

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 22 2017

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

REPLY TO RESPONSE AND OBJECTION TO MOTION TO DISMISS THE APPEAL, BASED ON APPELLANT'S FAILURE TO COMPLY WITH THE JANUARY 26, 2017 ORDER OF THIS COURT

AND

REPLY TO RESPONSE AND OBJECTION TO REFORM THE RECORD ON APPEAL

Please accept this brief Reply to both the (A) Response and Objection to Motion to Dismiss and the (B) Response and Objection to the Motion of Respondents to Reform the Record on Appeal. As the remedy sought in both instances in the same, either dismissal of the appeal, or conformation with the South Carolina Rules

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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Summons and Complaint

Answer of All Defendants

Notice of Removal

Motion to Dismiss and Memorandum in Support of Motion to Dismiss, pursuant to 12(b)(6) Fed. R. Civ. P.

Report and Recommendation of the Magistrate Judge

Order Granting Motion for Dismissal, pursuant to 12(b)(6) Fed. R. Civ. P., dated March 31, 2016, signed by Judge Mary Geiger Lewis

Memorandum in Support of Motion to Dismiss, Richland County

Order Granting Motion for Dismissal, pursuant to 12(b)(6), SCRCF, dated May 18, 2016

June 3, 2016 Letter to Appellant from Alison Dennis Hood

May 25, 2016 Letter to Appellant from Alison Dennis Hood

June 10, 2015 Letter from Warren V. Ganjehsani to Appellant

Affidavit of Service and Certificate of Service

Transcript of Hearing, dated May 18, 2016

Counsel hereby certifies that the Designation contains no matter which is irrelevant to the appeal.

September 2, 2016

Respectfully submitted,

By: 

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Alison Dennis Hood
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P.O. Box 909
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ATTORNEY FOR ALL RESPONDENTS

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

ANSWER
 (All Defendants)

2016 APR -7 PM 4:24
 JEANETTE M. HOBBS
 C.S.P. & C.S.
 RICHLAND COUNTY
 CLERK

Responding to the allegations of the Complaint, all Defendants, answering together in both their official and individual capacities, answer as follows:

FOR A FIRST DEFENSE
(Responding Specifically to the Allegations of the Complaint)

1. These defendants lack sufficient information upon which to form a conclusion as to the allegations of paragraph 1, and therefore deny same and demand strict proof thereof.
2. These Defendants admit South Carolina Department of Public Safety is a state agency, but deny the remaining allegations of Paragraph 2 and demand strict proof thereof.
3. Paragraphs 3-13 regard the individual defendants. Each named defendants admits to an employment relationship with the South Carolina Department of Public Safety at the time of the events giving rise to the Complaint. These defendants deny the remaining allegations of Paragraphs 3 through 13, and demand strict proof thereof.

4. These individual defendants assert that they are entitled to an Order of Substitution, pursuant to South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-70, which states that only the governmental entity, and not an individual employee, should be named in suits under the Act, and that, if an individual employee is named as a defendant, the governmental entity for which he or she was working at the time "must be substituted as the party defendant" in his or her stead in all actions governed by the Act.

5. Defendants admit the allegations of Paragraph 14 to the extent they reflect the accident report, dated September 27, 2012, referenced therein. Defendants deny the remaining allegations, and demand strict proof thereof.

6. Defendants lack sufficient information upon which to form a belief as to the allegations of Paragraphs 14-28, and therefore deny same and demand strict proof thereof.

7. Defendants deny the balance of the allegations of the Complaint, and demand strict proof thereof.

FOR A SECOND DEFENSE

(March 31, 2016 Order of Federal Judge Mary Geiger Lewis)

8. On March 31, 2016 all causes of action for Constitutional violations and violations of federal law were dismissed by the Order of Judge Mary Geiger Lewis. This Order is attached as Exhibit A.

9. This Answer is responsive to only the state law causes of action, as all others have been dismissed.

FOR A THIRD DEFENSE

(Strike Punitive Damages)

10. This action is governed by the South Carolina Tort Claims Act, §15-78-10, et seq., Code of Laws of South Carolina, which governs the terms and conditions under which sovereign immunity is abrogated and reserved unto governmental entities and political subdivisions of the state. Pursuant to S. C. Code §15-78-120, no punitive or exemplary damages or pre-judgment interest can be awarded in this action, and actual damages are limited as set forth therein. Defendants are informed and believe they are entitled to an Order all striking references to punitive damages from the Complaint.

FOR A FOURTH DEFENSE

(Special Verdict)

11. Pursuant to §15-78-100(c), Code of Laws of South Carolina, Defendants demand a special verdict apportioning damages, if any, among and between the defendants.

FOR A FIFTH DEFENSE

(South Carolina Tort Claims Act)

12. The South Carolina Tort Claims Act, S. C. §15-78-10, et seq, applies to this action. Defendants assert they are entitled to all defenses, privileges, limitations, restrictions, immunities, and exemptions from liability provided thereby, whether or not specifically enumerated herein.

FOR A SIXTH DEFENSE

(No Liability for Non-Employees)

13. Defendants assert they are immune from liability for any losses which are the direct and proximate result of the actions of the plaintiff, contractors, or other persons not employed by this defendant, pursuant to the common law and §15-78-60(20), Code of Laws of South Carolina.

