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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Honorable D. Craig Brown, Presiding Judge

Case No. 2015-CP-26-902

RECEIVED

APR 03 2017

SC Court of Appeals

Harold F. Jones d/b/a Butch Jones Body Shop, Appellant,

v.

State Farm Mutual Automobile Insurance Company and Clint Cudd, Respondents,

RECORD ON APPEAL

Harold F. Jones
P.O. Box 1068
Myrtle Beach, SC 29572
(843) 267-5254
Appellant

Charles R. Norris, Esquire
Matthew Orville, Esquire
Nelson, Mullins, Riley &
Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29401
(843) 853-5200
Attorney for Respondents

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

HAROLD F. JONES d/b/a BUTCH)
JONES BODY SHOP,)
)
Plaintiff,)

Civil Action No. 2015-CP-26-0902

vs.)

ORDER

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY and CLINT CUDD,)
)
Defendants.)

HERRY COUNTY
2016 JUL 26 AM 8:17
CLERK OF COURT

On April 26, 2016 this Court granted summary judgment to the Defendants on all causes of action in the Plaintiff's complaint. On May 16, 2016 the Plaintiff filed a motion for reconsideration and/or to alter or amend the order granting summary judgment. Although this motion did not reference the rule of procedure under which it was filed, this Court will consider the motion as being pursuant to SCRCP 59(e). For the following reasons this motion is denied.

The Plaintiff's motion for reconsideration argues that this Court applied the wrong Statute of Limitations, and that the Court allowed counsel for the Defendants to reference documents and evidence the Defendants failed to produce in discovery and deliberately withheld from the Plaintiff. As to the Statute of Limitations, this Court did apply the correct two (2) year Statute of Limitations to the Plaintiff's first cause of action alleging defamation. The Statute of Limitations for libel or slander is two (2) years. Section 15-3-550 of the South Carolina Code of Laws; Jones v. City of Folly Beach, 483 S.E.2d 770 (S.C. App. 1997); Harris v. Tietex International Limited, South Carolina Court of Appeals opinion no. 5418 filed June 29, 2016. Accordingly, this Court

did apply the correct Statute of Limitations to the Plaintiff's first cause of action alleging defamation.

Second, this Court granted summary judgment on the Plaintiff's defamation claim on two additional grounds not challenged by the Plaintiff's motion for reconsideration – namely, (1) the alleged defamatory statements were subject to a qualified or conditional privilege and the Plaintiff did not create a question of facts as to whether the qualified privilege was exceeded, and (2) the Plaintiff failed to establish a connection between the alleged defamatory statements and the Plaintiff's damages and, therefore, failed to create a question of fact as to causation which is an element of every tort. Because there are two (2) separate, independent grounds upon which this Court granted summary judgment on the defamation claim which the Plaintiff has not contested in his motion for reconsideration, the motion for reconsideration must be denied.

Third, the Plaintiff's argument that this Court applied the incorrect Statute of Limitations is now argued for the first time. When contesting the Defendants' motion for summary judgment the Plaintiff did not argue that the two (2) year Statute of Limitations of § 15-3-550 was inapplicable. Accordingly, this issue is not preserved because a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. Hotel and Motel Holdings v. BJC Enterprises, 780 S.E.2d 263, footnote 12 (S.C. App. 2015).


As to the second ground of the Plaintiff's motion for reconsideration, the Plaintiff did not make a formal motion to continue the hearing on summary judgment, nor did the Plaintiff specify how he would be prejudiced if summary judgment was granted. This Court's order of April 26, 2016 cites seven (7) cases for the proposition that for a non-moving party to avoid summary judgment because further discovery is needed to defend the motion for summary

judgment, the non-moving party must make both a formal motion for continuance and specify how the non-moving party will be prejudiced if summary judgment is granted. The non-moving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. Dawkins v. Fields, 580 S.E.2d 433, 439 (S.C. 2003) Here, the Plaintiff neither moved for a continuance nor informed this Court that further discovery would uncover additional relevant evidence. Accordingly, the second ground in the Plaintiff's motion for reconsideration is not a basis for this Court to reverse its order granting summary judgment to the Defendants.

Additionally, this Court's order of April 26, 2016 granting summary judgment did so on the other causes of action for *respondent superior* and for injunctive relief. The Plaintiff's motion for reconsideration does not contest these parts of the Court's order, nor does the Plaintiff's motion contest the part of the Court's order granting the Defendants' motion for summary judgment on the Plaintiff's claim for damages concerning the Deonta Dawson claim or the Mikol claim.

Finally, SCRCP 59(g) requires that a party filing a motion under this rule provide a copy of the motion to the judge within ten (10) days after filing the motion. Although the Plaintiff's motion for reconsideration was filed on May 16, 2016, the Plaintiff did not provide this Court with a copy of the motion and, therefore, failed to comply with SCRCP 59(g).

For all of these reasons the Plaintiff's motion for reconsideration is denied. ALL OF WHICH IS SO ORDERED.


D. Craig Brown, Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina
July 20, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

HAROLD F. JONES d/b/a BUTCH)
JONES BODY SHOP,)
Plaintiff,)

Civil Action No. 2015-CP-26-0902

vs.)

ORDER

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY and CLINT CUDD,)
Defendants.)

This lawsuit was filed February 6, 2015. It alleges three causes of action for: 1) defamation per se; 2) *respondeat superior*; and, 3) injunctive relief. On April 18, 2016, this Court heard the Defendants' Motion for Summary Judgment on these claims. For the following reasons, this Motion is granted.

SUMMARY JUDGMENT ON THE PLAINTIFF'S CLAIM FOR DEFAMATION

The Plaintiff was questioned in his deposition about proof of defamatory statements, the substance of the statements, and when the statements were made. The Plaintiff could only specify two instances of defamatory statements by the Defendants. One statement was to a State Farm insured, Julia Willis, in February or March of 2012. The other alleged defamatory statement was made to a customer, whose name the Plaintiff could not recall, that was made between 2002 and 2012.

Even assuming for purposes of this Motion the truth of the Plaintiff's allegations, the alleged defamatory statements were made outside the Statute of Limitations. The Statute of Limitations for libel or slander is two years. §15-3-550 of the South Carolina Code; Jones v.

City of Folly Beach, 483 S.E. 2d 770 (S.C. App. 1997). Because the most recent incident of slander the Plaintiff could identify occurred in February or March of 2012, three years before the Plaintiff commenced this lawsuit, the Plaintiff's claim for defamation per se is barred by the Statute of Limitations.

Another reason summary judgment is appropriate on the defamation claim is that the alleged defamatory statements were subject to a qualified or conditional privilege and the Plaintiff has not created a question of fact as to whether the qualified privilege was exceeded. One who publishes defamatory matter concerning another is not liable for the publication if the matter is published upon an occasion that makes it conditionally privileged and the privilege is not abused. Fountain v. First Reliance Bank, 730 S.E. 2d 305 (S.C. 2012). Whether an occasion gives rise to a qualified or conditional privilege is a matter of law for the Court. Boone v. Sunbelt Newspapers, 556 S.E. 2d 732 (S.C. App. 2001). One who has an interest in the subject matter of a communication and the person to whom it is made has a corresponding interest, every communication honestly made in order to protect such common interests is privileged by reason of the occasion. Castine v. Castine, 743 S.E. 2d 93 (S.C. App. 2013); McBride v. School District of Greenville County, 698 S.E. 2d 845 (S.C. App. 2010). Here, the statements allegedly made about the Plaintiff concerned the Plaintiff's body shop business and, specifically, the Plaintiff's repair of damage to a car insured with State Farm. The statements were made to an insured of State Farm – Willis – who had her car repaired by the Plaintiff. Therefore, as a matter of law, there existed a qualified or conditional privilege.

One publishing under a qualified privilege is liable only upon proof of actual malice which means the Defendant acted recklessly or wantonly or with conscious disregard of the Plaintiff's rights. Constant v. Spartanburg Steel Products, 447 S.E. 2d 194 (S.C. 1994). The

Plaintiff has not created a question of fact as to any statement by the Defendants which were made recklessly or wantonly or with a conscious disregard of the Plaintiff's rights.

A third reason why summary judgment is appropriate on the Plaintiff's claim of defamation is that the Plaintiff has not established a connection between alleged defamatory statements and the Plaintiff's damages. It is axiomatic that causation is an element of every tort. Troutman v. Facet Glass, 316 S.E. 2d 424 (S.C. App. 1984); McAlhaney v. Carter, 781 S.E. 2d 105, 112 (S.C. App. 2015).

In response to the Defendants' interrogatories requiring the Plaintiff to set forth an itemized statement of all damages, the Plaintiff listed five claims and referenced damages for each claim in round numbers. However, according to the Plaintiff's deposition testimony these damages were not caused by any alleged defamation. Instead, the \$18,000 claimed as damages on the Dawson claim were for the time the Plaintiff spent trying to resolve repairs of Dawson's car and the cost of his monies tied up. As for the \$5,000 in damages claimed by the Plaintiff on the Norris claim, that amount is what the Plaintiff anticipates he would have made in profit if he had completed repairs to the car, rather than State Farm considering the car a total loss. For the \$8,000 claimed by the Plaintiff in damages on the Mikol claim, these damages concerned his legal fees and time involved in defending himself. The Plaintiff claimed \$400 in damages on the Willis claim, but those damages were for parts the Plaintiff did not get paid for plus his time involved in that claim. Finally, for the \$150 claimed as damages on the Riccio claim, that involved parts, labor and materials State Farm should have paid for but did not. None of these damages relate to any alleged defamation.

SUMMARY JUDGMENT ON *RESPONDEAT SUPERIOR*

The second cause of action in the Plaintiff's Complaint alleges *respondeat superior*. *Respondeat superior* is not, however, a cause of action. Instead, it is a theory for imposing liability upon a master for injuries to third parties caused by the tort of a servant committed within the scope of the servant's employment. Armstrong v. Food Lion, 639 S.E. 2d 50 (S.C. 2006); Wade v. Berkeley County, 498 S.E. 2d 684 (S.C. App. 1998).

Under S.C.R.C.P. 8 pleadings must set forth causes of action. The Plaintiff's second cause of action alleging *respondeat superior* does not constitute a cause of action. Accordingly, the Defendants are entitled to summary judgment on the second cause of action.

SUMMARY JUDGMENT ON THE THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF

The Defendants are entitled to summary judgment on this cause of action for two reasons: 1) the Plaintiff has an adequate remedy at law, and 2) the Plaintiff has no proof the alleged wrongful acts are ongoing and continuing.

An injunction is a drastic remedy issued by a Court in its discretion to prevent irreparable harm suffered by the Plaintiff. Brock v. Town of Mount Pleasant, 767 S.E. 2d 203, 207 (S.C. App. 2014). An injunction is available only when there is no adequate remedy at law. Rawlinson Road Homeowners Association v. Jackson, 716 S.E. 2d 337, 343 (S.C. App. 2011). The Plaintiff cannot establish the absence of an adequate remedy at law because his first cause of action seeks damages for the very act he seeks to enjoin.

The second reason the Defendants are entitled to summary judgment on the Plaintiff's claim for injunctive relief is that a preliminary injunction is issued only to preserve the status quo. Hook Pointe v. Branch Banking and Trust, 725 S.E. 2d 681, 683 (S.C. 2012). However, the purpose of the Plaintiff's request for injunctive relief is not to preserve the status quo, but

rather to stop something that is allegedly occurring. In any event, the Plaintiff has no proof the alleged defamation is even continuing. He therefore cannot prove another element necessary for injunctive relief – irreparable harm if the injunction is not granted. Hook Pointe, 725 S.E. 2d at 683. Because the Plaintiff cannot prove any of the elements of a claim for injunctive relief it is appropriate to grant summary judgment on this cause of action.

SUMMARY JUDGMENT IS APPROPRIATE ON SPECIFIC DAMAGES CLAIMED BY THE PLAINTIFF

In response to the Defendants' interrogatories the Plaintiff claims \$18,000 in damages on the Deonta Dawson claim. However, in 2012 the Plaintiff sued State Farm regarding repairs to Dawson's vehicle, and the Plaintiff and State Farm entered into a settlement agreement to resolve that case whereby State Farm paid the Plaintiff \$23,000. In connection with the settlement agreement the Plaintiff signed a general release of State Farm. The lawsuit was then dismissed with prejudice. This release signed by the Plaintiff bars him from seeking any damages related to the Dawson claim.

Summary judgment is also appropriate for damages claimed by the Plaintiff for the Mikol claim. In his answer to State Farm's interrogatory 3, the Plaintiff claims \$8,000 in damages related to that claim. In 2010 State Farm filed suit against the Plaintiff for defective repairs of Mikol's car which were paid by State Farm. The Plaintiff answered that Complaint but did not assert a counterclaim. To the extent the Plaintiff had any claim against State Farm for repairs related to the Mikol claim, it was incumbent upon the Plaintiff to file a compulsory counterclaim in that lawsuit in 2010.

A counterclaim is compulsory if it arises out of the same transaction or occurrence as the opposing party's claim. The test for determining whether a counterclaim is compulsory is whether there is a logical relationship between the claim and the counterclaim. The Beach

Company v. Twillman, 566 S.E. 2d 863 (S.C. App. 2002); First Citizens Bank and Trust v. Hucks, 408 S.E. 2d 222 (S.C. 1991). The Plaintiff testified that the \$8,000 he claims in damages on the Mikol claim are for legal fees and time involved in defending that lawsuit. Those claims were compulsory counterclaims and were waived when not asserted.

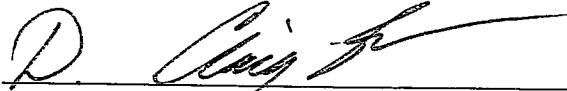
**THE PLAINTIFF'S CLAIM THAT SUMMARY JUDGMENT IS PREMATURE
BECAUSE FURTHER DISCOVERY IS NECESSARY**

Almost one year after the Plaintiff filed this lawsuit, he served interrogatories and a request for production of documents upon the Defendants. The Defendants' responses to the Plaintiff's discovery included some objections. The Plaintiff filed a motion to compel discovery and that motion is scheduled for a hearing on May 16th, 2016.

