

**AMENDED PROPOSED RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Case No:2016-CP-001239

**RECEIVED**

MAR 15 2017

SC Court of Appeals

Biafra Monique Curtis,

**Appellant**

V.

South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.,

**Respondent(s)**

AMENDED PROPOSED RECORD ON APPEAL

Biafra Monique Curtis, Pro Se, Appellant  
PO BOX 21294  
Hilton Head Island, SC 29925  
843-684-3118

Norma Jett, Esquire and  
Allison D. Hood, Esquire  
ATTORNEY'S FOR RESPONDENT(S)  
Post Office Drawer 909  
Bamberg, SC 29003  
803-245-5178

## INDEX

FINAL ORDER from hearing held May 18, 2016, signed & dated <b>May 16, 2016</b> .....	2-6
Original Complaint, FILED August 24, 2015.....	7-54
Chief K.D. Phelps Office of Professional Responsibility Letter, dated June 05, 2015.....	55
Chief Counsel for SC Dept. of Public Safety, Warren Ganjesani Letter dated June 10, 2015.....	56
Respondent's "Response & Objection" dated December 21, 2015 pg. 4, item #7.....	57-62
Respondents "Motion To Exclude Matter from Record on Appeal".....	63-65
Appellants "Response Objection to Motion to Exclude Matter from Record on Appeal".....	66-69
Order to Deny Respondents Motion to Strike.....	70
Transcript from May 18, 2016 Hearing.....	71-83
Respondent's Reply Brief.....	84-97
Certificate of Appellant.....	98

### **EXHIBITS:**

EXHIBIT 1-Notices of Scheduling for Motion Hearings on Court Roster for **May 18, 2016**

EXHIBIT 2- First (FORM 4) Judgement Coversheet with filing stamp RICHLAND COUNTY  
FILED **2016May 20 AM 9:18** JEANETTE MCBRIDE C.C.P. & G.S

EXHIBIT 3-Second (FORM 4) Judgement Coversheet with filing stamp RICHLAND COUNTY  
FILED **2016May 20 AM 9:18** JEANETTE MCBRIDE C.C.P. & G.S

EXHIBIT 4- Richland County Public Index Roster Entry (See May 16, 2016 Entry)

EXHIBIT 5-NOTICE OF INTENT TO FILE LAWSUIT, **Sept. 27, 2014** to SC Attorney General Alan  
Wilson, Governor Nikki Haley, SC Dept. of Public Safety Director Leroy Smith & Colonel Mike Oliver  
(Transcript PG. 11, Lines 1-8)

EXHIBIT 6- Medical Documentation- Continuation of Care (per Transcript PG 7, lines 1-25)

EXHIBIT 7- Memorandum filed in Richland County C.C.P, dated October 20, 2015

EXHIBIT 8- Letter from Chief Deputy C.C.P., dated February 22, 2017 (Extrinsic Evidence)

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Biafra Monique Curtis, Pro Se, )

v. )

South Carolina Department of Public )  
Safety, Warren Ganjehsani, Mike )  
Oliver, Leroy Smith, Kenneth )  
Phelps, Anthony Grice, William )  
Taylor, Nicklous King, Willie )  
McCauley, Jr., Ada Schmidt, Aaron )  
Canzater and Cherie Young, )  
Individually and in their official )  
Capacities, )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Case Number: 2015-CP-40-05172

**RECEIVED**

JUN 23 2016

SC Court of Appeals

ORDER

RICHLAND COUNTY  
FILED  
2016 MAY 20 AM 9:18  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

Plaintiff filed this action in Richland County on August 24, 2015. Defendants filed their notice of removal to federal court on September 18, 2015. The initial Complaint stated several causes of action under 42 USC §1983, as well as various state law causes of action. The March 31, 2016 Order of Judge Mary Geiger Lewis dismissed all federal causes of action, including portions of the First cause of action (to the extent it relied on 42 USC §14141), and the Third cause of action (civil rights violations) and the Fourth cause of action (federal conspiracy) in their entirety. The case was then remanded to the Richland County Court of Common Pleas. The named defendants were heard on the balance of the motion to dismiss, pursuant to Rule 12(b)(6), on May 18, 2016 in Richland County Courtroom 2-E at 9:30 a.m. All Defendants moved for dismissal of the remaining state court causes of action on the following grounds:

1. The action is barred, as to all state law causes of action, by the applicable statute of limitations, set forth in S. C. Code §15-78-100;

**SCANNED**

2. The individual defendants, as state employees, cannot be sued for the state law causes of action, pursuant to S. C. Code §15-78-70; and

3. Any duties of the defendants are public duties, and the plaintiff has no private right of action against defendants for Violation of Oath of Office, Dereliction of Duty of Elected Official, Crimes of Moral Turpitude, Violation of Department Handbook, or Systematic Neglect of Duties.

#### FINDINGS OF FACT:

This action arises from an automobile accident that occurred on September 27, 2012. Plaintiff alleges she was the victim of an accident on Interstate 26 in South Carolina, having been forced off the road by an unknown driver in a vehicle collision. Plaintiff alleges the failure of the South Carolina Highway Patrol, a division of the South Carolina Department of Public Safety, to properly investigate the wreck deprived her of her opportunity to sue the alleged at fault driver for her injuries. Plaintiff named each individual involved in processing the accident, maintaining records related to the accident, and all officers who responded to her requests for information as defendants in this matter. Defendants deny all allegations of wrongdoing, but assert that no private right of action arises even if the allegations were true. Defendants further assert the statute of limitations and the South Carolina Tort Claims Act bars the state law causes of action.

#### APPLICABLE STANDARD OF REVIEW:

"A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must

**SCANNED**

consider all well-pled allegations as true." *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014).

#### CONCLUSIONS OF LAW:

These Defendants are entitled to dismissal of plaintiff's state law causes of action, including the First Cause of Action (which includes Negligent Infliction of Emotional Distress, Negligent Supervision, and Negligence Per Se), Fifth cause of action (Dereliction of Duty), Sixth Cause of action (Crimes of Moral Turpitude), Seventh Cause of action (Violation of Policy), and Eighth Cause of action (Systemic Neglect of Duty) pursuant to S. C. Code of Laws, §15-78-100, as no verified claim was made within one year of the September 27, 2012, incident date alleged in the Complaint, pursuant to S.C. Code §15-78-80, and this action was not filed until August 24, 2015, more than two years after the date of the September 27, 2012, accident upon which Plaintiff's case is based. For this reason, even if the allegations are otherwise actionable, blanket dismissal of all state law causes of action is appropriate.

The individual Defendants are further entitled to dismissal from the First, Fifth, Seventh and Eighth Causes of Action, as they were all acting within the course and scope of their employment at all times alleged by Plaintiff. The South Carolina Tort Claims Act, S.C. Code §15-78-10, et seq., "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code §15-78-200. Pursuant to S.C. Code §15-78-70, the individual government employees cannot be sued for causes of action related to conduct in the scope of their duty. The allegations described in the

**SCANNED**

First Cause of Action regard activity exclusively within the scope of employment of all individual defendants, and for this reason dismissal of the individual defendants from these state law causes of action is appropriate.

These Defendants are further entitled to dismissal of the plaintiff's Second (Violation of Oath of Office), Fifth Cause of Action (Dereliction of Duty of Elected Official), Sixth Cause of Action (Crimes of Moral Turpitude), Seventh causes of action (Violation of Department Handbook), and the Eighth Cause of action (Systematic Neglect of Duties), as these causes of action provide no private right of action upon which Plaintiff is entitled to seek relief. See also *Trask v Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (Ct. App. 2011); See also §23-6-30, §23-6-40, and §23-6-140, S.C. Code of Laws.

"The Public Duty Rule insulates public officials, employees, and governmental entities from liability for the negligent performance of their official duties by negating the existence of a duty toward the plaintiff." *Arthurs v. Aiken County*, 346 S.C. 97, 104, 551 S.E.2d 579 (2001). "The Public Duty Rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties because the duty is owed to the public at large rather than to anyone individually." *Wells v. City of Lynchburg*, 331 S.C. 296, 306, 501 S.E.2d 746 (Ct. App. 1998). "Statutes which create or define the duties of a public office create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. at 105-6 (2001). "Thus, where the duty is owed to the public in general, the official is not liable to an individual who may have been "incidentally injured" by the failure to perform the duty." *Wells v. City of Lynchburg*, 331 S.C. 296,

SCANNED

307, 501 S.E.2d 746 (Ct. App. 1998), quoting *Parker v. Brown*, 195 S.C. 35, 10 S.E.2d 625 (1940); See also *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

In this case, the essential purpose of the cited oaths, regulations, statutes, handbooks, and guidelines is not to preserve civil actions on behalf of the public. See *Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct.App.1988), cert. denied, 298 S.C. 204, 379 S.E.2d 133 (1989). Therefore, these Defendants owed no particular duty to Plaintiff, and any alleged violation is not actionable.

WHEREFORE, Plaintiff's cause of action is untimely, improperly alleged against individual governmental employees acting well within the course and scope of their employment, and premised on concepts that do not give rise to individual causes of action. These defendants are entitled to dismissal of this action, in its entirety, under §15-78-100 and §15-78-80, S.C. Code of Laws, and pursuant to the Public Duty Rule.

THEREFORE, IT IS ORDERED, Plaintiff's causes of action are hereby dismissed in their entirety, under SCRCP 12(b)(6), as the Complaint fails to state a claim upon which relief can be granted. This action is hereby dismissed, with prejudice.

AND IT IS SO ORDERED!

Chantia, S.C.  
May 16 2016

J. Casey Manning  
The Honorable J. Casey Manning  
Fifth Judicial Circuit

SCANNED 6

COUNTY OF RICHLAND

BIAFRA MONIQUE CURTIS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2015CP400 5172

vs.

South Carolina Department of Public Safety, Warren Ganjehsani, Mike Oliver, Leroy Smith, Kenneth Phelps, Anthony Grice, William Taylor, Nicklous King, Willie McCauley, Jr., Ada Schmidt, Aaron Canzater and Cherie Young, individually and in their official capacities, et al.

Defendant(s)

Submitted By: Biafra Monique Curtis

Address: PO Box 21294

Hilton Head Island, SC 29925

SC Bar #: Pro Se

Telephone #: 843-684-3118

Fax #:

Other:

E-mail:

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

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)

Torts - Professional Malpractice

- Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299) NEGLIGENCE, DERELICTION OF DUTY, CIVIL RIGHTS

Torts - Personal Injury

- Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)

Real Property

- Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

Inmate Petitions

- PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)

Administrative Law/Relief

- Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)

Judgments/Settlements

- Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)

Appeals

- Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)

Special/Complex /Other

- Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

Biafra Monique Curtis

Date: 8-24-15

**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Biafra Monique Curtis, Pro Se

Plaintiff,

-versus-

South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No: \_\_\_\_\_

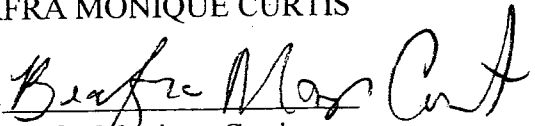
SUMMONS

RICHLAND COUNTY  
CLERK  
2015 AUG 24 AM 11:28  
JEANNETTE M. HERRIDGE  
C.C.P. & C.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber and the address shown below within thirty (30) days (thirty five (35) days if served by United States Postal Mail) after service thereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgement by default will be rendered against you for the relief demanded in the Complaint.

BIAFRA MONIQUE CURTIS

BY: 

Biafra Monique Curtis  
P.O. Box 21294  
Hilton Head Island, SC 29925  
Phone 843-684-3118  
Plaintiff, *Pro Se*

Hilton Head Island, SC 29925  
August 9, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Biafra Monique Curtis, Pro Se

Case No: \_\_\_\_\_

Plaintiff,

-versus-

**COMPLAINT  
(JURY TRIAL DEMANDED)**

South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.

Defendants

RICHLAND COUNTY  
FILED  
2015 AUG 24 AM 11:28  
JEANETTE V. MORRIS  
C.C.P. & C.S.

And herenow comes the Plaintiff, complaining of the Defendants, respectfully alleges the following:

1. The Plaintiff, Biafra Monique Curtis, is an African - American female and citizen and resident of Beaufort County, South Carolina and was at the time of these occurrences a top producing salesperson for Hargray Communications in Bluffton South Carolina. The Plaintiff has had an extensive career in sales spanning many years and maintained an excellent work record receiving numerous nominations, awards and recognitions as top revenue generator throughout the entire company, number one in core sales, nominations and many other accolades with plans of retiring from this occupation at the age of 65 years old. Prior to September 27, 2012, she was healthy, happy, and excited about life. She was a single parent with a very healthy, active relationship with her child. She had a very successful career in which she was ranked Top Producer in the company while receiving many nominations for "Most Valuable Player" and awards for my performance as "Top Revenue Generator" for 1<sup>st</sup>.

Quarter of 2012 as well "#1 in Core Sales" throughout the entire Company of over 200 employees with yearly gross earnings in excess of \$50,000 per year with an excellent benefit package for herself and child, which included health insurance, dental insurance, vision insurance, and life insurance. She is now disabled, has lost her career, and because of her deteriorated health condition, lost out on the remaining months of an active relationship with her child, which can never be recovered. Her bills became delinquent, her credit was destroyed and she nearly lost her home to foreclosure.

2. The Defendant, South Carolina Department of Public Safety, (hereinafter "Department"), is an agency of the State of South Carolina with its principal place of business in Richland County, South Carolina, where it maintains and operates its municipal offices and services. This agency has the responsibility for law enforcement functions of the state of South Carolina, including the training and supervision of Highway Patrol officers.