FOR A SEVENTH DEFENSE

(Superseding or Intervening Negligence)

14. Defendants assert that, even if one or more of these defendants are shown to be negligent (such negligence is specifically denied), the acts or omissions of other persons not within the control of defendants superseded and intervened to such an extent as to negate any affect the negligence of any defendant may have had on Plaintiff.

FOR AN EIGHTH DEFENSE

(Comparative Fault)

15. Defendants asserts that if the plaintiff sustained any injuries or damages as set forth in the Complaint, the same were due to the willful, wanton, reckless, careless and negligent acts and conduct of Plaintiff, which combined with, concurred with and exceeded any willful, wanton, reckless or negligent acts and conduct on the part of defendants, which is specifically and emphatically denied, to bring about the said injuries and damages, if any, as the proximate cause thereof and without which the same would not have occurred and bars any recovery by plaintiff; and, if defendants were equally negligent as plaintiff, or greater, which is specifically and emphatically denied, the amount of recovery of damages, if any must be reduced in proportion to the amount of plaintiff's negligence.

FOR A NINTH DEFENSE

(Negligence of Others)

16. Defendants assert they are not liable for any loss attributable to the sole negligence of any person or entity not within its control.

FOR A TENTH DEFENSE

(Compliance with Standard of Care)

17. Defendants assert that the care and treatment of, and interactions of these defendants and defendant's employees with, the Plaintiff was within the applicable standard of care.

FOR AN ELEVENTH DEFENSE

(Proximate Cause)

18. These Defendants assert no act or omission on the part of these defendants or their employees were the proximate cause or cause in fact of Plaintiff's injuries.

FOR A TWELFTH DEFENSE

(Intervening Act)

19. These defendants assert any injury or damage to the plaintiff was a proximate result of one or more independent, efficient, intervening causes which these defendants plead as a bar to this action.

FOR A THIRTEENTH DEFENSE

(Public Duty Rule)

20. To the extent the plaintiff asserts an individual claim, the Complaint should be dismissed for failure to state a cause of action, as there is no individual claim which the plaintiff has standing to bring before this Court.

FOR A FOURTEENTH DEFENSE

(Failure to State a Claim)

21. Plaintiff's complaint fails to state a complaint upon which relief can be granted.
22. Plaintiff's complaint fails to allege facts sufficient to constitute a cause of action, as Plaintiff fails to describe any duty owed to Plaintiff by these defendants recognized under South Carolina statutory or common law.
22. Defendants are entitled to dismissal of all remaining state law causes of action, pursuant to Rule 12(b), SCRPC.

FOR A FIFTEENTH DEFENSE

(Compliance with Applicable Policies and Procedures)

23. Plaintiff's complaint fails to state with specificity any violations of any applicable policies or procedures of South Carolina Department of Public Safety.
24. To the extent that Plaintiff does allege any violations of any applicable policies or procedures of the South Carolina Department of Public Safety, such violations do not create any private cause of action.
25. All named defendants and all employees of South Carolina Department of Public Safety complied with the applicable policies and procedures at all times relevant to the Complaint in this action.

FOR A SIXTEENTH DEFENSE

(Statute of Limitations)

26. Plaintiff's accident took place on September 27, 2012.
27. Plaintiff failed to file a verified complaint, pursuant to §15-78-80, S.C. Code of Laws.

28. Plaintiff's complaint was not filed until more than two years after the September 27, 2012 accident.

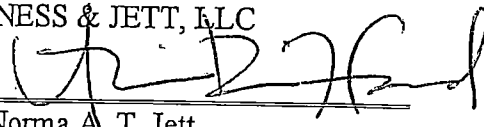
29. As the federal causes of action have been dismissed, Plaintiff's complaint, as to all remaining state law causes of action, must be dismissed, with prejudice, pursuant to §15-78-100, S.C. Code of Laws.

WHEREFORE, having fully responded to the Complaint, defendants pray the Court issue its Order dismissing the Complaint with prejudice, as to all Defendants.

April 5, 2016
Bamberg, SC

Respectfully submitted,

NESS & JETT, LLC



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ATTORNEY FOR ALL DEFENDANTS

p. 7

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

Biafra Monique Curtis, Pro Se,	)	Case Number: _____
	)	(state court case 2015-CP-40-05172)
v.)	
)	
South Carolina Department of Public)	
Safety, Warren Ganjehsani, Mike)	
Oliver, Leroy Smith, Kenneth	)	NOTICE OF REMOVAL
Phelps, Anthony Grice, William)	
Taylor, Nicklous King, Willie)	
McCauley, Jr., Ada Schmidt, Aaron)	
Canzater and Cherie Young,)	
Individually and in their official)	
Capacities,)	
_____)	

Pursuant to 28 United States Code §1441(a) and (c), and §1446, defendants 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 capacity, joining together, hereby invoke the jurisdiction of the United States District Court for the District of South Carolina, and state the following grounds for removal:

1. The above-captioned action was brought in the Court of Common Pleas for Richland County by plaintiff, alleging in the First, Third, and Fourth, causes of action a violation by defendants South Carolina Department of Public Safety, Ganjehsani, Oliver, Smith, Phelps, Grice, Taylor, King, McCaley, Schmidt, Canzater, and Young of the plaintiff's rights under the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, the Civil Rights Act of 1964, 42 USC §14141, and the Fair Labor Standards Act, pursuant to 42 USC §1985. The plaintiff also alleges supplemental state law claims. (See Complaint attached hereto.) The action

was filed in the state court on August 24, 2015, and, upon information and belief, was received by the defendants Ganjehsani and South Carolina Department of Public Safety on August 26, 2015, but not yet served on any other individual defendant, nor on the South Carolina Attorney General.