To avoid summary judgment because further discovery is needed to defend the motion for summary judgment, the non-moving party must both make a formal motion for continuance and point out in a specific manner how the non-moving party will be prejudiced if summary judgment is granted. Middleborough Property Regime v. Montedison, 465 S.E. 2d 765 (S.C. App. 1996); Bayle v. South Carolina Department of Transportation, 542 S.E. 2d 736 (S.C. App. 2001); Mixson v. American Loyalty Insurance Company, 562 S.E. 2d 659 (S.C. App. 2002); McClanahan v. Richland County Council, 567 S.E. 2d 240 (S.C. 2002); Dawkins v. Fields, 580 S.E. 2d 433 (S.C. 2003); CEL Products v. Rozelle, 591 S.E. 2d 643 (S.C. App. 2004); Guinan v. Tenet Health Systems, 677 S.E. 2d 32 (S.C. App. 2009). The Plaintiff has neither moved for a continuance of the Defendants' Motion for Summary Judgment, nor demonstrated how the discovery he seeks may uncover evidence to avoid summary judgment. As stated by the Supreme Court in Dawkins v. Fields, *supra* "the non-moving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a fishing expedition'". 580 S.E. 2d at 439.

CONCLUSION

IT IS THEREFORE ORDERED that summary judgment be granted to the Defendants on all of the Plaintiff's causes of action and that this case be dismissed with prejudice. All of which is so ORDERED.



D. Craig Brown
Presiding Judge, Twelfth Judicial Circuit

Florence, South Carolina

April 26, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-26-00902_____

Harold F. Jones, d/b/a Butch Jones Body)
Shop,)
)
Plaintiff,)

vs.)

State Farm Mutual Automobile Insurance)
Company and Clint Cudd,)
)
Defendants.)

SUMMONS

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at their offices at 460 Piedmont Avenue, Myrtle Beach, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint.

Harold F. Jones
PO Box 1068
Myrtle Beach, SC 29572
(843)267-5254

Myrtle Beach, South Carolina

February __, 2015

the Plaintiff regularly has dealt with State Farm, and has also had to deal with Cudd in his capacity as an adjuster and employee of State Farm.

6. Over the past few years, the business relationship between the Plaintiff and the Defendants has deteriorated due the actions of Cudd. Specifically, at least within the past three years, Cudd has engaged in a pattern of actively discouraging policy holders of State Farm from using the services of the Plaintiff in rearing their vehicles. Specifically Cudd has engaged in a pattern of slandering and defaming the Plaintiff and his work, and has on several occasions sought to prevent or stop policy holders of State Farm from ever dealing with the Plaintiff.

7. The Plaintiff has sought to keep Cudd from coming to his business and has specifically requested of State Farm that they assign another adjuster to handle any claims where the Plaintiff is doing the work. Despite the Plaintiff's request, State Farm continues to assign Cudd to claims involving the Plaintiff, and Cudd continues to engage in slanderous and defamatory conduct towards the Plaintiff.

FOR A FIRST CAUSE OF ACTION

(Defamation Per Se)

8. Each and every allegation is realleged and reiterated as if repeated verbatim herein to the extent not inconsistent herewith.

9. The actions and statements of Cudd in denigrating the work of the Plaintiff amount to the unjust claim that the Plaintiff is unfit in his business or profession.

10. Cudd has made these defamatory statements on several occasions to policy holders of State Farm and to other adjuster in the industry.

11. As a result of Cudd's defamatory statements which are untrue, the Plaintiff has suffered general damages to include, loss of business, loss of reputation, and other consequential damages.

12. The Plaintiff is informed and believes that he is entitled to judgment against Cudd for all general damages sustained by the Plaintiff, together with punitive damages to deter like conduct

in the future and the cost of this action.

FOR A SECOND CAUSE OF ACTION
(Respondent Superior)

13. Each and every allegation is realleged and reiterated as if repeated verbatim herein to the extent not inconsistent herewith.

14. At all times that Cudd was defaming the work and business of the Plaintiff, Cudd was in the employ and was an agent of State Farm.

15. Cudd was engaging in his unjust conduct towards the Plaintiff and his business in furtherance of his position and authority with State Farm.

16. As a result of the actions of Cudd, State Farm should be held liable for the damages of the Plaintiff.

17. Thus the Plaintiff is informed and believes that he is entitled to judgment against State Farm for all general damages sustained by the Plaintiff, together with punitive damages to deter like conduct in the future and the cost of this action.

FOR A THIRD CAUSE OF ACTION
(Injunctive Relief)

23. Each and every allegation is realleged and reiterated as if repeated verbatim herein to the extent not inconsistent herewith.

24. In the alternative, the actions of the Defendants will continue to harm the business of the Plaintiff, if the Defendants are not temporarily and permanently enjoined from slandering, defaming or otherwise intentionally harming the business and personal reputation of the Plaintiff.

25. The Plaintiff does not have an adequate remedy at law and he will continue to suffer general damages without injunctive relief.

26. The Plaintiff is informed and believes that he is entitled to the equitable relief of a temporary and permanent injunction against the Defendants to prevent the Defendants from defaming the Plaintiff.

WHEREFORE, Plaintiffs pray as follows:

A. As to the First Cause of Action on Defamation Per Se, for judgment against the Cudd

for all general damages sustained by the Plaintiff, together with punitive damages to deter like conduct in the future and the cost of this action;

B. As to the Second Cause of Action on Respondeat Superior, for judgment against State Farm for all general damages sustained by the Plaintiff, together with punitive damages to deter like conduct in the future and the cost of this action;

C. As to the Third Cause of Action for Injunctive Relief, for an Order temporarily and permanently enjoining the Defendants from engaging in any defamatory conduct towards the Plaintiff;

D. For the costs and disbursements of this action; and

E. For such other and further relief as this Court may deem just and proper.

Harold F. Jones
PO Box 1068
Myrtle Beach, SC 29572
(843)267-5254

Myrtle Beach, South Carolina

February __, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Civil Action No.: 2015-CP-26-00902

Harold F. Jones d/b/a Butch Jones Body Shop,

Plaintiff,

vs.

State Farm Mutual Automobile Insurance Company and Clint Cudd,

Defendants.

**FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS TO THE DEFENDANTS**

Pursuant to South Carolina Rules of Civil Procedure, you are requested to answer the following Interrogatories and Request for Production of Documents in writing and under oath within thirty (30) days, and to supplement your responses as required by the Rules of Civil Procedure upon your obtaining additional information which is responsive to these Interrogatories and Request for Production of Documents.

INTERROGATORIES

Interrogatories within thirty (30) days after service, as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
3. Set forth a list of all claims handled by the Defendants since January 01, 1989, wherein the Plaintiff was involved as either a body shop, towing operation or storage.
4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
5. List the names and addresses of any expert witnesses whom the Defendant proposes to use as a witnesses at the trial of the case.
6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

7. Set forth a list of all former or pending lawsuits against the Defendants since January 01, 2000, wherein the allegations included causes of action for defamation, civil conspiracy and/or unfair trade practices. Please included the name of the Plaintiff(s), the jurisdiction in which the case was filed, the file number, and the final result of the case if it has concluded.

The Interrogatories set forth above shall continue from the time of service until the time of trial, and any information requested herein, which shall come to your or your counsel's knowledge after answering, shall be promptly submitted to the undersigned.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all records, reports, charts or documentation reflecting consultation or evaluation for any claim handled by the Defendants in which the Plaintiff was involved as either body shop, towing or storage.
2. A copy of all memoranda, diaries, notebooks, calendars, notes, records or reports which in any way or manner tend to reflect consultation or evaluation for any claim handled by the Defendants in which the Plaintiff was involved as either body shop, towing or storage.
3. A copy of all photographs identified in response to the Defendants' First Set of Interrogatories.
4. Copies of all statements, whether transcribed or recorded via audio or video reproduction device of any kind, whether written or oral, of the Defendant or the Plaintiff.
5. Copies of all exhibits which you intend to introduce into evidence at trial.

Harold F. Jones
PO Box 1068
Myrtle Beach, SC 29572
(843) 267-5254

Myrtle Beach, South Carolina
January ____, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing documents have been served, via United States First Class Mail and/or facsimile, on the following parties to this action in the manner prescribed by the South Carolina Rules of Civil Procedure, addressed as follows:

This, the _____ day of January, 2016.

Harold F. Jones

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

HAROLD F. JONES d/b/a BUTCH) Civil Action No. 2015-CP-26-0902
 JONES BODY SHOP,)

Plaintiff,)

vs.)

STATE FARM MUTUAL)
 AUTOMOBILE INSURANCE)
 COMPANY and CLINT CUDD,)
 Defendants.)

ANSWER TO AMENDED
COMPLAINT

(Jury Trial Requested)

Horry County
 2015 MAR 16 PM 2:00
 MELBAE HUGGINS-WARD
 CLERK OF COURT

State Farm Mutual Automobile Insurance Company (State Farm) and
 Clint Cudd (collectively the "Defendants") answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendants admit paragraph 1.
2. Answering paragraph 2, the Defendants admit State Farm is a corporation organized and existing under the laws of one of the States of the United States of America and that it conducts business in Horry County, South Carolina.
3. Paragraph 3 is admitted.
4. Answering paragraph 4, the Defendants would show that the Court's personal and subject matter jurisdiction are matters of law to be determined by the Court.
5. Answering paragraph 5, the Defendants admit upon information and belief that the plaintiff has been engaged in the automobile body repair business for a number of years, that as part of his business the Plaintiff on occasion communicates

with representatives of State Farm and that the Plaintiff has had some communications with Clint Cudd in his capacity as an employee of State Farm, but the Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 and, therefore, those allegations are denied.

6. Answering paragraph 6, the Defendants admit that in the past few years the relationship between the Plaintiff and the Defendants has deteriorated, but the remaining allegations in paragraph 6 are denied.

7. Answering paragraph 7, the Defendants admit that the Plaintiff has recently sought to prevent Clint Cudd from coming to the Plaintiff's business, but the remaining allegations in paragraph 7 are denied.

8. Answering paragraph 8, the Defendants incorporate their answers to paragraphs 1 through 7 as fully and effectually as if set forth verbatim.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Answering paragraph 13, the Defendants incorporate their answers to paragraphs 1 through 12 as fully and effectually as if set forth verbatim.

14. Answering paragraph 14, the Defendants admit only that any interactions between the Defendant Cudd and the Plaintiff were in the course and scope of Cudd's employment with State Farm, but the remaining allegations in paragraph 14 are denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Answering paragraph 23 (the Complaint has no paragraphs 18-22), the Defendants incorporate their answers to paragraphs 1 through 17 as fully and effectually as if set forth verbatim.

19. Paragraph 24 is denied.

20. Paragraph 25 is denied.

21. Paragraph 26 is denied.

22. Except as is specifically admitted, each and every allegation in the Complaint and in the prayer of the Complaint is denied.

FOR A SECOND DEFENSE

23. The Complaint fails to set forth facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

24. Any statements by the Defendant Cudd concerning the Plaintiff are subject to a qualified privilege which was not exceeded.

FOR A FOURTH DEFENSE

25. Any statements by the Defendant Cudd about the Plaintiff were true.

FOR A FIFTH DEFENSE

26. The Plaintiff failed to commence this lawsuit within the applicable Statute of Limitations.

FOR A SIXTH DEFENSE

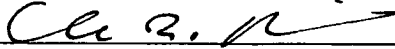
27. Any alleged defamatory statements were non-actionable statements of opinion.

FOR A SEVENTH DEFENSE

28. Any award of punitive damages would under the facts of this case violate the United States and South Carolina Constitutions.

WHEREFORE, having fully answered the Amended Complaint, State Farm Mutual Automobile Insurance Company and Clint Cudd pray that the Amended Complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Charles R. Norris
SC Bar No. 004238
E-Mail: charles.norris@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for State Farm Mutual Automobile
Insurance Company and Clint Cudd

Charleston, South Carolina

March 3, 2015

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry	)	FIFTEENTH JUDICIAL CIRCUIT
)	
HAROLD F. JONES d/b/a BUTCH	)	Civil Action No. 2015-CP-26-0902
JONES BODY SHOP,)	
)	
)	
	)	Plaintiff,
)	
vs.	)	STATE FARM MUTUAL AUTOMOBILE
	)	INSURANCE COMPANY AND CLINT
	)	CUDD'S ANSWERS TO PLAINTIFF'S
	)	INTERROGATORIES
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	
COMPANY and CLINT CUDD,)	
)	
)	
	)	Defendants.
)	

Pursuant to SCRCP 33 the Defendants answer the Plaintiff's interrogatories dated January 29, 2016 as follows:

1. Give the names and addresses of persons known to the parties or counsel for the parties to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

ANSWER:

The following persons were involved in the claims referenced in the Plaintiff's answers to the Defendant's interrogatories. These witnesses may offer testimony concerning these claims. The Defendants do not have written or recorded statements from these witnesses: Clint Cudd, Reggie Burnett, Jeff Mudd, Deanna Wilkinson, Denise Moorman, Chris Brandon, Kay Crawford, Harry Lombard, Marsha Harris, Cassy Hunkins

C/O Counsel for Defendants
 Nelson Mullins Riley & Scarborough
 151 Meeting Street / Sixth Floor
 Charleston, SC 29401

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: The Defendants do not have any documents which relate to causes of action in the Plaintiff's complaint. Documents which relate to defense of Plaintiff's claims are exhibits to the Plaintiff's deposition.

3. Set forth a list of all claims handled by the Defendants since January 1, 1985, wherein the Plaintiff was involved as either a body shop, towing operation or storage.

ANSWER: The Defendants object to interrogatory 3 because it is over broad in subject and time and therefore unduly burdensome and potentially impossible to answer given the interrogatory seeks information dating back to 1985, constituting nothing more than a fishing expedition in violation of the letter and spirit of discovery law in the state of South Carolina. The Defendants also object to this interrogatory as seeking irrelevant not reasonably calculated to lead to the discovery of admissible evidence and not reasonably tailored to the facts or allegations of this case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts liability coverage provided in each policy.

