

THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, JR., Circuit Court Judge

Civil Action No. 13-CP-40-2306

RECEIVED

OCT 28 2014

SC Court of Appeals

Basil W. AKBAR

Appellant,

v.

South Carolina Department of Corrections

Respondents,

APPELLANT'S PETITION FOR REHEARING, AND
OBJECTIONS TO COURT'S ORDER OF DISMISSAL

The Appellant respectfully object to this Honorable Court's
ORDER dated filed October 20, 2014, Received October 22, 2014.

OBJECTIONS

The Appellant submits that Remittitur should be stayed, for the
following Good Cause shown:

- * Appellant believes he had complied to Order, SEI, Appellant's
Designation of Matter dated March 17, 2014; Certificate of Service
dated January 28, 2014; and, Supplemental Record on Appeal dated
July 30, 2014, and
- * Pursuant to Rule 6(b)(1), (2), and Rule 15, SCRCV. PROC..
- * That Judgment be set aside, and Remittitur stayed in the interest
of Justice, pursuant to Rule 15, and 60(b), SCRCV.; and Rule 221(b), SCACR..

- * Due Diligence exercised by Appellant, under circumstances, untrain in procedure; filed volume (over 50 pages) of documents regards to Designation of Matter; and currently requesting copies of documents not in files from Lower Court's Clerk Office.
- * Excusable Neglect due to singular noted circumstance, seeks relief pursuant to Rule 60(b), SCRPC, where Appellant attempted to meet requirements.
- * Appellant respectfully believe the Court's Order to be excessive, when Respondent merely alleges Appellant fail to include all material Designation of matter technicality, without specificity. However, for caution the Appellant submits ANNEX documents. [Rule 15, SCRPC].

The Appellant pray is that he be allotted until November 30, to attain any remaining documents from the Richland County Clerk of Court Office not in Appellant's possession, and grant Appellant's Petition for Rehearing / stay Remittitur.

Date: October 27, 2014

Respectfully Submitted

Basil W. Akbar

Basil W. Akbar, 065498
 Lee County Corr. Inst.,
 990 WISSACKY Hwy, Flo. 2213-S
 Bishopville, S.C. 29010

THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-2306

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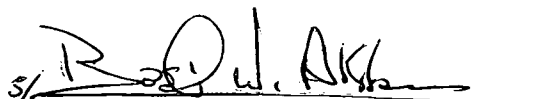
South Carolina Department of Corrections

Respondents,

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of, Defendant's answers to Plaintiff's Interrogatories and Request for Production of Documents; Defendants' answers to Plaintiff's Request for Admission; Notice of Motion and Defendants' Motion for Summary Judgment; Defendants' answers to Plaintiff's second Interrogatories and Request for Production of Documents; Memorandum of Law in support of Defendants' Motion to Dismiss and for Summary Judgment; and Appellant's Petition for Rehearing, and Objections to Court's Order of Dismissal, has been served on Counsel of Record, by the United States Postal Service prepaid at: Daniel R. Settano, Attorney, 1303 Blanding Street, Columbia, S.C. 29202.

Date: October 27, 2014


Basil W. Akbar, 065498
Lee County Corr. Inst.,
990 Wisacky Hwy., Fl. 2213-S
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar, #065498)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Corrections,)
 Bill Byers, Martha Roof, Debrah Long,)
 Lisia Johnson, Ann and John Doe,)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS

C/A No: 2013-CP-40-0301

RECEIVED

OCT 28 2014

SC Court of Appeals

**DEFENDANTS' ANSWERS TO
 PLAINTIFF'S INTERROGATORIES
 AND REQUEST FOR PRODUCTION
 OF DOCUMENTS**

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

Defendants hereby respond to Plaintiff's Interrogatories and Request for Production of Documents pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure as follows:

1. On July 18, 1979 thru April 8, 1982, the Plaintiff were authorized to participate in Community Work Release Programs by the South Carolina Department of Corrections (SCDC) Director to work at paid employment. If so, produce copy of the then promulgated policies and regulations used to administer the programs.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this Request because it is vague and ambiguous as written; it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library. If Plaintiff requires access to a prior policy, he can request that these policies be made available at his institution's law library.

