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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-099
Appellate Case No. 2013-001257

David Michael Hollis.....Appellant,

v.

Fairfield County, Philip Hinely, Davis Anderson and David Brown,
in their individual capacities,.....Respondents.

RECORD ON APPEAL

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JAN 30 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

David Michael Hollis,

2013 APR 26 A 10:03

CASE NO: 2012-CP-20-099

Plaintiff,

vs.

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

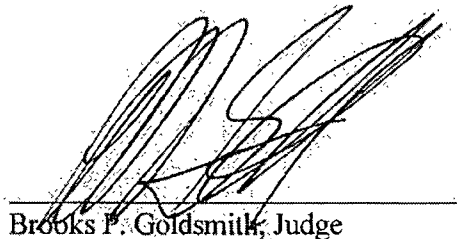
ORDER

Fairfield County, Philip Hincly, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

This matter comes before the Court upon Applicant's Motion to Reconsider the Court's Order, filed March 22, 2013, that granted Defendant's Motion for Judgment on the Pleadings.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion, and therefore, denies Applicant's motion.



Brooks P. Goldsmith, Judge

Chester, South Carolina
April 24, 2013

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MAY 15 2013

J. LEWIS CROMER
& ASSOCIATES, L.L.C.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-20-099

David Michael Hollis

2013 MAR 22 A 10:51

Fairfield County, Philip Hinely, Davis Anderson,
and David Brown, in their individual capacities

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKMAN

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) by the Court: _____

ORDER INFORMATION

This order ☒ ends or ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

139

Judge Code

Date

3/19/13

For Clerk of Court Office Use Only

This judgment was entered on **March 21, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **March 21, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer
J. Lewis Cromer & Associates, LLC
PO Box 11675
Columbia, SC 29211-1675

ATTORNEY(S) FOR THE PLAINTIFF(S)

Derwood L. Aydlette III
Gignilliat Savitz & Bettis, LLP
900 Elmwood Ave. Suite 100
Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty Jo Beckham

Betty Jo Beckham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

vs.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 2012-CP-20-099

ORDER

2013 MAR 22 A 10:57
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKWITH

This matter came before the Court on March 7, 2013 upon Defendants' Motion for Judgment on the Pleadings, pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. Defendant argues that Plaintiff's defamation claim against Fairfield County is barred by the South Carolina Tort Claims Act. Defendant also argues that Plaintiff's civil conspiracy claim is barred because Plaintiff was an at-will employee and a public official. After considering oral arguments and reviewing applicable authority, the Court grants Defendant's Motion for Judgment on the Pleadings.

Facts

Plaintiff David Michael Hollis, former Animal Control Supervisor of Fairfield County, was terminated from his position by Defendant Davis Anderson, Deputy County Administrator. The firing occurred over Plaintiff's handling of a case, in which an owner's dog severely wounded another dog. Following the termination, Plaintiff grieved his termination, and the County's Grievance Committee recommended that the termination be upheld. Defendant Philip Hinley, the County Administrator, accepted the Committee's recommendation. Plaintiff asserts that Fairfield County defamed him, and the natural defendants conspired to terminate his employment.

Analysis

Under South Carolina law, a plaintiff must show the following to recover for defamation: "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm was caused by the publication." *Seaton v. City of N. Charleston*, 2012 U.S. Dist. LEXIS 176053, 9 (D.S.C. Dec. 12, 2012); (quoting *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (S.C. 2006)). "In addition to the common law elements of defamation, a public official has the constitutional burden of proving that the defendant published the alleged defamatory material with 'actual malice.'" *Anderson v. Augusta Chronicle*, 365 S.C. 589, 594-595, 619 S.E.2d 428, 431 (2005) (quoting *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964)). Under the South Carolina Tort Claims Act (SCTCA), a governmental entity is not liable for a loss that results from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17) (Supp. 1993)).

Plaintiff appears to be a public official. In *Rosenblatt v. Baer*, the United States Supreme Court explains the "public official" designation, and states the term applies "at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). "Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the

#2
005

New York Times malice standards apply.” *Id.* As the supervising officer of his department and a limited duty law enforcement officer, Plaintiff is a public official for the purposes of the New York Times malice standard. Plaintiff’s former position displayed control over the conduct of governmental affairs and was a position that held an important public interest. As a public official, Plaintiff must meet the burden of proving the defamation was conducted with “actual malice.” Because actual malice has not been proven in this case, the SCTCA bars Plaintiff’s claim.

In regards to Plaintiff’s civil conspiracy claim, Plaintiff’s status as an at-will employee and public official control the claim. In this case, Plaintiff was an at-will employee. He was terminated by Defendant Anderson, and the termination was upheld by Defendant Hinley. In *Angus I*, the court held that an at-will employee cannot maintain an action for civil conspiracy against his employer or employees authorized to terminate his employment. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004). As an at-will employee, Plaintiff’s claim against Anderson and Hinley is barred by *Angus I*. Furthermore, *Angus II* states that a public official cannot maintain a civil conspiracy claim against a private party. *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). The holding in *Angus II* bars Plaintiff’s claim against Defendant Brown, or any party relating to the termination of his employment.

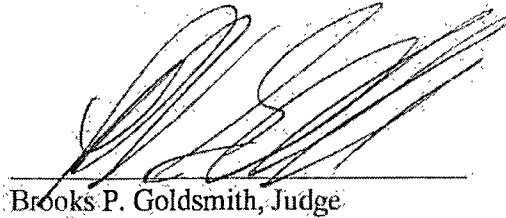
Conclusion

The Court grants Defendants’ Motion for Judgment on the Pleadings. Plaintiff is barred from his defamation claim, pursuant to the SCTCA. The civil conspiracy claim fails because Plaintiff was an at-will employee and public official.

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IT IS ORDERED, ADJUDGED AND DECREED that the motion of the Defendants for Judgment on the Pleadings is hereby granted.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Brooks P. Goldsmith', is written over a horizontal line.

Brooks P. Goldsmith, Judge

Lancaster, South Carolina
March 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF Fairfield

David Michael Hollis

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP- 20 - 099

COPY
Plaintiff(s)

vs.

Fairfield County, Philip Henely, Davis Anderson
and David Brown in their individual capacities

Defendant(s)

(Please Print)

Submitted By: J. Lewis Cromer

Address: 1522 Lady Street Columbia SC 29211

SC Bar #: 1470

Telephone #: 8037999530

Fax #: 8037999533

Other:

E-mail: jlc@jlewiscromerlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- _____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☒ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | Defamation/Civil Conspiracy | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: March 1, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

2012 MAR -1 A 10:27
FAIRFIELD COUNTY
CLERK OF COURT
JERRY B. BOWMAN

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

David Michael Hollis,)
Plaintiff,)

-versus-

Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
Defendants.)

SUMMONS
(Jury Trial Demanded)

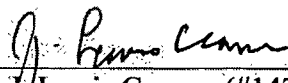
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FAIRFIELD COUNTY
CLERK OF COURT
RECEIVED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is 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 (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date 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.

J. LEWIS CROMER & ASSOCIATES

BY:


J. Lewis Cromer (#1470)
Tandi R. Card (#76623)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

March 1, 2012
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

David Michael Hollis,)
Plaintiff,)

-versus-

Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
Defendants.)

COMPLAINT
(Jury Trial Demanded)

2012 MAR -1 A 10:28
FAIRFIELD COUNTY
SOUTH CAROLINA
CLERK OF COURT

The plaintiff, complaining of the defendants herein, would respectfully allege as follows:

1. The plaintiff is a citizen and resident of Fairfield County, South Carolina residing at 46 Osage Drive, Winnsboro, South Carolina 29180 and was, prior to January, 2012, the Animal Control Supervisor of Fairfield County.

2. The defendant Fairfield County (hereinafter "County") is a political subdivision in the State of South Carolina having offices, agents and employees in Fairfield County, South Carolina and its principal offices in Fairfield County, South Carolina and its principal offices are located in Winnsboro, South Carolina.

3. The defendant Philip Hinely (hereinafter "Hinely") is, upon information and belief, a citizen and resident of Fairfield County, South Carolina and was at all times mentioned herein the County Administrator of Fairfield County; the defendant Davis Anderson (hereinafter "Anderson") is, upon information and belief, a citizen and resident of Fairfield County, South Carolina and was at all times mentioned herein the Deputy County Administrator for Fairfield County and the direct supervisor of the plaintiff; and defendant David Brown (hereinafter "Brown") is, upon information, and belief a citizen and resident of Fairfield County, South

Carolina and was at all times mentioned herein and Animal Control Officer and the husband of the clerk to the Council of Fairfield County.

4. On January 13, 2012, plaintiff entered the office of a local veterinarian for other business. The veterinarian's wife, and assistant, reported a dog that had been severely wounded by another dog's attack and was told to contact the owner, or apparent owner, of both dogs involved.

5. Plaintiff attempted to contact the owner several times on that day and reached him in the late afternoon. After a brief conversation, plaintiff advised the owner that under the County's policies, the offending animal would have to be euthanized or securely confined to prevent further attacks. The owner chose the latter option and assured plaintiff that a secure enclosure would confine the animal in the future. Plaintiff attempted to follow up with the veterinarian on January 17, 2012.

6. Plaintiff had no further conversations with owner, the veterinarian, County officials or anyone else until January 20, 2012 when he was summarily fired by defendant Anderson for alleged incompetence in his handling of the issue.

7. At the behest of these individual defendants, an e-mail message was circulated on the Winnsboro classified website from a Janice Lynn Emerson requesting "honest people" to come to a meeting to tell about plaintiff's "abuse of his job."

8. Plaintiff attended a County Council meeting on February 9, 2012 and was approached by defendant Brown in the hallway and was accused by defendant Brown of incompetence in the handling of the incident and bringing about his own termination. Such statements were made in the presence of others at the County Council meeting.

9. Plaintiff grieved his termination which was turned down by the County Grievance Committee and the decision was approved by the defendant Hinely as County Administrator and plaintiff's discharge is final.

10. The defendant Brown was brought into the Animal Control Division without prior experience or qualifications. He was placed there by the defendants Hinely and Anderson solely because of his race and his relationship to the clerk to County Council. In 2010 he was placed in charge of adoption services and plaintiff learned, after the fact, that he had become involved in the matter of the animal attack earlier described without plaintiff's knowledge or approval.

11. The defendant Brown, plaintiff also learned after the fact, had obtained a judge's order to kill the dog and had personally euthanized him after plaintiff's termination with restricted and deadly drugs for which only the plaintiff had a certification and having no one so certified violates federal law.

12. The termination of the plaintiff and his portrayal as an incompetent, abusive public official was made evident and has been circulated throughout Fairfield County and beyond.

**FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT FAIRFIELD COUNTY
(Defamation)**

13. Plaintiff realleges paragraphs 1-12 above as if set forth herein verbatim.

14. Statements regarding plaintiff's job performance as well as actions taken against him were false, malicious and published with reckless disregard for the truth. Such statements and actions are defamatory *per se*, accusing the plaintiff of incompetence in his business and profession.

15. That publication of such words and statements with a reckless disregard for the truth have not only caused the plaintiff to permanently lose his job but have injured his reputation and inflicted severe and continuing humiliation, embarrassment, and mental anguish which will continue into the future.

16. That such statements and actions, although done for private benefit and malicious reasons, were done in the course and scope of the defendants employment with the County.

17. That as a direct and proximate result of the defamation referred to herein, plaintiff is entitled to judgment against the defendant County for all actual damages, attorney's fees and costs of this action.

**FOR A SECOND AND SEPARATE CAUSE OF ACTION
AGAINST THE DEFENDANTS HINELY, ANDERSON AND BROWN
IN THEIR INDIVIDUAL CAPACITIES
(Civil Conspiracy)**

18. Plaintiff realleges paragraphs 1-17 above as if set forth verbatim herein.

19. The individual defendants, over the past several months, met, planned, schemed and conspired to replace the plaintiff, a hardworking, qualified, certified professional with 7 years of exceptional service as Animal Control Supervisor, with a less qualified person but well connected personally to the other defendants in this case.

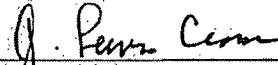
20. The conspiracy caused the plaintiff's special damages which the individual defendants were able to accomplish because of the positions they held with the County. Such actions were taken outside the scope of their duties and undertaken further to promote their own personal agendas.

21. The same amounts to unlawful civil conspiracy which was entered into and carried out to accomplish personal objectives at the expense of the plaintiff and was done in a malicious, clandestine and evil manner

22. That as a direct and proximate result of the defendants' civil conspiracy, the plaintiff has sustained severe and continuing emotional distress and loss of reputation. Plaintiff is entitled to an award of punitive damages for the malicious, intentional and deliberate conduct of the defendants acting in their individual capacities.

WHEREFORE, plaintiff prays for judgment against the defendant County in an appropriate amount to be determined by a jury and judgment against defendants Hinely, Anderson and Brown in the amount of Two Million (\$2,000,000.00) Dollars actual damages as well as an award of punitive damages to be determined by a jury, for attorney's fees and costs of this action and for any and all other and further relief as this court may deem just and proper.

J. LEWIS CROMER AND ASSOCIATES

BY: 

J. Lewis Cromer (#1470)
Tandi D. Ross (#76623)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

March 1, 2012

Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

v.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

David Brown,

Counter-Plaintiff,

v.

David Michael Hollis,

Counter-Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-20-099

**DEFENDANTS' ANSWER AND
COUNTERCLAIM OF DEFENDANT/
COUNTER-PLAINTIFF BROWN**

(Jury Trial Demanded)

Defendants answer the Complaint as follows:

FOR A FIRST DEFENSE

- I. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

- II. The Defendant's actions are consistent with its policies and there is a good faith dispute as to the Plaintiff/Counter-Defendant's claim.

FOR A THIRD DEFENSE

III. Defendants plead the provisions of the Tort Claims Act, S.C. Code §§ 15-78-10, *et seq.*, including all of the immunities, limitations, and defenses granted or preserved therein.

FOR A FOURTH DEFENSE

IV. Plaintiff/Counter-Defendant's exclusive and preemptive remedy for any injury he claims arose out of and in the course and scope of his employment is under the South Carolina Workers' Compensation Act, and any such injuries as alleged in the Complaint, if substantiated, would be barred pursuant to S.C. Code § 42-1-540.

FOR A FIFTH DEFENSE

V. Any statements published by the defendants of or concerning the Plaintiff/Counter-Defendant were true or substantially true and the defendants plead truth as a complete defense.

FOR A SIXTH DEFENSE

VI. Defendants deny that they published any defamatory statement of or concerning the Plaintiff/Counter-Defendant, but if they did, they did so under circumstances and on an occasion giving rise to a qualified privilege and defendants plead qualified privilege as a defense to this action.

FOR A SEVENTH DEFENSE

VII. At all times relevant to this action, the natural defendants were acting in good faith as officers and agents of the County, within the scope of discretion entrusted to them by law, and thus plead good faith immunity as to all claims against them.

FOR AN EIGHTH DEFENSE

VIII. The actions of the defendants, without admitting the same to be true, constitute the

exercise of discretion or judgment for which the County, a governmental entity, and its employees are not liable.

FOR A NINTH DEFENSE

IX. All actions taken on behalf of the County and its employees were taken in good faith with probable cause all while acting within the scope of official duty and, therefore, the County and its employees are immune from liability for any losses occurring from such actions.

FOR A TENTH DEFENSE

X. At all times referenced in the complaint, the defendants acted within the scope of their official duties and thus are immune from liability.

FOR AN ELEVENTH DEFENSE AND BY WAY OF ANSWER

XI. A. Each allegation of the Complaint not hereinafter expressly admitted is denied.

B. Defendant responds to the allegations of the Complaint by paragraph numbers corresponding to the respective paragraph numbers of the Complaint as follows:

1. Admitted on information and belief.
2. Admitted.
3. Admitted.
4. Defendants lack sufficient information as to the truth of the allegations of this paragraph.
5. Defendants admit that Plaintiff/Counter-Defendant refused to seek an order to seize and euthanize the offending animal, despite knowing of the offending animal's vicious propensities as evidenced by the offending animal's owner's admission of numerous prior attacks on, including killings of, other animals, and that Plaintiff/Counter-Defendant's

refusal to act was the result of his relationship with the offending animal's owner, all to the detriment of the citizens that he had sworn to protect, and in violation of his duties as the County's Animal Control Director and as a sworn law enforcement officer of the County.

6. Defendants admit that Plaintiff/Counter-Defendant utterly failed to take any reasonable action to protect the citizens of the County from the offending animal prior to Plaintiff/Counter-Defendant's termination.

7. Denied as alleged.

8. Defendant Brown admits that he advised Plaintiff/Counter-Defendant in the lobby of the Fairfield County Government Complex, and in the presence of others, that Plaintiff/Counter-Defendant's own actions caused his termination.

9. Defendants admit Plaintiff/Counter-Defendant unsuccessfully grieved his termination.

10. Defendants admit that Defendant/Counter-Plaintiff Brown had no prior experience in Animal Control at the time he was hired, that his wife is the County's Clerk to Council, that in 2010 he was placed in charge of adoption services, and that he became involved in the matter of the offending animal referenced in paragraph 5 above because Plaintiff/Counter-Defendant had utterly failed to perform his duties leaving the citizens of the County at risk.

11. Defendant/Counter-Plaintiff Brown admits that he euthanized the offending animal, just as Plaintiff/Counter-Defendant should have done had he acted as a reasonably prudent Animal Control Director and sworn law enforcement officer, and Defendant/Counter-Plaintiff Brown affirmatively alleges that he obtained his euthanasia certification in 2010 and that Plaintiff/Counter-Defendant knows his allegations to the contrary

are patently false.

12. Defendants admit Plaintiff/Counter-Defendant's failure and refusal to responsibly carry out his duties resulted in his termination, which has received a certain level of publicity in the community.

AS TO THE FIRST CAUSE OF ACTION AGAINST THE COUNTY
(Defamation)

13. Defendants incorporate their prior responses as if repeated herein verbatim.

14. Denied. Defendants would affirmatively allege that any reasonably prudent Animal Control Director and sworn law enforcement officer faced with an animal that had attacked and killed numerous other animals would have considered no other option but euthanasia for the offending animal, and that any criticism of Plaintiff/Counter-Defendant's failure to seek euthanasia for the offending animal at issue is true as a matter of law, or at a minimum protected opinion, and thus not defamatory.

15. Denied. Defendants would affirmatively allege that Plaintiff/Counter-Defendant was terminated because, as set forth in 14 above, he failed to act in a reasonable fashion, thus inflicting his own injuries.

16. Defendants admit that any statements they may have made regarding Plaintiff/Counter-Defendant's failure to appropriately perform his duties were made in the course and scope of their employment.

17. Denied.

AS TO THE SECOND CAUSE OF ACTION

(Civil Conspiracy)

18. Defendants incorporate their prior responses as if repeated herein verbatim.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

AS A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Defamation by Defendant/Counter-Plaintiff Brown)

XII. 1. Plaintiff/Counter-Defendant has stated and repeated on many occasions to third parties that he was terminated because Defendant/Counter-Plaintiff Brown, his spouse, and others have conspired to have Plaintiff/Counter-Defendant removed from office so that Defendant/Counter-Plaintiff Brown could ascend to that office.

2. Plaintiff/Counter-Defendant's accusations have defamed Defendant/Counter-Plaintiff Brown in that they call his character into question and cause others to believe that Defendant/Counter-Plaintiff Brown has manipulated the situation involving the offending animal for his own personal benefit.

3. Plaintiff/Counter-Defendant knows or reasonably should know that his statements regarding Defendant/Counter-Plaintiff Brown are false and were thus uttered with actual malice, all for the purpose of providing a subterfuge to conceal Plaintiff/Counter-Defendant's own failure to adequately perform his duties as a reasonably prudent Animal Control Director and sworn law enforcement officer.

4. Defendant/Counter-Plaintiff Brown's reputation has been damaged as a result of Plaintiff/Counter-Defendant's false and malicious statements.

5. Plaintiff/Counter-Defendant's statements were made in his personal capacity and with actual malice, and thus for both reasons he is not entitled to the protections of the South Carolina Tort Claims Act.

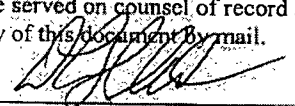
6. Defendant/Counter-Plaintiff Brown is informed and believes that he is entitled to an award of actual and punitive damages to be determined by a jury.

WHEREFORE, having fully answered the Complaint, Defendants request that Plaintiff/Counter-Defendant's claims against them be dismissed and that they be awarded its costs and such other and further relief as the Court may grant. Further, Defendant/Counter-Plaintiff Brown requests that this Court award him actual and punitive damages, as well as costs and whatever other relief the Court deems appropriate, for his counterclaim.

April 2, 2012
Answer & Counterclaim.wpd/397.I

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


DERWOOD L. AYDLETTE, III (SC Bar #13011)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201
Phone: (803) 799-9311 / Fax: (803) 254-6951
Email: daydlette@gsblaw.net

ATTORNEYS FOR DEFENDANTS AND
COUNTER-PLAINTIFF BROWN

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF FAIRFIELD

4 2012-CP-20-00099

5

6 David Michael Hollis

7 vs.

8 Fairfield County, Hinely, Anderson and Brown

9

10

11 Winnsboro, South Carolina

12 March 7, 2013

13 Before the Honorable Brooks P. Goldsmith

14

15 APPEARANCES

16 For the Plaintiff: Paul Porter, Julius Babb, IV

17 For the Defendant: Derwood L. Aydlette, III

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

21

22

23

24

25

RECEIVED

JUL 19 2013

J. LEWIS CROMER
& ASSOCIATES, 023 C.

1 THE COURT: We will now hear Hollis versus Fairfield
2 County and others. Y'all help me out, do we have three
3 motions?

4 MR. AYDLETTE: Just one, it's a motion for judgment on
5 the pleadings. The note about a motion for a protective
6 order was something I sent in to cover me in late March and
7 May, that is unrelated to what we're doing today.

8 THE COURT: All right. There's one motion brought
9 by --

10 MR. AYDLETTE: The defendants.

11 THE COURT: -- all defendants. All right. Who is
12 going to argue the motions?

13 MR. AYDLETTE: Your Honor, I sent you a reply brief
14 yesterday, I got in this habit in federal court, you've got
15 to brief everything so I sent you a reply brief yesterday
16 based on the response. Did you get a copy of it? I've got
17 a hardy copy if you didn't.

