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Basil W. Akbar, 063498
Lee County Corr. Inst.,
990 Wiscoky Hwy., Flo. 2213-S
Bishopville, S.C. 29010

NOVEMBER 6, 2014

THE HON. V. CLAIRE ALLEN, DEPUTY CLERK
SOUTH CAROLINA COURT OF APPEALS

RE: Basil W. Akbar v. SCDC
Appellate Case No. 2013-002306


Dear Clerk Allen:

I am in receipt of your letter dated November 3, 2014 informing me of deficiency regarding my Petition for Rehearing received November 3, 2014.

Please be advised that though I am an indigent inmate, required filing fee of \$25⁰⁰, is currently being forwarded to you as before from a family member in Houston Texas.

In addition, please find enclosed Certificate of Service, and documents just received from Richland County Clerk of Court on November 4, 2014.

Respectfully Submitted


Basil W. Akbar

RECEIVED

NOV 10 2014

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2013-002306

Basil W. Akbar

Appellant,

v.

South Carolina Department of Corrections

Respondent,

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Respondent's Designation of Matters has been served on Respondent's Counsel of Record in totality to include: Notice of Motion and Motion to Dismiss or in the Alternative; Motion to Substitute Parties; Notice of Motion to Dismiss / Strike Prayer for Punitive Damages; Defendants' Notice of Motion and Motion for Protective Order and to stay Discovery; and Answer of Defendants, by the United States Postal Service postage prepaid, to: Settana, Daniel, Attorney, 1303 Blanding St., Columbia, SC. 29201.

Date: November 6, 2014

Respectfully Submitted


Basil W. Akbar

RECEIVED

NOV 10 2014

SC Court of Appeals

Basil W. Akbar, 065498
Lee County Correction Institution
990 Wiscoky Highway, Eto. 2013-5
Bishopville, S.C. 29010

UNITED STATES POSTAGE
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ATTN:

THE SOUTH CAROLINA COURT OF APPEALS
HONORABLE V. CLAIRE ALLEN, DEPUTY CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA, 29211

NOV 10 2014

SC Court of Appeals
FOREVER



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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar,)
)
 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
 NOV 10 2014
 SC Court of Appeals
 RICHLAND COUNTY
 FILED
 NOV 13 PM 4:43

**ANSWER OF DEFENDANTS
 (Jury Trial Demanded)**

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

Defendants, by and through their undersigned attorneys, not waiving but specifically reserving its right to be heard under all Rule 12 Motions, answering the Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute any cause of action or claim upon which relief may be granted against Defendants and should be dismissed under Rule 12(b)(6).

FOR A SECOND DEFENSE

2. Plaintiff has improperly named as defendants individual employees of a governmental entity, all of whom were acting, at all times relevant herein, within the course and scope of their employment with the South Carolina Department of Corrections, a governmental entity and agency of the State of South Carolina. Pursuant to S.C. Code Ann. §§ 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. All of the individually

named Defendants in the present action were acting as agents and employees of the South Carolina Department of Corrections at all times relevant herein and therefore the proper entity to defend this matter is the South Carolina Department of Corrections.

3. Therefore, to the extent Plaintiff asserts claims under the South Carolina Tort Claims Act, the individually named Defendants must be dismissed from the cause of action pursuant to S.C. Code §15-78-70(c) and -200.

FOR A THIRD DEFENSE

4. Plaintiff has failed to properly serve Defendant and other necessary parties pursuant to Rule 4(d), SCRCP.

5. Defendant pleads insufficiency of process and insufficiency of service of process under Rule 12(b)(4) and (5) SCRCP as defenses, and also moves to dismiss on these grounds.

FOR A FOURTH DEFENSE

6. Defendants assert that Plaintiff's claims are barred by the applicable statute(s) of limitations.

FOR A FIFTH DEFENSE

7. The Defendants are subject to suit only pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-10 *et seq.*

8. Pursuant to Rule 12(b)(6) and S.C. Code Ann. Section 15-78-120(b), all references to punitive and/or exemplary damages and costs sought in the Complaint should be dismissed and stricken since the Plaintiff cannot recover these damages from Defendants and Defendants hereby move for such relief and further asserts this Code Section as an affirmative defense.

