard it. Because what they're
12 doing is, essentially, saying we're going to present a
13 witness who creates a pattern of these statements being
14 made. So that is perfectly analogous to what Rule 404(b)
15 prevents is that we don't introduce things to show action
16 in conformity with. If there was an independent basis for
17 that statement, then they could file a new complaint based
18 on that statement. That hasn't happened.

19 So I -- that's a mistake I made. And I will say it
20 on the record. I thought that his claim was part of the
21 defamation cause of action. It sounds like it's not. It
22 sounds like he's a pattern witness, which I don't know
23 that we have said that the statement was never made.

24 THE COURT: What is -- for the record, what is the
25 statement?

1 MR. KENDRICK: He just testified that Dr. Chapman at
2 his swimming pool --

3 THE COURT: I mean, that statement, I know. What
4 is -- that is the statement that he's made regarding the
5 issues in this case, that the Plaintiff -- I mean, that
6 Dr. Chapman did tell him that she stole.

7 But after that, what are you trying to get after
8 that, Mr. Few?

9 MR. FEW: Well, Your Honor --

10 THE COURT: I think the statement -- the statement
11 from the witness that Dr. Chapman told him that -- that
12 the Plaintiff had stolen money. That is relevant. It
13 involves the issues in the case.

14 But what I don't know is what you're about to get in
15 with this witness. And that is Mr. Kendrick's objection
16 here about what you're about to get into.

17 So what are you about to get into as far as this
18 witness?

19 MR. FEW: Your Honor, I was just going to ask him if
20 he had been sued, and by who, and when. And that's all.

21 THE COURT: Let me ask you this, what is the
22 relevance of that?

23 MR. FEW: Well, the relevance is that in their
24 lawsuit, they say that you have inserted yourself into
25 this lawsuit. Well, as Your Honor just said, he has

1 relevant testimony that we already have before the Court
2 about a defamatory statement that was made after the
3 charges had already been dismissed.

4 And I was pulling up my discovery responses because I
5 gave them a very specific description. I could have just
6 read his interrogatory response into the record.

7 So, Your Honor, again, I didn't ask that he be sued.
8 They sued him. They created this issue. It's an effort
9 at -- it has to be construed as some sort of effort at
10 witness intimidation.

11 Otherwise, why would they not have served it? If
12 they wanted to go forward with a lawsuit, go ahead and
13 serve it. It's almost like show up and you get served. I
14 don't intend to go into it much. I was just going to say,
15 have you been sued?

16 I want to read into the record what I put in my
17 discovery response, if I can find it here.

18 THE COURT: Well, while you're looking at that,
19 Mr. Kendrick, what in response to that?

20 MR. KENDRICK: That's fine. Let's do it. I've got
21 all day to be here. I'm just trying to make this more
22 efficient. And if he wants to bring this up, we'll get
23 into the lawsuit. We'll get into everything that
24 Mr. Smith has said. We'll get into -- I mean, he's lied
25 several times already. So I want him to have all the

1 opportunity on direct he can.

2 THE COURT: Is Mr. Smith the one that's writing the
3 stuff on social media?

4 MR. KENDRICK: Absolutely.

5 THE COURT: See, Mr. Few, that's my concern.
6 Assuming for purposes of this objection, if Mr. Smith is,
7 in fact, writing on social media derogatory comments about
8 any of the Defendants in this case, we're going to be
9 trying that case. Because I think Mr. Kendrick would be
10 allowed to -- to -- if that question is elicited,
11 Mr. Kendrick will be allowed to bring up all of that as
12 far as evidence and all, the thing he may have said. And
13 Mr. Smith may find himself in some trouble with that,
14 depending on what the -- I don't know what it is. I don't
15 have any idea what it is.

16 MR. FEW: I don't either. I just identified him as a
17 witness about something that was said by the pool. I'm
18 fine with it.

19 THE COURT: I'm going to sustain it. Even if it's
20 relevant -- I don't think it's relevant. But from a 403
21 analysis, if it's unfairly prejudicial and it substantial
22 outweighs the probative value of it, I think -- and I
23 think it does. I think it is unfairly prejudicial and
24 substantially outweighs the probative value. And we would
25 get into trying a case within a case. And I think the

1 Defense would be entitled to bring up all that stuff about
2 him. And then we're going to be trying that case.

3 I mean, you've got the information from him that you
4 need in pursuit of your theory of the case that a
5 defamatory comment was made by Dr. Chapman, which is the
6 issue in the case. So -- and that is relevant and I'll
7 allow that. But as far as going into a lawsuit with this
8 particular witness, I'll sustain that.

9 MR. FEW: Thank you, Your Honor.

10 MR. KENDRICK: Your Honor, one other issue. Just
11 because I don't have everything printed. But I would like
12 to use as an exhibit and impeachment just the
13 interrogatory response that Mr. Few was just referring to,
14 which, essentially, explains what Mr. Smith is going to
15 testify to.

16 THE COURT: Well, I don't think he's going to -- I'm
17 not allowing him to testify to that.

18 MR. KENDRICK: I'm sorry. What he's already
19 testified to is the defamatory statement. So what I'm
20 talking about is -- so Mr. Few told me what he was going
21 to say. And if he tells me that Mr. Few is wrong in what
22 he gave me, then I want to be able to show him the
23 interrogatory response and make sure he understands that
24 that's what was said. I don't have it printed out.

25 THE COURT: So tell me what you're trying to impeach

1 him with. An interrogatory answer from the Plaintiff?

2 MR. KENDRICK: Yes.

3 THE COURT: All right. What rule -- where does that
4 get you -- you're impeaching him under 613. Where -- your
5 ways to impeach him would be 613, 608.

6 MR. KENDRICK: Prior inconsistent.

7 THE COURT: That's why I asked that question is that
8 an interrogatory from the Plaintiff? Is it a statement
9 made by the witness himself?

10 MR. KENDRICK: Well, I mean, that goes back to my
11 complaint about the witness is that if I'm told what the
12 witness is going to say, I have a right to rely on it.
13 And if now he's going to change what he said, then that
14 seems like a strange thing for me not to be able to
15 address.

16 So even if we put the interrogatory away, I mean, I
17 assume I can tell him what I've been told and ask him if
18 that's accurate.

19 THE COURT: What have you -- what does the
20 interrogatory say?

21 MR. KENDRICK: The witness is expected to testify
22 about defamatory statements made by Dr. Chapman after the
23 criminal charges against the Plaintiff were dismissed and
24 on information and belief after this lawsuit was filed.
25 To the best of the witness' memory, they were at the pool

1 outside of the new house at Rocky Point in Greenville,
2 South Carolina. And Dr. Chapman said he was stressed
3 about a lawsuit and continued to state that the Plaintiff
4 stole money from him.

5 I don't mind telling you because this isn't any kind
6 of a secret, but the problem is that's not exactly what he
7 just said. Because the context in explaining that he's
8 been sued to his friend and why he has been sued, I think,
9 needs to be explored.

10 Because there's a big difference between him saying,
11 hey, a lady you don't know and have never met stole from
12 me. I don't think that's defamatory, but that will be for
13 a later argument. But then to say, I am being sued by a
14 lady who I said stole from me, that's not a defamatory
15 statement under any definition of defamation. And that's
16 what I was told he was going to say, that the lawsuit was
17 filed. Dr. Chapman was stressed about a lawsuit --

18 THE COURT: I understand your theory. But from an
19 evidentiary standpoint, the rule -- what is the rule that
20 allows you to ask him that particular question?

21 I understand and recognize where you're coming from,
22 and your position on that, and the argument you've got.
23 But as far as an evidentiary basis, how do you -- how do
24 you impeach this particular witness?

25 And, as you know, it's got to be under 613 or 608.

1 It's not a -- it's not a 608 issue. So it's really
2 impeachment. You've got to impeach him by his statement.

3 MR. KENDRICK: I mean, I guess I've never had this
4 come up before. Because, obviously, the statement that
5 was reported to me was made to Mr. Few. I'm not going to
6 try to call him. But he would be the proper witness if
7 this guy doesn't -- if he says something different than
8 what's in the interrogatory.

9 THE COURT: But, see, that's what -- that's not my
10 inquiry with you. I understand your argument. And I
11 understand why you're making the argument and the basis
12 for it. The -- the problem, though, is the rule to
13 impeach him under is what?

14 MR. KENDRICK: Is the prior inconsistent statement.

15 THE COURT: Okay. But, as you know, under 613 in the
16 prior inconsistent statement, as you know, it's a prior
17 inconsistent statement from the witness. And you, also,
18 know, you've got to go through these steps before you are
19 allowed to do that. And, as you know, those steps, there
20 are several of them. You first ask the witness, did you
21 make this statement on this particular day --

22 MR. KENDRICK: Right.

23 THE COURT: -- under these particular circumstances
24 and with this particular person? And then you give the
25 witness the opportunity to admit or deny. And under 613,

1 if he admits it, then you're done. If he denies it, then
2 you can cross-examine him on that.

3 MR. KENDRICK: Right. So I'm sorry. I skipped the
4 first part. I guess I assumed he's going to deny it, but
5 maybe he's not. And then this is probably much ado about
6 nothing.

7 THE COURT: But the one -- the first step under that
8 rule under any impeachment is it's got to be a statement
9 from that witness. And this is an interrogatory answer
10 from the Plaintiff. And so in order to impeach a witness,
11 you've got to have an inconsistent statement from that
12 particular witness.

13 Now, if that particular witness had made those
14 comments to somebody -- let's say he made that statement
15 to somebody, that exact statement that's in that
16 interrogatory, he made that statement. You can
17 cross-examine him on it, as you know, or you can bring in
18 that witness and impeach him. You can do it that way.

19 MR. KENDRICK: But he did make that statement, Your
20 Honor. And I guess that's why this is a unique
21 situation --

22 THE COURT: All right. What's the proof he made that
23 statement?

24 MR. KENDRICK: Because I don't think Mr. Few would
25 mislead me. I trust Mr. Few. I think when Mr. Few signs

1 his name to a piece of paper, then I can take that as a
2 legitimate statement.