2. Provide complete copy of any and all SCDC's Financial Accounting Branch Business Office Records Relating to the Plaintiff Basil W. Akbar's [#065498] Work Release

EFF

Paid Employment Programs, Archives Records Produced to Micro-Fiche Record, or stored electronically for examination, audit and inspection to include but not limited to:

- a. any and all SCDC's Accountence deductions from gross wages.
- b. authorized percentage(s) of funds held from each pay check.
- c. total amount of wages held in Long Term Saving Interest bearing escrow account #065498.
- d. history of interest drawn on Work Release Escrow Account #065498.
- e. Complete history of status, balance of account, and dates of any withdrawl from account #065498.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted due to safety concerns. Notwithstanding these objections, there is no such account under Plaintiff's name or SCDC number. Further, any documents regarding Plaintiff's pay from 1979 through 1982 would be very difficult if not impossible to locate as it has been more than thirty years since that time. Therefore, Defendants object to this request as unduly burdensome.

3. Copy of the SCDC's Lee county West Yard Prison Industries Agreement, entered/signed by the Plaintiff September 3, 2008.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

4. Copy of the General Operating Procedures for Lee C.I. West Yard Prison Industries.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

EF

5. Complete Copy of Plaintiff's Lee County [2008] Prison Industries work production and evaluation reports.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

6. Complete copy of any and all Incident Reports, Investigation Reports, and EWC write-up, regarding the Plaintiff's termination from Lee County Prison Industries Rehabilitation Work Program.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

7. Names and SCDC number of the six (6) West Yard Prison Industries Inmate Workers terminated on or about March 14, 2009, upon order of Larry Clutter that included Plaintiff.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants. Defendants further object to this interrogatory to the extent that it implicates privacy rights of other inmates.

8. Complete copy of any and all evidence relied upon that the Officials believes constituted Plaintiff's termination, and.

ESK

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

9. Complete copy of any and all evidence relied upon that include witness statements and/or Reports in support of termination.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

10. Current mailing address of pro se Defendants, Leon Visintainer former SCDC's Prison Industries Operation Manager; Larry Clutter former Lee C.I. Prison Industries Supervisor; and former Lee C.I. Wardeh Anthony Padula.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant also objects to this Interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted, as its production would jeopardize the safety of these individuals and their families. Additionally, these individuals are not currently Defendants in this action, as the Court has not yet ruled on Plaintiff's Motion to File a Supplemental Complaint.

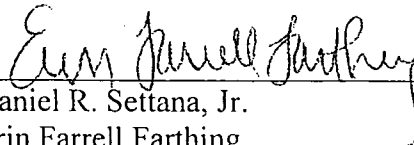
11. Has SCDC allowed inmates while incarcerated to make withdrawal from their Long Term Savings Account? If so, when, and what circumstances.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this Interrogatory because it is vague and ambiguous as written; it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome.

ER

12. Provide copy of criteria, policy, related directive, and application for withdrawal from Long Term Savings by incarcerated inmates.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this request to the extent it seeks information or documents not in the possession, custody or control of Defendants. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library.



Daniel R. Settana, Jr.
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P.O. Drawer 7217
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(803) 256-4645
Attorneys for Defendants

Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Basil W. Akbar, #065498)
)
Plaintiff,)
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v.)
)
South Carolina Department of Corrections,)
Bill Byers, Martha Roof, Debrah Long,)
Lisia Johnson, Ann and John Doe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-40-0301

**NOTICE OF MOTION AND
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

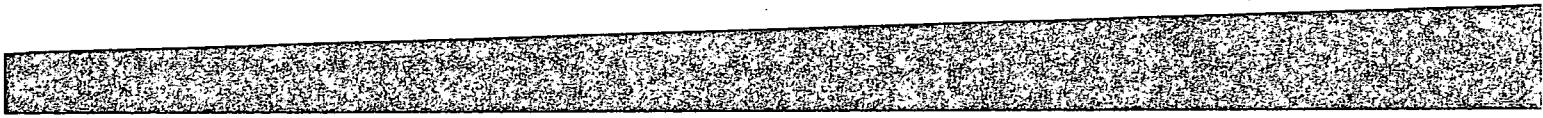
TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorneys, will move the Court for an Order granting them summary judgment in this case pursuant to the grounds set forth in this Motion. Said Motion will be heard on August 7, 2013 or at other such time and place as may be set by the Court in the Court of Common Pleas for Richland County, of which you will be notified.

