STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	Civil Action Number: 2014-CP-02-879

Carlton E. Cantrell,

Plaintiff,

v.

Aiken County, Aiken County Animal Control Director, Shirley Hardin, Aiken County Animal Control Officer Bobby Arthurs, and Judge Charles T. Carter,

Defendants.

ORDER DISMISSING THIS ACTION WITH PREJUDICE, ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER, AND IMPOSING SANCTIONS UPON THE PLAINTIFF

THIS MATTER COMES BEFORE THE COURT pursuant to a motion to dismiss, or in the alternative for summary judgment, for sanctions, and for injunctive relief filed on behalf of Defendants. A hearing on this motion was held on July 7, 2014, at the Aiken County Courthouse, Aiken, South Carolina. Present at the hearing was Daniel C. Plyler, Esquire, on behalf of Defendants. Also present at the hearing was the *pro se* Plaintiff Carlton E. Cantrell. The Defendants' motions are made in part pursuant to Rules 11, 12, and 56 of the South Carolina Rules of Civil Procedure and are dispositive of all claims against the Defendants as asserted by Plaintiff. Upon review of the record, the pleadings, the file available to the Court, including Plaintiff's previous filings, and oral arguments, this Court now rules, and grants the Defendants' motion.

Based upon the following discussion, this Court hereby dismisses Plaintiff's Complaint with prejudice. Further, this Court hereby awards the Defendants the costs associated with the defense of this matter, in the amount of eight hundred, twenty-five dollars and no cents ($825.00)

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due the frivolous and malicious nature of this litigation. This Court further directs the Clerk of Court for Aiken County to refrain from filing any additional Complaints or other Pleadings submitted by Plaintiff that are related to the matters set forth in Civil Action Nos. 08-CP-02-887, 11-CP-02-1480, or 14-CP-02-879.

STANDARD OF REVIEW

In ruling on a motion to dismiss, the Court must view the pleadings in the light most favorable to the nonmoving party. *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 274–75 (Ct. App. 1997). A motion to dismiss must be granted if the facts and inferences reasonably deductible from them show that the plaintiff cannot prevail on any theory of the case. *Id.* In considering a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedures, the Court must base its ruling solely upon the allegations set forth on the face of the plaintiff's complaint. *Doe v. Greenville County Sch. Dis.*, 375 S.C. 63, 66–67, 651 S.E.2d 305, 307 (2007). A 12(b)(6) motion will not be granted if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n.*, 407 S.C. 67, 753 S.E.2d 846, 850 (2014).

In this case, with regards to the motion at issue, the Defendants filed their motion as both a motion to dismiss, or in the alternative for summary judgment under Rule 56, SCRCP. Rule 56, SCRCP, "provides that a trial judge may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In addition, it must be shown that further inquiry into the facts is not needed to clarify an application of law." *Charleston Lumber Co., Inc. v. Miller House Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 436 (Ct. App. 1995). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in

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the light most favorable to the nonmoving party." *Strothers v. Lexington County Recreation Commission*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

The Court has considered the motion as a motion for summary judgment, and finds, as is set forth in more detail herein, that summary judgment in favor of the Defendants is appropriate.

BACKGROUND

Plaintiff filed his Complaint in the above-captioned matter on April 16, 2014. Taking the facts in a light most favorable to Plaintiff, he makes allegations relating to the confiscation of a number of goats from his property by Aiken County Animal Control. The confiscation in question occurred on May 19, 2005. According to the facts set forth in the Complaint, Plaintiff entered into a plea agreement, which he later had overturned as set aside. Specifically, Plaintiff alleges that the plea agreement was set aside on October 3, 2007.

The Court takes judicial notice that Plaintiff previously filed two civil actions against the same named Defendants, regarding the same allegations, on May 30, 2008[1] and July 7, 2011[2]. *See*, Civil Action Number 08-CP-02-887, Civil Action Number 11-CP-02-01480. "A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *South Carolina Dep't of Social Servs v. Janice C.*, 383 S.C. 221, 678 S.E.2d 463 (Ct. App. 2009), *citing Freeman v. McBee,* 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984). The Court additionally takes judicial notice that the two earlier civil actions were dismissed, with prejudice, that the Plaintiff appealed those dismissals, and that those dismissals were upheld on appeal.