18 THE COURT: I did. You do have a hard copy? If you
19 have one I'll take it.

20 MR. AYDLETTE: I know you've got a busy day so I'll
21 give you as much background or as little as you want.

22 THE COURT: I've looked at the briefs.

23 MR. AYDLETTE: So you know what the facts basically
24 are. We've got a former animal control supervisor for the
25 county who was terminated following an incident in which a

1 dog is badly, badly injured by a dog owned by the same
2 owner. The defendants in the case are the county, Fairfield
3 County, that's a claim for defamation, there are three
4 individual defendants in a civil conspiracy claim, those
5 include Phil Hinely, the county administrator; Davis
6 Anderson, the deputy county administrator; and David Brown,
7 an animal control officer. Now, plaintiff as notes in his
8 response to memorandum, he was the chief enforcement officer
9 for animal control for Fairfield County, he was the
10 supervisor of that department, supervised other animal
11 control officers. He was terminated by Davis Anderson who
12 again is the deputy county administrator, grieved it, and
13 the grievance committee sent their recommendation to uphold
14 the termination to Phil Hinely, the county administrator,
15 who accepted that recommendation. Now, the defamation
16 claim. South Carolina Tort Claims Act 15-78-60 subparagraph
17 17 says you cannot sue a government entity on a claim
18 involving actual malice. Our contention is that the
19 plaintiff as the chief enforcement officer for animal
20 control and a supervisor for the county was a public
21 official, if he is a public official the New York Times
22 standard applies and he has to prove actual malice. He
23 held -- and this is not -- there's no contention as to this,
24 he held a class three limited duty law enforcement
25 certification from the Criminal Justice Academy. In every

1 case in South Carolina that has addressed the question as to
2 whether or not a law enforcement officer is a public
3 official has said that they are. The Goss versus
4 (phonetically) Doe case, a police officer sues the City of
5 Myrtle beach, the court says you're a police officer, you
6 have to prove actual malice, because you have to prove
7 actual malice, you can't sue them for defamation. There are
8 numerous attorney general opinions that talk about code
9 enforcement officers, animal control officers as law
10 enforcement officers. Because of that, because it was a
11 public official and because he had that law enforcement
12 certification he is a public official and you can't sue the
13 county for defamation. The conspiracy claim. We have to
14 break it down, but there's a case of Angus vs. Burris
15 (phonetically) and Chapin out of Horry County in which the
16 formal county administrator sued the county council members
17 who voted to terminate her as well as some third parties.
18 The Court said you're an at-will employee, you can't sue the
19 employer, you can't sue the individuals employed by the
20 employer who are authorized to terminate your employment.
21 That takes out Mr. Hinely and Mr. Anderson. Mr. Anderson
22 terminated the plaintiff, Mr. Hinely confirmed that
23 termination or held that termination and so they can't be
24 parties to the civil conspiracy lawsuit because they can't
25 conspire to do what they're authorized to do. There are a

1 number of cases that confirm that, Holly Reid versus
2 Williston, Antley versus Shepherd, and a federal case, Brown
3 versus City of Columbia. So that knocks out Mr. Hinely and
4 Mr. Anderson. That leaves Mr. Brown who can't be a
5 conspiracy of one, so that should wipe out Mr. Brown as
6 well. Angus Two. Angus goes up to the Supreme Court.
7 Angus says we take it a step further, if you're at-will and
8 you're a public official you can't sue anybody for civil
9 conspiracy period. So if Angus One didn't knock them out
10 Angus Two does because he is a public official and he is
11 admittedly at will.

12 THE COURT: I thought that case was one of the most
13 important cases in the past 20 years.

14 MR. AYDLETTE: I think so, too, Your Honor. And
15 Mr. Cromer -- I told Lewis I hope he never retires because
16 60 percent of my work comes from Lewis. Lewis and I have
17 had many conversations about it and he says it's one of the
18 biggest spurs in his saddle, that and the Gaur (City case, a
19 US Supreme Court case.

20 THE COURT: There's probably another reason that I
21 think it's more important than you do.

22 MR. AYDLETTE: What's that?

23 THE COURT: I was on the court.

24 MR. AYDLETTE: I should have read a little further.
25 Angus One or Two?

1 THE COURT: Two.

2 MR. AYDLETTE: So you obviously very familiar with it.
3 The other arguments, Your Honor, we really don't have to get
4 to the intent to harm issue which were raised in the reply
5 brief yesterday and the special damages issues because Angus
6 takes care of the conspiracy claim. But very quickly, the
7 plaintiff says in his memorandum, and this is what he
8 testified to in his deposition, the purpose of conspiracy so
9 was not to harm him but to put David Brown in the
10 plaintiff's job and because much of that focus is on the
11 conspiracy because it is not to harm the plaintiff. It's
12 not -- he can't satisfy the element that he can show that
13 the intent of the conspiracy was to cause him harm. And
14 there are a number of cases that say that; Ellis versus
15 Davidson, Bivins versus Watkins, the Reid versus Akin
16 County, which is a federal case, and then some cases from
17 other jurisdictions. And then finally, Your Honor, the
18 issue of special damages, it's well established in South
19 Carolina you can't, merely re-plead the same damages in the
20 conspiracy claim that you pled in the other causes of
21 action. The conspiracy claim pleads less damages than the
22 defamation claim. The defamation claim pleads emotional
23 distress, loss of reputation and loss of job, conspiracy
24 pleads emotional distress and representation, so it's
25 identical damage. In addition to that, Your Honor, there's

1 nothing special about those damages, there's nothing unusual
2 about them and that's what the Hackworth (phonetically) case
3 says. The damages have to necessarily flow from the
4 conspiracy but they also have to be something unexpected,
5 they have to be unusual and there's nothing unusual about
6 suffering emotional distress and the loss of reputation from
7 losing your job. Now, the plaintiff says in a footnote they
8 would like to amend their pleadings if you're going to
9 dismiss it. They can't fix Angus, there's no amendment that
10 can fix the Angus issues, it is what it is, and because of
11 that the conspiracy claim clearly falls out. They certainly
12 could massage the defamation claim, change defendants,
13 whatever they want to do but they can't pursue it against
14 the county. Thank you, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 MR. PORTER: If it please the Court, Your Honor? I am
17 Paul Porter, along with Jay Babb, I represent Mr. Hollis.
18 The defendant is arguing two primary points. First he's
19 arguing that a dog catcher is a public figure under
20 constitutional jurisprudence. Second, he's arguing that
21 tortfeasors can't be held liable for their own torts. With
22 regard to the defamation contention there's no authority
23 federal or South Carolina holding that dog catchers or
24 animal control supervisors are public officials. There's
25 one case in Florida he cites to, a court of appeals case,

1 different situation, that was an animal control director
2 over a 250,000 person county, this is an animal control
3 supervisor over a 24,000 person county. He also cites to an
4 unpublished Alaska opinion. What's important is that the
5 only case -- the case that held that police officers are
6 public officials. The second head note that it cites to
7 says that we join the majority of jurisdictions in holding
8 that police officers are public officials. No high court of
9 any state that I have seen cited to has even held that
10 animal control officials are public officials, so therefore
11 he's not a public official and does not need to prove actual
12 malice to proceed on his defamation claim, rather he can
13 only prove it by common law malice which is not barred by
14 the tort claims act. With regard to the -- and I would also
15 like to point out, back on defamation on the issue of title,
16 the Court in Rosenblock (phonetically) held that the states
17 labeling of titles is for administrative purposes and does
18 not mean constitutionally that one is or is not a public
19 official under the New York Times standard. On civil
20 conspiracy the Angus cases are very different from this
21 case. In Angus One the only law that is left of that one
22 says that you cannot sue your employer for civil conspiracy,
23 there he was suing the town council, essentially his
24 employer. Here he's suing fellow co-employees for civil
25 conspiracy. Angus Two says public officials cannot sue

1 third party workers. He's not suing -- he's not a public
2 official so we don't have to go there. In the Reid case is
3 for purposes of civil conspiracy an uncited magistrates
4 report and recommendation, and it's different from this
5 case, there it was on summary judgment, not on judgment on
6 the pleadings. We argued in both cases, Reid and both cases
7 that they acted outside the course and scope of their
8 duties. At summary judgment you can present evidence
9 showing that they did not act outside the course and scope
10 of their duties. Here at this stage we're bound by the
11 pleadings and since we've argued that they did act outside
12 the course and scope of their duties, Reid, City of Columbia
13 v. Brown and the Angus cases are distinguished. Thank you,
14 Your Honor.

15 THE COURT: All right. Thank you, sir. Anything in
16 reply, Dirk?

17 MR. AYDLETTE: Nothing, Your Honor.

18 THE COURT: All right. I'm going to read them again, I
19 will be in touch.

20 MR. BABB: Your Honor, Jay Babb. Would you like a hard
21 copy?

22 THE COURT: No, I think I'm fine.

23 (End of the hearing.)

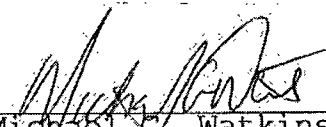
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25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of Common Pleas for
7 Fairfield County, South Carolina, on the 7th day of March,
8 2013.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11
12 July 16, 2013

13
14 
15 Michael C. Watkins
16 Court Reporter
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	C/A #: 12-CP-20-099
David Michael Hollis	)	
Plaintiff,	)	
v.	)	
Fairfield County, Philip	)	
Hinely, Davis Anderson	)	
and David Brown in their	)	
individual capacities,	)	
Defendants.	)	

COPIES

**DEPOSITION OF
DAVID MICHAEL HOLLIS**

Monday, January 14, 2013
10:10 a.m. - 1:00 p.m.

The deposition of David Michael Hollis, taken on behalf of the Defendant at the law offices of J. Lewis Cromer and Associates, 1522 Lady Street, Columbia, South Carolina, on the 14th day of January, 2013, before Christine A. Cortright, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 Lee Haney took it over.

2 Q: You're talking about the sheriff's department?

3 A: Sheriff's department.

4 Q: All right. People employed by an elected
5 official?

6 A: Yes, sir.

7 Q: As far as people employed within the county, as
8 far as people employed by Fairfield County, you
9 were the top enforcement official for animal
10 control ordinances in the county?

11 A: Yes, I reckon you could call it that.

12 **COURT REPORTER: -Number Five.**

13 **(Defendant's Exhibit Number Five was marked for**
14 **identification purposes.)**

15 Q: I'm going to hand you Exhibit Number Five. Do
16 you recognize that?

17 A: Yes, sir.

18 Q: And that is National Animal Control Association
19 level two certification, correct?

20 A: Correct.

21 Q: What is the National Animal Control
22 Association?

23 A: That's a organization that's nationally
24 recognized, and it certifies you with laws and
25 stuff with animal control.

1 I'd gone to school and got my certification and
2 find out the law that legally I could do it
3 instead of paying the money outsourcing it.
4 There was some other issues going on with the
5 veterinarian there at the time, and so they
6 decided to just go ahead and let -- since I had
7 the certification and could maintain
8 everything, that I would be the one to do --
9 that would be doing -- being over the drugs
10 there. I carried the license.

11 Q: When was it that you started performing
12 euthanasia?

13 A: I'm not exactly sure of the date.

14 Q: Was it around the time of this certification,
15 beginning of 2009?

16 A: It was -- I'd been certified for a while. It
17 wasn't -- it'd been a while since -- because it
18 stayed under Dr. Lewis' license for a period of
19 time. But then when they got ready to redo the
20 license, they got it under my name.

21 Q: How many did you perform during your employment
22 with Fairfield County, roughly? I'm not going
23 to hold you to the number, just give me a rough
24 figure.

25 A: Goodness. In seven years, probably 1,000 dogs.

1 Q: Okay. Any of those court ordered?

2 A: Yes, sir.

3 Q: How many, roughly?

4 A: There were just a few. I don't have any
5 paperwork in front of me that -- everything
6 that I euthanized for the court, pictures was
7 taken and went back and give it to the judge,
8 and they filed it. They'll have files on what
9 was done.

10 Q: And you said it was just a few of those?

11 A: Yeah, it was a few of them. Yes, sir.

12 Q: Would those have been dangerous animal
13 euthanasia?

14 A: Went through the courts, and yes, sir, I was
15 ordered to euthanize them.

16 MR. AYDLETTE: Let's go off the record just a
17 second.

18 (Off the Record)

19 MR. AYDLETTE: For the record, plaintiff stipulates
20 that he was an at-will employee of Fairfield
21 County?

22 MR. CROMER: So stipulated.

23 COURT REPORTER: Number Eight.

24 (Defendant's Exhibit Number Eight was marked for
25 identification purposes.)

1 And somewhere along that time, David Brown was
2 coming out. And I'd say -- it was dark. I
3 didn't really see him. And he says, well, you
4 ain't going to shake my hand. And I kind of
5 tried to pull myself together. I looked up and
6 I said, you know, David. And he grabbed my
7 hand, he says, I'm going to tell you something,
8 he said, I didn't have nothing to do with what
9 happened to you, what you did was yourself, you
10 shouldn't -- it was your fault. And I said,
11 well, what you talking about? And he said, you
12 sure -- if you took care of the dog situation,
13 you know -- I said, let's step outside.
14 Because he was loud and I didn't know what he
15 was -- you know, he was getting loud and I was
16 hurt enough without being hollered at in front
17 of my family and stuff. So I said, let's step
18 on out here. So we stepped outside, and I told
19 him, I said, I don't know whether you had
20 anything to do with my firing or not, David.
21 But I said, but if it is, I said, it will come
22 out. And, you know, that's -- we'll just see.
23 And I had -- it was three or four people that
24 stepped out. And so the man was wearing his
25 uniform shirt, driving a county vehicle, so, I

1 mean, I feel like he was on duty at the time.
2 I took and I got myself to come in, and about
3 that time Mr. Anderson come walking out the
4 door, and we spoke. And I went on up to the
5 county council meeting and had a lot of
6 supporters, you know, that came in up there
7 just to see if we could hear anything or what
8 was going on. And so to me, Mr. Brown had
9 already been told and advised of what was going
10 on, and he was a part of the reason to help get
11 me out of the position I was in.

12 Q: All right. Well, we're talking about
13 defamation. You said that he told you it was
14 your own fault you got fired, correct?

15 A: (Nods head affirmatively).

16 Q: Is that a yes?

17 A: Yes, sir.

18 Q: Okay. And then he said if you'd handled that
19 dog situation you wouldn't -- you'd still have
20 your job, correct?

21 A: Yes, sir.

22 Q: All right. And those are the two statements
23 you're talking about?

24 A: Yes, sir.

25 Q: All right. Is there anything else from David

1 Brown? Not necessarily that day, any time.
2 A: Not that I can recollect.
3 Q: All right. And who heard him say it?
4 A: Tommy Wright, Jerry Hollis.
5 Q: Jerry Hollis is who?
6 A: That's my brother.
7 Q: All right.
8 A: John Hollis was there, my brother.
9 Q: Did he hear it?
10 A: Yes, sir.
11 Q: All right.
12 A: Tommy's wife, Marsha Wright, I believe she was
13 there. There was several people in there. I
14 can't remember exactly who was there at that
15 time, but later on that night I think Norma
16 Branham had came in. Eddie Branham, I think he
17 was there. But I'm not sure about Eddie, but
18 I think he was there.
19 Q: All right. In your interrogatory responses,
20 you said John Hollis, Jerry Hollis, Tommy
21 Wright, Marsha Wright and Norma Branham will
22 testify to the facts and circumstances
23 surrounding the complaint as well as the
24 interactions they observed between Defendant
25 Brown and the Plaintiff at the county council

1 Anderson has made?

2 A: Pretty much just, you know, I reckon just not
3 doing the job in a roundabout way. He's -- he
4 undoubtedly went down to Dr. Knight's and all.
5 From what they tell me, he told them if I come
6 back down there that I wasn't employed, that
7 they should call the sheriff's office and have
8 me arrested. And all that was uncalled for.
9 I'd see my guys I had worked with, they would
10 not speak to me or tell me, you know, talk to
11 me about anything, you know. It was almost
12 like they were told that they better not be
13 saying or talking to me or whatever. They guy,
14 Mr. Willie Cook, right after all this here,
15 they end up fixing it to where he just more or
16 less made him to where they wasn't giving him
17 enough hours and he chose not to work for the
18 county no more. Good man. Matter fact, Mr.
19 Cook, he thinks that Davis thought that he and
20 I was so close that he would tell me stuff that
21 was going on at the animal shelter or
22 something. You know, that's speculation there,
23 but -- and I'm sure there are other things I
24 don't know about.

25 Q: And as you sit here today, do you know of any

1 statements that Davis Anderson has made about
2 you that are false?

3 A: Only that he said I wasn't doing my job.

4 Q: Who did he say it to?

5 A: He said that in the grievance committee.

6 Q: Okay. Anywhere else?

7 A: It could have been, but no, right now I can't
8 think of any.

9 Q: All right. How about Phil Hinely?

10 A: Phil Hinely, the only thing that I know is he
11 -- Davis said it came from a higher up; that
12 Davis -- that Phil Hinely said to terminate me.
13 And, you know, I always thought we had a good
14 working relationship. I thought well of him.

15 Q: All right. Do you know of any false statements
16 Phil Hinely has made about you?

17 A: No, sir.

18 Q: All right. So we talked about Janice Lynn
19 Emerson. Were there any other false statements
20 that she made other than what you didn't like
21 that was in that email?

22 A: Not that I personally know, no, sir.

23 Q: All right. Anybody else that we haven't
24 already talked about made any false statements
25 about you, any other county employees?

The National Animal Control Association

Hereby Certifies That

David Hollis

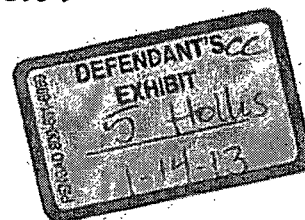
*has successfully completed the
National Animal Control Association Training Academy
NACA 100 Level 2
40 hours
Nashville, Tennessee*

In Witness whereof this certificate is awarded

May 7, 2010



Johnnie W. Mays
Executive Director



STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

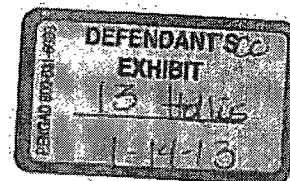
IN THE SUMMARY COURT

ORDER

A Rule to Show Cause hearing to determine a dangerous dog was held on February 6, 2012. The dog is a male boxer, pit bull mix, brown and tan in color owned by Phillip Timms. This animal has reportedly attacked other animals causing severe trauma. After hearing evidence presented this animal has been deemed dangerous and I do hereby Order that the dog be euthanized.

W. F. Pope for Russell Price

2-06-2012
Date



PP
JB

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

RECEIVED

David Michael Hollis,

Plaintiff,

-versus-

Fairfield County, Philip Hinely
Davis Anderson and David Brown
in their individual capacities,

Defendants.

Case No. 2012-CP-20-099

APR 10 2013

J. LEWIS CROMER
& ASSOCIATES, L.L.C.

AFFIDAVIT OF DAVID MICHAEL HOLLIS

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE
FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, David Michael Hollis, am a competent adult and can testify truthfully.
2. I hereby testify voluntarily of my own knowledge.
3. I was hired by Fairfield County as an Animal Control Attendant on or about 2002; I was terminated by Fairfield County in January, 2012, at that time I was an Animal Control Supervisor.
4. At the time of my hire I was paid approximately \$10.50 an hour, at the time of my termination I was paid approximately \$17.50 an hour; I punched a time clock to record my hours worked throughout my employment.
5. At no time within my employment did I have the authority to hire or fire County employees and all employment decisions were approved by Davis Anderson, my immediate supervisor, or Philip Hinley, the County Administrator.
6. I did not have the authority to create County policy. All policy concerning animal control was created at the direction of the County Council or the County Administrator, Philip Hinely.
7. My actions and job responsibilities were governed and directed by guidelines, policies and procedures set by County Council, Davis Anderson, and Philip Hinely.

8. I, along with all other animal control officers, wore a collared short-sleeved shirt that solely stated Fairfield County Animal Control Officer; we also wore name tags similar to all County employees.

9. On or about October, 2011, I was directed to attend a course at the Criminal Justice Academy to get a limited duty law enforcement certification in the event I need to write a ticket.

10. Prior to getting the certification, Davis Anderson had informed me that I was not Law Enforcement and could not wear a badge.

11. After receiving the certification, at a meeting Davis Anderson once again informed me that I was not law enforcement, I was not given a badge or radio, I was told I could not carry a gun, and I was told that anything requiring law enforcement intervention should be handled by the County Sheriff's Office.

12. In my entire employment with the County I wrote one ticket, the ticket was written concerning a dog and presented to the dog's owner by a Fairfield County Sheriff's Deputy and myself; this occurred prior to me getting the limited duty certification.

13. Towards the end of my employment my job duties had been reduced and I was solely given capture, shelter and euthanize responsibilities; whereas, David Brown was given control of the adoption center. When this occurred I was informed by Davis Anderson that David Brown would report only to him.

14. I was not elected, nor was I appointed by the County Council, I was hired pursuant to the same policies and procedures by which all other entry and middle level County employees were hired.

15. My title, when I was terminated, was Animal Control Supervisor, presently David Brown is over all of animal control for Fairfield County, including the adoption center, and has the title Animal Control Director.

16. I was not terminated by County Council, but was terminated pursuant to the same policies and procedures as all other entry and middle level employees.

(Signature Next Page)

FURTHER AFFIANT SAYETH NAUGHT.


David Michael Hollis

SWORN to before me this
2nd day of April, 2013.


Notary Public for South Carolina

My Commission Expires September 9, 2021

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

v.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-20-099

**MOTION FOR JUDGMENT ON
THE PLEADINGS**

Defendants hereby move pursuant to Rule 12(c), SCRCP, for an order dismissing this
action on the following grounds:

AS TO THE FIRST CAUSE OF ACTION

(Defamation against Fairfield County)

- A. Because he was a public official, Plaintiff's first cause of action is barred by Section 15-78-60(17) of the South Carolina Tort Claims Act which bars claims requiring proof of actual malice. *Gause v. Doe*, 317 S.C. 39, 41-42, 451 S.E.2d 408, 409 (Ct. App. 1994) (law enforcement officer was a public official who had to prove actual malice to establish defamation claim, and thus claim was barred).

AS TO THE SECOND CAUSE OF ACTION

(Civil Conspiracy against Defendants Hinely, Anderson and Brown)

- B. Plaintiff's claim for civil conspiracy is barred as to defendants Hinely and Anderson pursuant to the holding of *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (at-will employee may not sue his employer or those employees authorized to terminate his employment), *rev'd on other grounds*, 628 S.E.2d 261 (2006); *Antley v. Shepherd*, 340 S.C. 541, 550, 532 S.E.2d 294, 298 (Ct.App. 2000) (holding that a county official was immune from liability in his individual capacity since that official acted within his authority in firing an employee who was serving at the will of the official), *aff'd as modified*, *Antley v. Shepherd*, 349 S.C. 600, 564 S.E.2d 116 (2002); *Brown v. City of Columbia*, 2011 WL 3654472, *1 (D.S.C. June 16, 2011) ("Nor may public officials be sued in their individual capacities for civil conspiracy when they

terminate an at-will employee.”); *Reed v. Town of Williston*, 2009 WL 821013, *3 (D.S.C. Mar. 27, 2009) (dismissing conspiracy claim against council members who voted to terminate plaintiff and town manager who recommended plaintiff’s termination because “[t]he public officials acted within the scope of their authority in terminating Plaintiff as Recreation Director [and] cannot be sued in their individual capacities for exercising this authority”) (internal citation omitted).

C. Plaintiff’s claim for civil conspiracy is barred as to all defendants because, as an at-will public official, he cannot sue anyone for civil conspiracy relating to the termination of his employment. *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006) (“In our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. Because of Angus’s status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants.”); *Brown v. City of Columbia*, 2011 WL 3654472, *1 n.2 (D.S.C. June 16, 2011) (“Moreover, a plaintiff who is a public official cannot maintain a civil conspiracy claim against non-employer third parties.”).

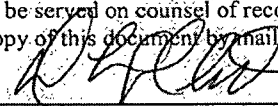
D. Plaintiff’s claim for civil conspiracy is barred as to all defendants because he has failed to allege any damages that are “the natural, but not the necessary or usual, consequence of the defendant’s conduct.” *Hackworth v. Greywood at Hammett, LLC*, 682 S.E.2d 871, 875 (Ct. App. 2009) (dismissal of a claim for civil conspiracy is appropriate when “a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim”); *James v. Pratt & Whitney*, 2005 WL 3440868, *3 (D.S.C. Dec. 14, 2005) (rejecting conspiracy claim alleging lost wages, benefits, and consequential economic damages since such damages “necessarily result from the alleged conspiracy; i.e., that they are ‘exactly those damages that one would expect to flow from’ the alleged conspiracy to terminate him”).

January 18, 2013

Mot 12c.wpd/397.1

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail:


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


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ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

v.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-20-099

**MEMORANDUM IN SUPPORT
OF MOTION FOR JUDGMENT
ON THE PLEADINGS**

Introduction

This is an action alleging defamation against Fairfield County and civil conspiracy against the natural defendants. All defendants have moved for a judgment on the pleadings pursuant to Rule 12(c), SCRCPP. This memorandum is in support of that motion.