ANSWER: Not applicable.

5. List the names and addresses of any expert witnesses who the Defendant proposed to use as witnesses at the trial of the case.

ANSWER: None currently. The Defendants reserve the right to supplement their response to this interrogatory.

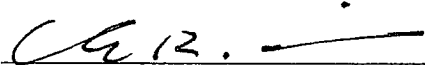
6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER: Please see the answer to interrogatory 1.

7. Set forth a list of all former or pending lawsuits against the Defendants since January 1, 2000, wherein the allegations included causes of action for defamation, civil conspiracy and/or unfair trade practices. Please include the name of the Plaintiff(s), the jurisdiction in which the case was filed, the file number, and the final result of the case if it has concluded.

ANSWER: The Defendants object to this interrogatory on the grounds that it is overly broad and unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of South Carolina. What may or may not have occurred with respect to another claim or lawsuit will neither prove nor disprove the existence of any wrongdoing underlying this case. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to relevant facts. Further, to the extent this interrogatory seeks the final result of cases, information responsive to this request may contain confidential non-public information of State Farm insureds not party to this suit. To the extent this interrogatory seeks public information, State Farm objects as Plaintiff has equal access to this information.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Charles R. Norris
SC Bar No. 004238
E-Mail: charles.norris@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for State Farm Mutual Automobile Insurance
Company and Clint Cudd

Charleston, South Carolina

March 3, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

HAROLD F. JONES d/b/a BUTCH)
JONES BODY SHOP,)

Plaintiff,)

vs.)

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY and CLINT CUDD,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-26-0902

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND CLINT
CUDD'S RESPONSE TO PLAINTIFF'S
REQUEST FOR PRODUCTION**

Pursuant to SCRCP 34 the Defendants respond to the Plaintiff's request for production of documents dated January 29, 2016 as follows:

1. Any and all records, reports, charts or documentation reflecting consultation or evaluation for any claim handled by the Defendants in which the Plaintiff was involved as either body shop, towing or storage.

RESPONSE: The Defendants object to request 1 because it is over broad in subject and time and therefore unduly burdensome and potentially impossible to answer given the time frame, constituting nothing more than a fishing expedition in violation of the letter and spirit of discovery law in the state of South Carolina. The Defendants also object to this interrogatory as seeking irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and not reasonably tailored to the facts or allegations of this case. Further, information responsive to this request may contain confidential non-public information of State Farm insureds not party to this suit.

2. A copy of all memoranda, diaries, notebooks, calendars, notes, records, emails or reports which in any way or manner tend to reflect consultation or evaluation for any claim handled by the Defendants in which the Plaintiff was involved as either body shop, towing or storage.

RESPONSE: The Defendants object to request 2 based upon the same grounds as the objections to request 1 which are incorporated herein.

3. Copies of all statements, whether transcribed or recorded via audio or video reproductions device of any kind, whether written or oral, of the Defendant to the Plaintiff.

RESPONSE: The Defendants object to request 3 because it is over broad in subject and time and therefore unduly burdensome, constituting nothing more than a fishing expedition in violation of the letter and spirit of discovery law in the state of South Carolina. The Defendants also object to this request as seeking irrelevant information not reasonably calculated to lead to the discovery of admissible evidence and not reasonably tailored to the facts or allegations of this case. Further, information responsive to this request may contain confidential non-public personal information of State Farm insureds not party to this suit. Notwithstanding and without waiving said objections, to the best of the Defendants' belief, none.

4. Copies of all statements, whether transcribed or recorded via audio or video reproduction device of any kind, whether written or oral, of the Defendant or the Plaintiff.

RESPONSE: The Defendants object to request 4 based upon the same grounds as the objections to request 3 which are incorporated herein. Notwithstanding and without waiving said objections, to the best of Defendants' belief, none.

5. Copies of all exhibits which you intend to introduce into evidence at trial.

RESPONSE: The Defendants object to request 5 on the ground that documents counsel for the Defendants intends to introduce at trial is a matter of trial strategy and, as such, is protected by the attorney work product privilege.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Charles R. Norris
Charles R. Norris
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(843) 853-5200

Attorneys for State Farm Mutual Automobile Insurance
Company and Clint Cudd

Charleston, South Carolina
March 3, 2016

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending a copy of the same via U.S. Regular mail, postage paid, to the following:

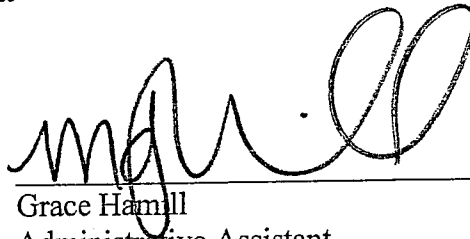
Pleadings:

**STATE FARM'S ANSWERS TO PLAINTIFF'S
INTERROGATORIES AND RESPONSE TO PLAINTIFF'S
REQUEST FOR PRODUCTION OF DOCUMENTS**

Served Upon:

Harold F. Jones
P.O. Box 1068
Myrtle Beach, SC 29572

Pro Se Plaintiff



A handwritten signature in black ink, appearing to read 'mg Hamill', is written over a horizontal line.

Grace Hamill
Administrative Assistant

March 3, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Harold F. Jones, d/b/a Butch Jones)
 Body Shop,)
)
 Plaintiff,)
 vs.)
)
 State Farm Mutual Automobile)
 Insurance Company and Clint Cudd,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 Case No. 2015-CP-26-0902

FILED
 HORRY COUNTY
 2016 MAR 18 PM 3:32
 MELANIE HUGGINS-MARD
 CLERK OF COURT

NOTICE OF MOTION AND MOTION
 TO COMPEL

TO: THE DEFENDANTS, AND THEIR ATTORNEY, CHARLES S. NORRIS, ESQUIRE:

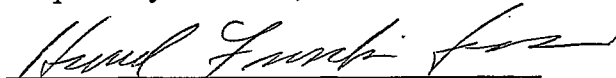
YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before this Court within ten (10) days of service hereof upon you, or as soon thereafter as this matter may be heard, for an Order of this Court compelling the Defendants to comply with discovery requests propounded by the Plaintiff and served upon the Defendants' attorney. This Motion is made pursuant to Rule 37 of the South Carolina Rules of Civil Procedure.

In support of this Motion, the Plaintiff would show that on February 1, 2016, the Defendants was served, by and through their attorney, Charles S. Norris, with the Plaintiff's Request for Production of Documents and First Set of Interrogatories. The Plaintiff received responses the Request for Production and First Set of Interrogatories and the Defendants have failed to fully respond to the requests as shown on the attached responses from Defendants' counsel. In fact, the Defendants failed to produce one single document with the Request for Production, and objected to all of the requests. As for the interrogatories, the defendants failed to fully respond to the interrogatories and objected to two of the interrogatories without any reasonable basis. The actions of the Defendants in failing to respond to the discovery requests is

merely to delay this matter and is not in good faith.

The Plaintiff would further move this Court, pursuant to Rule 37(a)(4) of the South Carolina Rules of Civil Procedure, for its Order granting the Plaintiff's reasonable expenses incurred in obtaining the Order to Compel, as a result of the Defendants' conduct which necessitated the filing of this Motion.

Respectfully submitted,



Harold F. Jones
PO Box 1068
Myrtle Beach, SC 29578
(843) 267-5254

Myrtle Beach, South Carolina

March 18, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS

HAROLD F. JONES)

PLAINTIFF)

vs.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY, ET AL)
DEFENDANT.)

2015 CP 26 00902

ORIGINAL

BEFORE THE HONORABLE D. CRAIG BROWN;

The enclosed judicial proceedings took place in the Court of Common Pleas, Horry County, Conway, SC; commencing at the hour of 10:06 AM on the 18th day of April, 2016.

REPORTED BY: H. Eugene Buckner, CVR

ORIGINAL

H. Eugene Buckner, CVR-M
Family Court Reporter at Large
15th Judicial Circuit
PO Box 1382, Conway, SC 29528-1382

APPEARANCES:

Harold Jones; pro se

....On Behalf of the Plaintiff

Charles R. Norris, Esquire
Nelson, Mullins, Riley, Scarborough, LLP
P.O. Box 1806
Charleston, SC 29402

Office: 843-720-4303

....On Behalf of the Defendant
State Farm Mutual Automobile
Insurance Company

OFFICIAL COURT RECORD

INDEX OF TESTIMONY

No witnesses took the stand in these proceedings.

OFFICIAL COURT RECORD

INDEX OF EXHIBITS

No exhibits were marked by the court reporter in these proceedings.

OFFICIAL COURT REPORT

1 THE COURT:

2 The next matter on here, Motion for
3 Summary Judgement, Harold Jones v. State Farm Mutual
4 Insurance Company.

5 MR. NORRIS:

6 Yes, sir, I'm Charles Norris. That's
7 N-O-R-R-I-S, for the moving party, State Farm.

8 THE COURT:

9 Sir, you can be seated, please.

10 COURT REPORTER:

11 Tell me your name for the record?

12 MR. JONES:

13 Harold Jones.

14 THE COURT:

15 All right.

16 Mr. Norris, I'm happy to hear from
17 you, sir?

18 MR. NORRIS:

19 Thank you, sir.

20 We have filed a memorandum in support
21 of a Motion for Summary Judgement.

22 I have -- uh -- two extra copies for
23 you and your clerk if you don't have that in the file.

24 THE COURT:

25 I got the file right here.

1 MR. NORRIS:

2 Okay.

3 If you need another copy, I've got
4 one.

5 THE COURT:

6 Have you provided a copy to Mr.
7 Jones?

8 MR. NORRIS:

9 Yes, sir. Yes, sir.
10 That's two copies both of which have
11 been -- have been filed.

12 THE COURT:

13 All right.

14 MR. NORRIS

15 Uh -- Mr. Jones operates a -- uh -- a
16 body shop. And he has sued -- uh -- State Farm with
17 three causes of action -- uh -- defamation, respondeat
18 superior, and injunctive relief.

19 Uh -- He's moved for Summary Judgment
20 on the first cause of action for defamation.

21 Defamation is a little bit unusual
22 because it has a two year statute of limitations.

23 The normal statute of limitations of
24 course is three years.

25 This law suit was filed in February

1 of 2015.

2 I deposed Mr. Jones and asked him
3 when the alleged defamation -- uh -- occurred -- uh -- of
4 him. And he mentioned -- uh -- a witness, Julia Willis
5 (phonetic) -- uh -- had said something to him in February
6 or March of 2012; which would be outside of the two year
7 statute of limitations.

8 The other incident that he mentioned
9 was -- uh -- somebody whose name he did not recall told
10 him sometime between 2010 and 2011 that State Farm had
11 said something bad about him.

12 Uh -- That was the only thing he
13 could come up with.

14 Uh -- I did get last week an unsigned
15 affidavit of Ms. Willis.

16 Uh -- Mr. Jones showed me this
17 morning her signed affidavit.

18 Uh -- I note, if you look at it, Your
19 Honor, he has -- uh -- the year 2012 on the signature
20 block.

21 But, in any event, even if that
22 affidavit is proper, it goes -- it says nothing about --
23 uh -- that would -- uh -- create questions back to the
24 statute of limitations.

25 The second ground on which we move

1 for -- uh -- Summary Judgment on the defamation is
2 qualified privilege.

3 Uh -- There was -- There is a
4 qualified privilege about any statements made about Mr.
5 Jones and whether the qualified privilege exists as a
6 matter of law.

7 We cited cases on that point in page
8 two of our brief.

9 Uh -- Once there is a qualified
10 privilege, the claimant needs to prove -- uh -- reckless,
11 or wanton, or a conscious disregard for his rights.

12 Uh -- There's no evidence of that.

13 So that is reason number two why
14 Summary Judgment should be granted.

15 Uh -- The third reason was that
16 there's no evidence from any third parties.

17 Now if -- If Ms. Willis' affidavit is
18 proper for the date of 2012 -- uh -- I would remove that
19 because that does create a question of fact on that one
20 ground, assuming the Court accepts the affidavit.

21 Uh -- The second cause of action
22 alleges respondeat superior.

23 That is not a tort.

24 That is a legal theory for holding
25 one person vicarious of libel for acts of another.

1 So a Summary Judgment should be
2 granted on that; because it is not a tort.

3 Uh -- The next ground is on the
4 injunctive relief.

5 Uh -- Number one, he has an adequate
6 remedy at law -- uh -- and number two, he has no proof of
7 any continuing harm.

8 So those are two reasons why State
9 Farm should be granted Summary Judgment on the injunctive
10 relief.

11 There are other grounds for the
12 defamation.

13 Uh -- If you look at pages five and
14 six of our brief -- uh -- Mr. Jones listed his damages in
15 response to our interrogatories.

16 And every single -- uh -- list of
17 damages is -- is an even figure.

18 Uh -- But we asked him what caused
19 those damages -- the damages in pages five and six of our
20 brief -- none of it has anything to do with defamation.

21 He claimed \$18,000.00 on the dot
22 damages on this Dawson claim. And he said -- uh -- that
23 was for the time he spent trying to resolve repairs of
24 Dawson's car -- cost of monies tied up.

25 He listed exactly \$5,000.00 in

1 damages on the Norris claim; no relation to me.

2 Uh -- That's what he anticipates he
3 would have made in profit if he completed the repairs to
4 the car, rather than State Farm considering that car a
5 total loss.

6 And he claimed \$8,000.00 in damages
7 on a Mikol -- that's M-i-k-o-l -- claim; which he said
8 concerned his legal fees and time involved in defending
9 himself in that case.

10 Uh -- And he claimed \$400 .00 on
11 damages on the Willis case for parts that he did not get
12 paid for plus his time involving that claim.

13 And finally, on Riccio claim --
14 that's R-i-c-c-i-o -- claimed -- he claimed \$150.00;
15 which involved, according to him, parts, labor and
16 materials State Farm should have paid but did not.

