

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

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Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-0301

Basil W. Akbar, #065498,

Appellant,

v.

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

Respondents.

**RESPONDENTS' MOTION TO STRIKE APPELLANT'S OBJECTION TO  
RESPONDENTS' FINAL BRIEF AND APPELLANT'S AFFIDAVIT IN THE SUPPORT  
OF BRIEF**

Pursuant to Rule 211 of the South Carolina Appellate Court Rules, "[t]he final brief(s) shall be identical to the brief(s) previously served under Rule 208," with certain exceptions. Rule 211, SCACR, only contemplates an Appellant's brief and Respondent's brief, in final form. While Rule 208, SCACR, allows for reply briefs under Subsection (b)(3), Rule 211, SCACR, dealing with final briefs, does not include such a contemplation.

On November 5, 2015, the undersigned counsel for Respondents received two documents from the Appellant entitled (1) "Appellant's Affidavit in Support of Brief," and (2) "Appellant's



Objection to Respondents' Final Brief in its Entirety." *See* Exhibit A. These documents seem to be additional materials in support of Appellant's Final Brief and his Objections to Respondents' Final Brief. These documents clearly are not contemplated within the South Carolina Appellate Court Rules, and thus, should not be considered by the Court. Therefore, Respondents respectfully move this Court to strike these documents from the Record in this appeal.

Furthermore, and alternatively, to the extent the Court construes these documents served by the Appellant to be an additional Reply Brief served pursuant to Rule 208, SCACR, Respondents respectfully request that these documents be stricken from the record due to Appellant's failure to timely file such alleged brief. Rule 208(a)(3), SCACR, requires that an Appellant file and serve a Reply Brief within ten (10) days after service of a Respondents' Brief. In this matter, Respondents' Final Brief was filed and served on October 2, 2015. The attached documents were signed by Appellant on November 3, 2015; received by the Lee Correctional Institution mailroom on November 4, 2015; and received by the undersigned counsel for Respondents on November 5, 2015. All three of these dates clearly fall outside of the required ten (10) days after service of Respondents' Brief to serve any Reply Brief. Therefore, these documents should be stricken from the record as untimely filed and served.

Additionally, and alternatively, to the extent that the Court construes these documents as somehow being a supplemental record pursuant to Rule 212, SCACR, Respondents respectfully request that they be stricken from the record as noncompliant with Rules 212(b) and (c), SCACR. Specifically, Subsection (b) requires that written consent be obtained by all attorneys of record if a party wishes to supplement the Record on Appeal at any time before argument commences. "Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the Appellate Court for leave to do so." Rule

212(b), SCACR. Because arguments have not commenced in this matter, Appellant was required to obtain consent for all attorneys of record, which he did not do prior to filing and serving these documents. Appellant also did not request leave of Court to file and serve these materials. Additionally, Subsection (c) states that assuming such materials were filed under Subsection (b), they should be included in an Appendix to the Record on Appeal. Rule 212(c), SCACR. Appellant has failed to do this, and thus, is not compliant with this Rule. Consequently, assuming these documents are construed as any sort of Supplemental Record, they should be stricken from this matter.

Based upon the foregoing reasons, Respondents respectfully request that the Court strike the attached documents filed by the Appellant from this matter and grant the Respondents' Motion.

Respectfully submitted,



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Daniel R. Settana, Jr.  
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(803) 256-4645  
Attorneys for Respondents

Columbia, South Carolina  
November 9, 2015

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

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APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

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Civil Action No. 13-CP-40-0301

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Basil W. Akbar, #65498,

Appellant,

v.