Statement of Facts

“A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 48-49 (2009). Thus, the relevant facts for this motion are largely found in Plaintiff’s Complaint. Those facts are as follows:

1. Plaintiff is the former Animal Control Supervisor of Fairfield County (“the County”). [Com. ¶1] In that capacity, as he correctly pleads, he was a “public official” of the County. [*Id.* ¶ 12]¹

¹“The termination of the plaintiff and his portrayal as an incompetent, abusive public official was made evident and has been circulated throughout Fairfield County and beyond.” [Com. ¶ 12]

2. Natural defendants Philip Hinely, Davis Anderson, and David Brown, were at all times relevant, the County Administrator, Deputy County Administrator and an Animal Control Officer, respectively. [*Id.* ¶ 4]

3. Plaintiff was terminated from his job by defendant Anderson after he was fired over his handling of a case in which a citizen's dog "severely wounded" another dog owned by the same citizen. [*Id.* ¶¶ 4, 6] Plaintiff elected to allow the citizen to maintain custody of the offending animal as long as the owner agreed to securely confine same. [*Id.* ¶ 5]

4. Following Plaintiff's termination, a County magistrate ruled that the offending animal should be euthanized. [*Id.* ¶ 11]

5. Plaintiff grieved his termination and the County's Grievance Committee recommended that the termination be upheld. [*Id.* ¶ 9] Defendant Hinely accepted the Committee's recommendation. [*Id.*]

6. Plaintiff asserts that the County defamed him and that the natural defendants conspired to terminate his employment. [*Id.* ¶¶ 17, 22]

Argument

I. Plaintiff's defamation claim against the County is barred by the South Carolina Tort Claims Act.

As Plaintiff properly pled, as the County's Animal Control Supervisor, he was a public official. "In addition to the common law elements of defamation, a public official has the constitutional burden of proving that the defendant published the alleged defamatory material with 'actual malice.'" *Anderson v. Augusta Chronicle*, 365 S.C. 589, 594-595, 619 S.E.2d 428, 431 (2005) (quoting *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964)).

“Under the S[outh] C[arolina] T[ort] C[laims] A[ct], a governmental entity is not liable for a loss that results from ‘employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, intent to harm, or a crime involving moral turpitude.’” *Gause v. Doe*, 317 S.C. 39, 41, 451 S.E.2d 408, 409 (Ct. App. 1994) (emphasis in original) (quoting S.C. Code Ann. § 15-78-60(17) (Supp. 1993)) (law enforcement officer’s defamation claim against his employer barred because he had to prove actual malice as an element of his case).

Plaintiff pleads he was a public official. He is bound by that allegation. *Charleston County School Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) (“Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.”). Thus, his claim is barred because he has to prove actual malice as an element of his case. *Gause, supra*.

Even if Plaintiff had not alleged he was a public official, his defamation claim would still fail. As the County’s Animal Control Supervisor, he was the highest ranking “enforcement officer[] of the provisions of th[e] [County’s Animal Control] Ordinance.” Fairfield Co. Ord. 535.

In *Demby v. English*, 667 So. 2d 350, 354 (Fla. Dist. Ct. App. 1995), the court held that a county animal control director was a public official. The court stated, “The director thus is the chief enforcement officer for a division of county government and is authorized to enforce county and state law, and pursuant to this authority she and the officers whom she directs are empowered to, among others, enter private property, impound people’s pets, and issue citations carrying civil penalties.” *Id.* “Although appellee is not an elected public official, she most

certainly is a public officer wielding a portion of the sovereign power of this state . . .” *Id.*; see also *Scepurek v. Municipality of Anchorage*, 1985 WL 1077799 (Alaska Ct. App. Jan. 23, 1985) (Animal Control Officers are considered “peace officers” and “public officers”).

Numerous opinions of the South Carolina Attorney General have considered animal control and other code enforcement officers to be law enforcement officers. See, 1997 Op. Att’y Gen. dated Apr. 24, 1997, 1997 WL 255969 (opining that code enforcement officers such as animal control officers are “[r]egular, salaried law enforcement officers” under the concealed weapons law); 2005 Op. Att’y Gen. dated July 29, 2005, 2005 WL 1983360 (concluding that code enforcement officers such as animal control officers have the same authority as constables and “would be allowed to use or display blue or red lights on their county vehicles”). And one recent such opinion concluded that Limited Duty Law Enforcement Officers are office holders for constitutional dual office-holding purposes. 2012 Op. Att’y Gen. dated Oct. 02, 2012, 2012 WL 4836949 (collecting opinions). The court can take judicial notice of the fact that SLED has certified Plaintiff as a Limited Duty Law Enforcement officer.² [Ex. A]

It is well-settled in South Carolina that law enforcement officers are public officials.

Gause, supra (police officer is a public official); *State v. Bridgers*, 329 S.C. 11, 15, 495 S.E.2d

²Under Rule 201(b)(2), SCRE, the court can take judicial notice of a fact “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Plaintiff’s SLED-issued Limited Duty Law Enforcement Certification certainly constitutes such a source as it is a public record and was produced by Plaintiff in discovery, as evidenced by the notation “JLC&A00244” in the upper right corner. Such notice may be properly taken upon consideration of a motion pursuant to Rule 12(c) “without converting [it to] a motion for summary judgment.” See, 5A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*, Civil 2d § 1367 (1990) (motion to dismiss may be decided by reviewing the “formal pleadings and what is subject to judicial notice”); see also, *Wisconsin v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998) (“A court may consider judicially noticed documents without converting a motion to dismiss into a motion for summary judgment.”).

196, 198 (1997) (highway patrol officers are public officials); *Willis v. Aiken County*, 203 S.C. 96, 26 S.E.2d 313 (1943) (deputy sheriff is a public official). As the chief law enforcement and implementation officer for the County's animal control ordinances and pertinent state laws³, Plaintiff is clearly a public official. His Limited Duty Law Enforcement certification underscores that fact, and his admission in his pleadings cements it. Accordingly, Plaintiff's claim for defamation against the County is barred by the TCA. *Gause, supra*.

II. Plaintiff's civil conspiracy claim is barred as to Hinely and Anderson because he was an at-will employee.

"In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment." *Barron v. Labor Finders of South Carolina*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). Where a plaintiff fails to plead that his at-will employment was altered, the presumption of at-will employment applies. *See, Keiger v. Citgo, Coastal Petroleum, Inc.*, 326 S.C. 369, 482 S.E.2d 792 (Ct. App. 1997) (affirming trial judge's dismissal of cause of action for breach of implied covenant of good faith and fair dealing where employee failed to allege in her complaint that her at-will employment status had been altered); *Crawford v. Limehouse and Sons, Inc.*, 2010 WL 5136213, *5 (D.S.C. Nov.10, 2010), *adopted by*, 2010 WL 5140035, *1 (D.S.C. Dec.10, 2010) (dismissing claim of fraudulent termination because Plaintiff failed to allege facts sufficient to show that she was not an employee at-will); *Frasier v. Verizon Wireless*, 2008 WL 724037, *2-5 (D.S.C. Mar. 17, 2008) (dismissing claim that Plaintiff was terminated on "false ground [s]" because Plaintiff did not sufficiently plead the existence of a contract altering her at-will status).

³S.C. Code §§ 47-1-75, 47-1-150, 47-3-40, 47-3-420, 47-3-480, 47-3-540, 47-3-750, 47-5-180.

In *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (*Angus I*), the court held that an at-will employee cannot maintain an action for civil conspiracy against his employer or those individual employees authorized to terminate his employment. There, the plaintiff had been employed at-will as a county administrator. She sued the council members who voted to terminate her, as well as The Sun News and developer Burroughs & Chapin, alleging a civil conspiracy. The court held that the conspiracy claim failed because "the council members acted within their authority when they fired Angus and they cannot be sued for doing what they had a right to do." *Id.* And in *Reed v. Williston*, 2009 WL 821013 (D.S.C. Mar. 27, 2009), a former at-will recreation director brought a civil conspiracy claim against the council members who voted to terminate him, as well as the town manager who recommended his termination and several third parties. The court, applying *Angus I*, dismissed the conspiracy claim as to the town manager and council members.

Here, Plaintiff correctly pleads that he was terminated by Anderson, and that that termination was upheld by Hinely. Because he does not allege that he was anything other than an at-will employee, Plaintiff's claim is barred by *Angus I. Accord, Antley v. Shepherd*, 340 S.C. 541, 550, 532 S.E.2d 294, 298 (Ct.App. 2000) (holding that a county official was immune from liability in his individual capacity since that official acted within his authority in firing an employee who was serving at the will of the official), *aff'd as modified, Antley v. Shepherd*, 349 S.C. 600, 564 S.E.2d 116 (2002); *Brown v. City of Columbia*, 2011 WL 3654472, *1 (D.S.C. June 16, 2011) ("Nor may public officials be sued in their individual capacities for civil

conspiracy when they terminate an at-will employee.”).⁴

III. Plaintiff’s claim for civil conspiracy against all of the natural defendants is barred because he was an at-will public official.

Following the Court of Appeals decision in *Angus I*, the South Carolina Supreme Court addressed the matter further in *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006) (*Angus II*). There, the court broadened the scope of *Angus I*. Where *Angus I* only barred civil conspiracy claims by at-will employees against those who fired them, *Angus II* extended that bar universally, holding that such claims were barred against private parties as well. In dismissing the claims against The Sun News and Burroughs & Chapin, the court held,

In our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. Because of Angus’s status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants.

Id.; *Brown*, 2011 WL at *1 n.2 (“Moreover, a plaintiff who is a public official cannot maintain a civil conspiracy claim against non-employer third parties.”).

As set out above, Plaintiff was an at-will public official. Thus, he cannot pursue a civil conspiracy claim against anyone relating to the termination of his employment.

IV. Plaintiff’s civil conspiracy claim also fails because he has failed to properly allege special damages.

To prove a claim for civil conspiracy, a plaintiff must show: “(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874

⁴It would seem logical that the dismissal of the civil conspiracy claims against Hinely and Anderson would also defeat the claim as to Brown. Since there can be no conspiracy among an employer’s terminating agents when they do what they are legally entitled to do, there certainly can be no conspiracy involving one remaining alleged conspirator.

(Ct. App. 2009). “Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Id.* Special damages are those damages that are “the natural, but not the necessary or usual, consequence of the defendant’s conduct.” *Id.* at 875. Thus, it is not enough for a plaintiff to plead damages that are merely different from those asserted in his other caused of action. He must also plead damages that are unexpected or unique. Here, Plaintiff does neither.

Plaintiff alleges in his cause of action for defamation “[t]hat publication of such words and statements with a reckless disregard for the truth have not only caused the plaintiff to permanently lose his job but have *injured his reputation and inflicted severe and continuing humiliation, embarrassment, and mental anguish* which will continue into the future.” [Com. ¶ 15 (emphasis added)] In his conspiracy cause of action, he alleges “[t]hat as a direct and proximate result of the defendants’ civil conspiracy, the plaintiff has sustained severe and continuing emotional distress and loss of reputation.” [Com. ¶ 22] “Emotional distress . . . includes all highly unpleasant mental reactions, [including] humiliation [and] embarrassment . . .” *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 359, 650 S.E.2d 68, 72 (2007) (quoting Restatement (Second) of Torts § 46 cmt. j). Thus, the damages alleged by plaintiff as to his conspiracy claim are duplicative of those asserted in his defamation claim. In fact, he has actually alleged less damages as to the conspiracy claim.

Moreover, there is nothing unusual or unexpected about the damages he asserts as to the conspiracy claim. The damages alleged are “exactly those damages that one would expect to flow from the alleged conspiracy to terminate him.” *James v. Pratt & Whitney*, 2005 WL 3440868, *3 (D.S.C. Dec. 14, 2005). Thus is nothing extraordinary about sustaining emotional distress and a

loss of reputation from losing one's job. And our Court of Appeals has explicitly ruled that "emotional distress and humiliation [a]re not special damage[s]." *Wardlaw v. Peck*, 282 S.C. 199, 206, 318 S.E.2d 270, 275 (Ct. App. 1984). Accordingly, Plaintiff's conspiracy claim fails because he has not properly alleged special damages.

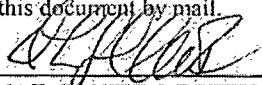
Conclusion

Based on the foregoing, the defendants respectfully request that their motion for judgment on the pleadings be granted.

February 28, 2013
MM 12c.wpd/397.1

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


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ATTORNEYS FOR DEFENDANT



STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

ORDINANCE NO. 535

AN ORDINANCE TO AMEND ORDINANCE NO. 321, ESTABLISHING THE RULES AND REGULATIONS PERTAINING TO ANIMAL CONTROL IN FAIRFIELD COUNTY, AS FOLLOWS: ARTICLE I, SECTION 4.B, LINE 1 IS AMENDED BY STRIKING THE WORD "TWENTY-ONE" AND REPLACING IT WITH THE WORD "TEN"

In order to promote the health, safety, and welfare of the community and protect the property rights of the citizens of Fairfield County, now therefore, BE IT ENACTED BY THE COUNCIL OF FAIRFIELD COUNTY AS FOLLOWS:

ARTICLE I - DOGS AND OTHER DOMESTIC PETS

Section 1. (Animal Shelter)

Any premises so designated by County Council for the purpose of impounding, caring for, and disposing of all pets found in violation of these rules and regulations. (State Law Reference: Title 47, Chapter 3 of the South Carolina Code of Laws of 1976, as amended.)

Section 2. (Animal Control Officer)

Any person(s) employed by the County as the enforcement officer(s) of the provisions of this Ordinance.

Section 3. (Inoculation)

In accordance with Section 47-5-60 of the South Carolina Code of Laws, 1976, as amended, every owner of a pet shall have the pet inoculated against rabies at a frequency to provide continuous protection of the pet from rabies using a vaccine approved by the South Carolina Department of Health and Environmental Control and licensed by the United States Department of Agriculture Veterinary Biologics Division. Evidence of

such inoculation shall consist of a certificate signed by a licensed veterinarian. The certificate must include information recommended by the National Association of State Public Health Veterinarians. The licensed veterinarian administering the vaccine shall provide one copy of the certificate to the owner of the pet and must retain one copy in his files for not less than three years. With the issuance of the certificate, the licensed veterinarian shall furnish a serially numbered metal license tag bearing the same number and year as the certificate with the name and telephone number of the veterinarian, veterinary hospital, or practice. The metal license tag at all time should be attached to a collar or harness worn by the pet for which the certificate and tag have been issued.

Section 4. (Quarantine of Dogs Found Running At Large)

- A. In accordance with 47-3-40 of the South Carolina Code of Laws of 1976, as amended, the Animal Control Officer(s) shall pick up and quarantine any dog running at large. The Animal Control Officer shall notify the owner of any quarantined dog by registered mail at his last known address, when such owner can be determined from tags or other sources of information. To obtain release of his dog, an owner or keeper must satisfy the animal shelter personnel that the dog is currently inoculated against rabies and also pay a quarantine fee of twenty-five dollars. Payment of this fee shall bar prosecution under 47-3-50 of the South Carolina Code of Laws of 1976, as amended. All fees so collected shall be delivered to the county treasurer for deposition in the general fund of the county.
- B. After any dog, which cannot be positively identified, has been quarantined for ten days and is unclaimed by its owner, the animal shelter employees may dispose of such dog by a humane form of destruction or such dogs may be turned over to any

organization established for the purpose of caring for animals such as the Humane Society. (State Law Reference: 47-3-60) For the purposes of this section, "humane form of destruction" means any of those methods of euthanasia allowable by South Carolina State Law, 47-3-420 of the 1976 Code, as amended.

- C. If a dog has been positively identified and its owner notified by registered mail, the owner must notify the Animal Control Officer(s) within two weeks that he will pick up his dog. If the owner does not pick up his dog within two weeks of notification to the Animal Control Officer, the dog may be destroyed. Reasonable costs for this extending holding period, including the cost of mailing the required notice must be paid, in addition to the \$25.00 quarantine fee, before the dog is returned to its owner.
- (State Law Reference: 1976, 47-3-540)

Section 5. (Liability of Owner or Person Having Dog in His Care)

- A. Whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked.
- B. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, when the person bitten or otherwise attacked is on the property in the performance of any duty imposed upon him by the laws of this State by the ordinance of this County, or by the laws of the United States of America including but not limited to postal regulations, or when the person bitten or otherwise

attacked is on the property or of any lawful tenant or resident of the property. If a person provokes a dog into attacking him, then the owner of the dog is not liable.

(State Reference: S.C. Code of 1976, 47-3-110)

Section 6. (Dangerous Animals)

- A. As used in this section "dangerous animal" means an animal of the canine or feline family, which falls within the guidelines of the South Carolina State Code Of Laws of 1976, as amended, 47-3-710, et. seq.
- B. No person owning or harboring or having the care of the custody of a dangerous animal may permit the animal to go unconfined on his premises. A dangerous animal is "unconfined" as use din this section if the animal is not confined securely indoors or confined in a securely enclosed fence or securely enclosed and locked pen or run area upon the person's premises. The pen area or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal. However, this section does not apply to an animal owned by a licensed security company and on patrol in a confined area. (State Law Reference: S.C. Code of 1976 47-3-720)
- C. No person owning or harboring or having the care of a dangerous animal may permit the animal to go beyond his premises unless the animal is safely restrained. (State Law Reference: S.C. Code of 1976 47-3-730)
- D. Any person owning a dangerous animal shall register the animal with the Fairfield County Sheriff's Department and the registration application shall be accompanied by proof of liability insurance of at least fifty thousand dollars insuring the owner for

personal injuries inflicted by the dangerous animal, as required by state law. (State Law Reference: S.C. Code of 1976 47-3-760)

- E. If the Animal Control Officer(s) or any law enforcement agent has probable cause to believe that a dangerous animal is being harbored, housed or cared for in violation of this section, he may petition the magistrate's court to order the seizure and impoundment of the dangerous animal while trial is pending. (State Law Reference: S.C. Code of 1976, 47-3-760)
- F. If a dangerous animal is found running at large, and if an emergency situation should arise wherein the safety of humans or other animal life is threatened, the Animal Control Officer shall be empowered to use shooting as a means of euthanasia. [State Law Reference: S.C. Code of 1976, 47-3-420(5)]
- G. A person who violates this section, or who is the owner of a dangerous animal which attacks and injures a domestic animal or a human being is guilty of a misdemeanor and must be fined not more than two hundred dollars or imprisoned no more than thirty days. Offenses under this section must be tried in the magistrate's court.
- H. A dangerous animal which attacks a human being or domestic animal may be ordered or destroyed when in the court's judgment the dangerous animal represents a continuing threat of serious harm to human beings or domestic animals.
- I. A person found guilty of violating this article shall pay all expenses, including but not limited to, shelter, food, veterinary expenses for boarding and veterinary expenses necessitated by the seizure of an animal for the protection of the public, medical expenses incurred by a victim from an attack by a dangerous animal, and any

expenses required for the destruction for the animal. (State Law Reference: (S.C. Code 1976, 47-3-760)

Section 7. (Disposition of Unclaimed Animals)

Immediately after impounding or quarantining any pet, the Animal Control Officer(s) shall make a reasonable effort to notify the owner of its impoundment and to inform the owner of the conditions whereby he can regain custody of the pet. Any animal impounded under the provisions of this article and not redeemed by its owner may, at the end of the legal detention period:

- A. Be turned over to any organization established for the purpose of caring for animals such as the Humane Society (or SPCA) or be adopted by any person deemed to be a responsible and suitable owner, who will agree to comply with the provisions of this Ordinance.
- B. All adopted animals must be inoculated against rabies as provided in section 3 of this Article and be spayed and/or neutered.
- C. No animal which has been determined to be a dangerous animal may be allowed to be adopted from the Animal Shelter.
- D. All required fee must be paid at the time of adoption.
- E. Any unclaimed animal, after being confined for the legal detention period, may be disposed of, using a "humane form of destruction" as outlined in South Carolina State Law, 47-3-420 of the 1976 Code, as amended.)
- F. Any diseased animal presented to the Animal Shelter whose owner cannot be identified and whose condition endangers the health of other animals in the shelter

may be euthanatized immediately, notwithstanding any legal detention period. If the owner can be determined, the owner shall be contacted immediately.

- G. Any injured animal presented to the shelter, whose condition is determined by the Animal Control Officer(s) to be in extreme pain, and whose owner cannot be identified, may be euthanatized immediately, notwithstanding any legal detention period. If the owner can be determined, the owner shall be contacted as soon as possible.

Section 8. (Records and Fees)

- A. Accurate records shall be kept by the Animal Control Officer(s) on all animals impounded or quarantined as to whether they are redeemed, adopted, or destroyed.
- B. All fees collected by animal shelter personnel shall be turned over the Fairfield County Treasurer and periodic accounting of such funds shall be made to the County Council.

Section 9. (Municipal Powers Not Limited)

Nothing in this article shall be construed to limit the power of any municipality within the county to prohibit dogs from running at large, whether or not they have been inoculated as herein provided; nor shall anything in this article be construed as to limit the power of any municipality to regulate and control further in such municipality and to enforce other and additional measures for the restriction and control of rabies. (State Law Reference: S.C. Code of 1976, 47-3-70)

ARTICLE II - DOMESTIC OR DOMESTICATED ANIMALS

Section 1. (Trespassing or Running at Large)

A. It shall be unlawful for the owner or manager of any domestic animal of any description willfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased, occupied or controlled by him.

B. Whenever any domestic animals shall be found upon the lands of any other person than the owner or manager of such animals, the owner of such trespassing stock shall be liable for any damages sustained. (State Law Reference: 47-7-130)

Section 2. (Disposal of Feral Dogs)

At the request of any property owner, the Animal Control Officer shall request the South Carolina Wildlife and Marine Resources Department to investigate dogs running at large on private property. If the dogs are determined to be feral dogs (a dog which has reverted to a wild state) and are a threat to the lives or health of livestock, wildlife, or humans, the dogs may be removed or disposed of in the most humane manner as determined by the South Carolina Wildlife and Marine Resources Department. (State Law Reference: S.C. Code of 1976, 47-3-310)

ARTICLE III - EXOTIC ANIMALS

SECTION 1. (Definition of Exotic Animal)

For purposes of this section, an exotic animal shall be defined as one which would ordinarily be confined to a zoo, or one which would ordinarily not be native to this state or county or to North America. It includes, but is not limited to, such animals as mountain lions, tigers, lions, bears, panthers, leopards, wolves, rhinoceroses, elephants,

and other such animals. Exotic animals do not include animals of a species customarily considered at household pets in Fairfield County or animals customarily considered in Fairfield County as domestic farm animals.

SECTION 2. (Keeping of Exotic Animals)

No person, firm or corporation shall keep or permit to be kept on their premises any exotic animal as a pet, for display or for exhibition purposes. It shall be unlawful for any person, firm or corporation to keep, maintain, possess, or have under their control within the borders of Fairfield County any exotic animals. The prohibition of exotic animals is primarily based upon a concern to protect the health, safety, and welfare of the citizens of Fairfield County. This section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses.

Any exotic animals kept in Fairfield County on and/or before the date of the execution date of this Ordinance shall be exempted from the provisions outlined above.

Those exotic animals shall be subjected to the following conditions:

- 1) The Fairfield County Animal Control Officer(s) will have the authority to enter any premises where animals are confined in cages or on open land, pastures, or fields for the purpose of inspecting for proper care and humane treatment of animals and the safety of the surrounding public.
- 2) Any person, firm or corporation keeping or owning exotic animals in Fairfield County shall comply with the guidelines established by the United States Department of Agriculture for the purposes of construction of cages, housing of animals, and subsequent care of animals.