FOR A SIXTH DEFENSE

9. The Defendants herein specifically deny each and every allegation contained within the

Complaint not hereinafter either expressly admitted qualified or explained.

10. The Defendants admit only so much of the allegations of Paragraph 1 of the Complaint as would allege that Plaintiff is an inmate and is currently confined to the SCDC.

11. Defendants deny the allegations of Paragraph 2 of the Complaint and demand strict proof thereof.

12. Defendants admit only so much of the allegations of Paragraph 3 of the Complaint as would allege that Defendant Byars is the Director of the SCDC. Defendants deny the remaining allegations of Paragraph 3 as alleged, and demand strict proof thereof.

13. Defendants admit only so much of the allegations of Paragraph 4 of the Complaint as would allege that Defendant Roof is an employee of the SCDC. Defendants deny the remaining allegations of Paragraph 4 as alleged, and demand strict proof thereof.

14. Defendants admit only so much of the allegations of Paragraph 5 of the Complaint as would allege that Defendant Long is an employee of the SCDC. Defendants deny the remaining allegations of Paragraph 5 as alleged, and demand strict proof thereof.

15. Defendants admit only so much of the allegations of Paragraph 6 of the Complaint as would allege that Defendant Johnson is an employee of the SCDC. Defendants deny the remaining allegations of Paragraph 6 as alleged, and demand strict proof thereof.

16. Defendants lack sufficient information to admit or deny the allegations of Paragraph 7 of the Complaint, and therefore deny same and demand strict proof thereof.

17. Defendants deny the allegations of Paragraph 8 of the Complaint as worded, and demand strict proof thereof.

18. Paragraph 9 of the Complaint is a plea directed to the Court, and requires no response from Defendants; however, to the extent a response is required from Defendants, Defendants admit only

that they are subject to the South Carolina Tort Claims Act, and deny the remaining allegations of Paragraph 9 of the Complaint, and demand strict proof thereof. Defendants specifically deny that Plaintiff has any cause of action against Defendants based on any theory contained within Paragraph 9 of the Complaint

19. Defendants admit only so much of the allegations of Paragraph 10 of the Complaint as would allege that Plaintiff was sentenced to life in prison following a plea of guilty to murder in 1971, that Plaintiff was released on conditional parole in April 1981, that Plaintiff's parole was revoked and he was convicted of a number of additional crimes in 1985, and that he was returned to the custody of the SCDC in 1985 where he has remained since. Defendants deny the remaining allegations of Paragraph 10 of the Complaint and demand strict proof thereof.

20. Defendants admit so much of the allegations of Paragraph 11 of the Complaint as would allege that Plaintiff filed grievances 2323-09, 0813-10, 1270-10, and 1598-10 in 2009 and 2010, but deny all remaining allegations of Paragraph 11 of the Complaint and demand strict proof thereof. Defendants specifically deny that those grievances were properly filed or that they complied with SCDC policy, and further deny that Plaintiff has any cause of action against Defendants based on any theory contained within Paragraph 11 of the Complaint

21. Defendants lack sufficient information to admit or deny the allegations of Paragraph 12 of the Complaint, and therefore deny same and demand strict proof thereof.

22. Defendants admit so much of the allegations of Paragraph 13 of the Complaint as would allege that Plaintiff filed grievance number 2323-09 on or around August 17, 2009 and filed grievance number 0813-10 on or around March 17, 2010, that both grievances were returned to Plaintiff unprocessed because of Plaintiff's failure to comply with SCDC policy, and that, in the response to grievance number 0813-10, Plaintiff was advised to contact Ms. Melton in the Business Office to

address his concerns. Defendants deny all remaining allegations of Paragraph 13 of the Complaint and demand strict proof thereof. Defendants specifically deny that those grievances were properly filed or that they complied with SCDC policy, and further deny that Plaintiff has any cause of action against Defendants based on any theory contained within Paragraph 13 of the Complaint

23. Defendants lack sufficient information to admit or deny the allegations of Paragraph 14 of the Complaint, and therefore deny same and demand strict proof thereof.