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

Respondents.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on November 9, 2015, a copy of the foregoing **RESPONDENTS' MOTION TO STRIKE APPELLANT'S OBJECTION TO RESPONDENTS' FINAL BRIEF AND APPELLANT'S AFFIDAVIT IN THE SUPPORT OF BRIEF** was served on the Pro Se Appellant by mailing a copy of same in the United States Mail, via certified mail, return receipt requested, proper postage prepaid, addressed as follows:

Basil W. Akbar, #65498  
Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, SC 29010



S. McConnell, Legal Assistant to:  
Daniel R. Settana, Jr.  
Brandon P. Jones  
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Attorneys for Respondents

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# EXHIBIT A

# EXHIBIT A

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

G. THOMAS COOPER, Jr., CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2013-002306

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BASIL W. AKBAR.....APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, et al.....RESPONDENTS

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APPELLANT'S AFFIDAVIT IN SUPPORT OF BRIEF,  
AND OBJECTIONS TO RESPONDENT'S FINAL BRIEF

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**RECORD ON APPEAL**

BASIL W. AKBAR, # 065498  
LEE COUNTY CORR INST.  
990 WISACKY Hwy., Flo. 2213-S  
BISHOPVILLE, S.C. 29010  
PRO SE APPELLANT

DANIEL R. SETTANA Jr.  
POST OFFICE DRAWER 7217  
COLUMBIA, S. C. 29202  
(803) 256-4645  
ATTORNEY FOR RESPONDENTS

APPELLANT'S AFFIDAVIT

IN SUPPORT

I, Basil W. Akbar, Appellant solemnly swear that the account of Claims; the authentication of related documents; and information given by me in this Affidavit is true and correct, and I understand that I will be subject to Civil and/or Criminal penalties if I knowingly furnish false information:

I, Basil W. Akbar, #065498 the undersigned is currently a resident at Lee County Correction Institution, and the Appellant (Akbar).

2. Between July 1979 thru April 1981, assigned facilities, was Employment Work Program; and Campell Work Release Program; Employed at Owens Electric & Steel Co.; received weekly pay check in hand...and personally delivered to Center's Administrator...weekly deductions for Room & Board; and Long Term Escrow saving Account.

3 Akbar were parole [1981], and advised funds in Escrow Savings Account would be release upon completing five (5) years on conditional parole, or pardon, however, parole were revoked 1985 prior to, and believed information to be routine and truthful.

4. Approximately October 2008, Akbar sought status of said account at SCDC's Financial Business Office [Martha Roof], no reply...December 2008 a second Request were filed to same...after furthered delay, numerous phone calls from family member...June 18, 2009 [Debrah Long] SCDC's Financial Branch related false information. On July 2009, a third (Corrective Request were filed), pursuant to S.C. Code. Ann. §30-4-10 et seq., served upon [M. Roof & D. Long] by Certified Mail Return Receipt July 23, 2009...no reply, furthered delay. See Exhibits coinciding dates.

5. Akbar filed numerous grievances as results, (1). Lee C.I. # 2323-9; (2). Lee C.I. #0813-10; (3). Lee C.I. #1270-10; and (4). Lee C.I. #1598-10, grievances return unprocessed except for the fourth grievance with attached three grievances. See Exhibits.

6. Akbar first learn approximately April 28, 2010, that Work Release Escrow Account was closed and archived; account was never made transparent, or funds release. See Exhibit, Request Disposition from Ms. Melton Lee C.I., coincide date.

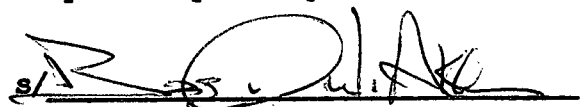
7. At all times relevant Akbar were in legal custody of SCDC, on parole in the State of South Carolina, City of Columbia; and personally reporting to Agent Officer monthly.

8. Pursuant to the SCDC's Definition of Policy Employee Account ADM-15.12:

Sec. 13.1 "Check requested for delivery by institution to inmate prior to release." Sec. 13.1.4 "No release checks will be automatically cut by Financial Branch Personnel for any institution..." Sec. 15, "Account Statement." Sec. 17.4, "Reporting of mistake in account, if an inmate thinks a mistake has been made...Inmate Request To Staff Member...no later than 75 days." Sec. 17.4.3, "SCDC investigation of Account mistake, the Institutional Cooper Trust Fund designee will give the inmate the result...within ten working days...investigation in continuing 10 calendar days...either correct the mistake or explain...and record the necessary adjustment to account."