3. The Defendant, Warren Ganjehsani, (hereinafter "Ganjehsani") is a citizen and resident of the Lexington County, South Carolina area, and at all times mentioned herein is the General Counsel for the State of South Carolina Department of Public Safety thereby representing the South Carolina Highway Patrol.

4. The Defendant, Mike Oliver, (hereinafter "Oliver") is a citizen and resident of the Richland County, South Carolina area, and at all times mentioned herein is a Commander of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Mark Keel.

5. The Defendant, Leroy Smith, (hereinafter "Smith"), is a citizen and resident of the Richland County, South Carolina area, and at all times mentioned herein is the Director of the South Carolina Department of Public Safety. The Defendant, has had an extensive career in law

enforcement serving as the director of the Florida Department of Highway Safety and Motor Vehicles prior to becoming be the director of the South Carolina Department of Public Safety.

6. The Defendant, Kenneth Phelps, (hereinafter "Phelps"), is a citizen and resident of the Lexington County, South Carolina area, and at all times mentioned herein is a Trooper with Troop Seven (7) of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

7. The Defendant, Anthony Grice, (hereinafter "Grice") is a citizen and resident of the Clarendon County, South Carolina area, and at all times mentioned herein is the Captain of Troop Seven (7) of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

8. The Defendant, William Taylor, (hereinafter "Taylor") is a citizen and resident of the Calhoun County, South Carolina area, and at all times mentioned herein is a Trooper with Troop Seven (7) of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

9. The Defendant, Nicklous King, (hereinafter "King"), is a citizen and resident of the Clarendon County, South Carolina area, and at all times mentioned herein is a Trooper with Troop Seven (7) of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

10. The Defendant, South Carolina Highway Patrol Trooper Willie McCauley Jr, (hereinafter "McCauley, Jr."), is a citizen and resident of the Orangeburg, South Carolina area, and at all times mentioned herein is a Trooper with Troop Seven (7) of the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

11. The Defendant, Cherie Young (hereinafter "Young") is a citizen and resident of the Lancaster County, South Carolina area, and at all times mentioned herein is a Telecommunications Operator with the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith. Young was awarded Telecommunications Operator of the Year in 2009 and it was stated that she excels in her knowledge of the Computer Aided Dispatch (CAD). Young's CAD, NCIC, Fatality entries are complete and packed with information to ensure compliance with Policies and Procedures put forth by the Department of Public Safety.

12. The Defendant, Aaron Canzater (hereinafter "Canzater") is a citizen and resident of the Richland County, South Carolina area, and at all times mentioned herein is a Telecommunications Operator with the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

13. The Defendant, Ada Schmidt (hereinafter "Schmidt") is a citizen and resident of the Richland County, South Carolina area, and at all times mentioned herein is a Freedom of Information Officer (FOIA) with the South Carolina Highway Patrol thereby an employee of the State of South Carolina Department of Public Safety being under the supervision of Smith.

14. On September 27, 2012, at approximately 2:30pm, on South Carolina Interstate I-26 and traveling Westbound, the Plaintiff was involved in an automobile accident that she did not cause or contribute to, but sustained multiple injuries as a result of. According to the Plaintiff, she was traveling in the far left lane when the tractor trailer that was in the right lane next to her suddenly and without notice came into her lane, completely overtaking the lane, causing her to lose control of her vehicle, run off the road into the median at which time she lost

further control of her vehicle as the back of it spun around and traveled back across two lanes of highway, dropping down approximately five (5) feet into a ditch and only coming to a stop after hitting an embankment.

15. There were three (3) people stopped at the scene, one of which being the driver of the truck that actually ran the Plaintiff off the road (hereinafter "Anonymous"). The second (2nd) person being a gentleman we have identified as Bobby Hudson (hereinafter "Hudson") and the third (3rd) gentleman later to be discovered as Carl Culpepper (hereinafter "Culpepper").

16. The Plaintiff states that when her vehicle came to rest, Culpepper was the first person that she saw running towards her vehicle holding a badge up in the air. The Plaintiff began to get out of the car and met Culpepper a few steps away from the vehicle. She asked if he saw that truck run her off the road. Culpepper said yes and proceeded to ask the Plaintiff if she was ok. She told him that her neck hurt but everything else was ok while checking herself for cuts or abrasions. The Plaintiff retrieved her cell phone from the vehicle and then the driver of the truck that caused the accident appeared along with another truck driver whom we know as Hudson. Anonymous and Culpepper assisted the Plaintiff away from the vehicle over to a shady area to sit down on the ground with Hudson following. The Plaintiff then attempted to call a friend to inform her of the accident, but was not able to communicate effectively. She handed her phone to Hudson who spoke to Stacey Olden (hereinafter "Olden") and provided the facts of accident and the location of the closest hospital that the Plaintiff would likely be taken to. Hudson revealed a tag # that he was able to retrieve from the car that came on to the highway and stated that he would give it to the officer. Soon thereafter, a first responder fire truck arrived. It was later discovered that this fire truck was dispatched from Jamison Fire Department to secure the scene until other emergency personnel arrived. The Plaintiff states that while waiting

for the ambulance and police to arrive, this truck driver, Anonymous, stated in front of all who were present that he overtook her lane to avoid hitting a car that pulled out in front of him. The Plaintiff told Anonymous that she never, at any time, saw a car. She then states that Culpepper took the names of everyone at the scene on a small pad and she assumed he was a police officer who saw everything and that is why he had a badge and collected the information.

17. The Plaintiff was transported to Orangeburg Regional Hospital by ambulance and had CT scans and X-rays. Shortly thereafter, Stacey L. Olden (hereinafter "Olden"), arrived at the hospital. Later, South Carolina Trooper, Willie McCauley, Jr. arrived at the hospital and asked Plaintiff to tell him what happened. She gave him a statement (same as items 14,15 and 16 above). He told her that the witnesses at the scene told him that a car that came on to the highway, came across all lanes of traffic onto the highway, ran her off the road and then drove away. The Plaintiff disputed this information with him just briefly and he abruptly left the hospital room and returned a few minutes later, gave her an FR-10 form and left. The Plaintiff was released later that day after being treated for whiplash and inflammation in her neck, back and shoulders. With a quickly deteriorating condition, immediately following, the Plaintiff had several spinal procedures to no positive result before undergoing a major spine surgery, a dissection and fusion at the C 5-6 level. She then had intense physical and occupational therapy 4 (four) days per week for 6 (six) months to strengthen and learn to use the left side of her body (arm and leg), which included the necessity of a walker before she was able to adapt to walking alone with a cane that she still has use for.

18. There are a total of 5 (five) witnesses who testify that the Plaintiff's statement of facts of the accident are accurate. The 1st (first) being Bobby Hudson (hereinafter "Hudson"), the only witness who is listed on all 4 (four) of the accident reports. The 2nd (second) witness,

Carl Culpepper, hereinafter ("Culpepper"), the 3rd (third), James Lamb (hereinafter "Lamb"). Lamb is a witness who is not reported by any of the other witnesses as being seen present at the same, but was located from the 911 call log. Lamb states that he spent some time talking to the Plaintiff at the scene and heard the driver of the truck that caused the accident identify himself as the driver and state that he could not help the accident. The 4th (fourth) witness, Erin Tyler, (hereinafter referred to as "Tyler"), was a passerby who saw the entire accident was not able to stop at the scene, but immediately called in to 911 to report what she saw. The fifth (5th) witness, Stacey Olden (hereinafter "Olden") was at the hospital when McCauley arrived and witnessed was reported to the Trooper at the time the Plaintiff gave her statement to him. Olden asserts by sworn affidavit that she did indeed speak to Hudson who informed her of the details of the accident and told her that the Plaintiff would be taken to Orangeburg Regional Hospital. She also states that the Plaintiff did indeed tell McCauley, Jr. the exact details of items 14,15 and 16 above.

19. The Plaintiff states that a little over one (1) week after the accident, she contacted McCauley to request the accident report, names and contact information for the three men that were at the scene along with their statements. McCauley stated that he did not have the information of two of the men because he discredited them as witnesses and discarded their statements and contact information. He stated that the only credible witness would be listed on the accident report which could take up to thirty (30) days to be prepared. The plaintiff was in shock and extremely outraged when the trooper gave her descriptions of the men whom he discredited. The Plaintiff asked for the tag # of the car that Hudson had at the scene and McCauley Jr. stated it didn't come back registered to any vehicle so he discarded it as well. After restating to him several times that one of those gentlemen was driving the truck which caused the

accident, the trooper stated that he would attempt to locate the information. After spending the next three (3) weeks waiting for McCauley Jr. to "track down" the contact information for the driver of the truck and the tag # of the car, the Plaintiff contacted McCauley Jr.'s Sergeant Nicklous King to present her complaint against McCauley Jr. and to request assistance. King said he would look into it by speaking with McCauley Jr. and reviewing video camera footage. After receiving no return call for two (2) weeks, the Plaintiff called and left a message for King. He later called her back with an rude and unprofessional attitude, stating that he spoke to McCauley Jr and he did not have additional information on the truck driver or the tag #. King stated that McCauley, Jr. informed him that when he arrived, he did not have his video camera on so there is no video footage available. The Plaintiff learned that current video dash cam policy stipulates that officers operating a patrol vehicle equipped with an in-car video recording system activate the in-car system, including the audio portion, as soon as the blue lights and/or siren begin to flash. Once activated, the system is to remain on as long as the officer interacts with the individual(s). In all cases involving enforcement activities, once the audio and video recording has begun it is not to be stopped, paused, turned off or otherwise interfered with at any time until the enforcement event is concluded. When a trooper turns on blue lights the video recording system activates automatically. The trooper does; however, have to turn on his lapel microphone once he exits the vehicle. To promote a department culture where inappropriate actions are not tolerated, the director of the Department openly voiced his positions on a number of issues such as lying and providing misleading information, and has indicated that those taking such actions will be dismissed. The Department has had a sensitivity training program in place for nearly fifteen (15) years. All troopers receive it when they first join the patrol, and it is part of the department's annual in-service training. All trooper trainees receive

this training while undergoing patrol training, and all troopers, from the colonel on down, undergo refresher courses every year during in-service training. As the plaintiff understands the policy, the goal has been to treat all motorists in a uniform manner which does not condone troopers not following departmental policies and procedures and the purpose of the camera is to catch the truth; it's there to show what really happened. All of the defendants in this complaint had knowledge that this imperative policy had been violated, yet they participated in a "code of silence" and attempted to downplay the violation which created the climate for conspiracy to conceal the acts and omissions of all defendants. Each of them collectively and individually had a duty to report the actions of McCauley Jr. to the Office of Professional Responsibility. They each had a duty to report the inactions of other officers to the Office of Professional Responsibility as well. As a result of these behaviors, each and every officer and participant should be disciplined for their willful failure to supervise and are individually and officially guilty of corruption and bare the liability each of the occurrences that they had knowledge of.

20. McCauley also told King that when he arrived, all truck drivers identified themselves as only witnesses and stated that a blue car was the cause of the accident and that this blue car drove away. He stated that he only used one of the witness, Hudson, accounts of what happened in the accident report because he seemed most credible and Hudson even supplied the tag # of the blue car that drove away but after running the tag#, it did not come back as valid, so he discarded it. The Plaintiff and King went back and forth about the relevancy of this information and the Plaintiff explained to him that the accident report was wrong and that further witness statements were needed to correct these inaccuracies. She told him how imperative it was that he located the driver of the truck. He then told the Plaintiff that even if they did locate the identity of the truck driver, he could

use the defense of the sudden emergency doctrine as a defense. The Plaintiff then realized that she would get no further assistance from him because it seemed like he, just as McCauley Jr. had played judge and jury and came to their conclusions already. She stated to King that she was emotionally distraught by the fact that both of these officers of the law, who have a sworn duty to protect the rights of citizens, were defending the man whom had negatively changed her life forever, without considering that in doing so, she was denied any/all right of equal protection under the law. Because of the actions of McCauley, she has no way to pursue and recourse against the at fault party. She also told him that in her opinion, the matter became a criminal incident the moment she gave her statement to McCauley because the driver of the truck had a duty to report that he was involved in the accident and failed to do so. The Plaintiff again stated that she never, at any time saw a blue car. It was only the truck that caused the accident and asked for the name and contact information of King's supervisor. King then agreed to investigate more to see if there was information that he could obtain. The Plaintiff suggested that he collect written statements from the witnesses who called in to 911. King agreed and then contacted Tyler and Culpepper, and they gave him an account of what happened. After verifying these facts, he agreed to amend the accident report to reflect that it was in fact the truck that caused the accident, but this cannot be done until McCauley Jr. returns from leave in a week or so. The report was still amended incorrectly.