2. This action presents claims and issues of federal law, in that the plaintiff alleges a violation of constitutional and federal statutory rights and brings her claim under 42 USC §1983.

3. The date on which the first defendant was served with the pleadings in this action was no earlier than August 26, 2015.

4. This notice is filed with this Court within thirty (30) days of receipt by the first-served defendant of a copy of the Summons and Complaint. All Defendants are represented by the undersigned attorney

5. Based on the allegations of the Complaint, the plaintiff resides in Beaufort County, South Carolina.

6. These defendants are an agency of the State of South Carolina, headquartered in Richland County, and its individual employees residing in Orangeburg County, Lexington County, Lancaster County, Richland County, Clarendon County, and Calhoun County, and presently or formerly employed by the South Carolina Department of Public Safety. The Complaint is silent as to the location where the conduct alleged in the Complaint is alleged to have occurred. This case was filed by plaintiff in Richland County. Therefore, these defendants are informed and believe venue is properly in the Columbia Division of this Court.

7. This Court has original jurisdiction of this action based upon the federal questions presented by plaintiff in the Complaint, invoking 42 United States Code §1983.

8. These defendants submit this Notice of Removal without waiving any defenses to the claims asserted by plaintiff, including but not limited to defenses of lack of personal jurisdiction, and without conceding that the plaintiff has stated a claim upon which relief may be granted.

9. The attorney of record for these defendants signs this Notice of Removal pursuant to Rule 11, FRCP.

WHEREFORE, defendants 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 capacity, joining together, pray this Court accept this Notice of Removal which is being filed, and that this Court take jurisdiction of the above-captioned action, and that all further proceedings in this action in the Court of Common Pleas for Richland County, State of South Carolina, bearing Civil Action Number 2015-CP-40-05172, be stayed.

Respectfully submitted,

September 18, 2015

NESS & JETT, LLC

Bamberg, SC

s/Norma A. T. Jett
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ATTORNEY FOR ALL DEFENDANTS

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

NOTICE OF MOTION AND MOTION
FOR DISMISSAL FOR FAILURE
TO STATE A CAUSE OF ACTION

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

YOU WILL PLEASE TAKE NOTICE THAT ALL DEFENDANTS hereby
move the Court for an Order, pursuant to FRCP 12(b)(6), dismissing this action for
failure to state a cause of action, as to all defendants, as the allegations, even if true,
which is denied, are not actionable, for the following reasons:

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;

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;

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, 42 USC §14141, Violation of Department
Handbook, or Systematic Neglect of Duties; and,

4. The allegations of the Complaint, even if true, which is denied, do not constitute a violation of any constitutional right, nor a cause of action under 42 USC §1983.

All of these grounds are more fully addressed in a Memorandum of law filed contemporaneously herewith.

Respectfully submitted,

September 21, 2015

NESS & JETT, LLC

Bamberg, SC

By: s/Norma A. T. Jett

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ATTORNEY FOR ALL DEFENDANTS

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

Biafra Monique Curtis, Pro Se,	)	Case Number: 3:15-cv-03753-MGL-PJG
)	
v.)	
)	
South Carolina Department of Public)	
Safety, Warren Ganjehsani, Mike)	
Oliver, Leroy Smith, Kenneth	)	MEMORANDUM IN SUPPORT OF MOTION
Phelps, Anthony Grice, William	)	FOR DISMISSAL FOR FAILURE
Taylor, Nicklous King, Willie	)	TO STATE A CAUSE OF ACTION
McCauley, Jr., Ada Schmidt, Aaron)	
Canzater and Cherie Young,)	
Individually and in their official)	
Capacities,)	
_____)	

In this action, the Complaint purports to state a cause of action under 42 USC §1983, as well as various state law causes of action. The defendants have moved to dismiss for failure to state a cause 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;
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;
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, 42 USC §14141, Violation of Department Handbook, or Systematic Neglect of Duties; and,

4. The allegations of the Complaint, even if true, which is denied, do not constitute a violation of any constitutional right, nor a cause of action under 42 USC §1983.

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 on September 27, 2012, and that 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. 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.

STATE LAW CAUSES OF ACTION ARE TIME-BARRED

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.

INDIVIDUAL DEFENDANTS IMMUNE FOR STATE LAW CAUSES OF ACTION

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 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.