17 Now let's assume all that's true.

18 That has nothing to do with
19 defamation.

20 And, of course, defamation like every
21 tort in this State has a causation element.

22 We have also filed a Motion for
23 Partial Summary Judgment on other aspects of his claim --
24 uh -- specifically the Dawson claim.

25 Uh -- He filed suit against State

1 Farm a number of years ago regarding that claim. And it
2 was settled. And he signed a release of all claims
3 related to the Dawson -- uh -- claim. Uh -- And the
4 release -- uh -- is attached as an exhibit to our brief.

5 So that's the reason he shouldn't get
6 any damages on the Dawson claim.

7 Uh -- Finally, on the Mikol claim:

8 In that case State Farm sued him
9 years ago for not treating -- making proper repairs.

10 If he had a claim against State Farm
11 in regard to the Mikol claim, he was -- uh -- required to
12 file a compulsory counterclaim; which he did not.

13 So -- uh -- those are all the reasons
14 why who -- we believe Summary Judgment should be granted.

15 THE COURT:

16 All right.

17 Anything else?

18 MR. NORRIS:

19 Not unless Your Honor has any
20 questions.

21 THE COURT:

22 All right.

23 Mr. Jones?

24 MR. JONES:

25 Yes, sir.

1 THE COURT:

2 I'd be happy to hear from you, sir.

3 MR. JONES:

4 Uh -- I've requested documents in
5 discovery.

6 And I basically have gotten nothing
7 except his remark that I'm on a fishing expedition.

8 THE COURT:

9 Accept what? I'm sorry?

10 MR. JONES:

11 I've only got remarks in their reply
12 that I'm on a fishing expedition; and I'm not.

13 I'm trying to have those -- have
14 those documents to prove that I've been blackballed since
15 the mid-eighties by State Farm.

16 So, I feel like ---

17 THE COURT:

18 When did you request the documents?

19 MR. JONES:

20 Uh -- I don't have that in front of
21 me, but --

22 THE COURT:

23 Have you filed a Motion to Compel?

24 MR. JONES:

25 Yes, I did.

1 THE COURT:

2 Is that outstanding and pending?

3 MR. JONES:

4 (No verbal response.)

5 THE COURT:

6 When did you file a Motion to Compel?

7 MR. JONES:

8 I don't have that with me this
9 morning; I'm sorry.

10 THE COURT:

11 Hold on just a minute; okay?

12 WHEREUPON: The Court reviews
13 documents in the file.

14 THE COURT:

15 I see it. It was dated March 18,
16 2016. It was filed March 18th as well.

17 Has that matter been set yet?

18 MR. NORRIS:

19 Your Honor, if I may?

20 THE COURT:

21 Hold on a minute.

22 CLERK:

23 Uh -- It's scheduled for May the
24 15th, Your Honor.

25 THE COURT:

1 Okay.

2 CLERK:

3 May the 16th; excuse me.

4 THE COURT:

5 I'll come back to you, Mr. Norris.

6 MR. NORRIS:

7 Thank you, sir.

8 THE COURT:

9 Yes, sir; go ahead?

10 MR. JONES:

11 Uh -- I feel like that this is
12 getting a little over my head and I would probably like
13 to get a two week continuance.

14 Uh -- I've talked with legal counsel
15 actually this morning that said they would -- uh -- be
16 willing to take it on and represent me.

17 I think for the respect of the Court
18 and everybody concerned that would probably be the best
19 thing.

20 THE COURT:

21 Hold on just a minute here.

22 Okay.

23 Is there anything else you want to
24 tell me right now?

25 MR. JONES:

1 I think that's enough.

2 THE COURT:

3 All right; Mr. Norris?

4 MR. NORRIS:

5 Thank you, sir.

6 THE COURT:

7 Yes sir.

8 MR. NORRIS:

9 Uh -- Mr. Jones filed this law suit
10 -- uh -- in February of 2015.

11 Uh -- He has not taken any
12 depositions -- uh -- in a year.

13 We did respond to his discovery; but
14 we objected to some of it.

15 For example:

16 I'll just give you one example;
17 asking for all claim files back to 1980.

18 Uh -- I anticipated this argument --
19 uh -- so I did a little bit of research.

20 Uh -- To defeat this Motion for
21 Summary Judgment -- uh -- the opposing party has to file
22 a Motion to Continue.

23 I don't think a Motion to Continue
24 has been filed.

25 In addition -- uh -- they have to

1 show that additional discovery would make a difference.

2 Uh -- And -- The cases:

3 McClanahan versus Richland County; I

4 have copies of all these cases.

5 Dawkins v. Fields, C.E.L. versus

6 Roselle (phonetic), Zenith versus Tennant (phonetic)

7 Savannah Bank versus -- uh -- Stalliard (phonetic)

8 Those are Court of Appeals and

9 Supreme Court -- uh -- decisions -- uh -- denying a
10 request to continue just to avoid a hearing on a Summary
11 Judgment Motion.

12 And in all five of those cases, a
13 grant of Summary Judgment was affirmed.

14 So if -- Mr. Jones has known about
15 this hearing at least since I wrote him on March the 15th
16 and notified him of this hearing.

17 And -- uh -- it's ripe to be heard.

18 There hasn't been a motion for a
19 continuance. And I don't see anything that would make a
20 difference -- uh -- in the discovery from State Farm.

21 THE COURT:

22 So, hold on a minute.

23 Isn't there case law out there that
24 says where additional discovery may be warranted, the
25 granting of Summary Judgment would be improper?

1 MR. NORRIS:

2 That is.

3 THE COURT:

4 Is --

5 MR. NORRIS:

6 And in fact that's the ---

7 THE COURT:

8 Go ahead; I'm sorry. Go ahead.

9 MR. NORRIS:

10 That's the Baughman case; which is
11 dated in 1991.

12 There have been a number of cases
13 since then; because when Baughman came out, a lot of
14 people have since tried to avoid Summary Judgment saying
15 that discovery was outstanding and further discovery
16 would be needed.

17 And there are cases -- uh -- I've got
18 them right here if Your Honor wants to see --

19 THE COURT:

20 You can hand up copies; I'll be happy
21 to look at them.

22 MR. NORRIS:

23 Yes, sir.

24 COURT REPORTER:

25 Your Honor, can I get the spelling of

1 that last case name?

2 THE COURT:

3 Yes, sir.

4 Mr. Norris, would you spell that last
5 case name, please?

6 I think you said Baughman; is that
7 correct?

8 MR. NORRIS:

9 Yeah, B-a--

10 COURT REPORTER:

11 No, I meant the one before that. It
12 was a real long name.

13 MR. NORRIS:

14 Okay I think the one I mentioned
15 before Baughman was Savannah Bank -- Bank, B-a-n-k versus
16 Stalliard; is that the one?

17 COURT REPORTER:

18 Yes sir.

19 MR. NORRIS:

20 S-t-a-l-l-i-a-r-d; Stalliard.

21 Uh -- Now, the cases -- These are the
22 cases.

23 And I'm going to give you a clean
24 copy because I've marked all over. I don't want you to
25 read my remarks on them.

1 But again, these cases stand for the
2 proposition that if you're in the position of the
3 Plaintiff, you need to file a motion to continue.

4 And here, there has been no motion to
5 continue this hearing.

6 And if you do file a motion to
7 continue the hearing, you have to be specific about what
8 additional discovery is needed; and the fact that it
9 would actually make a difference.

10 I mean this case is -- uh -- what --
11 fourteen months old and ---

12 THE COURT:

13 Let me ask you this.

14 Why would it not be premature to
15 grant the relief that you've requested here until the
16 Motion to Compel has been heard; which could in turn
17 result in some additional discovery?

18 MR. NORRIS:

19 That's because today, under those
20 cases I've just handed Your Honor, he has to show what
21 specific discovery would make a difference.

22 You can't just say:

23 I want State Farm's claim files back
24 to 1980; therefore, the hearing today should not go
25 forward.

1 That's not enough. And that's what
2 the cases show.

3 THE COURT:

4 All right.

5 Well, I'll look at these cases. Have
6 you got a copy of these cases for -- uh --

7 MR. NORRIS:

8 Yes.

9 THE COURT:

10 --- Mr. Jones?

11 MR. NORRIS:

12 Yes sir.

13 THE COURT:

14 Okay

15 I'll take a look at them and I'll let
16 you know.

17 MR. NORRIS:

18 Thank you, sir.

19 THE COURT:

20 Thank you.

21 WHEREUPON: There being nothing
22 further in this regard, these proceedings were concluded
23 at 10:17 AM, April 18th, 2016.

24

25

CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR-M, Official Family Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 18th day of April, 2016;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of October, 2016.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR-M
COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

AFFIDAVIT OF JULIA M. WILLIS

Personally appeared before me Julia M. Willis, who being duly sworn, deposes and states as follows:

1. I am a resident of Horry County, and was involved in an accident in late January of 2012.
2. After the accident, I contacted my insurer, State Farm, to get my car repaired. I was thereafter contacted by an individual named Clint Cudd, who was an adjuster for State Farm.
3. In discussing the repair of my vehicle, Mr. Cudd asked if I had a body shop that I wanted to repair my vehicle. I told Mr. Cudd that I wanted Butch Jones to repair my vehicle.
4. Once I told Mr. Cudd that I wanted Butch Jones to do the body work on my vehicle, Mr. Cudd immediately tried to get me to use another body shop and suggested others. When I insisted that I wanted to use Butch Jones, Mr. Cudd stated that Mr. Jones did not do good work and that they "had had problems with Mr. Jones and his work in the past". Mr. Cudd further stated that if Mr. Jones did the work to my vehicle that State Farm could not "stand behind his work". I told Mr. Cudd that I thought Mr. Jones did good work and that I was going to use his body shop. Even after I insisted on using Butch Jones for the work, Mr. Cudd continued to try to steer me away from Butch Jones Body Shop and use someone else. He repeated on several occasions that "we [State Farm] have had problems with his work" and that "he[Butch Jones] does bad work".
5. After I had resolved my issue with my car and had it repaired, I felt the need to let Mr. Jones know what Mr. Cudd and State Farm had said about him and his

work.

Further affiant sayeth not.

Julia M. Willis

Sworn before me this _____
day of _____, 2012.

_____(SEAL)
Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

HAROLD F. JONES d/b/a BUTCH)
JONES BODY SHOP,)
Plaintiff,)

Civil Action No. 2015-CP-26-0902

vs.)

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY and CLINT CUDD,)
Defendants.)

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

The complaint alleges three causes of action: (1) defamation per se; (2) *respondere superior*; and (3) injunctive relief. The Defendants are entitled to summary judgment on each of these causes of action.

**THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE FIRST
CAUSE OF ACTION ALLEGING DEFAMATION BECAUSE IT IS BARRED BY THE
STATUTE OF LIMITATIONS.**

This lawsuit was filed February 6, 2015. In regard to when the Defendants' alleged slander occurred, the Plaintiff testified that:

- A State Farm insured, Julia Willis, told the Plaintiff that Clint Cudd said negative things about the Plaintiff "just beating my character down as a body shop person." (Plaintiff's Deposition pg. 25)
- Other than Willis, there was one customer somewhere between 2002 and 2011 whose name the Plaintiff cannot recall who told him negative things State Farm had said about the Plaintiff. (Plaintiff's Deposition pg. 30, 31)
- Other than Julia Willis and another customer whose name the Plaintiff cannot recall who repeated negative things State Farm had said about him between 2002 and 2012, the Plaintiff cannot recall any other customer who relayed to him negative things State Farm had said about the Plaintiff. (Plaintiff's Deposition pg. 33, 34; 48)
- Julia Willis informed the Plaintiff in February or March of 2012 of negative things State Farm had said to Willis about the Plaintiff. (Plaintiff's Deposition pg. 35, 36)

- The Julia Willis incident in February or March 2012 is the genesis of the Plaintiff's lawsuit. (Plaintiff's Deposition pg. 40, 41)
- Other than what Willis told the Plaintiff in February or March 2012 and another incident with an unnamed customer between 2002 and 2011, the Plaintiff cannot recall any other incidences when persons told him State Farm was saying bad things to them about the Plaintiff. (Plaintiff's Deposition pg. 45, 46)
- The only person the Plaintiff can specifically identify who told the Plaintiff that State Farm had said negative things about the Plaintiff is Julia Willis, and this was in February or March of 2012. (Plaintiff's Deposition pg. 62, 63)

In South Carolina the Statute of Limitations for libel or slander is two years. Section 15-3-550. See also, Jones v. City of Folly Beach, 483 S.E.2d 770 (S.C. App. 1997). Because the most recent incident of slander the Plaintiff could identify occurred in February or March 2012, three years before the Plaintiff commenced this lawsuit, the Plaintiff's claim for defamation per se is barred by the Statute of Limitations.

STATE FARM IS ENTITLED TO SUMMARY JUDGMENT ON THE PLAINTIFF'S CAUSE OF ACTION FOR DEFAMATION BECAUSE ANY ALLEGED STATEMENTS WERE SUBJECT TO A QUALIFIED PRIVILEGE AND THE PLAINTIFF HAS NO EVIDENCE OF ACTUAL MALICE TO OVERCOME THIS PRIVILEGE.

One who publishes defamatory matter concerning another is not liable for the publication if the matter is published upon an occasion that makes it conditionally privileged and the privilege is not abused. Fountain v. First Reliance Bank, 730 S.E.2d 305 (S.C. 2012) Whether an occasion gives rise to a qualified or conditional privilege is a matter of law for the Court. Boone v. Sunbelt Newspapers, 556 S.E.2d 732 (S.C. App. 2001) One who has an interest in the subject matter of a communication and the person to whom it is made has a corresponding interest, every communication honestly made in order to protect such common interests is privileged by reason of the occasion. Castine v. Castine, 743 S.E.2d 93 (S.C. App. 2013); McBride v. School District of Greenville County, 698 S.E.2d 845 (S.C. App. 2010) Here, the statements allegedly made by Cudd about the Plaintiff concerned the Plaintiff's body shop business and, specifically, the Plaintiff's repair of damage to a car insured with State Farm. The statements were made to an

insured of State Farm - Willis - who had her car repaired by the Plaintiff. Therefore, as a matter of law there existed a qualified or conditional privilege.