The Defendants move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting the Defendants' Summary Judgment and dismissing the case against them on the grounds that the pleadings, discovery, and material on file show that there is no genuine issue as to any material fact, and they are entitled to judgment as a matter of law for the following reasons:

1. The Plaintiff fails to state a cause of action under the Constitution and laws of the United States or the State of South Carolina; the claims are frivolous and without merit; there is no genuine issue as to any material fact; and the Complaint does not state a claim upon which relief can be granted;

EAP



2. Defendants Byers, Roof, Long, and Johnson are immune from suit pursuant to the doctrine of qualified immunity;

3. Defendants are immune from suit pursuant to the doctrine of sovereign immunity;

4. Plaintiff has improperly named as Defendants individual employees of a governmental entity, who were acting, at all times relevant herein, within the course and scope of their employment with the South Carolina Department of Corrections ("SCDC"), a governmental entity and agency of the State of South Carolina. Pursuant to S.C. Code Ann. Sections 15-78-70 and 15-78-200, when bringing an action against a governmental entity or against an employee acting on behalf of a governmental entity, only the agency or political subdivision shall be named as defendant. If an employee is individually named in a suit, the governmental entity shall be substituted for that employee. The individually named Defendants in the present action were acting as agents and employees of the SCDC at all times relevant herein and therefore the proper entity to defend this matter is the SCDC. Further, SCDC is immune from suit pursuant to S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (17), (20), (23) and (25).

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5. Plaintiff failed to exhaust his readily available administrative and state court remedies prior to initiating this action.

6. Plaintiff's remedy, if any, lies exclusively within the jurisdiction of the Administrative Law Judge Division, pursuant to the holdings of *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), *Sullivan v. South Carolina Dep't of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003) and their progeny.

Ironical that Defendants asserts that Plaintiff's Remedy lies exclusively within Administrative Law Judge Division structure of the Dept. Admin. of Justice. Pursuant to *Al-Shabazz* when they inhibited/restricted use...

7. Plaintiff has failed to plead or establish the prerequisites for injunctive relief.

8. Plaintiff's claims are barred by res judicata and/or collateral estoppel.

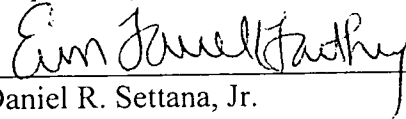
9. Plaintiff's claims are barred by the applicable statute of limitations.

When unsupported defense addresses a subject reaches beyond interference with judicial process, it is obstruction of governmental administration.

EFF

This Motion is supported by the pleadings in the case, the South Carolina Rules of Civil Procedure, the South Carolina Tort Claims Act, the statutory and case law of the United States of America and the State of South Carolina, the affidavits of Noel Hebert, Ann Hallman, Janice Kenealy, the attached exhibits, and any such other and further documents as this court may accept for filing.

Respectfully submitted,



Daniel R. Settana, Jr.

Erin Farrell Farthing

McKay, Cauthen, Settana & Stublely, P.A.

1303 Blanding Street

P. O. Drawer 7217

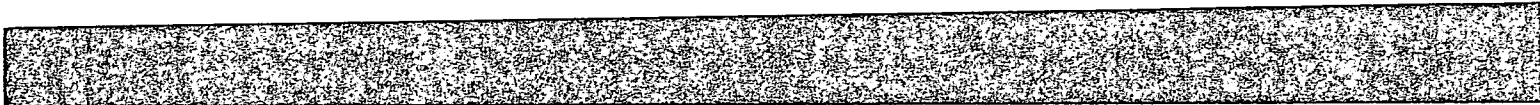
Columbia, SC 29202

(803) 256-4645

Attorneys for Defendants

Columbia, South Carolina

July 22, 2013



STATE OF SOUTH CAROLINA)
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Basil W. Akbar,)
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Bill Byers, Martha Roof, Debrah Long,)
Lisia Johnson, Ann and John Doe,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-40-0301

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS AND FOR
SUMMARY JUDGMENT**

FACTS

Plaintiff Basil W. Akbar, #310671 ("Plaintiff") is presently confined to the Lee Correctional Institution of the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. Plaintiff was convicted of murder September 1971. (See Exhibit A). Plaintiff received a life sentence, but is eligible for parole. Plaintiff was released on parole in or around April 1981. Plaintiff was arrested for a number of drug offenses, and his parole was revoked in 1985. (See *Id.*). At that time, Plaintiff was returned to the custody of the SCDC, where he has been held since that time, and is currently serving the remainder of his life sentence. (See *Id.*).