- 3) Any person, firm, or corporation keeping or owning exotic animals in Fairfield County shall have adequate locks upon the cages housing said animals. The Fairfield County Animal Control Officer(s) will have the authority to inspect the locks on any cage housing exotic animals.
- 4) Any person, firm or corporation keeping or owning exotic animals in Fairfield County shall pay a yearly fee of One Hundred (\$100.00) Dollars per location. These fees shall be paid to Fairfield County. Fairfield County shall maintain records of those exotic animals in Fairfield County on and/or before the date of the execution of this Ordinance.
- 5) The owner of any employee of any person, firm or corporation owning exotic animals in Fairfield County as of the date of the execution of this Ordinance must maintain residence on the property where the said exotic animals are housed or must have a representative available on a 24 hour basis.
- 6) There shall be no increase in the total number of animals on the property as of the date of the passage of this Ordinance. Any birth of exotic animals which will exceed the total number of animals established on the property as of the date of the execution of this Ordinance shall be transported outside the boundaries of Fairfield County after a normal weaning period as determined by Animal Control. Any birth of exotic animals kept in Fairfield County shall be reported by the owner to the Fairfield County Animal Control Office within one (1) week of the birth.

Any violation of this section of this Ordinance shall be punished by a fine up to \$500.00 or imprisonment of up to thirty (30) days.

ARTICLE IV - ALL BRUTE CREATURES

SECTION 1. (Cruelty to Animals)

- A. Whoever overloads, overdrives, overworks, or ill-treats any animal, or deprives any animal of necessary sustenance or shelter, or inflicts unnecessary pain or suffering upon any animal, or causes these things to be done, is guilty of a misdemeanor and upon conviction shall be punished by a fine of \$200.00 or thirty days in jail. An offense under this section shall be tried in magistrate's court.
- B. Whoever tortures, torments, needlessly mutilates, cruelly kills, or inflicts excessive or repeated unnecessary pain or suffering upon any animal or causes the acts to be done, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of \$200.00 or thirty days in jail. An offense under this section shall be tried in magistrate's court. (State Law Reference: S.C. Code of 1976, 47-7-110)

SECTION 2. (Abandonment)

- A. It shall be unlawful for a person to abandon an animal. As used in this section "abandonment" is defined as deserting, forsaking, or intending to give up absolutely an animal without securing another owner or without providing the necessities of life. "Necessities of life" include:

- 1) Adequate water which means a constant access to a supply of clean, fresh, and potable water provided in a suitable manner for the species at least once daily;
- 2) Adequate food which means provisions at suitable intervals of quantities of wholesome foodstuff suitable for the species and age,

sufficient to maintain a reasonable level of nutrition to allow for proper growth and weight.

- 3) Adequate shelter which means shelter that reasonably may be expected to protect the animal from physical suffering or impairment of health due to exposure to the elements or adverse weather.

B. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars or imprisoned not more than thirty days, or both. Offenses under this Article must be tried in the magistrate's court. (State Law Reference: S.C. Code 1976, 47-1-70.)

Section 3. (Disposal of Unclaimed Animals)

The burying of dead animals shall be the responsibility of the owner of said animal or the responsibility of the property owner where said animal died.

Section 4. (Rabies Control)

A. The Animal Control Officer(s) will cooperate with the Fairfield County Health Department in the enforcement of the South Carolina Rabies Control Act for the purposes of investigations and quarantines.

B. When a pet owner or any person has knowledge or suspects that a pet or other animal is affected by rabies or has been bitten by an animal affected by rabies he/she shall forthwith notify the Animal Control Officer(s), and/or the County Health Department, stating precisely where the animal may be found.

C. The Animal Control Officer(s) shall immediately inform the County Health Department upon receipt of any information concerning an animal bite or a possible animal bite.

D. The Animal Control Officer(s), in conjunction with the County Health Department, shall arrange for the confinement, examination, or destruction of the biting or attacking animal, in accordance with Section 47-5-100 of the South Carolina Code of Laws, 1976, as amended. Any animal bitten by another animal suspected of having rabies shall be confined according to the stipulations contained in Section 47-5-110 of the South Carolina Code of Laws, 1976, as amended. (State Law Reference: 47-5-10, et. seq.)

E. The Animal Control Officer(s) shall keep accurate records of all reported cases involving animal bites.

ARTICLE V - Enforcement

A. The provisions of this Ordinance shall be enforced by the Animal Control Officer(s) under the supervision of the County administrator and the County Health Department.

B. In case of emergency and for the purpose of discharging the duties of this article and to enforce its provisions, the duly appointed Animal Control Officers(s) or any Law Enforcement Officer is entitled to enter any premises upon which any animal is kept or harbored and demand evidence of ownership or rabies inoculation.

ADOPTED THIS 8th DAY OF October, 2007 BY ORDER
OF THE FAIRFIELD COUNTY COUNCIL.

David L. Ferguson Sr.
David L. Ferguson, Chairman

Russell D. Brown
R. David Brown, Member

James E. Branham
James E. (Eddie) Branham, Member

Mikel R. Trapp
Mikel R. Trapp, Member

Karnau Marcharia
Karnau Marcharia, Vice Chairman

Mary Lynn Kinley
Mary Lynn Kinley, Member

Dwayne Perry Sr.
Dwayne Perry, Member

ATTEST

Sheryl M. Brown
Sheryl M. Brown, Clerk to Council

First Reading:	September 10, 2007
Second Reading:	September 24, 2007
Third Reading:	October 8, 2007
Public Hearing:	October 8, 2007

EXHIBIT

A

The South Carolina Criminal Justice Academy

This Certificate is awarded to

David M. Hollis

for successful completion of a course of training in

Limited Duty Law Enforcement

October 20, 2011

Hubert F. Harrell

Hubert F. Harrell SCCJA Director

SC CJA ID No 59264982

SCDEW

FEB 07 2012

Received Benefits Div

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)
)
David Michael Hollis,)
)
Plaintiff,)
)
-versus-)
)
Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2012-CP-20-099

**MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

Plaintiff here asks this Honorable Court to deny defendants' SCRPC Rule 12(c) motion for judgment on the pleadings.¹

The defendants' motion should be denied; because: (1) plaintiff is not a *New York Times* v. *Sullivan* "public official," thus his defamation claim against defendant Fairfield County ("County") is not barred by the South Carolina Tort Claims Act ("SCTCA"); (2) defendants Hinley, Anderson, and Brown ("Individual Defendants") can be held liable for civil conspiracy and are not protected from liability on the basis of their county employment or the plaintiff's former county employment; and (3) the plaintiff has properly pled special damages. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964); and, S.C. Code Ann. § 15-78-60(17).

¹ Alternatively, should this Court find that plaintiff has not sufficiently pled his allegations against the defendants, plaintiff requests pursuant to South Carolina Rules of Civil Procedure Rule 15(a) that this Court grants him leave to amend his complaint. Plaintiff requests an amendment on the grounds that 12(c) is a drastic remedy, the evidence already produced by plaintiff in this case would support an amendment consistent therewith, justice would require such, and the parties would not be prejudiced by an amendment. "Where a judgment on the pleadings is appropriate, the court has the discretion to grant the opposing party leave to amend. Amendments should be readily allowed so as to preclude entry of such judgment. In order to protect a plaintiff's right to amend, when a party challenges the sufficiency of a petition to state a cause of action, a motion for judgment on the pleadings should be sustained only when an amendment cannot cure the defect. Leave to amend should be granted if a party can show that he or she is able to state a claim for relief." 61A Am. Jur. 2d Pleading § 551

For the reasons stated above and elaborated upon below, plaintiff has stated sufficient facts upon which relief may be granted and the defendant's motion should be denied.

STATEMENT OF PLEADINGS

Plaintiff was fired on January 20, 2012. (Compl. ¶ 6). Prior to that, plaintiff had been the Animal Control Supervisor for the County. (*Id.* ¶ 1). Plaintiff was fired on the asserted basis of incompetence in handling a dog fight between two dogs, owned by the same owner. (*Id.* ¶¶ 4 & 6). Upon learning of the dog fight, plaintiff advised the owner that under the County's policies, the suspected aggressing animal would either have to be euthanized or be securely confined to prevent further attacks. (*Id.* ¶ 6). The owner chose the latter option and assured plaintiff that he would build a secure enclosure to confine the animal. (*Id.* ¶ 5). Plaintiff attempted to follow up with a veterinarian regarding the other dog involved; but had no further conversations about the incident with owner, the veterinarian, County officials, or anyone else until he was summarily fired by defendant Anderson. (*Id.* ¶ 6). Later, on February 9, 2012, plaintiff attended a County Council meeting and was approached by defendant Brown in the hallway and was accused by defendant Brown, in front of others, of incompetence in the handling of the incident and bringing about his own termination. (*Id.* ¶ 8). The termination of the plaintiff and his portrayal as an incompetent, abusive public official² by the County, through its agents and employees, has been published throughout the County and beyond. (*Id.* ¶ 12).

Plaintiff has brought this action alleging defamation against the County and civil conspiracy against the individual defendants. (*Id.* ¶¶ 13-22). Plaintiff alleges the individual

² Defendant relies on this allegation as an admission that plaintiff is a public official. (Def. Memo pp. 1-2). This characterization is misplaced as (1) the allegation facially refers to the defamatory insinuations of the County and is not a admission, and (2) defendant is attempting to characterize the same as an admission that plaintiff is a public official in the constitutional law meaning espoused in *Sullivan*; meanwhile the clear meaning, reasonable inferences drawn from and the context of plaintiff's pleadings patently do not convey such. See, *Sullivan*, 376 U.S. at 281-282.

defendants acted outside the course and scope of their employment to get plaintiff fired so that defendant Brown could replace him and are liable for civil conspiracy. (*Id.* ¶¶ 19-20). The parties have exchanged written discovery and each party has been deposed.

STANDARD OF REVIEW

When considering a motion for judgment on the pleadings, the court must regard all properly pleaded factual allegations as admitted. *Russell v. City of Columbia*, 305 S.C. 86, 406, S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990). A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever; thus, pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell*, 305 S.C. at 89, 406 S.E.2d at 339. Furthermore "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.* Therefore, a motion for judgment on the pleadings will only be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. *Rosenthal v. Unarco Industries, Inc.*, 278 S.C. 420, 297 S.E.2d 638 (1982); *see also*, *Wooten v. Standard Life and Cas. Ins. Co.*, 239 S.C. 243, 122 S.E.2d 637 (1961).

ARGUMENT

I. PLAINTIFF'S DEFAMATION CLAIM IS NOT BARRED BY THE SOUTH CAROLINA TORT CLAIMS ACT.

The nature of plaintiff's former employment, with the County, does not bar his defamation claim. "To recover for defamation under South Carolina law, a plaintiff must show:

“(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Seaton v. City of N. Charleston*, 2012 U.S. Dist. LEXIS 176053, 9 (D.S.C. Dec. 12, 2012); *quoting*, *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (S.C. 2006). Section 15-78-60, of the SCTCA, states that a “governmental entity is not liable for a loss resulting from ... employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-60(17). The bar to liability in cases where “actual malice” must be proven is not implicated here.

The term “actual malice” is not defined in the SCTCA and the defendant improperly relies on the Court’s holding in *Gause v. Doe* to define it. *Gause*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994). In *Gause* the court was bound by the constitutional, *Sullivan*, standard of “actual malice” to a defamation claim. *Id*; *See also*, *Sullivan*, 376 U.S. at 281-282. However, this case does not involve the standard governing claims for defamation brought by public figures, the constitutional “actual malice” standard. Instead, plaintiff “brings claims for defamation and defamation per se as a private plaintiff, so South Carolina common law governs. *Seaton*, 2012 U.S. Dist. LEXIS 176053 at 9. The Court has held that “[a]ctual malice under the New York Times [*v. Sullivan*] standard should not be confused with the concept of common law malice as an evil intent or a motive arising from spite or ill will.” *Erickson*, 629 S.E.2d at 666; *quoting*, *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991)).

Defendant asserts that plaintiff is a public official under *Sullivan*; however, the pleadings and facts do not support this contention. Plaintiff was the chief animal control officer, a position

appointed and hired by the county administrator just as a custodian or secretary would be; he is not of the “public concern, [a] public [man]”, or a candidate for office. (Compl ¶ 1); *Sullivan*, 376 U.S. at 281-282. The only place in the pleadings where the term “public official” is even written refers to insinuations made by the defendant; and clearly read does not state the conclusion of law which the defendants seek to interpret it as. (Compl. ¶ 12). Furthermore, the defendants’ reliance on *Gause* is misplaced; because, the parties did not dispute, in that case, that plaintiff was a public official.³ *Gause*, 451 S.E.2d at 409 fn 2. Through a patchwork of disjointed case law that does not address the public official analysis implicated in *Sullivan* the defendants have improperly labeled plaintiff a public official; however, neither the pleadings nor the case law of South Carolina support this contention. See, *Seaton v. City of N. Charleston*, 2012 U.S. Dist. LEXIS 176053; and, *Yost v. City of Charleston*, 2009 U.S. Dist. LEXIS 109929 (D.S.C. Nov. 24, 2009).

The plaintiff’s defamation claim is not barred by the SCTCA because plaintiff is not a public official in the constitutional sense. The defendants proposed analysis would suggest that a public entity in South Carolina is wholly immune from a defamation lawsuit arising out of employment; this is neither explicitly nor implicitly stated in the SCTCA. See, *Mcbride v. School District of Greenville County*, 389 S.C.546, 698 S.E. 2d 845 (Ct. App. 2010); see also,

³ The defendants rely on a plethora of other authority that is neither on issue or dispositive to the present issue. The Florida case and the unpublished Alaska Court of Appeals case, cited by defendants, are irrelevant here. In the Florida case the Florida Court of Appeals was dealing with an animal control director, not an animal control supervisor like plaintiff and in the Alaska case the Court simply stated that Animal Control Officers were “peace officers” and “public officers”. Neither of these cases are sufficient authority for the defendant’s assertion that plaintiff as a county animal control supervisor is a public figure under *Sullivan*. *Demby v. English*, 667 So. 2d 350, 354 (Fla. Dist. Ct. App. 1995); *Scepurek v. Municipality of Anchorage*, 1985 WL 1077799 (Alaska Ct. App. Jan 23, 1985).

Defendants also cite to numerous Attorney General Opinions on the matter of whether or not animal control officers, or limited duty law enforcement officers, are considered office holders or law enforcement officers. (Def. Memo. p. 4). These opinions do not address the constitutional public figure inquiry implicated here.

Finally, the defendant cites to *State v. Bridgers* a decision explicitly limited to defining highway patrolmen as public officials for the purpose of a statute making it unlawful to threaten a public official. *Bridgers*, 329 S.C. 11, 16, 495 S.E.2d 196, 199 (1997)³.

Yost v. City of Charleston, 2009 U.S. Dist. LEXIS 109929. Because the plaintiff has not pled that he is a public official under *Sullivan* and the defendant cannot show as a matter of law that he was such, defendant's motion for judgment on this claim should be denied.⁴

II. THE PLAINTIFF HAS PROPERLY PLED HIS CIVIL CONSPIRACY CLAIM AND IT IS NOT BARRED AS A MATTER OF LAW.

A properly pled civil conspiracy claim asserts three elements, (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). To establish the first two elements the plaintiff needs to allege "additional acts in furtherance of the conspiracy." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). The third element, special damages, must be satisfied to prevent a double recovery. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000); *See Also*, *Anthony v. Ward*, 336 Fed. Appx. 311, 318, C.A.4 (S.C.), (2009) (attached) (interpreting South Carolina civil conspiracy law and recognizing: "The case law makes clear that the concern is with the plaintiff receiving a double recovery".) Therefore, to establish special damages, "the damages alleged must go beyond the damages alleged in the other causes of action. *Hackworth v. Greywood at Hammett, L.L.C.*, 358 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009); *citing Vaught*, 300 S.C. at 209, 387 S.E.2d 95.

A. THE INDIVIDUAL DEFENDANTS ARE NOT PROTECTED BY THE NATURE OF THEIR EMPLOYMENT OR THE PLAINTIFF'S FORMER EMPLOYMENT FROM SUIT FOR CIVIL CONSPIRACY.

The defendants cite *Angus v. Burroughs & Chapin Co. (Angus I)*, to support their contention that the individual defendants cannot be held liable because plaintiff was an at-will

⁴ It is necessary to note that even if this Court found plaintiff was a public official in his capacity as an animal control officer; much of the defamation here occurred after he was terminated so the actionability of his defamation claim is not wholly foreclosed.

employee. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (rev'd on other grounds). The still standing premise announced in *Angus I* is that "an at-will employee cannot maintain an action against a former employer for civil conspiracy that resulted in the employee's termination." *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) rev'd, 368 S.C. 167, 628 S.E.2d 261 (2006). The plaintiff's claim is not barred by this holding as plaintiff is not suing his former employer, the County, for civil conspiracy, rather he is suing several employees for actions allegedly taken in their individual capacities. (Compl. ¶¶ 18-22).

The defendant's further allege that because plaintiff was a public official (for reasons above, plaintiff is not a public official) he cannot sue the individual defendants for civil conspiracy. In *Angus v. Burroughs & Chapin Co. (Angus II)*, the court made the very limited holding that "[i]n our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. Because of Angus's status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants." *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). Plaintiff is not a public official so *Angus II* does not affect his civil conspiracy claim.⁵

The defendants' argument on this claim is akin to an assertion that a tortfeasor may not be held liable for torts he has committed. The right of at-will public employees to sue employees acting in their individual capacities was upheld by the Fourth Circuit Court of Appeals in *Anthony v. Ward. Anthony*, 336 Fed. Appx. 311 (4th Cir. 2009) (interpreting South Carolina Law and recognizing an action in civil conspiracy against a deputy director and inspector over plaintiff and employed by plaintiff's employer.) Here plaintiff has properly pled civil conspiracy

⁵ Defendants also rely on *Reed v. Town of Williston*. The District Court determined that an employee could not bring a civil conspiracy against an employer for actions within the scope of its authority. This is not dispositive as plaintiff is suing several former co-employee's for actions outside of the course and scope of their employment.

against the individual defendants for actions taken outside the course and scope of their employment and his claim is not legally barred.

B. THE PLAINTIFF HAS PROPERLY PLED SPECIAL DAMAGES RESULTING FROM THE CIVIL CONSPIRACY CLAIM.

The plaintiff has pled special damages that are separate and distinct from those damages pled in his defamation claim. Regarding the defamation claim the plaintiff has pled that the defendant County is liable to him “for [the] loss of his job . . . [injury to] his reputation and . . . severe and continuing humiliation, embarrassment, and mental anguish which will continue into the future” (emphasis added) (Compl. ¶ 15). Regarding the civil conspiracy the plaintiff has pled that the individual defendants are liable to him for “severe and continuing emotional distress and loss of reputation” arising out of a separate set of acts on the part of those defendants (emphasis added) (Comp. ¶ 22). The damages pled here are against separate defendants for separate actions and avoid a double recovery; thus, they are properly pled special damages.⁶ *See, Kuznik*, 342 S.C. at 610, 538 S.E.2d 15.

Finally, the defendants assert that plaintiff’s civil conspiracy injuries do not constitute special damages. Rule 9(g), of the South Carolina Rules of Civil Procedure, requires special damages to be “specifically stated.” Plaintiff’s damages resulting from the conspiracy are specifically stated here. (Complaint ¶ 22). Much of the case-law cited in the defendant’s motion is inapplicable and overlooks the distinction between special damages in other contexts, such as the defamation case cited by defendant, and in the Civil Conspiracy setting.⁷ Plaintiff’s

⁶ Further, assuming *arguendo* that plaintiff’s damages are duplicative, pursuant to Federal Rules of Civil Procedure Rule 8(d)(3) a plaintiff can plead alternative and inconsistent claims. Thus, even if this court finds plaintiff’s damages are duplicative, plaintiff should be permitted discovery to determine upon which claim(s) his damages lie.

⁷ In certain contexts like contract and certain defamation cases, where malice has not been shown, a plaintiff must prove damages capable of a monetary determination to recover. *See, Holtzscheiter v. Thompson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998). Such is akin to the definition of special damages in the context of contract law; on the other hand, special damages under the tort of civil conspiracy must simply be different from a plaintiff’s damages for other causes of action and preclude a double recovery. *See, Anthony v. Ward*, 336 Fed. Appx. 311.

pleadings satisfy the requirements for special damages under the Rule 9(g).⁸ Therefore, the plaintiff has properly pled special damages in his civil conspiracy claim upon which relief may be granted and the defendant's motion should be denied.

CONCLUSION

For the foregoing reasons, this Honorable Court should deny defendants' motion for judgment on the pleadings and plaintiff should be permitted to proceed with this action.

Respectfully Submitted,

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Attorneys for Plaintiff

March 4, 2013
Columbia, South Carolina

⁸ *Assuming arguendo* that the contract standard for special damages were applicable here, plaintiff's damages for civil conspiracy are still legally cognizable since they can be ascertainably calculated and proven. (Complaint ¶ 22).

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

v.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-20-099

**DEFENDANTS' REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR
JUDGMENT ON THE PLEADINGS**

Defendants hereby reply to plaintiff's memorandum opposing Defendants' Motion for

Judgment on the Pleadings as follows:

I. Plaintiff's argument that he is not a constitutional public official flies in the face of established law.

At the outset it must be noted that Plaintiff does not dispute that, at all times relevant, he held a Class 3 Limited Duty Law Enforcement Certification from the South Carolina Criminal Justice Academy. As a matter of law, that certification conferred on Plaintiff, among other things, "limited powers of arrest." S.C. Code of Regs. 38-007. Every South Carolina case that has examined the issue has held that law enforcement officers are public officials. *Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E.2d 683 (1996) (applying Constitutional actual malice standard in case involving assistant police chief); *Beckham v. Sun News*, 289 S.C. 28, 344 S.E.2d 603, *cert. denied*, 479 U.S. 1007 (1986) (applying Constitutional actual malice standard in case involving former police officer); *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980) (holding police officer is a public official); *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App.

1994) (police officer was public official for defamation purposes). The fact that his law enforcement powers are "limited" means only that they were limited to the area of animal control. See 2012 Op. Att'y. Gen. dated Oct. 02, 2012, 2012 WL 4836949 ("Class 3 . . . officers MAY perform as . . . Animal Control" and "MAY NOT perform as County Code Enforcers (with the exception of . . . Animal Control Officers)"). Plaintiff's law enforcement certification alone makes him a public official.

Plaintiff argues that he is not a public official because he was "appointed and hired by the county administrator just as a custodian or secretary would be; he is not of the 'public concern, [a] public [man]', or a candidate for office." [Plf. Mem p. 5] That argument is of no moment. There are "public employees" like a custodian or secretary, and there are "public officials" like police officers and department heads. All are "appointed and hired" into their positions. In the very same sentence in which Plaintiff denies he was a public official, he acknowledges that he "was the chief animal control officer" for the County. [*Id.* p. 4] As the court held in *Demby v. English*, 667 So. 2d 350, 354 (Fla. Dist. Ct. App. 1995), the county animal control director was deemed a public official because she:

is the chief enforcement officer for a division of county government and is authorized to enforce county and state law, and pursuant to this authority she and the officers whom she directs are empowered to, among others, enter private property, impound people's pets, and issue citations carrying civil penalties. Although appellee is not an elected public official, she most certainly is a public officer wielding a portion of the sovereign power of this state, and the qualified privilege of every citizen to criticize such a public officer applies in this instance.