9. See, The Respondents' misleading Disposition to Request dated June 18, 2009 asserted, "...according to our records you receive a Cooper deposit from...work center March 30, 1994." In fact Akbar received and reimbursement for lost property [GA. Liebre C.I. #030-94], approximate \$8.00; see, Exhibits...Dept. letters dated, April 20, 1994.

10. Akbar submits he exercised due diligence, but hindered from promptly grieving mistake; account not made transparent on Request; funds not made accessible; and denied fiduciary duty of care owed, howeverm the Respondents are attempting to dictate when Akbar discovered said tort, despite the facts refuting the Respondents' view that is facially void upon Inspection of facts.



Basil W. Akbar, 065498, Pro se F6-B

Lee Correction Institution

990 Wisacky Highway

Bishopville, S.C. 29010

Sworn To Before Me

This 3<sup>rd</sup> Day of NOVEMBER, 2015

Notary: Robert J. Phipps

My Commission Expires: 11-05-2019

# EXHIBIT B

THE STATE OF SOUTH CAROLINA  
IN THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
G. THOMAS COOPER, Jr., CIRCUIT COURT JUDGE

CIVIL ACTION No. 13-CP-40-2306

BASIL W. AKBAR, #065498

APPELLANT.

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, et al.

RESPONDENTS.

APPELLANT'S OBJECTION TO RESPONDENT'S  
FINAL BRIEF IN IT'S ENTIRETY

DANIEL R. SETTANA Jr.  
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BASIL W. AKBAR, #065498 PRO SE  
LEE CORRECTIONAL INSTITUTION  
990 WISACKY Hwy., F-6(B), 2213  
BISHOPVILLE, S.C. 29010

## STANDARD OF REVIEW

On Appeal from an Order granting Summary Judgment, the Appellate Court will review all ambiguities, conclusions, and inferences arising in and from the evidence in light most favorable to Appellant, the non-moving party. Bergstrom v. Palmetto Health Alliance, 358 SC 388, 395, 596 SE2d 42, 45 (2004); See also Huggins v. Med. Univ. Of S.C., 326 SC 592, 486 SE2d 269 (Ct. App. 1997)(A trial judge considering a motion for Summary Judgment must consider all documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits). If triable issues exist, those issues must go to the jury. Miller v. Blumenthal Mill Inc., 365 SC 204, 219, 616 SE2d 722, 729, (Ct. App. 2005). In determining whether any triable issues of fact exist the evidence and all reasonable inferences therefrom must be view in light most favorable to the non-moving party. Helms Reality, Inc. v. Gibson-Wall Co., 363 SC 334, 611 SE2d 485 (2005). Summary Judgment is a drastic remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of trial on disputed factual issues, Hooper v. Ebenzer Sycs. & Rehabilitation Ctr., 377 SC 217, 277, 659 SE2d 213, 217. Summary Judgment is inappropriate where further inquiry into the facts of the case is necessary to clarify the application of law. Gibson v. Hembree, 364 SC 316, 320, 613 SE2d 533, 535 (2005).

## STATEMENTS OF FACTS / CORRECTIONS TO RESPONDENT'S STATEMENT OF FACTS

The Applicant Basil W. Akbar #065498 (Appellant), is currently confined at the Lee County Correction Institution, of South Carolina Department of Corrections (SCDC), and is continually serving a 1971 conviction upon parole revocation 1985, at all times relevant he was in SCDC's custody merely on parole. The Black's Law Dictionary define parole, "The release of a prisoner from imprisonment before the full sentence has been server." See also Sanders v. MacDougal, 135 SE2d 836 (1964). The Fourth Circuit held that in custody does not refer just to physical confinement, but also to parole served as part of a sentence, Wilson v. Flaherty, 689 F.3d 332 (4th Cir. 2012); Jones v.