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[1] This action was dismissed pursuant to an Order from this Court signed December 9, 2008.
[2] This action was dismissed with prejudice pursuant to an Order from this Court filed September 2, 2011.

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DISCUSSION

A) Defendants Hardin, Arthurs, and Carter

The South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann., § 15-78-10, *et seq.*, provides various immunities for employees of governmental actors. Chief among these immunities is the absolute immunity provided to individual employees contained within S.C. Code Ann., § 15-78-70. Pursuant to subsection 15-78-70(a), individual employees are not subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment.

Plaintiff has named Defendants Hardin, Arthurs, and Carter[3] as individual defendants in this case. The record reflects that these Defendants are employees of the County of Aiken and at all times were working within the course and scope of their official duties as employees of the County of Aiken. An employee of a governmental entity is immune from liability for tortious acts committed within the scope of his or her official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). As a result, these Defendants are entitled to be summarily dismissed from this action.

B) Action Barred by *Res Judicata* and/or Collateral Estoppel

This Court finds that the doctrines of *res judicata* and/or collateral estoppel, which are also known as and referred to as issue preclusion, apply in this matter. "Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim." *Laughon v. O'Braitis*, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004), *citing, Carman v. S.C. Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6, 451 S.E.2d

[3] This Court finds that Defendant Carter is also entitled to absolute judicial immunity. *See*, Unpublished Opinion of South Carolina Court of Appeals 2010-UP-533.

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383, 386 (1994). "Under South Carolina law, '[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.'" *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360, 362 (Ct. App. 2013), *quoting*, *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d, 779, 782 (Ct. App. 2009).

"The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* Plaintiff's pending lawsuit has been fully litigated in two prior actions. Both those lawsuits were ultimately dismissed, and those dismissals were upheld on appeal. Further, Plaintiff's allegations in his 2008 lawsuit, 2011 lawsuit, and this current lawsuit are exactly the same.

This Court finds that the Defendants have met this burden in this case, and that the doctrines of *res judicata* and/or collateral estoppel, which are also known, and referred to, as issue preclusion, apply in this case to bar the Plaintiff from relitigating the facts at issue and the conclusions of law reached by this Court on Plaintiff's two, previous civil actions.[4] Therefore, this Court is bound to apply the facts and the conclusions of law as reached in Plaintiff's two previous identical proceedings. In applying the law to the facts, this Court finds that the Plaintiff's claims fail, and that the Defendants are entitled to summary judgment.

C) Action Barred by Statute of Limitations

The Court further concludes that Plaintiff's claims are barred by the applicable statute of limitations. The SCTCA is the exclusive remedy for any tort committed by an employee of a

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[4] As recognized above, Plaintiff brought Civil Action No. 08-CP-02-887 and Civil Action No. 11-CP-02-01480 in this same Court against the same Defendants with those prior actions containing the very same allegations that are contained in his present Complaint.

governmental entity. S.C. Code Ann. § 15-78-70(a). Thus all of Plaintiff's claims are governed by the SCTCA, including its statute of limitations in § 15-78-110. That section provides that:

> "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered . . .."

See, S.C. Code Ann. § 15-78-110; *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).

The actions of which Plaintiff complains took place on May 19, 2005. According to the facts set forth in the Complaint, Plaintiff entered into a plea agreement, which he later had overturned and set aside on October 3, 2007. However, Plaintiff did not institute this action until April of 2013, almost six years after the events complained of. Because Plaintiff did not commence an action within two years after the date the loss was discovered, the action is forever barred according to § 15-78-110.