3 THE COURT: So what would be the question you would
4 ask him?

5 MR. KENDRICK: Did you say this?

6 THE COURT: And what is "this"?

7 MR. KENDRICK: Well, I would say, did you say that
8 Dr. Chapman told you she stole money? And I think I could
9 just say --

10 THE COURT: That's nothing inconsistent from his
11 testimony that he just gave.

12 MR. KENDRICK: But the part that is inconsistent is
13 the lawsuit was pending. And there was a discussion about
14 the lawsuit in -- so what he didn't say when he -- he just
15 said, Dr. Chapman told me that she stole money from him.

16 Now, think about the two versions there. Plaintiff
17 stole money from me. I am involved in a lawsuit because I
18 said Plaintiff stole money from me. There is a very big
19 difference there when it comes down to the stage where we
20 argue the legal ramifications of what's been presented in
21 the courtroom.

22 But if that is, in fact, a defamatory statement that
23 they're going to use to support their case, then the
24 context of the statement could make it no longer
25 defamatory if he's describing activity that is going on,

1 especially if that activity he's describing is a lawsuit.

2 Now, secondarily, if they're, in fact, not relying on
3 this defamatory statement to trigger damages and
4 liability, then I go back to -- I think it's a 404(b)
5 issue, that he doesn't get to come in and testify about
6 something to create a pattern of conduct to show that
7 Dr. Chapman is acting in conformity with the allegation
8 being made.

9 THE COURT: I agree with that. Under 404(b), I agree
10 with that.

11 MR. KENDRICK: Then I think that triggers my -- we
12 strike him and tell the jury to disregard. Because if
13 that testimony is not part of the complaint, which it's
14 not, then it's 404(b) testimony and it's improper.

15 THE COURT: But the testimony is that Dr. Chapman
16 told him that the Plaintiff stole money from him.

17 MR. KENDRICK: Right.

18 THE COURT: Okay. And that's all he's testified to.

19 MR. KENDRICK: Right.

20 THE COURT: And that's all I've allowed him to
21 testify to.

22 MR. KENDRICK: But that's a defamatory statement,
23 according to the Plaintiff.

24 THE COURT: Right. So where is the impeachment under
25 613 that allows you to impeach him on a statement he has

1 made in the past?

2 MR. KENDRICK: So I think we have two different
3 arguments going on. So I'm going to address --

4 THE COURT: Address that one. Address that.

5 MR. KENDRICK: If he has said that a statement was
6 made, but he has left out the context regarding what was
7 said, then I am entitled to ask him about the context. I
8 don't know that impeachment is the right word yet.

9 THE COURT: And the context -- you're allowed to ask
10 him what else he has said. You're allowed to ask him what
11 else he has said -- and I don't know what that's going to
12 be in relation to that statement.

13 So you ask him, you've testified to X. But, also,
14 didn't you say -- or however you phrase it. I think -- I
15 don't have any issues with that.

16 Mr. Few, do you have any response?

17 If he -- the statement -- the testimony he's made on
18 the record is that Dr. Chapman told him that. He would be
19 entitled to delve into the context about what that
20 statement was about.

21 MR. FEW: Absolutely, Your Honor. That's what
22 cross-examination is all about. But at no point in time
23 does this courtroom, yours or any other, going to get
24 turned into a situation where an attorney, who in good
25 faith under Rule 33(b)(7), actually, provides the

1 important facts known to the witness or observed by the
2 witness, which is what I did or you provide a statement.
3 We didn't provide a statement.

4 I would have been perfectly fine for him to say he
5 was stressed about the lawsuit. I can't make him answer
6 the questions the same way he did when we were in there
7 interviewing him. He's more than welcome -- and he's
8 going to -- he's going to cross-examine him about what
9 were the circumstances. What else was said? That's what
10 cross-examination is for. But there's no need to get into
11 my interrogatory responses as a means of impeachment.

12 If my interrogatory response quoted him and said that
13 this was a statement, but I didn't give an affidavit -- if
14 it was an affidavit, then he'd be under the rule. I don't
15 even know if it was a statement -- if it was a statement.
16 It wouldn't have to be under oath. But that's what 33(b)
17 says is that you give a statement from the witness or the
18 attorney describes the facts known to -- the important
19 facts known or observed. That's what we did.

20 So I've given him the information that he needs to
21 ask -- to probe all of the circumstances about this
22 statement that was made at the pool. And, frankly, Your
23 Honor, given their objections, that's the only legitimate
24 cross-examination that -- that -- that should occur,
25 unless they want to get into the existence of the

1 friendship, which I didn't get into.

2 I made -- I established that they were friends. They
3 didn't just meet, which is important for the jury to know.
4 And then I got up to the point where how did the
5 relationship end. I didn't go into the details of that.
6 We just established that it ended. The jury needed to
7 know that. And then we got him to give the statement.

8 And Josh, now, it's his turn to cross-examine the
9 witness on anything he wants to about the statement that
10 was made at the pool.

11 MR. KENDRICK: Let me say this, -- I forget what I
12 said about the interrogatory. I withdraw any kind of --

13 THE COURT: I just --

14 MR. KENDRICK: It's overcomplicated.

15 THE COURT: It's just not proper under the rule. You
16 can impeach him all day long on the context of the
17 statement he made -- or the testimony about the statement
18 Dr. Chapman made and the context surrounding that. You
19 can cross-examine him all day. But as far as any
20 interrogatory, it doesn't come under 613. And that's
21 where it really has to come into or any other evidentiary
22 rule. Because it's just not a statement by him. So I
23 will not allow that.

24 But you can testify -- you can cross him all day long
25 on the context of the statement.

1 MR. KENDRICK: I guess my secondary concern, though,
2 is I think I -- just based on what we've talked about, I
3 have a very valid 404(b) concern that this witness has
4 come in as a 404(b) witness.

5 THE COURT: How has he gotten 404(b), though? He's
6 testified he was friends with him and that he had a
7 conversation with Dr. Chapman. And Dr. Chapman told him
8 that the Plaintiff stole from him.

9 MR. KENDRICK: Right. Which is the heart of their
10 case --

11 THE COURT: How is that 404(b), though?

12 MR. KENDRICK: Because that's not part of their
13 defamation claim in their complaint. What that is is to
14 establish what they're saying must have happened because
15 he said it to him, too. It's a pattern witness.

16 It's classic. It's a classic pattern witness.
17 Because you can be a substantive witness and you can say I
18 am suing defendant for defamation based on statements one,
19 two, and three. Did you hear statement three? Did it
20 come from the defendant?

21 THE COURT: Was the interrogatory -- did the
22 interrogatory -- I thought I heard the answer in the
23 interrogatory that he was going to say that Dr. Chapman
24 told him she stole.

25 MR. KENDRICK: Right. And I should have -- but

1 here's the thing. So I could have asked you to exclude
2 that under 404(b). You wouldn't have been able to exclude
3 it, you still would have had to wait for me to object to
4 it, which I am now doing. And I --

5 THE COURT: How is -- how is -- that's not 404(b).
6 How is that 404(b)? It's other conduct, motive, identity,
7 intent, absence of mistake, all those things under 404(b).
8 How is this a 404(b)?

9 It would be -- let's just use, for example, the
10 testimony came out that Dr. Chapman told Bob Smith that
11 June Wilson stole a bunch of money. Then a couple months
12 later, Dr. Chapman told Steve Wilson that Bobby Williams
13 stole money. And this is a pattern. He's telling -- he's
14 telling people about people stealing things.

15 So then the Plaintiff says, I'm going to put up all
16 these witnesses that Dr. Chapman is telling all these
17 people that people steal all the time. There may be a
18 404(b) issue. But this is the issue in the case here that
19 Dr. Chapman allegedly, according to this witness, told him
20 that the Plaintiff stole.

21 So how is that 404(b)?

22 MR. KENDRICK: Because -- and I don't -- you
23 correctly described one way to use 404(b). But you could,
24 also, do that same thing by saying, I am suing you over
25 statement one. But I'm, also, going to bring in evidence

1 of statement two through 20 that happened after -- you
2 know, any time up to yesterday because we're going to show
3 you a pattern of conduct.

4 So it doesn't have to be different participants, if
5 you will. In other words, it doesn't have to be
6 Dr. Chapman and anybody about a separate person, which is
7 how you use the analogy to say that he's talking about all
8 of these different people. That's not the only way 404(b)
9 comes into play.

10 THE COURT: But I don't think 404(b) comes into play
11 in this particular fact pattern and the issues you're
12 addressing. I do understand your argument. But I don't
13 believe that this is a 404(b) issue. I think it's a
14 direct bit of testimony that Dr. Chapman allegedly told
15 this witness that the Plaintiff stole. And it was in an
16 interrogatory answer. It was previously put in there, so
17 it's not a surprise. So it's been out there.

18 So I note your objection.

19 MR. KENDRICK: Thank you.

20 THE COURT: So I'm going to -- the motion -- your
21 motion to strike the testimony is overruled.

22 MR. KENDRICK: Thank you, Judge.

23 THE COURT: All right. Let's take a little -- is
24 there anything else before we take a restroom break?

25 MR. FEW: I want to take a restroom break, too, Your

1 Honor. And we can come back on this. But while we're hot
2 on the subject, it seems to me in view of the rulings that
3 they're not wanting to get into the allegations he made in
4 the lawsuit.

5 So the limitation of the cross-examination on this
6 guy should be about this statement and anything else he's
7 testified to, but not getting into all these other things
8 that they're going to allege he's done. Because if they
9 do that, then they're opening up the door to get right
10 back into that lawsuit complaint. And I don't have
11 control over what he's going to say in response to his
12 answers on cross-examination. So --

13 THE COURT: Well, I mean, he can cross him on any
14 bias under the rules -- as far as any bias against
15 Dr. Chapman. I mean, Mr. Kendrick has got to be -- I
16 assume you're talking about the statements that this
17 witness has made about Dr. Chapman.

18 What are you --

19 MR. FEW: The objection was to getting into the
20 lawsuit, as I understood it, and was we were going to
21 confuse the issues and get involved in things that are not
22 really relevant to the claims in this case. And I have
23 that concern as well.