Cunningham, 317 US 236, 83 S.Ct. 373. The Respondents' statement "...was return to the custody of the SCDC in 1985" is misleading.

In addition the Respondents appears to contend that the Appellant brought his complaint pursuant to South Carolina Tort Claims Act S.C. Code. Ann. §15-78-10 et SEQ.. The Appellant submits that the Tort Claims Act does not create causes of action, rather the removes the Common Law bar of Sovereign Immunity in certain circumstances, as to extent permitted by the act itself. Tatum v. Medical Univ. Of S.C., 346 SC 194, 552 SE2d 18. Citation of S.C. Code. Ann. §15-78-10 et SEQ. does not constitute ground for dismissal.

The Appellant filed four separate grievances not "three", however, three were return unprocess and the fourth was process and the three grievances ANNEX, and appealed decision to the South Carolina Administrative Law Court (ALC), Order dismissing appeal...for allegedly not filing grievance within fifteen (15) days from the dated of the incident / failed to exhaust his administrative remedies with the Department prior to bring this matter before the ALC. The Appellant submits that he timely filed Rule 59(e), SCRCR, motion to alter or amend the order, and the ALC refused to recognized / intertain motion.

The Appellant further submits that the Respondents / Departments' defaulted from initial Step 1 and Step 2 grievance, stood in gross default, as a results Respondents ' are Estopped from raising "Non-Exhaustion" as an affirmative defense; and violating numerous Civil and Constitutional rights, and punishing the Appellant by not making account transparent and finance accessible.

#### APPELLANT'S OBJECTIONS

The Appellant realleges each and every allegation set forth in all pleadings, exhibits, and above as if repeated herein hereof verbatim, and further submits.

As to Respondents' Final Brief, Summary Judgment, and Rule 12(b)(6) Motion To Dismiss, the Appellant submits his objections to entirety as follows' both significant material facts essential in support of documented evidence in

Record that tends to prove existence of alleged facts. In considering a motion for Summary Judgment the judge must view the evidence submitted by both sides in light most favorable to the party opposing the motion. Cowburn v. Leventis, 366 SC 20, 619 SE2d 437. Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Middleborough...Of Co-Owners v. Montedison, 320 SC 470, 465 SE2d 765 (1995). Further, Summary Judgment should not be granted even where there is no dispute as to the evidentiary facts, or if there is a dispute as to the conclusions to be drawn therefrom. Macfarlane v. Manly, 274 SC 392, 264 SE2d 838 (1980). In Civil Procedure the law of Summary Judgments, a triable, substantial, or real question of fact supported by substantial evidence as in Appellant's matter precludes entry of Summary Judgment Koester v. Carolina Rental Center, Inc., 313 SC 490, 493, 443 SE2d 392, 394 (1994). A Rule 12(b)(6) Motion to Dismiss will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the Appellant to relief on any theory of the case. Stiles v. Onorato, 318 SC 297, 457 SE2d 601 (1995); Brown v. Leverette, 291 SC 364, 353 SE2d 697 (1987).

#### OBJECTIONS / DEFENSES

1. The Circuit Court improperly Ruled that Respondents were entitled to Summary Judgment because Appellant's claims are barred by the statute of limitations.

On January 16, 2013, the Appellant ("Akbar") brought the current lawsuit for Civil Liberty violations; money damages; Tort violations as a Civil wrongs; Declaratory Judgment; Injunctive / Mandatory Injunctive Order, Punitive Damages; and Jury Trial Demanded alleging Respondents failed to make my Work Release Mandatory Long Term escrow Saving Account Transparent and Transfer to E.H. Cooper Account. Initially the Institution Grievance Clerk erred in determined that Akbar filed grievance(s) outside fifteen (15) days from date of the incident. However, no incident had occurred until April 28, 2010, "First advised that Akbar did not have a Work Release Account. The