One publishing under a qualified privilege is liable only upon proof of actual malice which means the Defendant acted recklessly or wantonly or with conscious disregard of the Plaintiff's rights. Constant v. Spartanburg Steel Products, 447 S.E.2d 194 (S.C. 1994) Here, the Plaintiff has no proof of any statement by Cudd which was made recklessly or wantonly or with conscious disregard of the Plaintiff's rights.¹

THE PLAINTIFF HAS NO EVIDENCE FROM A THIRD PARTY THAT THE DEFENDANTS PUBLISHED ANY COMMENT ABOUT THE PLAINTIFF TO A THIRD PARTY.

As stated in footnote 1, in order to establish defamation the Plaintiff will need evidence directly from a third party about statements made to the third party by a representative of State Farm. The Plaintiff has no direct evidence from a third party to establish that State Farm slandered the Plaintiff.²

THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE SECOND CAUSE OF ACTION ALLEGING *RESPONDEAT SUPERIOR* BECAUSE THIS IS NOT A TORT, BUT RATHER A LEGAL THEORY FOR MAKING ONE PARTY LIABLE FOR THE TORT OF ANOTHER.

Under SCRPC 8 pleadings set forth causes of action. *Respondeat superior* is not, however, a cause of action. Instead, it is a theory for imposing liability upon a master for injuries to the third parties caused by the tort of a servant committed within the scope of the servant's employment. Armstrong v. Food Lion, 639 S.E.2d 50 (S.C. 2006); Wade v. Berkeley

¹ It would be hearsay for the Plaintiff to testify about what Willis told the Plaintiff. Evidence to oppose a motion for summary judgment must be admissible. SCRPC 56(e) Accordingly, the Plaintiff would need evidence directly from Willis in order to prevail.

² Slander is a spoken defamation while libel is a written defamation. Swinton Creek Nursery v. Edisto Farm Credit, 514 S.E.2d 126 (S.C. 1999) The Plaintiff has nothing in writing where State Farm disparaged him or his business. (Plaintiff's Deposition pg. 29) Therefore, the Plaintiff's claim of defamation must be based upon slander, not libel.

County, 498 S.E.2d 684 (S.C. App. 1998) For this reason the Defendants are entitled to summary judgment on the second cause of action which alleges *respondeat superior*.

THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF.

The third cause of action seeks injunctive relief to enjoin the Defendants from slandering the Plaintiff. Paragraph 25 of this cause of action alleges the Plaintiff has no adequate remedy at law. The Defendants are entitled to summary judgment on this cause of action for two reasons: (1) the Plaintiff does have an adequate remedy at law, and (2) the Plaintiff has no proof the alleged wrongful acts are ongoing and continuing.

THE PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW.

An injunction is a drastic remedy issued by a Court in its discretion to prevent irreparable harm suffered by the Plaintiff. Brock v. Town of Mt. Pleasant, 767 S.E.2d 203, 207 (S.C. App. 2014) An injunction is available only when there is no adequate remedy at law. Rawlinson Road Homeowner's Association v. Jackson, 716 S.E.2d 337, 343 (S.C. App. 2011) The Plaintiff cannot establish the absence of an adequate remedy at law because his first cause of action seeks damages for the very act he seeks to enjoin.

THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF BECAUSE HE HAS NO PROOF THAT THE ALLEDGED DEFAMATION IS ONGOING AND CONTINUING.

According to ¶ 24 and ¶ 26 of the Plaintiff's complaint he is entitled to a temporary and permanent injunction "to prevent the Defendants from defaming the Plaintiff." (Complaint ¶ 26) A preliminary injunction is issued only to preserve the status quo. Hook Pointe v. Branch Banking and Trust, 725 S.E.2d 681, 683 (S.C. 2012) However, the purpose of the Plaintiff's request for injunctive relief is not to preserve the status quo, but to rather stop something that is

allegedly occurring. Nonetheless, the Plaintiff has no proof the alleged defamation is even continuing. (Plaintiff's Deposition, p. 53) He therefore cannot prove another element necessary for injunctive relief – irreparable harm if the injunction is not granted. Hook Pointe, 725 S.E.2d at 683. In fact, the Plaintiff cannot prove any of the elements of a claim for injunctive relief – the absence of an adequate remedy at law, the necessity of preserving the status quo and irreparable harm if the injunction is not granted.

**NONE OF THE DAMAGES CLAIMED BY THE PLAINTIFF IN HIS ANSWERS TO
STATE FARM'S INTERROGATORIES WERE CAUSED BY ALLEGED
DEFAMATION.**

Attached as Exhibit A is the Plaintiff's answers to the Defendant's interrogatories. In response to interrogatory 3 which required the Plaintiff to set forth an itemized statement of all damages, the Plaintiff references damages in round numbers on five claims. These damages were not, however, caused by any alleged defamation. Instead, the \$18,000 claimed as damages on the Dawson claim were for the time the Plaintiff spent trying to resolve repairs of Dawson's car and the cost of his monies tied up. (Plaintiff's Deposition pg. 65)

As for the \$5,000 in damages claimed by the Plaintiff on the Norris claim, that amount is what the Plaintiff anticipates he would have made in profit if he had completed repairs to the car, rather than State Farm considering the car a total loss. (Plaintiff Deposition pg. 65, 66)

For the \$8,000 claimed by the Plaintiff in damages on the Mikol claim, these damages concern his legal fees and time involved in defending himself. (Plaintiff's Deposition pg. 66) For the \$400 claimed in damages on the Willis claim, these are parts the Plaintiff did not get paid for plus his time involved in that claim. (Plaintiff's Deposition pg. 66) For the \$150 on the Riccio claim, that involved parts, labor and materials State Farm should have paid for but did not. (Plaintiff's Deposition pg. 66, 67) None of these damages relate to any alleged defamation.

It is axiomatic that causation is an element of every tort. Troutman v. Facetglas, 316 S.E.2d 424 (S.C. App. 1984); McAlhaney v. Carter, 781 S.E. 2d 105, 112 (S.C. App. 2015) The disconnect between the damages claimed by Jones and his claim for defamation requires dismissal of that claim.

THE PLAINTIFF SIGNED A RELEASE OF ALL CLAIMS AGAINST STATE FARM REGARDING THE DAWSON CLAIM AND BY VIRTUE OF THIS RELEASE THE PLAINTIFF CANNOT CLAIM ANY DAMAGES RELATED TO THAT CLAIM.

In 2012 the Plaintiff sued State Farm regarding repairs to a vehicle owned by Deonta Dawson. (Plaintiff's Deposition Exhibit 13) The Plaintiff and State Farm entered into a settlement agreement to resolve that case whereby State Farm paid the Plaintiff \$23,000. (Plaintiff's Deposition Exhibit 14) In connection with the settlement agreement the Plaintiff signed a general release of State Farm. (Plaintiff's Deposition Exhibit 15) The lawsuit was then dismissed with prejudice. (Plaintiff's Deposition Exhibit 16) The release signed by the Plaintiff now bars him from seeking damages related to the Dawson claim.

THE PLAINTIFF CANNOT CLAIM DAMAGES REGARDING REPAIRS TO A CAR OF JANE MIKOL BECAUSE STATE FARM FILED SUIT AGAINST THE PLAINTIFF REGARDING REPAIRS TO MIKOL'S CAR AND TO THE EXTENT THE PLAINTIFF HAD ANY CLAIMS AGAINST STATE FARM AND CUDD REGARDING THOSE MATTERS THOSE CLAIMS WERE COMPULSORY COUNTERCLAIMS WHICH WERE NOT ASSERTED.

According to the Plaintiff's answer to State Farm's interrogatory 3, the Plaintiff claims \$8,000 in damages related to the Mikol claim. In 2010 State Farm filed suit against the Plaintiff for defective repairs of Mikol's car which were paid by State Farm. The Plaintiff filed an answer to State Farm's lawsuit as subrogee of Jane Mikol, but the Plaintiff's answer did not assert a counterclaim. (Plaintiff's Deposition Exhibit 19) To the extent the Plaintiff had any claim against State Farm for repairs related to the Mikol claim, it was incumbent upon the Plaintiff to file a compulsory counterclaim in that lawsuit in 2010.

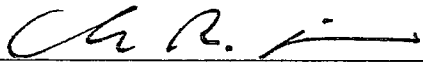
A counterclaim is compulsory if it arises out of the same transaction or occurrence as the opposing party's claim. The test for determining whether a counterclaim is compulsory is whether there is a logical relationship between the claim and the counterclaim. The Beach Company v. Twillman, 566 S.E.2d 863 (S.C. App. 2002); First Citizens Bank and Trust v. Hucks, 408 S.E.2d 222 (S.C. 1991). The Plaintiff has testified that the \$8,000 he claims in damages on the Mikol claim are for his legal fees and time involved in defending that lawsuit. (Plaintiff's Deposition pg. 66) While the Plaintiff could not have recovered attorney's fees and time involved in the case even had he filed a counterclaim in the Mikol lawsuit, those claims were, nonetheless, compulsory counterclaims and were waived when not asserted.

CONCLUSION

The Defendants are entitled to summary judgment on the Plaintiff's claim of defamation because: (1) this claim is barred by the two year Statute of Limitations; (2) any alleged statements were subject to a qualified privilege and the Plaintiff has no evidence of actual malice to overcome the qualified privilege; (3) the Plaintiff has no direct evidence from a third party that the Defendants published defamatory comments about him to a third party. The Defendants are entitled to summary judgment on the second cause of action alleging *respondeat superior* because this is not an independent tort; instead, it is simply a legal theory for imposing vicarious liability. The Plaintiff is not entitled to injunctive relief because he cannot establish any of the elements of a claim for injunctive relief – the absence of an adequate remedy at law, the threat of irreparable harm and the necessity of preserving the status quo. Also, none of the damages claimed by the Plaintiff were caused by any alleged defamation. Finally, the Defendants are entitled to summary judgment for the Plaintiff's damages related to the Dawson and Mikol claims because of a release signed for the Dawson claim and the failure to assert a compulsory

counterclaim in the Mikol claim. For all of these reasons the Defendants are entitled to summary judgment on all of the Plaintiff's claims.

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By:  _____

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Company and Clint Cudd

Charleston, South Carolina

April 4, 2016

1 "QUESTION: Did any person ever tell you that
2 State Farm had discouraged them from going to your
3 body shop?"

4 A (Continuing) I've had -- I've had a customer
5 tell me that -- that I wasn't a good body shop
6 qualified to do what needed to be done and that -- some
7 other remarks that wasn't of good character. I don't
8 remember exact at the moment.

9 Q Okay. Well, were they telling you that
10 that's what they thought, or were these customers
11 repeating what State Farm said?

12 A The insured for State Farm told me that this
13 is what Clint Cudd told her on a telephone
14 conversation.

15 Q All right. And what insured is that?

16 A Julia Willis.

17 Q All right. And what did Julia Willis tell
18 you that Clint Cudd of State Farm told her?

19 A Right at the moment I don't remember
20 everything word for word, but it was all negative about
21 just beating my character down as a body shop person.

22 Q Okay. Well, under ordinary circumstances,
23 Mr. Jones, I only get to take your deposition one time,
24 so I need you to be as specific --

25 A And I'm really trying.

1 and different troubles. I don't think he elaborated on
2 what the problems were in the past, but he did
3 elaborate my quality of work was not satisfactory in
4 his opinion.

5 Q Have you ever overheard Clint Cudd or anyone
6 else at State Farm make any derogatory comments about
7 you?

8 A Not offhand.

9 Q Okay. So what you've heard is what State
10 Farm told people and they then told you, right?

11 A Yes.

12 Q Have you ever seen anything in writing where
13 State Farm disparaged you or your business?

14 A No.

15 Q Now, you indicated that Julia Willis told you
16 what Clint Cudd had said about you. Can you remember
17 any other customer telling you about negative things
18 any representative of State Farm said about you or your
19 business other than Julia Willis?

20 A Speculation, no actual facts or proof.

21 Q Okay. Well, I mean, you named one instance
22 in which one of your customers, Julia Willis --

23 A Yes.

24 Q -- gave -- specifically told you that Clint
25 Cudd was saying negative things about you and your

1 business. Can you come up with any other example where
2 people have told you that State Farm said negative
3 things about you or --

4 A There was one customer a long time -- a few
5 years back, it was on his son's car, it was the father.

6 Q Can you give me the name?

7 A I don't remember it right off. I'm sorry. I
8 don't.

9 Q And how many years ago was this?

10 A Charles, I'm not sure. I'd say in the last
11 10 years, within the last 10 years for sure.

12 Q Okay. Well, let's do -- like we're in 2016.
13 It was before or after 2010?

14 A Let's say from -- anywhere from maybe 2007
15 up.

16 Q Up to what?

17 A Well, to say -- well, let's see. Let's just
18 go 2002 to 2010 or '11 to be on the safe side. I'm
19 sorry. I just don't have that information.

20 Q All right. So sometime --

21 A That stuff has been filed away years back.

22 Q So sometime, to the best of your
23 recollection, between 2002 and 2011, a customer whose
24 name you can't recall related to you a negative thing
25 that State Farm said about you or your company?

1 A He made a remark that -- what had happened on
2 this particular car is when I took the car in, the
3 vehicle, it was a Honda, actually, and it was a black
4 one just like the other one we talked about with Julia
5 Willis, coincidental, but the young guy that owned it,
6 his father was pretty much handling the claim for him,
7 and from day one, he insisted that that vehicle be
8 repaired with OEM parts. And of course, he was my
9 customer and I said, "Okay."

