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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2026-000120

Thomas McElveen, as next friend of O.M., a minor child,.....Appellant,

v.

South Carolina Department of Corrections,.....Respondent,

PETITION FOR REHEARING AND REQUEST FOR REHEARING EN BANC

March 18, 2026

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GROUNDNS FOR THE PETITION FOR REHEARING

- IV. The January 7, 2026 Order Denying Plaintiff’s Motion to Amend Is Not Moot Due to Appellant Not Appealing the Original Order Dismissing the Original Complaint Without Prejudice, as Reversing the Order Will Have the Practical Effect of Allowing the Amended Complaint to be Filed.**
- V. Even If the Order on Appeal Is Moot, an Exception to the Mootness Doctrine Applies, as The Order Denying Appellant’s Motion to Amend May Affect Future Events and Appellant’s Ability to File Another Action.**
- VI. Even If the Order on Appeal Is Moot, an Exception to the Mootness Doctrine Applies, as This Issue Is Capable of Repetition but Generally Will Evade Review.**

STATEMENT OF THE CASE

This case stems from the horrific and unspeakable sexual assault and exploitation that Appellant alleges Respondent allowed to be perpetrated on a 3-year-old girl by allowing an inmate in the custody of Respondent continual access to contraband cellphones to orchestrate, direct, and disseminate video of the assaults, despite repeated warnings from the girl’s family members that this inmate was using cellphones to harass them.

Appellant originally filed the Complaint in the Court of Common Pleas for Lee County on October 15, 2024. Exhibit 1. Respondent filed a motion pursuant to Rule 12(b)(6), S.C.R.C.P. seeking to dismiss the Complaint on December 20, 2024, and after a hearing, the trial court granted Respondent’s motion in an order dated April 23, 2025. Exhibit 2. The order

outlined deficiencies in the Complaint such as, “[t]here are no allegations in the complaint that SCDC was given notice that Inmate Lance used the cell phone to harass O.M.’s mother” and that “[t]he complaint does not allege that Inmate Lance was using the cell phone to ‘harass’ O.M.’s mother and family.” On May 2, 2025, Appellant filed both a Rule 59(e), S.C.R.C.P. motion regarding the trial court’s order as well as a motion pursuant to Rule 15(a), S.C.R.C.P. for leave to file an Amended Complaint, which was attached thereto and addressed the deficiencies outlined by the trial court. Exhibit 3 & 4. Both motions were heard via WebEx on September 30, 2025. On December 1, 2025, the trial court denied the motion to reconsider but did not issue an order on Appellant’s motion to amend. Appellant immediately alerted the trial court of the need for a ruling on the motion to amend. Exhibit 5. On December 11, 2025, with respect to the motion to amend, the trial court requested for the parties to “each submit proposed orders for Judge Griffin’s review within 30 days,” which both parties submitted. Id. On January 7, 2026, the trial court denied Appellant’s Rule 15(a), S.C.R.C.P. motion, finding that the “Proposed Amended Complaint would be futile.” Exhibit 6.

Appellant filed the Notice of Appeal on January 16, 2026, seeking to appeal the trial court’s order precluding Appellant from filing an Amended Complaint to address the deficiencies outlined by the Court. On January 21, 2026, the Court asks for memoranda addressing the issue of appealability of the January 7, 2026 order denying the motion to amend. After both parties submitted memoranda, the Court filed an Order on March 5, 2026 holding that “it appears the order on appeal is moot because the circuit court order dismissing the case was not appealed to this court and thus any judgment by this court will have no practical legal effect.” Appellant now moves for rehearing on that issue and requests a rehearing en banc, as consideration by the full court is necessary to secure or maintain uniformity of its decisions, as

discussed herein.

STANDARD FOR REHEARING AND REHEARING EN BANC

To prevail on a petition for rehearing, an appellant must “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221, S.C.A.C.R. In order for a rehearing en banc to be ordered, the suggestion must be included in the petition for rehearing, and rehearing en banc will not be ordered “except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.” Rule 219, S.C.A.C.R.

ARGUMENT

Appellant Thomas McElveen, as next friend of O.M., a minor child (“Appellant”), hereby submits this Petition for Rehearing and Request for Rehearing on En Banc of the Court’s March 5, 2026 Order dismissing the appeal. For the foregoing reasons, Appellant requests rehearing en banc by the full court and asks that the order dismissing the appeal as moot be vacated and allow the appeal to proceed on the merits.

I. The January 7, 2026 Order Denying Plaintiff’s Motion to Amend Is Not Moot Due to Appellant Not Appealing the Original Order Dismissing the Original Complaint Without Prejudice, as Reversing the Order Will Have the Practical Effect of Allowing the Amended Complaint to be Filed.

This is an appeal from a January 7, 2026 order that denied the Appellant’s motion pursuant to Rule 15(a), S.C.R.C.P. to file an Amended Complaint in this case to correct deficiencies outlined by the trial court’s order dismissing the original Complaint without prejudice pursuant to Rule 12(b)(6), S.C.R.C.P. In its March 5, 2026 order dismissing the appeal, the Court held that “it appears the order on appeal is moot because the circuit court order dismissing the case was not appealed to this court and thus any judgment by this court will have no practical legal effect.” Mar. 5. 2026 Order.

“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.” Protopapas v. Wall, Templeton & Haldrup, P.A., 442 S.C. 217, 227, 898 S.E.2d 150, 155 (2023) (quoting Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006)); see Skydive Myrtle Beach, Inc. v. Horry County, 428 S.C. 638, 643, 837 S.E.2d 485, 487 (2020) (“This case is not moot because a decision to reverse the ejectment order could have the practical effect of putting Skydive back in possession of the bird hangar.”). However, South Carolina jurisprudence clearly shows that the trial court’s order in this case denying Appellant’s motion to amend is not moot and is appealable to this Court, as a decision by this Court reversing the order denying the motion to amend would have the legal effect of superseding the original complaint allowing the Amended Complaint to be filed and the case to proceed. Because relief remains available and meaningful and is not impossible, the controversy is not moot.

In terms of a “practical legal effect,” if allowed to be filed, “an amended pleading generally supersedes the original, rendering the original of no legal effect.” BAE Systems Tech. Solution & Servs., Inc. v. Republic of Korea’s Defense Acquisition Program Administration, 884 F.3d 463, 474 (4th Cir. 2018). The trial court’s order granting Respondent’s Rule 12(b)(6), S.C.R.C.P. motion was without prejudice. See Spence v. Spence, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006) (“When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, the dismissal generally is without prejudice.”). “Dismissal of a case ‘without prejudice’ means a plaintiff may reassert her complaint by curing defects that led to the dismissal.” Spence, 368 S.C. at 128, 628 S.E.2d at 880-81.

The South Carolina Supreme Court has explicitly condoned plaintiffs, following a

dismissal of the original complaint pursuant to Rule 12(b)(6), S.C.R.C.P. without prejudice, seeking to amend the complaint to correct the deficiencies and appealing that order if the motion to amend is not granted. The Court holds that with respect to an order granting a Rule 12(b)(6) motion to dismiss, “any plaintiff is . . . entitled to accept the court’s ruling the original complaint was deficient, and replead in an attempt to fix the deficiency.” Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 181, 826 S.E.2d 585, 588 (2019). In other words, when a “trial court dismisses [a] complaint pursuant to Rule 12(b)(6) for failure to state facts upon which relief can be granted, dismissal is without prejudice; plaintiff then has the election to plead further or appeal.” Spence, 368 S.C. at 130, 628 S.E.2d at 881 (citing Swink v. Ernst & Young, 908 S.W.2d 660, 663 (Ark. 1995)). “[T]he time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient.” Skydive Myrtle Beach, Inc., 426 S.C. at 181, 826 S.E.2d at 588. This can be done through “a formal Rule 15(a) motion.” Id.

In fact, the South Carolina Supreme Court and Court of Appeals have long held that orders denying Rule 15(a), S.C.R.C.P. motions to amend may be appealed after the lawsuit ends to ensure that litigants are not foreclosed from advancing potentially meritorious claims due to an erroneous futility or prejudice determinations. In Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004), while the Supreme Court found that a trial court’s order denying a motion to amend was not immediately appealable prior to the trial of the case, it held, “Petitioners have not ‘arrived at the end of the road’ and will be able to appeal the decision after the trial is finished.” 357 S.C. at 230, 593 S.E.2d at 147. In Tillman v. Tillman, 420 S.C. 246, 250, 801 S.E.2d 757, 760 (Ct. App. 2017), the Court of Appeals held that with respect to a motion to amend, “[I]n the unlikely event the motion to amend is denied, then Appellant retains

the right, after the lawsuit ends, to appeal the denial” of the motion to amend. Id. Likewise, in Tatnall v. Gardner, 350 S.C. 135, 139, 564 S.E.2d 377, 379 (Ct. App. 2002), the Court of Appeals held that with respect to the denial of a motion to amend to assert third-party claims, “[a]t the conclusion of the present action, [Appellant] may either appeal the trial court’s order denying her motion to amend or file a separate, first-party suit against Gardner.” Id. Declaring such appeals moot would conflict with these decisions and encourage piecemeal, duplicative filings to preserve review.

For instance, in Schein v. Lamar, 284 S.C. 252, 325 S.E.2d 573 (Ct. App. 1985), several defendants filed demurrers to the First Amended Complaint challenging the sufficiency of the allegations, and the plaintiff also filed a motion to amend to file a Second Amended Complaint. The demurrers and motion to amend were heard the same day. The circuit court entered an order sustaining the demurrers to the First Amended Complaint, but reserved decision on the motion for leave to file the Second Amended Complaint. The order sustaining the demurrers was appealed, and the trial court subsequently granted the motion to amend to file the Second Amended Complaint while the appeal of the demurrers was pending. The Court of Appeals dismissed the appeal of the demurrer on the First Amended Complaint as moot, holding that “[s]ince the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case. Thus, any questions as to the sufficiency of the First Amended Complaint are now moot. . . . Our dismissal of the appeal from the order of November 25, 1980, is without prejudice to the Directors’ right to demur, answer, or otherwise plead to the Second Amended Complaint as amended by the order of April 5, 1982.” Schein, 284 S.C. at 255, 325 S.E.2d at 574-75.

In this case, the trial court granted Respondent’s Rule 12(b)(6), S.C.R.C.P. motion to

dismiss the Complaint on April 23, 2025 without prejudice. Thus, Appellant had the option “to replead in an attempt to fix the deficiency.” Skydive Myrtle Beach, Inc., 426 S.C. at 181, 826 S.E.2d at 588. On May 2, 2025, Appellant filed both a Rule 59(e), S.C.R.C.P. motion regarding the trial court’s order as well as a motion pursuant to Rule 15(a), S.C.R.C.P. for leave to file an Amended Complaint. Both motions were heard via WebEx on September 30, 2025. On December 1, 2025, the trial court denied the motion to reconsider but did not issue an order on Appellant’s motion to amend. On December 11, 2025, with respect to the motion to amend, the trial court requested for the parties to “each submit proposed orders for Judge Griffin’s review within 30 days,” which both parties submitted. Should the trial court have granted the motion to amend it would have “superseded” the original Complaint, making it “no longer the operative pleading in the case.” Schein, 284 S.C. at 255, 325 S.E.2d at 574-75.

On January 7, 2026, despite the South Carolina Supreme Court’s holding that “[t]he plaintiff in most cases should be given an opportunity to file and serve an amended complaint,” the trial court denied Appellant’s Rule 15(a), S.C.R.C.P. motion, effectively ending Plaintiff’s ability to file an Amended Complaint. See Spence, 368 S.C. at 129, 628 S.E.2d at 881. While the original Rule 12(b)(6) order dismissing the case without prejudice was not appealed, as set forth above, it did not have to be. Skydive Myrtle Beach, Inc., 426 S.C. at 181, 826 S.E.2d at 588 (holding that “any plaintiff is . . . entitled to accept the court’s ruling the original complaint was deficient, and replead in an attempt to fix the deficiency.”). It also does not make the January 7, 2026 Order denying the motion to amend moot, as if the Court takes up the appeal and decides that it was error to deny Appellant the opportunity to file the Amended Complaint, the decision will have a substantial practical legal effect upon this case and allow it to proceed. As such, the March 5, 2026 Order should be vacated and the appeal allowed to proceed on the merits.

II. Even If the Order on Appeal Is Moot, an Exception to the Mootness Doctrine Applies, as The Order Denying Appellant’s Motion to Amend May Affect Future Events and Appellant’s Ability to File Another Action.

Should the Court conclude that mootness is somehow implicated, exceptions apply that were overlooked by the Court. “The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). One such an exception is that “if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Sloan, 380 S.C. at 535, 670 S.E.2d at 667 (quoting Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001)). Here, the trial court’s finding that the Amended Complaint would be futile carries ongoing collateral consequences for the parties by precluding amendment of Appellant’s claims and effectively preventing the filing of a new action.

III. Even If the Order on Appeal Is Moot, an Exception to the Mootness Doctrine Applies, as This Issue Is Capable of Repetition but Generally Will Evade Review.

Another exception to the mootness doctrine is “if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction.” Sloan, 380 S.C. AT 535, 670 S.E.2d at 667. It is fairly common procedural sequence for there to be a dismissal of a case without prejudice followed by a denial of leave to amend. In fact, Skydive and the other cases cited above show just how often our appellate courts deal with such a sequence. Moreover, Erroneously insulting denials of motions to amend from review following a without prejudice dismissal invites repetition and evasion, as denials paired with dismissals will routinely end actions without an avenue for appellate correction unless separately and immediately appealed in a manner that is often impractical. In fact, this case shows the impracticality of such an appeal,

given the delay by the trial court in ruling on the motion to amend following the denial of the motion to reconsider. Addressing the merits of the denial of the motion to amend by the trial court in this case will provide needed guidance and prevent inconsistent outcomes and judicial inefficiency.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Court grant rehearing en banc and vacate the March 5, 2026 Order dismissing the appeal and allow the appeal to proceed on the merits.