24 MR. KENDRICK: And I don't mean this to sound in any
25 way condescending, Your Honor. But I've tried countless

1 cases. So I'm well aware that if I open the door to
2 something that I've just objected to, then it will now be
3 something that I --

4 THE COURT: Well, that's what I was just getting
5 ready to say, that Mr. Kendrick is going to have to be
6 careful --

7 MR. KENDRICK: And I know --

8 THE COURT: -- because he doesn't want to open the
9 door.

10 MR. KENDRICK: I will have to be careful, Judge. So
11 I, certainly, appreciate and understand what Mr. Few is
12 saying. And I recognize if it becomes part of my
13 perceived necessity in a trial to open the door to
14 something, then that's what I've done. But I don't plan
15 on doing that because I was trying to keep things sort of
16 focused.

17 THE COURT: As I said yesterday, I like to keep
18 trials between the ditches on the issues in the case.
19 Let's try to keep doing that. Y'all both are -- you're
20 doing a good job.

21 All right. We'll be in recess.

22 (WHEREUPON, a break was taken.)

23 THE COURT: All right.

24 MR. FEW: Your Honor, should I say I have no further
25 questions or do you want to go straight into cross?

1 THE COURT: Yes. If you didn't make that statement,
2 which you didn't, so yeah.

3 Let's get the witness back in and put him on the
4 stand.

5 (WHEREUPON, Brian Smith entered the courtroom.)

6 THE COURT: You're still under oath.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Now, bring the jury in.

9 (WHEREUPON, the jury came into open court at
10 approximately 11:13 a.m.)

11 THE COURT: Mr. Few, resume.

12 MR. FEW: No further question for this witness, Your
13 Honor.

14 THE COURT: All right. Cross.

15 MR. KENDRICK: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. KENDRICK:

18 Q Good morning, Mr. Smith.

19 How are you?

20 A Good morning.

21 I'm doing all right.

22 Q I'm Josh Kendrick. You and I have never met before,
23 have we?

24 A No.

25 Q The first time you went to Chapman Dental to be a

1 dental patient was in March of 2018; correct?

2 A I don't recall.

3 Q Does that sound right?

4 A That sounds about right.

5 Q The statement that you claim Dr. Chapman made to you
6 was that the Plaintiff stole money from him?

7 A Correct.

8 Q And that was at his house; right?

9 A Yes.

10 Q And that took place after the lawsuit was filed;
11 right?

12 A I don't -- yes.

13 Q And the reason you know that is because what he,
14 also, said was he was stressed about a lawsuit that had
15 been filed against him; right?

16 A Yes.

17 Q And he told you that that lawsuit involved him saying
18 the Plaintiff stole money from him; right?

19 A I don't recall.

20 Q Okay. Who else was there? Do you remember that?

21 A I don't recall.

22 Q What time of year was it? Do you remember that?

23 A It definitely wasn't winter. I want to say it was
24 more towards spring.

25 Q Okay. And you don't know what year it was?

1 A I believe it was 2019.

2 MR. KENDRICK: 2019.

3 That's all I have, Your Honor.

4 THE COURT: All right. Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. FEW:

7 Q Did you -- do you recall -- can you recall what
8 Dr. Chapman said? Did he not continue to say that the
9 Plaintiff stole money from him?

10 MR. KENDRICK: Your Honor, we just both asked him
11 what he said and he told us. So now, we're going to --

12 THE COURT: Yeah. Rephrase -- you're going back over
13 it. Rephrase it.

14 Sustained.

15 BY MR. FEW:

16 Q You were just asked questions about did Dr. Chapman,
17 also, mention the lawsuit?

18 A Correct.

19 Q So do you recall if he said -- if it was an
20 additional statement or -- about the statement that he
21 said she stole from him? What can you recall about what
22 was said? Is there any difference between the lawsuit and
23 the allegation saying she stole from him?

24 A I think I understand your question. From what I
25 recall in that conversation that day, he said that

1 Samantha had stolen money from the office.

2 MR. KENDRICK: Your Honor, I'm going to object to
3 this testimony. He just told me he didn't remember.
4 And now that the Plaintiff is asking him, he does
5 remember.

6 THE COURT: I'll allow you to cross him on that
7 point.

8 MR. KENDRICK: Okay.

9 BY MR. FEW:

10 Q And did Dr. Chapman, also, say something about the
11 lawsuit on that day?

12 A He did.

13 Q And is that -- what did he say about the lawsuit, if
14 you can remember?

15 A He didn't want to go into detail too much about it.
16 But he said there's a lawsuit about the front desk lady
17 who stole money from him, that she was suing him. And he
18 was stressed.

19 Q And did you understand him to say that she had stolen
20 money from him, or that the lawsuit was about having
21 stolen money from him?

22 A I remember him saying that she had stolen money from
23 him. He didn't go into specifics about the lawsuit.

24 MR. FEW: That's all the questions I have.

25 THE COURT: All right. Recross.

RECROSS EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. KENDRICK:

Q You didn't know who he was talking about, did you?

A I'm sorry?

Q You didn't know who he was talking about, did you?

A In reference to at the time of when he told me he was stressed?

Q When he made the statement, you didn't know who he was referring to; right?

A He mentioned that it was his old front desk lady, Samantha, who I never was friends with at the time.

Q So you didn't know her when that statement was made to you?

A What do you mean by "know her"? I'm sorry. I don't understand.

Q I should have gotten Mr. Few to ask you that and you would probably understand.

Did you have any association or relationship with this front desk lady who was not employed at the practice when you became a patient?

A No, no relationship.

MR. KENDRICK: Thank you.

THE COURT: You may step down.

Thank you.

THE WITNESS: I'm sorry?

1 THE COURT: You may step down.

2 THE WITNESS: Okay.

3 THE COURT: Next witness.

4 MR. FEW: The next witness, the Plaintiff calls the
5 Plaintiff.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 SAMANTHA LYNN KATCHICK,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 State your name for the record.

13 THE WITNESS: Samantha Lynn Katchick.

14 THE CLERK: Thank you.

15 Please be seated.

16 DIRECT EXAMINATION

17 BY MR. FEW:

18 Q Good morning, Ms. Katchick.

19 How are you feeling today?

20 A I'm doing good.

21 Q I'm going to get you to tell the jury a little bit
22 about yourself. Where were you born? And where did you
23 grow up?

24 A I was born in Pennsylvania, Danville, Pennsylvania.

25 I've pretty much lived in Greenville County most of my

1 life. For five years, I did live in Jacksonville, North
2 Carolina. I was married to a marine. I have two boys,
3 they are 20 and 14. I'm a single mom, so.

4 Q The marriage that you say you lived in North
5 Carolina, what time period was that?

6 A That was from 2007 to 2011.

7 Q And is that your first marriage or your second
8 marriage?

9 A My second marriage.

10 Q And you have a child from that marriage?

11 A I do.

12 Q What's that child's name?

13 A His name is Caden Sandifer.

14 Q Caden. And Caden -- what grade is Caden in now?

15 A He's in the eighth grade.

16 Q And then you have a child from a previous marriage?

17 A I do.

18 Q And what's that child's name?

19 A His name is William.

20 Q Have you been involved in raising the children?

21 A Oh, yes.

22 Q Have you been the primary caregiver for the children?

23 A Absolutely. Full custody.

24 Q And you've always been the primary caregiver and
25 mother to the children?

1 A Yes.

2 Q Where did you go the high school?

3 A I graduated from Mauldin High School.

4 Q Mauldin High. What year was that?

5 A 2002.

6 Q And then at some point in time, did you go back to
7 get further education, or certificate, or something of
8 that nature?

9 A I did. Actually, I did when I was a stay-at-home mom
10 when I was married to my ex-husband. I went back to
11 school full-time to get my Associate's Degree in Medical
12 Office Administration.

13 Q And was that when you were in North Carolina?

14 A Yes, sir.

15 Q And where did you -- how much schooling did you have
16 to go through to get that degree?

17 A I did about three years up there. And then we ended
18 up getting divorced. And I had to transfer down here to
19 finish my last degree -- or my last part of it, which
20 transferring my transcripts over added on a couple of
21 extra classes.

22 Q So did you finish -- what institution did you,
23 ultimately, get the degree from?

24 A Virginia College.

25 Q Is that where you were taking classes in North

1 Carolina?

2 A No. I was at Coastal Carolina Community College.

3 Q What town is that in?

4 A Jacksonville, North Carolina.

5 Q And approximately what time did you -- what year did
6 you get that -- it's an Associate's degree?

7 A Yes.

8 Q Okay. What year did you get that?

9 A I got that in 2013.

10 Q And did you, eventually, go to work in the field
11 of -- describe it again. It's healthcare administration?

12 A Healthcare administration. I was working bartending
13 at Kanpai while I was finishing up my school degree.

14 Q How long had you been working at Kanpai?

15 A Since 2011.

16 Q 2011. And what kind of schedule did you work at
17 Kanpai?

18 A I would work around my school schedule. So I would
19 work nights and then weekends.

20 Q And was that -- you worked that job continuously?

21 A I did until I finished my degree. And then I cut
22 down on my hours.

23 Q And then what kind of hours -- you, eventually, went
24 to work at Chapman Dental; right?

25 A Correct.

1 Q And while we're on Kanpai, do you recall what -- when
2 would you work at Kanpai Steakhouse during the time period
3 that you were employed by Chapman Dental?

4 A I would work every Wednesday evening. I left about
5 1:00 every day to go in. And then I would work every
6 other weekend when my kids were with their dad.

7 Q And, like, how many hours -- how were you paid and
8 compensated for that?

9 A I was paid hourly and then, also, tips.

10 Q How many hours would you work on that Wednesday
11 night?

12 A About six hours.

13 Q And then when you worked on weekends, how many?

14 A Anywhere between seven and a half to eight, depending
15 on how late we were there.

16 Q And what kind of tips did you usually get?

17 A It could range anywhere from \$40 to a hundred
18 dollars. But the typical was anywhere around \$55, \$60.

19 Q At some point in time, did you come to meet
20 Dr. Chapman?

21 A Correct.

22 Q Do you recall the first communication or contact with
23 him?

24 A I do.

25 Q And -- and tell the jury about that.

1 A I, actually, had met a mutual friend -- well, I met a
2 guy on the Tinder app. And we were talking. I was
3 talking about my degree that I was just finishing up. And
4 he told me he had a friend in Greenville that just opened
5 a dental office. And he wanted me to reach out to him
6 because he was looking for help.