21. The Plaintiff spent the next few months having information collected regarding additional witnesses from CAD call logs and 911 recordings. After the multiple failures and refusals to conduct a thorough investigation by McCauley and King, the Plaintiff had her own investigation conducted. She provided this information to the King who stated that he

interviewed the witnesses, but still failed to obtain any written statements from any of them. The accident report was revised three (3) times and the final report still resulting in the omission of key information. The fourth (4<sup>th</sup>) and final report does not include the name, contact information of the at fault truck driver and his statement. It does not show that he remained at the scene and spoke with McCauley Jr. It also neglects to mention that a tag# of the car was provided to McCauley by Hudson at the scene and finally, the accident report does not contain any statements from witnesses. A true and accurate accident report was supposed to be made available to the Plaintiff within thirty (30) days by the Department of Public Safety/Motor Vehicles. Please note that to date, a true and accurate accident report has not been produced. All of the defendants in this complaint had knowledge that these imperative policies had been violated, yet they participated in a "code of silence" and attempted to downplay the violations. This created the climate for conspiracy to conceal the acts and omissions of McCauley. Each of the Defendants collectively and individually had a duty to report the actions and inactions of each other to the Office of Professional Responsibility. As a result of these behaviors, each and every officer and participant should be disciplined for their willful failure to supervise and are individually and officially guilty of corruption and bare the liability each of the occurrences that they had knowledge of. The Plaintiff alleges that each of the defendants have Violated their Oath of Office, Violated her Civil Rights, Co-conspired to conceal the acts and omissions of McCauley, Dereliction of Duty for not reporting to the Office of Professional Responsibility, Violating the North American Charter of Rights and Freedoms policy on Equal Protection Under the Law, Crimes of Moral Turpitude for having vast, detailed knowledge of direct policy violations resulting in negligence and harm to an individual. While remaining silent and electing to intentional ignore the Plaintiffs complaints which caused

emotional distress. The Defendant's conduct was intentional and malicious and done for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress. As a proximate result of defendant's discarding information, their acts and omissions specifically violate constitutionally protected rights as well as statues and policy and procedure of the Department and thereby are liable for the consequences of breach of duty and should make restitution to the Plaintiff. The actions and inactions of the Defendants, their repeated refusals, failures and denials and the consequences proximately caused by it, as hereinabove alleged , plaintiff suffered severe humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and body as follows: Major Depression, Anxiety, Cervical Disc Disorder, Annular tears in her lumbar and will need a lifetime of care and therapy and prays for \$11,148.000 in damages.

22. The Plaintiff states that quite a bit of time passed while she was recovering from surgery, going through therapy and did not have time to dedicate to pursuing this as naturally her health was her primary concern. During this time, she was able to have some research done into federal and state laws as well as DPS and SC Highway Patrol rules, regulations and requirements with a focal point of specific statues regarding policy and procedure. After reaching no resolution with McCauley, Jr. and King, the Plaintiff requested a meeting with their direct supervisors Lieutenant William Taylor and Captain Anthony K. Grice. On July 9<sup>th</sup>, 2013, The Plaintiff attended a meeting at the Troop Seven (7) building McCauley Jr., King, Taylor and Grice. Despite her obvious disability, all of the Defendants showed insensitivity and attempted to intimidate her by taking her down some dark, concrete stairs which presented a discomfort for her to navigate. They led her into an underground room where she sat at a table with McCauley Jr., King, Taylor and Grice while

she explained in great detail her concerns with the way that the accident was investigated. Again, she provided a summary of the accident, a timeline of events showing all of the steps that she went through and expressed how stressful the ordeal was. The Plaintiff presented four (4) amended accident reports and CAD call Reports to support the accuracy of her facts. She shared her deteriorating health conditions, loss of her job and the mounting medical costs that she had. She literally showed awards that she had received at the job that she lost and would have retired from, a bundle of medical bills with just one which she specifically placed in Grice's hand, alone being \$88,000. She spoke of how she is in pain every day of her life and will most likely be forever. The Plaintiff states that she made the statement that "we would not be sitting here if this trooper (McCauley) would not have played judge and jury on the side of the road and simply done what his training, policy and procedures required." She went on to say "If the trooper (McCauley) had his video camera activated, if he would not have discredited the "alleged witness" who we now know is the driver of the truck that caused the accident, if he would not have discarded this man's name, contact information, statement and if he would have not discarded the tag# which was provided to him at the scene and even then, if he would have upgraded the status of the accident once the Plaintiff gave her statement which then became a victim reporting a crime to an officer. In this meeting, McCauley admitted that he discarded the name, contact information and statement of the truck driver. He stated that he deemed him non-credible because he kept changing his story. He also admitted that he discarded the tag # that was provided to him at the scene by Hudson. McCauley states that he called it in and it did not come back registered to any vehicle so he discarded it. The Plaintiff stated that her tag# was EGY 865, however, the tag# which is entered in the CAD log shows a tag# of "G"GY 865

for the second vehicle. At some point between McCauley, Young (dispatcher) and Arcanzer (call taker), falsified information was input into the system. It is not clear specifically who input the false information, but all three of them knew or should have known that it was false information. After the Plaintiff showed the CAD Call dispatch records to Grice, he became frustrated and sent McCauley to make copies of the documents that the Plaintiff provided. The Plaintiff also pointed out that it took thirty-nine minutes for McCauley to arrive at the scene. Grice then instructed Taylor to re-conduct the investigation, re-interview witnesses to address McCauley's mistakes. The Plaintiff requested written statements and have not received this to date. The Plaintiff also requested to be provided with an accurate accident report after it has been corrected and this has not been done to date. The Plaintiff requested the correct car tag number that was provided to Trooper McCauley be located or tracked in the system in which he states that he called it in and to date, have not received this. In addition, the Plaintiff also requested that efforts be made to discover the identity of the truck driver, to date, the Plaintiff has received NONE of this information. In this meeting, the Plaintiff specifically provided Lt. Grice with two tag#'s of "persons of interest" that with a photo, possibly the Plaintiff, and/or one of the other witnesses or even Trooper McCauley could identify him, to date, the Plaintiff has not received any of this. The Plaintiff received a request from Taylor to provide him with the calls in to 911 and SChP dispatch reports of the accident. On September 19, 2013 she provided the information, however, once again, felt that this information would have and should have been more easily obtained and accessed directly by SChP. She also requested written statements to be collected from all witnesses including McCauley and King. The Plaintiff states that throughout the next six (6) months, she had multiple conversations

with Taylor who continued to assure her that he was still investigating. However, no results were ever produced.

23. On January 21, 2014, the Plaintiff sent an email request to FOIA asking for specific information about the policy and procedure requirements for troopers assigned to investigate traffic accidents. This request was responded to by Ada Schmidt (hereinafter "Schmidt") who stated that she is not the proper person to answer the questions, but instead of forwarding this request to the Office of Professional Responsibility or to her immediate supervisor, she gave the Plaintiff instructions on contacting the supervisor of the same troop that the plaintiff inquired about the wrong doing of. Hence begins the Plaintiffs suspicion of a conspiracy to conceal these incidents. A few days later, on January 25, 2014, the Plaintiff emailed Taylor to request a general status update and to request the production of written statements/affidavits of the witnesses. This email was not responded to. The Plaintiff states that she received a call from Taylor on February 13, 2014 informing her that he and Grice have concluded their investigation and no results were found. The plaintiff immediately followed up by email, dated February 13, 2014, with both gentlemen to thank them for their efforts and to inquire as to what reprimands would be made to the trooper. She received a return email from Grice indicating that personnel matters are not disclosed outside of the agency. He also assured her that matters that should be corrected with any of his employees are addressed as needed. After being informed that the investigation had been concluded, the Plaintiff sent an email to FOIA (Freedom of Information Act) to inquire if there is an updated accident report. Schmidt, again, directed the Plaintiff back to contacting the supervisor of the same troop that the plaintiff inquired

about the wrong doing of and never answered or responded to the request regarding an final accident report.

24. On September 27, 2014, the Plaintiff sent a final notice of her intent to file a lawsuit along with supporting documents to Governor Nikki Haley, South Carolina Attorney General Alan Wilson, South Carolina Department of Public Safety Director Leroy Smith and South Carolina Highway Patrol Commander Mike Oliver. She received a call from Marty Roberson (hereinafter "Roberson") with Adair Horne, the insurance company that represents the South Carolina Insurance Reserve Fund. He informed her that he was assigned to investigate and settle her complaint. After providing all information to him, Roberson allegedly completed his investigation and later informed her that he found no liability on the part of the officer because McCauley stated that he did not throw away any evidence. According to Roberson, he not able to contact Hudson, the witness who is listed on all four (4) accident reports. She also received a letter stating Roberson's decision from Warren Ganjehsani (hereinafter "Ganjehsani"), General Counsel for the South Carolina Department of Public Safety informing the Plaintiff of the same. To this day, they have failed and refused to address the part of the complaints regarding acts and omissions the troopers superiors.

25. On March 6, 2015, the Plaintiff sent an email to FOIA Officer, Schmidt, to request under the FOIA, any and all accident reports. She also sent an email to Grice, Taylor and Roberson requesting by order of the FOIA, ALL interviews, questionnaires and reports collected in their investigation. On or around March 9, 2015, she received a copy of her email request to Grice along with a copy of the same accident report, dated February 6, 2013, as well as copies of two (2) memorandums addressed to Grice from Taylor and King.

which detailed the results of their conclusions regarding the accident. There is varying information in the affidavits prepared by Taylor and King. Taylor's affidavit is closer to the truth but still omits the specific, detailed knowledge that he has which is that McCauley admitted in the July 9, 2013 meeting that he did not have his video camera activated, "discarded" the tag# of the "blue sedan" and that he discarded the contact information along with the statement of the responsible truck driver. Sgt. Nick King's varying affidavit confirms in sentence number seven where, that Trooper McCauley did, in fact, talk to the "self proclaimed witness" whom was later confirmed to be the actual truck driver. This package also omits the written statements of Erin Tyler and Bobby Hudson, yet Hudson's name was used on all four (4) accident reports. In fact, neither of these affidavits EVEN mention Mr. Hudson, though King states that he spoke with ALL witnesses. His affidavit also omits any and all mention knowledge of the tag# which was provided to McCauley as well as the name, contact information and statement of the responsible party being "discredited and discarded" by the trooper under his command. He does acknowledge that McCauley did not have his video camera activated. King also fails to state why he didn't have the Plaintiff to look at the photo as well to attempt to identify the driver.

26. At the end of April, 2015, the Plaintiff sent a summary of events along with supporting documentation to South Carolina Law Enforcement Division (hereinafter "SLED") with a request that they investigate her complaints, but received a reply acknowledging receipt of her information, explaining that they only investigate matters of criminal misconduct by government agencies, corporations or individuals only after a review by a Solicitor, the Attorney General's Office, or at the request of the law enforcement agency of jurisdiction. It further informed her that SLED will not conduct an investigation

into this matter. And finally, it suggested that she contact the Department of Public Safety Office of Professional Responsibility. This letter was signed by John T. Bishop, Captain of Investigative Services.

27. At the end of May, 2015, the Plaintiff sent a letter along with supporting documentation to the Department of Public Safety Office of Professional Responsibility and then spoke with Chief K.D. Phelps who was shocked to learn that there were four (4) accident reports and that neither of them were accurate or complete even though she was supposed to receive a true and accurate report within 30 days of the accident. He was also in awe of that fact that the trooper, McCauley Jr., did not have his video camera on while investigating an accident. Within a week of reviewing this package, the Plaintiff received a letter from Chief Phelps acknowledging receipt of the information and assuring her that the department would conduct a thorough inquiry into her complaint and will take appropriate action and notify her when the inquiry is completed. Then, five (5) days later, she received a letter from Warren Ganjehsani, General Counsel for the South Carolina Department of Public Safety informing her that she was attempting to reengage the Department on the same allegations that were the basis of her claim against the agency in 2014. He informed her that the Department deems the matter closed and will not be commenting further. Finally, he advised her to contact Marty Roberson, the insurance agent with the SC Insurance Reserve Fund if she has information that IRF should consider in revisiting her claim. After recovering from the emotional distress of being assured that the matter would be investigated and then informed that it wouldn't, the Plaintiff felt that it doesn't seem to matter that she included two additional, written, notarized statements and from one of the witnesses that Marty Roberson supposedly couldn't locate. In light of the fact that Phelps

was unaware of this incident prior to the Plaintiff contacting him, it is clear that no one within the Department had informed him of the Plaintiff's complaints.

28. The Plaintiff sent a final FOIA request for any/all accident reports on March 6, 2015 and never received a true and accurate accident report. The Plaintiff sent a FOIA request on July 7, 2015 for any/all Policy and Procedure Manuals which have yet to be received. In closing, the Plaintiff has exhausted all levels of procedure and provided her complaint with supporting documentation to the following members of command: Willie McCauley Jr., Nicklous King, William Taylor, Anthony Grice, Kenneth Phelps, Leroy Smith, Mike Oliver and Warren Ganjehsani. She has endured severe emotional distress, will forever live with a pain plagued body, irreparable financial anguish and prays for relief from the willfully negligent parties who had a sworn duty to protect her. She is seeking restitution for all. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer bodily injury, extreme mental distress, humiliation and anguish, and other emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff from an improper and evil motive, amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff thus is entitled to recover punitive damages from Defendants in amounts to be proven at trial.

**FOR A FIRST CAUSE OF ACTION  
AGAINST THE DEFENDANT DEPARTMENT  
(Negligence, Gross Negligence)**

29. The plaintiff alleges paragraphs 1 through 28 aforesaid

30. 42 U.S. Code § 14141 - Unlawful conduct. It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

31. Plaintiff is informed, believes and thereon alleges that, at all times mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment. All facts showing relationship of parties giving rise to defendant's duty to exercise due care towards plaintiff and equal protection under the law.

32. Plaintiff alleges Defendant(s), did willfully participate by having knowledge of acts and omission to act and failure to supervise fellow agents which constitutes a breach of duty and failure to protect which resulted in negligent, grossly negligent, willful and wanton acts by failing to carry out meaningful investigation of the events described herein and further by placing unreasonable reliance and belief on the acts of it's agents, particularly when he knew or should have known of the blatant violations of departmental regulations. Defendants, and each of them, unlawfully and intentionally and/or negligently denied Plaintiff adequate medical care, by refusing to allow her to seek financial remedy after a serious accident, during which she

sustained physical trauma and bodily injury. Defendants' actions and/or failures to act caused Plaintiff severe distress and subjected her to extreme emotional trauma. Plaintiff was unaware of her rights, emotionally traumatized, and unable to seek appropriate remedies, including the filing of a lawsuit during such time. As alleged herein, Defendants used denials of liability and intimidation to hold Plaintiff in financial oppression and captivity.