Respectfully submitted,

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March 18, 2026

Exhibit 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
Thomas McElveen, as next friend of O.M.,)
a minor child,)
)
)
Plaintiff,)
)
vs.)
)
South Carolina Department of Corrections,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C.A. No.: 2024-CP-31-_____

SUMMONS

TO: THE DEFENDANT ABOVE-NAMED, YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

October 15, 2024
Anderson, South Carolina

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STATE OF SOUTH CAROLINA)	
)	
COUNTY OF LEE)	IN THE COURT OF COMMON PLEAS
)	FOURTH JUDICIAL CIRCUIT
)	
Thomas McElveen, as next friend of O.M.,	)	C.A. No.: 2024-CP-31-_____
a minor child,)	
)	
Plaintiff,)	
)	
vs.	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
South Carolina Department of Corrections,)	
)	
Defendant.)	

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto this honorable court and alleges as follows:

PARTIES

1. The Plaintiff, Thomas McElveen, brings this action on behalf of O.M., a minor child, as the next friend of O.M. McElveen is an attorney licensed to practice law in South Carolina. McElveen will move at the appropriate time, with the consent of O.M.’s grandmother and legal guardian, to be appointed as special guardian of O.M. for the purpose of this action only.

2. The Defendant, South Carolina Department of Corrections (hereinafter referred to as “SCDC”), is a governmental agency/entity existing under the laws of the state of South Carolina and has facilities located throughout the state, including in Lee County, South Carolina. At all times herein mentioned in this lawsuit, SCDC acted and carried on its business by and through its agents, servants, and/or employees at its various locations, including Lee Correctional Institution (hereinafter referred to as “Lee Correctional” or the “facility”).

FACTUAL ALLEGATIONS

3. Prior to the events in question, and at least since 2008, SCDC has identified contraband cellphones within SCDC facilities as a major security threat to inmates, staff, and members of the public.

4. In 2014, SCDC Director Bryan Stirling stated that cellphones posed a huge threat and claimed that SCDC was working to change the way contraband gets inside the prison walls.

5. In 2016, Stirling declared that SCDC was at war over the cellphones coming into our prison system and called contraband cellphones the most dangerous weapon inside prison walls.

6. SCDC policy identifies cell phones as contraband and requires that such contraband be confiscated, accounted for, and disposed of at each institution. SCDC policy also requires that each facility ensure all precautions are taken to keep all contraband away from inmates and that there be routine and irregular shakedowns of inmates' quarters, frequent shakedowns, and careful supervision of inmates; discrete observation of visitors, vendors, volunteers, contractors and employees; and regular inspections of vehicular traffic and supplies as well as proper handling and storage of items that are not to be in the possession of inmates.

7. Despite identifying cellphones as the most dangerous weapon inside prison walls SCDC, by understaffing Lee, overstaffing SCDC headquarters, hiring incompetent officers, failing to supervise officers, and ignoring specific tips about inmates who have contraband cellphones, has continuously not followed its own policies and procedures and allowed contraband cellphones to continue to be readily available at its facilities, including Lee.

8. Prior to the events in question, Lee Correctional had a well-documented history of failing to provide adequate security and supervision over the inmates located at the facility, as well

as the SCDC employees in the facility. Further, the administrators, employees, and correctional staff of the facility knew or should have known that their failure to provide adequate security measures would result in unsafe conditions for the inmates and members of the public.

9. Lee has a long history of overcrowding, as well as a lack of supervision and training of employees, which has led to a violent and unsafe environment within the facility, and which has had a profound impact on public safety.

10. Just prior to and during the time period in question, the warden and administrators at the facility failed to provide the adequate and/or specific number of properly trained security guards at numerous locations throughout the facility. Further, officials at the facility, and the officers under their command, failed to follow the policies that were specifically designed to allow the facility to operate safely.

11. Additionally, SCDC has a policy and practice of allowing violations of policies and procedures by employees pertaining to constant supervision of inmates and employees.

12. Notwithstanding SCDC's knowledge of these issues, just prior to and during the time period in question, SCDC failed to provide the adequate and/or specific number of properly trained personnel at Lee. The Defendant knew or should have known that its failure to provide adequate staff would result in unsafe conditions at Lee and posing a danger to the general public.

13. Prior to and during the events in question, SCDC, through its employees and agents, including the warden and/or assistant wardens at Lee, had notice that SCDC employees at Lee were providing contraband cell phones to inmates and/or tipping off inmates any time there was to be a search for contraband, allowing inmates, including Inmate Jacob Lance, to conceal their contraband cell phones.

14. In 2017 SCDC was found to have the largest occurrence of contraband cellphones in the country with one contraband cellphone for every three inmates.

15. In 2018, SCDC's failure to control contraband cellphones led to the deadliest prison riot in the last 30 years in the United States at Lee.

16. Prior to and during the events in question, SCDC knew that Jacob Lance, an inmate housed at Lee Correctional (hereinafter "Inmate Lance"), had unfettered access to and was using contraband cellphones to contact individuals outside of Lee Correctional.

17. On December 11, 2019, SCDC received notice that Inmate Lance was making a call outside the institution using a contraband cellphone, and a charger for a cellphone was found in his cell.

18. On October 13, 2022, SCDC found a contraband cellphone and contraband 9-inch sharp-edged weapon inside Inmate Lance's Cell and Inmate Lance admitted to ownership of these items.

19. Prior to the events in question, SCDC received several different tips and complaints specifically about Inmate Lance's persistent use of contraband cellphones. Nevertheless, Defendant and its employees either failed to remove these contraband cellphones from Inmate Lance's possession, failed to discipline Inmate Lance for these incidents, and/or supplied Inmate Lance with more contraband cellphones.

20. Prior to the events in question, O.M.'s grandfather, David El-Dier (hereinafter "El-Dier") contacted SCDC employees at Lee multiple times alerting them that Inmate Lance was utilizing contraband cellphones to call his daughter, Abbygale El-Dier (hereinafter referred to as "Abbygale"). SCDC ignored these calls by El-Dier and did nothing, allowing Inmate Lance to

continue to possess the contraband cellphone to continue calling Abbygale and causing harm to O.M.

21. After SCDC ignored the calls from El-Dier, on or about May 1, 2023, El-Dier utilized the tip line provided through SCDC's website to make a report about Inmate Lance. SCDC, in providing this link, assures the person providing the tip that use of a cellphone "constitutes a security violation/possession and appropriate disciplinary actions will be taken."

22. In the May 1st, 2023 tip, El-Dier again reported that Inmate Lance was regularly on the phone with his daughter, Abbygale, and that their relationship has been going on for approximately nine (9) months, with communications only through the contraband cellphones.

23. This specific notice El-Dier provided to SCDC regarding Inmate Lance's use of contraband cellphones to speak with his daughter was also ignored by SCDC, and El-Dier again received no response from SCDC for over three (3) months.

24. In ignoring the previous calls and tips from El-Dier regarding Inmate Lance's use of a contraband cell phone to call and harass Abbygale, who had a minor daughter, O.M., SCDC created a situation that it knew or should have known posed a continued substantial risk of injury to O.M.

25. As a result of SCDC's disregard of the notice SCDC had or should have had and allowance of Inmate Lance to continue to have contraband cell phones, Inmate Lance was able to utilize the contraband cell phone to continuously contact Abbygale and direct her to sexually abuse, assault, and take pictures and videos of her minor daughter, O.M., while he remained incarcerated at Lee.

26. Inmate Lance began communicating with Abbygale via contraband cellphones in late 2022.

27. At least by March 27, 2023 and continuing thereafter, Inmate Lance, through the use of the contraband cellphones SCDC allowed him to possess and video chat on the cellphone, began directing Abbygale to sexually assault and abuse O.M.

28. On May 28, 2023, at the direction of Inmate Lance on his contraband cell phone SCDC allowed him to possess, Abbygale made a recorded video, in which she sexually assaulted and abused O.M., her minor child. Abbygale then disseminated this video as well as several nude photographs of O.M. to Inmate Lance through his contraband cellphone.

29. Inmate Lance's use of the cell phone to contact Abbygale and direct the sexual abuse of O.M. continued after May 28, 2023.

30. On July 13, 2023, Inmate Lance was found to have a black wireless earbud in his ear and was charged with possessing a communication device.

31. When SCDC finally investigated the tip from El-Dier, they confiscated six (6) cell phones from Inmate Lance, which showed the relationship with Abbygale and the sexual abuse that SCDC, through its allowance of the possession of the cellphones by Inmate Lance and failure to respond to the multiple tips, allowed to be perpetrated on O.M.

32. On August 11, 2023, Julie Swank, a special agent with the Office of Inspector General, finally responded to El-Dier's tip, informing El-Dier that she had just been informed of the prior tip that El-Dier had submitted.

33. Then, on August 12, 2023, over three (3) months after El-Dier's tip, both Inmate Lance and Abbygale were arrested for Criminal Conspiracy to Commit Criminal Sexual Conduct with a Minor in the First Degree.

34. Abbygale was not on Inmate Lance's approved visitor sheet, nor had she ever visited Inmate Lance in prison or at the facility.

35. As a result, Abbygale and Inmate Lance's relationship existed solely through the contraband cellphones that SCDC allowed Inmate Lance to continue to possess even after multiple tips and notice that Inmate Lance had the contraband cell phone and was using it to contact Abbygale.

36. Had SCDC been properly monitoring and supervising the inmates and correctional officers at Lee, properly following contraband control policy, and actually removed the cell phones from Inmate Lance when it had specific notice that he was using it to contact Abbygale, Inmate Lance would never have had the opportunity direct Abbygale to complete the sexual abuse and molestation that O.M. suffered.

FIRST CAUSE OF ACTION
(Negligence/Gross negligence)

37. Plaintiff reiterates each and every allegation above as if repeated verbatim herein.

38. The above set forth incident and the Plaintiff's resulting injuries and damages were proximately caused by the negligent, grossly negligent, reckless, and willful and wanton acts of Defendant, in the following particulars:

- a. In being deliberately indifferent to a specific threat of harm to the minor child;
- b. In allowing gross overcrowding at the Lee Correctional Institution;
- c. In failing to provide the appropriate number of correctional staff at the various locations in Lee Correctional Institution;
- d. In failing to provide adequate and appropriate security officers at the Lee Correctional Institution;
- e. In failing to properly monitor for contraband at the Lee Correctional Institution;
- f. In failing to prevent contraband from entering the Lee Correctional Institution;

- g. In failing to identify and remove contraband from the Lee Correctional Institution;
- h. In failing to remove contraband from the Lee Correctional Institution despite being put on notice;
- i. In failing to properly train, monitor and supervise its personnel, agents, and/or employees so as to ensure the safety of the general public from inmates housed at Lee Correctional Institution;
- j. In being grossly negligent in hiring and then retaining employees who were providing contraband cell phones to inmates and/or providing tips to inmates that contraband searches were being conducted, despite having notice of the same;
- k. In failing to have appropriate policies and protocols in place to provide for the safety and well-being of the general public from inmates housed at Lee Correctional Institution;
- l. If such policies exist, in failing to follow the same;
- m. Failing to follow and adhere to the policies and protocols of SCDC;
- n. In failing to protect the general public from inmates in its custody;
- o. In failing to take any action to prevent the minor child from becoming severely injured after multiple events providing notice of danger;
- p. In failing to provide proper investigations of incidents regarding the confiscation of contraband cellphones which occurred at the facility; and
- q. In failing to properly monitor inmates at Lee Correctional Institution.

39. As a proximate and direct result of the Defendant's reckless, willful and wanton, and grossly negligent conduct the Plaintiff was severely injured, including but not limited to becoming the victim of a physical and sexual assault which required needless physical and mental suffering and injuries, and medical expenses and emotional and psychological injuries and damages that have been incurred and will be incurred in the future, and permanent impairment and disability.

40. The Plaintiff has alleged multiple "occurrences" as the term is used under the South Carolina State Tort Claims Act, and accordingly, the Plaintiff may obtain an award against the Defendants in excess of one million dollars even if the Defendants are entitled to the protection of any caps pursuant to the South Carolina State Tort Claims Act. *Boiter v. S.C.D.O.T.*, 393 S. C. 123, 125 (2011); *Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543 (2010) ("more than one single act of negligence" constitutes multiple occurrences). The Plaintiff asks that the jury be charges on the definition of occurrences and determine the number of occurrences at trial.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for an award of all available, actual, and consequential damages, the cost of this action, and for such other and further relief as the court deems just and proper.

October 15, 2024
Anderson, South Carolina

/s/ Kyle White
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The Plaintiff demands a trial by jury.

/s/ Kyle J. White
Kyle J. White, SC Bar No. 101426

Exhibit 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEE	)	C/A NO.: 2024-CP-31-00253
)	
Thomas McElveen, as next friend of O.M.,)	
a minor child,)	
)	
Plaintiff,	)	ORDER
)	
vs.)	
)	
South Carolina Department of Corrections,)	
)	
Defendant.)	
)	

This matter comes before the Court on Defendant South Carolina Department of Corrections’ (“SCDC”) motion to dismiss the complaint filed by Plaintiff Thomas McElveen, as next friend of O.M., a minor child. SCDC filed its motion to dismiss on December 20, 2024, arguing that Plaintiff’s negligence/gross negligence claims fail as a matter of law. On March 24, 2025, Plaintiff submitted his response in opposition to SCDC’s motion. SCDC subsequently submitted a reply to the arguments raised in Plaintiff’s brief. The Court heard extensive, in-person argument on this motion on March 26, 2025. Following close and careful consideration of the case record, briefing, and arguments of counsel, the Court GRANTS SCDC’s motion to dismiss.

BACKGROUND¹

There is no doubt that this civil litigation has stemmed from a horrific set of underlying allegations. The minor child in this case, O.M., was allegedly sexually abused by her mother Abbygale El-Dier. Abbygale El-Dier was charged with first-degree sexual exploitation of a minor,

¹ Because this is a Motion to Dismiss, the Court has taken all facts and inferences drawn from the facts alleged in the Complaint in the light most favorable to Plaintiff. *See, e.g., Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

and a State Grand Jury issued an indictment on this charge. *See State v. Abbygale Alexandria El-Dier*, C/A No. 2023A2320400378. At the time of this hearing, the criminal charges brought by the South Carolina Attorney General's Office against Abbygale El-Dier were still pending.