circumstances / incident only came in existence when Akbar was put on "Notice" and Tort was discovered. McClain v. Jarrad, M.D., 354 SC 218, 220, 580 SE2d 763, 764 (2004). A Grievance Policy do not in of itself constitute when the incident occurred, instead the facts / circumstance determine when the time begun to run. To the contrary the ALC, and Circuit Court adopted the Institution Grievance Clerk flawed version, unsupported by evidence, and exception lies in the discovery rules, which tolls the starting of the statute of limitations until a person discovers or should have known through reasonable diligence that a potential claim might exist. S.C. Code. Ann. §15-3-535 (2005); Barr v. City of Rock Hill, 330 SC 640, 644-45, 500 SE2d 157, 160 (1998). For purpose of commencement of the statute of limitation, Akbar receive notice of potential cause of action after grievance Clerk instructed him to submit Request To Institution Business Office, and received First Notice that account was close. As a result a "Third" grievance (L.C.I. #1270-10) was filed and return unprocess. On June 7, 2010, a Fourth grievance (L.C.I. #1598-10). However, Akbar did not receive a timely determination pursuant to [SCDC Policy GA-01.12], from June 7, 2010 thru April 8, 2011, approximately 120 days over SCDC's Policy GA-01.12 authorized allotted time, Quote: "Under no circumstance will the grievance process excee 180 days."

The Appellant submits that the Respondents stand in gross :Default." See also, Harrah v. McGinnis, 271 SE2d 222; Underwood v. Wilson, 151 F.3d 292 (5th Cir.); and Abney v. McGinnis, 380 F.3d 663 (2004). The statute of limitation run against the Respondents likewise (Emphasis added).

This Honorable Court must be mindful that all times relevant that Akbar was in S.C.D.C.'s custody. Sanders v. MacDougal, 135 SE2d 836; and received First Notice that he no longer has Work Release Account until April 28, 2010. Where testimony is conflicting upon the application of the Statute of Limitations, the question becomes an issue of fact for the jury Brown v. Finger, 240 SC 102, 124 SE2d 781 (1962); see Arant v. Kressler, 327 SC 225, 489 SE2d 206 (1997). Whether a claimant knew or should have known he had a cause of action is a question for the jury Johnston v. Bowen, 313 S. C. 61, 437 SE2d 45 (1993). An abuse of discretion arises where the judge issuing the

Order was controlled by an error of law or where the Order is based on factual conclusions that are without evidentiary support. BB&T v. Taylor, 369 SC 548, 551, 633 SE2d 501, 503.

- 
2. The Circuit Court improperly ruled that Respondents were entitled to Summary Judgment because Appellant's allegations against Respondents failed to state a claim upon which relief could be granted.

The Appellant submits that the lower courts erred in granting Respondents' Summary Judgment, that Akbar failed to state a claim upon which relief could be granted, Akbar further, submits that he filed a legitimate colorable claims reasonably asserted given the facts presented and appropriate laws. The Respondents arguing Summary Judgment is inappropriate, because Akbar raises genuine issues of material facts having logical connection with issues and primary facts, documentation in records; Respondents admission that Work Release Account did exist; and further upon completion of discovery information. Moreover, Akbar submits that he relied upon Work Release Supervisor explanation of five (5) year criterion regarding Life Sentence, and release of Work Release Saving Account. Therefore issue of reliance and its reasonableness going as they do to subjective states of mind and application of objective standard of reasonableness are preeminently factual issues for the trier of facts, Unlimited Servs., Inc. v. MacKlen Enters., Inc., 303 SC 384, 387, 401 SE2d 153, 155 (1991). Additionally, Akbar has a right to have access to timely Agency Grievance Final Decision...Account transparency...disclosure...hidden conditions could not be discovered upon exercise of due diligence. See, S.C. Code. Ann. §15-3-535 (2005). The Court should not dismiss a complaint for failure to state a claim unless it appears beyond all doubt that the Appellant can prove no set of facts in support of his claim which would entitle him to relief. Brown v. Leverette, 291 SC 364, 353 SE2d 697 (1987); Stiles v. Onorato, 318 SC 297, 457 SE2d 601.