In his Complaint, which Plaintiff contends has been brought pursuant to the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.*, Plaintiff alleges that he was employed in an SCDC Work Release Program from July 1979 through April 1981¹, and that, during that time weekly deductions were taken for "Mandatory Long Term Escrow Savings

¹ Plaintiff's records actually indicate Plaintiff was employed in an SCDC work program from in or around March 1980 until in or around April 1981 (See Exhibit A and Affidavit of Noel Hebert).

1 EFF

Account" and for room and board. Plaintiff contends that, at the time of his release on parole in 1981, the balance of his escrow account was not released.

While Plaintiff was returned to the custody of the SCDC in 1985, Plaintiff apparently did not inquire regarding the funds he alleges he did not receive until October 2008. Plaintiff filed three separate grievances regarding these alleged funds in 2009 and 2010, but each were unprocessed as untimely. (See Exhibit B). Plaintiff appealed the decision from one of these grievances to the South Carolina Administrative Law Court, but his appeal was dismissed by Order dated April 28, 2011 based on Plaintiff's failure to exhaust his administrative remedies. (See Exhibit C). There is no indication that the Plaintiff appealed that decision.

The Plaintiff filed the present action on January 16, 2013. Defendants filed a Motion to Dismiss on February 27, 2013, as well as a Motion to Strike Plaintiff's claims for punitive damages under S.C. Code Ann. §5-78-120(b). In addition to the Motion to Dismiss, Defendants also filed a Motion for Summary Judgment on all allegations within Plaintiff's Complaint. While Defendants' Motions are based on a number of grounds, the primary grounds for those Motions are that Plaintiff failed to file his Complaint within the statutorily prescribed period of time, and therefore should be barred by the applicable statute of limitations, and that Plaintiff has failed to set forth a claim against Defendants. This memorandum is submitted in support of those Motions.

Claims filed within one year after the loss with Budget and contract Board - should have been discovered [§15-78-80(d)].

LEGAL ARGUMENT

1) Plaintiff's Claim is Barred by the Two-Year Statute of Limitations for Causes of Action Arising Under the South Carolina Tort Claims Act

Under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 to -220, a claimant must commence an action for damages within two (2) years after the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110. According to the statute, "loss" is

This statute also states unless the action is commenced within three years of the date the loss was or should have been discovered SEE §15-78-80(d), "Verified Claim"

defined as "bodily injury, disease, death, or damage to tangible property, **including lost wages and economic loss** to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm." S.C. Code Ann. § 15-78-30(f) (emphasis added).

Under the discovery rule, "the statute of limitations does not run from the date of the negligent act, but from the date when the *injury* resulting from the wrongful conduct either is discovered or *may be* discovered by the exercise of reasonable diligence." *McClain v. Jarrard*, M.D., 354 S.C. 218, 220, 580 S.E. 2d 763, 764 (S.C. App. 2003) (citing *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (S.C. App. 1989)); see also *Strong*, *supra*; *Knox v. Greenville Hosp. System*, 608 S.E.2d 459 (S.C. App. 2005); *Arant v. Kressler*, 489 S.E.2d 206 (1997); *Preer v. Mims*, 476 S.E.2d 472 (1996); *Anderson v. Short*, 476 S.E.2d 475 (1996).

The date on which discovery should be made is an objective, not subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). In other words,

whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. South Carolina Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). The fact that the injured party does not comprehend the full extent of his injuries is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). "The statute of limitations is not tolled during the period of time in which a plaintiff is merely unaware of the extent of an actionable injury." *Young v. South Carolina Dept. of Corr.*, 333 S.C. 714, 720, 511 S.E.2d 413, 416 (Ct.App.1999).