As the court stated in *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), a public official is "[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned,

and which are continuing, and not occasional or intermittent." As "the chief animal control officer" for the County, Plaintiff was the top law enforcement officer for animal control, supervising a team of other officers. The public clearly was interested in Plaintiff's performance of his duties, as the enforcement of laws regulating dangerous or abused animals is a matter of public interest. The same cannot be said of a "custodian or secretary." Thus, he was clearly a public official, especially when viewed in light of his law enforcement certification. See *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966) ("Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* [v. *Sullivan*, 376 U.S. 254 (1964)] are present and the *New York Times* malice standards apply.").¹

Plaintiff asserts in a footnote "that even if this Court found plaintiff was a public official in his capacity as an animal control officer; much of the defamation here occurred after he was terminated so the actionability of his defamation claim is not wholly foreclosed." [Plf. Mem. p. 6] The United States Supreme Court has already rejected such an argument where the alleged defamation pertains to the plaintiff's performance of those duties prior to his termination. In *Rosenblatt, supra*, the alleged defamation of a former supervisor of a public recreation facility occurred some six months after his termination. *Id.* at 78. The court flatly rejected the notion that the termination of a public official removed him from his status as a public official for defamation purposes:

¹The public's interest in the performance of his duties is also evidenced by the news coverage of the incident that led to Plaintiff's termination and its aftermath. [Ex. A]

It is not seriously contended, and could not be, that the fact respondent no longer supervised the Area when the column appeared has decisional significance here. To be sure, there may be cases where a person is so far removed from a former position of authority that comment on the manner in which he performed his responsibilities no longer has the interest necessary to justify the *New York Times* rule. But here the management of the Area was still a matter of lively public interest; propositions for further change were abroad, and public interest in the way in which the prior administration had done its task continued strong. The comment, if it referred to respondent, referred to his performance of duty as a county employee.

Id. at 87 n.4; *accord*, *Peterson v. New York Times Co.*, 106 F. Supp. 2d 1227, 1230 (D. Utah 2000) ("Accordingly, Mr. Peterson did not lose his public official status in the approximately three months between his resignation as Senate Majority Whip and the time of the publication of the AP story."); *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1069 (5th Cir. 1987) (determining that the public official status of law enforcement officers had not eroded with time, even though they had been discharged six years prior to the publication at issue) *Vassallo v. Bell*, 221 N.J. Super. 347, 364, 534 A.2d 724, 732 (App. Div. 1987) ("The fact that the allegedly defamatory letter was published after plaintiff left his position does not affect his public official status. . . . The statements made in Bell's letter clearly related to Vassallo's fitness for the office and his activities while holding it."); *Camacho v. Udick*, 1983 WL 30225, *2 (D. Guam App. Div. May 3, 1983) ("The lapse of time between the firing and publishing is overcome by the fact that the matter was still of lively public interest, not *solely* because Camacho continued to litigate the matter, but also because he is a former public official requiring application of the malice standard."); *Gray v. Udevitz*, 656 F.2d 588, 590 n.3 (10th Cir. 1981) (fact "that the person defamed no longer holds the same position does not by itself strip him of his status as a public official for constitutional purposes"); *Pierce v. Capital Cities Communications, Inc.*, 576 F.2d

495, 510 n. 67 (3d Cir. 1978) ("The passage of some three years between the time of Pierce's departure from the Port Authority and the airing of the broadcast did not, by itself, strip Pierce of his status as a 'public official' for purposes of analyzing this case."), *cert. denied*, 439 U.S. 861 (1978).

Plaintiff references only two potentially defamatory statements in his complaint. [Com ¶¶ 7, 8] Both of them relate to his duties as supervisor of animal control: one references his "abuse of his job" and the other refers to his "incompetence in the handling of the incident" involving the dangerous dog. [*Id.*] Thus, the only defamation alleged relates to the performance of his duties as the County's supervisor of animal control. And surely if the director of a recreation facility is a public official, the top animal control law enforcement officer and supervisor for the County is as well. Accordingly, *New York Times* applies and his claim is barred by the Tort Claims Act because he must prove actual malice. *Gause, supra*.

II. Plaintiff's civil conspiracy claim against Anderson and Hinely is barred by *Angus I* regardless of the fact that he has sued them in their individual capacity.

Plaintiff asserts that *Angus I* does not bar his claim, arguing:

The plaintiff's claim is not barred by this holding as plaintiff is not suing his former employer, the County, for civil conspiracy, rather he is suing several employees for actions allegedly taken in their individual capacities.

[Plf. Mem. p. 7] That argument ignores the core holding of *Angus I*. There, the court held that "[t]he trial court was therefore correct to dismiss the action as to the four council members," stating:

Angus claims that she was suing them not as council members, but in their capacity as individuals. That argument is unpersuasive. The employment agreement stated on its face that Angus served "at the will" of the Council. Clearly, the council members acted within their authority when they fired Angus

and they cannot be sued for doing what they had a right to do.

Angus v. Burroughs & Chapin Co., 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (citing *Antley v. Shepherd*, 340 S.C. 541, 550, 532 S.E.2d 294, 298 (Ct. App. 2000) (county official immune from liability individually since he acted within his authority in firing an employee who was serving at the will of the official), *aff'd as modified*, *Antley v. Shepherd*, 349 S.C. 600, 564 S.E.2d 116 (2002)); *accord*, *Reed v. Williston*, 2009 WL 821013 (D.S.C. Mar. 27, 2009) (at-will employee's civil conspiracy claim against the council members and town manager who terminated him barred by *Angus I*); *Brown v. City of Columbia*, 2011 WL 3654472, *1 (D.S.C. June 16, 2011) ("Nor may public officials be sued in their individual capacities for civil conspiracy when they terminate an at-will employee.").

III. Plaintiff's civil conspiracy claim fails as to all defendants because he was an at-will public official.

Initially, because Hinely and Anderson were incapable of conspiring against Plaintiff because they had a right to terminate his employment, Plaintiff's conspiracy claim as to Brown should fail as well. A conspiracy requires "a combination of two or more persons." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). Regardless, Plaintiff's claim is barred by *Angus II* because he was an at-will public official. *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006).

Plaintiff asserts in a footnote that his case is somehow different from *Reed v. Town of Williston* because "[t]he District Court determined that an employee could not bring a civil conspiracy against an employer for actions within the scope of its authority. This is not dispositive as plaintiff is suing several former co-employee's for actions outside of the course

and scope of their employment.” [Plf. Mem. p. 7 n.5] Plaintiff’s argument is specious. The Complaint in *Reed v. Williston* (which was signed by the same senior counsel here) upon which the court granted the motion for judgment on the pleadings also alleged that “[t]he defendants who are officers or officials with the Town have *acted outside the course and scope of their employment*” to effectuate his termination. [Ex. B, ¶ 22 (emphasis added)] Merely alleging the defendants acted outside the scope of their employment does not save the claim because it is only *within* the scope of that employment that the harm alleged – termination of Plaintiff’s employment – could be visited on the Plaintiff. The very act complained of here (and in *Reed v. Williston*) – that the “defendants acted outside the course and scope of their employment to get plaintiff fired so that defendant Brown could replace him and are liable for civil conspiracy” [Plf. Mem. p. 3] – could only happen in the course and scope of Hinely and Anderson’s employment as they had no authority to terminate Plaintiff as individuals.

Plaintiff’s reliance on *Anthony v. Ward*, 336 Fed. Appx. 311 (4th Cir. 2009), is completely misplaced. The Fourth Circuit held that *Angus I* did not bar that civil conspiracy claim because “neither defendant actually had the power to terminate him.” *Id.* at 321. Here, Plaintiff correctly pleads that Anderson terminated his employment and Hinely rejected Plaintiff’s grievance appeal of that termination. Thus, both defendants did what they had a right to do and the claim is barred.²

IV. Plaintiff’s conspiracy claim also fails because he admits that the purpose of the conspiracy was not to injure him.

²The *Anthony* court actually cites to *Angus II*. However, the court’s discussion centers around the holding of *Angus I* relating to at-will employees rather than at-will public officials, which *Angus II* affirmed. The *Anthony* defendants failed to assert that the plaintiff there was a public official.

An actionable conspiracy requires as its sole purpose the intent to cause harm to the plaintiff. *See, Ellis v. Davidson*, 358 S.C. 509, 527, 595 S.E.2d 817, 826 (Ct. App. 2004) (“Ellis did not prove Davis engaged in a civil conspiracy with the Firm in order to purposely injure either Ellis or American. . . . Ellis proved only that Davis was involved with the Firm in the formation of Absolute, not that he undertook this enterprise for the purpose of injuring either Ellis or American.”); *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993) (no conspiracy shown where there was a “complete lack of evidence to establish that the purpose of the business of the parties was anything other than profit motivated, and not meant to deprive [Mrs. Bivens] of her property”).

In *Reed v. Aiken County, et al.*, 2010 WL 4238848, *1 (D.S.C. Oct. 21, 2010), the plaintiff, a county assessor, alleged that he sought to have a county appraiser disciplined. The plaintiff claimed the appraiser was violating state law in conducting appraisals. *Id.* The plaintiff alleged he was constructively discharged due to harassment he incurred because the appraiser was an alleged friend of the county council chairperson. *Id.* The court held that the plaintiff failed to establish the second element of a claim for civil conspiracy because, at best, he could show the aim of the conspiracy was to protect the job of the council chairperson’s friend, not harm the plaintiff. *Id.* at *6.

There is no evidence in the record to support a claim that either Killian or Young intended to harm Plaintiff or have him resign. The evidence indicates only that Young sought to protect Ward. Plaintiff’s threat to resign does not transform the failure to discipline Ward into an intent to cause Plaintiff harm.

Id. Other courts have ruled similarly. In *Petra Int’l Banking Corp. v. First Am. Bank of Virginia*,

758 F. Supp. 1120, 1142 (E.D. Va. 1991), *aff'd sub nom., Petra Int'l Banking Corp. v. Dameron Int'l Inc.*, 953 F.2d 1383 (4th Cir. 1992), the court rejected a conspiracy claim, holding that "[a]ny injury to [Plaintiff] was a 'secondary' or 'consequential' result of the parties' attempt to protect themselves." The court in *Guar. Towers, LLC v. Cellco P'ship*, 2007 WL 2617651, *6 (M.D. Pa. Sept. 6, 2007), held that "Plaintiff's theory of the civil conspiracy claim is that both defendants acted to obtain more revenue [was] fatal to a civil conspiracy claim under Pennsylvania law" requiring proof of a specific intent to harm the plaintiff. Citing, *WM High Yield Fund v. O'Hanlon*, 2005 WL 1017811, *14 (E.D.Pa. April 29, 2005) (civil conspiracy claim fails when the plaintiffs acknowledged that the defendants' intent was to "raise new capital to fund [the] growth of a nonparty corporation, thereby negating" malice solely to injure Plaintiffs); *Giannone v. Ayne Institute*, 290 F.Supp.2d 553, 570 n. 20 (E.D.Pa. 2003) (civil conspiracy claim fails when based on Plaintiffs' belief that defendants " 'were more interested in generating revenue and improving their corporate and personal earnings than in the welfare of [the minor plaintiff]' " because "this allegation falls short of the 'intent to injure' " requirement). And in *Radue v. Dill*, 246 N.W.2d 507, 511 (Wis. 1976), the court held that a conspiracy to "protect [one's] own interests," rather than to injure another, is not actionable.

Here, Plaintiff alleges that the purpose of the conspiracy was "to get plaintiff fired so that defendant Brown could replace him . . ." [Plf. Mem. p. 3] He is bound by that allegation. *Charleston County School Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) ("Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.")

Accordingly, Plaintiff's claim is barred because he admits the purpose of the conspiracy was not to harm Plaintiff but to help Brown.

V. Plaintiff's attempt to paint his alleged conspiracy damages as "special" ignores established caselaw and his own pleadings.

Plaintiff relies on *Anthony, supra*, and *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000) for the proposition that "special damages under the tort of civil conspiracy must simply be different from a plaintiff's damages for other causes of action and preclude a double recovery." [Plf. Mem. p. 8 n.7] He asserts that "[t]he damages pled here are against separate defendants for separate actions and avoid a double recovery; thus, they are properly pled special damages." [*Id.* p. 6] This argument misses the mark.

First, as the South Carolina Supreme Court established more than 100 years ago, "special damages are those elements of damages that are the natural, *but not the necessary or usual*, consequence of the defendant's conduct." *Hackworth v. Greywood at Hammett, LLC* 385 S.C. 110, 116-117, 682 S.E.2d 871, 875 (Ct. App. 2009) (emphasis added) (citing *Loeb v. Mann*, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893)). "Special damages must 'be specifically stated' to avoid surprise to the other party." *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 546, 735 S.E.2d 518, 522 (Ct. App. 2012) (quoting *Hackworth*). Thus, merely avoiding a double recovery is not the sole purpose of requiring a party to plead special damages.

"[T]he existence of special damages is an essential ingredient of the plaintiff's claim for relief; in other words, as a matter of substantive law recovery is impossible without demonstrating that the plaintiff sustained such damages. *Wright & Miller*, 5A Fed. Prac. & Proc. Civ.3d 1310 (2005). "[S]pecial damages are an element of civil conspiracy, and a failure to allege

same is fatal to plaintiff's civil conspiracy claim." *James v. Pratt & Whitney*, 2005 WL 3440868, *4 (D.S.C. Dec. 14, 2005). "In other words, 'special damages are those damages which are of a relatively unusual kind and which, without specific notice to the adversary, may not be understood to be part of the claim.' " *Id.* (quoting *Ellis v. Crockett*, 51 Haw. 45, 451 P.2d 814, 819 (Haw.1969)).

"[D]ismissal of a claim for civil conspiracy is appropriate when 'a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim.' " *Benedict, supra*. Plaintiff's damage claims for both causes of action are identical. The fact that he pleads them against different parties does not save him, and he cites no precedent to the contrary. In fact, in *Reed v. Williston*, the court rejected that very argument, finding that the damages asserted against the town under Title VII were identical to those asserted against the individual defendants for civil conspiracy. *Id.*, 2010 WL 1409427, *11 (D.S.C. Feb. 26, 2010), *report and recommendation adopted*, 2010 WL 1409425 (D.S.C. Mar. 31, 2010).

Accordingly, Plaintiff's conspiracy claim also fails for failure to allege special damages.

Conclusion

Based on the foregoing, the defendants respectfully request that their motion for judgment on the pleadings be granted.

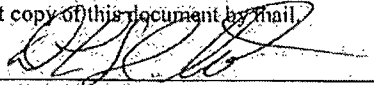
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March 6, 2013

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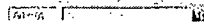
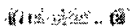
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I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.


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Dangerous Dog Put Down

by Jill Cincotta

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Dodger, a shepherd mix, lost a hind leg due to the vicious attack by his owner's brother's dog last month. The attacking dog was euthanized Monday.

No matter how you look at it, there is no happy ending to this story.

In a case heard Monday in Fairfield County Magistrate Court, Judge Doug Price had to decide the fate of a dog that had been deemed dangerous by the County's Veterinarian. In the case of dogs deemed to be dangerous, Fairfield County has policies and procedures in place in order to protect the citizens of the county, which include a court hearing to determine what should be done with a aggressive animal.

Lt. Lee Haney, who handles animal control issues for the Fairfield County Sheriff's Office, told Judge Price that the County received information that a dog, "Bo," owned by Phillip Timms, had attacked a dog named "Dodger," owned by Timms' sister, Rebekah, who is away at college.

The Timms' neighbor, Laura Collins, was called to the stand to give her account of what happened after the attack. She said Dodger, a 70-pound shepherd mix, usually spent a lot of time at her house.

"I got a call on New Year's Day. Cathy Timms (Phillip and Rebekah's mother) called looking for Dodger," Collins recounted. "She had heard a dog fight at 2 a.m. I looked around my property and I heard a whimper by my horse barn. I found Dodger, and he was covered with blood from his neck to the tip of his tail. I cleaned him up. He had bad bites all over. I took him to Dr. Knight's office, where he stayed for five days. He had to have surgery and strong antibiotics."

Collins cared for him at her home, then Dodger went back to his own home with the Timms family. On Jan. 12, Dodger was attacked again. George Timms (father of Phillip and Rebekah) took Dodger to Dr. Knight's office.

"George Timms thought a bobcat did it the first time," Collins told the judge. "George said Bo had killed another dog. I asked him what he was going to do with the dog. Dodger had to have five surgeries and had to have a hind leg amputated."

Veterinarian Dr. Robert Knight was asked for his testimony.

"I am a 21 year veterinarian, nine of those years have been in Fairfield County," said Knight. "The first time Dodger was brought in he had 20 bite wounds that were consistent with those from another canine. He had lost blood and was dehydrated. The second time was much worse. The dog was unstable, had low blood pressure, he had lost half of his blood and had 50 bite wounds. It was one of the worst cases of injuries I have seen in my career. I wrote a letter to Davis Anderson (Deputy Fairfield County Administrator) telling him the situation. I gave a couple of options for Bo. I said the family could confine the dog where it can't get out at all, or euthanize the dog."

In his letter to Anderson, Knight deemed Bo, who weighs 80 pounds, to be a dangerous dog.

Upon receiving the information from Knight, Anderson instructed County Animal Control to go to the Timms residence to bring Bo into custody until the case could be brought before a judge.

Animal Control Officer David Brown then testified that he went to the Timms home on Jan. 23.

"Phillip Timms and Bo were not at home," Brown said. "I finally spoke with George and Phillip at about 9 p.m. that evening and asked them to sign the dog over to animal control. Phillip said he would bring the dog the next day, and he did. He told me the dog had killed four cats. George said he had killed a dog too. Phillip said he had worked with the dog since, and he said the dog no longer had those tendencies. Now, here at the shelter, the dog is aggressive to the cats, but not to humans or other dogs."

Finally, Phillip Timms was asked by Judge Price if he wanted to speak.

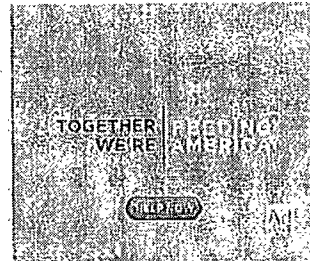
"I believe Bo killed an 80-pound hound. I never found the dog," Timms said. "The cats, I can't control that. He had that problem. I should have penned him up, but I didn't. The second time, I wasn't home. My dad must have let him out. I feel terrible. I hate that it happened. I will get him neutered and put him in a pen. The first time, I think it was incidental. He listens to me."

"I may be going into the Army in a couple of weeks," Timms continued. "We have a run that is

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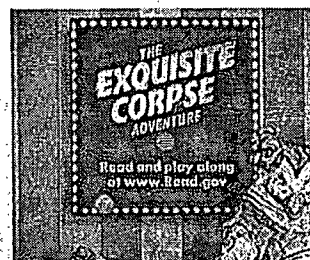
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DJIA	12769.15	↓ -203.66	-1.57%

17517839

pen. The dog will be taken up to my daddy if I go into the Army.

After a short recess for deliberation, the judge returned to render his decision.

"This is not a case I wanted to hear," Price said. "I am an animal lover. This court is going to rule that the dog is dangerous. The court has only one option. We can not allow you to take the dog."

Bo was put down at the animal shelter later that day. Dodger is still under the care of Dr. Knight, and remains at his office.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

EXHIBIT

B

Jimmy A. Reed,

Plaintiff,

vs.

Town of Williston and
Thomas A. Rivers, Michael
Benjamin, Phil Frederick, Milton
Widener, Scotty Richardson,
Wanda B. Matthews, Scott
Neely, Sean Moody and
Christopher Rivers, in their
individual capacities,

Defendants.

COMPLAINT
Jury Trial Demanded

1:08-2451-MBS-JRM

The plaintiff, complaining of the defendants herein, would respectfully allege as follows:

1. The plaintiff is a citizen and resident of Barnwell County, South Carolina, residing at 40 Mill Street, Williston, South Carolina and is a black male.
2. The defendant, Town of Williston ("Town") is a municipal corporation and a political subdivision having offices, agents and employees in Barnwell County, with its principal offices in Williston, South Carolina.
3. The individual defendants, Thomas R. Rivers ("Rivers"), Michael Benjamin ("Benjamin"), Phil Frederick ("Frederick"), Milton Widener ("Widener"), Scotty Richardson ("Richardson"), Wanda B. Matthews ("Matthews"), Scott Neeley ("Neely"), Sean Moody ("Moody") and Christopher Rivers ("C. Rivers") are, upon information and belief, citizens and residents of Barnwell County, South Carolina who, at all times relevant hereto, were the mayor,

councilmen, town administrator and other local residents of the Williston community who were highly critical of the plaintiff's performance as recreation director for the Town.

4. This action arises under Title VII of the 1991 Civil Rights Act and amendments thereto, as well as the common law of the State of South Carolina.

5. Jurisdiction exists pursuant to 29 U.S.C. Section 1331 which gives the District Court original jurisdiction over any legal action authorized by law to be commenced by any person to recover damages under any Act of Congress for the protection of civil rights.

6. Venue lies within the Orangeburg Division pursuant to 28 U.S.C. Section 1391 because the defendant Town is located in this judicial district and most of the events giving rise to this action occurred in the Orangeburg Division.

7. In 2005, the plaintiff, a black male, with coaching and teaching experience, was hired to be the part-time recreation director for the Town of Williston at a salary of \$9,700 per year. He was the first black recreation director hired by the Town and the only black department head.

8. Upon his hiring, the plaintiff revitalized the youth athletic program within the city, bringing in basketball, softball and football teams in which all of the youth could participate. He also assembled a quality group of volunteer coaches to assist him with this program and under his leadership, the program flourished.

9. In 2006 and 2007, the plaintiff came under great criticism from certain members of the white community for his involvement of more black coaches and more black children into the athletic programs. Particularly criticism was leveled at him because some members of the white community with young daughters did not want their daughters to play on segregated softball teams and preferred that there be all white teams and that black children be excluded.

10. The plaintiff took care of the athletic program for the youth of the Town on a race neutral basis and all of his sports were equal opportunity. In fact, the program had been previously criticized because it used federal grant money and there were no female sports teams for segregation reasons. The plaintiff initiated female sports teams and utilized equal opportunity principles.

11. Because of the plaintiff's insistence on allowing equal opportunity in his athletic program, many of the white citizens of the Town boycotted the program and would not allow their children to participate.

12. In May of 2007, contrived and false charges were brought against the plaintiff which resulted in a hearing before the Town Council and ultimately a vote by city council along racial lines which resulted in his termination.

FOR A FIRST CAUSE OF ACTION
AGAINST THE TOWN
(Race Discrimination)

13. The plaintiff realleges paragraphs 1 through 12 aforesaid.

14. The plaintiff had outstanding success as recreation director for the Town and became the first black department head. He was uniformly praised by coaches, parents and children.

15. Because of the plaintiff's insistence upon equal opportunity participation by black and white children in the program, his program was boycotted by many white parents and children and ultimately he was pretextually terminated from his position on false and unimportant charges.

16. The plaintiff was replaced by a white male and since his termination, the recreational programs have reverted to their former, segregated status.

17. Such actions on the part of the Town of Williston constitute clear and transparent race discrimination prohibited by Title VII of the 1991 Civil Rights Act and amendments thereto.

18. The termination and charges made were pretextual and also clearly exhibit disparate treatment and discrimination since white male participants in the athletic programs have been consistently been treated more favorably under the same or similar circumstances and past incidents of misconduct, poor sportsmanship and outright hostility against the plaintiff, black coaches, umpires and officials in the athletic programs presented by the plaintiff have been totally ignored.

19. As a direct and proximate result of such unlawful race discrimination, the plaintiff is entitled to recover compensatory damages for loss of earnings, future earnings and the loss of his job as recreation director for the Town, including state retirement, insurance and other benefits. He further is entitled to intangible damages, including a loss of reputation, embarrassment and emotional distress. He is further entitled to an award of attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
RIVERS, BENJAMIN, FREDERICK, WIDENER, RICHARDSON, MATTHEWS,
NEELY, MOODY AND C. RIVERS AND AS A PENDENT STATE CLAIM
(Civil Conspiracy)

20. The plaintiff realleges paragraphs 1 through 19 aforesaid.

21. Over the last two years, some of the defendants have exhibited outright hostility toward the plaintiff's athletic programs for children and have met with one another, at some times involving all of the individual defendants and have schemed, planned and conspired to present false statements, false charges and to take collective action to force the plaintiff's removal as recreation director for the defendant Town. Such efforts have included galvanizing

support from the white community of the Town while ignoring the black community and keeping it from participating in public discussions regarding the plaintiff's job performance, ignoring coaches, parents, youth and others who have spoken in the plaintiff's behalf and have been strongly supportive of the work that he has done.