The Appellant further contends that the Lower Courts erred in granting Respondents motion for Summary Judgment, and Rule 12(b)(6) SCRPC. Motion, when the Lower Courts relying on newly amended [S.C. Code Ann.

§24-3-40(A)&(B) 1994] statute that did not govern the "Scope of Authority" delegated in carrying out the principal operation of South Carolina Work Release Program between 1979 thru 1981 time in question, clear error and Expost Facto Clause violation forbidding applying retroactively in a way that negatively affects Akbar's rights. United States Constitution Art. I, §9, Art. I §10. The Lower Court decision was based on incorrect provision, without due examination, improper rendered decision, requires this Honorable Court to deny Respondents Summary Judgment and Rule 12(b)(6), SCRPC. Motions. In essence Akbar is entitled to have this Court decide the merits of the dispute, where the conduct of which he complains has cause him to, (1) suffer an injury in fact that is (2) fairly traceable to SCDC; and (3) that is likely to be redressed by a favorable judgment.

By Respondents own admission, see Affidavits, [Janice Kenealy and Noel Hebert] Affidavits at pertinent part:

- \* Janice Kenealy, SCDC's Record Summary Report dated March 12, 2013 Akbar's signed facility, "Employment Work Release Program June 26, 1970 thru April 8, 1981.
- \* Noel Hebert, SCDC Accounting Manager, "Infact Inmate Akbar does not have a Work Center Account with the SCDC, and has not had one since at least 1994."

Affiant's Affidavits corroborate / substantiate much of Akbar's claims, and fail to support Respondent's Summary Judgment, or Rule 12(b)(6) motions...and further support funds [approxiamtely ten (10,000 dollars) or more] are being wrongfully withheld depriving Akbar's rightful benefit. Furthermore Affiant's Affidavits were made in bad faith Rule 56(g), SCRPC., to delay relief, a mere sham defense and strategy in opposing Akbar. Unlike a meritorious defense that such address the substance or essential of this case, [Respondents'] rather made dilatory nd technical objections. The Respondents' defense has no basis in fact or law, such plain errors requires this Honorable Court to reverse / deny Summary Judgment.

3. The Circuit Court improperly dismissed the individual Respondents from this action.

The Appellant Akbar submits that the Circuit Court err, and improperly dismissed the individual Respondents from this action. Where Respondents made false representation to Akbar, owed a duty of care to see that they communicate truthfully information to him...did breached that duty by failing to exercise due care...and his reliance upon the representation...Akbar suffered a "Pecuniary Loss" as the result of. Therefore Akbar include all individual and entity, named and un-name that are responsible for the suffered injury, acting under the color of State Law, acted in a way or failed to act in a way that led to the violation of my rights, or causation.

The Appellant properly named Respondents (Bill Byars, Martha Roof, Debrah Long, Lisia Johnson, and Ann and John Doe), because they are "parties" who took part in said illegal transaction or process, and each individual in one aspect or another sought to abridge Akbar's First Amendments Right to petition the government for redress of grievances; deprive of access / transparence of personal Work Release Long Term Escrow Account; and denied duty of care, and the Director and Supervisor(s) for failing to do anything to fix / correct the situation...and grossly negligent in managing the people supervise. Furthermore each Respondents is sued in their "Individual Capacity" and "Official Capacity" for both monetary damages, and mandatory injunction.

Contrary to Respondents' view, the Appellant submits that S.C. Code. Ann. §24-1-220 requires bring law-suit in name of ScDC's Director; and when multiple defendants named as Joint Tortfeasor [Current Tortfeasors / Consecutive Tortfeasors are jointly and severally liable]. The trier of facts may return a special verdict specifying the culpability / proportion of monetary liability of each defendant action or inaction, to permit separate action on each claim.

