

9

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge

**Appeal Case No. 2017-002270
Circuit Court Case No. 2014-CP-07-00943**

JOSEPH C. SUN Appellant

v.

**TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES. Respondents**

RECORD ON APPEAL

Joseph C. Sun, pro se
P. O. Box 2543
Bluffton, SC 29910
843-226-8788

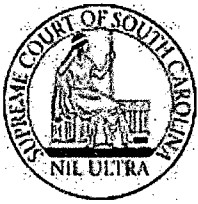
Hilary Grace Meyer, Esq.
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Switch View

Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number:	2014CP0700943	Court Agency:	Beaufort County Common Pleas	Filed Date:	04/22/2014
Case Type:	Common Pleas	Case Sub Type:	Slander/Libel 380	File Type:	Jury
Status:	Appeal	Assigned Judge:			
Disposition:	Ended by Non Jury	Disposition Date:	12/07/2016	Disposition Judge:	Dukes, Marvin H III
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Sun, Joseph	NEF(11-08-2017 02:12:04 PM) Appeal/Notice of Appeal to C...	Filing		11/08/2017-14:12		
Sun, Joseph	Notice of Appeal to Court of Appeals(Multiple Orders),Servic	Action		11/08/2017-14:12		
Gonzales, Christian	Cert Service of Order Denying Pla's Motion to Vacate/Set Asi	Filing		08/30/2017-11:02		
Gonzales, Christian	Order Denying Plaintiff's Motion to Vacate/Set Aside Judgmen	Order		08/29/2017-14:15		
Norberg, Bryan	Order Cover Sheet \$25.00-Waived-Proposed Order on Mot/Vacate	Filing		08/24/2017-13:51		
Sun, Joseph	Amendment Motion to Vacate and Set Aside Judgment	Filing		08/01/2017-16:05		
Gonzales, Christian	Crt Svc Discovery to Plt 7-26-17	Filing		07/26/2017-12:40		
Gonzales, Christian	Memo in Opposition to Motion to Vacate and Set Aside Judgmen	Filing		07/26/2017-10:43		
Sun, Joseph	Notice of Hearing b/f MIE 8-1-17 at 2:30 pm	Filing		07/06/2017-14:48		
Sun, Joseph	Notice of Motion Hearing on 7/28/2017	Filing		06/21/2017-13:16		
Sun, Joseph	Affidavit of Joseph Sun	Filing		06/16/2017-16:42		
Sun, Joseph	Motion to Vacate and Set Aside Judgment	Motion		06/16/2017-16:38	08/01/2017-16:38	
Sun, Joseph	Form 4 Order On Plaintiff's Motion to Reconsider	Order		05/24/2017-16:27		
Sun, Joseph	Amended Order Granting Def's Motion For Summary Judgment	Order		05/23/2017-10:17		
Sun, Joseph	Notice of Motion Hearing b/f MIE on 5/9/17	Filing		04/05/2017-15:13		
Sun, Joseph	Notice of Hearing b/f MIE 3-14-17 at 3:30 pm	Filing		02/22/2017-16:14		
Gonzales, Christian	Crt Svc Notice of Hearing to Plt 2-22-17	Filing		02/22/2017-10:48		
Gonzales, Christian	Certificate Of Service	Filing		01/03/2017-11:49		
Gonzales, Christian	Memo in Opposition to Defs Motion to Reconsider	Filing		01/03/2017-11:49		