33. Negligent Infliction of Emotional Distress by the Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. To the extent that said outrageous conduct was perpetrated by certain Defendants, the remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the deleterious consequences to Plaintiff. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover punitive damages in amounts to be proven at trial.

34. Negligent Supervision that the Plaintiff is informed and believes and on that basis alleges that, when engaging in the wrongful conduct alleged herein, Defendants were acting as agents of each other. Each Defendant knew or reasonably should have known that the other Defendants were engaging in the wrongful conduct alleged herein, and that

this conduct would directly and proximately result in injury to Plaintiff. Each Defendant knew or reasonably should have known that the other Defendants were in violation of legal requirements as alleged herein and each Defendant had the authority to supervise, prohibit, control, and/or regulate the other Defendants so as to prevent these acts and omissions from occurring. Each Defendant knew or reasonably should have known that unless they intervened to protect Plaintiff and properly to supervise, prohibit, control, and/or regulate the conduct of the other Defendants, those Defendants would perceive their acts and omissions as being ratified and condoned. Each Defendant failed to exercise due care by failing to supervise, prohibit, control, or regulate the remaining Defendants and/or by failing to protect Plaintiff. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered and continued to suffer injuries entitling her to damages in an amount to be determined at trial.

35. Negligence Per Se that the Plaintiff is among the class of persons that the Policy and Procedure Manual and the Instructions for South Carolina Traffic Collision Report Manuals were designed to protect and for whose protection the foregoing statutes and regulations were adopted. Plaintiff's injuries are of the type that the foregoing statutes and regulations are intended to prevent. Defendants' violations of the foregoing statutes and regulations constituted negligence per se and created a presumption of negligence. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, Plaintiff has suffered and continues to suffer economic damages, in an amount, nature, and degree to be proven at trial. Defendants' conduct as described in this Complaint was malicious, fraudulent, and/or

oppressive, and done with a conscious disregard for the rights of the Plaintiff and for the deleterious consequences of the Defendants' actions. Each Defendant authorized, condoned, and/or ratified the unlawful conduct of all the other Defendants named in this action and of their agents and employees.

**FOR A SECOND CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Violation of Oath of Office)**

36. The Plaintiff realleges paragraphs 1-35 aforesaid.

37. Plaintiff alleges Violation of Oath of Office. Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe an oath.

a. Plaintiff has no record or evidence that Oaths of office are not required by all public officials, judges, law enforcement personnel, administrators, and many other persons who have voluntarily submitted themselves into the duties of said offices/positions and are given monetary and other benefits for such commitment. According to Article VI, Clause 3, of the Constitution, "All executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution..."

b. Plaintiff hereby makes explicit NOTICE and DECLARATION of one specific Right granted to Plaintiff by way of the Constitution of the United States; that being,

the right to demand all judicial, executive, and legislative officers and agents of the United States government and all sub-corporate governmental entities give their required Oath to protect and defend my unalienable rights, given to me by my Creator; that it be duly recorded and made available to all who may from time to time be, questioned by corporate entities, or, accused of any infamous crime against society.

**FOR A THIRD CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Violation of Civil Rights)**

38. The Plaintiff realleges paragraphs 1 through 37 aforesaid

39. Plaintiff alleges Violation of Civil Rights. The Plaintiff brings this civil action for deprivation of rights under Title 28 USC 42 Section 1981, Section 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1. Deprivation of Due Process- Plaintiff has no record or evidence that without warning or even the hint of warning that the case would be considered or determined on the side of the highway by Trooper Willie McCauley, Jr. [a decision was entered] "This is not the fair hearing essential to due process. It is condemnation without trial", as per; Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 (1937).

2. Uncapped emotional distress damages are recoverable under the post-Civil War Civil Rights Acts, 42 U.S.C. " 1981 and 1983. Patterson v. McLean Credit Union, 491 U.S. 164, 182 n. 4 (1989) (Section 1981); Hafer v. Melo, 502 U.S. 21, 31 (1991) (Section 1983).

3. The 1991 Civil Rights Act permits emotional distress damages in cases brought under Title VII, the Americans with Disabilities Act, 42 U.S.C. '12117(a), and the Rehabilitation Act of 1973, 29 U.S.C. '794(a)(1). See, generally, 42 U.S.C. ' 1981A (1991). These damages are capped based on the size of the employer. 42 U.S.C. ' 1981A(b)(3).

(a) Right of recovery

(1) Civil rights. In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover

compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(2) Disability in an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 794a(a)(1) of title 29, respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 791 of title 29 and the regulations implementing section 791 of title 29, or who violated the requirements of section 791 of title 29 or the regulations implementing section 791 of title 29 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(3) Reasonable accommodation and good faith effort In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with

Disabilities Act of 1990 [42 U.S.C. 12112(b)(5)] or regulations implementing section 791 of title 29.

(4) Despite their superior knowledge and special information, Defendants, and each of them, actively concealed from Plaintiff that she was entitled to legal protections under the law. Defendants actively concealed these known, material facts with the intent to induce Plaintiff to accept her medical and financial status, and for the purpose of preventing Plaintiff from asserting her rights in any legal forum available to her. Because of the Defendants' position of superior access to relevant knowledge and information about Plaintiff's rights, Plaintiff justifiably relied upon Defendants' false representations to her detriment.

(5) Consequently, the Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial. Defendants caused Plaintiff to be constantly apprehensive that she would be subjected to intentional invasion of her right to be free from offensive and harmful physical contact. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer extreme mental distress, humiliation, anguish and emotional and physical injuries and economic losses, all to her damage in amounts to be proven at trial. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice and in

conscious disregard of Plaintiff's rights. Plaintiff thus is entitled to recover punitive damages from Defendants in amounts to be proven at trial.

**FOR A FOURTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Conspiracy to Conceal Acts and Omissions)**

40. The Plaintiff realleges paragraphs 1 through 39 aforesaid

41. "[T]he essential elements of a [42 U.S.C.] § 1985 claim are:

(1) a conspiracy;

(2) to deprive plaintiff of equal protection or equal privileges and immunities;

(3) an act in furtherance of the conspiracy; and

(4) an injury or deprivation resulting therefrom." *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993).

42. The Plaintiff alleges the Defendants participated in a conspiracy to defeat enforcement of the laws. The liability of the supervisors referred to in this case is distinguishable from cases alleging vicarious liability on the part of a supervisor. Rather, there were two sets of duties involved. First, the trooper, as the pursuing officer, had a "duty to protect, reasonably investigate and record those findings." Second, the supervisors Under the Doctrine of Acquiescence as well as the Maxim in Law which states that "silence

shows consent" 6 Barb. [N.Y.] 2B, Qui non negat, fatetur and "He who does not deny, agrees," (Trayner, Maxim 503)

a. 42 U.S. Code § 1985 - Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with

intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.(R.S. § 1980.)

b. 42 U.S.C. 1986 - Neglect to prevent

(1) Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. (R.S. § 1981.)

(2) All of the Defendants are alleged to be co-conspirators with each other, in that each agreed to participate and participated in the furtherance of the objective of a civil wrongs as alleged in this Complaint. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy. Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon

information and belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not limited to, the wrongs alleged herein. All Defendants' acts and failures to act as alleged herein were perpetrated in furtherance of the ongoing conspiracy.

There are other co-conspirators not named as Defendants in this Complaint, who may be called as witnesses pursuant to South Carolina Rules of Civil Procedure.

(3) Plaintiff is informed and believes and thereupon alleges that at all times material herein, each Defendant was completely dominated and controlled by his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

Whenever and wherever this complaint refers to any act by a Defendant or Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

(4) Plaintiff is informed and believes and on that basis alleges that at all material times, each of the Defendants has acted as an employer and/or a joint employer within the meaning of 29 U.S.C. § 203(d), and Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency,

employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

(5) Whenever and wherever reference is made in this complaint to any act by a Defendant and/or Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint but are or were employees/agents of Defendants, or any of them, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

c. 42 U.S. Code § 1988 -

(1) Proceedings in vindication of civil rights applicability of statutory and common law. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions

necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

- a. Attorney's fees in any action or proceeding to enforce a provision of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title,

- b. Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title,

**FOR A FIFTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Dereliction of Duty)**

43. The Plaintiff realleges paragraphs 1-42 aforesaid.

44. The Plaintiff alleges that the Defendants "Could have known and should have known".

1. All duly sworn "officials", public "servants", and others who allow violations to be executed and continue without objection "could have known and should have known" according to common logic, general understanding, and competency certifications by legislative authorities. Note this early use of the established doctrine, "could have known and should have known", ruled in the case of Lashley v. Koerber, California, 1945. In this 1945 case, the appellate court held a physician liable because he could have known and should have known. It was summarized that a physician could be expected to exercise a "... reasonable degree of skill and learning and care ordinarily exercised by other doctors of good standing in the community".

2. Considered was the doctrine of *res ipsa loquitur* (the thing speaks for itself), where the plaintiff does not cause the problem, and the Defendant(s) is assumed guilty if Defendant(s) knowingly allowed or caused the harm to happen, or was negligent in preventing that harm when Defendant(s) should have and could have prevented it. This precedent implies and applies to all people licensed by the public to be trusted by that public to perform in a capacity demanded of their profession and licensed to be rated as "competent". This precedent, then, reaches

out to all professionals licensed by the public. Furthermore, those licenses are for the protection of that public. All professional people, bankers, real estate agents, car salesmen and certainly all government workers (politicians, Congress Persons), especially those elected to offices of trust and power, are affected by that court ruling, which must be considered a precedent of the land. All elected officials, certainly, could have known and should have known, or they must suffer the consequences of incompetency and dereliction of duty. As a direct and proximate result of Defendants' conduct as alleged in this Complaint, Plaintiff has lost wages and other benefits in amounts to be proven at trial. Further, the unlawful conduct of Defendants, and each of them, as alleged in this Complaint, was and continues to be malicious, fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full knowledge of the consequences to the Plaintiff as alleged in this Complaint, with the intent to violate the statutory and other rights of the Plaintiff, and/or with a willful, conscious, wanton, and reckless disregard for the Plaintiff's rights and for the deleterious consequences and cruel and unjust hardship resulting to Plaintiff.

**FOR A SIXTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Crimes of Moral Turpitude)**

45. The Plaintiff realleges paragraphs 1-44 aforesaid

46. Violation of Crimes of Moral Turpitude which a legal concept in the United States and some other countries that refers to "conduct that is considered contrary to community standards of justice, honesty or good morals." The concept of "moral turpitude"

might escape precise definition, but it has been described as an "act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Plaintiff has no record or evidence that for more than a century the central meaning of procedural due process has not been clear, as per; "Parties whose rights are to be affected are entitled to be heard;" Baldwin v. Hale, 1 Wall. 223, 233. See Windsor v. McVeigh, 93 U.S. 274 ; Hovey v. Elliott, 167 U.S. 409 ; Grannis v. Ordean, 234 U.S. 385 . It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 Failure to Protect from Harm-6th Amendment (Failure to protect victim /witness) Plaintiff has no record or evidence that any Court has authority to do that which is clearly unlawful, as per; "The United States is forbidden by the fundamental law to take either life, liberty, or property without due process of law, and its courts are included in this prohibition." Bass v. Hoagland, 172 F.2d 205, 209 (1949); DelVecchio v. Illinois Dept. of Corrections, 8 F.3d 509, 514 (7th Cir. 1993). SC TITLE 23 Ch. 6 DPS Article 1 Sec. 23-6-30

1. As a direct and proximate result of these actions, Plaintiff has sustained damages, including extreme mental suffering, humiliation, emotional distress, physical injuries and economic losses, entitling her to damages in an amount to be proven at trial.

2. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice, and in conscious disregard of

Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from Defendants in amounts to be proven at trial. Each of the Defendants and their agents intentionally and/or negligently made multiple representations of material fact in telling Plaintiff that they were not liable. These representations were in fact false. The truth was that the Individual Defendant, McCauley, acting within the course and scope of his duties with the Defendant Department failed to use due care in conducting his accident investigation and demonstrated erroneous and false assumption and presumption by discrediting the alleged witnesses and his statement when it turned out that this "alleged witness" was indeed the party who caused the Plaintiff's accident. By the act of discarding the contact information and statement of this alleged witness when it turned out that this "alleged witness" was indeed the party who caused the Plaintiff's accident. By falsifying information in official documents by inputting wrong tag # in CAD (Computer Aided Dispatch), by refusing to properly investigate (refused to contact witnesses), by preparing erroneous documents (four (4) accident reports), by intentional neglect of duty (failure to upgrade status after the victim reported a crime to him at the hospital, i.e. Plaintiff's statement and by attempting to conspire to conceal acts and omissions. When remaining Defendants became knowledgeable of his actions, they made the representations that they were false and/or had no reasonable ground for believing that the representations were true. Defendants made the representations with the intent to defraud and induce Plaintiff to simply go away. Each of the Defendants has had and continues to have both the means of obtaining and actual possession of superior knowledge and special information with regard to the facts relevant to a determination of Plaintiff's rights as a citizen. The superior knowledge and special information possessed by Defendants includes, but is not

limited to, knowledge of legal requirements for policy, procedure and liability by law. As a result of Defendants' position to obtain superior knowledge and their actual possession of such knowledge, each Defendant has gained an unconscionable advantage over Plaintiff, who was ignorant of facts relevant to her recoverable damages and rights and who was not in a position to become informed about such facts.