22. These named defendants have also used their positions as mayor, town council members, the town administrator and members of the community with a hostile grudge against the plaintiff to come together and force him to be ousted from his job. The defendants who are officers or officials with the Town have acted outside the course and scope of their employment and have taken the actions referred to as a malicious and personal vendetta to accomplish their own improper ends. The actions of the named defendants as set forth herein constitute a combination of persons for the purpose of injuring the plaintiff and causing him special damages - a civil conspiracy for which the named defendants are liable individually for money damages.

23. As a direct and proximate result of the civil conspiracy as alleged herein, the plaintiff has sustained embarrassment, humiliation, mental anguish, loss of employment opportunities and the loss of his quality of life. The plaintiff is further entitled to an award of punitive damages for the intentional and bad faith actions of the named defendants in their individual capacities. The plaintiff is also entitled to such an award to punish and deter them from future wrongful conduct.

WHEREFORE, the plaintiff prays for judgment against the Town of Williston in the amount of \$300,000 actual damages and attorney's fees and costs and for judgment against the individual defendants herein in the amount of \$500,000 actual damages, together with an appropriate award of punitive damages and for the costs of this action.

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July 8, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

David Michael Hollis,)
Plaintiff,)

-versus-)

Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2012-CP-20-099

**SUPPLEMENTAL MEMORANDUM
OPPOSITION TO DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

2013 MAR 14 P 12:04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECK

The plaintiff here supplements his memorandum in opposition to defendants' Motion for Judgment on the Pleadings to briefly address the legal issues raised by the defendants by way of their reply brief and in the hearing on this matter.

This matter has been now fully briefed and was argued before the Honorable Judge Brooks J. Goldsmith of the Sixth Judicial Circuit on March 7, 2013.

ARGUMENT

I. PLAINTIFF IS NOT A PUBLIC OFFICIAL UNDER *NEW YORK TIMES V. SULLIVAN*.

Defendants argue that plaintiff, the former animal control supervisor of the Defendant County, is a public figure and must prove actual malice for defamation; the South Carolina Tort Claims Act bars liability for claims requiring the proof of actual malice. In *New York Times v. Sullivan* the US Supreme Court held that persons who were "[of the] public concern, [a] public [man]", or a candidate for office were public officials for defamation purposes and would have to show actual malice to overcome the First Amendment speech rights of those they sue for defamation. *Sullivan*, 376 U.S. 254, 281-282, 84 S.Ct. 710, 727 (1964).

In *McClain v. Arnold* the South Carolina Supreme Court determined that police officers were public officials. *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980). The *McClain* Court reasoned “the status of a public official may be deemed sufficient to warrant application of the New York Times privilege, not because of the government employee's place on the totem pole, but because of the public interest in a government employee's activity in a particular context.” *Id.*; citing, *Fadell v. Minneapolis Star & Tribune Co., Inc.*, 425 F. Supp. 1075, 1083 (N.D. Ind. 1977), affirmed, 557 F. (2d) 107 (7th Cir. 1976); and, Handbook of Free Speech and Free Press by Barron & Dienes, page 275. In its holding, the Court noted that by concluding that police officers were public officials South Carolina was “**join[ing] the majority of jurisdictions** which have denominated police officers as ‘public officials’ within the meaning of the New York Times doctrine”. (emphasis added) *McClain*, 275 S.C. at 284. Here, the defendant can cite to no authoritative federal law and no law from the high court of any state to support its contention that plaintiff, an animal control supervisor, is a public official under *Sullivan*.¹ Therefore, unlike in *McClain*, if this Court were to conclude that plaintiff was a public official it would not be “joining the majority of jurisdictions.” *Id.*

The defendants also assert that, because plaintiff had a limited duty law enforcement certification and is considered a law enforcement officer by the state for the purpose of a certain number of limited functions, he is analogous to a police officer and is thus a public official under *McClain*. *Id.* The Court has held that state labels of “public official” do not have a bearing on the constitutional determination contemplated in *Sullivan*. See, *Rosenblatt v. Baer*, 383 U.S. 75, 84, 86 S. Ct. 669, 675 (1966).

¹ Rather defendant can only cite two intermediate appellate decisions from the states of Florida and Alaska, the later unpublished, that support his contention, both of which are not contextually identical to the case here. *Demby v. English*, 667 So. 2d 350, 354 (Fla. Dist. Ct. App. 1995); *Scepurek v. Municipality of Anchorage*, 1985 WL 1077799 (Alaska Ct. App. Jan 23, 1985).

States have developed definitions of "public official" for local administrative purposes, not the purposes of a national constitutional protection. If existing state-law standards reflect the purposes of New York Times, this is at best accidental. Our decision in New York Times, moreover, draws its force from the constitutional protections afforded free expression. The standards that set the scope of its principles cannot therefore be such that "the constitutional limits of free expression in the Nation would vary with state lines." *Id.*; quoting, *Pennekamp v. Florida*, 328 U.S. 331, 335, 66 S.Ct. 1029, 1031 (1946) (emphasis added).

The Court in *Rosenblatt* also recognized that "a conclusion that the New York Times malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputation." *Rosenblatt*, 385 U.S. at 86 fn 13.

Here there is no authoritative law that would hold plaintiff a public official, his designation as such in limited scopes by the state is irrelevant, and the fact that his termination and the present action has received some press is not dispositive. Plaintiff is not a public official and need not show actual malice to prove his defamation claim.

II. THE PLAINTIFF HAS PROPERLY PLED HIS CIVIL CONSPIRACY CLAIM.

The plaintiff in large part may rely on the previously filed memorandum in opposition and the argument in this case to address the contentions raised by the defendants on reply. However it is necessary to note that much of the case law cited by the defendants on reply was decided in the Summary Judgment Context and is not appropriately considered in an analysis of the sufficiency of the pleadings. See, *Reed v. Williston*, 2009 WL 821013 (D.S.C. Mar. 27, 2009); and, *Brown v. City of Columbia*, 2011 WL 3654472 (June 16, 2011). Finally, in regards to the assertion that plaintiff's civil conspiracy claim fails due to a construed admission in the pleadings that the purpose of the conspiracy was not to harm him, plaintiff's assertion that there was a motive for the conspiracy does not foreclose on the fact that the purpose of the conspiracy

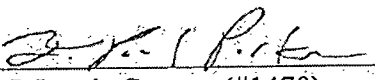
was to cause him harm. The defendants' assertion on this point is semantic and is not consistent with an ordinary reading of the pleadings.

CONCLUSION

For the foregoing reasons, the reasons stated in previous memoranda, and the reasons argued before the Court this Honorable Court should deny defendants' motion for judgment on the pleadings and plaintiff should be permitted to proceed with this action.

Respectfully Submitted,

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March 12, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

David Michael Hollis,)

Plaintiff,)

-versus-)

Fairfield County, Philip Hinely)

Davis Anderson and David Brown)
in their individual capacities,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2012-CP-20-099

**PLAINTIFF'S MEMORANDUM AND
MOTION TO RECONSIDER JUDGMENT
ON THE PLEADINGS**

2013 APR -5 A 11:47
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECHAM

Plaintiff here asks this Honorable Court, pursuant to SCRCP Rule 59(e), to reconsider and set aside its March 19, 2013,¹ order granting Judgment on the Pleadings for the Defendants.

The Judgment on the Pleadings should be set aside; because: (1) the plaintiff is not a "public official" as defined in *New York Times v. Sullivan*; (2) whether the plaintiff, in his capacity of Animal Control Supervisor, is a "public official" under South Carolina law is a novel issue of law requiring a full factual adjudication; (3) plaintiff's civil conspiracy claims are proper against the individual defendants; and (4) even if the Court determines that plaintiff is a "public official" plaintiff should be given leave to amend his complaint under SCRCP 15(a).

For the reasons stated above, and elaborated upon below, plaintiff has provided sufficient grounds upon which the Court should grant the plaintiff's 59(e) motion.

STATEMENT OF PLEADINGS

Plaintiff was fired on January 20, 2012. (Compl. ¶ 6). Prior to that, plaintiff had been the Animal Control Supervisor for the County. (*Id.* ¶ 1). Plaintiff was fired on the asserted basis of

¹ The order was received by plaintiff on March 25, 2013.

incompetence in handling a dog fight between two dogs owned by the same owner. (*Id.* ¶¶ 4 & 6). Upon learning of the dog fight, plaintiff advised the owner that under the County's policies, the suspected aggressing animal would either have to be euthanized or be securely confined to prevent further attacks. (*Id.* ¶ 6). The owner chose the latter option and assured plaintiff that he would build a secure enclosure to confine the animal. (*Id.* ¶ 5). Plaintiff attempted to follow up with a veterinarian regarding the other dog involved; but had no further conversations about the incident with owner, the veterinarian, county officials, or anyone else until he was summarily fired by Defendant Anderson. (*Id.* ¶ 6). Later, on February 9, 2012, plaintiff attended a County Council meeting where he was approached by defendant Brown in the hallway and accused, in front of others, of incompetence in the handling of the incident and bringing about his own termination. (*Id.* ¶ 8). The termination of the plaintiff and his portrayal as an incompetent, abusive public official² by the County, through its agents and employees, has been published throughout the County and beyond. (*Id.* ¶ 12).

Plaintiff has brought this action alleging defamation against the County and civil conspiracy against the individual defendants. (*Id.* ¶¶ 13-22). Plaintiff alleges the individual defendants acted **outside the course and scope of their employment** to get plaintiff fired so that defendant Brown could replace him and that they are liable for civil conspiracy. (*Id.* ¶¶ 19-20) (**emphasis added**). The parties have exchanged written discovery and each party has been deposed; however, the plaintiff foresees taking further depositions. Defendants filed a SCRCP

² Defendant relied on this allegation as an admission that plaintiff is a public official. (Def. Memo pp. 1-2). This characterization is misplaced as (1) the allegation facially refers to the defamatory insinuations of the County and is not an admission, and (2) defendant is attempting to characterize the same as an admission that plaintiff is a public official in the constitutional law meaning espoused in *Sullivan*; meanwhile the clear meaning, reasonable inferences drawn from and the context of plaintiff's pleadings patently do not convey such. *See, Sullivan*, 376 U.S. at 281-282.

Rule 12(c) motion on March 7, 2013, which this Court subsequently granted on March 25, 2013.

Plaintiff here requests that decision be reconsidered and set aside.

FACTS³

Plaintiff was hired as an Animal Control Attendant on or around 2002 with an hourly wage of approximately \$10.50, he was terminated on January 20, 2012 with an hourly wage of approximately \$17.50; at all times plaintiff punched a time-clock to record hours worked and did not receive a salary. (Pl. Aft. ¶¶ 3-4). Plaintiff did not have the right to hire or fire employees nor was he authorized to create policy. (Pl. Aft. ¶¶ 5-6) Defendants Hinely, Anderson and the County Council were responsible for all final decisions regarding hiring and firing and the drafting and approval of all policy and procedures; plaintiff's work responsibilities and provisions were governed by such policies and procedures. (Pl. Aft. ¶¶ 5-7). While on the clock, along with all other animal control officers, plaintiff wore a collared short-sleeved shirt that solely stated Fairfield County Animal Control Officer and a name-tag similar to all County employees. (Pl. Aft. ¶ 8). Prior to and after receiving his limited duty law enforcement certification, plaintiff's immediate supervisor, Defendant Anderson, informed him that he was not a law enforcement official, would not have a badge, radio or gun; and that he was to contact the Sheriff's Office for any instance requiring law enforcement intervention. (Pl. Aft. ¶¶ 9-11).

³ As asserted in Defendants Memorandum in Support for Judgment on the Pleadings (pg. 4 fn. 2,) under Rule 201 (b)(2), SCRE, the court can take judicial notice of a fact "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned;" plaintiff's Affidavit containing his sworn testimony about the nature of his work for the County may be judicially noticed in so much as it **represents plaintiff's description and opinion** as to the nature, duties and obligations he held while a County Employee. (**emphasis added**). However even if the Court determines this affidavit is not subject to judicial notice, the representations contained therein are necessary to illuminate what facts should be further discovered in the light of the novelty of this legal issue in South Carolina prior to a dispositive legal determination and also to show what facts plaintiff should be permitted to use in amending his complaint to establish that he was not a public official. (See *infra*, II & IV).

Plaintiff in his entire employment wrote only one ticket which was written to a dog and presented to the dog owner by a Fairfield County Sheriff's Deputy and plaintiff. (Pl. Aft. ¶ 12).

Plaintiff was not elected or appointed by the County Council; rather he was hired and fired pursuant to the same policies and procedures by which all other entry to middle level county employees are hired or fired. (Pl. Aft. ¶¶ 14 & 16). When Plaintiff was terminated his title was Animal Control Supervisor and he solely had capture, shelter and euthanasia responsibilities. (Pl. Aft. ¶¶ 13 & 15). Defendant Brown is now over all of animal control for Fairfield County and has the title **Animal Control Director**. (Pl. Aft. ¶ 15) (**emphasis added**).

STANDARD OF REVIEW

Although the State law of South Carolina does not address the standard of review applicable to 59(e) Motions, the notes to SCRCF 59(e) state that South Carolina's Rule 59(e) "is substantially the Federal Rule." SCRCF 59, Official Notes.

The South Carolina District Courts and the Fourth Circuit have held that "while the Rule itself provides no standard for when a district court may grant such a motion, we have previously recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) **to correct a clear error of law or prevent manifest injustice.**" *Pacific Ins. Co. v. American Nat'l Fire Assoc.*, 148 F.3d 396, 402, 41 Fed.R.Serv.3d 729 (4th Cir. 1998) (**emphasis added**). See also *EEOC v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112, 74 Fair Empl.Prac.Cas. (BNA) 202 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081, 1993 U.S. App. LEXIS 12052 (4th Cir. 1993); *Rouse v. Nielsen*, 851 F.Supp.171, at 734, 1994 U.S. Dist. LEXIS 21803; *Liberty Mut. Ins. Co. v. Employee Res. Mgmt., Inc.*, 176 F. Supp. 2d 510, 529, 2001 U.S. Dist. LEXIS 19679 (D.S.C. 2001). In the context of a motion for

reconsideration, a "manifest injustice" is defined as an error by the court that is "direct, obvious, and observable." *In re Oak Park Calabasas Condominium Ass'n*, 302 B.R. 682, 2003 Bankr. LEXIS 1680 (Bankr.C.D.Cal.2003).

ARGUMENT

I. PLAINTIFF IS NOT A *NEW YORK TIMES* "PUBLIC OFFICIAL".

The standard for what constitutes a "public official" as enunciated in *New York Times v. Sullivan* and its progeny, does not apply to the position held by the plaintiff; this Honorable Court erred in holding it did. *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964). *New York Times* made clear that the term "public official" included elected officials and public officials of the "public concern", but did not include all public employees. The term "public official" was more clearly defined in *Rosenblatt v. Baer* where the court held that a "public official" applies "at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966). The court also held that "[w]here a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the *New York Times* malice standards apply." *Id.* Only one court in the nation,⁴ an intermediate appellate court in

⁴ When South Carolina determined that Police Officers were *New York Times* public officials it noted that it was "join[ing] the majority of jurisdictions which have denominated police officers as 'public officials' within the meaning of the New York Times doctrine". (emphasis added) *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980).

Florida, has held conclusively that an **Animal Control Director** is a public official.⁵ *Demby v. English* 667 So 2d 350, 20 FLW D2411 (1995) (**emphasis added**).

The *Rosenblatt*, court was careful to point out that the finding of “public official” status under these tests should not sweepingly apply to all public employees.

It is suggested that this test might apply to a night watchman accused of stealing state secrets. But a conclusion that the *New York Times* malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputation. The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy. *Id.* at 676 n. 13.

Furthermore Public official analysis is made without reverence to state administrative titles.

States have developed definitions of “public official” for local administrative purposes, not the purposes of a national constitutional protection. If existing state-law standards reflect the purposes of New York Times, this is at best accidental. Our decision in *New York Times*, moreover, draws its force from the constitutional protections afforded free expression. The standards that set the scope of its principles cannot therefore be such that “the constitutional limits of free expression in the Nation would vary with state lines.” *Id.* at 675; *quoting*, *Pennekamp v. Florida*, 328 U.S. 331, 335, 66 S. Ct. 1029, 1031 (1946) (**emphasis added**).

The *Rosenblatt* Court noted that a full factual analysis was necessary to determine whether or not the plaintiff in that case, a recreation director over a state-owned ski resort, was a public official;

The “record here, however, leaves open the possibility that respondent could have adduced proofs to bring his claim outside the *New York Times* rule.” *Rosenblatt*, 86 S. Ct. at 677.

Furthermore, the public official standard should only be applied cautiously and on a case-by-case basis: “moreover, the preventive effect of liability for defamation serves an important public

⁵ In *Demby* the Florida District Court of Appeals determined that the Leon County, Florida (2012 pop. est. 283,769) was a public official; however, here plaintiff was Animal Control Supervisor in Fairfield County, South Carolina (2012 pop. est. 23,363;) and plaintiff was not the Animal Control Director as Defendant Brown currently is.

purpose. For the rights and values of private personality far transcend mere personal interests. Surely if the 1950's taught us anything, they taught us that the poisonous atmosphere of the easy lie can infect and degrade a whole society." *Id.* at 680 (J. Stewart, *concurring*).

Although defendants can only sight to one case where an official similar in title to plaintiff was a public official and it is a wholly novel issue in South Carolina and in the Federal Courts, there are several cases in which other courts have held that persons with positions akin to that of the plaintiff were not public officials. *See e.g., Peoples v. Taufest*, 274 Cal. App. 2d 630, 79 Cal Rptr. 478 (Cal 2nd Dist. 1969) (former city recreation director not a public official for defamation purposes regarding accusations made against her before and after her termination); *Foster v. Laredo Newspapers*, 541 S.W.2d 80920 Tex. Sup. Ct. Jour. 3, cert. denied 429 U.S. 1123, 97 S.Ct. 1160 (1976) (engineer regularly hired by county for consulting not a public official); and, *Michaelis v. CBS, Inc.*, 119 F.3d 697, 1997 U.S. App. LEXIS 17347 (8th Cir. 1997) (County Coroner assisting County Coroner in a another county not a public official). Based on these cases, plaintiff is not a "public official" as the court determined.

Plaintiff was not and did not appear to be "one of those among the hierarchy of government employees who [has/had] . . . substantial responsibility for or control over the conduct of governmental affairs;" thus his right to his reputation is not overcome by the public's interest in his job duties. Plaintiff's position as an Animal Control Supervisor does not exhibit the necessary criteria to make him a "public official". Plaintiff did not have the authority to make policy, hire or fire, and he appeared to the public just as any other Animal Control Officer. (Pl. Aft. ¶¶ 5-9). For these reasons and in light of the relevant case law, the holding that plaintiff was a public official was error of law and the plaintiff respectfully asks that that holding be set aside.

II. WHETHER OR NOT PLAINTIFF IS A “PUBLIC OFFICIAL?” IS A NOVEL ISSUE OF LAW REQUIRING A FULL FACTUAL ADJUDICATION.

The issue of whether an Animal Control Supervisor is a “public official” is a novel issue of law in South Carolina, as well as in the United States, and it requires the Court to conduct a full factual adjudication before making a determination. Whether an Animal Control Supervisor is a “public official” under *New York Times* has not been addressed by any South Carolina court nor has it been ruled any Federal Court. In fact, the issue has only ever been directly addressed in the Florida District Court of Appeals in *Demby v. English* under different facts.

In light of the novelty of this issue, a Motion for Judgment on the Pleadings is not the proper stage for the Court to decide whether an Animal Control Supervisor is a “public official”. Under South Carolina law, a 12(c) motion is treated as a motion to dismiss and should be decided under the same standard. *Williams v. Frontier Spinning Mills, Inc.*, 368 F. Supp. 2d 491, 492-93; 2005 U.S. Dist. LEXIS 7000 (M.D.N.C. 2005)(“This case is before the Court on defendant's motion to dismiss made pursuant to Fed.R.Civ.P. 12(c). Such a motion is to be decided under the same standard as a motion brought under Fed.R.Civ.P. 12(b)(6).”) The Supreme Court has held that novel issues of law are best determined not on a motion to dismiss, but in the light full evidence adduced at discovery and the testimony of the witnesses at trial. *Tyler v. Macks Stores of South Carolina, Inc.*, 275 S.C. 456, 459, 272 S.E.2d 633, 634 (1980) citing, *Williams v. Streb*, 270 S.C. 650, 243 S.E.2d 926 (1978). Therefore, all relevant evidence must be brought to light before this Court can conclude that plaintiff is or is not a public official. *See, Id.*

III. PLAINTIFF'S CIVIL CONSPIRACY CLAIM IS PROPER AGAINST DEFENDANTS.

The judgment against the plaintiff with regards to his civil conspiracy claim should be over turned as it is an erred application of the current law and creates a manifest injustice. The Court held that under *Angus v. Burroughs & Chapin Co. (Angus I)*, the plaintiff could not maintain a civil conspiracy claim against Anderson and Hinley. However, this is incorrect, the only holding from *Angus I* that is still good law is that an employee cannot bring a civil conspiracy claims against his former employer. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (rev'd on other grounds). Plaintiff does not seek to maintain an action against the County, his employer, or even members of County Council, as in *Angus I*, rather his civil conspiracy claim is against Anderson and Hinley in their individual capacities for actions outside the course and scope of their duties. The holding in *Angus I* does not bar claims against employees in their individual capacities for actions outside of the course and scope of their duties; in fact more recent case law fact specifically allows it.

The Fourth Circuit Court of Appeals upheld the right of at-will public employees to sue co-employees acting in their individual capacities in *Anthony v. Ward. Anthony*, 336 Fed. Appx. 311, 2009 U.S. App. LEXIS 14847 (4th Cir. 2009) (interpreting South Carolina Law and recognizing an action in civil conspiracy against may lie where a deputy director and inspector, who had the right to terminate plaintiff and were co-employed by plaintiff's employer, conspired to cause him harm.) Plaintiff's civil conspiracy claim against Anderson and Hinley in their individual capacities is not barred under *Angus I*, and is specifically permitted under *Anthony*. Similarly in *Pridgen v. Ward*, the South Carolina Court of Appeals held that a plaintiff's claim against supervisory co-employees was not barred by *Angus I. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010). Plaintiff, in this case, was fired by persons who had the authority

to do so within the course and scope of their employment, *on behalf of the County* (his employer), but did so here outside of the course and scope of their employment; thus, plaintiff's civil conspiracy claim is not barred by *Angus*. See, *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986); (*holding*, "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment"). Furthermore, whether or not the defendants did or did not act within the course and scope of their employment is a fact question not properly addressed on a motion for judgment on the pleadings. See, *Broyhill v. Resolution Mgmt. Consultants*, 736 S.E.2d 867, 872, 2012 S.C. App. LEXIS 365, (S.C. Ct. App. 2012). Since plaintiff's action here is against co-employees for conspiring to have him terminated outside the course and scope of their duties and because the individual defendants did so, outside the course and scope of their duties plaintiff's civil conspiracy claim is not barred by *Angus I*.

The holding that plaintiff's civil conspiracy claim is barred under *Angus v. Burroughs & Chapin Co. (Angus II)* was also error; because, plaintiff is not and cannot be held to be a public official at this time. *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). Therefore, plaintiff's civil conspiracy claim is not barred by *Angus I* or *Angus II* and the plaintiff respectfully requests this honorable court set aside its ruling to the contrary.