Sun, Joseph	Motion to Reconsider, Cert of Service	Motion		12/22/2016-13:50	05/09/2017-13:50	
Sun, Joseph	Objection to Defs' Proposed Order	Filing		12/09/2016-08:11		
Sun, Joseph	Form 4 Order to the Order Granting Def's Mot/Summ Jgmt & Den	Order		12/07/2016-13:23	12/07/2016-13:23	
Sun, Joseph	Order Granting Def's Mot/Summ Jgmt & Denying Pla's Mot/Compe	Order		12/07/2016-13:19	12/07/2016-13:19	
Sun, Joseph	Motion to Postpone Determination of Def's Motion for SJ	Motion		10/31/2016-16:14	12/07/2016-16:14	
Sun, Joseph	Supplemental Response/Motion Summary Judgment, Verification,	Filing		10/25/2016-09:06	12/07/2016-09:06	
Sun, Joseph	Demand for Jury Trial, Cert of Service 9/16/2016	Filing		09/16/2016-09:50	12/07/2016-09:50	
Sun, Joseph	Verification of Amended Complaint	Filing		09/16/2016-09:18	12/07/2016-09:18	
Sun, Joseph	Supplemental Affidavit of Joseph Sun	Filing		09/13/2016-10:47	12/07/2016-10:47	
Norberg, Bryan	Defs Memo in Support of Motion for Summary Judgment	Filing		09/09/2016-08:22	12/07/2016-08:22	
Sun, Joseph	9/8/16 Motions Roster Notification	Filing		08/03/2016-12:41	12/07/2016-12:41	
Meyer, Hillary Grace	9/8/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		08/03/2016-12:00	12/07/2016-12:00	
Griffith, Ernest Mitchell	9/8/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		08/03/2016-12:00	12/07/2016-12:00	
Sun, Joseph	9/8/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		08/03/2016-12:00	12/07/2016-12:00	
Sun, Joseph	Motion to Compel Discovery	Motion		07/21/2016-15:24	09/16/2016-15:24	
Sun, Joseph	Response to Motion for Summary Judgment	Filing		07/12/2016-15:35	12/07/2016-15:35	
Sun, Joseph	Affidavit of Joseph Sun	Filing		07/08/2016-08:54	12/07/2016-08:54	
Sun, Joseph	7/12/16 Motions Roster Notification	Filing		06/29/2016-10:40	12/07/2016-10:40	
Sun, Joseph	7/12/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/2016-10:09	12/07/2016-10:09	
Griffith, Ernest Mitchell	7/12/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/2016-10:09	12/07/2016-10:09	
Meyer, Hillary Grace	7/12/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/2016-10:09	12/07/2016-10:09	
Sun, Joseph	Notice of Leave of Absence	Filing		06/24/2016-08:59	12/07/2016-08:59	
Norberg, Bryan	Motion for Summary Judgment, Cert of Serv	Motion		06/13/2016-16:05	09/16/2016-16:05	
Sun, Joseph	Case Status Update	Filing		05/11/2016-11:03	12/07/2016-11:03	
Sun, Joseph	No Activity Letter-Sun	Filing		05/11/2016-08:18	12/07/2016-08:18	
Sun, Joseph	No Activity Letter-Griffith	Filing		05/11/2016-08:17	12/07/2016-08:17	
Sun, Joseph	No Activity Letter-Jones	Filing		05/11/2016-08:17	12/07/2016-08:17	
Norberg, Bryan	Order-Defs Entitled to Judgment As Matter of Law on COA 1-5	Order		12/28/2015-11:18	12/07/2016-11:18	
Sun, Joseph	Order on Plaintiff's Motion to Amend	Order		11/13/2015-11:32	11/13/2015-11:32	
Norberg, Bryan	Defendants Answer to Amended Complaint	Filing		10/29/2015-08:24	12/07/2016-08:24	
Sun, Joseph	ADR/Notice of ADR	Action		10/25/2015-14:05	10/02/2015-14:05	
Sun, Joseph	Consent Order on Motion/Relieve Counsel	Filing		10/14/2015-12:18	12/07/2016-12:18	
Sun, Joseph	Amended Summons & Complaint	Filing		10/08/2015-11:05	12/07/2016-11:05	