**FOR A SEVENTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Violation of SC Department of Public Safety Policy and Procedure)**

47. The Plaintiff realleges paragraphs 1-46 aforesaid

48. Disciplinary Action Policy Purpose

1. All employees of the Department of Public Safety are expected to conduct themselves in accordance with applicable laws, regulations, Agency Policies and generally acceptable work behaviors. Employees in supervisory positions will set an example by their conduct, attitude and work habits. This policy is created to ensure that disciplinary actions imposed by the Agency for unacceptable conduct are imposed in a consistent and fair manner and generally follow a progressive disciplinary plan. However, because it can be difficult to be all-inclusive or to assign a degree of severity to various offenses, the appropriate discipline will be determined after the particular circumstances of the case have been carefully considered. For these reasons, all supervisors will consult the Agency's Office of Human Resources prior to imposing any discipline or attempting to resolve any disciplinary matter. Employees should not construe any recommended actions contained herein to be a definitive course of action that the Agency will strictly

follow when administering discipline. The Agency reserves the right to impose any type of disciplinary action for any offense as deems appropriate, including dismissal from employment for a first offense.

2. Guidelines for Progressive Disciplinary Action

a. Destruction, Alteration or Falsification of Records (Level II Reprimand to Dismissal)

3. Interference with Other Employee's Work/ Co-conspiracy to conceal acts and omissions (Level II Reprimand)

4. Mishandling of Agency Funds or Documents- Spoilation of Evidence, Failure to Preserve Evidence (Level II Reprimand to Dismissal)

5. Willful Violation of Rules, Regulations or Policy (Level II Reprimand to Suspension)

6. Negligence in Following Rules, Regulation or Policies (Level I Reprimand to Level II Reprimand)

7. Negligent Authorized Operation of a State Vehicle Resulting in an Accident/Personal Injury (Level I Reprimand to Dismissal)

8. Refusal to Cooperate with Administrative Investigations (Written Reprimand to Dismissal)

9. Improper Conduct (Level I Reprimand to Dismissal)

10. Negligence in the Performance of Duty (Level I Reprimand to Dismissal)

11. Failure to Provide Accurate, Truthful and Complete Information (Level I Reprimand to Suspension)

12. Gross Negligence- Refusal to Properly Investigate and Refusal to acknowledge victims report as a crime
13. Conduct Non-becoming of an Officer-
14. Negligent Infliction of Emotional Distress- Refusal to acknowledge victims report as a crime
15. Failure to supervise McCauley, King, Taylor, Grice and Smith

**FOR AN EIGHTH CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(Systematic Neglect of Duty)**

49. The Plaintiff alleges paragraphs 1 through 48 aforesaid

50. The Plaintiff alleges that the trooper and the supervisors at the Department of Public Safety FAILED to perform their respective duties and there was an "absence of care that is necessary under the circumstances". The supervisors at the Department had an independent duty to monitor the acts of the troopers and take any actions deemed appropriate as reprimands and reporting the Troopers acts and omissions to the Office of Professional Responsibility. This duty is based on both the Department's own internal policy and on general standards of conduct recognized by law enforcement agencies, primarily the latter. These failures left an ongoing victimization of the Plaintiff which existed since the accident and will continue in the future do to severe emotional harm, serious economic harm including and not limited to major lifestyle changes do to medical bills loss of income.

1. All of the above are in violation of standards taught by the Department to its patrolmen, and known to the Defendant(s). The above actions were obviously negligent, reckless and malicious which led to everlasting lifetime injury which will require lifelong medical care and therapy.

2. All Defendants, and each of them, knew or reasonably should have known that the conduct described herein would and did proximately result in physical and emotional distress to Plaintiff. At all relevant times, all Defendants, and each of them, had the power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or prohibit said conduct. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise protect Plaintiff. To the extent that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and reckless disregard for the deleterious consequences to Plaintiff. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to her damage in amounts to be

proven at trial.

By Biafra Monique Curtis  
biafra-monique; Curtis

Date

8-24-15

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays judgment against defendant as follows:

- a. For general damages for severe emotional distress and mental suffering.
- b. For medical, injury related expenses as well as future care in according to proof to be provided at trial;
- c. For lost wages in the sum of which to be provided at trial;
- d. For property damage in the sum of which to be provided at trial.
- e. For costs of suit herein incurred, proof of which to be provided at trial;
- f. For punitive damages in an amount to be determined by the finder of fact;
- g. For such other and further relief as the court may deem just and proper.

WHEREFORE, Plaintiff respectfully prays that this Court enters judgment against Defendants, and each of them.

DATED:

By Biafra Monique Curtis 8-24-15  
biafra-monique; Curtis

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED:

By Biafra Monique Curtis 8-24-15  
biafra-monique; curtis

2015 AUG 24 AM 11:29  
JEANNETTE W. HOBRIE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

VERIFICATION

I, biafra-monique; curtis, am a Plaitiff in the above-entitled action. I have read the foregoing Summons and Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Beaufort County, South Carolina.

DATED: 8-24-15

Biafra Monique Curt  
(Signature)

RICHLAND COUNTY  
FILED  
2015 AUG 24 AM 11:29  
JEANNETTE W. HOBBS  
C.C.P. & G.S.

NOTARY ACKNOWLEDGEMENT

On this 24<sup>th</sup> day of August, 201<sup>5</sup>, before me, the undersigned Notary Public in and for the STATE OF SOUTH CAROLINA, appeared Biafra Monique Curt self-identified as an indigenous woman

AS WITNESS my hand and seal.

A L Thompson Notary Public

My Commission Expires 03/28/2023

**A L THOMPSON**  
Notary Public - State of South Carolina  
My Commission Expires March 28, 2023

# CERTIFICATE OF SERVICE

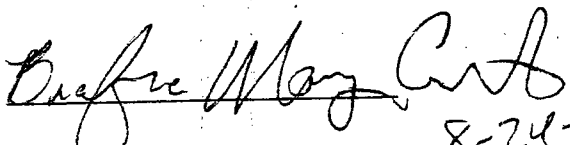
I, :biafra-monique :curtis hereby attest to the filing of the original copy of this Affidavit of Truth into the record of the Court of Common Pleas in and for Richland County, South Carolina and left additional copies with an associate of the United States Postal Services for delivery, with adequate postage paid, to the parties and entities named herein at the addresses given:

Mr. Warren Ganjehsani, SC BAR #17040  
South Carolina Department of Public Safety  
Office of General Counsel  
10311 Wilson Blvd.  
Blythewood, SC 29016

Mr. Warren Ganjehsani, SC BAR #17040  
South Carolina Department of Public Safety  
Office of General Counsel  
PO BOX 1993  
Blythewood, SC 29016

South Carolina Insurance Reserve Fund  
1201 Main Street, Ste. 500  
Columbia, SC 29201

Loretta E. Lynch  
United States Department of Justice  
Attorney General of the United States  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

By   
biafra-monique; curtis 8-24-15

FILED  
2015 AUG 24 AM 11:29  
JEANNETTE W. HOBBS  
C.C.P. & G.S.



South Carolina Department of Public Safety  
Office of Professional Responsibility

June 5, 2015

Ms. Biafra Curtis  
P. O. Box 21294  
Hilton Head, SC 29925

**RE: OPR File #DI-2107-15-0087-C**

Dear Ms. Curtis:

This letter will acknowledge receipt of the information you provided to the South Carolina Department of Public Safety (DPS). The DPS will conduct a thorough inquiry into your complaint.

As part of the Department's commitment to providing law enforcement services that are fair, effective, and impartially applied, the Office of Professional Responsibility (OPR) was established to provide citizens with a fair and effective avenue for redress of their legitimate grievances against employees, and, by the same token, to protect employees from false charges of misconduct or wrongdoing.

You can be assured that the Department takes these matters seriously and you can have confidence that the Department will take appropriate action and will notify you when the inquiry is completed.

If I can be of any further assistance, please do not hesitate to contact me at 803-896-8240.

Sincerely,

Chief K. D. Phelps

/ss

C: Colonel M. R. Oliver  
Captain A. K. Grice



## South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016  
Tel: (803) 896-7965 • Fax: (803) 896-7967

June 10, 2015

Ms. Biafra Monique Curtis  
P.O. Box 21294  
Hilton Head Island, SC 29925

Re: Claim No. 87232

Dear Ms. Curtis:

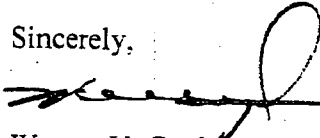
You contacted the Department of Public Safety's Office of Professional Responsibility ("OPR") recently and sent OPR Chief K. D. Phelps an e-mail on June 8, 2015 in connection with an incident involving you on September 27, 2012. In your June 8th e-mail, you attempted to reengage the Department on the same allegations that formed the basis of a claim you made against this agency last year.

As you will recall from my October 29, 2014 letter to you, the Insurance Reserve Fund ("IRF") is the entity responsible for evaluating claims such as yours that are asserted against state agencies. Consequently, the Department forwarded your claim regarding this incident to the IRF for evaluation on October 3, 2014.

By letter dated November 18, 2014 (a copy of which is enclosed), the adjuster assigned to investigate your claim notified you that he was "unable to establish any liability on behalf of the SC Department of Public Safety for this incident." Insofar as the IRF has found that no liability exists in this matter, the Department declines to undertake further investigative efforts that would duplicate those already performed by the IRF.

For the foregoing reasons, the Department deems this matter closed and will not be commenting further on the circumstances surrounding your claim. Should you have any information that you believe the IRF should consider in revisiting your claim, you can contact the adjuster shown on the enclosed letter.

Sincerely,

  
Warren V. Ganjehsani  
General Counsel

WVG/md

Encl.

cc: Chief K. D. Phelps

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

Biafra Monique Curtis, Pro Se, )  
 )  
 v. )  
 )  
 South Carolina Department of Public )  
 Safety, Warren Ganjehsani, Mike )  
 Oliver, Leroy Smith, Kenneth )  
 Phelps, Anthony Grice, William )  
 Taylor, Nicklous King, Willie )  
 McCauley, Jr., Ada Schmidt, Aaron )  
 Canzater and Cherie Young, )  
 Individually and in their official )  
 Capacities, )

Case Number: 3:15-cv-03753-MGL-PJG

RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S DISCOVERY REQUESTS  
MISCHARACTERIZED AS MOTION  
FOR DISCOVERY

TO: BIAFRA CURTIS, *pro se*, PLAINTIFF:

The defendants hereby respond and object to plaintiff's discovery requests, mischaracterized as a Motion for Discovery and improperly filed in the Court, dated November 20, 2015, mailed November 23, 2015, received at some time between November 25 and 30, 2015, as follows:

Defendants note that the documents included in the package contain a reference to FRCP 36, however, no requests for admissions were included in the package. No item within the package constitutes a request for an admission. To the extent plaintiff considers any of her discovery requests to constitute requests for admissions, the defendants object and deny all requests for admissions.

Notwithstanding any objection herein, defendants assert all nonprivileged relevant information responsive to the plaintiff's requests and in the possession of defendants has been provided pursuant to the Freedom of Information Act.

36

Defendants object to the discovery requests as exceeding the scope and limits set forth in FRCP 26(b)(1).

Defendants object to a "prayer" being included with discovery requests, as such is not a proper discovery request.

Defendants object to the Requests for Production as overly broad, unduly burdensome, and vague.

Defendants object to the Interrogatories, in that the plaintiff, in violation of FRCP 33(a)(1), has served interrogatories exceeding the allowed number of twenty-five. Rather than simply respond to the first twenty-five (25) discrete subparts, defendants invite the plaintiff to trim her interrogatories to the allowed number or seek the Court's leave to serve additional interrogatories.

Defendants object to the interrogatories and requests for production to the extent they seek information which constitutes attorney-client privileged communication, or materials prepared in anticipation of litigation or for trial by any defendant, its attorneys, consultants, sureties, indemnitors, insurers, or agents, or communications with experts except to the extent specifically rendered discoverable by FRCP 26.

Defendants and their counsel object to being "instructed" how to respond to discovery requests, when responses are governed not by the plaintiff but by the Federal Rules of Civil Procedure.

Defendants assert all materials responsive to any proper discovery request have been provided to the plaintiff pursuant to a Freedom of Information Act request. Pursuant to FRCP 33(d), the defendants crave reference to those records for the information responsive to plaintiff's discovery requests.

12/2

Specific Responses and Objections to Requests for Production

1. Defendants object to Request 1, on the grounds the request is overly broad, vague, unduly burdensome, and unduly intrusive, in that it seeks, without limit of time or scope: a. "All" records concerning a South Carolina state agency, the South Carolina Department of Public Safety; and its individual employees who are defendants to this action;

b. "All" records, without limit of time or scope, concerning the individual defendants in this action, including "all" records every individual defendant has about himself or herself, whether or not those records are relevant to this action or likely to lead to the discovery of admissible evidence;

c. Records about, or perhaps records in possession of, nonparties, Adair Home Insurance Company, South Carolina Insurance Reserve Fund, and South Carolina Department of Motor Vehicles;

d. Records of insurers, all or part of which are protected and privileged from discovery under FRCP 26(b)(3)(A).

2 and 3. Defendants object to Requests 2 and 3, on the ground they are unduly burdensome, overly broad, and vague; and may be construed to seek information privileged from disclosure as attorney-client communications, and attorney work product and case and trial preparation materials protected from discovery by FRCP 26(b)(3)(A). Notwithstanding the objection, defendants have provided all nonprivileged relevant information to the plaintiff in compliance with a Freedom of Information Act request.

4 and 5. Defendants object to Requests 4 and 5, to the extent they seek information of nonparties, to the extent it seeks attorney-client communications, and to

1763

17

the extent it seeks information from the nonparty insurer for these defendants (protected under FRCP 26(b)(3)(A)). Defendants further object to the extent the discovery request implies any crime was committed by any defendant. Defendants further object to Request 5 as argumentative and not intended to elicit discovery. These defendants assert no crime nor misconduct was committed. These defendants do not bear the burden of proof in this action. Notwithstanding the objection, defendants believe all nonprivileged responsive material has been produced to the plaintiff pursuant to FOIA.