Arising out of these underlying criminal allegations committed by Abbygale El-Dier against O.M. is the instant civil litigation. In his complaint, Plaintiff accuses SCDC of being negligent/grossly negligent in prohibiting SCDC Inmate Jacob Lance from obtaining a contraband cell phone while being housed at Lee Correctional Institution ("LCI"). Plaintiff alleges that SCDC was put on notice by O.M.'s grandfather that Inmate Lance had a cell phone and had been contacting O.M.'s mother via the cell phone. Plaintiff alleges that SCDC confiscated cell phones from Inmate Lance approximately three (3) months after the "tip" or "tips" were made, and the phones revealed a relationship between Inmate Lance and O.M.'s mother. According to Plaintiff, Inmate Lance used the cell phone to contact O.M.'s mother and to "direct the sexual abuse" of O.M. *Id.* at ¶¶ 26-29. SCDC has denied any liability to Plaintiff and has moved to dismiss Plaintiff's complaint for failure to state a claim. SCDC's primary argument is that SCDC did not owe a duty with respect to O.M.

LEGAL STANDARD

"A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524 (Ct. App. 2009). If the facts set forth in the complaint do not support relief under any theory of law, the complaint must be dismissed. *See, e.g., Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d

413, 416 (Ct. App. 2003). “If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006).

ANALYSIS

Plaintiff’s case against SCDC is one of alleged negligence/gross negligence. To prove a negligence cause of action, a plaintiff must demonstrate: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damages that proximately result from the breach. *See, e.g., Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct. App. 2002) (setting forth elements a plaintiff must prove in a negligence cause of action). “An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Oblachinski v. Reynolds*, 391 S.C. 557, 561, 706 S.E.2d 844, 845-46. Without a duty owed by the defendant to the plaintiff, there is no actionable negligence. *Id.* “In a negligence cause of action, it is the plaintiff’s burden to establish that a duty of care is owed to him by the defendant.” *Trask v. Beaufort Cnty.*, 392 S.C. 560, 566, 709 S.E.2d 536, 539 (Ct. App. 2011).

As this presents a question of law, the Court is charged with determining whether a legal duty exists under the facts as alleged by Plaintiff. *See Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

I. There is no general duty to act under the common law.

The Court begins its analysis by recognizing the general rule that the common law imposes no duty on a person to act. *See Rayfield v. S.C. Dep’t of Corrs.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). More directly on point, “South Carolina does not recognize a general duty to warn a third party or potential victim of danger or to control the conduct of another.” *Doe 2 v.*

Citadel, 421 S.C. 140, 146, 805 S.E.2d 578, 581 (2017). However, the general rule is just that; there are certain circumstances in which an affirmative duty may arise. The Court will address these exceptions below.

II. No duty arises with respect to SCDC pursuant to any of the exceptions to the general duty not to act recognized by South Carolina.

South Carolina recognizes five exceptions to the general rule of no duty to act. These five exceptions include: “1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). The Court, after careful consideration, finds that none of these exceptions is applicable.

A. Where the defendant has a special relationship with the victim.

The Court need not spend much time as to this first exception. The allegations set forth in the complaint make clear that there was no special relationship between O.M. and SCDC. O.M. was not in SCDC’s custody or control. O.M. had never been to SCDC nor had any contact with SCDC whatsoever. In fact, there is not even an allegation in the complaint that SCDC knew of the existence of O.M. prior to the investigation that led to the arrest of O.M.’s mother (Abbygale El-Dier) for her alleged abuse of O.M. Therefore, the Court finds this exception not applicable.

B. Where the defendant has a special relationship to the injurer.

In both briefing and argument, Plaintiff focuses on this exception. Plaintiff argues that the “special relationship” between SCDC and Inmate Lance establishes an actionable duty owed by SCDC to O.M. The Court respectfully disagrees.

This common law exception creates a duty owed to the injured person for damages

sustained at the hands of the **injurer**, whenever there is a special relationship between a defendant and the **injurer**. See *Faile*, 350 S.C. at 334, 566 S.E.2d at 546 (explaining the exception may apply “where the defendant has a special relationship to the injurer”). Plaintiff’s attempt to establish that Inmate Lance was the injurer of O.M. is incorrect. Rather, O.M.’s injurer was her mother Abbygale El-Dier, an individual that had no special relationship with SCDC. See Compl. at ¶ 39 (alleging O.M.’s damages stem from “becoming the victim of a physical and sexual assault which required needless physical and mental suffering and injuries, and medical expenses and emotional and psychological injuries and damages”). SCDC did not have custody over Abbygale El-Dier. SCDC did not place O.M. into Abbygale El-Dier’s custody. Simply put, SCDC had no duty to control the actions of Abbygale El-Dier, and it was the alleged actions of Abbygale El-Dier that purportedly caused injury to O.M.

The cases relied upon by Plaintiff make clear that this exception, if applicable, could apply only in narrow situations in which the inmate committed physical harm to an individual. See Opp. Br. at 6 (quoting *Rayfield* for the proposition that “[w]hile the Department had charge of [the prisoner], it arguably owed a duty of care to others to prevent foreseeable harm **[the prisoner]** might do them” (emphasis added)); Opp. Br. at 6 (quoting *Faile* for the proposition that where an entity has “custody of a known dangerous individual,” it has “an independent duty to control and supervise [the individual] **to prevent him** from harming others as long as it retained custody of him” (emphasis added)). This makes sense as SCDC cannot control the actions of others outside of its prisons. The allegations in the complaint make clear that O.M.’s mother Abbygale El-Dier committed the physical and sexual assault upon O.M. The allegations are clear that O.M. never came into physical contact with Inmate Jacob Lance, and that the only person that physically harmed O.M. was O.M.’s own mother – Abbygale El-Dier.

Even if these cases have application to the situation at bar, Plaintiff runs head on into the significant limiting application set forth in *Faile*. Our Supreme Court set forth, “This Court is reluctant to impose the duty to control unless there is an established authority relationship *and a substantial risk of serious harm.*” *Faile*, 350 S.C. at 339, 566 S.E.2d at 548 (emphasis added). The substantial risk of serious harm to O.M. due to Inmate Lance’s possession of a cell phone is absent in this case. Plaintiff’s attempts to establish a substantial risk of serious harm to O.M.—via notice that Inmate Lance had a cell phone and had apparently been calling Abbygale El-Dier—are unsuccessful. There are no allegations in the complaint that SCDC was given notice that Inmate Lance used the cell phone to harass O.M.’s mother, or was given notice that O.M.’s mother was sexually abusing her daughter. The lone asserted fact is that SCDC was allegedly put on notice that Inmate Lance had a cell phone and used it to communicate with O.M.’s mother. This is insufficient to trigger this exception and establish a duty owed by SCDC to O.M. Therefore, the Court finds this exception not applicable.

C. Where the defendant voluntarily undertakes a duty.

Similarly, in both briefing and argument, Plaintiff focuses on this exception. Plaintiff argues that a duty arose through a voluntary undertaking by SCDC to protect O.M. from Inmate Lance and his use of a contraband cell phone. Plaintiff asserts that because SCDC allows the public to submit “tips” concerning inmates’ illegal possession of cell phones for confiscation and prosecution purposes, SCDC undertook a duty to prohibit O.M.’s mother from physically and sexually abusing her. Again, the Court respectfully disagrees.

The voluntary assumed duty is explained in the Restatement (Second) of Torts § 323 and provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the

protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking.

In this case, the existence of a duty stemming from a § 323 undertaking fails for several reasons. First, SCDC did not undertake to render services to O.M. Second, even if SCDC did, O.M. did not rely on SCDC's undertaking. Third, the harm suffered by O.M. is not a result of the undertaking but rather is a result of the criminal acts of O.M.'s mother Abbygale El-Dier. Finally, and importantly, SCDC's efforts to eliminate contraband within its facilities is not a voluntary undertaking under the common law. Rather, if anything, it is a preexisting duty, owed to the public at large, codified in S.C. Code Ann. § 24-3-950. As discussed in more detail below, any triggering of this statutory duty is barred by the public duty rule. Plaintiff's own argument demonstrates the applicability of the public duty rule in this situation. (Opp. Br. at 9) ("SCDC has expressed a commitment **to the public** for over a decade that it was working to change the way contraband cellphones get inside prison walls and identified such cellphones as a major security threat to inmates, staff, and **members of the public.**" (emphasis added)).

Plaintiff relies heavily on SCDC's "tip" line to create a duty flowing out of a voluntary undertaking. As our Supreme Court stated in *Doe 2*, "any violation of an internal policy does not give rise to the voluntary assumption of a duty and does not establish that [Defendant] owed a duty of care as a matter of law." *Doe 2*, 421 S.C. at 149. Furthermore, Plaintiff would still have to establish that either her "risk of [] harm" was increased or that she "suffered" the harm "because of [her] reliance upon [SCDC's purported] undertaking." *Doe 2*, 421 S.C. at 147. There is simply

no allegation to support that contention and establish a voluntary undertaking by SCDC. The simple fact remains, O.M. suffered harm due to the specific, and despicable, actions of her own mother (Abbygale El-Dier), and nothing about SCDC's efforts (or failures) to remove contraband cellphones from SCDC prisons increased that risk or formed the basis for that risk. Therefore, the Court finds this exception not applicable.

D. Where the defendant negligently or intentionally creates the risk.

Plaintiff next argues that the "special circumstances" of this case apply to create a duty to be imposed on SCDC to ensure O.M. was not sexually abused by her mother. Plaintiff asserts that "SCDC also created a situation that it knew or should have known posed a substantial risk to injury to O.M." The Court disagrees and notes that this exception has only been recognized in a short line of case law.

Plaintiff cites to *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125 (2010), for support of his argument. In *Edwards*, the Supreme Court narrowly held that the defendants owed the plaintiff "a duty solely as a result of the unique facts of this case, i.e., 'special circumstances.'" The unique facts were as follows:

Respondents were well aware of Baker's unrelenting violent tendencies toward Edwards. Edwards had called the sheriff's office to report Baker's harassment on numerous occasions, and the sheriff's office arranged for Edwards to stay in a hotel after one of the incidents. The sheriff's office and the County, through its agent Howland, arranged the bond revocation hearing at the magistrate's office with no security present. Despite Respondents' awareness that Edwards feared Baker and was reluctant to attend the bond revocation, Respondents strongly encouraged Edwards' presence.

Respondents cannot claim lack of knowledge of Baker's violent tendencies towards Edwards since the reason they were seeking to revoke Baker's bond was due to his failure to obey the no-contact order, which was issued as a direct result of his violent actions. We hold Respondents created a situation in which it was foreseeable that Baker would harm Edwards.

Id. at 293, 688 S.E.2d at 130.

Here, this case does not present the “unique facts” akin to those facts that were present in *Edwards*. As alleged by Plaintiff, the “unique facts” arise from SCDC’s purported notice that Inmate Lance had a cell phone and was communicating with O.M.’s mother. (Opp. Br. at 8). But that is all. The complaint does not allege that Inmate Lance was using the cell phone to “harass” O.M.’s mother and family, nor does Plaintiff suggest that SCDC had notice that O.M.’s mother was committing physical or sexual abuse upon O.M. In short, allegations that Inmate Lance possessed a contraband cell phone, and SCDC failed to locate and confiscate same, does not create a situation in which it was foreseeable that O.M.’s mother (Abbygale El-Dier) would physically and sexually abuse O.M.

Again, our Supreme Court’s decision in *Doe 2* is instructive. Like Plaintiff in this case, the plaintiff in *Doe 2* attempted to argue that the defendant (The Citadel) had created the risk of harm and therefore “special circumstances” existed that created a duty owed. The *Doe 2* Court rejected that argument after a careful review of *Edwards*. The same result would apply in this case. The *Doe 2* Court found that “[u]nlike *Edwards*, [plaintiff] does not present any evidence indicating [defendant] created a situation that increased the risk of harm to [plaintiff] – such as placing [the injurer] and [plaintiff] in the same room, encouraging the two to meet, or placing [plaintiff] into [the injurer’s] custody.” *Doe 2*, 421 S.C. at 150.

The same is true here. SCDC did not create the situation that allowed O.M.’s mother to perpetrate these despicable acts upon O.M. Therefore, the Court finds this exception not applicable.

E. Where a statute imposes a duty on the defendant.

Plaintiff acknowledges that he is not relying on any specific statutes for the purpose of contending a duty exists in this case. However, if he did, the Court finds that such a reliance would be barred by the public duty rule.

III. The Court declines to reach the other issues set forth in SCDC's motion to dismiss.

SCDC also argues that Plaintiff's complaint should be dismissed due to lack of causation and due to various bars set forth in the South Carolina Tort Claims Act. Because of the dispositive nature of the Court's duty analysis set forth above, the Court finds it unnecessary to rule on these remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591 (1999) (explaining courts need not address remaining issues when disposition of a prior issue is dispositive of a case).

CONCLUSION

Based on the foregoing, the Court GRANTS SCDC's motion to dismiss Plaintiff's complaint.

(JUDICIAL E-SIGNATURE TO FOLLOW)



Lee Common Pleas

Case Caption: Thomas Mcelveen, As Next Friend Of O.M., A Minor Child VS South Carolina Department Of Corrections
Case Number: 2024CP3100253
Type: Order/Dismissal

So Ordered

s/ R. Kirk Griffin 2768

Exhibit 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
Thomas McElveen, as next friend of O.M.,)
a minor child,)
)
)
Plaintiff,)
)
vs.)
)
South Carolina Department of Corrections,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C.A. No.: 2024-CP-31-00253

PLAINTIFF’S MOTION TO
RECONSIDER THE COURT’S
ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS

PLEASE TAKE NOTICE that Plaintiff Thomas McElveen, as next friend and Guardian ad Litem of O.M., a minor child (“Plaintiff”), by and through his undersigned counsel, hereby moves pursuant to Rule 59(e), S.C.R.C.P. for the Court to reconsider its April 23, 2025 Order granting Defendant South Carolina Department of Corrections’ (SCDC) Motion to Dismiss. For the reasons stated herein, Plaintiff respectfully requests that the Court reconsider its prior ruling and deny SCDC’s Motion to Dismiss.