Sun, Joseph	Notice of Motions Roster JSun	Filing		09/23/2015-15:22	12/07/2016-15:22	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		09/23/2015-14:16	12/07/2016-14:16	
Griffith, Ernest Mitchell	Roster/Notice of Motions Roster Publication Sent	Action		09/23/2015-14:16	12/07/2016-14:16	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		09/23/2015-14:16	12/07/2016-14:16	
Sun, Joseph	Order/Form 4 Motion to Compel filed 7/9/15, Resolved.	Order		09/09/2015-10:54	12/07/2016-10:54	
Sun, Joseph	Order/Form 4 Motion to Amend Complaint filed 4/28/15 Granted	Order		09/09/2015-10:27	12/07/2016-10:27	
Griffith, Ernest Mitchell	Roster/Notice of Motions Roster Publication Sent	Action		09/02/2015-16:17	12/07/2016-16:17	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		09/02/2015-16:17	12/07/2016-16:17	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		09/02/2015-16:17	12/07/2016-16:17	
Sun, Joseph	Notice of motion roster to JSun	Action		09/02/2015-11:51	12/07/2016-11:51	
Sun, Joseph	Notice of MH to JSun	Filing		09/02/2015-11:18	12/07/2016-11:18	
Norberg, Bryan	Motion and Order for Substitution of Counsel. Griffith for	Order		08/31/2015-08:06	12/07/2016-08:06	
Norberg, Bryan	Def Motion for Summary Judgement, Cert of Serv	Motion		08/28/2015-10:43	10/09/2015-10:43	
Sun, Joseph	Notice of Motion Roster to JSun	Filing		08/19/2015-15:10	12/07/2016-15:10	
Sun, Joseph	Notice of Motion Roster to JSun	Action		08/19/2015-12:35	12/07/2016-12:35	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Lietzow, Alissa Collins	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Lietzow, Alissa Collins	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Lohr, Mary Bass	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Stuckey, James A. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Stuckey, James A. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Lohr, Mary Bass	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		08/19/2015-10:03	12/07/2016-10:03	
Lohr, Mary Bass	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Lohr, Mary Bass	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Lietzow, Alissa Collins	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Lietzow, Alissa Collins	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Tootle,	Roster/Notice of Motions Roster	Action		08/18/2015-	12/07/2016-	

Kenneth L.	Publication Sent			14:48	14:48	
Stuckey, James A. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Stuckey, James A. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		08/18/2015-14:48	12/07/2016-14:48	
Sun, Joseph	Notice of ADR	Filing		08/04/2015-00:00	12/07/2016-00:00	
Norberg, Bryan	Motion to Compel; Certificate of Service 7/6/2015	Motion		07/09/2015-10:00	09/09/2015-10:00	
Stuckey, James A. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		06/18/2015-16:15	12/07/2016-16:15	
Tootle, Kenneth L.	Roster/Notice of Motions Roster Publication Sent	Action		06/18/2015-16:15	12/07/2016-16:15	
Sun, Joseph	Roster/Notice of Motions Roster Publication Sent	Action		06/18/2015-16:15	12/07/2016-16:15	
Lohr, Mary Bass	Roster/Notice of Motions Roster Publication Sent	Action		06/18/2015-16:15	12/07/2016-16:15	
Sun, Joseph	Motion to Amend Complaint	Motion		04/28/2015-10:25	09/09/2015-10:25	
Sun, Joseph	Order/Form 4- Plt's Motion to Reconsider filed on 12/22/14	Order		04/17/2015-16:28	12/07/2016-16:28	
Sun, Joseph	Order/Form 4- Plt's Motion to Amend Complaint filed 11/26/14	Order		04/17/2015-08:59	12/07/2016-08:59	
Sun, Joseph	Motion/Reconsider Judge Dukes 12/10/2014 Order	Motion		12/22/2014-10:14	04/14/2015-10:14	
Town Of Bluffton	Order Granting Motion To Dismiss	Order		12/10/2014-15:16	12/10/2014-15:16	
Sun, Joseph	Motion For Leave to Amend Complaint, Service	Motion		11/26/2014-13:52	04/14/2015-13:52	
Sun, Joseph	ADR/Alternative Dispute Resolution (Workflow)	Action		11/18/2014-08:28	02/02/2015-08:28	
Norberg, Bryan	Answer of Defs Bryan Norberg, Angela Tubbs, Joseph	Filing		06/04/2014-16:03	12/10/2014-16:03	
Town Of Bluffton	Motion/Dismiss	Motion		05/28/2014-16:06	08/11/2014-10:40	
Sun, Joseph	Aff Svc SC on Mayor Lisa Fulka 5-1-14	Filing		05/16/2014-14:33	12/10/2014-14:33	
Sun, Joseph	Aff Svc SC on Joseph Babkiewicz 5-1-14	Filing		05/16/2014-14:31	12/10/2014-14:31	
Sun, Joseph	Aff Svc SC on Police Chief Joey Reynolds 5-1-14	Filing		05/16/2014-14:29	12/10/2014-14:29	
Sun, Joseph	Aff Svc SC on Jeffrey Dickson 5-1-14	Filing		05/16/2014-14:14	12/10/2014-14:14	
Sun, Joseph	Aff Svc SC on Christian Gonzales 5-1-14	Filing		05/16/2014-14:04	12/10/2014-14:04	
Sun, Joseph	Summons & Complaint	Filing		04/21/2014-08:28	12/10/2014-08:28	
Sun, Joseph	TOWN OF BLUFFTON-SAFSVC	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-MRECON	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-SUMCMP	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-ORDER	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-MAMNMO	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN BLUFFTON-OFORM4	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-MDISMS	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN BLUFFTON-ANSWER	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-SAFSVC	Filing			12/07/2016-00:00	
Sun, Joseph	TOWN OF BLUFFTON-SAFSVC	Filing			12/07/2016-00:00	