7 I told him I didn't feel comfortable because this
8 was, actually, on Thanksgiving Day. That I was not going
9 to interfere with family time, that it was a holiday. And
10 the next thing I knew this guy had given my number to
11 Dr. Chapman. And he started texting me.

12 Q Do you remember the name of that individual?

13 A I don't remember it. That was in 2013. I can't
14 remember. It was one of his racing friends.

15 Q So Thanksgiving Day of 2013, you were contacted by
16 Dr. Chapman?

17 A Correct.

18 Q And what was the substance of those communications?

19 A Just kind of asking me about what my degree was, if I
20 was interested in dentistry, a lot of casual talk. And
21 then some asking if I wanted to come up and take a look to
22 see if dentistry was something I was interested in.

23 Q And what happened next?

24 A I ended up going to the office and meeting him after
25 hours. He showed me a little bit around the office. And

1 then we went to dinner.

2 Q Dinner. Where did you go?

3 A El Jalisco, a little Mexican place right by the
4 office.

5 Q And his office is in Simpsonville?

6 A It's in Simpsonville, Five Forks.

7 Q And what -- what do you remember about that dinner?

8 A We talked and had a good time, and just kind of hung
9 out.

10 Q Were you employed at that time?

11 A I was not.

12 Q Had you applied for a job at that time?

13 A I did not.

14 Q Okay. So you -- Thanksgiving day of 2013 was the
15 first communication. And do you remember how many days
16 after Thanksgiving you went to this dinner?

17 A We went to dinner a couple of times. We talked
18 pretty regularly after that day.

19 Q So what was -- what was -- what was the -- how would
20 you describe your relationship during that time period
21 between the time that you were contacted on Thanksgiving
22 and you started going to dinner with him?

23 A We started, basically, talking and going on dates.

24 Q And at some point -- and how long did that -- did
25 that --

1 A That went on until -- I think it officially ended on
2 January 1st of 2014.

3 Q At that point in time, you were employed there;
4 right?

5 A Correct.

6 Q You started work sometime in 2013?

7 A Correct.

8 Q Do you remember if it was before Christmas or after
9 Christmas?

10 A It was the beginning of December.

11 Q So as of December 1st, you were --

12 A I would say December 13th, somewhere around there. I
13 did have a -- I got a text message from him saying that
14 his front desk girl had quit, and he needed somebody, and
15 wanted to give me a trial run to see how I would do in
16 that office.

17 Q So I know this is not nothing you want to go into,
18 but tell the jury, like, what was the extent of the
19 relationship until it ended on January the 1st of 2014?

20 A We talked regularly. We would text each other. We
21 would go out to dinner. I would go back to his house.
22 And it became intimate.

23 Q And was there anything, in particular, that caused
24 the -- the termination of that aspect of the relationship?

25 A We decided it needed to end because of the fact that

1 I was working there.

2 Q And then you continued to work there until sometime
3 in early 2017; right?

4 A Correct.

5 Q Did you ever start dating or talking to him again?

6 A No.

7 Q Okay. Tell us, what were your job responsibilities
8 at Chapman Dental?

9 A I would check patients in, put in all their paperwork
10 into the computer. I would verify their insurance, mail
11 out the claims, send invoices out to patients that owed
12 money. I would go over treatment plans with the patients,
13 file insurance, work on outstanding claims, just about --
14 answering the phone, scheduling appointments. Pretty
15 much, I did everything up-front.

16 Q When Ms. Hawthorne testified yesterday, she said that
17 there was Dr. Chapman, and then a hygienist, and then a
18 dental assistant, which is the role she played, and then a
19 front desk person?

20 A That's correct.

21 Q And so all those roles are different; right?

22 A Correct.

23 Q And did your role ever really change from the time
24 period that you were working there?

25 A Sometimes, I would help Dr. Chapman assist. If Angie

1 wasn't there or was out, I would help him with some
2 procedures. I would help clean the instruments every now
3 and then, if they got really busy. I'd help the hygienist
4 do probing depths. I would type them in for them as they
5 would call them out. So I kind of dabbled a little bit in
6 everything.

7 Q So you never had your hand in anybody's mouth, did
8 you?

9 A Technically, no. I would maybe have the suction in
10 their mouth.

11 Q Okay.

12 A But I didn't clean any teeth, or anything like that.

13 Q You were -- and I'm trying to just get an
14 understanding. You were kind of assisting, like, hand me
15 this device, that kind of thing?

16 A Yes.

17 Q And that's not something you did on a normal basis?

18 A No. He would talk me through it and tell me what I
19 needed to do and how to do it.

20 Q And if Angie Hawthorne was there, then you probably
21 didn't need to do that?

22 A No, I did not.

23 Q Angie Hawthorne testified yesterday -- was she
24 working there when you got there?

25 A No.

1 Q So you remember her coming on?

2 A I do.

3 Q Did she take someone's place that was the assistant
4 before?

5 A She did. So she took Karena's spot.

6 Q Was Karena there when you first got there?

7 A She was.

8 Q All right. So there's been testimony about this
9 Eaglesoft. Tell the jury what Eaglesoft is.

10 A Eaglesoft is a dental program that allows you to
11 schedule patients, put in X-rays, put in treatment plans,
12 post payments. And it's just designed for dental.

13 Q So, like, if you take an X-ray of a patient, does
14 Eaglesoft have a function where you can, actually, log and
15 store the X-ray in their software?

16 A Yes. In the individual patient's chart.

17 Q And so, to your knowledge, is Eaglesoft a -- a
18 financial management software?

19 A I mean, if it's done correctly, it could be, yes.

20 Q So you -- tell the jury what you would do with
21 Eaglesoft when you're checking out a patient?

22 A While I was working at Chapman, I would collect the
23 money. I'd put the money into the account. And I would
24 put it in the envelope in the drawer next to me.

25 Q Okay. Is there any -- checks and cash, the same

1 thing?

2 A Check and everything, insurance checks, regular
3 checks, credit card payments, all of that.

4 Q So insurance checks would come in the mail; right?

5 A Correct.

6 Q And then some people would still write an
7 old-fashioned personal check; right?

8 A Correct.

9 Q And then some people would use debit cards; right?

10 A Correct.

11 Q Or credit cards?

12 A Correct.

13 Q Some people couldn't pay; right?

14 A Usually, we didn't do services if nobody could pay.

15 Q Were you ever involved in -- what would you do if
16 someone couldn't pay?

17 A Usually, that was something that me and Dr. Chapman
18 would talk about and discuss. And that would be between
19 me and him. And the ultimate decision would come down to
20 him.

21 Q Did you ever put people on, like, a payment plan?

22 A I did.

23 Q Was that a regular occurrence?

24 A Not a regular. We did it for some patients that
25 needed some extensive work.

1 Q And this was the first time that you had ever had a
2 role at a front desk; right? Even though you had the
3 degree, that was your first job in the medical
4 administration?

5 A Correct.

6 Q Now, there was testimony about these end-of-day
7 reports. Do you know what those are?

8 A I know better now what they are. The day report is a
9 report that is supposed to be ran every day. I know that
10 Dr. Chapman would run them on his own, but they would
11 never print out or anything to that aspect. We
12 wouldn't -- I never saw the end-of-day.

13 Q Were you -- was it ever part of your job description,
14 or your role, or your duties to prepare end-of-day reports
15 when you worked at Chapman Dental?

16 A No. That was something he did.

17 Q Do you know what he did with it?

18 A He would run it and that's all I know. He would just
19 check it and run it.

20 Q Did he ever come to you and say there was a problem?

21 A No.

22 Q You were in the courtroom a minute ago when
23 Mr. Schmieding was testifying about QuickBooks. Did you
24 have any involvement with QuickBooks?

25 A No.

1 Q Did anybody in the office have any involvement with
2 QuickBooks?

3 A Not that I'm aware of, no.

4 Q So let's talk about Eaglesoft a little bit. A random
5 person just can't walk up and start using it; right?

6 A No.

7 Q Okay. I mean, you had to log in?

8 A Yes.

9 Q And who else had log-in credentials that you know of?

10 A Everybody that worked there.

11 Q And did you have any limitations on the types of
12 things that you could enter or alter in the Eaglesoft
13 system?

14 A No, I didn't.

15 Q Do you know if anybody else did?

16 A Yes. I know the hygienist and the assistants
17 couldn't put in any kind of insurance information, or
18 anything like that. They weren't able to do that.

19 Q Do you know why that is?

20 A It's a certain block. Most hygienists and assistants
21 have that set up as an automatic feature in Eaglesoft?

22 Q So could they enter check payments?

23 A They could.

24 Q Could they enter insurance payments by check?

25 A They could.

1 Q Did y'all distinguish between personal checks and
2 insurance checks?

3 A We did.

4 Q And that was distinguished in Eaglesoft?

5 A Correct.

6 Q And how would you go about doing that?

7 A You would just make a -- put in a payment and the
8 payment type, check number. It would give you a list of
9 what kind of payment it was, check number, personal
10 check -- or check, or insurance check, debit card, cash,
11 et cetera.

12 Q Did you enter cash payments in Eaglesoft?

13 A I did.

14 Q How often would people pay by cash?

15 A Not as often as the typical credit card.

16 Q And did anyone else, as far as you know, enter cash
17 payments into Eaglesoft?

18 A Yes.

19 Q And who was that?

20 A Dr. Chapman.

21 Q And do you know -- what about Brooke Chapman, didn't
22 she work there toward the end of your tenure?

23 A Yes.

24 Q Did you ever see her work on Eaglesoft?

25 A Oh, yeah.

1 Q And explain to the jury, like, what -- how did you
2 and her interact up there at the front desk?

3 A Well, when she officially started working there in
4 2017, basically, I was pushed to the side.

5 Q Okay. You said when she "officially started working
6 there," did she -- that would presume that she
7 unofficially worked there at some point?