6. Defendants object to Request 6 as argumentative and not intended to elicit any discovery.

7. Defendants object to Request 7, as a Request to Produce may not be used to compel an Affidavit from any person, nor can an Affidavit ever be compelled.

Defendants assert the nonprivileged information, if any, responsive to 7B, 7D, 7F, and 7G is included in the materials produced to plaintiff pursuant to FOIA. Defendants deny that defendant Ganjehsani can refuse or did refuse to allow an ethics investigation.

Defendants object to the characterization in 7E of "false" vehicle tag, and assert any error in data entry was a human error. Defendants object to producing any information protected by FRCP 26(b)(3)(A). Defendants deny the accident should have been deemed criminal. Defendants deny any liability or causative role in any injury to the plaintiff.

8. There is no Request 8, but counsel is unaware why a list of witnesses is included in the discovery requests. If plaintiff's intention is to seek the direct contact information for any employee of the SCDPS, this information will not be provided, as SCDPS employees, whether or not named as individual defendants, should be contacted only through their undersigned counsel. If plaintiff's intention is to seek information held

1764

by nonparties, it will not be provided by these defendants and should be sought directly from its source. If plaintiff's intention is to seek information from defendants' insurer concerning this action, that information is protected from discovery by FRCP 26(b)(3)(A), and will not be disclosed by defendants.

#### Specific Responses and Objections to the Interrogatories

1 and 2. All information responsive to Interrogatories 1 and 2, which is in the possession of defendants and nonprivileged, has been produced pursuant to FOIA.

3. Objection is made to Interrogatory 3 on the ground it seeks information concerning attorney-privileged communications and trial preparation materials not discoverable under FRCP 26(b)(3)(A). Notwithstanding the objection, and without waiving any privilege but expressly reserving same, counsel discloses only that the responses are made in reliance on information provided to counsel by the defendants.

4 through 10. Objection is made as Interrogatories 4 through 10 are not proper interrogatories, but are argumentative and accusatory. Each defendant has been forthright in their conduct. Furthermore, each defendant is available for deposition by the plaintiff.

11. Objection is made to Interrogatory 11, as plaintiff is not permitted to dictate how a defendant answers a Complaint in a civil action.

12 through 29. Defendants object to interrogatories 12 through 29 on the grounds they are not proper interrogatories. Defendants further object as the interrogatories seek already in the possession of the plaintiff and information already provided pursuant to FOIA. Defendants further object to interrogatories 23 and 24 as seeking an opinion from defendants, and, at that, an opinion some of the defendants would be unqualified to state.

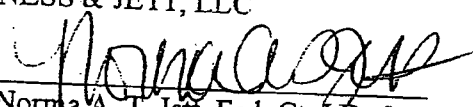
Defendants object to all interrogatories seeking standards, laws, or other information available to plaintiff through review of publicly available research materials. Defendants object to Interrogatories 25 and 26 as not proper interrogatories. Defendants object to Interrogatory 27 as not a proper interrogatory but a legal argument. Defendants object to Interrogatory 28 as not a proper interrogatory. Defendants object to Interrogatory 29 as not an interrogatory but an accusation, which defendants deny.

December 21, 2015

Bamberg, SC

NESS & JETT, LLC

By:

  
Norma A. T. Jett, Fed. Ct. LD. 5101

Alison Dennis Hood, Fed. Ct. LD. 11078

Post Office Box 909

Bamberg, SC 29003

(803) 245-5178

[normajett@bellsouth.net](mailto:normajett@bellsouth.net)

[alisondhood@gmail.com](mailto:alisondhood@gmail.com)

ATTORNEYS FOR ALL DEFENDANTS

12/6

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
SEP 02 2016  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Appellate Case No. 2016—001239

Biafra Monique Curtis.....Appellant

v.

South Carolina Department of Public Safety, Warren Ganjehsani, Mike Oliver, Leroy Smith, Kenneth Phelps, Anthony Grice, William Taylor, Nicklous King, Willie McCauley, Jr. Ada Schmidt, Aaron Canzater and Cherie young, individually and in their Official Capacities.....Respondents

**MOTION TO EXCLUDE MATTER FROM RECORD ON APPEAL**

YOU WILL PLEASE TAKE NOTICE, RESPONDENTS, by and through their undersigned attorneys, will move the Court for an Order striking portions of the Record on Appeal, as designated by Appellant, pursuant to Rule 210 (c), SCACR, as the designated matter was not submitted to the lower court and is therefore extraneous and should not properly be included within the Record on Appeal.

Particularly, Respondents request the following matter be stricken from the Record on Appeal:

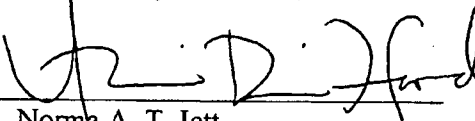
1. Defendants' Attorneys Discovery "Response and Objection" dated December 21, 2015

This motion is based upon the Transcript of the Hearing on this matter, dated May 18, 2016, which contains no clear reference to this discovery documentation being submitted to the Court for consideration. The undersigned has no record of the discovery responses ever having been submitted to the court or to the clerk. Upon information and belief, this particular matter was not submitted to the lower court, and Rule 210(c), SCACR prohibits its inclusion within the Record on Appeal.

September 2, 2016

Respectfully submitted,

By:



Norma A. T. Jett  
Alison Dennis Hood  
NESS & JETT, LLC  
P.O. Box 909  
Bamberg, South Carolina 29003  
Telephone (803) 245-5178  
Fax (803) 245-5384  
ATTORNEY FOR ALL RESPONDENTS

CERTIFICATE OF SERVICE

This is to certify that I, Alison Dennis Hood, Attorney for ALL RESPONDENTS, along with Richard B. Ness of Ness & Jett, LLC, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **RESPONDENTS' INITIAL BRIEF AND INITIAL DESIGNATION OF MATTER, along with a MOTION TO EXCLUDE MATTER FROM RECORD ON APPEAL** in the matter captioned *Biafra Monique Curtis, Pro Se v. SCDPS, et al.*, Appellate Case Number: 2016-001239 to the following parties, at the following addresses:

Biafra Monique Curtis  
P.O. Box 21294  
Hilton Head, SC 29925

**RECEIVED**

SEP 02 2016

SC Court of Appeals

Bamberg, S.C.  
Sept 2, 2016



Norma A. T. Jett  
Alison Dennis Hood  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for All Respondents

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Case No:2016-CP-001239

RECEIVED

SEP 19 2016

SC Court of Appeals

South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.

Respondent(s)

V.

Biafra Monique Curtis, Pro Se

Appellant

RESPONSE TO MOTION TO EXCLUDE MATTER FROM RECORD ON APPEAL

YOU WILL PLEASE TAKE NOTICE, APPELLANT, moves the court for an Order objecting to striking any portions of the Record on Appeal and if, as stated in the defense attorneys motion to strike matter which was prepared, addressed to the United States District Court, signed, dated and mailed to the Appellant by use of the United States Postal Service, but not submitted to the lower court, then it seems to this writer that there is a possibility of fraud on the court or at least or evidence that the judicial process may have been polluted by way of fraudulent actions and omissions, as per; "McNally v. U.S., 483 U.S. 350, 371-372 (1987), Quoting U.S. v Holzer, 816 F.2d 304, 307: ""**Fraud in its elementary common law sense of deceit - and this is one of the meanings that fraud bears in the statute, see United States v. Dial, 757 F.2d 163, 168 (7th Cir. 1985) - includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them he is guilty of fraud or evidence that false representation does not**

constitute fraud. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co. 92 F 26 817 or evidence that defendants attorney(s) are not guilty of Sham Pleading. "Those which are inherently false and must have been known by interposing party to be untrue." Pentecostal Holiness Church, Inc. v. Mauney, Fla App., 270 So.2d 762, 769. or evidence that defense attorney(s) did not promote the functions of Aider and Abettor. "One who advises, counsels, procures, or encourages another to commit a crime, himself being guilty of some overt act or advocacy or encouragement of his principal, actually or constructively present when crime is committed, and participating in commission thereof by some act, deed, word, or gesture, Turner v Commonwealth, 268 Ky. 311, 104 S.W. 2D 1085, and sharing the criminal intent of the principal."

This writer is now concerned with Offenses Against Public Justice.

#### **SECTION 16-9-10. Perjury and subornation of perjury.**

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

#### **SECTION 16-9-20. Subornation of perjury in civil actions.**

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

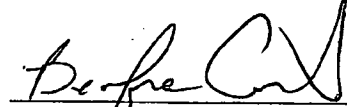
A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

My response to this motion is based on the fact that documents were indeed referred to during the final hearing regarding the information which had previously been submitted to the court and were repeatedly overlooked and ignored. Now that the defense has gotten caught with their pants down, it would be an atrocity and a continuation of the biased and one-sided treatment that represents the continued victimization of the appellant. They had both the letter from Phelps and Ganjesani in hand at the time that they prepared that fictitious document and they knew that it was false. Now that it is being pointed out, they want to strike it. No. Absolutely Not.

I certify that this response to motion contains no matter that is not relevant to this appeal.

September 16, 2016



Biafra Monique Curtis, Pro Se  
PO BOX 21294  
Hilton Head Island, SC 29925

**FORM 7  
PROOF OF SERVICE OF RESPONSE TO MOTION TO EXCLUDE  
MATTER TO BE INCLUDED ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

**RECEIVED**

SEP 19 2016

SC Court of Appeals

Appellate Case No: 2016-001239

South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.

Respondent

V.

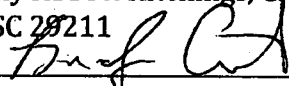
Biafra Monique Curtis, Pro Se

Appellant

PROOF OF SERVICE

I certify that I have served the Proof of Service of Response to Motion to Exclude Matter on Appeal to the Respondent(s) by depositing a copy of it in the United States Mail, postage prepaid, on September 16, 2016, addressed to: Honorable Jenny Abbott Kitchings, Clerk South Carolina Court of Appeals PO BOX 11629 Columbia, SC 29211

September 16, 2016

  
Biafra Monique Curtis, Pro Se  
PO BOX 21294  
Hilton Head Island, SC 29925  
843-684-3118

# The South Carolina Court of Appeals

Biafra Monique Curtis, Appellant,

v.

South Carolina Department of Public Safety, Warren Ganjehsani, Mike Oliver, Leroy Smith, Kenneth Phelps, Anthony Grice, William Taylor, Nicklous King, Willie McCauley, Jr., Ada Schmidt, Aaron Canzater and Cherie Young, individually and in their official capacities, et al., Respondents.

Appellate Case No. 2016-001239

---

## ORDER

---

After careful consideration, Respondents' motion to strike is denied. Within thirty days of the date of this order, Appellant shall serve the record on appeal on Respondents and file a proof of service with this court.



FOR THE COURT

Columbia, South Carolina

cc:  
Biafra Monique Curtis  
Norma Anne Turner Jett, Esquire  
Alison Dennis Hood, Esquire

**FILED**

October 26, 2016

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Richland	)	
	)	
Biafra Monique Curtis,	)	
	)	
Plaintiff,	)	2015-CP-40-05172
	)	
versus	)	May 18, 2016
	)	
S.C. Department Of Public	)	Columbia, South Carolina
Safety, et al,	)	
	)	
Defendants.	)	
	)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable L. Casey Manning

A P P E A R A N C E S:

Biafra Monique Curtis  
Pro Se Plaintiff

Allison D. Hood, Esquire  
Attorney for the Department of Public Safety

PROVIDED FOR: Biafra Monique Curtis

FOR COPIES CONTACT: DeeAnne Varnadoe  
Official Court Reporter  
Fifth Judicial Circuit, At-Large  
dvarnadoe@sccourts.org

I N D E X

Hearing . . . . . 4

Certificate . . . . . 17

1 THE COURT: You're sure about that?

2 PLAINTIFF CURTIS: Yes. I have something that I would  
3 like to say if it's ---

4 THE COURT: Oh, yeah. This is how it works. She goes  
5 first; it's her motion.

6 PLAINTIFF CURTIS: Okay.

7 THE COURT: Then I'll give you a chance to respond.

8 PLAINTIFF CURTIS: Okay. Thank you.

9 THE COURT: I can help you out a little bit, but not  
10 too much.

11 PLAINTIFF CURTIS: Okay.

12 THE COURT: I can't give you advice.

13 PLAINTIFF CURTIS: All right.

14 THE COURT: You understand all of that.

15 PLAINTIFF CURTIS: I appreciate that. Thank you.

16 THE COURT: Go ahead. Are you ready?

17 MS. HOOD: Yes, sir.

18 THE COURT: All right.

19 MS. HOOD: This case is -- has been brought by Ms.  
20 Curtis ---

21 THE COURT: Please sit down, Ms. Curtis.

22 PLAINTIFF CURTIS: Thank you so much.

23 MS. HOOD: --- against the Department of Public Safety  
24 and then a number of state employees ranging from the  
25 General Counsel for the Department of Public Safety down to

1 the Freedom of Information Act officers. Essentially, Ms.  
2 Curtis has named everyone who either responded to her  
3 request for information or investigated an automobile  
4 accident that occurred on September 27, 2012.

5 THE COURT: And it was her accident, I assume.

6 MS. HOOD: That is correct.

7 And we -- we don't dispute that the accident took  
8 place or that Ms. Curtis was seriously injured in the  
9 accident. But there is some dispute about what happened.