NO PRIVATE RIGHT OF ACTION FOR VIOLATION OF A PUBLIC DUTY

These Defendants are 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), and to the extent it relied on 42 U.S.C. §14141, the First Cause of Action (Negligence), 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. 97, 105-6, 551 S.E.2d 579 (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, 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 her First Cause of Action, for “negligence,” Plaintiff cites at Paragraph 30, 42 U.S.C. § 14141, which provides in part (c), that the cause of action, if any, under that statute belongs to the United States of America, not to an individual Plaintiff.

In her Sixth Cause of action (Crimes of Moral Turpitude), Plaintiff fails to state a cause of action, as the cited code section does not provide any private right of

action. If Defendants committed "Crimes of Moral Turpitude," for example, they could be prosecuted but not sued for that as a cause of action.

In this case, the essential purpose of the cited regulations and statutes 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.

**NO 42 U.S.C. §1983 CLAIMS PRESENTED AS TO THE SOUTH
CAROLINA DEPARTMENT OF PUBLIC SAFETY**

The Defendant, South Carolina Department of Public Safety is entitled to dismissal of the plaintiff's Third Cause of Action (42 U.S.C. §1983) on the ground the Complaint contains no allegation of any custom or policy of this entity which violated any right of the plaintiff, nor any conduct of this entity which violated any right of the plaintiff. Defendant South Carolina Department of Public Safety is aware of no wrongful conduct of any of its co-defendant employees but, even if the allegations were proven, this defendant cannot be vicariously liable for the conduct of its employees under 42 U.S.C. §1983. *Respondeat superior* cannot be a foundation for an action under §1983. *Wright v. Collins*, 766 F. 2d 841 (4th Cir. 1985). Rather, the plaintiff must allege and prove "that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1948, 173 L.Ed.2d 868 (2009). She must establish that she suffered a specific injury as a result of specific conduct of a specific defendant, and an affirmative link between that injury and that conduct. *Rizzo v. Goode*, 423 U.S. 362, 371-372, 96 S.Ct. 598, 604

(1976). Nothing in the Complaint, even if taken at face value, supports a cause of action for specific conduct causing specific harm against this specific defendant under §1983.

**NO 42 U.S.C. §1983 OR 42 U.S.C. §1985 CLAIM PRESENTED AS TO THE
INDIVIDUAL DEFENDANTS**

The individual Defendants are entitled to dismissal of the plaintiff's Third and Fourth Causes of Action (42 U.S.C. §1983 and 42 U.S.C. §1985) as plaintiff fails to allege either a state or federal Constitutional violation of any recognized right.

As a preliminary matter, it should be noted Plaintiff, "does not have a constitutional right to have the **police investigate** h[er] case at all, still less to do so to h[er] level of satisfaction. *See, e.g., DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 196, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989) (holding that the Constitution "generally confer[s] no affirmative right to governmental aid, even where such aid may be necessary secure life, liberty, or property interests of which the government itself may not deprive the individual."). While *DeShaney* does not address **police** behavior specifically, the implication is clear: mere inactivity by **police** does not give rise to a constitutional claim." *Rossi v. City of Chicago*, 790 F.3d 729, 735 (7th Cir. 2015).

In order to prevail on a § 1983 claim (or a §1985 claim) the plaintiff must show that the defendant caused the deprivation of a recognized federal right while operating under color of state law. *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422, 1426 (8th Cir.1986) (holding that a § 1983 inquiry requires consideration of (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of

rights, privileges, or immunities secured by the Constitution or laws of the United States. (quoting *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981)). In this instance, Plaintiff fails to allege that the named individual defendants acted affirmatively to deny her any recognized Constitutional rights. *See Scheeler v. City of St. Cloud, Minn.*, 402 F.3d 826, 830 (8th Cir. 2005)(Holding the police did not violate a any recognized Constitutional right by failing to investigate further after ruling a shooting accidental). Read in the light most favorable to Plaintiff, the Complaint fails to state actionable cause of action for deprivation of any recognized federal right.

In *Daniels v. Williams*, the Supreme Court stated “that the Due Process Clause is simply not implicated by a negligent act of an official causing *unintended* loss of or injury to life, liberty, or property.” 474 U.S. 327, 328, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986)(emphasis added). The Fourteenth Amendment mandates, “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. *Daniels* holds that, as a matter of plain constitutional text, no “deprivation” occurs on account of official negligence. 474 U.S. at 330-33, 106 S.Ct. 662. Indeed, negligent conduct cannot by definition establish the “affirmative abuse of power” necessary to constitute a due process deprivation. *See id.* at 330-32, 106 S.Ct. 662. Under *Daniels*, then, police officer negligence or inadvertence regarding an investigation cannot be actionable under § 1983. *Jean v. Collins*, 221 F.3d 656, 660 (4th Cir. 2000).

Read in the light most favorable to Plaintiff, the Complaint fails to allege the violation of any recognized federal right. Further, the Complaint alleges deprivation of civil rights by omission or through the negligence of the investigating officers. Sections §1983 and §1985 do not include any such cause of action. No law, state or federal, gives rise to any duty of the Defendants to advance Plaintiff's civil claims against another driver nor to investigate for her benefit. Likewise, there is no such constitutional right infringed upon here. These individual defendants are entitled to dismissal of all claims alleged under both §1983 or §1985.