8 A Oh, yeah. She would definitely be in our computer
9 system doing all kinds of things prior.

10 Q Do you recall when Dr. Chapman started dating Brooke
11 Chapman?

12 A 2014.

13 Q And do you recall when they got married?

14 A I believe it was in 2016.

15 Q And do you recall roughly when was the first time
16 that she came to the office and -- and did work-related
17 things at the office, not just showing up?

18 A I would say probably 2015.

19 Q Did she have -- as far as you know, did she have a
20 log-in at that point in time?

21 A In 2015, possibly. I can't recall exactly or
22 remember when. I believe so because she would come in and
23 help Dr. Chapman on Saturdays.

24 Q Do you know -- she could have been using his log-in;
25 right?

1 A Possibly, yeah.

2 Q Were there situations where somebody would use
3 somebody else's log-in, either by mistake or
4 intentionally?

5 A I've had to give Angie my log-in for Wednesdays to be
6 able to put in insurance information if a new patient
7 called. Because she didn't have access to that ability
8 under her name.

9 Q So do you know if Angie took in any cash on
10 Wednesdays? Did she enter it under your log-in or her
11 log-in?

12 A Typically, it depended on if I was still logged into
13 my account or not.

14 Q But -- but she definitely had to have your log-in
15 on -- frequently in order to log-in insurance payments?

16 A Correct.

17 Q Pretty much every Wednesday, she had to have your log
18 in?

19 A Pretty much, yes.

20 Q All right. And were you ever asked about any
21 problems with the cash as it compared to any other system
22 of recordkeeping?

23 A I was not. I was asked by Ruth at one point, I'm not
24 sure when, about a check that was not showing up in the
25 system. And Angie and I went through and ended up finding

1 that check and the balancing sheet for it.

2 Q All right. And then -- so at some point in time, you
3 no longer were working at Chapman Dental?

4 A Correct.

5 Q Tell the jury how that all went down.

6 A I was told to come into the office early on a -- I
7 think it was on a Thursday morning. I'm not sure exactly
8 what day. It was in March of 2017. They had me come in
9 early. And he pulled me aside and told me that he had
10 gotten an e-mail from his accountant saying that money was
11 not adding up and that money was missing in the amount of
12 \$2,000.

13 Q What else did he say?

14 A I asked him what he was trying to imply. He said, I
15 don't know.

16 I said, Are you trying to say that I took the money?

17 And he said, No. I know you would never do that.

18 And I wrote it down because he, basically, told me he
19 had to fire me.

20 Q That day?

21 A Correct.

22 Q And so your employment was terminated that day?

23 A Correct.

24 Q And there was testimony that -- that you spoke to
25 Angie Hawthorne. Do you recall speaking to Angie

1 Hawthorne about being terminated?

2 A I did. Me and Angie were very close.

3 Q So did the termination and the conversation that you
4 just described occur that morning and you were able to
5 leave the building before she got to work?

6 A Yes. We didn't open until 10:00. I was there at
7 8:00 in the morning. I was gone. All my belongings were
8 gone before anybody arrived.

9 Q Did you see that coming at all?

10 A Yes, but not for that reason.

11 Q Did you steal any money from Chapman Dental?

12 A I did not.

13 Q So what did you do next?

14 A I went to work full-time at Kanpai. And then I got a
15 job offer -- or applied for a job in April of 2017 at
16 Greenville Orthodontics Group and got hired on.

17 Q And is that -- where do you work for them?

18 A I worked in Cherrydale.

19 Q That's out by Furman University; right?

20 A Correct.

21 Q And then what -- what was your role when you first
22 got hired on -- I'm just going to call it the new job?

23 A Pretty much the same thing. I would schedule
24 appointments, answer the phone, take payments, take
25 insurance payments, file insurance claims, and go over

1 treatment plans -- well, I didn't really go over treatment
2 plans. I would renew new treatment plans if they needed
3 to be done. But that's about it.

4 Q Were you paid by the hour at Chapman Dental?

5 A No.

6 Q How were you paid at Chapman Dental?

7 A Salary.

8 Q And what was your salary?

9 A It started at 800.

10 Q 800?

11 A Every two weeks.

12 Q Did you -- did it ever go up?

13 A It did.

14 Q What was it when you left?

15 A I think about a little over a thousand.

16 Q And then when you got the new job -- what was the
17 name of it again?

18 A It's Greenville Orthodontics Group. It's associated
19 with Cherrydale Dental.

20 Q The new job with Greenville Orthodontics in
21 Cherrydale, how were you paid?

22 A Hourly.

23 Q And do you recall what your hourly rate was?

24 A 14.50.

25 Q And did that change at any point in time?

1 A It didn't change for probably almost two, two and a
2 half years later.

3 Q All right. And so you started there in April of
4 2017. And at that point in time, who all had been made
5 aware that -- of this allegation that you had stolen
6 \$2,000 from Chapman Dental --

7 A Nobody.

8 Q -- other than yourself and Angie Hawthorne?

9 A My family, my mom.

10 Q You told your mom?

11 A (There was no verbal response.)

12 Q And anybody else in your family?

13 A My mom and my brother. That's it.

14 Q You were a single mother at that point in time;
15 right?

16 A Correct.

17 Q All right. And then -- okay. So what's the next
18 thing you can recall happening as it relates to Chapman
19 Dental?

20 A I believe the end of January of 2018, we were at work
21 and our phone systems went down -- oh, wait. Hold on.
22 I'm sorry. I think that was the summer of 2017, I had
23 asked Dr. Chapman to remove my name off of the website --
24 off of his website.

25 Q And you were still on the alarm system, or something

1 like that?

2 A I was. I, actually, got a call from Anvis Alarm
3 Company in 2019 informing me that their alarm system was
4 going off.

5 Q So anything else, other than the alarm system and
6 your name on their website?

7 A That's about it that I can think of at the moment.

8 Q You were telling us about a phone call that you
9 received the end of January 2018?

10 A January of 2018, I got a call -- we -- our phone
11 systems were down at the office. And I was waiting for IT
12 to contact me on my personal cell phone number. I got a
13 phone call and I thought it was the IT company. And
14 instead, it was the Greenville County Sheriff's
15 Department. I thought it was a joke at first. I thought
16 it was a hoax.

17 He -- it was Elliott Turner calling me, asking me to
18 come down for questioning in regards to a breach of trust
19 case. He would not go into any details who it was
20 regarding, who it involved, nothing. He was not giving me
21 any information on the phone.

22 And he -- after multiple times asking him what it was
23 in regards to and if it was in regards to Chapman, he said
24 he could not tell me. And I said, Well, I don't really
25 need to talk to you right now. I'm working. I'm busy.

1 And he said, Well, if you don't come down, I'm going
2 to issue a warrant for your arrest.

3 And I said, Well, what kind of warrant are you going
4 to put out for my arrest? You haven't told me anything.

5 And, yes, I was a little agitated. I was busy. I
6 was at work. No information was given to me. He would
7 not tell me anything. He just wanted me to come down and
8 talk to him. And I told him that I would think about it
9 and hung up.

10 Q Did you seek any advice from anyone about what to do
11 about this situation?

12 A I didn't.

13 Q Well, let me back up for a second. Did you,
14 eventually, become convinced it was not a prank call, it
15 was legitimate?

16 A Eventually, yes.

17 Q And you have an ex-husband that worked at the
18 Greenville County Sheriff's Office; right?

19 A I do.

20 Q What is his name?

21 A Kenneth Sandifer.

22 Q Did you speak with him about it?

23 A I did.

24 Q Do you recall that conversation?

25 A I asked him if he knew of an Elliott Turner. He said

1 he vaguely knew of him. I told him the situation. Me and
2 him were very close. We co-parent very well together with
3 our child.

4 I told him what exactly was said and what happened.
5 And he told me to absolutely not come down to the
6 department, to not talk to them. That if they had enough
7 evidence on me that they would arrest me, they would have
8 just came and arrested me. And he told me to go get a
9 lawyer.

10 Q Did you go get a lawyer?

11 A I absolutely did.

12 Q Who did you hire?

13 A David Seay.

14 Q His name is spelled S-E-A-Y; right?

15 A I believe so, yes.

16 Q And do you recall what the fee arrangement was with
17 Mr. Seay?

18 A I paid him \$750 straight up that day to make sure
19 that my children were not in my vehicle with me or around
20 me at any time for them to come and pick me up on these
21 charges that they were looking to pin on me. I wanted my
22 children completely out of it. I didn't want them
23 involved in any way.

24 Q So you were in fear of being arrested at that point?

25 A Absolutely.

1 Q Do you know -- what was the total amount that you --
2 that you were indebted to Mr. Seay for his work on your
3 behalf?

4 A I believe about \$4,000.

5 Q Have you paid him that much?

6 A I have.

7 Q And how long did it take you to get him paid?

8 A A couple months.

9 Q All right. So you, eventually, got arrested, didn't
10 you?

11 A I did.

12 Q Tell us how -- what you can recall about that.

13 A David had been in contact with the Solicitor -- the
14 solicitor's office.

15 Q Are you talking about David Sandifer -- David --

16 A David Seay, the attorney. He had been in contact
17 with, I guess, Alexa and with Mr. Turner. And he told me
18 that most cases -- being that I had no priors, that most
19 of the time, that my ex-husband was correct, there wasn't
20 really any reason for me to go down there. He told me I
21 did the right thing. He told me that with my situation
22 that I had plenty of time to surrender myself and make
23 accommodations for my children, being that I was a single
24 mom.

25 I was absolutely not given that. I got a call on

1 February 7th at work telling me I had to surrender the
2 next day or they were coming to get me.

3 Q And what did you do next?

4 A I left work immediately. I went home. I got my
5 affairs in order. I made arrangements for my kids to be
6 picked up from school for the next day. And I went home
7 and had a complete melt down, anxiety attack, just
8 preparing myself for the next day.

9 Q Had you seen the warrant at that point in time?

10 A I had not.

11 Q So approximately what time did you -- you say you
12 left work on February 7th. This is 2018; right?

13 A Correct.

14 Q Was that before lunch? After lunch? Do you
15 remember?

16 A It was right around lunchtime.

17 Q And you turned yourself in the next day?

18 A Correct.

19 Q Did Mr. -- did your lawyer go down there with you?

20 A He did.

21 Q And tell the jury about that process. What happened?

22 A My lawyer and my brother went down with me to
23 surrender. I was then handcuffed and taken into the
24 warrants division, sat there. And then I was escorted to
25 booking.