10 The highway patrolman that responded to the scene  
11 investigated at the roadside. There was some dispute about  
12 whether or not -- there were three lanes of traffic --  
13 about whether or not a blue car entering the interstate  
14 forced the vehicle in the middle lane into Ms. Curtis' lane  
15 and forcing her off the road or whether the vehicle in the  
16 center lane forced Ms. Curtis off the road. We don't --  
17 we're not here today to talk about what happened in the  
18 accident.

19 But Ms. Curtis' assertion is that the Department of  
20 Public Safety breached a duty of care in failing to  
21 identify the drivers of those vehicles. Ms. Curtis was  
22 unable to successfully bring a civil claim for personal  
23 injury after the accident because the investigation at the  
24 roadside did not determine who was driving the tractor-  
25 trailer in the center lane or the blue vehicle that merged,

1 the federal claims, but remanded ---

2 THE COURT: Judge Woods.

3 MS. HOOD: That's correct. But he elected not to  
4 exercise any jurisdiction over the state court claims and  
5 remanded.

6 THE COURT: She.

7 MS. HOOD: She. I meant to say that. I know her.  
8 But she remanded back down to state court for the balance  
9 of the state claims. So we're here today to ---  
10 essentially, we would like to seek dismissal based on the  
11 statute of limitations argument. But we would also argue  
12 that there are several causes of action in here apart from  
13 the negligence claim for violations of office, violations  
14 of policy handbooks and those sorts of things. We'd like  
15 to, at a minimum, clean up the complaint and get those  
16 sorts of things that don't actually create a duty to the  
17 public out, strike putatives and substitute the appropriate  
18 defendants in this case which would be the Department of  
19 Public Safety.

20 THE COURT: All right.

21 MS. HOOD: And that's really about all I have today,  
22 Your Honor.

23 THE COURT: Thank you. Ms. Curtis?

24 PLAINTIFF CURTIS: Okay.

25 THE COURT: Let me ask you this question, Ms. Curtis.

1           PLAINTIFF CURTIS: Yes, sir.

2           THE COURT: Did you ever hire a lawyer when this  
3 accident occurred?

4           PLAINTIFF CURTIS: I attempted to.

5           THE COURT: But you never retained the services of a  
6 lawyer?

7           PLAINTIFF CURTIS: No, I didn't.

8           THE COURT: I'm sorry. Go ahead.

9           PLAINTIFF CURTIS: I attempted to and I had several  
10 lawyers who were willing to take the case; however, when  
11 they found out that the chief counsel of the highway patrol  
12 was one of the parties that I was intending to sue, they  
13 wouldn't ---

14          THE COURT: Have you ever heard of the Uninsured  
15 Motorists Claim?

16          PLAINTIFF CURTIS: Yes.

17          THE COURT: Go ahead.

18          PLAINTIFF CURTIS: Okay. So the accident -- and I'm  
19 looking at the Memorandum of ---

20          THE COURT: Well, this is how it works, Ms. Curtis.  
21 You've got to respond to her motion as to why I should not  
22 kick you out of court.

23          PLAINTIFF CURTIS: Okay.

24          THE COURT: Why this should not be dismissed. She said  
25 that you failed to comply with the requirement of doing a

1 verified petitioner claim within -- within two years, I  
2 think it is, of the date of the accident if you're going to  
3 sue a public entity like the Department of Public Safety.  
4 You've got to put them on notice that extends the time that  
5 you can file a claim. You've got to respond to her  
6 arguments as to why this case should not be dismissed.

7 She's asking for two things. One, to clean up the  
8 pleadings and make it more definite or certain and remove  
9 some of the parties. That's not asking that your claim be  
10 dismissed. But, alternatively, she's saying that your  
11 claim should be kicked out for failure to comply with the  
12 statute and that is that you didn't file the claim on time.

13 PLAINTIFF CURTIS: Right.

14 THE COURT: Does that make sense?

15 PLAINTIFF CURTIS: Yes, it does.

16 THE COURT: Okay.

17 PLAINTIFF CURTIS: The accident is not what my claim is  
18 about, though.

19 THE COURT: Okay.

20 PLAINTIFF CURTIS: My claim is actually about the fact  
21 that I submitted complaints to the Department of the Office  
22 of Professional Responsibility against the officers that  
23 were involved in the ---

24 THE COURT: All right. What was the date of those  
25 complaints?

1 PLAINTIFF CURTIS: Let's see here. May of 2015.

2 THE COURT: All right. Was that the first time you had  
3 put the Department on notice that you had a claim against  
4 them?

5 PLAINTIFF CURTIS: No, I had put them on notice prior  
6 to that.

7 THE COURT: When?

8 PLAINTIFF CURTIS: 2014.

9 THE COURT: All right. Go ahead.

10 PLAINTIFF CURTIS: Okay. And I received a letter from  
11 the Office of Professional Responsibility assuring that  
12 there would be an investigation against the officers  
13 involved in the investigation of the accident.

14 THE COURT: Okay.

15 PLAINTIFF CURTIS: Okay. From there, approximately  
16 five days later I received a letter from the General  
17 Counsel of the Highway Department telling me that there  
18 would not be an investigation done into the accident and  
19 that is, basically, what I'm here about.

20 THE COURT: Okay.

21 PLAINTIFF CURTIS: It's the fact that there -- it's not  
22 a failure to investigate the accident itself. It is a  
23 neglect to investigate the complaints that I submitted to  
24 the Office of Professional Responsibility into the acts of  
25 the officers.

1 THE COURT: All right.

2 PLAINTIFF CURTIS: So it's not about the accident.  
3 It's about the complaints that I submitted.

4 THE COURT: Okay. Anything further?

5 PLAINTIFF CURTIS: No.

6 THE COURT: All right. Thank you, ma'am.  
7 Yes, ma'am.

8 MS. HOOD: Judge, the complaint in this action is  
9 seeking personal injury damages. I don't believe I have  
10 the complaint in my little packet for today, but it ---

11 THE COURT: That's all right. Go ahead. It's in the  
12 file.

13 MS. HOOD: It's a significant amount of money based on  
14 personal injury related to surgeries. They're serious  
15 injuries, Your Honor, that I don't dispute took place, but  
16 those are related to the accident date. And the FR-10 that  
17 was, you know, filled out at the roadside and distributed  
18 to Ms. Curtis in the hospital put her on notice that the  
19 drivers of these vehicles were unidentified. She followed  
20 up almost immediately to try to figure out what other  
21 information Public Safety may have and was told repeatedly  
22 that they did not have any additional information. And an  
23 additional investigation did not yield any additional  
24 information. So whoever those folks were, one of them kept  
25 driving and one of them may or may not have stopped at the

1 roadside, but their name was not memorialized in any  
2 meaningful way.

3 Your Honor, Section 1578-80 requires a verified claim  
4 within one year to extend the statute to three years. If  
5 you fail to file a verified claim, you get that two-year  
6 statute from the date of the accident.

7 I would assert that there are no damages related to  
8 the failure to investigate the investigating officers, so  
9 I'm not sure that that argument really makes much sense in  
10 light of the pleadings that have been drafted here.

11 And, Your Honor, we also have a 12(F) Motion, a Motion  
12 to Strike before you today as well in the event that we're  
13 not successful with the Motion to Dismiss. We would like  
14 punitive damages to also be removed under the Torte Claims  
15 Act and I believe the Motion cites the appropriate statute  
16 there:

17 THE COURT: And the -- whatever the named individuals  
18 to be taken off as well. /

19 MS. HOOD: That's correct. Yes, Your Honor. I believe  
20 that's appropriate under the Torte Claims Act as well.

21 THE COURT: All right. Thank you.

22 Yes, ma'am.

23 PLAINTIFF CURTIS: The whole point of the complaint  
24 that I submitted to the OPR was to reveal the fact that the  
25 officer that investigated the accident did, in fact, do his

1 job. In fact, in a meeting that I had with the officer and  
2 his four superior officers he admitted in that meeting that  
3 he did obtain the name and contact information of the  
4 driver of the at-fault vehicle and he discarded it at the  
5 time and deemed that information unimportant and that  
6 person that gave the information non-credible; however,  
7 four months later after re-investigating it was determined  
8 that that driver was, in fact, responsible for the  
9 accident.

10 So that is the whole point of having the OPR  
11 investigation which would have revealed that that officer  
12 did, in fact, have that information. He admitted it in a  
13 meeting and I have information here -- documentation here  
14 confirming what I'm telling you.

15 THE COURT: All right. Thank you, Ms. Curtis.  
16 Anything further?

17 MS. HOOD: Your Honor, we submitted, prior to the  
18 hearing today, a proposed order. I have a paper copy of  
19 that order and a Form 4 which I failed to submit if you'd  
20 like me to hand that up.

21 THE COURT: I'll allow you to submit it.

22 MS. HOOD: Okay. May I approach, Your Honor?

23 (WHEREUPON, documents are handed to the Court.)

24 THE COURT: And Ms. Curtis, I'll think about the  
25 arguments that I heard here today. I'll review the file

1 and I'll let you know my decision in due course, okay?

2 PLAINTIFF CURTIS: Okay. Can I say just one more  
3 thing?

4 THE COURT: Yes, ma'am.

5 PLAINTIFF CURTIS: I just feel like this is the first  
6 time my voice is being heard. I feel like all of the  
7 information that I submitted and resubmitted clearly  
8 stating that my point is not what they say here -- they  
9 being the attorney -- that the Plaintiff alleges that she  
10 was the victim of an accident on I-26 having been forced  
11 off the road by an unknown driver and the collision -- and  
12 the failure of the highway patrol to properly investigate  
13 deprived her of the opportunity to sue for her injuries.  
14 That's not what I claimed. I never claimed that because  
15 the investigator did obtain the information. He made the  
16 decision that that information was given to him by someone  
17 who was non-credible. And he admitted in front of his four  
18 superiors and myself that he ---

19 THE COURT: Ms. Curtis, I think you're going back over  
20 the arguments you previously gave.

21 PLAINTIFF CURTIS: Okay. I just wanted ---

22 THE COURT: Let me ask you this. Who was your  
23 insurance carrier at the time of this accident?

24 PLAINTIFF CURTIS: Nationwide.

25 THE COURT: All right. Did you ever have any contact

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

## CERTIFICATE

Be it known that I, the undersigned DeeAnne Varnadoe, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Circuit Court for Richland County, South Carolina, so given on May 18, 2016, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 1st day of July, 2016.

S/DeeAnne Varnadoe

DeeAnne Varnadoe  
 Official Court Reporter  
 Notary Public for South Carolina  
 My commission expires 3/14/2026.

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SEP 02 2016

SC Court of Appeals

Judge L. Casey Manning, Fifth Judicial Circuit

Appellate Case No. 2016—001239

Biafra Monique Curtis.....Appellant

v.

South Carolina Department of Public Safety, Warren Ganjehsani, Mike Oliver, Leroy  
Smith, Kenneth Phelps, Anthony Grice, William Taylor, Nicklous King, Willie  
McCauley, Jr. Ada Schmidt, Aaron Canzater and Cherie young, individually and in their  
Official Capacities..... Respondents

Respondents' Initial Brief

Norma A. T. Jett  
Alison Dennis Hood  
Ness & Jett, LLC  
Attorneys for Respondents

TABLE OF CONTENTS

Table of Authorities..... iii

Statement of the Issues on Appeal.....1

Counter Statement of the Case..... 1

Standard of Review.....4

Argument.....5

    I.    The Trial Court Correctly Dismissed the Complaint in  
          this Action Under Rule 12(b)(6), SCRPC.....5

        A.    South Carolina does not Recognize a Private  
              Cause of Action for Failure to Investigate a Claim.....5

        B.    Appellant’s Causes of Action are Time-Barred  
              By the Statute of Limitations in the South Carolina  
              Tort Claims Act.....7

        C.    The Individual Defendants are Immune from Suit  
              Under the South Carolina Tort Claims Act..... 9

Conclusion.....10

South Carolina Statutes:

§23-6-30.....	5
§23-6-40.....	5
§23-6-140.....	5
§15-78-10, et seq.....	9
§15-78-30(d).....	8
§15-78-70.....	3, 9
§15-78-80.....	7
§15-78-100.....	3, 6, 7, 8
§15-78-110.....	8
§15-78-200.....	9

Federal Statutes:

42 USC §1983.....	2, 3
42 USC §14141.....	2, 3
42 USC §1981.....	2
42 USC §1985.....	2, 3
42 USC §1988.....	2

Issues on Appeal

- I. Did the Trial Court Err in Dismissing the Complaint in this Action Under Rule 12(b)(6), SCRCP?
- A. Does South Carolina law create a private cause of action for failure to investigate a complaint?
  - B. Does the Tort Claims Act statute of limitations operate to bar Appellant's remaining negligence claims?
  - C. Are the individual Respondents immune from suit, under the South Carolina Tort Claims Act?