24. Defendants admit so much of the allegations of Paragraph 15 of the Complaint as would allege that Plaintiff filed grievance number 1270-10 and that this grievance was returned to Plaintiff unprocessed because of Plaintiff's failure to comply with SCDC policy. Defendants deny all remaining allegations of Paragraph 15 of the Complaint and demand strict proof thereof. Defendants specifically deny that this grievance was properly filed or that it complied with SCDC policy, and further deny that Plaintiff has any cause of action against Defendants based on any theory contained within Paragraph 15 of the Complaint

25. Defendants admit so much of the allegations of Paragraph 16 of the Complaint as would allege that Plaintiff filed grievance number 1598-10 on or around June 7, 2010 and that this grievance was denied. Defendants deny all remaining allegations of Paragraph 16 of the Complaint and demand strict proof thereof. Defendants specifically deny that this grievance was properly filed or that it complied with SCDC policy, and further deny that Plaintiff has any cause of action against Defendants based on any theory contained within Paragraph 16 of the Complaint

26. Defendants lack sufficient information to admit or deny the allegations of Paragraph 17 of the Complaint, and therefore deny same and demand strict proof thereof

27. Paragraph 18 of the Complaint can be neither admitted nor denied and the Defendants herein reassert and reallege their answers to the prior allegations of the Complaint as set forth above.

28. Defendants deny the allegations of Paragraph 19 of the Complaint, including all subparts, and demand strict proof thereof.

29. Paragraph 20 of the Complaint can be neither admitted nor denied and the Defendants herein reassert and reallege their answers to the prior allegations of the Complaint as set forth above.

30. Defendants deny the allegations of Paragraph 21 of the Complaint, including all subparts, and demand strict proof thereof.

31. Paragraph 22 of the Complaint can be neither admitted nor denied and the Defendants herein reassert and reallege their answers to the prior allegations of the Complaint as set forth above.

32. Defendants deny the allegations of Paragraph 23 of the Complaint, including all subparts, and demand strict proof thereof.

33. Paragraph 24 of the Complaint can be neither admitted nor denied and the Defendants herein reassert and reallege their answers to the prior allegations of the Complaint as set forth above.

34. Defendants deny the allegations of Paragraph 25 of the Complaint, including all subparts, and demand strict proof thereof.

35. Paragraph 26 of the Complaint is a plea directed to the Court, and requires no response from Defendants; however, to the extent a response is required from Defendants, Defendants deny that Plaintiff.

36. Defendant denies all remaining allegations of the Complaint, including all prayers for damages and relief, and especially punitive damages, and demands that the case be dismissed with prejudice.

FOR A SEVENTH DEFENSE

37. The Complaint fails to state a cause of action against the Defendants.

FOR AN EIGHTH DEFENSE

38. The Complaint fails to state a claim against the Defendants upon which relief can be granted.

FOR A NINTH DEFENSE

39. The Complaint shows on its face that any alleged Federal questions are frivolous and insubstantial.

FOR A TENTH DEFENSE

40. Defendants deny that the matters asserted by the Plaintiff in the Complaint fall within the purview of 42 U.S.C. §1983. The Defendants deny that any constitutional rights of the Plaintiff have been violated and deny that the Defendants are, in any way, responsible for any willful or malicious acts towards Plaintiff.

41. Defendants, at all times relevant hereto, and during the performance or non-performance of the acts alleged in the Complaint, did not, either themselves or through their employees, officers, and employees, perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and Defendants are therefore immune from suit.

FOR AN ELEVENTH DEFENSE

42. Defendants assert that the principle of respondeat superior does not apply to actions brought pursuant to 42 U.S.C. §1983.

FOR A TWELFTH DEFENSE

43. That at all times relevant hereto, the Defendants were acting as or through government employees, engaged in the performance of their official duties, and therefore are immune from liability pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 *et seq.* Defendants are specifically immune pursuant to S.C. Code Ann. §15-78-60(1), (2), (3), (4), (5), (17), (20), (21), (23)

and (25).