1 Q How long do you think you were handcuffed?

2 A I was handcuffed for probably about an hour before I
3 got there.

4 Q And how long were you down there at the -- was it the
5 jail you went to?

6 A It was.

7 Q That's --

8 A Downtown.

9 Q By East North and Stone Avenue, and all of that?

10 A Yeah, right off of 385.

11 Q And approximately how long were you down there for
12 the entire process?

13 A I believe I, finally, got to my car around 7:00 p.m.
14 that evening.

15 Q And what time did you go turn yourself in?

16 A I was there at 10:45.

17 Q Is that when you were told to be there?

18 A I was told to be there at 11:00. But I met with my
19 lawyer a few minutes prior.

20 Q All right. . So what happened next?

21 A I was taken in to booking.

22 Q Oh, I thought you were done with that. So you were
23 cuffed and then the booking process is something
24 different. That's when you go in front of a Judge?

25 A You have to go through multiple stages in order to

1 get to -- in front of a Judge. They had to body search
2 me. I had to sit out in the hallway with men and women
3 coming in and out, waiting to be called to be seen by a
4 nurse to evaluate my mental state of mind, and go over any
5 medications that I took.

6 We were then put into a holding cell, me and a few
7 other women, where we waited for a bond hearing. Then I
8 was taken in to get fingerprinted and do my mug shot. And
9 I was swabbed for DNA in my cheeks. And then I went back
10 to the holding cell and then, finally, got to see a Judge.

11 We were supposed to see the Judge at 3:30 that
12 afternoon, but it was a little after 4:00 before I saw the
13 Judge. And they did let me make one phone call while I
14 was in there. I had to make one phone call. It's an
15 order thing that you have to do. And I called my mom.

16 Q That's this lady right here?

17 A Correct.

18 Q Her first name is?

19 A Debra.

20 Q What do you recall about that phone conversation with
21 her?

22 A She was, like, Why are you calling me? I know where
23 you are.

24 I said, They made me call.

25 And she asked me how I was doing and if I was okay.

1 And she told me to keep my head up and that we would get
2 through this.

3 Q So February 9th, I mean, anything else that you can
4 recall about the arrest process that day?

5 A It's the worst experience that I've ever been
6 through. Going to the bathroom, you don't have any
7 privacy. Men are literally watching you. Feces are being
8 thrown all over the wall in other inmates cells. And I
9 would never wish that on anybody.

10 Q Did you go to work the next day?

11 A I did not. It was a Friday. I didn't have to go in.
12 I got out of jail that night and came home to my youngest
13 son having a fever. So I had to take care of him after
14 spending the whole day in jail and take him to the doctor
15 the next morning while keeping my composure and not
16 breaking down.

17 Q Did your -- how old was he at that point in time?

18 A He was eight.

19 Q Did he have -- did he know what had happened to you?

20 A No. Then no.

21 Q What about your older son?

22 A He didn't know either.

23 Q How old was he at that time?

24 A He was working.

25 Q You, eventually, told your kids what happened?

1 A To an extent, I did. They don't know that I ever
2 went to jail. They think I just went down and talked to
3 somebody. My kids weren't dumb. They saw a big
4 difference in me. I was not the same person. I literally
5 would come home and go to bed every night and cry myself
6 to sleep in fear that I was going to go to prison for
7 something I didn't do.

8 Q Did your attorney tell you what the potential prison
9 time was for the charge that --

10 A I was looking at up to five years in prison.

11 Q Had you ever been arrested for any criminal activity?

12 A No.

13 Q Have you ever been arrested since then?

14 A No.

15 Q Do you -- tell us some other things that happened as
16 a result of the arrest that -- how it affected your --
17 your parenthood and your child at school, and things of
18 that, if there is anything?

19 A Being that I was arrested for a felony, I couldn't
20 participate with any of my children in school activities.
21 And that was something I was very big on. I was very
22 hands on with my kids in school. I wasn't allowed to do
23 anything with them school-wise because of the felony.

24 I --

25 Q Did the -- I'm sorry. You go ahead.

1 A I had SLED at my house within days asking me to turn
2 over my CWP. I had to surrender that.

3 Q CWP, concealed weapons permit?

4 A Yes. That's correct.

5 Q Have you gotten the concealed weapons permit back?

6 A I have.

7 Q Was the school made aware that you had been arrested?

8 A No. You have to do a background check. Every so
9 often, you have to do a background check. And I couldn't
10 apply for it because I had a felony pending on me.

11 Q So when it came time for the background check, you
12 had to just pretend like nothing had happened?

13 A I just had to not be able to participate with my
14 kids.

15 Q Okay. So I think the charges, eventually, were
16 dismissed?

17 A In November.

18 Q Okay. I'm going to get to that in a minute. But I
19 want you to -- what else do you recall as being
20 significant events related to being arrested and charged
21 after what you've already described?

22 A I went through severe depression. I started having
23 panic attacks, anxiety. I made an appointment with my
24 doctor, I believe, that next Monday after I got out of
25 jail. And I broke down to her and told her everything

1 that had happened. She put me on anxiety medication.

2 After about two or three months, my mom came to me
3 and she was like, You need help. I don't know what's
4 wrong with you, but you need help. I was distancing
5 myself from everything, from my family, from my friends.
6 I cut off society. I just -- I was a mess. And I,
7 finally, went and got put on depression medicine.

8 Q Do you recall the names of those medicines?

9 A It was Clonazepam for anxiety and Viibryd for
10 depression.

11 Q Viibryd?

12 A Correct.

13 Q Were those medications you were taking beforehand?

14 A No.

15 Q Did you -- were you planning to go -- Dr. Tuggle is
16 your doctor; right?

17 A Correct.

18 Q How long has she been your doctor?

19 A Since 2011.

20 Q And what -- what medications did you start taking to
21 deal with the situation after the arrest, other than
22 Clonazepam and the Viibryd?

23 A That's the only medication that I was taking due to
24 the arrest.

25 Q And then have you, subsequently, changed the

1 medication -- the antidepressant medication?

2 A Yes. I've had to be changed quite a few times and
3 upped on anxiety medication as well. I think I've been on
4 three different depression medications now because they
5 stopped working.

6 Q And do you recall the names of the other two?

7 A One was Wellbutrin. We -- the doctor upped that one
8 to twice a day. That didn't work. And now, I'm on
9 Prozac.

10 Q Did you have to start going to the doctor more often
11 than you were before?

12 A I did.

13 Q Okay. We've heard about Mike O'Shea. Do you know
14 Mike O'Shea?

15 A I do.

16 Q Can you tell us about how you met him?

17 A I met him through a friend of mine. I just happened
18 to have a friend who knew a forensic accountant. And he
19 sent me to Mike O'Shea's direction.

20 Q You met with Mr. O'Shea in person at some point in
21 time?

22 A I did.

23 Q And tell us about that, where it was.

24 A I met at his office in Mauldin. I gave him all of my
25 discovery, all of the information, the bank deposit slips,

1 everything that was in discovery, and told him the
2 situation. And he was going to look through it all.

3 Q You -- when you say "discovery," you gave him the
4 stuff that the Prosecutor's office had given to your
5 attorney?

6 A Yes. It was, like, the bank deposit slips that were
7 all sent over from Chapman, the banking information,
8 deposit slips, all of that information.

9 Q And do you know what Mr. O'Shea did with that
10 information?

11 A He was going to work on that and give me a call. And
12 he probably called me a week later and told me that there
13 was some major issues that he found.

14 Q And then was he working at the same time with
15 Mr. Seay?

16 A He then --

17 Q Your attorney?

18 A He wanted to know my lawyer information so the two of
19 them could communicate with each other. So, yes, the two
20 of them were at that point working together.

21 Q Did you have any type of financial obligation to
22 Mr. O'Shea to pay him for the work that he was doing for
23 you?

24 A I did.

25 Q And what were those arrangements?

1 A \$11,000.

2 Q That's the total amount that it is now?

3 A Yes.

4 Q But that's not what it was in the beginning?

5 A In the beginning, I was making payments. And I
6 retained him. I don't remember exactly how much I gave
7 him off the bat. But I just made payments to him. And
8 those come out to be \$11,000.

9 Q And he eventually -- are you aware if he prepared a
10 report?

11 A I believe so, yes.

12 Q And then do you remember when that was?

13 A I want to say I got in touch with him shortly after
14 my preliminary hearing. So I'd say April, May of 2018.

15 Q And then there was this e-mail from the Prosecutor to
16 Mr. Schmieding that we went over earlier. Were you aware
17 of any of that going on?

18 A I believe David had showed it to me at one point.
19 And Mike O'Shea had told me about it. But Mike O'Shea
20 told me that he never heard back from Doug Schmieding.
21 They never got able to be in contact with each other.
22 They never spoke.

23 Q And did Mr. O'Shea do anything, as far as you know,
24 after he prepared his first report?

25 A I think he did a second report. He got more

1 information. Because there was quite a bit of financial
2 information that was missing the correct information that
3 he needed was not all in the discovery. So we had to
4 request more information from the Chapmans.

5 Q And then at any point in time, did you retain an
6 additional attorney?

7 A I did.

8 Q And who was that?

9 A Ryan Beasley.

10 Q And do you remember when that was?

11 A I want to say June, maybe, June, July. I don't
12 really recall.

13 Q Were the charges still pending?

14 A Yes.

15 Q And why did you retain an additional attorney?

16 A Because I -- I wanted it to be over with. I was -- I
17 was fighting. It was already going on long enough.

18 Q And what -- what's the fee arrangement you had with
19 the additional attorney?

20 A \$20,000.

21 Q You agreed to pay that amount?

22 A Yes.

23 Q Have you been able to pay on that amount?

24 A Yes.

25 Q And, eventually, the charges were dismissed.

1 Anything else?

2 A The charges were dismissed, I believe, November 26th
3 of 2018. David O'Shea called me and informed me of that.

4 Q David Seay?

5 A I'm sorry. Yes, David Seay.

6 Q Your attorney called you.

7 What else happened?

8 A About two days after I was informed that my charges
9 were dropped, I received a text message from Dr. Chapman.

10 Q Were you expecting to receive a text message from
11 Dr. Chapman?

12 A I was not.

13 Q What did it say?

14 A I believe it said, Yo, Sam. Let's go grab a beer or
15 two on me, smiley face.

16 MR. FEW: I beg the Court's indulgence for a second,
17 please.

18 (Pause.)