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

**ORDER DENYING PLAINTIFF'S
MOTION TO VACATE AND SET
ASIDE JUDGMENT**

This matter is before me on the motion of Plaintiff Joseph C. Sun ("Mr. Sun" or "the Plaintiff"), dated July 16, 2017, for an order to vacate and set aside my Amended Order granting Defendants' Motion for Summary Judgment, dated May 23, 2017, pursuant to Rule 60(b)(3), SCRCF. A hearing on the motion took place on August 1, 2017. Present at the hearing were Joseph C. Sun, pro se, and Hillary G. Meyer, of Griffith, Freeman, and Lippert, LLC, attorneys for the Defendants. At the hearing, Mr. Sun presented his memorandum, amended motion, and affidavit of Joseph Sun. He presented that the Defendants' affidavits provided to the Court in the Defendants' Motion for Summary Judgment were perjuries. Mr. Sun further presented that the Defendants' counsel was committing extrinsic fraud upon the Court by providing the Court with the perjuries. No other evidence was presented.

LEGAL STANDARD

Rule 60(b)(3) of the South Carolina Rules of Civil Procedure states that "on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud,

misrepresentation, or other misconduct of an adverse party.” However, “fraud upon the court is a narrow and invidious species of fraud that ‘subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003) (*citing* Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003)). In order to show fraud upon the court, a plaintiff must show “that one has acted with an intent to deceive or defraud the court.” Chewning, 354 S.C. at 78, 579 S.E.2d at 608. “Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17–18, 594 S.E.2d 478, 482 (2004).

DISCUSSION

I have reviewed the evidence and arguments presented by Mr. Sun, and I find that the matter before me does not present grounds for the exceptional relief requested by the Plaintiff under Rule 60(b)(3), SCRCP.

Therefore as discussed above, it is:

ORDERED that the Plaintiff's Motion to Vacate and Set Aside Judgment is DENIED.

IT IS SO ORDERED.

Judge Marvin H. Dukes, III

Beaufort, South Carolina

_____, 2017



Beaufort Common Pleas

Case Caption: Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number: 2014CP0700943

Type: Order/Vacate Judgment

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-08-29 13:57:13 page 3 of 3

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION

NO. 2014-CP-07-00943

AMENDMENT MOTION TO VACATE
AND SET ASIDE JUDGMENT

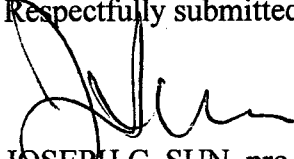
2017 AUG -1 PM 2:22
JERRI ANN ROSENBERG
BEAUFORT COUNTY, SC
CLERK OF COURT

Plaintiff amends his Motion to Vacate and Set Aside Judgment by adding the ground of subornation of numerous perjury by Defendant counsels which constitutes fraud upon the court. See generally Moore's Federal Practice, at § 60.21.[4][b] & [c]. This fraud was not known until Defendants' filed their response to Plaintiff's Motion to Reconsider.

Defendants' counsel employed the fraud upon the court to obtain a summary judgment and denial of Plaintiff's Motion to Reconsider and deprive his day in court. Defendant counsels committed extrinsic fraud as explained in *Lightsey & Flanagan, South Carolina Civil Procedure* 407 (2d ed.1985), and *Hilton Head Ctr., Inc. V. Pub. Serv. Comm'n*, 294 S.C.9,11,362 S.E.2d 176,177(1987). See also, *Chewning v. Ford Motor Co.*, 346 S.C.28, 550 S.E.2d 584 (2001).

Respectfully submitted,

This 1st day of August, 2017.