44. Further, any damages the Plaintiff suffered, which are hereby denied, would be limited by any cap on recovery as set forth at S.C. Code Ann. §15-78-120.

45. S.C. Code Ann. §15-78-120(b), bars the recovery of punitive damages in actions brought pursuant to the South Carolina Tort Claims Act. Accordingly, Plaintiff cannot recover punitive damages on any state law claims and all claims for such relief should be dismissed.

46. Further, Defendants affirmatively plead and assert all defenses, conditions of recovery, exceptions to waiver of immunity, limitations on liability, statutes of limitations, limitations as to damages and caps as to damages, as set forth in the South Carolina Tort Claims Act.

47. Defendants affirmatively assert that Plaintiff's claims are barred by the two year statute of limitations as set forth at S.C. Code Ann. §15-78-110.

FOR A THIRTEENTH DEFENSE

48. At all times relevant hereto, Defendants were acting as or through officers and officials of the State of South Carolina, engaged in the performance of their official duties, and acting as the alter ego of the State of South Carolina, and therefore this action is barred by the Eleventh Amendment to the Constitution of the United States.

FOR A FOURTEENTH DEFENSE

49. That at all times relevant hereto, Defendants were acting as or through employees, officers, and officials of the State of South Carolina, engaged in the performance of their official duties, and are therefore immune from liability and cannot be sued without an express waiver of sovereign immunity.

FOR A FIFTEENTH DEFENSE

50. That at all times relevant hereto, Defendants and Defendants' employees, officers, and

officials were engaged in the performance of their official duties and at no time violated any clearly established constitutional rights which were known or should have been known to them; therefore they are entitled to qualified immunity as a matter of law.

51. That at all times relevant hereto, Defendants and Defendants' employees, officers, and officials were governmental officials performing discretionary functions and actions which could reasonably have been thought consistent with the rights of Plaintiff and for which they are alleged to have violated, and they are therefore entitled to qualified immunity as a matter of law.

FOR A SIXTEENTH DEFENSE

52. Plaintiff has failed to exhaust his readily available administrative and state court remedies.

FOR A SEVENTEENTH DEFENSE

53. Defendants would show that such injury or loss as the Plaintiff may have sustained, if any, and the same is hereby expressly denied, was due to, caused and occasioned by the sole negligence, carelessness, recklessness and wantonness of Plaintiff at the time and date in question and the Defendants plead the Plaintiff's sole negligence as a complete bar to this action.

FOR AN EIGHTEENTH DEFENSE

54. The Defendants deny any negligence whatsoever and allege that the sole negligent acts of a third party or parties were the sole and proximate cause of injuries and damages to the Plaintiff, if any, and any one or more of those parties caused the injuries and damages to the Plaintiff.

55. These acts and omissions by the third party or parties were the sole and proximate cause of any injuries or damages to the Plaintiff and therefore the action against the Defendants should be dismissed.

FOR A NINETEENTH DEFENSE

56. If the Defendants were negligent and reckless in any respect, which is expressly denied, the Defendants are not liable to the Plaintiff for the resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the damages, if any, sustained by the Plaintiff.

57. The Defendants assert that the intervening acts of a third party or parties were the sole and proximate cause of injuries to the Plaintiff and the action should be dismissed.

FOR A TWENTIETH DEFENSE

58. Defendants would further show, upon information and belief, and in the alternative, that if Defendants were negligent, which Defendants deny, then Plaintiff or his agent was likewise negligent and Plaintiff's negligence, carelessness and recklessness directly and proximately caused Plaintiff's or his agent's damages and injuries and that Plaintiff's or his agent's negligence, carelessness and recklessness exceed any negligence, carelessness or recklessness on the part of the Defendants and therefore, Defendants plead Plaintiff's greater degree of comparative fault as a complete bar to Plaintiff's recovery against Defendants.

FOR A TWENTY-FIRST DEFENSE

59. If Defendants were negligent in any respect, which is expressly denied, and if Defendants' conduct operated as any cause of Plaintiff's injuries or damages, if any, which is also expressly denied, Defendants are entitled to a determination as to the percentage of Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct which contributed to this incident and to a reduction of any amount awarded to Plaintiff equal to the percentage of Plaintiff's own negligence, gross

negligence, recklessness, willful and wanton conduct.