In applying this reasonable diligence analysis under the discovery rule, the Court stated, "an injured party must act with some promptness where facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of his had been invaded or that *some claim against another party might exist.*" *McClain v. Jarrard, M.D.*, 354 S.C. 218, 580 S.E. 2d 763 (S.C. App. 2003), *citing Strong, supra*. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery is developed. *Id.*; *see also Garner*, 312 S.C. at 485, 435 S.E.2d at 849.

In the present case, the Plaintiff contends, without any evidence in support, that a portion of the wages he earned from 1979-1981 were withheld by the SCDC in an escrow account. Plaintiff further contends that the funds contained in this account should have been disbursed to him upon his release on parole in 1981, but that they were not. Plaintiff did not file the present lawsuit until January 16, 2013, more than 30 years after any cause of action he may have arising out of his allegations accrued.

Further, while Plaintiff contends that he was only informed "for the first time 'February 9, 2009'" that he did not have a "Work Center" funds account, Plaintiff has not attributed for why he waited 27 years after he was released on parole, and 23 years after he was placed back into the custody of the SCDC to inquire into these funds.² Further, Plaintiff still did not file the present lawsuit until almost four years after he was informed that he did not have a "Work

Center" funds account. * Courts has held that in custody does not refer just to physical confinement, but also to parole served as part of a sentence. *See Jones v. Cunningham*, 397 U.S. 236, 83 S.Ct. 373; *Wilson v. Flaherty*, 689 F.3d 332 (4th Cir. 2012).

² Further, the fact that the Plaintiff waited more than 30 years after he alleges he should have received the funds in his escrow account has greatly prejudiced Defendants and put them at a significant disadvantage in trying to defend this action. Plaintiff has provided no evidence whatsoever that any such account ever existed, nor has he set forth the alleged amount of any funds in this alleged account. Any documentation regarding any wages earned by Plaintiff from 1979 to 1981, if it even still exists, would be very difficult or impossible to locate now, more than 30 years later.

5 yrs. UNDER SUPERVISION.

CROOKS V. SANDERS, 115 SE 760; *SANDERS V. MAC DOUGALL*, 135 SE2d 836 (1964),
PRISON UPON RELEASE ON PAROLE CONTINUE TO SERVE HIS SENTENCE OUTSIDE THE PRISON
WALLS... IN LEGAL CUSTODY UNTIL THE EXPIRATION OF HIS SENTENCE...

It is clear that any cause of action Plaintiff might have had based on the allegations sent forth in his Complaint arose well more than two years prior to the commencement of the lawsuit. Therefore, Plaintiff's claims are barred by the applicable statute of limitations.

2) Plaintiff's claims are based on a statute that was not in effect in 1981

Plaintiff's basis for his belief that a portion of his wages from 1979 through 1981 was withheld and maintained in an escrow account to be distributed to him on his release appears to be S.C. Code Ann. §24-3-40. Section 24-3-40 dictates the disposition of wages of prisoners allowed to work at paid employment. Specifically, §24-3-40(A) as currently written sets forth that the wages are to be paid directly to the Director of the SCDC, who shall make certain deductions from the prisoner's gross wages, including restitution, victim assistance programs, child support, etc. Section 24-3-40(5) as currently written provides that "[t]en percent must be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40 (B),

as currently written sets forth how the funds maintained in a prisoner's escrow is to be returned to the prisoner. *MARCH 6, 1966, LEGISLATION WAS SIGNED INTO LAW ENABLING THE DEPT. OF CORRECTIONS TO IMPLEMENT WORK PROGRAMS WHICH PERMITTED INMATES TO WORK IN THE COMMUNITY ON JOB. "TITLE 24 OF 1976 S.C. CODES OF LAW"...*

The Plaintiff has provided no evidence that this provision, or any similar law, was in effect at the time Plaintiff allegedly earned his wages in 1979 to 1981. Further, the version of §24-3-40 that was enacted in 1994 did not include any provision regarding withholding any amount of an inmate's wages for an escrow account. The 1994 version provided that:

Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404'. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate

and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner. No prisoner who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program. (See Exhibit D).³

Therefore, it appears there was not any statutory requirement for SCDC to make such withholding.