INTRODUCTION AND BACKGROUND

This case stems from the horrific and unspeakable sexual assault and exploitation that SCDC allowed to be perpetrated on a 3-year-old girl by allowing a depraved inmate to have continual access to contraband cellphones to orchestrate the assaults, despite repeated warnings from the girl’s family members that this inmate was using cellphones to harass them.

Dating back for over a decade, SCDC has identified cellphones as a huge security threat to inmates, staff, and members of the public. Compl. ¶3. SCDC Director Bryan Stirling has repeatedly referred to cellphones as the most dangerous weapon inside prison walls. *Id.* at ¶ 5. Indeed, contraband cellphones played a key role in the Lee riots in 2018—the deadliest prison riot in the last

30 years in the United States. *Id.* at ¶ 15. Yet, in 2022 and 2023, SCDC continued to allow contraband cellphones to be readily available at Lee. *Id.* at ¶ 7.

Jacob Lance was an inmate at Lee, whom SCDC had specific notice was continually obtaining and using contraband cellphones. *Id.* at ¶ 16. Inmate Lance is a dangerous individual serving 30-year sentence for voluntary manslaughter, burglary, and arson. On December 11, 2019, Inmate Lance was found using a contraband cellphone. *Id.* at ¶ 17. On October 13, 2022, Inmate Lance was again found with a contraband cellphone. *Id.* at ¶ 18. Nevertheless, SCDC either failed to remove contraband cellphones from Inmate Lance or supplied Inmate Lance with more contraband cellphones. *Id.* at ¶ 19.

Beginning in 2022, Inmate Lance began using contraband cellphones to regularly contact and harass O.M.'s mother, Abbygale El-Dier. *Id.* at ¶ 26. Abbygale never met Inmate Lance in person at Lee and was not on his approved visitor sheet, and their relationship existed solely as a result of SCDC's allowance of Lance to have contraband cellphones within Lee. *Id.* at ¶¶ 34-35.

Shortly after Inmate Lance began contacting Abbygale, O.M.'s grandfather, David El-Dier contacted SCDC employees at Lee multiple times, specifically alerting them that Inmate Lance was utilizing contraband cellphones to call his daughter Abbygale. *Id.* at ¶ 20. SCDC ignored these warnings and allowed Inmate Lance to continue to possess contraband cellphones and contact Abbygale. *Id.* With the SCDC employees at Lee doing nothing, El-Dier continued to try to alert SCDC to Inmate Lance's use of contraband cellphones to contact and harass his family. SCDC has an on-line tip portal that assures the person providing the tip that the use of a cellphone "constitutes a security violation and appropriate disciplinary actions will be taken." *Id.* at ¶ 21. El-Dier sent a tip on May 1, 2023 to SCDC again notifying SCDC that Inmate Lance had been contacting Abbygale

for nine (9) months by using contraband cellphones. *Id.* at ¶ 22. Three months passed with no response from SCDC. *Id.* at ¶ 23.

Tragically, as a result of SCDC failing to confiscate contraband cellphones from Inmate Lance and continuing to provide him cellphones despite specific notice that Inmate Lance was calling Abbygale, Inmate Lance continued to contact Abbygale and directed her to sexually abuse, assault, and take pictures and videos of three-year-old O.M. This sexual abuse by Inmate Lance utilizing contraband cellphones began at least by March 27, 2023 and continued well after El-Dier had provided specific notice to SCDC that Inmate Lance was contacting Abbygale on contraband cellphones. *Id.* at ¶ 27. On May 28, 2023, Abbygale made a recorded video in which she sexually assaulted and abused O.M. at the direction of Inmate Lance and disseminated the video and photographs to Inmate Lance. *Id.* at ¶ 28. The abuse continued unabated by SCDC, and nothing was done despite the multiple tips provided by El-Dier.

In fact, on July 13, 2023, well after El-Dier had provided tips to SCDC, Inmate Lance was found to have a black wireless earbud in his ear and was charged with possessing a communication device. *Id.* at ¶ 30. No one from SCDC contacted El-Dier about his multiple tips until August 11, 2023, after O.M. had experienced months of abuse. *Id.* at ¶ 32. When SCDC finally investigated Inmate Lance's cell, they confiscated six (6) cellphones from him, which showed the heinous abuse of O.M. that was allowed to be perpetrated. *Id.* at ¶ 31. On August 12, 2023, Inmate Lance and Abbygale were arrested for Criminal Conspiracy to Commit Criminal Sexual Conduct with a Minor in the First Degree. *Id.* at ¶ 33. Additionally, SCDC employees at Lee were arrested as part of the investigation of this matter for providing cellphones to inmates at Lee. Brittany Nicole Welch, who worked at Lee for about six years, was arrested for keeping contraband for inmates and tipping off inmates to contraband searches. Brian Keely, a longtime employee and food service supervisor at

Lee, was found with cellphones and narcotics in his office at Lee, and there was evidence of contraband deals with inmates. Disturbingly, he was also in possession of materials showing sexual assaults on children.

SCDC filed a Motion to Dismiss on December 20, 2024. The Court held a hearing on that Motion on March 26, 2025. The Court granted SCDC's Motion on April 23, 2025. Now, within ten days of that Order, Plaintiff moves the Court to reconsider its decision.

STANDARD OF REVIEW

“It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C.D.O.T.*, 361 S.C. 9, 21, 602 S.E.2d 772 (2004). A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the Rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* Indeed, “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Id.*

ARGUMENT

I. The Court Should Grant Leave for Plaintiff to Amend His Complaint.

As a preliminary matter, Plaintiff has filed a Motion to Amend his Complaint to address the deficiencies noted by the Court in its April 23, 2025 Order. The South Carolina Supreme Court requires that “[w]hen a trial court finds a complaint fails ‘to state facts sufficient to constitute a cause of action’ under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” *Skydive Myrtle Beach*,

Inc. v. Horry County, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019). As such, as stated in the Motion to Amend, Plaintiff would ask the Court to be given this opportunity before any final order of dismissal, should the Court not be inclined to revisit its prior decision.

II. The Court Erred in Finding No Special Relationship Between SCDC and Inmate Lance.

One of the exceptions to the general rule that a person has no duty to act is “where the defendant has a special relationship to the injurer.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). This exception is based on Restatement (Second) of Torts § 319 (1965), which provides: “One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.” *Id.* The Court does not question the rule of law that SCDC’s custody of Inmate Lance can give rise to such a special relationship. *See Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). However, in holding that that the “special relationship” exception does not apply in this case, the main basis for the Court’s holding was that “Plaintiff’s attempt to establish that Inmate Lance was the injurer of O.M. is incorrect. Rather, O.M.’s injurer was her mother Abbygale El-Dier, an individual that had no special relationship with SCDC.” Order, at 5. This finding by the Court definitively stating that Inmate Lance was not the injurer of O.M. is incorrect under South Carolina law, and SCDC has already implicitly admitted that Inmate Lance perpetrated the abuse against O.M.

A. Inmate Lance was an Injurer of O.M.

As alleged in the original Complaint, Inmate Lance used “a contraband cell phone to call and harass Abbygale, who had a minor daughter O.M.” *Compl.*, ¶ 24. Inmate Lance “through the use of the contraband cellphones SCDC allowed him to possess and video chat on the cellphone, began directing Abbygale to sexually assault and abuse O.M.” *Id.* at ¶ 27. “On May 28, 2023, at the

direction of Inmate Lance on his contraband cell phone SCDC allowed him to possess, Abbygale made a recorded video, in which she sexually assaulted and abused O.M., her minor child. Abbygale then disseminated this video as well as several nude photographs of O.M. to Inmate Lance through his contraband cellphone.” *Id.* at ¶ 28. Both Inmate Lance and Abbygale El-Dier were arrested and charged with “Criminal Conspiracy to Commit Criminal Sexual Conduct with a Minor in the First Degree.” *Id.* at ¶ 33. These allegations alone, construed in the light most favorable to Plaintiff, demonstrate that Inmate Lance was an “injurer” of O.M.

One need only look to the criminal charges and indictments against Inmate Lance, which SCDC partnered in bringing, which show that Inmate Lance’s actions in directing and facilitating the sexual abuse of O.M. and viewing, possessing, and disseminating child pornography make him an injurer of O.M. as a matter of law under South Carolina law. Importantly, the indictments and arrest of Inmate Lance “result[ed] from multiple investigations from the ongoing partnership between the State Grand Jury Division of the Attorney General’s Office, the South Carolina Law Enforcement Division (SLED), **the South Carolina Department of Corrections (SCDC)**, and local law enforcement agencies.” *See* <https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-state-grand-jury-indictments-related-to-criminal-activity-within-south-carolina-prisons-including-charges-of-criminal-sexual-conduct-with-a-minor-and-child-sexual-abuse-material/> (last visited May 2, 2025) (emphasis added).¹ Inmate Lance was indicted for Criminal Conspiracy; Criminal Sexual Conduct with a Minor, First Degree (5 Counts), and Sexual Exploitation

¹ “[A] court may properly take judicial notice of matters of public record without converting a motion to dismiss into a motion or summary judgment.” *Botten v. Charleston County EMS, c/a No. 2:23-cv-05064-DCN* (D.S.C. Mar. 14, 2024); *see Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014) (holding that “[t]he trial court’s reliance on transcripts and court orders in the underlying class action did not convert the motion to one for summary judgment

of a Minor, First Degree (10 Counts). In announcing these indictments against Inmate Lance, the South Carolina Attorney General explained, “[c]oncerning the abuse of a minor, Jacob Nathaniel Lance, a Lee Correctional inmate is alleged to have used a contraband cell phone within the facility **to perpetrate the abuse of the minor victim with his alleged co-conspirator, Abbygale El-Dier.**” *Id.* (emphasis added). In other words, SCDC, by being a partner in bringing the indictments against Lance implicitly admitted that Inmate Lance was a perpetrator of the abuse of O.M. Indeed, the South Carolina Court of Appeals holds that “the sexual abuse of a child is so inherently injurious to the victim that **the perpetrator’s intent to harm the child will be inferred as a matter of law.**” *Mfrs. & Merchants Mut. Ins. v. Harvey*, 330 S.C. 152, 159, 498 S.E.2d 222 (Ct. App. 1998) (emphasis added).

The statutory provisions for the charges against Inmate Lance also reflect that South Carolina law views him as an injurer of O.M. The statute for criminal conspiracy is found at S.C. Code Ann. § 16-17-410, which states that “‘conspiracy’ is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.” S.C. Code Ann. § 16-17-410. In other words, “a conspiracy is where two or more persons combine or agree to do something to the detriment or hurt of another.” *Charles v. Texas Co.*, 199 S.C. 156, 176, 18 S.E.2d 719, 727 (1942). Thus, by the very statute under which Inmate Lance was indicted by the state grand jury, he is considered the injurer or hurter of O.M. just as much as Abbygale El-Dier under South Carolina law.

Inmate Lance was also charged and indicted for Criminal Sexual Conduct with a Minor, First Degree (5 Counts), and Sexual Exploitation of a Minor, First Degree. The statutory provision for criminal sexual conduct with a minor, first degree is at S.C. Code Ann. § 16-3-655 and provides that “[a] person is guilty of criminal sexual conduct with a minor in the first degree if . . . the actor engages

in sexual battery with a victim who is less than eleven years old.” S.C. Code Ann. § 16-3-655. Additionally, the charge for sexual exploitation of a minor in the first degree is found at S.C. Code Ann. § 16-15-395, which provides in pertinent part:

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor **to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity** when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

(4) **records, photographs, films, develops, duplicates, produces, or creates a digital electronic file** for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

S.C. Code Ann. § 16-15-395 (emphasis added). Obviously by being indicted on these charges, there are plausible allegations that Inmate Lance “assist[ed] others” to engage in sexual activity with a minor, O.M. or have O.M. appear in a state of “sexually explicit nudity.” *Id.*

Moreover, it is undeniable that Inmate Lance viewed the child pornography showing O.M. As alleged in the Complaint, Inmate Lance was actually “directing Abbygale to sexually assault and abuse O.M.” through the use of his contraband cellphone provided to him by SCDC. Compl., ¶ 27. In passing its own legislation dealing with child pornography, the United States Congress has found that “[c]hild pornography is a permanent record of a child’s abuse and the distribution of child pornography images **revictimizes the child each time the image is viewed.**” *United States v. Skinner*, 70 F.4th 219, 226 (4th Cir. 2023) (quoting Effective Child Pornography Prosecution Act of 2007, Pub. L. No. 110-358, 122 Stat. 4001) (emphasis added). Thus, as the above authority shows and as admitted by SCDC in partnering to bring the charges against Inmate Lance, as a matter of law,

Inmate Lance is considered the “injurer” of O.M. for purposes of the special relationship exception, and the Court’s finding otherwise was incorrect, and the Court should reconsider its prior ruling.

B. SCDC Knew or Should Have Known Inmate Lance Posed a Substantial Risk of Harm.

In finding that there was no “special relationship” between Inmate Lance and SCDC, the only other ground stated by the Court relied upon the statement in *Faile* that “[t]his Court is reluctant to impose the duty to control unless there is an established authority relationship *and a substantial risk of serious harm.*” Order, at 6 (quoting *Faile*, 350 S.C. at 339, 566 S.E.2d at 548). The Court then held, “The substantial risk of serious harm to O.M. due to Inmate Lance’s possession of a cell phone is absent in this case.” *Id.* This ruling by the Court misconstrues *Faile* and Restatement (Second) of Torts § 319 (1965) on which *Faile* is based.