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Defendants a copy of the Amendment to Plaintiff's Motion to Vacate and Set Aside Judgment, by hand delivering a copy of same to the defendants at the courthouse, Beaufort, SC 29901.

This August 1, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO VACATE AND SET
ASIDE JUDGMENT**

COME NOW the Defendants, Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales (the "Defendants"), by and through their undersigned counsel, and submit this Memorandum in Opposition to the Plaintiff's Motion to Vacate and Set Aside Judgment.

FACTS AND PROCEDURAL HISTORY

On June 13, 2016 the Defendants, six individual officers of the Bluffton Police Department, filed a Motion for Summary Judgment to dismiss the Plaintiff's Malicious Prosecution and §1983 claims. On December 7, 2016, Judge Dukes considered the Plaintiff's Malicious Prosecution and §1983 claims as described in the Plaintiff's Amended Complaint. After extensive oral argument and careful consideration, Judge Dukes granted the Defendants' Motion. Following the issuance of an Order to this effect, the Plaintiff, on December 22, 2016, filed a Motion to Reconsider pursuant to Rule 59(e), SCRPC. At the hearing on the Plaintiff's Motion to Reconsider, the Plaintiff again argued the summary judgment standard and reiterated his original arguments. On May 24, 2017, the Court denied

the Plaintiff's Motion to Reconsider and submitted an Amended Order, which clarified its original holding. The Amended Order entered by Judge Dukes held that: (1) the majority of the Plaintiff's claims failed as a matter of law because the Plaintiff failed to institute his causes of action within the applicable statutes of limitation and the Plaintiff's Malicious Prosecution and §1983 claims do not relate back to the filing of the original Complaint; (2) the Plaintiff's malicious prosecution claims fail as a matter of law because, pursuant to the South Carolina Tort Claims Act ("the Act"), the Plaintiff cannot sue the Defendants in their individual capacities, and because the Defendants are entitled to discretionary immunity under the Act; (3) the Plaintiff's §1983 claims fail as a matter of law because as officers acting in their official capacity, the Defendants may not be sued under § 1983; and (4) the Plaintiff failed to produce a scintilla of evidence to prove the elements of either cause of action because the record shows that the officers acted at all times with probable cause.

On June 16, 2017, the Plaintiff filed a Motion to Vacate and Set Aside Judgment pursuant to Rule 60(b)(3), SCRCP. The Defendants respectfully ask the Court to uphold its grant of summary judgment and deny the Plaintiff's Motion to Vacate.

STANDARD OF REVIEW

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). "Not every fraud is sufficient to move a court of equity to grant relief from judgment." Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951). In making a determination on a Rule 60(b)(3) motion, courts in this state distinguish between intrinsic and extrinsic fraud. While extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of

the opportunity to be heard,” intrinsic fraud is “fraud that misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. Raby Const., at 19, 594 S.E.2d at 483 (*citing to* Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003)). Courts will not grant a motion for relief from judgment under Rule 60(b)(3) in cases of intrinsic fraud because “an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment.” Bryan, at 168, 66 S.E.2d at 610. “A party may not prevail on a Rule 60(b)(3) motion on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations at the time of the alleged misconduct.” Raby Const., at 21, 594 S.E.2d at 484. Furthermore, even in cases of extrinsic fraud, “a party does not have a claim ‘if he failed to exercise due diligence in discovering the existence of facts or documents during the underlying litigation.’” Id., at 21 n. 7, 594 S.E.2d at 484 n. 6 (*quoting* Chewning, at 82 n. 6, 579 S.E.2d at 611 n. 6).

ARGUMENT

Rule 60(b)(3) of the South Carolina Rules of Civil Procedure states that “on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud, misrepresentation, or other misconduct of an adverse party.” However, “fraud upon the court is a narrow and invidious species of fraud that ‘subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.’” Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05

(Ct. App. 2003) (*citing* Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003)). In order to show fraud upon the court, a plaintiff must show “that one has acted with an intent to deceive or defraud the court.” Chewning, 354 S.C. at 78, 579 S.E.2d at 608. It is apparent from this language that fraud upon the court applies when an officer of the Court has acted in a way that deceives or defrauds the Court, and that this remedy does not apply to any fraudulent acts of the parties themselves.