10 Well, I started working on the car, I wrote a
11 supplement on it. Ricky Prosser came and he basically
12 scorned me like a little stepchild and said, "You don't
13 do anything to these cars unless you ask us first."
14 And I said, "Well, Ricky," I said, "I wanted to get so
15 far along in the car before I did a final supplement on
16 it." "No. I want you to call me if it's something
17 that's a simple something." I said, "You mean to tell
18 me if it's a dollar clip, you want me to call you?" He
19 said, "That's exactly right." I said, "That's
20 ridiculous." I said, "And what, so I can wait five or
21 six days and not even work on the car and tie my shop
22 up and my facility until you come out and approve that
23 dollar?"

24 I said, "Here's the old parts, here's the
25 invoices. It's simple that the car needed it. Here's

1 Page. That's just -- that's guesswork, so that's
2 nothing that I can take to the bank, but I'm just
3 telling you what happened.

4 Q And when this customer told you that, I think
5 you said that was sometime between 2002 and 2011,
6 that's as specific as you can get?

7 A Charles, I can't -- I can't put my finger on
8 the date. I would have to dig in boxes way back to
9 remember exactly when, and I'm sorry I can't. I wish I
10 would have known that would have been important to
11 narrow it down.

12 Q Okay. And you don't remember the name of
13 this person who told you that?

14 A No, sir, not right off.

15 Q Well, the reason it's important, Mr. Jones,
16 is it's -- I just want to tell you that if you go back
17 after your deposition and you start digging through the
18 boxes and you remember stuff, that's going to create
19 problems for us because, again, see, I only get to
20 depose you one time under normal circumstances. So I
21 need you to really do your very, very best today to try
22 to remember things.

23 Anyway, going forward with the questions,
24 you've named one person, Julia Willis, who relayed to
25 you negative things Clint Cudd had said about you and

1 your business. And you've indicated another customer
2 of yours, whose name you can't recall, repeated
3 negative things State Farm said about you sometime
4 between 2002 and 2012.

5 Can you remember any other customer of yours
6 who relayed to you negative things that State Farm had
7 said about you?

8 A Not at the moment, sir. I don't.

9 Q All right. The Julia Willis incident, when
10 was that, when did she tell you that?

11 A I don't remember the date.

12 Q Can you give me the year?

13 A I can't right at the moment.

14 Q If, let's say -- was it before or after 2012
15 or do you know?

16 A Can you go off for a second?

17 Q Sure. We'll go off the record, Mr. Jones.

18 (Discussion off the record.)

19 BY MR. NORRIS:

20 Q Anything to help your memory. I've got a
21 list of documents here. I've got a folder here that
22 says, "Documents produced by Jones."

23 A Let me look at that.

24 Q What I did is I marked these Jones 001 --

25 A Okay, let me look at those just a minute.

1 Q -- to Jones 150. Hold on one second. Okay.
2 Now, what I did when I read through these, I put these
3 little yellow stickies as to which --

4 A Yeah, I think I saw those before.

5 Q -- person it was. So if you want to, I think
6 according to my notes, Willis is at page 9. You take
7 all your time. We can take a break. I want to do
8 anything I can to help you with your memory.

9 A Well --

10 Q So no hurry, we can take a break, you can
11 read through --

12 A Okay. That remark -- okay. I'm reading.

13 Q Does that help you?

14 A Yeah, it did.

15 Q All right. Just back on the record,
16 Mr. Jones, what you're looking at is documents that you
17 produced to me back in October, and I think once I got
18 them, I marked each page, page 1 through 150. Part of
19 that concerns the Willis claim. So do these documents
20 help you testify about when Julia Willis may have told
21 you these things that State Farm told her?

22 A Yes, sir. It was in the year 2012.

23 Q Okay. Any idea when in 2012?

24 A Approximately March.

25 Q I'm sorry?

1 A Approximately February or March of 2012.

2 Q Okay. Now, the documents that you're looking
3 at, actually they're your documents that you gave me
4 back in October. Does that help you refresh your
5 memory about any other instances in which people told
6 you negative things that State Farm had said to them
7 about you?

8 A That's good for now.

9 Q Okay. Well, if you think of any other
10 instances during your deposition, please feel free to
11 speak up.

12 Let's go back to -- I had some questions I
13 wanted to ask you about your complaint that's an
14 exhibit to your deposition, Mr. Jones. Could you look
15 at paragraph 6 of your complaint, please.

16 A (Witness complied with request of counsel.)

17 Q And you say in paragraph 6 of the complaint
18 you prepared that, "Over the past few years, the
19 business relationship between the plaintiff" -- that's
20 you -- "and the defendants has deteriorated due to the
21 actions of Cudd." You say, "over the past few years,"
22 what does that mean, is that the past three years, the
23 past five years, the past 10 years, or what? In other
24 words, when did this deterioration in the relationship
25 start due to the actions of Clint Cudd?

1 it up in a different fashion, but this is the best way
2 for the car's best interest to fix it. So they total
3 lossed the car, paid the claimant off on a total loss,
4 I finished the vehicle, and I also painted it all over.
5 They took it to the sale and sold it as a rebuilt total
6 loss car, and that's when a lot of this started.

7 Q Okay. What year is this?

8 A I don't know. It was either in the mid,
9 latter '80s or early '90s.

10 Q All right.

11 A I don't remember the names or any of that.
12 That's a long way to have to go back, but --

13 Q Well, let me ask you this: I mean, you sued
14 State Farm, I'm looking at your complaint, it says
15 defamation per se, is that when you feel that the
16 defamation by State Farm of you began, in the late '80s
17 or '90s?

18 A I think it's -- some of it started there, but
19 when it was brought to my attention what Clint Cudd had
20 said to one of my customers, then that's what this
21 complaint is about.

22 Q Okay. That's Miss Willis specifically,
23 right?

24 A Exactly.

25 Q Okay. So it's the Julia Willis incident in,

1 I think, February, March, 2012 that's really the
2 genesis of this lawsuit, is that fair?

3 A That's fair to say that's what I pretty much
4 can know for a fact that has been told straight from
5 the horse's mouth, so to speak.

6 Q Well, not to disparage Miss Willis, but she's
7 the horse in this case?

8 A Well, matter of speaking.

9 Q Okay, all right. I'm not calling Miss Willis
10 a horse. I'm just saying --

11 A I know.

12 Q -- that it came from Julia Willis's mouth,
13 right?

14 A Yes.

15 Q The -- so here's what I'm trying to find out.
16 I'm looking at the middle of paragraph 6 of your
17 complaint. You say that, "Cudd has engaged in a
18 pattern of actively discouraging policy holders of
19 State Farm from using services of the plaintiff in
20 repairing their vehicles."

21 I mean, other than Julia Willis, can you
22 point to anyone else that you know Clint Cudd has
23 actively discouraged from using your business? Can you
24 give me any other examples?

25 A After that incident, I feel like in October

1 Q Let me ask you --

2 A I feel like he totaled the car intentionally.
3 That's what I feel like.

4 Q In connection with the Michael Norris claim,
5 did you hear from Mr. Norris or anyone that State Farm
6 had disparaged you? I understand you had a
7 disagreement about whether the car should be totaled,
8 but what I'm trying to find out is, did State Farm say
9 to Mr. Norris or anything -- or to anybody else and it
10 got back to you that State Farm was disparaging you and
11 your business?

12 A Well, in my opinion, it was obvious, but for
13 them to come right out and say it, I don't remember
14 specifically.

15 Q Okay.

16 A I can't say 100 percent. I'm not going to
17 sit here and fabricate something if I don't know it's a
18 fact or believe it's a fact.

19 Q Okay. Well, here's what I'm trying to find
20 out. I'm looking at paragraph 6 of your complaint.
21 You allege that Cudd has engaged in a pattern of
22 slandering and defaming you and your work, but what
23 I've been able to find out so far in your deposition is
24 two specific incidences, one in February or March 2012
25 when Julia Willis told you what Clint Cudd had said to

1 her and another incident with an unnamed customer
2 between 2002 and 2011. But can you recall any other
3 specific incidences when people have told you that
4 State Farm was saying bad things to them about you?

5 A Not offhand.

6 Q Well, if you remember any others during the
7 deposition, let me know, okay?

8 A I will, if I remember at this time.

9 Q All right. And you go on to allege in
10 paragraph 6 of your complaint on -- that on several
11 occasions, Mr. Cudd sought to prevent or stop policy
12 holders of State Farm from dealing with you. Now, it's
13 my understanding that Miss Willis actually did come to
14 you, right?

15 A Yeah.

16 Q Despite what Mr. Cudd supposedly said to her.
17 And the customer back between 2002 and 2011 actually
18 came to you, right?

19 A Yes.

20 Q Can you name me any person who has actually
21 not come to your business because of what State Farm
22 told them?

23 A Not that I can put in black and white.

24 Q Do you have any idea at all?

25 A Well, no, not on my own.

1 years that that's -- that that's what -- what they do.

2 Q I'm trying to find out what proof you have of
3 it, though. I know you believe it in your head, but
4 can you give me examples?

5 A Well, I mean --

6 Q I mean, you've given me Miss Willis and
7 you've given me the gentleman back between 2002 and
8 2011. But can you think of anyone else that State Farm
9 has said these things to?

10 A Not that I can put in black and white.

11 Q Okay. Well, can you put it any other way
12 other than black and white, I mean, do you have any
13 proof at all?

14 A Well, it's my opinion after a lifetime of
15 being in this industry that it's there. It happens.

16 Q Okay.

17 A Can you prove that somebody stole something
18 in the middle of the night, yeah, sure, you know who
19 did it, but you can't prove it, so that's where I'm at
20 with this except for Julia Willis.

21 Q All right.

22 A Another -- another claim, Deonta Dawson, I
23 believe, it was another black car, a Mercedes, Harry
24 Lombard came out and assessed the damage on the car, he
25 wrote approximately \$19,000 on the car, give or take.

1 it.

2 A I'm going to walk out with this for just a
3 minute.

4 Q Take your time, as much as you want,
5 Mr. Jones.

6 (Brief recess.)

7 BY MR. NORRIS:

8 Q I've marked as Exhibit 8 to your deposition
9 your answers to the defendant's interrogatories. I
10 want to look at your list of witnesses on the first
11 page of Exhibit 8. Are these the -- all the witnesses
12 you can think of on this case, the ones listed on page
13 1 of Exhibit 8?

14 A Yes, at the moment.

15 Q All right. And I think we've established
16 numerous times in the deposition today that the only
17 person that has told you that State Farm said negative
18 things about you is Julia Willis, is that correct?

19 A At the moment.

20 Q Have you discussed your lawsuit with Julia
21 Willis?

22 A I discussed what -- what was said about me.

23 Q And when was that?

24 A I think I told you earlier approximately.

25 Q February, March of 2012?

1 A I think so.

2 Q All right. Have you discussed your lawsuit
3 with the Norrises, with Michelle Riccio, R-i-c-c-i-o,
4 or with Deonta Dawson?

5 A Can you repeat that question?

6 Q Have you discussed your lawsuit with the
7 Norrises, with Michelle Riccio, or Deonta Dawson?

8 A Not that I remember.

9 Q Okay. Now, you reference Harry Lombard. Is
10 he retired?

11 A He is.

12 Q Have you discussed your lawsuit with Harry
13 Lombard?

14 A No, I haven't.

15 Q What about Reggie Burnett or Jeff Mudd?

16 A Not that I recall.

17 Q Okay. To your knowledge, has Reggie Burnett,
18 Jeff Mudd, or Harry Lombard ever had anything negative
19 to say about you?

20 A Repeat that, please.

21 Q All right. To your knowledge, has Reggie
22 Burnett or Jeff Mudd or Harry Lombard ever had anything
23 negative to say about you that you can point to
24 specifically?

25 A No, sir.

1 in No. 3 are round even figures. You can't give me any
2 specifics about how you came up to exactly \$18,000 on
3 the Dawson claim as your damages?

4 A Well, if you figure storage, the storage that
5 I should have been paid on this car, that alone would
6 have took the biggest part of that.

7 Q And how much was the storage on the Dawson
8 car?

9 A I don't remember right offhand.

10 Q Okay. Well, is it -- does the Dawson damage
11 consist of anything other than storage?

12 A Well, the excessive time that I had trying to
13 resolve it and the cost of monies tied up that made a
14 hardship for me as far as cash flow on a daily
15 operating basis.

16 Q Okay. Anything else on the Dawson claim?

17 A Not at this time.

18 Q How about the Norris claim, you're claiming
19 exactly \$5,000 on the Norris claim. How did you
20 compute that 5,000?

21 A That's what I would have probably made,
22 that's what I would have made approximately in profit.

23 Q If what?

24 A Work and profit, if I had finished the car.
25 If they would have not totaled the car on me. The car

1 wasn't a total loss physically or on paper.

2 Q Okay. All right. So as I understand it, on
3 the Michael Norris claim, State Farm totaled the Norris
4 car and you figure that if you had been able to do the
5 repair work, you would have made exactly \$5,000, is
6 that right?

7 A Approximately.

8 Q Okay. Now, how did you come up with \$8,000
9 on the Mikol, that's M-i-k-o-l, claim?

10 A Well, legal fees was one and my time involved
11 in defending myself.

12 Q Anything else?

13 A That's okay for now.

14 Q All right. What about \$400 on the Julia
15 Willis claim?

16 A Parts that I didn't get paid for that I put
17 on the car, plus my time involved in it.

18 Q And that would have been in, what, February,
19 March, 2012?

20 A Yes, sir.

21 Q What about \$150 in the Riccio claim?

22 A I need to look at this again to -- I need to
23 look at this stuff I sent you right quick.

24 Q Sure. If you could, if you use some of those
25 pages that you sent me --

1 A Yeah, I will.

2 Q -- to refresh your memory, just call out the
3 page number at the bottom if you could.

4 A I will. Jones production 031.

5 Q Okay. And we're talking about which claim,
6 Riccio?

7 A Yeah.

8 Q All right.

9 A That's parts, labor, and material.

10 Q Parts and material?

11 A Parts, labor, and material.

12 Q All right. That you feel State Farm should
13 have paid for and --

14 A That's correct.

15 Q -- did not?

16 A That's correct.

17 Q Okay. All right. That's where the 150 bucks
18 comes from?

19 A Yes, sir.

20 Q All right. Let's go down to your answer to
21 Question 6. You say that Miss Willis, Miss Riccio, the
22 'Norrises, and Mr. Dawson will testify as to their
23 conversations with Clint Cudd, but the only person
24 you've been able to specify today in your deposition
25 who told you that Clint Cudd had said something bad

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COLUMBIA AGENCY EXCO

AB-16 NO. 578 P. 5 5/12

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2012-CP-26

Harold Franklin Jones d/b/a Butch Jones
Body Shop,

Plaintiff,

vs.