Counter-Statement of the Case

This action arises from an automobile accident that occurred on September 27, 2012. Biafra Monique Curtis, hereafter Appellant, alleges she was the victim of an accident on Interstate 26 in South Carolina, having been forced off the road by an unknown driver in a vehicle collision. Appellant alleges the failure of the South Carolina Highway Patrol, a division of the South Carolina Department of Public Safety, to properly investigate the wreck deprived her of the opportunity to recover damages from the alleged at-fault driver, for her injuries. In her complaint, Appellant names as a Defendant each individual involved in processing the accident, maintaining records related to the accident, and all officers who responded to her requests for information or requests for inquiry into the handling of the investigation of the accident. *See Complaint.*

Appellant filed her forty-six page Complaint in Richland County on August 24, 2015. All Respondents filed their joint notice of removal to federal court on September 18, 2015. *See Notice of Removal.* The initial Complaint stated several causes of action

under 42 USC §1983, as well as various state and federal law causes of action. Those causes of action include:

- First: As to South Carolina Department of Public Safety, State Law Negligence, Gross Negligence (Sub-causes of action for Negligent Infliction of Emotional Distress; Negligent Supervision; Negligence Per Se) and Federal Cause of Action for violations of 42 U.S.C. §14141
- Second: As to all Defendants, Violation of Oath of Office, under Article VI, Clause 3, of the U.S. Constitution
- Third: As to all Defendants, Violation of Civil Rights, under Title 28 U.S.C. 42, §§ 1981 and 1983 and the 1991 Civil Rights Act
- Fourth: As to all Defendants, Conspiracy to Interfere with Civil Rights under 42 U.S.C. §1985, violations of the Fair Labor Standards Act, and violations of 42 U.S.C. §1988
- Fifth: As to all Defendants, Dereliction of Duty, under a Res Ipsa Loquitur standard
- Sixth: As to all Defendants, Crimes of Moral Turpitude, under the 6<sup>th</sup> Amendment to the Federal Constitution
- Seventh: As to all Defendants, Violation of the SC Department of Public Safety Policies and Procedures
- Eighth: As to all Defendants, Systemic Neglect of Duty, Failure to Supervise and Failure to Train

On September 21, 2015, Defendants filed their Motion for Dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), seeking dismissal of the action in its entirety. *See September 21, 2015, Notice of Motion and Motion for Dismissal for Failure to State A Claim, and Memorandum in Support of the Motion.* By Order of the Court, dated March 31, 2016, Judge Mary Geiger Lewis dismissed all federal causes of action, including portions of the First Cause of action (to the extent it relied on 42 USC §14141), and the Third cause of

action (Civil Rights Violations) and the Fourth Cause of action (federal conspiracy), in their entirety. Judge Lewis concluded that the complaint alleged only three actionable federal causes of action, under 42 U.S.C. §14141, 42 U.S.C. §1983, and 42 U.S.C §1985, and dismissed them all, while declining to exercise supplemental jurisdiction over Appellant's state law claims, which were remanded to Richland County. Appellant failed to appeal the Order.

On remand, Respondents were heard on their motion to dismiss the balance of the complaint, pursuant to Rule 12(b)(6), SCRPC, on May 18, 2016 in Richland County Courtroom 2-E at 9:30am, before the Honorable Casey Manning. *See Memorandum in Support of Motion to Dismiss; Transcript of Hearing, May 18, 2016.*

Respondents' motion was based on the following: (1) the remaining state law causes of action were time-barred by the applicable statute of limitations, set forth in S.C. Code §15-78-100; (2) the individual defendants were acting within the course and scope of their employment at all times alleged to be relevant to this cause of action, and are therefore immune from suit under S.C. Code §15-78-70; and (3) any duty owed to Appellant in this action is a public duty, creating no private right of action and offering no remedy at law.

After oral arguments on the matters described above, Judge Manning took the matter under advisement. A signed Order was sent to counsel for the Respondents by Judge Manning's office, bearing the date May 16, 2016. Counsel forwarded the order on to Appellant, proceeding pro se, that same day, by letter dated May 25, 2016. *See May 25, 2016 letter.* A few days later, the Clerk of Court sent a copy of the recorded Order to all parties, along with the executed Form 4, bearing the date May 18, 2016. Counsel

forwarded that copy along to Appellant as well, by letter dated June 3, 2016. *See June 3, 2016 letter.*

The original document was entered by the Clerk of Court for Richland County on May 20, 2016. It appears that Judge Manning may have committed a scrivener's error in entering the date of May 16, 2016 on page 5 of the Order, and entering the correct date of May 18, 2016 on the Form 4. *See May 18, 2016 Order.* This scrivener's error is of no consequence in this matter. Appellant failed to file a motion for reconsideration.

Appellant's Initial Brief was served on Respondent by U.S. Mail, with a printed postmark dated August 8, 2016, though Respondent filed an Affidavit of Service with the Court indicating that service was effective on August 5, 2016. *See Affidavit of Service and Service Envelope.*

#### STANDARD OF REVIEW

"A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). The appellate court applies the same standard of review as the circuit court in reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his

behalf, the complaint states any valid claim for relief.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011).

### ARGUMENT

I. The Trial Court Correctly Dismissed the Complaint in This Action Under Rule 12(b)(6), SCRCP.

A. South Carolina Does Not Recognize a Private Cause of Action for Failure to Investigate a Claim.

The lower court properly dismissed the remaining causes of action, as the alleged violations provide no private right of action upon which Plaintiff is entitled to seek relief. *See Trask v Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (Ct. App. 2011); *See also* §23-6-30, §23-6-40, and §23-6-140, *S.C. Code of Laws*.

Appellant’s sprawling allegations all center on the central complaint regarding her vehicle accident. Appellant claims the failures of the respondents resulted in Appellant’s inability to recover civil damages from the drivers of the vehicles, which may have contributed to her vehicle accident. Essentially, Appellant alleges the failure to properly identify the parties contributing to the accident at the roadside on September 27, 2012 denied Appellant her potential for recovery in civil court. Appellant claims these damages, including lost wages, medical bills, future medical care, and property damage related to the accident, are properly imputed to the named-Defendants, who may have violated some policies or procedures in investigating her accident or investigation the actions of the officers themselves after the fact. *See Complaint, Page 44*. This position is unsupported by South Carolina law.

“The Public Duty Rule insulates public officials, employees, and governmental entities from liability for the negligent performance of their official duties by negating the existence of a duty toward the plaintiff.” *Arthurs v. Aiken County*, 346 S.C. 97, 104, 551 S.E.2d 579, 583 (2001). “The Public Duty Rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties because the duty is owed to the public at large rather than to anyone individually.” *Wells v. City of Lynchburg*, 331 S.C. 296, 306, 501 S.E.2d 746, 751 (Ct. App. 1998). “Statutes which create or define the duties of a public office create no duty of care towards individual members of the general public.” *Arthurs v. Aiken County*, 346 S.C. 97, 105-6, 551 S.E.2d 579, 583 (2001). “Thus, where the duty is owed to the public in general, the official is not liable to an individual who may have been “incidentally injured” by the failure to perform the duty.” *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998), quoting *Parker v. Brown*, 195 S.C. 35, 10 S.E.2d 625 (1940); *See also Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). “The public duty rule is a rule of statutory construction, which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach. It is a negative defense, which denies the existence of a duty of care owed to the individual.” *Repko v. Cty. Of Georgetown*, 416 S.C. 22, 36, 785 S.E.2d 376, 383 (Ct. App. 2016), *rehearing denied (May 20, 2016)*, citing *Vaughan v. Town of Lyman*, 370 S.C. 436, 635 S.E.2d 631 (2006).

As none of the respondents contributed in any way to the accident itself, Appellant's Complaint alleges causes of action only for violations of the Policies and Procedures Manual of the South Carolina Traffic Collision Report Manual, violations of

oaths of office, moral turpitude in failing to properly enter information into the CAD system, and violations of the Department of Public Safety Disciplinary Action Policy. *See Complaint, Page 23, Paragraph 35; Page 24, Paragraph 37; Page 37, Paragraph 46; and Page 40, Paragraph 48.*

The essential purpose of the cited regulations and policies is not to preserve civil actions on behalf of the public, which is the basis of Appellant's Complaint. *See Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct.App.1988), *cert. denied*, 298 S.C. 204, 379 S.E.2d 133 (1989). Appellant does not allege the existence of any special duty. *See Trask v. Beaufort County*, 392 S.C. 560, 708 S.E.2d 536 (Ct. App. 2011). Therefore, the Respondents owed no particular duty to Plaintiff, and any alleged violation is not actionable.

On Appeal, Appellant raises the issue of a letter from Respondent Warren V. Ganjesani, General Counsel for the Department of Public Safety, stating that the investigation into this matter was complete. This letter references the full investigation completed by the Insurance Reserve Fund. *See June 10, 2015 Letter of Warren V. Ganjehsani*. This letter is not the basis of any cause of action found within the Complaint. *See Rule 12(b)(6), SCRPC.*

The lower court properly found any duty owed to Appellant was a public duty, the breach of which cannot create a private cause of action.

**B. Appellant's Causes of Action Are Time-Barred By the Statute of Limitations in the South Carolina Tort Claims Act**

The lower court correctly found Respondents are entitled to dismissal of plaintiff's state law causes of action, pursuant to S. C. Code of Laws, §15-78-100, as no verified claim was made within one year of the September 27, 2012, incident date alleged in the Complaint, pursuant to S.C. Code §15-78-80, and this action was not filed until August 24, 2015, more than two years after the date of the September 27, 2012, accident upon which Appellant's case is based. For this reason, even if the allegations are otherwise actionable, blanket dismissal of all state law causes of action is appropriate.

Appellant argues that her causes of action are not subject to the statute of limitations, as her causes of action did not accrue until she received word from the General Counsel of the Department of Public Safety notifying her that the investigation into the vehicle accident and her complaints regarding the handling of the accident had not yielded any information about the driver of the vehicle which ran her off the road. *See Transcript of Testimony, Page 10, line 20—Page 12, line 3.* Further, Appellant claims her complaints center on the failure of the Department of Public Safety and its employees to discipline or censure the officers who responded to her accident for failing to obtain the identification of the driver of the vehicle who alleged ran Appellant off the road. Appellant claims this failure occurred within the appropriate time frame, given the filing of her action, and renders the lower court's dismissal improper. *Ibid.*

The South Carolina Department of Public Safety is a "governmental entity" as defined by S.C. Code Ann. § 15-78-30(d) (Supp. 1998). The Tort Claims Act, which governs tort claims against governmental entities, contains a two year statute of limitations which is applicable in this case. *See* S.C. Code Ann. § 15-78-100(a) (Supp. 1998); S.C. Code Ann. § 15-78-110 (Supp. 1998). Pursuant to § 15-78-110, S.C.

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

The discovery rule is applicable to actions brought under the Tort Claims Act. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct.App.1998). All of Appellant's allegations accrued, if at all, on September 27, 2012, the date she suffered her vehicle accident. All injuries and damages accrued that day. Additionally, Appellant received the accident report from the responding officers the day of the collision, and was put on notice that the investigation did not yield identifying information related to the driver who likely caused the accident. *See Complaint, Page 7, Paragraph 17.*

The Complaint in this action is dated August 24, 2015, more than two years from the date of the accident. The lower court did not err in finding Appellant's claims to be time-barred by operation of the South Carolina Tort Claims Act.

C. Individually Named-Defendants are Immune from Suit.

The lower court, accepting the allegations of the Complaint as true, determined that the individuals named in the complaint were acting within the course and scope of their employment at all times alleged during the Complaint. Appellant did not allege any activity outside the course and scope of employment. *See Order, May 18, 2016; Complaint.*

The South Carolina Tort Claims Act, S.C. Code §15-78-10, et seq., "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code §15-78-

200. Pursuant to S.C. Code §15-78-70, the individual government employees cannot be sued for causes of action related to conduct in the scope of their duty.

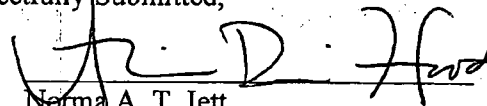
“An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). The allegations described in the Complaint regard activity exclusively within the scope of employment of all individual respondents, and for this reason dismissal of the individual respondents from these state law causes of action is appropriate. There is no mention of any activity by any individual outside the course and scope of their respective obligations of employment.

Accepting the allegations of the complaint as true, the lower court properly dismissed the individual respondents who were acting within the course and scope of their employee.

### CONCLUSION

For the reasons set forth above, Respondents pray this Court consider these matters and issue its opinion, upholding the lower court, and dismissing this appeal in its entirety.

Respectfully Submitted,



Norma A. T. Jett  
Alison Dennis Hood  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for Respondent

Bamberg, S.C.  
Sept 2, 2016

CERTIFICATE OF SERVICE

This is to certify that I, Alison Dennis Hood, Attorney for ALL RESPONDENTS, along with Richard B. Ness of Ness & Jett, LLC, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **RESPONDENTS' INITIAL BRIEF AND INITIAL DESIGNATION OF MATTER, along with a MOTION TO EXCLUDE MATTER FROM RECORD ON APPEAL** in the matter captioned *Biafra Monique Curtis, Pro Se v. SCDPS, et al.*, Appellate Case Number: 2016-001239 to the following parties, at the following addresses:

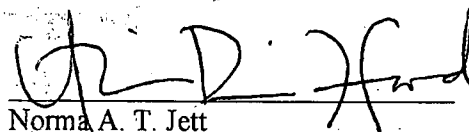
Biafra Monique Curtis  
P.O. Box 21294  
Hilton Head, SC 29925

**RECEIVED**

SEP 02 2016

SC Court of Appeals

Bamberg, S.C.  
Sept 2, 2016



Norma A. T. Jett  
Alison Dennis Hood  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for All Respondents

FORM 16  
CERTIFICATE FROM APPELLANT

RECEIVED

MAR 15 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Case No:2016-CP-001239

Biafra Monique Curtis,

**Appellant**

V.

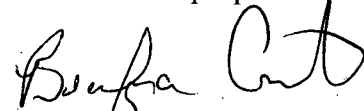
South Carolina Department of Public Safety,  
Warren Ganjehsani, Mike Oliver, Leroy Smith,  
Kenneth Phelps, Anthony Grice, William Taylor,  
Nicklous King, Willie McCauley, Jr., Ada Schmidt,  
Aaron Canzater and Cherie Young, individually  
and in their official capacities, et al.,

**Respondent(s)**

CERTIFICATE FROM APPELLANT

The undersigned certified that the Record on Appeal contains all material proposed to be included by the Appellant and not any other material.

March 13, 2017



Biafra Monique Curtis, Pro Se  
PO BOX 21294  
Hilton Head Island, SC 29925  
843-684-3118