D) Frivolous Civil Proceedings Sanctions Act

This Court further finds that Plaintiff is subject to the South Carolina Frivolous Proceedings Sanctions Act ("FCPSA") and imposes sanctions upon him. Defendants requested sanctions in the form of attorney's fees and costs they have incurred in defending the above-captioned matter, which Defendants contend is frivolous. Defendants further requested that Plaintiff be enjoined from filing additional pleadings regarding the same set of facts as the current lawsuit, and the two that were previously dismissed. This Court finds that such remedies are well within the inherent authority of the Court, and are appropriate under these circumstances.

This Court acknowledges that Plaintiff is *pro se*; however, lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as

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an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001). Furthermore, the Plaintiff had already been put on notice, in the Order dismissing his 2011 civil action, that his attempts to relitigate these facts, despite the dismissal and the affirmation of that dismissal through the appeals courts, that his claims were legally flawed, and therefore he was not ignorant of those facts.

Further, the applicable law specifically provides that *pro se* plaintiffs are subject to the FCPSA. Under the FCPSA, "sanctions may be awarded under section 15–36–10 regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned under the terms of the FCPSA." *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2012).

Specifically, the FCPSA provides:

> An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:
>
> (a) filing a frivolous pleading, motion, or document if:
>
> (i) the person has not read the frivolous pleading, motion, or document;
>
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
>
> (iv) a reasonable attorney presented with the same

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> circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
>
> (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
>
> (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

See, S.C. Code Ann. § 15-36-10(A)(4)(a)-(c) (Supp.2012). This Court finds that Plaintiff has violated the FCPSA. Specifically, Plaintiff has filed this Complaint after his two, previous, identical complaints had been dismissed. Any reasonable plaintiff in these "circumstances would understand that under the facts his claim was clearly not warranted under existing law" and made frivolous arguments that were not supported by the facts. *Id.* This is especially true in this case, because the Plaintiff had already been informed, by this very Court in its Order dismissing his 2011 lawsuit, that the claims at issue were legally flawed and time-barred by the applicable statute of limitations.

"The determination of whether attorney's fees should be awarded under the Frivolous Proceedings Act is treated as one in equity." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). "In reviewing the award in issue, this Court may take its own view of the preponderance of the evidence." *Id.* Moreover, "the decision whether to impose sanctions under the FCPSA is a decision for the judge, not the jury, it sounds in equity rather than at law." *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).

The Court has considered the matter, and finds that sanctions are appropriate. No litigant, *pro se* or not, should be allowed to subject other parties to the costs of defending

litigation of the same factual claims on multiple occasions. In this case the Plaintiff first sued the Defendants regarding these facts in 2008. That lawsuit was dismissed. The Plaintiff appealed the dismissal to the Court of Appeals, where the dismissal was affirmed. The Plaintiff then petitioned the South Carolina Supreme Court for a writ of certiorari, which was denied. Apparently dissatisfied with the dismissal and the affirmation of the dismissal through the appellate process, the Plaintiff chose to re-file the exact same claims, based on the exact same facts, against the exact same Defendants in 2011. This Court subsequently dismissed the 2011 lawsuit, and set forth, clearly and distinctly, in the Order of dismissal the various ways in which the Plaintiff claims were legally flawed. The Plaintiff then appealed the dismissal of the 2011 case to the Court of Appeals, where the dismissal was affirmed. He then petitioned the South Carolina Supreme Court for a writ of certiorari, which was denied.

Despite the fact that the Plaintiff had filed the exact same claims, based on the exact same facts, on two separate occasions, and the fact that on both occasions his lawsuits had been dismissed, and those dismissals had been upheld on appeal, the Plaintiff filed his claims for a third time against the exact same Defendants. Such a pattern shows a clear disdain for the judicial process. It wastes the Court's resources, and frivolously subjects the Defendants to costs and fees to defend the repetitive litigation. The Court finds that this is a prime example of a scenario where sanctions are appropriate. At this point the Plaintiff's recalcitrant efforts to continue to litigate claims that have been repeatedly dismissed are undoubtedly frivolous and are potentially malicious. This Court will not simply sit by and allow the Plaintiff to continue to abuse the judicial system and subject the Defendants to the unnecessary burden and expense of continuing to have to re-litigate these matters, and therefore this Court hereby **GRANTS** the Defendants request for sanctions, and hereby **GRANTS** the Defendants request for an injunctive