State Farm Mutual Automobile Insurance
Company,

Defendant

SUMMONS.

HORRY COUNTY
12 AUG -8 PM 1:59
WELANE HUGHES-GRAND
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED;

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint on the subscribers at their offices at P.O. Box 478, 1130 Highmarket Street, Georgetown, South Carolina 29442 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOODY, LLC

William T. Moody
William T. Moody
P.O. Box 478
1130 Highmarket Street
Georgetown, SC 29442
Telephone: (843) 545-9544
Facsimile: (843) 545-9735
Attorney for the Plaintiff

Georgetown, SC
June 7, 2012

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Jones/Dawson
350

Aug. 21, 2012 12:59 PM CSA

COLUMBIA AGENCY EXEC

BB-15 NO. 578 P. 6 6/13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NUMBER: 2012-CP-25

Harold Franklin Jones d/b/a Butch Jones
Body Shop,

Plaintiff,

vs.

State Farm Mutual Automobile Insurance
Company,

Defendant.

COMPLAINT

HORRY COUNTY
 12 AUG - 9 PM 1:59
 MELANIE JOHNSON-CLARK
 CLERK OF COURTS

Comes now the Plaintiff, Harold Franklin Jones d/b/a Butch Jones Body Shop, complaining of the Defendant, State Farm Mutual Automobile Insurance Company, and alleges as follows:

1. Harold Franklin Jones is a citizen and resident of County of Horry, State of South Carolina, and does business as Butch Jones Body Shop within the County of Horry, State of South Carolina.

2. State Farm Mutual Automobile Insurance Company, upon information and belief, is a licensed mutual insurance company organized and existing under the laws of one of the States of the United States, and does business within the County of Horry, State of South Carolina.

3. The jurisdiction of this Court is founded upon South Carolina Constitution, Article V, Section 11, which provides general jurisdiction over civil actions to the court of common pleas. The Court has jurisdiction over the subject matter and parties to this action.

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COLUMBIA AGENCY EXCISE

08-15 NO. 578:45 P. 7 7/13

4. Venue lies in Horry County pursuant to § 15-7-10, et seq., South Carolina Code of Laws, 1976, as amended;

BACKGROUND AND FACTS

5. Hereinafter, the Plaintiff was presented with a 2007 Mercedes automobile which had been in an automobile accident. The vehicle was owned by Deanna Dawson, and was insured by the Defendant. The Plaintiff was to submit an estimate of repairs to the Defendant and repair the vehicle pursuant to industry standards.

6. The Plaintiff did in fact submit an initial estimate of repairs to the Defendant, and the Defendant instructed the Plaintiff to perform the repairs.

7. During the process of repairing the vehicle, the Plaintiff had to submit three supplemental estimates to the original repair estimate as he uncovered additional damages which could not be discovered until the vehicle was taken apart. The Defendant approved the first two supplemental estimates for payment but refused to approve the last supplemental estimate. The total balance due and owing on the repairs to the vehicle is Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars.

8. To date, the Defendant has failed and refused to pay the Plaintiff for the two supplemental estimates approved by the Defendant, and has failed and refused to approve or pay the final supplemental estimate although all repairs have been made to the vehicle.

9. The Defendant continues to withhold payment from the Plaintiff in an attempt to cause financial damage to the Plaintiff or otherwise cause the Plaintiff to

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NO. 578 P. 8

capitulate and accept payment for less than the value of the services rendered by the Plaintiff.

10. Rather than pay the Plaintiff for his services, the Defendant paid Deonta Dawson for the vehicle and to title to the vehicle.

11. In addition to the foregoing, the vehicle remains stored on the property of the Plaintiff and continues to accrue storage fees on a daily basis.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

12. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference as fully as if repeated verbatim to the extent not inconsistent herewith.

13. This cause of action is brought pursuant to the Uniform Declaratory Judgment Act, Sections 13-53-10, et seq., of the South Carolina Code of Laws, 1976, as amended.

14. Based upon the work performed and the materials supplied to repair the vehicle, the Plaintiff is informed and believes that he is entitled to an Order of this Court finding that he has a valid lien against the vehicle in the amount of Twenty Three Thousand Eighty and 45/100 (\$23,080.46) Dollars plus accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court.

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COLUMBIA AGENCY EXEC

88-16-NO. 578 P. 9: 9/12

15. The Plaintiff is further informed and believes that he is entitled to an Order of this Court ordering that the vehicle be sold pursuant to Section 29-15-10 of the South Carolina Code of Laws, 1976, as amended, with the proceeds of the sale being applied to the balance of the repairs, and an Order entering judgment for any deficiency thereof against the Defendant.

SECOND CAUSE OF ACTION

(Breach of Contract)

16. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference as fully as if repeated verbatim to the extent not inconsistent herewith.

17. The Defendant entered into an agreement with the Plaintiff for the provision of labor and materials for the repair of the vehicle referenced above. The Plaintiff supplied all the materials and labor as required, and the Plaintiff has made specific demand on the Defendant for payment pursuant to terms of their agreement. To date, the Defendant has failed and refused, and continues to refuse, to pay the remaining balance on the agreement.

18. The Plaintiff is informed and believes that the agreement between he and the Defendant is a legally binding agreement and that the Defendant's failure to pay the balance constitutes a material breach of the agreement.

19. As a direct and proximate result of the Defendant's material breach of the contract, the Defendant has suffered substantial damages in that he has been deprived of the benefit of the bargain; has expended substantial time, effort, energy and monies in supplying the materials and labor requested by the Defendant to repair the vehicle; has

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COLUMBIA AGENCY EXEC

88-16 NO. 578:25 P. 10: 18/18

incurred out-of-pocket expenses as a result of having to supply materials and labor; and has incurred attorney's fees and costs as a result of having to bring this action.

20. Further, the Plaintiff is informed and believes that each and every element of the damages described herein is a direct consequence of the Defendant's breach of the agreement and that each element of those damages was foreseeable in the event of a breach.

21. The Plaintiff is informed and believes that, as a result of the Defendant's material breach of the agreement, he is entitled to judgment against the Defendant in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court.

FOR A THIRD CAUSE OF ACTION
(Suit on a Debt)

22. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference as fully as if repeated verbatim to the extent not inconsistent herewith.

23. That pursuant to the agreement between the Plaintiff and the Defendant, the Plaintiff provided materials and labor for the repair of the vehicle described herein.

24. The Plaintiff has fully performed all of his obligations under the agreement, and conferred upon the Defendant a substantial benefit by his performance which resulted in significant improvement to the vehicle. The total amount owed for all of the materials, labor, and supplies, provided by the Plaintiff pursuant to the agreement

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COLUMBIA AGENCY EXEC

88-15 NO. 578 P. 11: 11/12

with the Defendant, after all credits and adjustments have been made and given, is Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars.

25. The Plaintiff is informed and believes he is entitled to judgment against the Defendant in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court

FOR A FOURTH CAUSE OF ACTION
(QUANTUM MERUIT)

26. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference as fully as if repeated verbatim to the extent not inconsistent herewith.

27. In the alternative to the preceding paragraphs, the Plaintiff would show that he provided materials, labor, and supplies which benefited the Defendant, and has improved and increased the value of the vehicle owned by the Defendant.

28. The value of the materials, labor, and supplies provided by the Plaintiff, after all credits and adjustments have been made and given, is Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars.

29. The Plaintiff is informed and believes that he is entitled to judgment against the Defendant in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and

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Jones/Dawson
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No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court, on a *Quantum Meruit* basis in order to prevent unjust enrichment of the Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray:

- i) For a declaratory judgment finding that the Plaintiff has a lien against the Defendant's vehicle and permitting the sale of the vehicle with any deficiency being entered as a judgment against the Defendant;
- ii) For judgment in favor of the Plaintiff against the Defendant for breach of contract in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court;
- iii) For judgment in favor of the Plaintiff against the Defendant finding that the Defendant owes the Plaintiff on his suit on a debt in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court;

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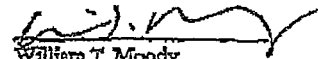
COLUMBIA AGENCY EXEC

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iv) For, in the alternative, judgment in favor of the Plaintiff against the Defendant for quantum meruit/unjust enrichment in the amount of Twenty Three Thousand Eighty and 46/100 (\$23,080.46) Dollars and accruing daily storage charges in the amount of Thirty Five and No/100s (\$35.00) Dollars per day from February 24, 2012 until the date of final judgment in this matter, plus accruing interest at the legal rate until the conclusion of this case, and for reasonable attorney's fees and costs as determined by the Court; and

v) For such additional relief as this Honorable Court deems just and proper.



William T. Moody
 Maring & Moody, LLC
 PO Box 478
 1130 Highmarket Street
 Georgetown, SC 29442
 (843) 545-9544
 Fax: (843) 545-9735
 Counsel for the Plaintiff

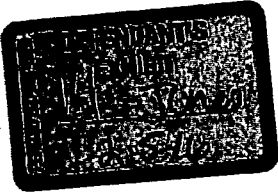
Georgetown, South Carolina

June 4, 2012

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CIVIL ACTION NO.: 2012-CP-26-06166

Harold Franklin Jones d/b/a Butch Jones)
 Body Shop,)
)
 Plaintiff,)

vs.)

SETTLEMENT AGREEMENT

State Farm Mutual Automobile Insurance)
 Company,)
)
 Defendant.)

This Settlement Agreement entered into by and between Harold Franklin Jones d/b/a Butch Jones Body Shop (hereinafter referred to as "Plaintiff") and State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm").

FOR AND IN CONSIDERATION of the mutually binding covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The parties have settled that certain action entitled *Harold Franklin Jones d/b/a Butch Jones Body Shop vs. State Farm Mutual Automobile Insurance Company*, Civil Action No.: 2011-CP-26-06166 filed in the office of the Clerk of Court for Horry County, South Carolina including, but not limited to, any claims of the Plaintiff for parts, labor, material and storage.

2. State Farm shall pay the Plaintiff the sum of Twenty-three Thousand and No/100 (\$23,000.00) Dollars.

3. The 2007 Mercedes E-350 vehicle which is the subject matter of this action shall be returned to State Farm by the Plaintiff undamaged and fully repaired to industry standards in accordance with the original estimate, as well as the first, second and third supplements, all of which are attached hereto and made a part and parcel hereof. The Plaintiff shall turn over for inspection by the Defendant, the 2007 Mercedes E-350 automobile which is the subject matter of this action. The inspection shall occur prior to payment of the Twenty-three Thousand and No/100 (\$23,000.00) Dollars to the Plaintiff by State Farm.

4. If the mileage on the 2007 Mercedes E-350 exceeds 80,330 miles or the vehicle is not repaired to industry standards and as represented on the estimate and the supplements one, two and three attached hereto, this settlement shall be of no force and effect.

5. This Settlement Agreement sets forth the entire agreement between the parties. Further, the parties agree that this agreement is the result of negotiation between the parties and their attorneys and therefore the rule of contract construction that the contract shall be construed against the party drafting the document shall not apply. Furthermore, the parties agree that the laws of the state of South Carolina shall apply to the interpretation of this agreement.

6. This Settlement Agreement shall be binding on the parties, their heirs, successors and assigns.

7. The parties through their attorneys shall execute a Stipulation of Dismissal dismissing the above-captioned action with prejudice.

8. The Plaintiff shall execute a General Release, a copy of which is attached hereto and made a part and parcel hereof, by which the Plaintiff releases State Farm Mutual Automobile Insurance Company and Deonta Dawson from any and all claims arising out of the repairs to the

2007 Mercedes E-350 vehicle which is the subject matter of this action including, but not limited to, all claims for parts, labor, materials and storage.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and seals this the _____ day of November, 2012.

WITNESSES:

AS TO PLAINTIFF:

Witness 1

Witness 2

Harold Franklin Jones
Harold Franklin Jones d/b/a Butch Jones
Body Shop
William T. Murray

AS TO DEFENDANT:

WITNESSES:

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Witness 1

Witness 2

By:
Its:

2007 Mercedes E-350 vehicle which is the subject matter of this action including, but not limited to, all claims for parts, labor, materials and storage.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and seals this the _____ day of November, 2012.

WITNESSES:

AS TO PLAINTIFF:

Witness 1

Witness 2

Harold Franklin Jones d/b/a Butch Jones
Body Shop

AS TO DEFENDANT:

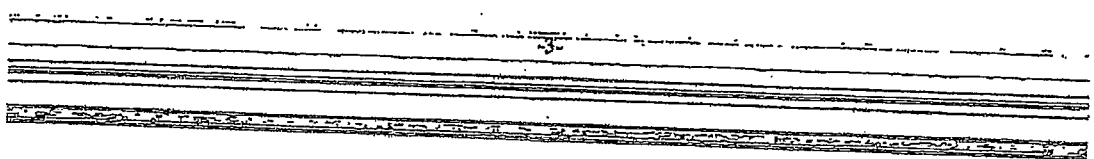
WITNESSES:

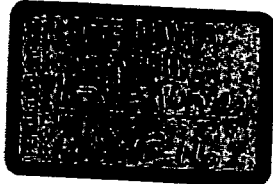
Witness 1
P. Esserman

Witness 2

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

By:
(Its:





STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, That I, or we, the undersigned Harold Franklin Jones d/b/a Butch Jones Body Shop, of Horry County, South Carolina, for and in consideration of the sum of Twenty-three Thousand and No/100 (\$23,000.00) Dollars, and for other good and valuable consideration to the undersigned in hand paid by Deonta Dawson and State Farm Mutual Automobile Insurance Company (receipt whereof is hereby acknowledged), have remised, released and forever discharged, and by these presents do for me or us, my, or our heirs, executors, administrators and successors, remise, release and forever discharge the said Deonta Dawson and State Farm Mutual Automobile Insurance Company, his, her, or their heirs, executors or administrators or its successors as the case may be of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands whatsoever both at law and in equity which against the said Deonta Dawson and State Farm Mutual Automobile Insurance Company, I, or us, the undersigned, ever had, now have, or which I or we, the undersigned or our successors, assigns, heirs, executors or administrators hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the execution of these presents, with regard to the following specifically stated matter or thing to wit:

Any and all repairs including, but not limited to, parts, labor, materials and storage of that certain 2007 Mercedes E-350 automobile presently owned by State Farm and previously owned by Deonta Dawson and any and all claims which are or could have

been brought in that certain civil action entitled: *Harold Franklin Jones d/b/a Butch Jones Body Shop vs. State Farm Mutual Automobile Insurance Company*, Civil Action No.: 2011-CP-26-06166 filed in the office of the Clerk of Court for Horry County, South Carolina

or any matter or thing whatever arising out of the same either known or unknown at this time, apparent or not apparent and both present and future.