Respectfully submitted,

September 21, 2015

NESS & JETT, LLC

Bamberg, SC

By: s/Norma A. T. Jett

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ATTORNEY FOR ALL DEFENDANTS

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

Biafra Monique Curtis, Pro Se,)
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v.)
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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

CERTIFICATE OF SERVICE

I, an attorney for defendants, hereby certify I have served the Notice of Motion and Motion for Dismissal for Failure to State a Cause of Action and Memorandum in Support of Motion for Dismissal for Failure to State a Cause of Action, upon the person(s) below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

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

September 21, 2015

s/Norma A. T. Jett
Norma A. T. Jett, Fed. Ct. I.D. 5101
Alison Dennis Hood, Fed. Ct. I.D. 11078
Ness & Jett, LLC
Post Office Box 909
Bamberg, SC 29003
(803)245-5178
normajett@bellsouth.net
alisondhood@gmail.com
ATTORNEYS FOR ALL DEFENDANTS

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

Biafra Monique Curtis,	)	C/A No. 3:15-3753-MGL-PJG
)	
Plaintiff,)	
)	
v.)	
	)	REPORT AND RECOMMENDATION
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; Cherie Young,)	
<i>Individually and in their official capacities,</i>)	
)	
Defendants.)	
)	

The plaintiff, Biafra Monique Curtis ("Curtis"), proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983.¹ This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motion to dismiss. (ECF No. 5.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Curtis of the summary judgment and dismissal procedures and the possible consequences if she failed to respond adequately to the defendants' motion. (ECF No. 6.) Curtis filed a response in opposition. (ECF No. 15.) Having reviewed the parties' submissions and the applicable law, the court finds that the defendants' motion should be granted in part.

BACKGROUND

Curtis alleges she was injured in a motor vehicle accident on Interstate 26 in South Carolina, having been forced off the road by an unknown driver in a vehicle collision on September 27, 2012.

¹ The defendants removed this action from the Richland County Court of Common Pleas.

She alleges that 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. Curtis’s Complaint purports to allege claims for negligence, violations of oath of office, violations of her civil rights, conspiracy, dereliction of duties, crimes of moral turpitude, violations of policy, and neglect of duty. (Compl., ECF No. 1-1 at 22-45.) Curtis seeks monetary relief. (Id. at 46.)

DISCUSSION

A. Motion to Dismiss Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the plaintiff’s complaint. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. Id. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 94 (2007).

The court observes that it is required to liberally construe *pro se* complaints. Id. Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, id.; Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious

case. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff's factual allegations are assumed to be true. Erickson, 551 U.S. at 93 (citing Twombly, 550 U.S. 544, 555-56 (2007)). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for her, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

B. Defendants' Motion to Dismiss

1. Federal Claims

Curtis appears to assert three federal causes of action in her Complaint: negligence under 42 U.S.C. § 14141; a civil rights violation under 42 U.S.C. § 1983;² and a conspiracy to conceal acts under 42 U.S.C. § 1985.

a. Negligence

Section 14141 prohibits

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

² To the extent Curtis references other federal statutes in her Complaint such as 42 U.S.C. § 1981; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*; and the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, any such allegations are without any factual support and thus are insufficient to state a plausible federal claim. Iqbal, 556 U.S. at 678 (holding that a complaint does not "suffice if it tenders naked assertions[s] devoid of further factual enhancement") (alteration in original) (internal quotation marks and citation omitted). Accordingly, to the extent Curtis attempts to allege such claims, they should be dismissed.

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.

42 U.S.C. § 14141(a). This statute further authorizes the Attorney General to bring suit when he "has reasonable cause to believe that a violation of [§ 14141(a)] has occurred." *Id.* § 14141(b). Thus, a private citizen may not bring suit under 42 U.S.C. § 14141. See Dyson v. Le'Chris Health Sys. Inc., No. 4:13-CV-224-BO, 2014 WL 271660, at *6 (E.D.N.C. Jan. 24, 2014); Ferrer v. Garasimowicz, No. 1:13CV797 LMB, 2013 WL 5428110, at *4 (E.D. Va. Sept. 27, 2013) ("Only the Attorney General of the United States, rather than a private citizen like plaintiff, is authorized to bring suit.") (citing 42 U.S.C. § 14141). Accordingly, Curtis may not pursue a cause of action under 42 U.S.C. § 14141.

b. Civil Rights

The defendants argue that Curtis's § 1983 claim fails because she has failed to identify a protected right that falls within the scope of § 1983. (ECF No. 5-1 at 6-8.) A legal action under 42 U.S.C. § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

In this action, Curtis's § 1983 claims are apparently based upon the failure of the Department and the officers to properly investigate the accident. However, Curtis's allegations are not cognizable under § 1983, as "[t]hird parties do not enjoy a constitutionally protected right to have wrongdoers criminally investigated or prosecuted, even if a third party is the victim of an alleged

wrongdoer[']s criminal acts.” Merrit v. City of Ennis, No. Civ. A. 3:04CV2606-G, 2005 WL 440408, at * 3 (N.D. Tex. Feb. 24, 2005) (citing Love v. Bolinger, 927 F. Supp. 1131, 1137 (S.D. Ind. 1996); Nieves-Ramos v. Gonzalez-De-Rodriguez, 737 F. Supp. 727, 728 (D.P.R. 1990); Johnson v. Craft, 673 F. Supp. 191, 193 (S.D. Miss. 1987)). Curtis has not asserted the violation of a right which is secured by the Constitution and laws of the United States.