In holding that Plaintiff has not plead a “substantial risk of serious harm to O.M. due to Inmate Lance’s possession of a cell phone,” the Court misreads *Faile*. *Id.* (emphasis added). *Faile* does not state anywhere that there must be a known substantial risk of harm to a particular person. In fact, in the very next sentence, the Supreme Court explained “DJJ had custody of a known dangerous individual [and] [i]t had an independent duty to control and supervise Fredrico to prevent him from harming others as long as it retained custody of him by court order.” *Faile*, 350 S.C. at 339 (emphasis added). Section 319 of the Restatement also speaks in terms of a person whom the defendant “knows or should know to be likely to cause bodily harm to others.” Restatement (Second) of Torts § 319 (1965) (emphasis added). The victim in *Faile*, was someone who had no relationship whatsoever with the individual who assaulted him. *Faile*, 350 S.C. at 322. Likewise, in *Semler v. Psychiatric Institute of Washington, D.C.*, 538 F.2d 121 (4th Cir. 1976), relied upon by *Faile*, the victim was also a random member of the public with no prior relationship to the person in custody. Thus, all that is required for the special relationship to exist under *Faile* is that the person

in custody be someone who is known or should be known “likely to cause bodily harm to others,” i.e. any member of the public.

Here, there is no question that Inmate Lance was a known dangerous individual to SCDC.

Comment a to Restatement (Second) of Torts § 319 states:

The rule stated in this Section applies to two situations. The first situation is one in which the actor has charge of one or more of a class of persons to whom the tendency to act injuriously is normal. The second situation is one in which the actor has charge of a third person who does not belong to such a class but who has a peculiar tendency so to act injuriously of which the actor from personal experience or otherwise knows or should know.

Restatement (Second) of Torts § 319, cmt. a. The *Semler* case relied upon by *Faile* explicitly states that “[c]onfinement of criminals frequently is **intended to protect the public** as well as to punish and rehabilitate the wrongdoer.” *Semler*, 538 F.2d at 124. Thus, by virtue of being a prisoner who has been convicted of violent crimes makes Inmate Lance someone who SCDC knew or should have known was “likely to cause bodily harm to others.”

However, SCDC had even further knowledge of Inmate Lance’s dangerous propensities above him simply being an incarcerated individual. In 2018, Inmate Lance pled guilty to voluntary manslaughter, first-degree burglary, and two-counts of third-degree arson for the 2015 killing of 53-year-old Todd Cantlay. On November 13, 2015, Inmate Lance along with his brother, went to Cantlay’s home, broke in and struck Cantlay several times in the head with a baseball bat. Inmate Lance also stabbed Cantlay in the neck. Inmate Lance then poured accelerant on Cantlay’s body and set it on fire. He then stole several items from Cantlay’s home, including a 2000 BMW, which he then drove to the woods and attempted to burn. Inmate Lance was sentenced to 30 years in prison for the killing and burglary and 15 years in prison for arson, to be served concurrently. These violent crimes and the killing of another individual by Inmate Lance put SCDC squarely on notice that it had custody of a “known dangerous individual.”

Moreover, as alleged in the Complaint, SCDC had further knowledge of the dangers Inmate Lance posed to others, from his conduct behind bars, and the specific notice SCDC has that Inmate Lance has been utilizing contraband cellphones to harass Abbygale El-Dier, O.M.'s mother. SCDC has long called contraband cellphones "the most dangerous weapon inside prison walls." Compl., ¶ 5. SCDC knew that Inmate Lance was acquiring contraband cellphones while in custody of SCDC, as he was found with them on December 11, 2019 and October 13, 2022. *Id.* at ¶¶ 16-18.

Moreover, more than simply having notice that Inmate Lance was obtaining contraband cellphones, SCDC had specific notice that Inmate Lance was utilizing contraband cellphones to harass O.M.'s mother Abbygale. The Court incorrectly states that "[t]here are no allegations in the complaint that SCDC was given notice that O.M.'s mother was sexually abusing her daughter." Order, at 6. Paragraph 24 of the original Complaint explicitly states that "[i]n ignoring the previous calls and tips from El-Dier regarding Inmate Lance's use of a contraband cell phone to **call and harass Abbygale, who had a minor daughter, O.M.**, SCDC created a situation that it knew or should have known posed a continued substantial risk of injury to O.M. Compl., ¶ 24 (emphasis added). This specific notice came in the form of calls from O.M.'s grandfather, David El-Dier, prior to the events in question, alerting the employees at Lee that Inmate Lance was using contraband cellphones to contact Abbygale, and a May 1, 2023 tip from David El-Dier on SCDC's website that Inmate Lance was continuously contacting Abbygale and had been for approximately nine (9) months. Compl., at ¶¶ 20-22. In fact, as set forth in the Amended Complaint that Plaintiff proposes to file that is an exhibit to Plaintiff's Motion to Amend, SCDC had even more knowledge of Inmate Lance's continual harassment and threats to Abbygale and her family, as, in addition to David El-Dier, Abbygale, her sister, and mother all contacted employees at Lee prior to the events in question to alert them to Inmate Lance's use of contraband cell phones to harass Abbygale and her family. As such, construing the

allegations in the light most favorably to Plaintiff, SCDC had specific notice that Inmate Lance had a “tendency to act injuriously” and was a “known dangerous individual,” sufficient to create a special relationship between Inmate Lance and SCDC, and give rise to a duty on the part of SCDC to protect others, including O.M., from harm by Inmate Lance.

III. SCDC Undertook a Duty to Protect O.M.

The Court next ruled that SCDC’s public tip line on its website utilized by David El-Dier to report to SCDC that Inmate Lance was utilizing contraband cellphones to constantly call and harass Abbygale El-Dier did not give rise to a duty under the “voluntary undertaking” exception. Order, at 6. South Carolina law has adopted Restatement (Second) of Torts § 323 in recognizing a voluntarily assumed duty, which states:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other’s reliance upon the undertaking.

Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504-05, 737 S.E.2d 512, 514 (Ct. App. 2012) (quoting Restatement (Second) of Torts § 323 (1965)). In holding that there was no voluntary undertaking in this case, the Court ruled that (1) “SCDC did not undertake to render services to O.M.,” (2) “even if SCDC did, O.M. did not rely on SCDC’s undertaking;” and (3) “the harm suffered by O.M. is not a result of the undertaking but rather is a result of the criminal acts of O.M.’s mother Abbygale El-Dier.” Order, at 7.

As set forth above, South Carolina law and SCDC clearly establish that the harm suffered by O.M. is considered to be harm caused by Inmate Lance. As to whether SCDC voluntarily undertook to provide services for the protection of O.M., the Complaint sufficiently alleges that contraband cell

phones were considered “the most dangerous weapons” by SCDC and that the tip line explicitly promises members of the public utilizing it that use of contraband cell phones by inmates “constitutes a security violation/possession of contraband and appropriate disciplinary actions will be taken.” Compl., ¶ 21. With respect to the claim that O.M. did rely on SCDC’s undertaking, this finding ignores the fact that O.M. was a 3-year-old child. The South Carolina Supreme Court has long held that “a child of tender years is not required to conform to an adult standard of care.” *Standard v. Shines*, 278 S.C. 337, 339, 295 S.E.2d 786, 787 (1982). A 3-year-old child cannot protect themselves but must rely on others to protect them. This is recognized under South Carolina law, which holds, “[u]nder the common law, a parent is responsible for the support of his or her minor child.” *Trident Reg’l Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App. 1995). As such, by David El-Dier utilizing the SCDC tip line, this constitutes reliance by O.M. on SCDC.

Finally, with respect to the Court’ ruling that this undertaking by SCDC is somehow based not on the common law but on S.C. Code Ann. § 24-3-950, that is clearly not the case. The tip line itself makes no reference to the statute, but rather claims that use of a contraband cellphone is “a security violation/possession of contraband.” Compl., ¶ 21. When actually analyzed, S.C. Code Ann. § 24-3-950 is a criminal statute that imposes no duty whatsoever on SCDC, but rather criminalizes an inmates possession of contraband. The statute makes it “unlawful for any person to furnish or attempt to furnish any prisoner under the jurisdiction of the Department of Corrections with any matter declared by the director to be contraband.” S.C. Code Ann. § 24-3-950. Thus, this duty undertaken by SCDC though its tip line is simply not “a preexisting duty, owed to the public at large, codified in S.C. Code Ann. § 24-3-950.” Order, at 7.

IV. SCDC Owed O.M. A Duty Based on Special Circumstances.

Finally, in holding that the “special circumstances” exception was inapplicable, the Court analyzed *Edwards v. Lexington County Sheriff’s Department*, 386 S.C. 285, 688 S.E.2d 125 (2010) relied upon by Plaintiff and held that “this case does not present the ‘unique facts’ akin to those facts that were present in *Edwards*.” Order, at 9. However, in so holding, the “unique facts” that the Court contended were not alleged in Plaintiff’s original Complaint were actually squarely alleged. The Court stated that “[t]he complaint does not allege that Inmate Lance was using the cell phone to ‘harass’ O.M.’s mother and family.” *Id.* However, as set forth above, Paragraph 24 of the original Complaint explicitly states that “[i]n ignoring the previous calls and tips from El-Dier regarding Inmate Lance’s use of a contraband cell phone to **call and harass Abbygale, who had a minor daughter, O.M.**, SCDC created a situation that it knew or should have known posed a continued substantial risk of injury to O.M. Compl., ¶ 24 (emphasis added). As the original Complaint indeed did plead facts that gave rise to the “special circumstances,” exception, the Court should reconsider its holding on this exception.

CONCLUSION

WHEREFORE, Plaintiff prays the Court reconsider its April 23, 2025 Order dismissing Plaintiff’s Complaint and deny SCDC’s Motion to Dismiss. Plaintiff further prays that the Court grant the accompanying Motion to Amend. This motion is supported by the applicable precedent, the South Carolina Rules of Civil Procedure, and such other supporting memoranda or attachments as are filed before the hearing.

May 2, 2025
Anderson, South Carolina

s/James A. Bradshaw

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Exhibit 4

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

Thomas McElveen, as next friend of O.M., a)
minor child,)

Plaintiff,)

vs.)

South Carolina Department of Corrections,)

Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2024-CP-31-00253

PLAINTIFF’S MOTION FOR LEAVE TO
AMEND COMPLAINT

PLEASE TAKE NOTICE that Plaintiff Thomas McElveen, as next friend and guardian ad litem of O.M., a minor child, by and through his undersigned counsel, hereby moves pursuant to Rule 15(a), S.C.R.C.P. for leave to amend the Complaint filed in this action and file and serve Plaintiff’s Amended Summons and Complaint attached hereto as Exhibit 1. For the reasons stated herein, Plaintiff’s Motion should be granted.

Rule 15(a), S.C.R.C.P. provides that leave for a plaintiff to amend his complaint “shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), S.C.R.C.P. “When a trial court finds a complaint fails ‘to state facts sufficient to constitute a cause of action’ under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal.” *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019). “[T]he time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient.” 426 S.C. at 181, 826 S.E.2d at 588. In *Skydive*, the South Carolina Supreme Court held “the circuit court erred not only in refusing to consider the request to amend, but also in effectively preventing Skydive from litigating a post-ruling motion to amend by immediately

dismissing the claims ‘with prejudice.’” 426 S.C. at 182, 826 S.E.2d at 588. The Court further held that “[t]he circuit court should not have denied—and we will not deny—Skydive the opportunity to amend its complaint.” 426 S.C. at 192, 826 S.E.2d at 594. Likewise, in *Doe v. Oconee Memorial Hospital*, 437 S.C. 574, 878 S.E.2d 920 (Ct. App. 2022), the Court of Appeals held that “the circuit court erred in dismissing Doe’s complaint without allowing her the opportunity to amend her complaint” and that “the circuit court abused its discretion by failing to allow Doe an opportunity to amend her complaint.” 437 S.C. at 584, 878 S.E.2d at 926.

Here, the Court entered an Order dismissing Plaintiff’s Complaint on April 23, 2025 pursuant to Rule 12(b)(6), S.C.R.C.P. Within the Order the Court noted several deficiencies in Plaintiff’s original Complaint and noted certain allegations that were not made. Plaintiff has attached hereto as Exhibit 1 his proposed Amended Summons and Complaint that addresses these deficiencies and adds many of the allegations the Court claims were missing. South Carolina law and justice require that Plaintiff be given this opportunity to amend his Complaint prior to a final order of dismissal, and SCDC faces no prejudice in Plaintiff being allowed to do so.

WHEREFORE, Plaintiff prays the Court grant his Motion to Amend and allow leave for Plaintiff to file and serve Plaintiff’s Amended Summons and Complaint attached hereto as Exhibit 1. This motion is supported by the applicable precedent, the South Carolina Rules of Civil Procedure, and such other supporting memoranda or attachments as are filed before the hearing. Pursuant to Rule 11, S.C.R.C.P., undersigned counsel certifies that consultation with counsel for SCDC regarding this motion would serve no useful purpose.

(Signature Page Follows)

May 2, 2025
Anderson, South Carolina

s/James A. Bradshaw

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
Thomas McElveen, as next friend of O.M.,)
a minor child,)
)
Plaintiff,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C.A. No.: 2024-CP-31-00253

AMENDED SUMMONS

TO: THE DEFENDANT ABOVE-NAMED, YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Amended Complaint upon the subscriber, at the address shown below, within fifteen (15) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

April 25, 2025
Anderson, South Carolina

/s/ Kyle White
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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF LEE)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
)	
Thomas McElveen, as next friend of O.M.,	)	C.A. No.: 2024-CP-31-00253
a minor child,)	
)	
Plaintiff,)	
)	
vs.	)	AMENDED COMPLAINT
	)	(JURY TRIAL DEMANDED)
South Carolina Department of Corrections,)	
)	
Defendant.)	

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto this honorable court and alleges as follows:

PARTIES

1. The Plaintiff, Thomas McElveen, brings this action on behalf of O.M., a minor child, as the next friend of O.M. McElveen is an attorney licensed to practice law in South Carolina. McElveen will move at the appropriate time, with the consent of O.M.’s grandmother and legal guardian, to be appointed as special guardian of O.M. for the purpose of this action only.