FOR A TWENTY-SECOND DEFENSE

60. Plaintiff's claims are barred by the doctrines of *res judicata* and collateral estoppel.

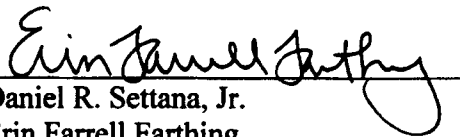
FOR A TWENTY-THIRD DEFENSE

61. Plaintiff cannot establish the prerequisites for an award of declaratory relief.

FOR A TWENTY-FOURTH DEFENSE

62. Plaintiff cannot establish the prerequisites for an award of injunctive relief.

WHEREFORE, the Defendants pray that Plaintiff's action be dismissed, or in the alternative for a jury trial and for such other and further relief as this Court deems just and proper.


Daniel R. Settana, Jr.
Erin Farrell Farthing
McKay, Cauthen, Settana & Stublely, P.A.
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Columbia, SC 29202
(803) 256-4645
Attorneys for Defendants

Columbia, South Carolina
March 13, 2013

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

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

Basil W. Akbar,

) Plaintiff,

) **NOTICE OF MOTION AND
MOTION TO DISMISS OR IN
THE ALTERNATIVE,
MOTION TO SUBSTITUTE
PARTIES**

v.

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

) Defendant.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 FEB 27 AM 10:28

RICHLAND COUNTY
FILED

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

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through the undersigned counsel, will move before the Presiding Judge for the Fifth Judicial Circuit, Richland County Courthouse, Columbia, South Carolina, ten (10) days after service hereof, or as soon thereafter as the matter can be heard, for an Order dismissing this action against them, or in the alternative, to substitute parties, pursuant to the grounds set forth herein.

Defendants move to dismiss this action pursuant to Rule 12(b)(1), (2), (4), (5) and (6) of the South Carolina Rules of Civil Procedure on the grounds of lack of subject matter jurisdiction, lack of jurisdiction over the person, insufficiency of process and insufficiency of service of process and the claim fails to state a cause of action upon which relief can be granted for the reasons stated below:

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

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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.

2. Plaintiff has failed to properly serve Defendant(s) and other necessary parties pursuant to Rule 4(d), SCRCF.

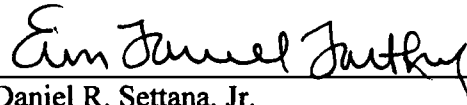
3. Plaintiff has improperly named as Defendants individual employees of a governmental entity, all of whom were acting, at all times relevant herein, within the course and scope of their employment with the South Carolina Department of Corrections, a governmental entity and agency of the State of South 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. All of the individually named Defendants in the present action were acting as agents and employees of the South Carolina Department of Corrections at all times relevant herein and therefore the proper entity to defend this matter is the South Carolina Department of Corrections.

4. Plaintiff has failed to establish the prerequisites for injunctive relief.

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

This motion may be deemed one for summary judgment under Rule 56, pursuant to Rule 12(b), SCRCF, and may be supported by affidavits submitted prior to a hearing in accordance with the South Carolina Rules of Civil Procedure and by certified copies of documents relevant to this action. It is also supported by the pleadings on file with the Court, 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 and such memoranda as may be submitted in support hereof.



Daniel R. Settana, Jr.
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Columbia, SC 29202
(803) 256-4645
Attorneys for Defendants

Columbia, South Carolina
February 27, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar,)
)
 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

**NOTICE OF MOTION AND MOTION
 TO DISMISS/STRIKE PRAYER
 FOR PUNITIVE DAMAGES**

FILED
 2013 FEB 27 AM 10:26
 BEANETTE W. MERRIDGE
 S.C.P. & G.S.
 RICHLAND COUNTY

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

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorney, will move before the Presiding Judge for the Fifth Judicial Circuit, on the tenth (10th) day following service hereof, or at such time and place as may be set by the Court, for an Order dismissing and/or striking any and all language in Plaintiff's Complaint, including any prayer for relief, which may be construed as a prayer for punitive damages against them, on the grounds stated in this Motion.