To the extent Curtis summarily argues a violation of the Due Process Clause of the Fourteenth Amendment, such a claim also fails. The Due Process Clause provides that no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. However, “the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” Daniels v. Williams, 474 U.S. 327, 328 (1986). Accordingly, Curtis’s § 1983 claims, which appear to rest on alleged negligent conduct by the defendants, must be dismissed.

c. Conspiracy

Curtis asserts a federal claim of “conspiracy to conceal acts and omissions” under 42 U.S.C. § 1985. Under 42 U.S.C. § 1985(3), an alleged conspiracy must be pled and proved by concrete facts, not mere conclusory allegations. Simmons v. Poe, 47 F.3d 1370, 1376-77 (4th Cir. 1995); Buschi v. Kirven, 775 F.2d 1240, 1248 (4th Cir. 1985). In addition, the Supreme Court has held that, to establish a federal conspiracy claim under § 1985, a plaintiff must show that the alleged conspiracy is motivated by “some racial, or perhaps otherwise class-based invidiously discriminatory animus.” Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see also Trerice v. Summons, 755 F.2d 1081, 1085 (4th Cir. 1985). Curtis alleges that the defendants participated in a conspiracy to “defeat

enforcement of the laws,” and to deprive her of her rights. (Compl., ECF No. 1-1 at 31-36.) However, speculation and conjecture are insufficient to demonstrate a conspiratorial agreement and the Complaint provides insufficient facts to demonstrate that the defendants came to any mutual understanding or acted “jointly in concert” to deprive Curtis of any constitutional right. See Hinkle v. City of Clarksburg, W.Va., 81 F.3d 416, 421 (4th Cir. 1996); see also Ruttenberg v. Jones, 283 F. App’x 121, 131 (4th Cir. 2008). Curtis also fails to allege facts indicating any discriminatory motive on the part of the defendants. Thus, to the extent Curtis attempts to allege a cause of action for conspiracy arising under 42 U.S.C. § 1985(3), she has failed to plead a plausible claim.

2. State law claims

Curtis also raises a multitude of state law claims. However, in light of the court’s recommendation that the federal claims be dismissed, the court should decline to exercise supplemental jurisdiction over such claims. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs; 383 U.S. 715, 726 (1966); Tigrett v. Rector and Visitors of the Univ. of Va., 290 F.3d 620, 626 (4th Cir. 2002) (affirming district court’s dismissal of state law claims when no federal claims remained in the case).

C. Curtis’s Motion for Default Judgment

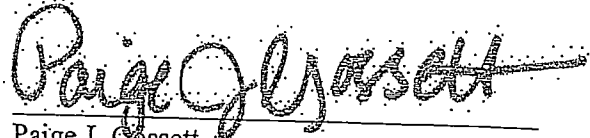
Curtis also moves for a default judgment, arguing that the defendants failed to file an answer to her Complaint. (ECF No. 12 at 2.) In response, the defendants confirm that they timely filed a motion to dismiss and are thus not in default. (ECF No. 14.)

Federal Rule of Civil Procedure 55(a) clearly states that the court must enter a party’s default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” The court also notes that, as a general matter, the law disfavors default

judgments. Tazco, Inc. v. Dir., Office of Workers Comp. Program, U.S. Dep't of Labor, 895 F.2d 949, 950 (4th Cir. 1990). As the defendants have filed a motion to dismiss in response to Curtis's Complaint, Curtis cannot show that the defendants have "failed to plead or otherwise defend." Fed. R. Civ. P. 55(a); see also Fed. R. Civ. P. 12(a)(4) (stating that filing and serving a motion to dismiss alters the period for filing a responsive pleading). Therefore, default judgment is not appropriate, and Curtis's motion should be denied.

RECOMMENDATION

Accordingly, the court recommends that the defendants' motion to dismiss (ECF No. 5) be granted with regard to Curtis's federal claims and that Curtis's motion for default judgment (ECF No. 12) be denied. Additionally, the court should decline to exercise supplemental jurisdiction over Curtis's state law claims, which should be remanded to the Richland County Court of Common Pleas.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

February 26, 2016
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 26, 2016. Although Plaintiff's objections to the Report were due no later than March 14, 2016, she failed to file any document titled "Objections." Instead, on March 11, 2016, the Clerk of Court entered Plaintiff's "Notice of Appeal." But, the Fourth Circuit's jurisdiction is limited to consider only final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. 1292. The Report does not fit into any of these three categories.

Because the Court is required to liberally construe pro se pleadings, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 5, 9 (1980), and because Plaintiff's "Notice of Appeal" was filed within the time-frame that objections were to be filed, the Court has no choice other than to construe Plaintiff's "Notice of Appeal" as her objections to the Report, *see, e.g., Hester v. N.C. Atty. Gen.*, 199 F.3d 1327 (4th Cir. 1999) (unpublished table decision) (interpreting a "Notice of Appeal" as "Objections to the Report" when the petitioner filed a notice of appeal instead of objections to the Report during the time period for filing objections to the Report).