The Plaintiff alleges, in his Motion to Vacate, that the Defendants have committed fraudulent acts against him, and in doing so, the Plaintiff misapplies Rule 60(b)(3). Rule 60(b)(3) does not provide relief for the allegedly fraudulent acts of the Defendants. The Plaintiff does not assert fraud or deceit on the part of the Court itself or on the part of defense counsel, nor does he have any evidence of it; therefore, the Plaintiff's Motion to Vacate pursuant to Rule 60(b)(3) should be denied.

Additionally, to the extent that the Plaintiff's Motion can be read to assert that defense counsel was fraudulent or deceitful to the Court, his motion should be denied because he asserts intrinsic fraud. The Plaintiff's Motion to Vacate states that he was “deprived all [sic] discovery to show Defendants [sic] total lack of probable cause.” He references a video taken by Defendant Gonzales. However, this video only reiterates the statements made by Defendant Gonzales in his Supplemental Incident Report regarding his interview with the Plaintiff on March 17 and 18, 2010, which was attached to the Defendants' Memorandum for Summary Judgment. See Gonzales Aff., Ex. B. Moreover, the Plaintiff had access to the video, and therefore could have brought it to the Court's attention at the time of hearing, had he believed that there were inaccuracies in defense

counsel's representations to the Court. As the Supreme Court has held on numerous occasions, Rule 60(b)(3) is not meant to provide relief in cases of intrinsic fraud. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004); Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003); Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951). Therefore, the Plaintiff's Motion should be denied.

CONCLUSION

For the reasons stated above, the Defendants respectfully ask that the Court deny the Plaintiff's Motion to Vacate and Set Aside Judgment.

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ATTORNEYS FOR DEFENDANTS

July 26, 2017
Beaufort, South Carolina

COUNTY OF BEAUFORT)
STATE OF SOUTH CAROLINA)

JOSEPH C. SUN,)
Plaintiff,)

v.)

TOWN OF BLUFFTON, BLUFFTON)
POLICE DEPARTMENT, BRYAN)
NORBERG, ANGELA TUBBS,)
JOSEPH BABKIEWICZ, CLAUDIA)
HEBDA, JEFFERY DICKSON and)
CHRISTIAN GONZALES.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

MOTION TO VACATE AND SET
ASIDE JUDGMENT

2017 JUN 16 PM 4:35
BEAUFORT COUNTY, S.C.
CLERK OF COURT

PLAINTIFF JOSEPH SUN, and pursuant to Rule 60(b)(3), South Carolina Rules of Civil Procedure, and moves the court to vacate and set aside its Amended Order Granting Defendants' Motion for Summary Judgment, entered on May 23, 2017 (see Exhibit A) and the Form 4 Order on Plaintiff's Motion to Reconsider, entered on May 24, 2017 a copy of which Plaintiff received on May 29, 2017, and shows the court as follows:

Rule 60(b)(3) provides that "on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(3) fraud, misrepresentation, or other misconduct of an adverse party;"

The Court in its earlier Order Granting Defendants' Motion for Summary Judgment, it denied Plaintiff's Motion to compel after Defendants failed to respond to all Plaintiff's Requests for Admissions, Interrogatories and Request for the Production of Documents. Therefore, the court in essence, denied Plaintiff all discovery in the case.

In its Amended Order Granting Defendants' Motion for Summary Judgment, the Court

finds that, "The Plaintiff fails to show that the Defendants acted with malice or with lack of probable cause. The burden falls on the Plaintiff to show the absence of probable cause." (Page 11, Amended Order.) The Court further finds in Page 12 of the amended order that,

"Like in Leonard, the evidence presented shows that the Defendants based all of their arrests of the Plaintiff on statements given by witnesses after the fact, and warrants were issued for each arrest. This is sufficient to show probable cause."