19 MR. FEW: Exhibit No. 18 is one we agreed on; right?

20 MR. KENDRICK: Yes.

21 BY MR. FEW:

22 Q Does that look like the text that you received?

23 A That is it.

24 Q Did you go have a beer with him?

25 A Absolutely not.

1 Q What did you do?

2 A The first thing I did was I contacted Mike O'Shea
3 and --

4 Q Did you --

5 A -- after I had a full blown panic attack. Mike
6 O'Shea had to calm me down on the phone. I was
7 hyperventilating. I couldn't breath.

8 Q And that was on November 28th of 2018?

9 A Correct.

10 Q So you were -- how did you feel -- you already knew
11 the charges had been dropped?

12 A Yes.

13 Q And then -- so how did you feel about that at that
14 time?

15 A I thought it was very strange. I don't know why
16 somebody would want to try to contact me after trying to
17 put me in jail for false charges.

18 Q I'm sorry. I meant what was your emotional state
19 when you discovered that everything that you had been
20 through was, finally, resulting in the charges being
21 dismissed? I'm not talking about the text.

22 A I was going through anxiety with everything, still
23 having depression. I, finally, felt like a relief had
24 been taken off my chest with having the charges dropped.
25 But it didn't make things better overnight.

1 Q How long did your panic attack last?

2 A It was about 30, 45 minutes. And it was as I was
3 walking into my bar job.

4 Q Were you able to go in there and work?

5 A After calming down, I was able to pull it together
6 and work.

7 Q That's at Kanpai?

8 A Correct.

9 Q Is this your -- the mug shot that was taken when you
10 were arrested?

11 A It is.

12 Q And do you know if this mug shot was -- it's no
13 longer available; right? Because your record has been
14 expunged?

15 A That is correct. I, actually, as of two months ago,
16 have been able to get it completely removed even off of
17 arrest.org, which was a very long lengthy process.

18 Q What all did you have to do to get that done?

19 A I had to submit all of my expungement papers several
20 times and tell them to have it removed. It -- they had to
21 verify everything. I had to show what charges I had, all
22 the dismissal papers, the expungement papers.

23 Q Do you -- have you applied for any other jobs during
24 this time period?

25 A I have not.

1 Q And then I'm going to show you Exhibit No. 21, which
2 is the expungement. Did you have to pay anything to get
3 your record expunged?

4 A I did not.

5 Q Do you know why you didn't have to pay anything?

6 A Because the charges were dropped against me, I did
7 not have to pay. I did have to pay to do a background
8 check to make sure it was completely removed.

9 Q And this expungement, I'm going to show you Page 2,
10 was -- do you remember the date? I'm looking for the date
11 that the expungement came through --

12 THE COURT: Hollie, can you hear him?

13 THE COURT REPORTER: Not very good.

14 THE COURT: Mr. Few, would you speak up a little bit?

15 MR. FEW: Yes, Judge. I'm sorry about that.

16 THE COURT: Thank you.

17 BY MR. FEW:

18 Q February 6th of 2019, it looks like, is when you got
19 the record expunged?

20 A Correct.

21 Q And then you were just referring to the -- is this
22 the receipt where you went out and used your --

23 A It is.

24 Q -- credit card ending in 1370 for \$26 to make sure
25 that your background check was clear?

1 A That's correct.

2 Q That was on March 21st of 2019?

3 A Correct.

4 Q I'm going to take a look at this Exhibit No. 28.
5 These are some documents that you've provided. Can you
6 give the jury an idea of how much it's cost you to seek
7 this additional medical treatment? And talk about just
8 the doctor's visits first.

9 A I have to see my doctor now every three months for
10 psychiatric evaluations. I have taken on, also, a
11 therapist that I see for anxiety and for trauma. I've
12 done a lot of trauma work with her.

13 Q What's that person's name?

14 A That's Sarah McGuire. The extra cost of
15 prescriptions. In 2018 after I was charged, I couldn't
16 afford to keep my medical insurance because it was a
17 self-plan. And I couldn't -- instead of paying that, I
18 was having to pay my lawyers the extra money.

19 So I lost my insurance and was having to pay
20 everything out-of-pocket, my prescriptions, my doctor
21 visits until I could get on insurance through my employer,
22 which wasn't until 2019 that I was able to get on. I've
23 spent --

24 Q So there was a period of time when you didn't have
25 insurance?

1 A Correct. I lost it.

2 Q And as a result of that, the medical visits cost you
3 more; is that right?

4 A Yes. I was paying about \$70 a visit.

5 Q For a year?

6 A Every visit.

7 Q And then how many extra visits were you having to
8 make?

9 A I probably had to pay three extra visits at \$70.

10 Q That was for one year?

11 A For one year.

12 Q And then how many additional visits are you -- are
13 you still going to see your doctor?

14 A Every three months.

15 Q Dr. Tuggle?

16 A Correct.

17 Q And how many -- is that more than what you were going
18 before?

19 A It is.

20 Q About how many extra visits per year is that?

21 A I think I was going before maybe once every six
22 months. Now, I go every three months. So anywhere
23 between three to four visits a year.

24 Q And, like, what's your co-pay when you go in for
25 that?

1 A It's \$35 now.

2 Q And you've said that the -- let's look at this
3 exhibit. I hate to bore everybody to death. But I want
4 to just show -- you've given these records from CVS where
5 it is Clonazepam right here that's not but \$6.50. But is
6 that one of the medications that you're having to take?

7 A It is.

8 Q That you weren't taking before?

9 A Correct.

10 Q Are you still taking that?

11 A I am, except for it's been upped. The dosage has
12 been upped.

13 Q And then this Viibryd is, I believe you said, an
14 antidepressant?

15 A It is.

16 Q And this particular summary, you paid \$30 for that
17 one?

18 A Correct.

19 Q And there's Clonazepam again. Bupropion, do you know
20 what that is?

21 A That's the Wellbutrin.

22 Q That's an antidepressant?

23 A Correct.

24 Q Something you weren't taking before?

25 A No.

1 Q There's Clonazepam and Bupropion, more Clonazepam.
2 And then on the last page here, there's this Fluoxetine.
3 Do you know what that is?

4 A That is now Prozac.

5 Q So you're having -- the doctors are helping you by
6 changing these medications so that you can cope?

7 A Yes.

8 Q And all of those things that we just went over that
9 are highlighted are medications that you're having to take
10 that you weren't having to take before?

11 A Correct.

12 MR. FEW: Your Honor, what do we want to do about a
13 breaking point? Just keep --

14 THE COURT: Approach.

15 (WHEREUPON, a bench conference was held.)

16 BY MR. FEW:

17 Q Ms. Katchick, tell us a little bit more about the
18 treatment or whatever it is that you're doing with Sarah
19 McGuire.

20 A I have been working with her with different
21 techniques on how to deal with trauma, EMDR, some flashing
22 techniques. I had to undergo several tests to find out
23 exactly what was causing my anxiety, what -- elaborate
24 evaluations that needed to be done in order to diagnose
25 what I was dealing with.

1 And I meet with her about every -- in the beginning,
2 it was about every three weeks. And it has helped me
3 tremendously to be able to control my panic and my anxiety
4 to where I don't have to, hopefully, take my medications
5 as much because I don't like taking stuff that I don't
6 want to, but sometimes I have to.

7 Q And have -- so it's been helpful?

8 A It has been.

9 Q And are you still seeing her for treatment?

10 A I am.

11 Q And is that treatment covered by your health
12 insurance?

13 A No.

14 Q So you're having to pay for it out-of-pocket?

15 A Correct.

16 Q And how much is that costing you?

17 A \$120 a visit.

18 Q What are her credentials, if you can describe them,
19 generally?

20 A I believe she's got quite a few of them. I know she
21 works with adults with marriage, anxiety, borderline
22 personality disorders.

23 Q She's not a medical doctor?

24 A No, she's not. She's just a psychologist.

25 Q Counselor?

1 A Counselor.

2 Q All right. And then Mr. Nasim testified that at some
3 point in time after you were arrested that your new
4 employer, which I believe he was one of the owners, had
5 you go work at a different location?

6 A That is correct.

7 Q Okay. What all was involved in that?

8 A I was transferred to the Spartanburg office. I had
9 to drive out there. My hours were cut significantly. I
10 was working the call center. They, basically, would not
11 have me anywhere with anything involving any kind of
12 money. I would answer calls, direct them. I could take
13 credit card payments over the phone, but, basically, just
14 scheduling.

15 Q So when you say your hours were cut, how many hours
16 were you working before?

17 A I was working 35 hours a week to 20, 21 hours a week.

18 Q And what was your rate of pay?

19 A \$14.50.

20 Q And approximately how long were you sent to work at
21 the call center in Spartanburg?

22 A I want to say about six or seven months.

23 Q So did you earn less money during that time?

24 A I definitely was making the same amount of money, but
25 I was working less hours and driving an hour to work.

1 Q About how many miles was it over and above what you
2 were already driving to work?

3 A 30 miles.

4 Q 30 miles?

5 A 30 miles there and 30 miles home.

6 Q 30 extra. So 60 every day?

7 A Correct.

8 Q And then the -- the Kanpai Steakhouse job, did you --
9 did you work that all the time or was there a time period
10 when you weren't able to do that?

11 A I kept that job. I still stayed on Wednesdays and
12 worked every other weekend. There was a point, I believe,
13 in 2019 that I got -- or maybe it was 2018, I don't recall
14 exactly -- that I did leave for a little bit because I was
15 overwhelmed with everything that was going on. And I just
16 needed a break.