This Court need not conduct a de novo review of the record "when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982); *see also Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991) (holding that general objections are insufficient to preserve appellate review). Here, Plaintiff was warned of the

consequences of failing to file specific objections, Report 8, but she neglected to do so. In that Plaintiff failed to specify the portions of the Report to which she objected, this Court holds that she has waived appellate review.

After a thorough de novo review of the Report and the record in this case, the Court overrules Plaintiff's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court that Defendants' motion to dismiss is **GRANTED WITH REGARD TO PLAINTIFF'S FEDERAL CLAIMS** and Plaintiff's motion for default judgment is **DENIED**. The Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims. Consequently, Plaintiff's state claims are **REMANDED** to the Richland County Court of Common Pleas.

IT IS SO ORDERED.

Signed this 31st day of March, 2016, in Columbia, South Carolina.

s/ Mary G. Lewis
MARY G. LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Biafra Monique Curtis,)	C/A No. 3:15-3753-MGL-PJG
)	
Plaintiff,)	
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)	REPORT AND RECOMMENDATION
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Warren Ganjehsani; Mike Oliver; Leroy Smith;)	
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To the extent Curtis summarily argues a violation of the Due Process Clause of the Fourteenth Amendment, such a claim also fails. The Due Process Clause provides that no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. However, “the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” Daniels v. Williams, 474 U.S. 327, 328 (1986). Accordingly, Curtis’s § 1983 claims, which appear to rest on alleged negligent conduct by the defendants, must be dismissed.

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Curtis asserts a federal claim of “conspiracy to conceal acts and omissions” under 42 U.S.C. § 1985. Under 42 U.S.C. § 1985(3), an alleged conspiracy must be pled and proved by concrete facts, not mere conclusory allegations. Simmons v. Poe, 47 F.3d 1370, 1376-77 (4th Cir. 1995); Buschi v. Kirven, 775 F.2d 1240, 1248 (4th Cir. 1985). In addition, the Supreme Court has held that, to establish a federal conspiracy claim under § 1985, a plaintiff must show that the alleged conspiracy is motivated by “some racial, or perhaps otherwise class-based invidiously discriminatory animus.” Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); see also Trerice v. Summons, 755 F.2d 1081, 1085 (4th Cir. 1985). Curtis alleges that the defendants participated in a conspiracy to “defeat

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2. State law claims

Curtis also raises a multitude of state law claims. However, in light of the court’s recommendation that the federal claims be dismissed, the court should decline to exercise supplemental jurisdiction over such claims. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Tigrett v. Rector and Visitors of the Univ. of Va., 290 F.3d 620, 626 (4th Cir. 2002) (affirming district court’s dismissal of state law claims when no federal claims remained in the case).

C. Curtis’s Motion for Default Judgment

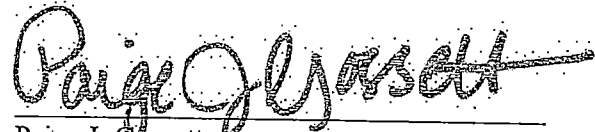
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RECOMMENDATION

Accordingly, the court recommends that the defendants' motion to dismiss (ECF No. 5) be granted with regard to Curtis's federal claims and that Curtis's motion for default judgment (ECF No. 12) be denied. Additionally, the court should decline to exercise supplemental jurisdiction over Curtis's state law claims, which should be remanded to the Richland County Court of Common Pleas.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

February 26, 2016
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Biafra Monique Curtis, Pro Se,)	
	)	Case Number: 2015-CP-40-05172
v.)	
)	
South Carolina Department of Public)	
Safety, Warren Ganjehsani, Mike)	
Oliver, Leroy Smith, Kenneth	)	MEMORANDUM IN SUPPORT OF
Phelps, Anthony Grice, William	)	MOTION TO DISMISS
Taylor, Nicklous King, Willie	)	(As to all Defendants, 12(b)(6), SCRCF)
McCauley, Jr., Ada Schmidt, Aaron)	
Canzater and Cherie Young,)	
Individually and in their official)	
Capacities,)	
)	

In this action, the Complaint purports to state a cause 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. The named defendants move herein for an order to dismiss the remaining state law 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;
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.

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 on September 27, 2012, and that 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. 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.

STATE LAW CAUSES OF ACTION ARE TIME-BARRED

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.

INDIVIDUAL DEFENDANTS IMMUNE FOR STATE LAW CAUSES OF ACTION

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 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.

NO PRIVATE RIGHT OF ACTION FOR VIOLATION OF A PUBLIC DUTY

These Defendants are 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. 97, 105-6, 551 S.E.2d 579 (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, 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 her Sixth Cause of action (Crimes of Moral Turpitude), Plaintiff fails to state a cause of action, as the cited code section does not provide any private right of action. If Defendants committed "Crimes of Moral Turpitude," for example, they could be prosecuted but not individually liable in a civil action.

In this case, the essential purpose of the cited regulations and statutes 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.