Order preventing the Clerk of Court from hereafter filing any pleadings from the Plaintiff regarding the matters set forth in Civil Action Nos. 08-CP-02-887, 11-CP-02-1480, or 14-CP-02-879. The Plaintiff shall pay, as a sanction, the costs and fees incurred by the Defendants, as set forth in the Affidavit of Costs provided to the Court, in the amount of eight hundred, twenty-five dollars and no cents ($825.00).

The Plaintiff shall remit payment of these sanctions directly to Davidson & Lindemann, P.A. as attorneys for Aiken County, and shall do so within thirty (30) days of the date of this Order. The Plaintiff is specifically cautioned that failure to comply with this Order, and failure to satisfy the sanctions imposed herein, will potentially subject him to additional sanctions for contempt of court.

CONCLUSION

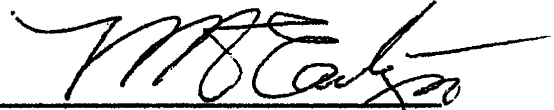
This Court finds that Plaintiff's Complaint, on its face, and in taking the allegations in the complaint most favorable to Plaintiff, fails as a matter of law to state a cause of action against Defendants. As such, the Court agrees, as is set forth in detail herein, with the Defendants that the Plaintiff's Complaint should be dismissed pursuant to Rules 12(b) and 56, SCRCP.

IT IS THEREFORE ORDERED that the motion to dismiss, or in the alternative for summary judgment, filed on behalf of the Defendants be, and hereby is, **GRANTED**, and that Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE.**

IT IS FURTHER ORDERED that Plaintiff's Complaint is frivolous and Plaintiff is to pay Defendants eight hundred, twenty-five dollars and no cents ($825.00) as a sanction pursuant to the FCPSA, which represents the fees incurred in the defense against Plaintiff's Complaint.

IT IS FURTHER ORDERED that the Clerk of Court of Aiken County shall refrain from filing any additional Complaints, or other Pleadings, that are related to the matters set forth in Civil Action Nos. 08-CP-02-887, 11-CP-02-1480, or 14-CP-02-879.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Presiding Circuit Court Judge

Dated: Aug. 28, 2014
Bamberg, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

Carlton E. Cantrell,)
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☐ Plaintiff,)
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v.)
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Aiken County, Aiken County Animal Control Director, Shirley Hardin, Aiken County Animal Control Officer Bobby Arthurs, and Judge Charles T. Carter,)
)
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IN THE COURT OF COMMON PLEAS