Plaintiff has failed to establish that Plaintiff has not provided any evidence that any amount of his wages in 1979 through 1981 were withheld and placed in an escrow account. Further, if Plaintiff had any funds remaining from his work program, it would be contained within a work center account with the SCDC. See Affidavit of Noel Hebert. Plaintiff's records reflect that he does not have any funds in a work center account with the SCDC. See *Id.* In fact, he does not have a work center account with the SCDC, and has not had one since at least 1994. See *Id.* Therefore, Plaintiff has failed to establish that Defendants, or any other employees of the SCDC, withhold or misappropriated any of Plaintiff's wages, and his suit should be dismissed.

3) Individual Defendants under the Tort Claims Act

Finally, Defendants have also moved that, should the Court choose not to dismiss the Plaintiff's case outright, the individual Defendants be dismissed from the case pursuant to the provisions of the South Carolina Tort Claims Act. Under S.C. Code Ann §§ 15-78-70 and 15-78-200, all individually named defendants must be dismissed from the suit and the agency substituted in their place for all actions taken by defendants "while acting within the scope of the

³ The version of §24-3-40 enacted in 1996 also did not have any requirement that any portion of a prisoner's wages be withheld in an escrow account. (See Exhibit E). It appears that the first version of §24-3-40 to include a requirement that a portion of a prisoner's wages be withheld in an escrow account was in the version enacted in 1999 (See Exhibit F).

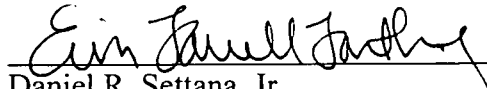
employee's official duty." *Faile v. South Carolina Dept. of Juvenile Justice*, 566 S.E.2d 536 (2002).

In the present case, it is clear that all of the individually named Defendants were officials and employees of the State of South Carolina and the Department of Corrections at the time alleged in the Complaint, they were acting within the scope of their employment, and they were exercising the discretion necessary to carry out their respective duties. Therefore, the proper entity to defend this matter is the South Carolina Department of Corrections. Since SCDC is already one of the named parties to this lawsuit, the individually named Defendants should be dismissed and SCDC be left as the only Defendant to this action.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that this Court grant their Motion to Dismiss or their Motion for Summary Judgment.

Respectfully submitted,



Daniel R. Settana, Jr.

Erin Farrell Farthing

McKay, Cauthen, Settana & Stublely, P.A.

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(803) 256-4645

Attorneys for Defendants

Columbia, South Carolina
July 31, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Basil W. Akbar, #065498

Plaintiff,

v.

South Carolina Department of Corrections,
Bill Byers, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe,

Defendant.

) IN THE COURT OF COMMON PLEAS

) C/A No: 2013-CP-40-0301

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**DEFENDANTS' ANSWERS TO
PLAINTIFF'S SECOND
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS**

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

Defendants hereby respond to Plaintiff's Interrogatories and Request for Production of Documents pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure as follows:

1. Names and addresses of SCDC's Financial Branch Accountant, Manager(s) responsible for overseeing Inmates Escrow Work Release Long Term Savings Account, between 1979 thru 1985.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant also objects to this Interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted, as its production would jeopardize the safety of these individuals and their families.

2. Complete copy of SCDC's Policy # ADM-15.12 Employee account; and relate Adm-15.12 regulations in effect between 1979 thru 1985.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object because Defendants are informed and believe that the

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Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library. Further, Defendants are unaware of any such policy for the dates of 1979 through 1985.

3. Complete copy of duty and description of Inmate Grievance clerk; and Administrative Grievance Coordinator.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this request because it is vague and ambiguous as written, and Defendants are unable to determine what Plaintiff is seeking. Defendants further object to this request as it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome

4. Complete Copy of SCDC's Grievance Policy #GA-01.12.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library.

5. Is there a written SCDC Policy that requires procedural time limit/allotted time to exhaust preliminary informal resolution, if so, produce complete copy.

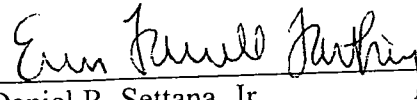
RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Notwithstanding this objection, see the SCDC's Grievance Policy, #GA-01.12, and see Defendants' Response to Plaintiff's Request number 4 above.

6. State concisely with specificity what event, explanation, and justification marks the time, or place of alleged incident relied on that the defendants believe justify agency posture; and produce documented evidence.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case.

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Defendant further objects to this request because it is vague and ambiguous as written, and Defendants are unable to determine what Plaintiff is seeking.