Plaintiff's cause of action is untimely, and these defendants are entitled to dismissal under §15-78-100 and §15-78-80, S.C. Code of Laws.

CONCLUSION

Any allegations that survive the applicable statute of limitations (these Defendants assert that none do) read in the light most favorable to Plaintiff, do not describe any duty recognized by either statutory or common law in South Carolina. No state law gives rise to any duty of the named Defendants to advance Plaintiff's civil claims against another driver, nor to investigate for her benefit.

These Defendants are entitled to dismissal, under SCRCP 12(b)(6), as the Complaint fails to state a claim upon which relief can be granted.

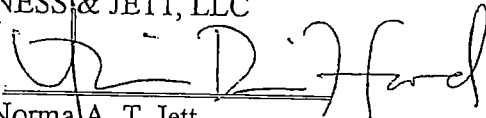
Respectfully submitted,

May 4, 2016

Bamberg, SC

NESS & JETT, LLC

By:


Norma A. T. Jett

Alison Dennis Hood, SC Bar #: 77128

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JULIUS B. NESS
1916-1991

June 3, 2016

Biafra Monique Curtis
PO Box 21294
Hilton Head Island, SC 29925

RE: Curtis v. South Carolina DPS, et al.
Case No.: 2015-CP-40-05172

Dear Ms. Curtis:

Please find enclosed and served upon you the Court's Judgment and Order filed May 18, 2016.

Sincerely,

Alison D. Hood / eas

Alison Dennis Hood

ADH/eas
Enclosures

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May 25, 2016

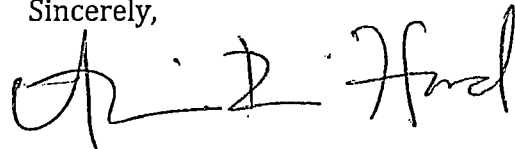
Biafra Monique Curtis
PO Box 21294
Hilton Head Island, SC 29925

RE: Curtis v. South Carolina DPS, et al.
Case No.: 2015-CP-40-05172

Dear Ms. Curtis:

Please find enclosed and served upon you the Court's Judgment and Order filed May 20, 2016.

Sincerely,



Alison Dennis Hood

ADH/eas
Enclosures

CERTIFICATE OF SERVICE

This is to certify that I, Alison Dennis Hood, Attorney for ALL RESPONDENTS, along with Norma A. T. Jett 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 **Reply to Response to Motion to Dismiss and Reply to Response to Motion to Record 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:

with exhibits

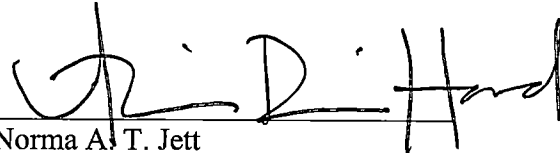
Biafra Monique Curtis
P.O. Box 21294
Hilton Head, SC 29925

RECEIVED

MAR 22 2017

SC Court of Appeals

Bamberg, S.C.
March 20, 2017



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JULIUS B. NESS
1916-1991

March 20, 2017

Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Biafra Monique Curtis v. SCDPS, et al.*
Appellate Case Number: 2016-001239

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MAR 22 2017
SC Court of Appeals

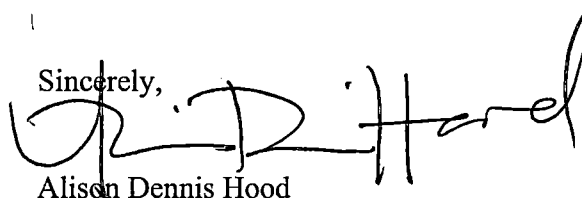
Dear Ms. Kitchings:

Please find enclosed an original and six copies, ^{ADH} as well as a check for the filing fee, for **Respondents Reply to Response to (A) Motion to Reform the Record on Appeal and to (B) Response to Motion to Dismiss.**

By copy of this letter, I am serving a copy of these items on Appellant as shown below, and by the attached certificate of service. Please file the original and return a clocked copy to me in the enclosed envelope.

Thank you for your assistance.

Sincerely,



Alison Dennis Hood

ADH
Enclosures

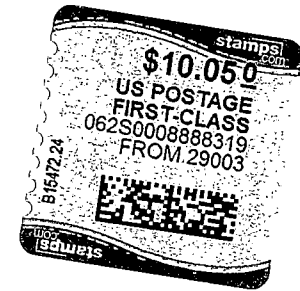
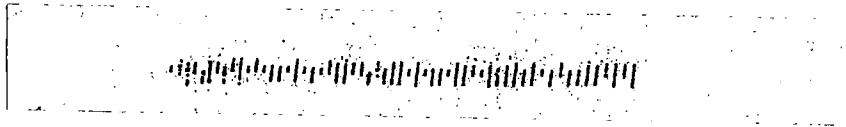
cc: Biafra Monique Curtis
Appellant
PO Box 21294
Hilton Head Island, SC 29925

RECEIVED

MAR 22 2017

SC Court of Appeals

Ness & Jett, LLC
PO Box 909
Bamberg, SC 29003



Honorable Jenny Abbott Kitchings, Clerk
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Cola, SC 29211