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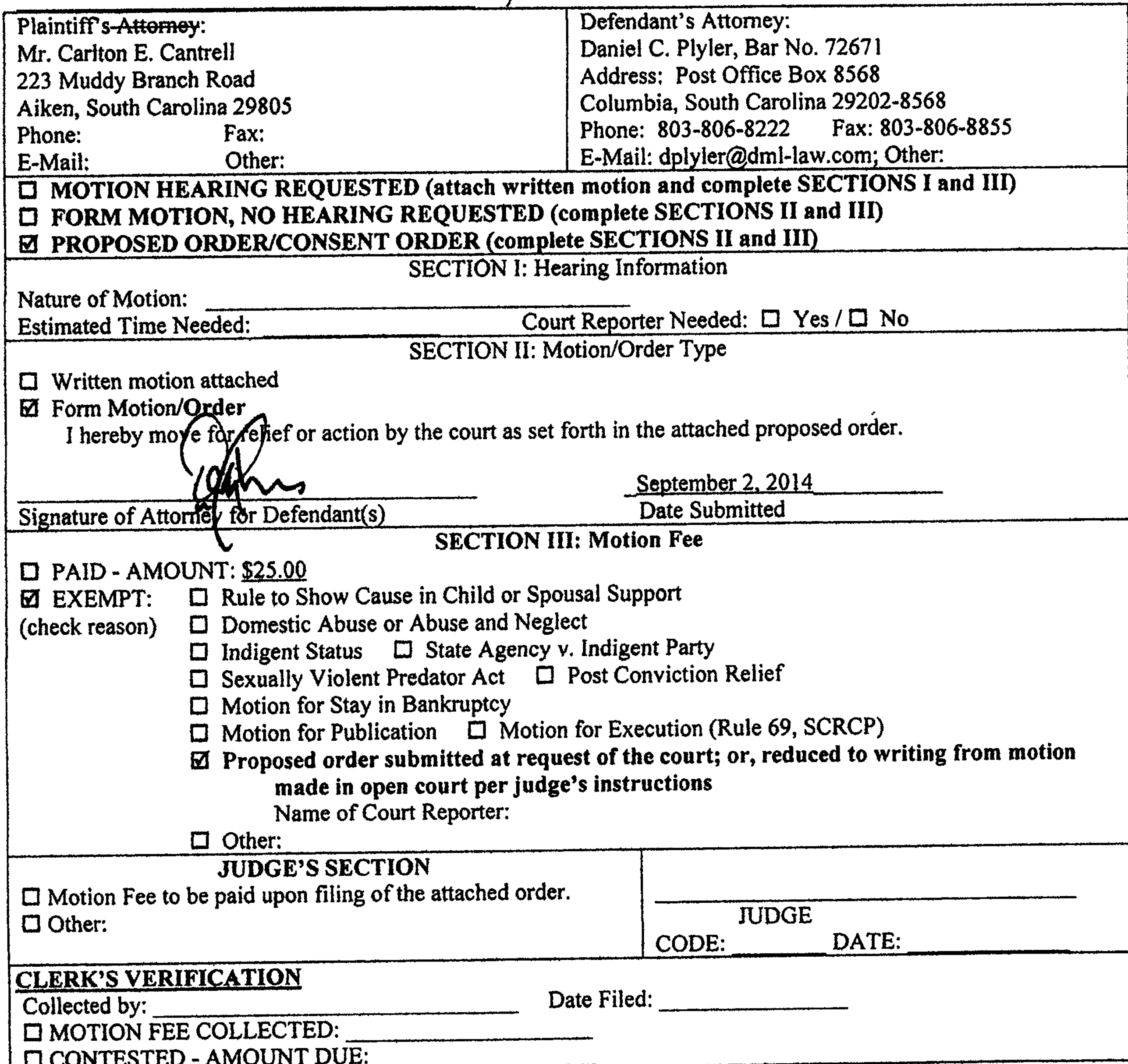
Civil Action No. 2014-CP-02-879

ORDER INFORMATION FORM COVER SHEET



Plaintiff's ~~Attorney~~:	Defendant's Attorney:
Mr. Carlton E. Cantrell	Daniel C. Plyler, Bar No. 72671
223 Muddy Branch Road	Address: Post Office Box 8568
Aiken, South Carolina 29805	Columbia, South Carolina 29202-8568
Phone: Fax:	Phone: 803-806-8222 Fax: 803-806-8855
E-Mail: Other:	E-Mail: dplyler@dml-law.com; Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☑ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ______________________
Estimated Time Needed: ______________ Court Reporter Needed: ☐ Yes / ☐ No

SECTION II: Motion/Order Type

☐ Written motion attached
☑ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

______________________ (signature) September 2, 2014
Signature of Attorney for Defendant(s) Date Submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: $25.00
☑ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☑ **Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions**
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION
☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

____
JUDGE
CODE: ________ DATE: ________

CLERK'S VERIFICATION
Collected by: ______________________ Date Filed: ____________
☐ MOTION FEE COLLECTED: ______________
☐ CONTESTED - AMOUNT DUE: ______________

SCCA/233 (11-03)