17 Q So do you know -- can you quantify how much time you
18 missed working at Kanpai?

19 A It was probably about four or five months.

20 Q And then that was -- what were you earning at that
21 point in time?

22 A \$8 an hour, and then tips.

23 Q And that was working, I think you said, every
24 Wednesday and every other weekend?

25 A Correct. And, sometimes, I would work on a

1 weekend -- if one of the girls wanted to be out, I would
2 work on a weekend that I wasn't supposed to work. I would
3 help them so they could have time off. But I --
4 typically, it was every Wednesday and every other weekend.

5 MR. FEW: That's all the questions I have.

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to take our lunch break now. So, again, please,
8 don't discuss the case. And let's be back here at 2:00.
9 So lunch until 2:00. And I'll see you back then.

10 Thank you.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 12:28 p.m.)

13 THE COURT: All right. We'll be in recess until
14 2:00.

15 Ms. Katchick --

16 THE WITNESS: Yes.

17 THE COURT: -- you are still on the stand. So you
18 can't talk with your lawyer or anybody about this case.

19 THE WITNESS: Okay.

20 THE COURT: You can talk about anything else, but
21 nothing about the case. Okay.

22 THE WITNESS: I figured that's how it works, the same
23 in depositions.

24 THE COURT: Okay. Thank you.

25 MR. FEW: She's learned that through the depositions.

1 THE WITNESS: I have.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: All right. Anything we need to take up
4 before we begin?

5 Anything from the Plaintiff?

6 MR. FEW: No, Your Honor.

7 THE COURT: Anything from the Defendant?

8 MR. KENDRICK: No, Your Honor.

9 THE COURT: All right. Bring them in.

10 (WHEREUPON, the jury came into open court at
11 approximately 2:05 p.m.)

12 THE COURT: All right. Good afternoon. I hope y'all
13 had a good lunch.

14 I forgot to introduce somebody. This gentleman
15 that's been sitting up here with me, you probably wonder
16 who this guy is. He's the real judge. No, I'm just --
17 he's my law clerk. This is Jonathan Umbriano. He's a
18 lawyer, graduated from law school last year, and passed
19 the bar. And he works with me for a year. And then
20 he'll be with me until August. And he starts the real
21 world of practicing law here in a few months. So my
22 apologies for not introducing him.

23 All right. Next witness -- or cross.

24 Ms. Katchick, if you'd, please, take the stand.

25 And you are still under oath.

CROSS-EXAMINATION

1

2

BY MR. KENDRICK:

3

Q Good afternoon, Ms. Katchick.

4

A Good afternoon.

5

Q I think this is the first time we've met in person.

6

But, obviously, you know I represent the Chapman

7

Defendants in this matter.

8

I'm not going to keep you up here very long. I just

9

want to ask you a few questions about what's happened and

10

what you testified to earlier.

11

A Okay.

12

Q So do you remember the exhibit we were discussing

13

earlier in testimony today where Ruth Stevens had

14

contacted Dr. Chapman about discrepancies in the account?

15

A I do.

16

Q And it sounded like from that exhibit that she was

17

going to have a conversation with you?

18

A Yes.

19

Q And did you guys discuss the discrepancies?

20

A As far as I remember. I don't recall. I did talk to

21

her one time. I think that was previously before that.

22

Q Were you aware that there were discrepancies between

23

the Eaglesoft software and the accounting records?

24

A I was not.

25

Q The Eaglesoft software, that is a fairly common

1 dental practice management program; right?

2 A Correct.

3 Q What it sounds like from what we have learned about
4 it this week is that it, essentially, manages all facets
5 of a dental practice; right?

6 A Correct.

7 Q So scheduling, treatment, finances?

8 A True.

9 Q And the log-in -- I'm not sure if I understand this
10 correctly. But you were talking about different people
11 have different log-ins in the Eaglesoft program; right?

12 A Yes.

13 Q And that's based on the role that Eaglesoft -- that
14 you're entered into Eaglesoft as?

15 A Yes.

16 Q So, for example, I think you were the office manager
17 role?

18 A Correct.

19 Q And that gave you a different level of access than
20 other employees; right?

21 A Correct.

22 Q And I apologize if I misunderstood this, but it
23 sounded like you had more ability to enter, manipulate --
24 and I don't mean manipulate, that's not the right word.

25 But to enter and maintain payments into the system?

1 A That's not correct.

2 Q Okay. So who else could deal with payments?

3 A Anybody could take a payment. Angela Hawthorne could
4 take a payment. Any of hygienists could take a payment.

5 Q Okay. When you were hired and worked at Chapman
6 Dental, it was your job to handle payments; right?

7 A Correct.

8 Q And we've heard a lot of terminology about that job.
9 But, essentially, when we say you were responsible for the
10 payments, that's correct; right?

11 A I would collect the payments when I was there.

12 Q Okay. And were you the one that entered those
13 payments into Eaglesoft?

14 A When I was there and when I collected the payments,
15 yes.

16 Q Okay. And then, also, you were the one that would
17 deposit the money?

18 A Correct.

19 Q And we -- I think your lawyer pointed out, you know,
20 we've heard from witnesses. And you've been in here. We
21 heard from Ms. Hawthorne that it was fairly uncommon for
22 her to take a payment?

23 A I don't know who took payments. I was not there on
24 Wednesdays. So I don't know -- when I was not in that
25 office, I do not know who was taking payments. I don't

1 know if the hygienists took any payments or the assistant.
2 I have no way of knowing that as I was not in the office.

3 Q Did you deposit the money that would have been
4 collected on the times you were not in the office?

5 A So I would do a deposit slip with all the money and
6 the checks that were in the envelope. I would take them
7 once a week. I would take everything that was in the
8 envelope and put it on a deposit slip and then take that
9 to the bank. I had no reconciliation -- I had no end of
10 the day period of what exactly amount-wise that I was
11 supposed to take to the bank. I just took what was in the
12 envelope. Because our end-of-day was never ran, never
13 printed out at the end of the day.

14 So what I was taking to the bank and how I was
15 instructed to by Dr. Chapman was that's how things were
16 done. We never had an end-of-day. I never knew exactly
17 how much was supposed to be taken to the bank until I
18 started my new job when I found out there is an end-of-day
19 that you do run and a report that shows you every day
20 every payment that is collected. I never had that at
21 Chapman Dental.

22 Q Okay. It sounded like you were telling us that you
23 knew that the report existed because you saw Dr. Chapman
24 run it; right?

25 A I knew of the report existing, but I did not know

1 what consisted of the report. I know that in the report
2 it was things being properly walked out under the
3 patient's name. I didn't know there was a part in there
4 that had a deposit report.

5 Q When you -- when you were terminated from employment,
6 Dr. Chapman told you it's because there were discrepancies
7 with the money; right?

8 A Correct.

9 Q And at that point, you still didn't know -- did you
10 not know there were discrepancies at all?

11 A I was not informed until that day.

12 Q Okay. And did you know on that day why there were
13 discrepancies?

14 A I did not.

15 Q Did you attempt to explain it or figure it out?

16 A I -- he didn't give me much of a chance to even say
17 anything. He just told me that the accountant had saw
18 some discrepancies and that he, basically, had to let me
19 go.

20 Q And did you respond to him?

21 A I asked him if he honestly thought that I would do
22 that being that I had been there for so long. And he
23 said, No.

24 Q So at the time of your termination, he did not
25 believe you had taken money; right?

1 A Correct.

2 Q And he conveyed that to you?

3 A Correct.

4 Q And then later, almost about 11 months later, you get
5 the initial call from the police officer; right?

6 A That is correct.

7 Q And at that point, did you have any idea that -- why
8 there were discrepancies in the records?

9 A When he terminated me, the amount that he gave me was
10 about \$2,000, maybe not even quite that. Then when I,
11 actually, was charged, it went to \$3,505.19. We never
12 even take -- we don't take change in there. So I don't
13 even know where the 19 cents even came from.

14 Q Okay. So it sounded like you got some advise from
15 somebody that you should not go and talk to the
16 investigator about this case?

17 A Correct.

18 Q But then you hired a lawyer; right?

19 A Correct.

20 Q Did you ask the lawyer to go and talk to the
21 investigator?

22 A I did.

23 Q And do you know if the lawyer did that?

24 A He had tried to reach out to Elliott Turner several
25 times. They did speak. They went back and forth playing

1 phone tag. I think that went on for about two weeks. And
2 then, finally, he just took a warrant out for my arrest.

3 Q So Turner knew that your lawyer was trying to contact
4 him; right?

5 A He should have.

6 Q Okay. And he didn't -- he didn't follow-up on that;
7 right?

8 A As far as I know. I really can't answer that. I
9 don't think so.

10 Q And do you think that Turner, as the law enforcement
11 investigator, made a mistake in this case?

12 A I think that he was given information that was not
13 correct.

14 Q And do you think he had any responsibility, as a law
15 enforcement investigator, to look any further into that
16 information?

17 A He took all the information that was supplied to him.
18 I think he did the best that he could.

19 Q And what do you think he did that would constitute
20 that? In other words, after he got that information, what
21 steps are you aware of that he took to further his
22 investigation?

23 MR. FEW: Your Honor, objection. He's asking him --
24 her to speculate as to what Turner could have, would have,
25 should have done.

1 MR. KENDRICK: Actually, the way I phrased it was,
2 was she aware. If she wasn't, I certainly --

3 THE COURT: I was listening to the question. The way
4 the question was phrased is okay. If he's asking what she
5 thinks or thought, that would be speculation. Only if
6 she is -- lay the foundation if she knows, and then go
7 from there.

8 Overruled.

9 Lay a foundation, though.

10 MR. KENDRICK: Yes.

11 BY MR. KENDRICK:

12 Q I'll go back. You, obviously, were involved in the
13 defense of your case; right?

14 A I'm sorry. Can you repeat --

15 Q You were, obviously, involved in the defense of your
16 case; right?

17 A I was made aware of things that were going on. My
18 defense attorney would call me and let me know updates,
19 yes.

20 Q And you got a copy of the file; right?

21 A I got that at my preliminary hearing.

22 Q Okay. So are you aware of anything that Turner did
23 or didn't do during his investigation?

24 A I'm not aware.

25 Q When you, initially, hired David Seay, it sounds like