IV. PLAINTIFF SHOULD BE GIVEN LEAVE TO AMEND HIS COMPLAINT.

Additionally, even if the Court determines that the plaintiff is a "public official", which he is not, he should be given leave to amend his complaint. Pursuant to South Carolina Rules of Civil Procedure Rule 15(a) this Court should grant the plaintiff leave to amend his complaint. See, *Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 94, 374 S.E.2d 907, 909

(Ct. App. 1988)(“where complaint is dismissed under Rule 12(b)(6), plaintiff should be granted leave to file an amended complaint”;) citing, *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Plaintiff requests an amendment on the grounds that granting a motion for Judgment on the Pleadings is a drastic remedy, the evidence already produced by plaintiff in this case would support an amendment consistent therewith, justice would require such, and the parties would not be prejudiced by an amendment. “Where a judgment on the pleadings is appropriate, the court has the discretion to grant the opposing party leave to amend. Amendments should be readily allowed so as to preclude entry of such judgment. In order to protect a plaintiff's right to amend, when a party challenges the sufficiency of a petition to state a cause of action, a motion for judgment on the pleadings should be sustained only when an amendment cannot cure the defect. Leave to amend should be granted if a party can show that he or she is able to state a claim for relief.” 61A Am. Jur. 2d Pleading § 551.

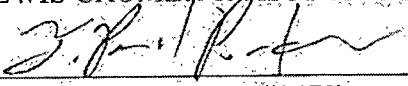
If the plaintiff, assuming *arguendo*, is a public official he should be given leave to amend his complaint, to name appropriate persons as defendants for defamation, plaintiff requested this in his memorandum in opposition and the denial of such resulted in dismissal where an amendment to the pleadings was not futile. Therefore, the judgment on the pleadings should be reversed and in accord with the above, plaintiff should be allowed to amend his complaint.

CONCLUSION

Based on the foregoing, the plaintiff asks this Honorable Court to reconsider and set aside its March 19, 2013, Order granting Motion for Judgment on the Pleadings to the Defendant. Plaintiff asks in the alternative that the Order be set aside and plaintiff be given leave to amend his complaint.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

BY: 

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Attorneys for Plaintiff

April 4, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

David Michael Hollis,)
Plaintiff,)

-versus-

Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2012-CP-20-099

AFFIDAVIT OF DAVID MICHAEL HOLLIS

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE
FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, David Michael Hollis, am a competent adult and can testify truthfully.
2. I hereby testify voluntarily of my own knowledge.
3. I was hired by Fairfield County as an Animal Control Attendant on or about 2002; I was terminated by Fairfield County in January, 2012, at that time I was an Animal Control Supervisor.
4. At the time of my hire I was paid approximately \$10.50 an hour, at the time of my termination I was paid approximately \$17.50 an hour; I punched a time clock to record my hours worked throughout my employment.
5. At no time within my employment did I have the authority to hire or fire County employees and all employment decisions were approved by Davis Anderson, my immediate supervisor, or Philip Hinley, the County Administrator.
6. I did not have the authority to create County policy. All policy concerning animal control was created at the direction of the County Council or the County Administrator, Philip Hinely.
7. My actions and job responsibilities were governed and directed by guidelines, policies and procedures set by County Council, Davis Anderson, and Philip Hinely.

8. I, along with all other animal control officers, wore a collared short-sleeved shirt that solely stated Fairfield County Animal Control Officer; we also wore name tags similar to all County employees.

9. On or about October, 2011, I was directed to attend a course at the Criminal Justice Academy to get a limited duty law enforcement certification in the event I need to write a ticket.

10. Prior to getting the certification, Davis Anderson had informed me that I was not Law Enforcement and could not wear a badge.

11. After receiving the certification, at a meeting Davis Anderson once again informed me that I was not law enforcement, I was not given a badge or radio, I was told I could not carry a gun, and I was told that anything requiring law enforcement intervention should be handled by the County Sherriff's Office.

12. In my entire employment with the County I wrote one ticket, the ticket was written concerning a dog and presented to the dog's owner by a Fairfield County Sheriff's Deputy and myself; this occurred prior to me getting the limited duty certification.

13. Towards the end of my employment my job duties had been reduced and I was solely given capture, shelter and euthanize responsibilities; whereas, David Brown was given control of the adoption center. When this occurred I was informed by Davis Anderson that David Brown would report only to him.

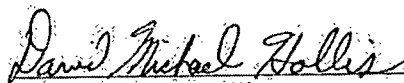
14. I was not elected, nor was I appointed by the County Council, I was hired pursuant to the same policies and procedures by which all other entry and middle level County employees were hired.

15. My title, when I was terminated, was Animal Control Supervisor, presently David Brown is over all of animal control for Fairfield County, including the adoption center, and has the title Animal Control Director.

16. I was not terminated by County Council, but was terminated pursuant to the same policies and procedures as all other entry and middle level employees.

(Signature Next Page)

FURTHER AFFIANT SAYETH NAUGHT.


David Michael Hollis

SWORN to before me this

2nd day of April, 2013.


Notary Public for South Carolina

My Commission Expires September 9, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

David Michael Hollis,)
Plaintiff,)

Case No. 2012-CP-20-099

CERTIFICATE OF SERVICE

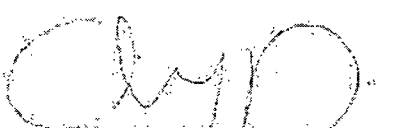
-versus-

Fairfield County, Philip Hinely)
Davis Anderson and David Brown)
in their individual capacities,)
Defendants.)

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FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

I, undersigned employee of J. Lewis Cromer & Associates, L.L.C. hereby certify that I
have on this the **4th day of April, 2013**, served a copy of the Plaintiff's Memorandum and
Motion to Reconsider Judgment on the Pleadings upon the above-named defendants counsel via
U.S. Mail and Email to:

Derwood L. Aydlette, III; Counsel for Defendants
Gignilliat, Savitz & Bettis, L.L.P.
900 Elmwood Avenue, Suite 100,
Columbia, SC 29201



Ashley Dickinson, Paralegal
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

David Michael Hollis,

Plaintiff,

v.

Fairfield County, Philip Hinely, Davis
Anderson, and David Brown, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-20-099

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Introduction

This is an action alleging defamation against Fairfield County and civil conspiracy against the natural defendants. The court granted Defendants' motion for judgment on the pleadings pursuant to Rule 12(c), SCRPC. Plaintiff has filed a motion to reconsider or, in the alternative, for leave to amend his complaint. This memorandum is in opposition to that motion.

- I. As the animal control supervisor for Fairfield County, Plaintiff was a public official because he was a limited duty law enforcement officer and by his own admission was the top enforcement official for animal control employed by Fairfield County.**

This court's March 22, 2013, Order granting Defendants' Motion for Judgment on the Pleadings is unassailable. As a limited duty law enforcement **official** employed by a **public** entity, Plaintiff was, by definition, a "public official." While Plaintiff attempts in his affidavit to downplay the level of his authority, *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), stands for the proposition that a public official is "[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, **either small or great**, in the performance of which the public is concerned, and which are continuing, and not occasional or

intermittent.” (Emphasis added). In addition to his certification as a limited duty law enforcement officer, Plaintiff testified:

Q. . . . [A]s far as people employed by Fairfield County, you were the top enforcement official for animal control ordinances in the county?

A. Yes, I reckon you could call it that.

[Plf. Dep. p. 26] And as a limited duty law enforcement officer, Plaintiff had “limited powers of arrest.” S.C. Code of Regs. 38-007. The fact that limitation was to issues relating to animal control statutes and ordinances does not alter the fact that he in fact had enforcement and arrest powers and thus was authorized to exercise some power of the sovereign. *Sanders*.

Further, “[a]nimal control is part of the state’s police power.” *Fabrikant v. French*, 691 F.3d 193, 208-09 (2d Cir. 2012) (quoting *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 701-02, 704 (1897) (“Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the state, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens.”)); accord, *San Diego County Veterinary Med. Ass’n v. County of San Diego*, 116 Cal. App. 4th 1129, 1137, 10 Cal. Rptr. 3d 885, 891 (2004) (“[A]nimal regulation and control is within the County’s legitimate police powers”); *Muehlieb v. City of Philadelphia*, 133 Pa. Cmwlth. 133, 140, 574 A.2d 1208, 1211-12 (1990) (“As previously stated, enactment of the Animal Control Law was a proper exercise of the City’s police power.”); *Young v. Broward County*, 570 So. 2d 309 (Fla. Dist. Ct. App. 1990) (“In our judgment, the trial court correctly interpreted the [vicious dog] ordinance as providing for the protection of the public under the county’s police powers.”); *Vill. of Carpentersville v. Fiala*, 98 Ill. App. 3d 1005, 1008, 425 N.E.2d 33, 35 (1981) (“The limitation of dog ownership by reference to types of residences

creates legislative classifications which must withstand equal protection scrutiny in order for the ordinance to be upheld as a valid exercise of the police power.”).

It is that police power which authorizes a government entity to impound and destroy by euthanasia what is otherwise private property. *See, All States Humane Game Fowl Org., Inc. v. City of Jacksonville, Fla.*, 2008 WL 2949442, *13 (M.D. Fla. July 29, 2008) (enjoining the euthanasia of a rooster to allow the owners “notice and an opportunity to be heard before the destruction of their private property”); *County of Pasco v. Riehl*, 635 So. 2d 17, 18-19 (Fla. 1994) (finding due process violation because the plaintiff’s dog which was their “private property was subject to, among other things, physical confinement, tattooing or electric implantation, and muzzling” which amounts to “a deprivation of property”); *Garcia v. Vill. of Tijeras*, 108 N.M. 116, 123, 767 P.2d 355, 362 (Ct. App. 1988) (“The ordinance [banning the ownership of pit bulls], being a proper exercise of the Village’s police power, is not a deprivation of property without due process even though it allows for the destruction of private property.”).

Plaintiff estimated that he personally euthanized “probably 1,000 dogs.” [Plf. Dep. p. 32] “Just a few” of those were court-ordered. [Plf. Dep. p. 33] That is approximately 1,000 instances of Plaintiff’s exercise of the County’s police powers. And the very issue that resulted in Plaintiff’s termination from employment – his refusal to take custody of a dangerous animal – in and of itself involves his exercise of discretion not to enforce those police powers. S.C. Code § 47-3-750(A) (“If a law enforcement agent, animal control officer, or animal control officer under contract with a county or municipal government to provide animal control services has probable cause to believe that a dangerous animal is being harbored or cared for in violation of Section 47-3-720 or 47-3-740 or 47-3-760(E), the agent or officer may petition the court having

jurisdiction to order the seizure and impoundment of the dangerous animal while the trial is pending.”). It is absurd for Plaintiff to contend that the public would have no interest in the performance of the top animal control officer in Fairfield County.¹

Plaintiff argues that *Demby v. English*, 667 So. 2d 350, 354 (Fla. Dist. Ct. App. 1995) is the “[o]nly . . . court in the nation [that] has held conclusively that an **Animal Control Director** is a public official.” [Plf. Mem. pp. 7-8 (emphasis in original)] That assertion is correct only to the extent that it deals with the top animal control enforcement official. Courts applying North Carolina and Maryland’s public official immunity laws have found animal control officers – not just directors – to be public officials. *See, Kitchin ex rel. Kitchin v. Halifax County*, 192 N.C. App. 559, 568, 665 S.E.2d 760, 766 (2008) (“Animal Control Lead Officer is a public officer” because his powers include “authority to . . . impound and euthanize dogs or cats . . . and destroy stray dogs or cats in quarantine districts” and thus “exercises a portion of sovereign power and exercises discretion”); *Walker v. Prince George’s County, Maryland*, 2008 WL 7555247, *6 (D. Md. Mar. 31, 2008), *aff’d sub nom. Walker v. Prince George’s County, MD*, 575 F.3d 426 (4th Cir. 2009) (Animal Control Officer entitled to public official immunity). That immunity only applies to public officials and not to mere public employees. *See, Daniel v. City of Morganton*, 125 N.C.App. 47, 55, 479 S.E.2d 263, 268 (1997) (public official immunity applies to employees

¹Plaintiff also received a Level II certification from the National Animal Control Association, which, according to Plaintiff, is “an organization that’s nationally recognized, and it certifies you with laws and stuff with animal control.” [Plf. Dep. p. 26 & Ex. 5] That training included “Animal Cruelty Investigations,” “Blood Sports (Dog and Cock Fighting),” “Crime Scene Photography,” “Officer Safety/Defensive Tactics (Classroom and Practical)” and “Search and Seizure.” [Ex. A] And according to that organization, “Deputy Sheriffs and Police Officers make numerous public contacts during their shifts, but Animal Control Officers make four (4) times as many contacts during the same time period.” [Ex. B]

whose duties “involve the exercise of the sovereign power” as opposed to “public employee[s] duties which] are historically characterized as ‘ministerial.’ ”); *Baltimore Police Dep’t v. Cherkas*, 140 Md.App. 282, 328, 780 A.2d 410, 437 (2001) (“the actor must be a public official, rather than a mere government employee or agent”). And in *Scepurek v. Municipality of Anchorage*, 1985 WL 1077799, *2 (Alaska Ct. App. Jan. 23, 1985), the court held that Animal Control Officers are “peace officers” and “public officers.”

Conversely, Plaintiff has not cited to a single case in which an animal control officer, much less an animal control supervisor or limited duty law enforcement officer, was not considered a public official. Instead he cites to three completely inapposite cases. In *Peoples v. Taufest*, 274 Cal. App. 2d 630, 636, 79 Cal. Rptr. 478, 482 (1969), the court found that a former city recreation director was not a public official for defamation purposes because “[a]lthough respondent is described several times in the record as the former recreation director of the City of Bell Gardens, nowhere is there evidence describing the functions, duties, or relationship with the public of that job.” Here, the fact that Plaintiff was a limited duty law enforcement officer, the highest ranking animal control enforcement officer in the County’s employ, and frequently exercised the County’s police powers is more than sufficient to establish that he was a public official. Plaintiff also cites to *Foster v. Laredo Newspapers*, 541 S.W.2d 809, 813-14 (Tex. 1976). There the court held that an engineer engaged in **private practice** who worked as a county consultant was not a public official because his work did not “stir[] up any significant public interest,” he “had little if any authority to exercise on behalf of the County,” he did not “exercise a significant amount of discretion,” “nor did he supervise any other employees of the County.” *Id.* He also had “very little public contact” because his work “did not require that he act in a

representative capacity for the County or have any direct dealings with the public.” *Id.* at 814. And in *Michaelis v. CBS, Inc.*, 119 F.3d 697 (8th Cir. 1997), a county coroner who also had her own **private practice** was hired by a neighboring county “[t]hrough her work for [her private practice] . . . to perform[] autopsies . . . on an as-needed basis.” *Id.* at 699. Not surprisingly, the court had no trouble holding that the plaintiff was not a public official of the neighboring county because she “held no position of government employment with respect to [that c]ounty . . .” *Id.* at 702. Thus, none of the cases cited by Plaintiff are relevant here.

Based on the above it is clear that Plaintiff was a public official for defamation and civil conspiracy purposes.

II. Plaintiff’s argument that the Court should not rule at this stage on the issue of whether he was a public official is mooted by caselaw and his own affidavit.

Plaintiff argues that the issue of whether an animal control supervisor is a public official is a novel issue which should not be decided on a motion for judgment on the pleadings.

Plaintiff’s argument fails for three reasons.

First, there is nothing novel about the fact that law enforcement officers are public officials. *Gause v. Doe*, 317 S.C. 39, 41, 451 S.E.2d 408, 409; *State v. Bridgers*, 329 S.C. 11, 15, 495 S.E.2d 196, 198 (1997); *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980); *Willis v. Aiken County*, 203 S.C. 96, 26 S.E.2d 313 (1943). The Attorney General has twice concluded that animal control officers in particular are law enforcement officers. 1997 Op. Att’y Gen. dated Apr. 24, 1997, 1997 WL 255969; 2005 Op. Att’y. Gen. dated July 29, 2005, 2005 WL 1983360. And in another Attorney General’s opinion, the conclusion was reached that Limited Duty Law Enforcement Officers are office holders for constitutional dual office-holding purposes. 2012 Op.

Att'y. Gen. dated Oct. 02, 2012, 2012 WL 4836949 (collecting opinions). The fact that Plaintiff's termination was based on his refusal to take custody of a dangerous animal only underscores the fact that Plaintiff was a public official, rather than a mere public employee, whose position required that he exercise the discretionary police powers of the County.²

Second, while the issue here is not novel, even if it was there is no need to further develop the facts in this case. "Where . . . the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of General Services Information Technology Management Office*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001). The undisputed facts are:

- Plaintiff was the top enforcement official for animal control employed by the county;
- Plaintiff held a limited duty law enforcement certification from the South Carolina Criminal Justice Academy;
- Plaintiff exercised discretion in the performance of his duties, including the decision at issue in this case wherein he refused to take custody of a dangerous animal; and
- Plaintiff euthanized approximately 1000 dogs which is an exercise of the County's police powers.

Plainly, Plaintiff was a public official. No more relevant facts could be introduced which could convert Plaintiff to a mere public employee. Which brings us to the third and final point on this issue: Plaintiff has been deposed and he has introduced a two-page affidavit in which he attempts

²As a matter of law, the animal at issue was a dangerous animal since the dog was adjudged as such and no appeal was taken. [Plf. Dep. Ex. 13] Plaintiff still maintains that he "do[esn]t think [the dog in question] was a dangerous animal." [*Id.* pp. 63-64]

to explain why he is not a public official. Thus he has fully developed the record on this issue and the defendants Motion for Judgment on the Pleadings, which plaintiff has now converted to a motion for summary judgment, is ripe for consideration.³

III. Plaintiff's attempt to distinguish his case from *Angus I* is no distinction at all.

Plaintiff continues to assert that *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (*Angus I*), does not bar his claim because "Plaintiff does not seek to maintain an action against the County, his employer, or even members of County Council, as in *Angus I*, rather his civil conspiracy claim is against Anderson and Hinley in their individual capacities for actions outside the course and scope of their duties." *Angus I* already addressed this argument.

Angus claims that she was suing them not as council members, but in their capacity as individuals. That argument is unpersuasive. The employment agreement stated on its face that Angus served "at the will" of the Council. Clearly, the council members acted within their authority when they fired Angus and they cannot be sued for doing what they had a right to do.

Angus v. Burroughs & Chapin Co., 358 S.C. 498, 503, 596 S.E.2d 67, 70 (Ct. App. 2004) (citing *Antley v. Shepherd*, 340 S.C. 541, 550, 532 S.E.2d 294, 298 (Ct. App. 2000) (county official immune from liability individually since he acted within his authority in firing an employee who was serving at the will of the official), *aff'd as modified*, *Antley v. Shepherd*, 349 S.C. 600, 564

³Plaintiff acknowledges in his affidavit he was required to "get a limited duty law enforcement certification in the event [he] need [sic] to write a ticket." [Plf. Aff. ¶ 9] He attempts to minimize that authority by stating that "[i]n [his] entire employment with the County [he] wrote one ticket . . ." [Plf. Aff. ¶ 12] The fact he only wrote one ticket between his October 2011 CJA certification and his February 2012 termination means nothing. He was empowered to, and did indeed, issue at least one ticket to a citizen. His argument to the contrary is similar to a police officer arguing that he only made one arrest during his short time on the force and therefore was not a police officer.

S.E.2d 116 (2002)). It was not the fact that the individual defendants in *Angus I* were council members that mandated dismissal of the claim. It was the fact that those council members had hiring and firing authority over that plaintiff, just as defendants Anderson and Hinely have here.

Plaintiff's continued reliance on *Anthony v. Ward*, 336 Fed. Appx. 311 (4th Cir. 2009), is sorely misplaced. There, the Fourth Circuit held that *Angus I* did not bar that civil conspiracy claim because "neither defendant actually had the power to terminate him." *Id.* at 321. Here, Plaintiff correctly pleads that Anderson terminated his employment and Hinely rejected Plaintiff's grievance appeal of that termination. Thus, both defendants did what they had a right to do and the civil conspiracy claim is barred. *Reed v. Williston*, 2009 WL 821013 (D.S.C. Mar. 27, 2009) (at-will employee's civil conspiracy claim against the council members and town manager who terminated him barred by *Angus I*); *Brown v. City of Columbia*, 2011 WL 3654472, *1 (D.S.C. June 16, 2011) ("Nor may public officials be sued in their individual capacities for civil conspiracy when they terminate an at-will employee."). And because Anderson and Hinely were incapable as a matter of law of conspiring to harm Plaintiff, his claim fails entirely under *Angus I* regardless of whether he was a public official because defendant Brown cannot be a conspiracy of one.

IV. Plaintiff's motion to amend his complaint fails because he has not included a proposed amended complaint with his motion and because any proposed amendment would be futile.

Plaintiff asks that the court allow him to amend his complaint as to the defamation cause of action. He has not included a proposed amended complaint with his motion and thus the motion should be denied. *See, Bowers v. Robinson*, 311 S.C. 412, 414-415, 429 S.E.2d 799, 800 (1993) (recognizing that "service of [a] copy of the proposed amended complaint with the motion

to amend was completely consistent with general practice regarding a motion seeking the court's leave to amend"). The court in *Bowers* favorably cited *Lempert v. Singer*, 766 F.Supp. 1356 (D.Vir. Islands 1991) for the proposition that a "motion to amend [a] complaint [should be] denied for the failure to include [a] proposed amendment." *Id.*

More importantly, any amendment to his complaint would be futile. *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997) (dismissal proper where amendment "ultimately would be futile") (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Plaintiff was deposed as to his defamation claims. As to defendant Brown, Plaintiff testified that Brown stated:

... I didn't have nothing to do with what happened to you, what you did was yourself, you shouldn't – it was your fault. And [Plaintiff] said, well what you talking about? And [Brown] said, you sure – if you took care of the dog situation, you know – I said, let's step outside. ...

[Plf. Dep. p. 93] That is the entire extent of Plaintiff's defamation claim against Brown. [*Id.* pp. 94-95] Such statements simply cannot support a defamation claim against Brown individually. Assuming such statements could be deemed defamatory, because Plaintiff was a public official he would have to prove that Brown made those statements with actual malice, i.e., "with the knowledge it was false or with reckless disregard of whether or not it was false." *Metts v. Mims*, 384 S.C. 491, 500, 682 S.E.2d 813, 818 (2009). The fact that a magistrate ruled that the dog was dangerous and ordered that it be euthanized moots any such argument, and certainly entitles Brown to his opinion that Plaintiff failed to do his job with regard to the dog at issue. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 520, 506 S.E.2d 497, 507 (1998) (quoting *Milkovich v. Lorain Journal Company*, 497 U.S. 1, 19-20 (1990)) ("[A] statement of

opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.”); *Haigh v. Matsushita Elec. Corp. of Am.*, 676 F. Supp. 1332, 1339 (E.D. Va. 1987), citing, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974) (“Statements of opinion are absolutely protected under the first amendment.”); see *De Leon v. St. Joseph Hospital, Inc.*, 871 Fed.2d 1229 (4th Cir. 1989) (finding that statements in a letter that a physician’s qualifications were unsatisfactory and recommending that his application for hospital privileges be denied were opinion and therefore were not defamatory); *Gunter v. Vill. of Gilberts*, 1992 WL 168543, *5 (N.D. Ill. July 9, 1992) (statement that plaintiff “was fired because he was not doing his job . . . is probably not actionable” in liberty interest context of damage to reputation). Nothing that Brown said is “provably false” since the magistrate agreed that the dog should be euthanized, rather than being left with its owner.

As to Anderson and Brown, Plaintiff has even less. Asked what defamatory statements Anderson made about him, Plaintiff testified, “Only that he said I wasn’t doing my job.” [*Id.* pp. 102-103] For the same reasons Brown’s statement is protected opinion, Anderson’s is as well. As Plaintiff pleads, he “advised the owner [of the dangerous dog] that under the County’s policies, the offending animal would have to be euthanized or securely confined to prevent further attacks.” [Com. ¶ 5] “The owner chose the latter option.” [*Id.*] However, the magistrate judge obviously disagreed with Plaintiff that allowing the owner to choose the disposition of the matter was the proper course of action as he ordered that the dog was so dangerous it had to be euthanized. Thus, Anderson’s statement that Plaintiff was not doing his job is both an opinion and not “provably false.” *Holtzscheiter*.