These Defendants move to dismiss, to strike, or for summary judgment on Plaintiff's prayer for punitive damages pursuant to Rules 12(b)(6) and 56, S.C.R.Civ.P., and pursuant to the South Carolina Tort Claims Act, and specifically, S.C. Code Ann. §5-78-120(b), which states: "No award for damages under this Chapter shall include punitive or exemplary damages or interest prior to judgment."

This Motion is supported by the pleadings on file with the Court and such memorandum of

EFF

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' NOTICE OF MOTION
AND MOTION FOR PROTECTIVE
ORDER AND TO STAY DISCOVERY**

RICHLAND COUNTY
FILED
JUL 22 PM 4:17
JANETTE W. McBRIDE
C.C.P. & G.S.

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

YOU WILL PLEASE TAKE NOTICE that on August 7, 2013, or at such other time as the Court may set, of which you will be notified, the Defendants, by their undersigned attorneys, will move the Court pursuant to Rule 26(c) of the SCRCP, for a Protective Order or in the alternative to stay discovery on the following grounds:

- 1) Plaintiff is a prisoner proceeding *pro se* and it proceeding in this case *in forma pauperis*;
- 2) In his Complaint, filed pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq*, the Plaintiff claims that he did not receive wages he claims were withheld by the SCDC during the time he was on work release from 1979 through 1981;
- 3) Defendants filed a timely Motion to Dismiss the Plaintiff's Complaint as a whole based on grounds including Rule 12(b)(1), (2), (4), (5) and (6), SCRCP, on August 25, 2010. One of the grounds for this Motion is that the Plaintiff's claims are barred by the statute of limitations. This Motion has yet to be ruled upon by this Court¹;

¹ Defendants are also filing a Motion for Summary Judgment contemporaneously based largely on statute of

1 EFP

4) Furthermore, in Defendants' Motion to Dismiss, Defendants have moved to dismiss the individually named Defendants from the present action as they are not proper parties pursuant to S.C. Code Ann. §§ 15-78-70 and 15-78-200;

5) Plaintiff has served numerous discovery requests to the Defendants. Defendants have provided Plaintiff with responses to this discovery, which set forth Defendants objections to Plaintiff's requests (*See Exhibit A*);

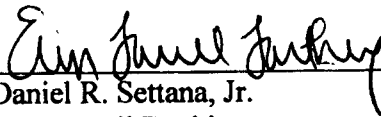
6) This Court has the power to make any discovery order as justice requires within its discretion upon a showing of good cause. Rule 26(b)(1) instructs the court to limit the frequency or extent of discovery if justice so requires to protect a party or witness from annoyance, embarrassment, oppression, or undue burden or expense.

7) Specifically, Defendants contend the discovery sought by the Plaintiff is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence, overly vague and ambiguous, unduly burdensome taking into account the circumstances of the case. Additionally, much of the information or documents sought by the Plaintiff are available to the Plaintiff through another source that is more convenient, less burdensome, or less expensive. Furthermore, a number of the discovery requests made by the Defendant implicate the privacy rights of the Defendants, other employees of the SCDC, and other inmates of the SCDC. Some of the information or documents requested by Plaintiff may also be restricted, as their production would jeopardize the safety of the officers and staff at SCDC, and would impede on their ability to maintain proper order within SCDC's institutions. Finally, most of the information sought by Plaintiff concerns documents and policies from more than thirty years ago. If these documents still exist, they will be extremely difficult, if not impossible, to locate;

limitations.

8) These Defendants request a Protective Order and that this Court stay pending discovery until such time as it rules on the Rule 12 motion previously filed, as well as any other dispositive motion, in particular concerning the statute of limitations issue.

It is well settled that the trial court enjoys considerable discretion in deciding discovery matters. This Court may grant the relief requested by these Defendants based on Rules 26(c)(1), (2), (3) and (4), SCRCP.


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Attorneys for Defendants

Columbia, South Carolina
July 22, 2013