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Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Basil W. Akbar, #065498)
)
Plaintiff,)
)
v.)
)
South Carolina Department of Corrections,)
Bill Byers, Martha Roof, Debrah Long,)
Lisia Johnson, Ann and John Doe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No: 2013-CP-40-0301

**DEFENDANTS' ANSWERS TO
PLAINTIFF'S REQUEST FOR
ADMISSION**

Not considered relevant by Recorder general's issue 5 (d) dispute exist

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

Defendants hereby respond to Plaintiff's Request for Admission pursuant to Rule 36 of the South Carolina Rules of Civil Procedure as follows:

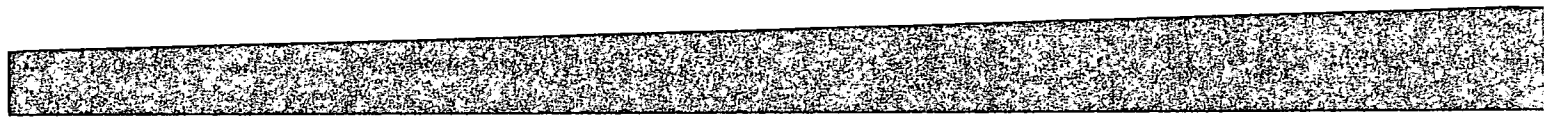
1. Admit that between July 1979 thru April 1981, Basil W. Akbar (hereinafter, Akbar), was assigned to SCDC's Work Release Programs, and employed at Owens Electric & Steel Co.; and weekly deductions were taken for Mandatory Long Term Escrow Savings Account.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny the allegations as worded. Defendants reserve their right to supplement their answer should Defendants receive additional documentation regarding this matter.

!! No !!

2. Admit that balance of Escrow Account was released or transferred to Akbar's general account on April 8, 1981 date of release on provisional parole.

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RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny the allegations as worded. Defendants reserve their right to supplement their answer should Defendants receive additional documentation regarding this matter.

3. Admit that on October 22, 2005, Akbar initiated correspondence with SCDC's Financial Business Office [Ms. M. Roof], and forward a second request on December 1, 2008. *also on July 7, 2009*
Request was answered with unrelate set of facts by Ms. D/ Long.

new Proof
RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendants finally object to the extent that this Request calls for speculation and calls for information Defendants do not have in their possession. Subject to and notwithstanding these objections, to the extent a response to required, Defendants admit only so much of the allegations of Request to Admit number 3 as would allege that Plaintiff wrote a Request to Staff to Defendant Roof in December 2008, and that Plaintiff received a response to this Request to Staff dated June 18, 2009. Defendants deny the remaining allegations of Request to Admit number 3.

4. Admit that on July 2, 2009, Akbar forwarded a third request via certified mail to [Ms. D. Long & Ms. M. Roof], pursuant to S.C. Code §§30-40-10, et.], has not been responded to.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendants finally object to the extent that this Request calls for speculation and calls for information Defendants do not have in their possession. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny this Request for Admission at present. Defendants reserve their right to supplement their answer should Defendants receive additional documentation regarding this matter.

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5. Admit that on August 17, 2009, Akbar filed a Step 1 grievance, and returned unprocessed, by Ms. L. Johnson, citing, SCDC Policy GA-01.12, "You have 15 days from the date of the alleged incident to file a grievance on this issue."

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants admit only so much of the allegations of Request to Admit number 5 as would allege that Plaintiff filed a Step 1 grievance on August 17, 2009, that this grievance was returned to Plaintiff unprocessed because of Plaintiff's failure to comply with SCDC policy, and that, in the response to this grievance, Plaintiff was advised that, pursuant to SCDC policy GA-01.12, Plaintiff had "fifteen days from the date of the alleged incident to file a grievance on this issue." Defendants deny any remaining allegations of Request to Admit number 5.

Returned unprocessed,

6. Admit that on March 17, 2010, Akbar filed a second Step 1 grievance^v and IGC L. Johnson recommended that Akbar submit request to Ms. Melton Lee C.I. Business office, and.