Further, Plaintiff testified that Anderson made the statement in question in Plaintiff’s

grievance hearing. [*Id.* p. 103] The County's grievance procedure was adopted pursuant to S.C. Code § 8-17-120, which provides that "[t]he governing body of any county or any incorporated municipality in this State may by ordinance or resolution adopt a plan for the hearing and resolution of employee grievances which, if adopted, shall conform substantially to the guidelines set forth in this article." County grievance committees "shall have the authority to call for files, records and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; [and] to call additional witnesses . . ." *Id.* at § 8-17-130. The committee then:

shall . . . make its findings and decision and report the findings and decision to the individual or body vested with employment and discharge authority. If the individual or body vested with employment and discharge authority approves, the decision of the grievance committee is final, and copies of the decision must be transmitted by the committee to the employee, to the chief administrative officer, and to the particular department or agency involved. If, however, the individual or body vested with employment and discharge authority rejects the decision of the committee, it shall make its own decision without further hearing, and that decision is final, with copies transmitted to the employee and the employing agency.

Id. at § 8-17-140. The finality language in § 8-17-140 "refers to the exhaustion of the complaining employee's administrative remedies." *Vaught v. Waites*, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989) (finding no evidence plaintiff sought or was given grievance hearing but trial judge did not rule on exhaustion argument and defendant failed to move to reconsider). Employees with administrative remedies such as grievance rights must exhaust them before filing suit. *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006) ("The trial judge correctly determined their wrongful termination claims were foreclosed under the State Employee Grievance Procedure Act because they did not exhaust their

administrative remedies.”); *accord*, *Graves v. Horry-Georgetown Technical College*, 391 S.C. 1, 14-15, 704 S.E.2d 350, 358 (Ct. App. 2010).

In *Crowell v. Herring*, 301 S.C. 424, 431, 392 S.E.2d 464, 467 (Ct. App. 1990), the court held that statements made during an investigation preceding a VFW court martial, as well as those made at the hearing, were quasi-judicial in nature and absolutely privileged. The court stated that “[t]he threat of a civil action and slander or libel would undoubtedly have a chilling effect on those tempted to initiate legitimate investigations or inquiries into other supposed wrongdoing.” *Id.* at 468. Obviously, a VFW court is not part of South Carolina’s unified judiciary. It is a non-profit corporation with Section 501 tax-exempt status. *Sprangers v. Greatway Ins. Co.*, 182 Wis. 2d 521, 529, 514 N.W.2d 1, 3 (1994) (“The VFW is incorporated under sec. 188.11, Stats.1991-92. It is a non-profit entity under sec. 501(c)(19) of the Internal Revenue Code for federal tax purposes.”). Nonetheless, the South Carolina Supreme Court considered the court martial proceeding and the pre-hearing investigation to have sufficient indicia of judicialness to warrant treatment as a quasi-judicial process.

Here, by law the County’s grievance process includes “the authority to call for files, records and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; [and] to call additional witnesses . . .” S.C. Code § 8-17-130. It also requires that the grievance committee “make . . . findings and decision and report the findings and decision to the individual or body vested with employment and discharge authority.” *Id.* § 8-17-140. Surely if a VFW court martial constitutes a quasi-judicial proceeding, a grievance hearing which must be held as a precursor to judicial review of a termination, *Vaught, supra.*, is as well. Thus, as a step in the process of the exhaustion of administrative remedies, and as a

condition precedent to judicial review, a grievance committee is quasi-judicial and statements made therein are absolutely privileged. *Crowell, supra*; *Gallegos v. Escalon*, 993 S.W.2d 422, 426 (Tex. App. 1999) (grievance hearing “before the school board was quasi-judicial in nature and Gallegos is absolutely immune with respect to his answers to questions posed by the board members”); *Johnson v. Brown*, 193 Or.App. 375, 382, 91 P.3d 741 (2004) (statements made to county investigators were absolutely privileged where the quasi-judicial action was a subsequent grievance hearing); *Hope v. National Alliance of Postal & Federal Employees*, 649 So.2d 897, 900 (Fla.App.1995) (holding statements made during course of grievance procedure absolutely privileged); *Surrency v. Harbison*, 489 So.2d 1097 (Ala.1986) (alleged statement made in the course of a grievance hearing is absolutely privileged); *Neece v. Kantu*, 84 N.M. 700, 705-706, 507 P.2d 447 (N.M. App.) (holding absolutely privileged statements made during course of labor grievance arbitration proceedings), *cert. denied sub nom. Ritschel v. Neece*, 84 N.M. 696, 507 P.2d 443 (1973).

As to Hinely, Plaintiff has not even a colorable claim for defamation. He testified:

Q. Do you know of any statements Phil Hinely has made about you that are false?

A. No, sir.

[Plf. Dep. p. 103]

Accordingly, no amendment to Plaintiff’s complaint could state a viable claim against any of the defendants.

Conclusion

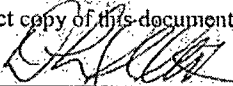
Based on the foregoing, the defendants respectfully request that Plaintiff’s Motion for Reconsideration or to Amend be denied.

April 19, 2013

Resp Plf Rule 59.wpd/397.1

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.



GIGNILLIAT, SAVITZ & BETTIS, L.L.P.



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ATTORNEYS FOR DEFENDANT



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NACA 100 Training Academy

The National Animal Control Association (NACA) was formed in 1978 for the express purpose of assisting its members to perform their duties in a professional manner. NACA believes its most important contribution towards solving our domestic animal problems is to make available to Animal Control agencies and personnel a comprehensive training program.

Who Should Attend

This program is designed for Animal Control Officers at the federal, state, and local levels, Police Officers, and Sheriff's Deputies responsible for animal control and all of its many facets. In addition, those people interested in a career in the animal control/care field are welcome to attend. No previous animal control experience is required.

To be NACA certified as a Animal Control/Care Officer, please attend our Level 1 AND Level 2 training academy. NACA offers locations all over the United States. For a list of current training opportunities, follow this link:

<http://www.nacanet.org/schedule.html>

Please be aware that due to logistics and scheduling, NACA may not offer a program within your state. You may need to travel to a course near your location.

It is not necessary to have previous or current experience in Animal Control/Care to attend the Level 1 or 2 course. You must be 18 years of age to attend a NACA course.

Academy Information:

The National Animal Control Association Training Academy was designed to be delivered in two levels. Upon successful completion of Level I and Level II, the National Animal Control Association shall certify each participant and issue the appropriate documentation and pin. Successful completion of Level I and Level II shall include a minimum passing score of 80% on written examinations and mandatory attendance during all training.

Both Level I and Level II will be five days (40 hours) in length. In addition to the National Certification participants will be awarded Certificates of Completion.

The Level I curriculum will include the following:

- Animal Diseases/Zoonosis/Basic Cleaning
- Animal Identification
- Animal Injury Identification and First Aid
- Basic Investigations
- Basic Law Overview (Constitutional Law/Civil Liability)
- Capture Techniques
- Case Report/Evidence Collection/Citation Preparation
- Crises Intervention/Officer Safety
- Companion Animal Behavior
- Courtroom Presentation and Testimony
- Ethics and Professionalism
- Euthanasia Overview
- Rabies/Quarantine Issues
- Shelter Operations

Each day begins at 7:30 am and ends at 4:00 or 5:00 pm, except on Friday when class ends at 12:00 pm (noon).

Tuition

Tuition for Level I will be \$525.00 per participant.

[Click here](#) for the current NACA Training Schedule.



For any additional questions please check out our [FAQ](#) or email naca@nacanet.org.

Level II curriculum will include the following:

- Animal Cruelty Investigations (Companion/Exotic/Agriculture)
- Blood Sports (Dog and Cock Fighting)
- Crime Scene Photography
- Handling of Exotic, Wildlife and Agricultural Animals
- Media Relations
- Methamphetamine Identification and Animal Decontamination
- Officer Safety/Defensive Tactics (Classroom and Practical)
- Public Speaking
- Search and Seizure
- Stress Management/Compassion Fatigue

Each day begins at 7:30 am and ends at 4:00 or 5:00 pm, except on Friday when class ends at 12:00 pm (noon).

Tuition for Level II will be \$525.00 per participant.

[Click here](#) for the current NACA Training Schedule.

For any additional questions please check out our [FAQ](#) or email naca@nacanet.org.

Level III curriculum will include the following:

The NACA Level III program will consist of four different Certification Workshops done in a week-long format. This format will enable an officer to attend individual workshops as needed by the Officer. The Workshops included are:

[Bite Stick Workshop](#)
[Chemical Immobilization Workshop](#)
[Euthanasia Workshop](#)
[Pepper Spray Workshop](#)

[Click here](#) for the current NACA Training Schedule.

For any additional questions please check out our [FAQ](#) or email naca@nacanet.org.

Tuition

Tuition for Level III will be \$575.00 for the full week of training. Tuition for individual workshops is as follows: Euthanasia - \$255.00; Chemical Capture - \$255.00; Bite Stick - \$180.00; OC Spray - \$105.00.

Level IV curriculum will include the following:

- Commercial Investigations - Pet Stores/Exhibits/Working Animals
- Advanced Evidence Collection
- Interview and Interrogation
- Mass Animal Impoundment
- Emergency Animal Sheltering
- Animal Hoarding
- Agricultural Cruelty Investigations
- Breeders and Puppy Mills

Tuition for Level IV will be \$525.00 per participant.

[Click here](#) for the current NACA Training Schedule.

For any additional questions please check out our [FAQ](#) or email naca@nacanet.org.

Training Site Selection

Training site locations will be chosen by the National Animal Control Association based on a regional commitment by agencies in a given geographical area of the United States. Those agencies in a given area will need a minimum of 35 attendees to be considered for a Level I program.

Hosting a NACA Training Academy or Workshop

If you are interested in hosting a NACA Training Academy or workshop, please [click here](#).

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NACA Training Academy

Animal Control Officers make four times the public contact of other law enforcement officers . . .

4 times the exposure = 4 times the liability.

SPECIALIZED TRAINING GENERATES ...

- Improved Service
- Enhanced Image
- Reduced Liability
- Increased Efficiency

Image, service, liability, cost and an effective program are impacted more by proper training than any other factor.

A well trained employee will display the proper image because they have learned what image is and understand its necessity and usefulness.

Service is improved when an employee is trained to know what to do and how to do it correctly. Dealing with the public is one of the most difficult responsibilities an employee can be assigned. An untrained employee can be an embarrassment and a liability.

Deputy Sheriffs and Police Officers make numerous public contacts during their shifts, but Animal Control Officers make four (4) times as many contacts during the same time period.

Result: 4 times the exposure equals 4 times the possible liability.

An effective program is no accident. No program was ever successful without well trained personnel. Personnel cannot be held accountable for making mistakes if they have not been instructed on what they are to do and trained how to do it properly.

The National Animal Control Association (NACA) was formed in 1978 for the express purpose of assisting its members in performing their duties in a professional manner. One method of accomplishing this goal is to make personnel training programs available. This training must be designed to prepare animal control personnel for the challenges of solving the animal/people problems in today's world.

[Click here](#) for the current NACA Training Schedule.

[Click here](#) for Level 1 Academy Information

[Click here](#) for Level 2 Academy Information

[Click here](#) for Level 3 Academy Information

[Click here](#) for Level 4 Academy Information



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD) C/A #: 12-CP-20-099

David Michael Hollis)

Plaintiff,)

v.)

Fairfield County, Philip)
Hinely, Davis Anderson)
and David Brown in their)
individual capacities,)

Defendants.)

COPY

DEPOSITION OF

DAVID MICHAEL HOLLIS

Monday, January 14, 2013
10:10 a.m. - 1:00 p.m.

The deposition of David Michael Hollis, taken on behalf of the Defendant at the law offices of J. Lewis Cromer and Associates, 1522 Lady Street, Columbia, South Carolina, on the 14th day of January, 2013, before Christine A. Cortright, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Lee Haney took it over.

2 Q: You're talking about the sheriff's department?

3 A: Sheriff's department.

4 Q: All right. People employed by an elected
5 official?

6 A: Yes, sir.

7 Q: As far as people employed within the county, as
8 far as people employed by Fairfield County, you
9 were the top enforcement official for animal
10 control ordinances in the county?

11 A: Yes, I reckon you could call it that.

12 COURT REPORTER: Number Five.

13 (Defendant's Exhibit Number Five was marked for
14 identification purposes.)

15 Q: I'm going to hand you Exhibit Number Five. Do
16 you recognize that?

17 A: Yes, sir.

18 Q: And that is National Animal Control Association
19 level two certification, correct?

20 A: Correct.

21 Q: What is the National Animal Control
22 Association?

23 A: That's a organization that's nationally
24 recognized, and it certifies you with laws and
25 stuff with animal control.

1 I'd gone to school and got my certification and
2 find out the law that legally I could do it
3 instead of paying the money outsourcing it.
4 There was some other issues going on with the
5 veterinarian there at the time, and so they
6 decided to just go ahead and let -- since I had
7 the certification and could maintain
8 everything, that I would be the one to do --
9 that would be doing -- being over the drugs
10 there. I carried the license.

11 Q: When was it that you started performing
12 euthanasia?

13 A: I'm not exactly sure of the date.

14 Q: Was it around the time of this certification,
15 beginning of 2009?

16 A: It was -- I'd been certified for a while. It
17 wasn't -- it'd been a while since -- because it
18 stayed under Dr. Lewis' license for a period of
19 time. But then when they got ready to redo the
20 license, they got it under my name.

21 Q: How many did you perform during your employment
22 with Fairfield County, roughly? I'm not going
23 to hold you to the number, just give me a rough
24 figure.

25 A: Goodness. In seven years, probably 1,000 dogs.

1 Q: Okay. Any of those court ordered?

2 A: Yes, sir.

3 Q: How many, roughly?

4 A: There were just a few. I don't have any
5 paperwork in front of me that -- everything
6 that I euthanized for the court, pictures was
7 taken and went back and give it to the judge,
8 and they filed it. They'll have files on what
9 was done.

10 Q: And you said it was just a few of those?

11 A: Yeah, it was a few of them. Yes, sir.

12 Q: Would those have been dangerous animal
13 euthanasia?

14 A: Went through the courts, and yes, sir, I was
15 ordered to euthanize them.

16 MR. AYDLETTE: Let's go off the record just a
17 second.

18 (Off the Record)

19 MR. AYDLETTE: For the record, plaintiff stipulates
20 that he was an at-will employee of Fairfield
21 County?

22 MR. CROMER: So stipulated.

23 COURT REPORTER: Number Eight.

24 (Defendant's Exhibit Number Eight was marked for
25 identification purposes.)

1 A: I wouldn't consider him a dangerous animal
2 because he was confined. I trusted the owners
3 to tell me the truth about the thing and to
4 keep him under supervision, and I wasn't
5 worried about him hurting nothing else, if
6 that's what you're asking.

7 Q: All right. My question is, as of the Tuesday
8 after the attack had you reached a conclusion
9 as to whether or not Bo was a dangerous animal
10 as defined by the statute?

11 A: No, sir.

12 Q: You had not reached that conclusion?

13 A: I hadn't reached that conclusion.

14 Q: All right. You subsequently reached a
15 conclusion that he was not a dangerous animal,
16 correct?

17 A: No, sir, not at that time.

18 Q: You subsequently reached that conclusion?

19 A: I don't think he was a dangerous animal.

20 Q: All right. So at some point you made the
21 decision, whether you were still employed by
22 the county or not, you reached a conclusion
23 that Bo was not dangerous?

24 MR. CROMER: Object to the form. You can answer.

25 Q: As it's defined by the statute.

1 MR. CROMER: Same objection.

2 A: I don't think Bo was a dangerous animal.

3 Q: Okay. And so because he was not a dangerous
4 animal in your opinion, any attempts at
5 confinement, rehabilitation, whatever it was by
6 the Timmses would have been wholly voluntary on
7 their part, correct?

8 MR. CROMER: Object to the form. You can answer.

9 A: That was a precautionary type thing until we
10 found out exactly what was going on and how I
11 was going to handle the thing. I mean, it
12 wasn't something that, you know, I'm just going
13 to come get your dog and take him up there and
14 kill him. You know, he needed -- the dog needs
15 a chance. I mean, you know, state law says the
16 dog's legally got a one-bite rule, from what I
17 understand. So that's the only instance that
18 I knew that something of that severity that
19 actually was seen, and that there was coming
20 from Mr. Timms and what I asked him when I
21 called him to inquire about what had happened
22 and about coming to pick the dog up. The whole
23 thing was that the Knights said that Mr. Timms
24 wanted me to come pick his dog up, and that's
25 what I was going to do. I know nothing else

1 And somewhere along that time, David Brown was
2 coming out. And I'd say -- it was dark. I
3 didn't really see him. And he says, well, you
4 ain't going to shake my hand. And I kind of
5 tried to pull myself together. I looked up and
6 I said, you know, David. And he grabbed my
7 hand, he says, I'm going to tell you something,
8 he said, I didn't have nothing to do with what
9 happened to you, what you did was yourself, you
10 shouldn't -- it was your fault. And I said,
11 well, what you talking about? And he said, you
12 sure -- if you took care of the dog situation,
13 you know -- I said, let's step outside.
14 Because he was loud and I didn't know what he
15 was -- you know, he was getting loud and I was
16 hurt enough without being hollered at in front
17 of my family and stuff. So I said, let's step
18 on out here. So we stepped outside, and I told
19 him, I said, I don't know whether you had
20 anything to do with my firing or not, David.
21 But I said, but if it is, I said, it will come
22 out. And, you know, that's -- we'll just see.
23 And I had -- it was three or four people that
24 stepped out. And so the man was wearing his
25 uniform shirt, driving a county vehicle, so, I

1 mean, I feel like he was on duty at the time.
2 I took and I got myself to come in, and about
3 that time Mr. Anderson come walking out the
4 door, and we spoke. And I went on up to the
5 county council meeting and had a lot of
6 supporters, you know, that came in up there
7 just to see if we could hear anything or what
8 was going on. And so to me, Mr. Brown had
9 already been told and advised of what was going
10 on, and he was a part of the reason to help get
11 me out of the position I was in.

12 Q: All right. Well, we're talking about
13 defamation. You said that he told you it was
14 your own fault you got fired, correct?

15 A: (Nods head affirmatively).

16 Q: Is that a yes?

17 A: Yes, sir.

18 Q: Okay. And then he said if you'd handled that
19 dog situation you wouldn't -- you'd still have
20 your job, correct?

21 A: Yes, sir.

22 Q: All right. And those are the two statements
23 you're talking about?

24 A: Yes, sir.

25 Q: All right. Is there anything else from David

1 Anderson has made?

2 A: Pretty much just, you know, I reckon just not
3 doing the job in a roundabout way. He's -- he
4 undoubtedly went down to Dr. Knight's and all.
5 From what they tell me, he told them if I come
6 back down there that I wasn't employed, that
7 they should call the sheriff's office and have
8 me arrested. And all that was uncalled for.
9 I'd see my guys I had worked with, they would
10 not speak to me or tell me, you know, talk to
11 me about anything, you know. It was almost
12 like they were told that they better not be
13 saying or talking to me or whatever. They guy,
14 Mr. Willie Cook, right after all this here,
15 they end up fixing it to where he just more or
16 less made him to where they wasn't giving him
17 enough hours and he chose not to work for the
18 county no more. Good man. Matter fact, Mr.
19 Cook, he thinks that Davis thought that he and
20 I was so close that he would tell me stuff that
21 was going on at the animal shelter or
22 something. You know, that's speculation there,
23 but -- and I'm sure there are other things I
24 don't know about.

25 Q: And as you sit here today, do you know of any

1 statements that Davis Anderson has made about
2 you that are false?

3 A: Only that he said I wasn't doing my job.

4 Q: Who did he say it to?

5 A: He said that in the grievance committee.

6 Q: Okay. Anywhere else?

7 A: It could have been, but no, right now I can't
8 think of any.

9 Q: All right. How about Phil Hinely?

10 A: Phil Hinely, the only thing that I know is he
11 -- Davis said it came from a higher up; that
12 Davis -- that Phil Hinely said to terminate me.
13 And, you know, I always thought we had a good
14 working relationship. I thought well of him.

15 Q: All right. Do you know of any false statements
16 Phil Hinely has made about you?

17 A: No, sir.

18 Q: All right. So we talked about Janice Lynn
19 Emerson. Were there any other false statements
20 that she made other than what you didn't like
21 that was in that email?

22 A: Not that I personally know, no, sir.

23 Q: All right. Anybody else that we haven't
24 already talked about made any false statements
25 about you, any other county employees?

1 HEARING OFFICER: ...indicated that Dr. Knight did not relay any concerns at
2 that time. Is that correct Mr...Mr. Hollis?

3 CLAIMANT: That's correct.

4 HEARING OFFICER: Okay.

5 EMPLOYER WITNESS: Okay. So he didn't...he did not say that Boe was a
6 dangerous animal as he stated in his statement?

7 CLAIMANT: No, sir.

8 EMPLOYER WITNESS: Okay. Under normal procedures if you have a dangerous
9 animal what would be the procedures to handling it?

10 CLAIMANT: A dangerous animal?

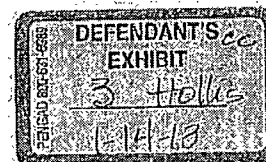
11 EMPLOYER WITNESS: Yes.

12 CLAIMANT: If I believe him...to believe that the animal's dangerous I
13 get in touch with the police department, police department takes him, and we go
14 through a magistrate. A magistrate will...makes the decision on whether to issue
15 papers to pick the animal up and take it into a court date.

16 EMPLOYER WITNESS: Okay. So you don't have the authority to tell someone
17 that they're animal will be euthanized. Is that correct?

18 HEARING OFFICER: And...and Mr...Mr. Caulder, I don't know what...what
19 relevance...whether or not Mr....what relevance that it is the authority of Mr. Hollis
20 as to whether or not he can tell someone whether their animal needed to be
21 euthanized or not. I mean...

22 EMPLOYER WITNESS: [UNCLEAR]...well, he actually...he stated I think, and
23 also in Mr...Mr. Timms' report that Mr. Hollis advised him that Boe would be put
24 down.



The National Animal Control Association

Hereby Certifies That

David Hollis

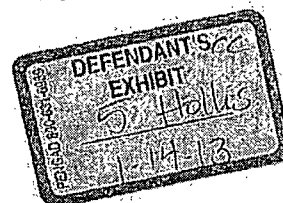
*has successfully completed the
National Animal Control Association Training Academy
NACA 100 Level 2
40 hours
Nashville, Tennessee*

In Witness whereof this certificate is awarded

May 7, 2010



Johnnie W. Mays
Executive Director

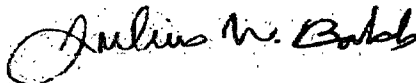


JLC&A00063

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

J. Lewis Cromer & Associates, L.L.C.



BY: _____

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Attorneys for Appellant

January 9, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-099

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SC Court of Appeals

David Michael Hollis.....Appellant,

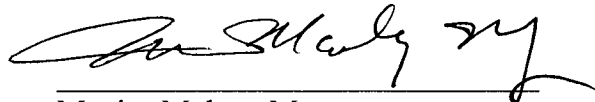
v.

Fairfield County, Philip Hinely, Davis Anderson and David Brown.....Respondents.

PROOF OF SERVICE

I certify that I, the undersigned employee of J. Lewis Cromer & Associates, L.L.C., did cause to have served a copy of the Record on Appeal on Respondents Fairfield County, Philip Hinely, Davis Anderson and David Brown by hand delivering a copy of it, on January 10, 2014, addressed to their attorney of record, Derwood L. Aydlette, III, with the law firm of Gignilliat, Savitz & Bettis, L.L.P., 900 Elmwood Avenue, Suite 100, Columbia, South Carolina 29201.

January 10, 2014



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