2. The Defendant, South Carolina Department of Corrections (hereinafter referred to as “SCDC”), is a governmental agency/entity existing under the laws of the state of South Carolina and has facilities located throughout the state, including in Lee County, South Carolina. At all times herein mentioned in this lawsuit, SCDC acted and carried on its business by and through its agents, servants, and/or employees at its various locations, including Lee Correctional Institution (hereinafter referred to as “Lee Correctional” or the “facility”).

FACTUAL ALLEGATIONS

3. Part of SCDC’s mission statement that it promotes through its website and various platforms is “Safety—we will protect the public, our employees, and our inmates.”

4. Prior to the events in question, and at least since 2008, SCDC has identified contraband cellphones within SCDC facilities as a major security threat to inmates, staff, and members of the public.

5. SCDC has long had notice that the use of contraband cellphones by inmates within SCDC facilities poses a substantial risk of serious harm to inmates, staff, and individuals outside of prison walls, as SCDC Director Bryan Stirling describes cellphones within SCDC facilities as a matter of “life and death” and admitted that contraband cellphones affect “prison safety, it can destabilize the prisons, and it affects public safety.”

6. Prior to the events in questions, contraband cellphones were utilized by inmates to commit crimes outside the facility which was known to SCDC, as Director Stirling admits that contraband cellphones are “not only an external problem for the citizens and public safety, it’s an internal problem.” “We’ve seen hits ordered. We’ve seen drug deals. We’ve seen sextortion. We’ve seen kidnapping. I mean, everything that your read in the paper that you cover and watch on TV continues from behind bars.”

7. In 2014, SCDC Director Bryan Stirling stated that cellphones posed a huge threat and claimed that SCDC was working to change the way contraband gets inside the prison walls.

8. In 2016, Stirling declared that SCDC was at war over the cellphones coming into our prison system and called contraband cellphones the most dangerous weapon inside prison walls.

9. In 2018, Stirling admitted that “we have crimes being committed inside of our facilities with cellphones.”

10. In 2019, Stirling admitted that “[t]he phone can be used as a weapon. The phone is used to continue criminal ways. The phone is used to order hits, look at Captain Johnson, to order weapons, to intimidate people that work here, to intimidate witnesses.” Stirling continued, “Can the community feel safe that, ‘Ok, that person is out of society? Physically, they are out of society, but virtually, they are able to wreak havoc on the citizens of South Carolina because of these phones.”

11. In 2019, Stirling again admitted, “Because of contraband cellphones, criminals are physically incarcerated, however, they are virtually out there amongst us, continuing their criminal ways from behind our nation’s prison walls.”

12. SCDC policy identifies cell phones as contraband and requires that such contraband be confiscated, accounted for, and disposed of at each institution. SCDC policy also requires that each facility ensure all precautions are taken to keep all contraband away from inmates and that there be routine and irregular shakedowns of inmates’ quarters, frequent shakedowns, and careful supervision of inmates; discrete observation of visitors, vendors, volunteers, contractors and employees; and regular inspections of vehicular traffic and supplies as well as proper handling and storage of items that are not to be in the possession of inmates.

13. Despite identifying cellphones as the most dangerous weapon inside prison walls SCDC, by understaffing Lee, overstaffing SCDC headquarters, hiring incompetent officers, hiring corrupt officers, failing to supervise officers, and ignoring specific tips about inmates who have contraband cellphones, has continuously not followed its own policies and procedures and allowed contraband cellphones to continue to be readily available at its facilities, including Lee.

14. Prior to the events in question, Lee Correctional had a well-documented history of failing to provide adequate security and supervision over the inmates located at the facility, as well as the SCDC employees in the facility. Further, the administrators, employees, and correctional staff of the facility knew or should have known that their failure to provide adequate security measures would result in unsafe conditions for the inmates and members of the public.

15. Lee has a long history of overcrowding, as well as a lack of supervision and training of employees, which has led to a violent and unsafe environment within the facility, and which has had a profound impact on public safety.

16. Just prior to and during the time period in question, the warden and administrators at the facility failed to provide the adequate and/or specific number of properly trained security guards at numerous locations throughout the facility. Further, officials at the facility, and the officers under their command, failed to follow the policies that were specifically designed to allow the facility to operate safely.

17. Additionally, SCDC has a policy and practice of allowing violations of policies and procedures by employees pertaining to constant supervision of inmates and employees and the introduction of contraband, including cellphones, into the facility.

18. Notwithstanding SCDC's knowledge of these issues, just prior to and during the time period in question, SCDC failed to provide and supervise the adequate, competent, uncorrupt and/or specific number of properly trained personnel at Lee. The Defendant knew or should have known that its failure to provide and supervise adequate, competent, and uncorrupt staff would result in unsafe conditions at Lee and posing a danger to the general public.

19. Prior to and during the events in question, SCDC, through its employees and agents, including the warden and/or assistant wardens at Lee, had notice that SCDC employees at Lee

were providing contraband cell phones to inmates and/or tipping off inmates any time there was to be a search for contraband, allowing inmates, including Inmate Jacob Lance, to conceal their contraband cell phones.

20. In 2017 SCDC was found to have the largest occurrence of contraband cellphones in the country with one contraband cellphone for every three inmates.

21. In 2018, SCDC's failure to control contraband cellphones led to the deadliest prison riot in the last 30 years in the United States at Lee.

22. In 2023, Director Stirling admitted that "[w]e're at the point where the only way you're getting anything in is through dirty staff."

23. Brittany Welch was an employee at Lee for six years. As part of a targeted investigation into SCDC employees at Lee stemming from the events involving Jacob Lance ("Inmate Lance"), Abbygale El-Dier, and O.M., Welch was charged with misconduct in office and obstruction of justice. At all times relevant herein, Welch tipped off inmates of contraband searches, allowed inmates to share contraband, and held contraband for inmates at Lee.

24. Brian Keely was the food service supervisor at Lee. As part of a targeted investigation into SCDC employees at Lee stemming from the events involving Inmate Lance, Abbygale El-Dier, and O.M., Keely was charged with providing contraband to prisoners, criminal conspiracy, and sexual exploitation of a minor, third degree. Keely was found to have a stash of cellphones and drugs in his cafeteria office at Lee and also was in possession of materials showing sexual assault against children. At all times relevant herein, Keely sold or traded contraband cellphones to inmates at Lee in exchange for money or other materials, including materials showing sexual assault against children.

25. Multiple other SCDC employees were suspended or otherwise disciplined for bringing contraband into the facility as part of operation "Clean Sweep" and targeted search of SCDC employees at Lee that stemmed from the events involving Inmate Lance, Abbygale El-Dier, and O.M.

26. Prior to and during the events in question, SCDC knew or should have known that Brittany Welch, Brian Keely, and/or other SCDC employees at Lee were bringing contraband cellphones into Lee.

27. Prior to and during the events in question, SCDC knew or should have known that Brittany Welch, Brian Keely, and/or other SCDC employees were selling or providing inmates at Lee with contraband cellphones, including Inmate Lance.

28. Prior to and during the events in question, SCDC knew or should have known that Brian Keely and/or other SCDC employees were selling or providing inmates at Lee, including Inmate Lance, with contraband cellphones in exchange for materials showing sexual assault against children.

29. Prior to and during the events in question, SCDC knew or should have known that Brittany Welch, Brian Keely and/or other SCDC employees were tipping off inmates at Lee, including Inmate Lance, any time there was a contraband search.

30. Prior to and during the events in question, SCDC knew or should have known that Brittany Welch, Brian Keely and/or other SCDC employees were holding contraband cellphones for inmates, including Inmate Lance, any time there was a contraband search.

31. Prior to and during the events in question, SCDC knew or should have known that any time Inmate Lance had a contraband cellphone confiscated, Brittany Welch, Brian Keely, and/or other SCDC employees would bring him a replacement contraband cellphone.

32. Prior to and during the events in question, SCDC knew that Inmate Lance was a dangerous individual that posed a substantial risk of serious harm to other individuals.

33. In 2018, Inmate Lance pled guilty to voluntary manslaughter, first-degree burglary, and two counts of third-degree arson for the 2015 killing of 53-year-old Todd Cantlay.

34. On November 13, 2015, Inmate Lance along with his brother, went to Cantlay's home, broke in and struck Cantlay several times with a baseball bat. Inmate Lance also stabbed Cantlay in the neck. Inmate Lance then poured accelerant on Cantlay's body and set it on fire. Inmate Lance then stole several items from Cantlay's home, including a 2000 BMW, which he then drove to the woods and attempted to burn. Inmate Lance was sentenced to 30 years in prison for the killing and burglary and 15 years in prison for arson, to be served concurrently.

35. Prior to and during the events in question, SCDC knew Inmate Lance was being provided cellphones by Brittany Welch, Brian Keely, and/or other SCDC employees at Lee and using contraband cellphones to contact individuals outside of Lee Correctional.

36. On December 11, 2019, SCDC received notice that Inmate Lance was making a call outside the institution using a contraband cellphone, and a charger for a cellphone was found in his cell.

37. On October 13, 2022, SCDC found a contraband cellphone and contraband 9-inch sharp-edged weapon inside Inmate Lance's Cell and Inmate Lance admitted to ownership of these items.

38. SCDC knew or should have known that any time that a contraband cellphone was confiscated from Inmate Lance, Brittany Welch, Brian Kelly, and/or other SCDC employees at Lee provided Inmate Lance another contraband cellphone in exchange for money and/or materials showing sexual assault against children.

39. Prior to the events in question, SCDC knew that Inmate Lance was using the contraband cellphones provided to him by Brittany Welch, Brian Keely and/or other SCDC employees to contact, harass, and threaten O.M.'s mother, Abbygale El-Dier, and her family.

40. Prior to the events in question, SCDC received several different tips and complaints specifically about Inmate Lance's persistent use of contraband cellphones to contact, harass, and threaten O.M.'s mother, Abbygale El-Dier and her family.

41. While in the custody of SCDC at Lee, Inmate Lance began calling, harassing, and threatening Abbygale El-Dier and her family via contraband cellphones in late 2022.

42. Abbygale El-Dier was not on Inmate Lance's approved visitor sheet, nor had she ever visited Inmate Lance in prison or at the facility.

43. As a result, Inmate Lance was only able to call, harass, and threaten Abbygale El-Dier and her family by using the contraband cellphones provided to him by Brittany Welch, Brian Keely, and/or other SCED employees and that SCDC allowed Inmate Lance to continue to possess even after multiple tips and notice that Inmate Lance was utilizing contraband cellphones to harass and threaten Abbygale El-Dier and her family.

44. Beginning in 2022 and continuing during the events in question, O.M.'s mother, Abbygale El-Dier, contacted SCDC employees at Lee several times to inform them that Inmate Lance was using contraband cellphones to call her at all hours of the day to harass, yell, and threaten her and her family.

45. Prior to and during the events in question, Abbygale El-Dier's sister, Emily El-Dier, contacted SCDC employees at Lee several times to inform them that Inmate Lance was using contraband cellphones to call Abbygale El-Dier at all hours of the day to harass, yell, and threaten her and her family.

46. Prior to and during the events in question, O.M.'s grandmother, Laura El-Dier contacted SCDC employees at Lee several times to inform them that Inmate Lance was using contraband cellphones to call Abbygale El-Dier at all hours of the day to harass, yell, and threaten her and her family.

47. Prior to and during the events in question, O.M.'s grandfather, David El-Dier contacted SCDC employees at Lee, including Captain Green, several times to inform them that Inmate Lance was using contraband cellphones to call Abbygale El-Dier at all hours of the day to harass, yell, and threaten her and her family. In the call with Captain Green, David El-Dier told Green that Inmate Lance was on the contraband cellphone with Abbygale at that very moment, and Captain Green told David El-Dier that SCDC did not have the man power to go to Inmate Lance's cell and confiscate the cellphone or do anything about it.

48. Despite the specific notice that Inmate Lance, a known dangerous individual in SCDC's custody and control that posed a substantial threat of harm to other individuals, was utilizing the "most dangerous weapon behind prison walls" to call, threaten, and harass Abbygale El-Dier and her family, SCDC ignored this notice and did nothing, allowing Inmate Lance to continue to possess the contraband cellphone to continue calling Abbygale and causing harm to O.M.

49. As part of its mission statement to "protect the public, our employees, and our inmates," SCDC has undertaken to set up a publicly available tip line on its website for anyone who knows "of an SCDC offender who has a cellphone or maintains information on a social networking website" to report such activity to SCDC. SCDC, in providing this link, assures the person providing the tip that use of a cellphone "constitutes a security violation/possession and appropriate disciplinary actions will be taken."

50. After SCDC ignored the calls from Abbygale El-Dier, Emily El-Dier, Laura El-Dier, and David El-Dier regarding Inmate Lance's persistent use of contraband cellphones to call, harass, and threaten Abbygale and her family, on or about May 1, 2023, David El-Dier utilized the tip line provided through SCDC's website to make a report to SCDC about Inmate Lance.

51. In the May 1st, 2023 tip, David El-Dier again reported that Inmate Lance was on the phone with Abbygale at that very moment at 4:29 a.m. on May 1, 2023 and that Inmate Lance had consistently been contacting Abbygale for about nine (9) months. David El-Dier further informed SCDC in the May 1, 2023 tip that even if SCDC found Inmate Lance with a contraband cellphone, the employees at SCDC were bringing him another contraband cellphone. David El-Dier further stated in the May 1, 2023 tip that they had previously reported the actions of Inmate Lance and his use of the contraband cellphone to Lee Correctional but was told that the SCDC employees at Lee could not stop Inmate Lance's actions.

52. This specific notice David El-Dier provided to SCDC regarding Inmate Lance's use of contraband cellphones to harass his daughter was also ignored by SCDC, and David El-Dier received no response from SCDC for over three (3) months.