It is expressly understood and agreed that the settlement made hereunder is the compromise of doubtful and disputed claims; that the payment made hereunder is not to be construed as an admission of liability on the part of *State Farm Mutual Automobile Insurance Company* and/or Deonta Dawson, by whom liability is expressly denied.

Once the aforementioned payment has been accepted, the obligations of the entities making the payment and those on whose behalf the payment is being made and all those who could be responsible for the actions of these entities, are fully and completely released and finally and forever discharged from any further responsibility in connection with this action.

In witness whereof the undersigned has executed, signed and sealed these presents on the

9th day of Nov. A.D., 2012.

Signed, Sealed and Delivered
in the Presence of:

Wanda S. Mandy
witness

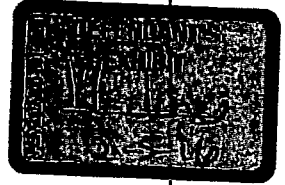
[Signature]
witness

Harold Franklin Jones
Harold Franklin Jones, individually and d/b/a
Butch Jones Body Shop

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

State Farm Mutual Insurance Company,)
as Subrogee of Jáne Mikol,)
)
Plaintiff,)
)
vs.)
)
Butch Jones, d/b/a Butch Jones Body Shop,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-26-4737



ANSWER OF THE DEFENDANT
(Jury Trial Requested)

The Defendant, answering the allegations contained within the Amended Complaint of the Plaintiff, would respectfully show and respond as follows:

1. That each and every allegation not hereinafter admitted is denied, and strict proof is demanded thereof.

FOR A FIRST DEFENSE
(General Denial)

2. Answering the allegations of paragraphs 1 through 3 of the Amended Complaint, the Defendant would admit the allegations contained therein upon information and belief.

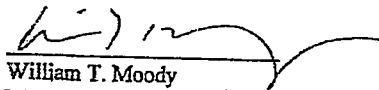
3. Answering the allegations of paragraph 4 of the Amended Complaint, the Defendant would admit so much of the allegations contained therein which state that Jane Mikol was involved in an accident. As to the remaining allegations of paragraph 4 of the Amended Complaint, the Defendant does not have sufficient information to admit or deny the allegations contained therein, and therefore denies same, and strict proof is demanded thereof.

4. Answering the allegations of Paragraph 6 of the Amended Complaint, the Defendant

would admit the allegations contained therein.

5. Answering the allegations of paragraphs 7 through 11 of the Amended Complaint, the Defendant would deny the allegations contained therein, and strict proof is demanded thereof.

WHEREFORE, having fully responded to the Complaint of the Plaintiff, the Defendant would request that this action be dismissed with prejudice, and for such other and further relief as this Court deems just and proper.



William T. Moody
Maring & Moody, LLC
PO Box 478
1130 Highmarket Street
Georgetown, SC 29442
(843) 545-9544
Fax: (843) 545-9735
Counsel for the Defendant

Georgetown, South Carolina

September 27, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

HAROLD F. JONES d/b/a BUTCH)
JONES BODY SHOP,)
)
Plaintiff,)

Civil Action No. 2015-CP-26-0902

vs.)

MOTION FOR SUMMARY JUDGMENT

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY and CLINT CUDD,)
)
Defendants.)

Pursuant to SCRCP 56 the Defendants move for a summary judgment on the following grounds:

1. As to the first cause of action alleging Defamation Per Se, the Defendants are entitled to summary judgment because:
 - a. This cause of action is barred by the Statute of Limitations;
 - b. Any alleged statements were subject to a qualified privilege and the Plaintiff has no evidence of actual malice to overcome the qualified privilege; and,
 - c. The Plaintiff has no evidence from a third party that the Defendants published any comment about the Plaintiff to a third party.
2. As to the second cause of action alleging Respondeat Superior, the Defendants are entitled to summary judgment because this is not a tort. Instead, this is simply a legal theory for making one party liable for the tort of another party.
3. As to the third cause of action for Injunctive Relief, the Defendants are entitled to summary judgment because:

- a. The Plaintiff has an adequate remedy at law;
 - b. The Plaintiff has no proof that the alleged wrongful acts of the Defendants are ongoing and continuing.
4. None of the damages claimed by the Plaintiff in his interrogatory answers were caused by any alleged defamation.
 5. Subject to paragraph 4, as to the Plaintiff's claim of damages regarding damage to a car of Deonta Dawson, the Defendants are entitled to summary judgment because the Plaintiff sued State Farm Mutual Automobile Insurance Company regarding repairs to the vehicle owned by Dawson (2012-CP-26-06166) and the Plaintiff and State Farm entered into a Settlement Agreement and General Release regarding that matter.
 6. Subject to paragraph 4, as to the Plaintiff's claim of damages regarding repairs to a car of Jane Mikol, the Defendants are entitled to summary judgment because State Farm filed suit against the Plaintiff regarding the Plaintiff's repairs to Mikol's car (2010-CP-26-04737) and, to the extent the Plaintiff had any claims against State Farm and Cudd regarding that matter, those claims were compulsory counter-claims in that lawsuit but were not asserted and are now barred.

This motion for summary judgment is based upon SCRCP 56, upon the Plaintiff's deposition and the Exhibits to that deposition, upon the Plaintiff's written answers to the Defendant's discovery and upon applicable cases and statutes.

[SIGNATURE PAGE TO FOLLOW]

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February 10, 2016

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
HAROLD F. JONES d/b/a BUTCH	)	Civil Action No. 2015-CP-26-0902
JONES BODY SHOP,)	
)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANTS' MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF'S MOTION
STATE FARM MUTUAL	)	FOR RECONSIDERATION
AUTOMOBILE INSURANCE)	
COMPANY and CLINT CUDD,)	
)	
Defendants.)	

On April 26, 2016 the Court granted summary judgment to the Defendants on all three causes of action in the Plaintiff's complaint. On May 16, 2016 the Plaintiff filed a motion for reconsideration and/or to alter or amend the order granting summary judgment. Although the Plaintiff's motion does not reference the rule of procedure under which it was filed, it is presumably pursuant to SCRCP 59(e). The Plaintiff's motion should be denied for the following reasons.

SUMMARY JUDGMENT WAS PROPERLY GRANTED ON THE FIRST CAUSE OF ACTION ALLEGING DEFAMATION PER SE.

The Plaintiff's motion for reconsideration claims the Court's order granting summary judgment applied the wrong Statute of Limitations. This argument is incorrect because the Statute of Limitations applicable to a defamation claim is two (2) years. See, Harris v. Tietex International Limited, South Carolina Court of Appeals Opinion No. 5418 filed June 29, 2016 – "In South Carolina, defamation claims are subject to a two year statute of limitation." South Carolina Code § 15-3-550 (2005) Accordingly, the Court applied the correct Statute of Limitations.

In any event, the Court granted summary judgment on the Plaintiff's defamation claim on two (2) additional grounds not challenged by the Plaintiff's motion for reconsideration – namely, (1) the alleged defamatory statements were subject to a qualified or conditional privilege and the Plaintiff did not create a question of fact as to whether the qualified privilege was exceeded, and (2) the Plaintiff failed to establish a connection between the alleged defamatory statements and the Plaintiff's damages and, therefore, failed to create a question of fact as to causation which is an element of every tort. There are therefore two (2) separate, independent grounds upon which the Court granted summary judgment on the defamation claim which are not contested in the Plaintiff's Rule 59 motion for reconsideration.

Furthermore, in contesting the Defendant's motion for summary judgment on the defamation claim the Plaintiff did not argue the two (2) year Statute of Limitations of § 15-3-550 was the wrong Statute of Limitations. The Plaintiff is therefore now arguing this issue for the first time. This issue is not preserved because a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. Hotel and Motel Holdings v. BJC Enterprises, 780 S.E.2d 263, footnote 12 (S.C. App. 2015) A party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the Circuit Court prior to the judgment but did not. Stevens & Wilkinson v. City of Columbia, 721 S.E.2d 455 (S.C. App. 2011) Accordingly, even if the Plaintiff is correct (which he is not) that the Court applied the wrong Statute of Limitations, this argument has been waived.

THE COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT DESPITE THE PLAINTIFF'S CLAIM THAT THE DEFENDANTS DID NOT RESPOND TO THE PLAINTIFF'S DISCOVERY.

Prior to the hearing on April 18, 2016 on the Defendants' motion for summary judgment the Plaintiff submitted an affidavit which argued the Defendants failed to answer any of his

discovery requests, including interrogatories and a request for production of documents. The Plaintiff did not, however, make a formal motion to continue the hearing on summary judgment, nor did the Plaintiff specify how he would be prejudiced if summary judgment was granted. The Court's order of April 26, 2016 cites seven (7) cases for the proposition that for a non-moving party to avoid summary judgment because further discovery is needed to defend the motion for summary judgment, the non-moving party must make both a formal motion for continuance and specify how the non-moving party will be prejudiced if summary judgment is granted. The non-moving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. Dawkins v. Fields, 580 S.E.2d 433, 439 (S.C. 2003) Because the Plaintiff neither moved for a continuance nor informed the Court that further discovery would uncover additional relevant evidence the Court correctly granted summary judgment notwithstanding the Plaintiff's motion to compel discovery.

THE PLAINTIFF HAS NOT MOVED FOR RECONSIDERATION ON PARTS OF THE ORDER GRANTING SUMMARY JUDGMENT.

The Court's order of April 26, 2016 granting summary judgment granted summary judgment on the Plaintiff's causes of action for *respondeat superior* and for injunctive relief. The Plaintiff's motion for reconsideration does not contest these parts of the Court's order. The Plaintiff also does not contest the part of the Court's order granting the Defendants' motion for summary judgment on the Plaintiff's claim for damages concerning the Deonta Dawson claim and the Mikol claim. Summary judgment was granted regarding the Plaintiff's claim of damages concerning the Dawson claim because the Plaintiff signed a general release concerning that claim. The Court granted summary judgment regarding the Plaintiff's claim of damages for the Mikol claim because, to the extent that Plaintiff had a claim against State Farm concerning the

Mikol claim, it was necessary that the Plaintiff file a compulsory counterclaim concerning the Mikol lawsuit in 2010 which the Plaintiff did not do. These rulings are not contested by the Plaintiff's motion for reconsideration.

Finally, SCRC 59(g) requires that a party filing a motion under this rule provide a copy of the motion to the Judge within ten (10) days after filing the motion. Although the Plaintiff's motion for reconsideration was filed on May 16, 2016, the Plaintiff has not provided the Court with a copy of the motion and has therefore failed to comply with SCRC 59(g).

CONCLUSION

There are a number of reasons why the Plaintiff's motion for reconsideration should be denied. First, regarding the Plaintiff's defamation claim the Court did apply the correct Statute of Limitations of two years. Second, the Court granted summary judgment on the Plaintiff's defamation claim on two (2) additional grounds other than the Statute of Limitations. These additional reasons – qualified privilege and the Plaintiff's failure to establish a causal connection between the defamatory statements and his damages – are not contested by the Plaintiff's motion for reconsideration. Furthermore, the Plaintiff's motion attempts to raise issues which the Plaintiff could have raised at the hearing before the Court on April 18, 2016 but did not. Those issues are therefore waived. Lastly, the Plaintiff did not comply with SCRC 59(g). For all of these reasons the Plaintiff's motion for reconsideration should be denied.

[SIGNATURE PAGE TO FOLLOW]

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July 5, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Honorable D. Craig Brown, Presiding Judge

Case No. 2015-CP-26-902

Harold F. Jones d/b/a Butch Jones Body Shop, Appellant,

v.


State Farm Mutual Automobile Insurance Company and Clint Cudd, Respondents,

HORRY COUNTY
2016 AUG 15 AM 10:46
MELISSA R. HARRIS
CLERK OF COURT

NOTICE OF INTENT TO APPEAL

Harold F. Jones d/b/a Butch Jones Body Shop appeals the Order of the Honorable D. Craig Brown, dated July 20, 2016, and filed July 26, 2016.

August 15, 2016


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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM Horry COUNTY
COURT OF COMMON PLEAS

Honorable D. Craig Brown, Presiding Judge

Case No. 2015-CP-26-902

Horry County
2016 AUG 15 AM 10:46
MELANIE
CLERK OF COURT

Harold F. Jones d/b/a Butch Jones Body Shop, Appellant,

v.

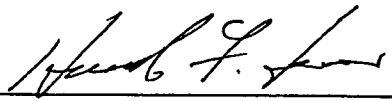
State Farm Mutual Automobile Insurance Company and Clint Cudd, Respondents,

PROOF OF SERVICE

I, Harold F. Jones, individually and d/b/a Butch Jones Body Shop, do hereby certify that on the 5 day of August, 2016, I served Notice of Intent to Appeal in the above-captioned action by depositing copies of same in the United States Mail, postage prepaid, in envelopes securely sealed, and addressed to:

Charles R. Norris, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
151 Meeting Street, Suite 600
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the same being his usual business addresses.



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