The issue of Interpretation of a statute is a question of law for the court, Univ. Of S.Cal v. Moran, 365 SC 270, 275, 617 SE2d 135, 137 (2005). When a statute's term are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according

to its literal meaning, Miller v. Aiken, 364 SC 303, 307, 613 SE2d 364, 366 (2005). The Court cannot rewrite the statute and inject matters into it which are not in legislature's language, City of Camden v. Brassell, 326 SC 556, 561, 486 SE2d 492, 495 (1997); and the Court should not consider a particular clause in a statute as being construed in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law, Houston v. Deloach & Deloach, 378 SC 543, 551, 663 SE2d 85, 89 (2008). For said reasons the Respondents' arguments are both "Flawed" and "Frivolous", and has no basis in fact or law.

4. The Circuit Court improperly denied Appellant's Motion to Compel as moot.

The Appellant submits that the Circuit Court erred, and improperly denied Akbar's Motion to Compel Discovery as moot, was a clear abuse of discretion; and where Respondents assert that "there is no indication that Appellant ever moved the Circuit Court for a continuance of the hearing on Respondents' Motion to Dismiss and Motion for Summary Judgment, or that he requested that these motions be held in abeyance until after a ruling on his Motion to Compel." Akbar further objects and respectfully directs this court attention to: (1) "Notice of Motion and Plaintiff's Motion for Summary Judgment, and Objection to Defendants Motion for Summary Judgment", dated August 2, 2013, in the Court of Common Pleas, see at pertinent part section 3." pursuant to Rule 56(f)...the court may refuse the application for judgment, or may order a continuance to permit Affidavit to be obtained, or discovery to be had, or may make such other order as is just." SEE ALSO, Appellant's Objection To Respondents' Return To Appellant's Motion For Order Compelling Discovery, dated June 12, 2014, filed in the South Carolina Court of Appeals. In addition, Akbar filed, "Plaintiff Notice of Motion and Rule Motion 59(2), SCRC.P., Hearing Requested, dated October 15, 2013 see sec. I, para. 7; and sec.III

Akbar avers that he exercised due diligence at all times to preserve his legal rights and sought to satisfy legal requirement and discharge obligation.

Moreover, his pleading infer continuance discovery, and Summary Judgment once discovery is completed. However, the South Carolina Supreme Court in considering a motion to dismiss a Pro Se complaint should be held to less strict standards than a motion pleadings drafted by a lawyer. Therefore, the issues are preserve for review. Pye v. Estate of Fox, 369 SC 555, 556, 633 SE2d 505, 510 (2006). The Respondents fail to cooperate with discovery request regarding Akbar's financial information from inception, even under Freedom of Information Act [S.C. Code.Ann. §§30-4-10 ES SEQ.] Request fail to exercise ministerial duty. Redmond v. Lexington County Sch Dist. No. Four, 314 SC 431, 445 SE2d 441 (1994). The Fifth Amendment provide that no person shall be deprived of life, liberty, or property, without due process of law, the government violated the process guarantees by taking away Akbar's property when done arbitrary capriciously. The Circuit Court erred in failing to extend Discovery Proceeding, that could prove critical to due process analysis, and aiding the trier of fact finder in reaching the truth and fair decision. Akbar further believes he is entitled to an opportunity to amend his complaint to overcome any deficiency [Rule 15(a)(b), SCRPC.], unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment. Potter v. McCall, 433 F.2d 1987 1970. The Respondents are attempting to confuse the issues properly before the Court and dictate when Akbar learned / discovered the Tort, because they cannot conjure a showing of a meritorious defense addressing the substance or essentials of this case, therefore, Respondents only has dilatory defense, technical objection of a Pro Se Scrivener;s inadvertence. The Respondents further seeks to abuse the Court process by disrespecting the imperative of Judicial integrity...namely that the Court do not become accomplices in willful disobedience of a constitution they are sworn to upheld. The Appellant argue that he was, and is deprive of rights guaranteed him by the First, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

5. The Appellant submits that the Respondents are attempting to Ruse this Honorable Court by maliciously reading false allegation into his complaint, knowingly, wanton and willful misconduct to deceive the

Court, Rule 11(b) Subdivision Violation Warranting Sanctions.