53. In ignoring all previous calls and tips from Abbygale El-Dier, Emily El-Dier, Laura El-Dier, and David El-Dier regarding Inmate Lance's, a known dangerous individual in SCDC's custody and control, use of a contraband cell phone to call and harass Abbygale, who had a minor daughter, O.M., SCDC created a situation that it knew or should have known posed a continued substantial risk of harm to O.M.

54. As a result of SCDC's disregard of the notice SCDC had or should have had and allowance of Inmate Lance to continue to have contraband cell phones, Inmate Lance was able to utilize the contraband cell phone to cause bodily harm to O.M. by continuously contacting,

threatening, and harassing Abbygale El-Dier and directing her to sexually abuse, assault, and take pictures and videos of her minor daughter, O.M., while he remained incarcerated at Lee.

55. At least by March 27, 2023 and continuing thereafter, Inmate Lance, through the use of the contraband cellphones SCDC entrusted to Inmate Lance and allowed him to possess and video chat on the cellphone, Inmate Lance threatened and harassed Abbygale El-Dier and her family and began directing Abbygale to sexually assault and abuse O.M.

56. On May 28, 2023, Inmate Lance on his contraband cell phone SCDC entrusted to Inmate Lance and allowed him to possess, threatened and harassed Abbygale El-Dier and her family and had Abbygale make a recorded video, in which she sexually assaulted and abused O.M., her minor child. Abbygale then disseminated this video as well as several nude photographs of O.M. to Inmate Lance through his contraband cellphone.

57. Inmate Lance's use of the contraband cellphone to contact, harass, and threaten Abbygale El-Dier and her family and direct the sexual abuse of O.M. continued after May 28, 2023.

58. On July 13, 2023, Inmate Lance was found to have a black wireless earbud in his ear and was charged with possessing a communication device.

59. When SCDC finally investigated the May 1, 2023 tip from David El-Dier, they confiscated six (6) cell phones from Inmate Lance, which showed the months of calls, harassment, and threats by Inmate Lance to Abbygale El-Dier and her family and the sexual abuse of O.M. that Inmate Lance directed Abbygale El-Dier to commit and that SCDC, through its allowance, entrustment, and provision of cellphones to a known dangerous individual in its custody, Inmate Lance its failure to supervise and conduct contraband control of Brittany Welch, Brian Keely,

and/or other SCDC employees, and its failure to respond to the multiple tips, allowed to be perpetrated on O.M.

60. On August 11, 2023, Julie Swank, a special agent with the Office of Inspector General, finally responded to David El-Dier's May 1, 2023 tip, informing David El-Dier that she had just been informed of the May 1, 2023 tip that El-Dier had submitted.

61. Then, on August 12, 2023, over three (3) months after El-Dier's tip, both Inmate Lance and Abbygale were arrested for Criminal Conspiracy to Commit Criminal Sexual Conduct with a Minor in the First Degree.

62. Had SCDC been properly monitoring and supervising the inmates and correctional officers at Lee, properly following contraband control policy, not provided and entrusted contraband cellphones to Inmate Lance and actually removed the contraband cellphones from Inmate Lance when it had specific notice that he was using it to harass, yell, and threaten Abbygale El-Dier and her family, Inmate Lance would never have had the opportunity direct Abbygale to complete the sexual abuse and molestation that O.M. suffered.

FIRST CAUSE OF ACTION
(Negligence/Gross negligence)

63. Plaintiff reiterates each and every allegation above as if repeated verbatim herein.

64. The above set forth incident and the Plaintiff's resulting injuries and damages were proximately caused by the negligent, grossly negligent, reckless, and willful and wanton acts of Defendant, in the following particulars:

- a. In allowing gross overcrowding at the Lee Correctional Institution;
- b. In failing to provide the appropriate number of correctional staff at the various locations in Lee Correctional Institution;

- c. In failing to provide adequate and appropriate security officers at the Lee Correctional Institution;
- d. In failing to properly monitor for contraband at the Lee Correctional Institution;
- e. In failing to prevent contraband from entering the Lee Correctional Institution;
- f. In failing to identify and remove contraband from the Lee Correctional Institution;
- g. In failing to remove contraband from the Lee Correctional Institution despite being put on notice;
- h. In failing to properly train, monitor, and supervise Brittany Welch, Brian Keely, and other employees at Lee and allowing them to provide Inmate Lance with contraband cellphones.
- i. In retaining Brittany Welch, Brian Keely, and other employees at Lee despite knowing or having should have known that they were providing contraband cellphones to inmates;
- j. In failing to prevent Inmate Lance, a person in its custody whom it knew or should have known was likely to cause harm to others if not controlled, from causing harm to O.M.;
- k. In failing to prevent Inmate Lance from obtaining contraband cellphones;
- l. In failing to confiscate contraband cellphones from Inmate Lance despite multiple specific tips that he was using contraband cellphones to harass and threaten Abbygale El-Dier and her family;
- m. In supplying and entrusting contraband cellphones to Inmate Lance when they knew or should have known that he was possessed with a malicious character

and disposition and when they knew or should have known he was likely to cause harm to others;

- n. In failing to properly train, monitor and supervise its personnel, agents, and/or employees so as to ensure the safety of the general public from inmates housed at Lee Correctional Institution;
- o. In being grossly negligent in hiring and then retaining employees who were providing contraband cell phones to inmates and/or providing tips to inmates that contraband searches were being conducted, despite having notice of the same;
- p. In failing to have appropriate policies and protocols in place to provide for the safety and well-being of the general public from inmates housed at Lee Correctional Institution;
- q. If such policies exist, in failing to follow the same;
- r. Failing to follow and adhere to the policies and protocols of SCDC;
- s. In failing to protect the general public from inmates in its custody;
- t. In failing to take any action to prevent the minor child from becoming severely injured after multiple events providing notice of danger;
- u. In failing to provide proper investigations of incidents regarding the confiscation of contraband cellphones which occurred at the facility; and
- v. In failing to properly monitor inmates at Lee Correctional Institution.

65. As a proximate and direct result of the Defendant's reckless, willful and wanton, and grossly negligent conduct the O.M. was severely injured by Inmate Lance, including but not limited to becoming the victim of a physical and sexual assault committed at his direction through

the use of a contraband cellphone SCDC allowed him to possess and being the victim of child sexual abuse material that was disseminated and viewed by Inmate Lance and others at SCDC, which required needless physical and mental suffering and injuries, and medical expenses and emotional and psychological injuries and damages that have been incurred and will be incurred in the future, and permanent impairment and disability.

66. The Plaintiff has alleged multiple “occurrences” as the term is used under the South Carolina State Tort Claims Act, and accordingly, the Plaintiff may obtain an award against the Defendants in excess of one million dollars even if the Defendants are entitled to the protection of any caps pursuant to the South Carolina State Tort Claims Act. *Boiter v. S.C.D.O.T.*, 393 S. C. 123, 125 (2011); *Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543 (2010) (“more than one single act of negligence” constitutes multiple occurrences). The Plaintiff asks that the jury be charges on the definition of occurrences and determine the number of occurrences at trial.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for an award of all available, actual, and consequential damages, the cost of this action, and for such other and further relief as the court deems just and proper.

May 2, 2025
Anderson, South Carolina

/s/ Kyle White
Kyle White (S.C. Bar No. 101426)
Drew Bradshaw (S.C. Bar No. 100548)
Sarah T. Collins (S.C. Bar No. 106450)
White, Davis & White Law Firm, P.A.
Post Office Box 1346
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1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
josh@hjllcsc.com

Attorneys for the Plaintiff

The Plaintiff demands a trial by jury.

/s/ Kyle J. White

Kyle J. White, SC Bar No. 101426

Exhibit 5

Drew Bradshaw

From: Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED]
Sent: Thursday, December 11, 2025 11:57 AM
To: Drew Bradshaw; Melissa S. Segear
Cc: Daniel C. Plyler; Griffin, Ryan K. Secretary (Debra Flinchum); Austin Reed; Kyle White; Sarah T. Collins; Cassie Letendre; Josh Hawkins
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Good morning,

It would be best if the parties each submit proposed orders for Judge Griffin's review within 30 days.

Kind Regards,

Megan Holderness

Law Clerk
The Honorable R. Kirk Griffin
215 N. Harvin St.
Sumter, SC 29150
[REDACTED]

From: Drew Bradshaw <drew@wdwlawfirm.com>
Sent: Monday, December 1, 2025 1:50 PM
To: Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED]; Melissa S. Segear [REDACTED]
Cc: Daniel C. Plyler [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]; Austin Reed [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Cassie Letendre [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Judge Griffin:

We are in receipt of the Court's Order denying Plaintiff's motion to alter or amend the Court's April 23, 2025 Order. As the Court will recall, the attached Motion for Leave to Amend Complaint was also heard on September 30, 2025. The Order filed today does not appear to rule on that motion. A ruling may be forthcoming, but out of an

abundance of caution, Plaintiff wanted to bring this to the Court's attention to request a ruling on that motion as well. Please let us know if the Court needs any further information.

Sincerely,
Drew Bradshaw



Drew Bradshaw

Attorney at Law

White, Davis, and White Law Firm, P.A.

864 231 8090 Main | 864 231 8006 Fax

Mailing Post Office Box 1346 | Anderson SC 29622

[Website](#)

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From: Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED]
Sent: Monday, September 22, 2025 3:23 PM
To: Melissa S. Segear [REDACTED]; Drew Bradshaw [REDACTED]
Cc: Daniel C. Plyler [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]; Austin Reed [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Good afternoon,

I will mark us down for September 30 at 10 a.m. via Webex. See y'all then.

Kind Regards,

Megan Holderness

Law Clerk
The Honorable R. Kirk Griffin
215 N. Harvin St.
Sumter, SC 29150
[REDACTED]

From: Melissa S. Segear [REDACTED]
Sent: Monday, September 22, 2025 9:53 AM
To: Drew Bradshaw [REDACTED]; Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED]
Cc: Daniel C. Plyler [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum)

[REDACTED]; Austin Reed [REDACTED]; Kyle White [REDACTED];
Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins
[REDACTED]

Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Defense counsel is also available for a hearing on September 30, 2025.

Thanks!



Columbia

3200 Devine Street
Columbia, SC 29205

Camden: 803.432.1992

Sumter: 803.778.2471

Melissa S. Segear

Paralegal

Office: [REDACTED]

Direct: [REDACTED]

Email: [REDACTED]

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From: Drew Bradshaw [REDACTED]

Sent: Friday, September 19, 2025 8:22 AM

To: Griffin Ryan K. Law Clerk [REDACTED]

Cc: Daniel C. Plyler [REDACTED]; Ryan K. Secretary Griffin [REDACTED] Austin Reed [REDACTED]; Melissa S. Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]

Subject: Re: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

Thanks Megan. September 30th via Webex works for Plaintiff. We would suggest 10 am but can make any time work that day. We appreciate the Court's time.

Thanks,
Drew

On Sep 17, 2025, at 2:49 PM, Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED] wrote:

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Mr. Bradshaw,

I apologize for the inconsistent communication. I am the current law clerk, and I think your last email may have been lost in the transition between my predecessor and me.

In any case, I am happy to schedule a Webex hearing for this matter. Does September 30 work for all the parties? Any preferable time? If that date does not work, we can look at other dates. Please let me know and I will be happy to get that on the calendar.

Again, I apologize for the inconvenience.

Kind Regards,

Megan Holderness

Law Clerk
The Honorable R. Kirk Griffin
215 N. Harvin St.
Sumter, SC 29150
[REDACTED]

From: Drew Bradshaw [REDACTED]
Sent: Wednesday, September 10, 2025 6:14 PM
To: Daniel C. Plyler [REDACTED]; Griffin, Ryan K. Law Clerk (Megan Holderness) [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: Austin Reed [REDACTED]; Melissa S. Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Ross:

I am following up regarding the scheduling of this hearing. We are happy to do this hearing via WebEx or in person and at the Court's convenience. We appreciate your consideration.

Thanks,
Drew

<image001.jpg>

Drew Bradshaw

Attorney at Law

White, Davis, and White Law Firm, P.A.

864 231 8090 Main | 864 231 8006 Fax

[Website](#)

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From: Drew Bradshaw
Sent: Monday, August 4, 2025 2:16 PM
To: Daniel C. Plyler [REDACTED]; Griffin, Ryan K. Law Clerk (Ross Campbell) [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: Austin Reed [REDACTED]; Melissa S. Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

Ross:

The parties have coordinated, and we are available August 29, September 12, 18, or 19. We are agreeable to having this hearing in person or via WebEx and will do whatever suits the Court's schedule best. Thanks again for accommodating us.

Sincerely,
Drew Bradshaw

Drew Bradshaw

Attorney at Law

White, Davis, and White Law Firm, P.A.

864 231 8090 Main | 864 231 8006 Fax

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<image001.jpg>

From: Daniel C. Plyler [REDACTED]
Sent: Tuesday, July 1, 2025 3:57 PM
To: Drew Bradshaw [REDACTED]; Griffin, Ryan K. Law Clerk (Ross Campbell) [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: Austin Reed [REDACTED]; Melissa S. Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Ross:

We are fine either way, and we will coordinate with Plaintiff's counsel and find some dates and times that are mutually agreeable, and then report back to the Court.

Sincerely,
Daniel C. Plyler

<image002.png>

Columbia

3200 Devine Street
Columbia, SC 29205

Camden: 803.432.1992

Sumter: 803.778.2471

Daniel C. Plyler

Member

Office: [REDACTED]

Direct: [REDACTED]

Email: [REDACTED]

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From: Drew Bradshaw [REDACTED]
Sent: Tuesday, July 1, 2025 3:36 PM
To: Griffin, Ryan K. Law Clerk (Ross Campbell) [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: Daniel C. Plyler [REDACTED]; Austin Reed [REDACTED]; Melissa S. Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

Ross:

We appreciate Judge Griffin's consideration of these motions. Plaintiff would request that a hearing be set at a mutually agreeable time and date for the parties and Judge Griffin.

Sincerely,
Drew Bradshaw

<image001.jpg>

Drew Bradshaw

Attorney at Law

White, Davis, and White Law Firm, P.A.