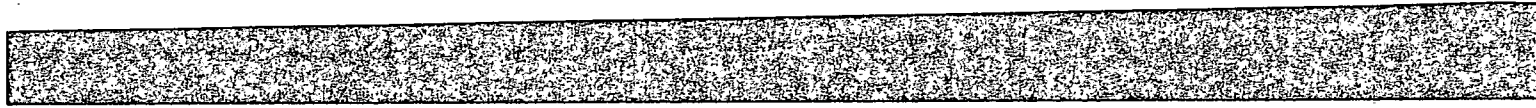
RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants admit only so much of the allegations of Request to Admit number 6 as would allege that Plaintiff filed a Step 1 grievance on March 17, 2010, that this grievance was returned to Plaintiff unprocessed because of Plaintiff's failure to comply with SCDC policy, and that, in the response to this grievance, Plaintiff was advised to contact Ms. Melton in the Business Office to address his concerns. Defendants deny any remaining allegations of Request to Admit number 6.

For

7. Admit that Akbar was informed for the first, that he do not have an account [of] work release center funds... as a result filed a third grievance on April 29, 2010, and returned unprocessed.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and

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misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants admit only so much of the allegations of Request to Admit number 7 as would allege that Plaintiff filed a grievance on April 29, 2010, which was returned unprocessed because of Plaintiff's failure to comply with SCDC policy. Defendants deny the remaining allegations of Request to Admit number 7 as worded.

8. Admit that on June 7, 2010, Akbar filed grievance, #No. Lee.C.I. 1598-10 concerning the IGC L. Johnson impeding access to utilize grievance system in instant matter.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants admit only so much of the allegations of Request to Admit number 8 as would allege that Plaintiff filed a grievance numbered LeeCI 1598-10 on June 7, 2010 which made allegations against Defendant Johnson. Defendants deny the remaining allegations of Request to Admit number 8.

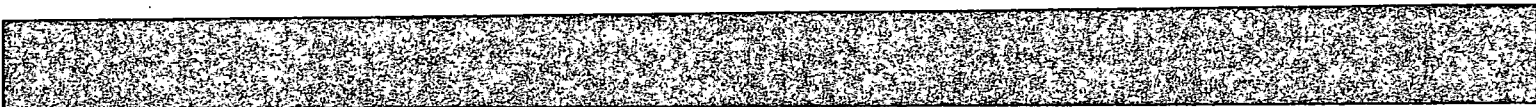
9. Admit that grievance #No. Lee C.I. 1598-10, Agency final response was rendered/returned for grievant signature until April 20, 2011.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny this Request to Admit as worded.

10. Admit that SCDC's grievance policy GA-01.12 Mandate that Grievance be processed within 180 days.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably

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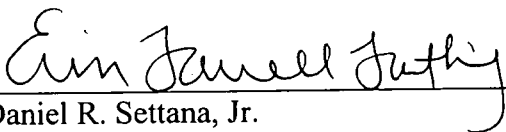
calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny this Request to Admit as worded.

> 11. Admit that Akbar has a statutory liberty interest to his property (money) in SCDC Escrow Account, protected by Due Process Rights.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Finally, Defendants object to this Request to Admit because it calls for a legal conclusion. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny this Request to Admit as worded.

12. Admit that Akbar never closed his work release escrow account and was never servered with notice of alleged closure, or status of account... and that Work Release Long Term savings was deposited into a interest bearing account pursuant to Law.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this Request for Admission on the grounds that it is vague, ambiguous, and misleading. Defendants also object to this request because the information it seeks is neither relevant to the subject matter involved in the pending action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding these objections, to the extent a response to required, Defendants deny this Request to Admit.

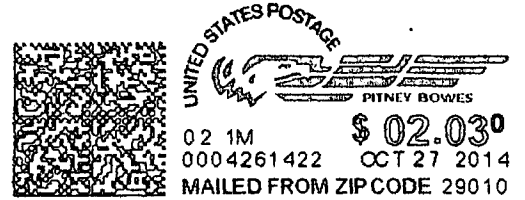


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Columbia, South Carolina
April 4, 2013



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SOUTH CAROLINA COURT OF APPEALS
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THE DEPARTMENT OF CORRECTIONS HAS NOT RECEIVED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR IT. WRITTEN CONSENT IS
REQUIRED.
LEE CORRECTIONAL INSTITUTE
SAC DEPARTMENT OF CORRECTIONS