The Appellant submits adamantly, that he did not raise or brief issue number V pages 22 thru 23 outlined in "Respondents Final Brief," that read:

"The Circuit Court did not rule on the issue of whether Appellant properly exhausted his administrative remedies, and therefore, the issue is not preserved for Appellate review."

Akbar submits that the Respondents fabricated said issue attempting to divert the court attention away from Akbar's issue of substance and meritorious claim, while referring to [App. Initial Br. at page 15-16, 19-20]/ However, the Appellant's Argument #III, pg. 15-16 and Argument #V pg. 19-20, referred to at pertinent part, "The Lower Court erred and abused its discretion in failing to rule that Respondents conduct constituted default and reprisal where Respondents fail to process grievance, and / or proress grievance within fix time at each stage..."; and "The Lower Court erred, and abused it's discretion in failing to the Respondents conduct hindered Appellant's ability to grieve Civil Liberty claims and access to the court(s)...For arguendo, as to Akbar's issues [App. Initial Br. at 15-16, 19-20], despite raising these issues in Rule 59(e) motion (dated October 15, 2013), the Circuit Court may not have rule on them, they are still preserved for review, and a second motion is not required if the court does not specifically rule on the issues raised. Pye v. Estate of Fox, 369 SC 555, 556, 633 SE2d 505, 510 (2006). The Lower Court merely adopted Respondents proposed Order without further review, and oversighted that Akbar were at all times relevant in SCDC's legal custody. Sanders v. MacDougal, id. Taking personal property as a punishment from "A" and gives to "B" void due process advocates fruad by Respondents and involve some criminal activities.

CONCLUSION

For said reasons set forth above this Honorable Court must deny Respondents Summary Judgment and Rule 12(b)(6) motions; Order that the Appellant's Work Release Account be made transparent and release; or as an alternative seeks

leave to renew / continue discovery motion, pursuant to Rule 15(a)(b), SCRCP.

s/ 

Basil W. Akbar 065498 Pro Se F6-B

CERTIFICATE OF SERVICE

I, Basil W. Akbar hereby Certify that copy of Appellant's Objections to Respondents' Final Brief in its Entirety; and Affidavit in Support, was served on Respondents Counsel of Record by prepaid First Class Mail, addressed to: Daniel R. Settana, Jr. 1303 Blanding Street, Post Office Box 7217, S.C. 29202-7217.

RECEIVED

NOV 09 2015

Date: ~~October~~ <sup>November</sup> 3, 2015

s/  SC Court of Appeals

Basil W. Akbar, 065498, Pro Se, F-6, B

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November 9, 2015

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Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: Basil Akbar v. SCDC, Bill Byers, Martha Roof, Debrah Long,  
Lisia Johnson, Ann and John Doe  
SC Appeal No.: 2013-002306  
Richland Co. Case No: 2013-CP-40-0301  
Claim No: 75046  
Our File No: 9-372

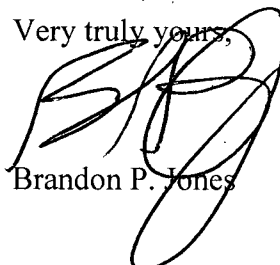
Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of *Respondents' Motion to Strike Appellant's Objection to Respondents' Final Brief and Appellant's Affidavit in the Support of Brief* in reference to the above-referenced matter. Please return one (1) clocked-in copy of this document to me via my courier.

Thank you for your assistance. Should you have any questions or concerns, do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Brandon P. Jones

BPJ/bmj

Enclosures

cc: Basil Akbar, #65498 (via Certified/Return Receipt Requested)