This message is from the law firm of White, Davis, and White, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

From: Griffin, Ryan K. Law Clerk (Ross Campbell) [REDACTED]
Sent: Tuesday, July 1, 2025 3:24 PM
To: Drew Bradshaw [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: [REDACTED] Austin Reed [REDACTED]; Melissa Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

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Good afternoon,

Judge Griffin is happy to set a hearing for this matter that would be at a mutually agreeable time and date. Judge Griffin is also happy to decide this matter on the briefs pursuant to South Carolina Rule of Civil Procedure Rule 59 (f). Please advise.

Best,

Ross Campbell

From: Drew Bradshaw [REDACTED]
Sent: Friday, May 2, 2025 5:24 PM
To: Griffin, Ryan K. Law Clerk (Ross Campbell) [REDACTED]; Griffin, Ryan K. Secretary (Debra Flinchum) [REDACTED]
Cc: [REDACTED] Austin Reed [REDACTED]; Melissa Segear [REDACTED]; Kyle White [REDACTED]; Sarah T. Collins [REDACTED]; Dana McBride [REDACTED]; Josh Hawkins [REDACTED]
Subject: RE: McElveen, as next friend of OM v SCDC; 2024CP3100253 - Plaintiff's Motion to Reconsider and Motion to Amend

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Griffin:

Please find attached Plaintiff's Motion to Reconsider the April 23, 2025 Order dismissing Plaintiff's Complaint along with Plaintiff's Motion for Leave to Amend the Complaint and Amended Summons and Complaint. These have just been filed, and Plaintiff requests a hearing on these motions. We appreciate the Court's consideration.

Sincerely,
Drew Bradshaw

Drew Bradshaw

Attorney at Law

White, Davis, and White Law Firm, P.A.

864 231 8090 Main | 864 231 8006 Fax

Mailing Post Office Box 1346 | Anderson SC 29622

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# **Exhibit 6**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF LEE ) C/A NO.: 2024-CP-31-00253

Thomas McElveen, as next friend of O.M., )  
 a minor child, )

Plaintiff, )

vs. )

South Carolina Department of Corrections, )

Defendant. )

**ORDER DENYING PLAINTIFF’S  
 MOTION FOR LEAVE TO FILE AN  
 AMENDED COMPLAINT**

This matter is before the Court on Plaintiff Thomas McElveen, as next friend of O.M., a minor child’s (“Plaintiff”) Motion for Leave to File an Amended Complaint. After careful consideration of Plaintiff’s Motion, the Proposed Amended Complaint, the Court’s prior Order, the briefing to date in this case, and the arguments of counsel, the Court respectfully DENIES Plaintiff’s Motion as futile for the reasons set forth in detail below.

**BACKGROUND**

This civil litigation stems from allegations that non-party Abbygale El-Dier (“Mother”) committed abhorrent acts of sexual abuse to her minor child (“O.M.”). Plaintiff alleges that the South Carolina Department of Corrections (“SCDC”) was put on notice by O.M.’s grandfather that non-party SCDC Inmate Jacob Lance had a contraband cell phone and had been contacting Mother via said cell phone. Plaintiff alleges that SCDC confiscated cell phones from Inmate Lance approximately three (3) months after the “tip” or “tips” were made, and the phones revealed a relationship between Inmate Lance and Mother. Additionally, as told by Plaintiff, Inmate Lance used the cell phone to not only contact Mother but to also “direct the sexual abuse” of O.M. Plaintiff alleges that on August 12, 2023, Mother and Inmate Lance were arrested for various

sexual abuse related offenses. Mother's numerous charges remain pending, and Inmate Lance's charges have been marked in the Public Index as nolle prossed.

Absent from the instant civil ligation are both Mother and Inmate Lance as defendants. However, Plaintiff accuses SCDC of being negligent/grossly negligent in prohibiting Inmate Lance from obtaining a contraband cell phone while being housed at Lee Correctional Institution ("LCI"). Plaintiff's theory of the case, in short, is that because Inmate Lance possessed a cell phone, he was able to call and/or text Mother and "direct" Mother to sexually abuse O.M.

SCDC denied liability to Plaintiff and moved to dismiss Plaintiff's Original Complaint for failure to state a claim. Following briefing and an extensive in-person argument, the Court granted SCDC's motion and dismissed the Original Complaint. The Court ruled that no duty existed between O.M. and SCDC, and because of the lack of duty, Plaintiff's negligence/gross negligence claims against SCDC failed as a matter of law. Because of the dispositive nature of the Court's finding, it declined to reach the other arguments raised by SCDC in support of dismissal.

Following this Court's dismissal of the Original Complaint, Plaintiff filed a motion to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Contemporaneously therewith, Plaintiff filed a Motion for Leave to file an Amended Complaint pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. The Court heard argument on both of these motions. On December 1, 2025, the Court issued an Order denying Plaintiff's motion to reconsider. The Court took further time to consider Plaintiff's Motion for Leave to File an Amended Complaint.

### **LEGAL STANDARD**

Rule 15 of the South Carolina Rules of Civil Procedure governs a party's motion for leave to file an amended pleading. Rule 15(a) states, "[A] party may amend his pleading only by leave

of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” Although it is usually encouraged that leave to amend be “freely given,” *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005), it is well-established that a party’s right to amend is not absolute. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) (“A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.”).

When denying motions to amend, courts have considered various factors such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, futility of amendment, etc.” *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017); *see also Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (“Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.”). The decision to grant or deny a Rule 15 motion to amend is within the circuit court’s discretion. *Id.*

When reviewing a plaintiff’s complaint, a court considers whether, “in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524 (Ct. App. 2009). “If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006).

## ANALYSIS

Our case law sets forth several different reasons for why amendment of a pleading may be denied. Here, the Court, after careful review and consideration, denies Plaintiff's Motion because the Proposed Amended Complaint would be futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (Although leave to amend should generally be 'freely given,' . . . it may be denied where the proposed amendment would be futile."). In *Skydive*, the South Carolina Supreme Court explained that a circuit court is charged with reviewing a Proposed Amended Complaint to determine whether such amendment would be futile. 426 S.C. at 183, 826 S.E.2d at 589. If so, the Proposed Amended Complaint cannot be allowed.

Here, the Court has applied the requisite analysis to the Proposed Amended Complaint and finds the amendment to be futile. Although Plaintiff vaguely alleges in his Motion (without specific guidance to the Court) that the Proposed Amended Complaint fixes the problems that plagued the Original Complaint, the Court has endeavored in its review of the Proposed Amended Complaint to find such "fixes," and concludes that Plaintiff is mistaken. The new allegations do nothing to change the analysis and fall short of manufacturing a duty recognized under South Carolina law between SCDC and O.M. where none exists.

In the Proposed Amended Complaint, Plaintiff discusses, predominately, the same set of general facts set forth in the Original Complaint. However, Plaintiff has included other allegations such as:

- Allegations about the problems SCDC has had with prohibiting inmates from obtaining contraband cell phones and the problems that contraband cell phones can impose.
- Allegations about SCDC employees committing criminal acts with respect to bringing in and disseminating contraband and being criminally charged for doing so.

- Allegations about SCDC not adhering to its contraband policies.
- Allegations that SCDC knew or should have known that if it confiscated contraband cell phones, other SCDC employees would commit criminal acts and bring more phones.
- Allegations about Inmate Lance being a known “dangerous individual that posed a substantial risk of serious harm to other individuals.”
- Allegations about Inmate Lance using a cell phone and “calling, harassing, and threatening [Mother] and her family.”
- Allegations about Mother, Emily El-Dier (O.M.’s aunt), Laura El-Dier (O.M.’s grandmother), and David El-Dier (O.M.’s grandfather) contacting SCDC “several times” to inform SCDC that Inmate Lance was using contraband cell phones to “call [Mother] at all hours of the day to harass, yell, and threaten her and her family.”
- Allegations that David El-Dier contacted an SCDC employee to tell SCDC that Mother was currently on the phone with Inmate Lance and that the employee allegedly told him that SCDC did not have the “man power” to confiscate the contraband cell phone.

(Proposed Amended Complaint).

Although the Court appreciates Plaintiff’s efforts to correct the prior deficiencies in the Original Complaint through his submission of the Proposed Amended Complaint, the problem does not exist in Plaintiff’s drafting, but rather, the problem is more fundamental because no duty recognized under South Carolina law exists between SCDC and O.M. in this situation. Whether via the Original Complaint or via the Proposed Amended Complaint, Plaintiff asks this Court to stretch the limits of liability to hold SCDC liable to O.M. for the criminal actions of Mother, when Mother is not a person SCDC had a legal duty to control. For example, in the Original Complaint, Plaintiff alleged that SCDC was negligent in allowing Inmate Lance to acquire a contraband cell

phone, where in turn Inmate Lance contacted Mother, where in turn Mother committed sexual assault on O.M., purportedly at Inmate Lance's direction. Similarly, in the Amended Complaint, Plaintiff is alleging that SCDC was negligent in supervising its employees, where in turn the employees' criminal acts allowed Inmate Lance to obtain and keep a cell phone, where in turn Inmate Lance was able to call Mother and "harass" and "threaten" her and her family, where in turn Mother was purportedly convinced by Inmate Lance to commit sexual assault on O.M.

This is not a case in which an SCDC inmate assaulted someone. Rather, this is a case in which a mother, outside of SCDC's control, chose to sexually assault her own daughter. Not only does O.M., who is one-step removed from any actions of the inmate, not have a cause of action against SCDC, but Plaintiff's own mother would not even have a cause of action against SCDC stemming from the contacts she directly received from the inmate. *See K.S. by and through Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 912 S.E.2d 240 (2025) (explaining the law in South Carolina does not allow recovery of damages for mental suffering in the absence of bodily injury). The fact that Plaintiff is attempting to reach even further down a chain of events to attempt to assign blame to SCDC is noteworthy, and it highlights that this Court did not err in dismissing the Original Complaint and is not erring in declining to allow amendment.

For the reasons set forth in great detail in the Court's Order dismissing the Original Complaint, the Court finds that the Proposed Amended Complaint too fails for lack of legal duty. Of course, there is no duty for an individual to act under the common law. *See Rayfield v. S.C. Dep't of Corrs*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). More specifically, "South Carolina does not recognize a general duty to warn a third party or potential victim of danger or to control the conduct of another." *Doe 2 v. Citadel*, 421 S.C. 140, 146, 805 S.E.2d 578, 581 (2017). And of course, there are exceptions to this general rule of no duty. *See Faile v. S.C. Dep't of*

*Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002) (setting forth the following exceptions in which a duty may arise: “1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant”).

Here, Plaintiff contends the Proposed Amended Complaint now establishes a duty in light of the special relationship between SCDC and the injurer—Inmate Lance. Plaintiff argues this duty between SCDC and O.M. is established through (1) his addition of a supervisory liability theory, (2) the identification of specific SCDC employees involved in the provision of contraband cell phones, and (3) the addition of allegations that other family members called to inform SCDC that Inmate Lance was using a cell phone to “harass” and “threaten” Mother and her family. However, these additions do not save Plaintiff from the bedrock problem.

The **injurer** in this case is Mother, an adult that chose to sexually assault O.M. In order for this legal duty exception to apply, the **injurer** must have a special relationship with the purported **defendant**. See *Faile*, 350 S.C. at 334, 566 S.E.2d at 546. SCDC and Mother simply do not have this relationship, as SCDC does not have any control of the actions of Mother. O.M.’s alleged damages are due to Mother’s sexual abuse. Although Plaintiff has made attempts to demonstrate “a substantial risk of serious harm” existed, *Faile* makes clear that courts are “reluctant to impose the duty to control unless there is an established authority relationship **and** a substantial risk of serious harm.” *Id.* at 339, 566 S.E.2d at 548 (emphasis added). Because no authority relationship existed between SCDC and Mother, the Court need not consider whether Plaintiff sufficiently pled “a substantial risk of serious harm.” Put simply, without the purported

criminal actions of Mother, O.M. would not have been harmed, and there simply is no duty owed to O.M. by SCDC in this scenario.

Accordingly, the Court finds that the Proposed Amended Complaint would be futile in light of there being no duty between SCDC and O.M.

\* \* \*

SCDC raised other grounds in its original motion to dismiss that were not addressed by the Court in light of the dispositive nature of the duty analysis. Here, the Court also agrees with SCDC's argument raised pursuant to the Tort Claims Act. Specifically, the Court finds that S.C. Code Ann. § 15-78-60(20), which states that a governmental entity is not liable for a loss resulting from "an act or omission of a person other than an employee including but not limited to the criminal acts of third persons," bars Plaintiff's claims as alleged against SCDC. Again, Mother is the "third person" who committed criminal acts against O.M. and created the damages for which O.M. now sues SCDC. Accordingly, the Court also finds in the alternative that SCDC is immune from suit in light of this exception to the waiver of sovereign immunity. Again, the Proposed Amended Complaint would be futile.

### **CONCLUSION**

Based on the foregoing, the Court DENIES Plaintiff's Motion for Leave to File an Amended Complaint. The Court has given careful consideration of the Proposed Amended Complaint and finds that amendment would be futile.

**[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]**



## Lee Common Pleas

**Case Caption:** Thomas Mcelveen, As Next Friend Of O.M., A Minor Child VS South Carolina Department Of Corrections  
**Case Number:** 2024CP3100253  
**Type:** Order/Other

So Ordered

s/ R. Kirk Griffin 2768

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Mar 18 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEE COUNTY  
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2026-000120

Thomas McElveen, as next friend of O.M., a minor child,.....Appellant,

v.

South Carolina Department of Corrections,.....Respondent,

CERTIFICATE OF SERVICE

I certify that I have served the foregoing Petition for Rehearing and Request for Rehearing En Banc on the date given below by emailing it to all counsel of record in the underlying action at the address(es) noted below.

Daniel C. Plyler, at Daniel.Plyler@SmithRobinsonLaw.com

Austin T. Reed, at Austin.Reed@SmithRobinsonLaw.com

/s/ James A. Bradshaw  
Drew Bradshaw (S.C. Bar No. 100548)

*Attorney for Appellant*

March 18, 2026