As aforesaid, record can show that Plaintiff was deprived all discovery to show Defendants total lack of probable cause. Exhibit C attached, which is a video taken by Defendant Christian Gonzales himself can show that Joseph Sun did not make any statement to Gonzales that between the dates of March 16 and March 17, 2010, he entered the residence located at 18 Sixth Avenue. That night at the Bluffton Police Department, Gonzales told Plaintiff that his truck was impounded and he would help to get his truck back if Plaintiff would go in for an interrogation. Plaintiff had denied any acts alleged by Gonzales in his affidavit that night. After almost an hour of harassment by Gonzales, Plaintiff knew that if he did not say something Gonzales liked to hear, he was not going to get his truck back, he said in the video that he "had been in the house before" with no dates given because that was a house he bought for his mother and Plaintiff had been living there ever since 2007 until this date. That "between the dates of March 16 and March 17, 2010" in Gonzales' affidavit is a perjury and fabrication committed by him with his intention to have Plaintiff arrested with fabricated probable cause.

The print out by the Beaufort County Detention Center (Exhibit D) can also show that Plaintiff was released from jail on March 16 with no car or any transportation. He was put back in jail immediately after the aforesaid interrogation.

There are numerous incidents of perjury and fraud committed by Defendants Gonzales and

Norberg which can only be proven in the trial when Plaintiff testifies. Without the opportunity of discovery Plaintiff cannot show here all other perjury and fraud committed by the defendants. Since Defendant Gonzales' affidavit is impeached by the video that he took himself, Rule 56, SCRCF should not allow a summary judgment for the defendants based on perjury committed by Defendant Gonzales.

CONCLUSION

For the foregoing reasons, Plaintiff should be allowed full discovery in the case and the granting of Defendants' Motion for Summary Judgment should be vacated and set aside.

This 15th day of June, 2017.

Respectfully submitted,


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Defendants a copy of the Plaintiff's Motion to Vacate and Set Aside Judgment, by depositing a copy of same in the U.S. Mail postage prepaid:

E. Mitchell Griffith, Esq. P. O. Box 570, Beaufort, SC 29901

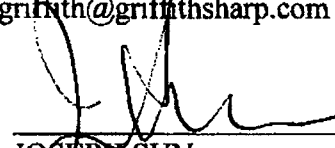
And by email to:

E. Mitchell Griffith, Esq.

P. O. Drawer 570
Beaufort, SC 29901

This ^{15th} ~~22nd~~ day of ^{June} ~~December~~, 201⁷.

hmeyer@griffithsharp.com
lsmyth@griffithsharp.com
mgriffith@griffithsharp.com


JOSEPH SUN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

**AMENDED ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

This matter came before me on the motion of Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales ("the Defendants"), dated June 13, 2016, for summary judgment pursuant to Rule 56, SCRPC. Present at the hearing were Hillary G. Meyer and E. Mitchell Griffith, attorneys for the Defendants, and the Plaintiff, Joseph C. Sun, proceeding pro se. The Court ruled for the Defendants ("Order"). Thereafter, Plaintiff sought reconsideration of the Order. This Amended Order now replaces the original Order.

LEGAL STANDARD

"[A] motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRPC). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably

be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). Moreover, “although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion.” Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006).

FACTS

The Plaintiff brought this action against the Town of Bluffton, the Bluffton Police Department and the individual defendants named above pursuant to the S.C. Tort Claims Act. § 15-78-10 *et. seq.* (“The Act”). These individuals are police officers and employees of the Town of Bluffton. As employees of the Town of Bluffton, they are subject to the Act. The Plaintiff’s original complaint was filed on April 21, 2014 and served on the Defendants thereafter. The original complaint asserted false arrest/ false imprisonment, gross negligence, slander/ libel per se, assault/ personal injury, and civil conspiracy. The Defendants filed a timely answer asserting various defenses and specifically as an affirmative defense raised the statute of limitations. The Town of Bluffton and Bluffton Police Department were represented by separate counsel, and they moved the Court to dismiss the complaint as being outside of the statute of limitations and therefore untimely filed. On December 28, 2014, the Court entered an order dismissing the complaint against the town and the police department finding “the Plaintiff failed to file a verified claim, thus the two year statute applies” and “the incidents giving rise to the Plaintiff’s cause of action all occurred outside of the two year period.” Judge Dukes’ Order filed December 10, 2014.

On April 28, 2015, the Plaintiff filed a motion to amend and add two causes of action, namely Malicious Prosecution and a 42 USC §1983 claim against Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales. Thereafter, on August 28, 2015, these Defendants filed a motion for Summary Judgment. Prior to the hearing on the motion for Summary Judgment, on October 8, 2015 the Court granted the Plaintiff's motion to amend which added the two new causes of action. However, the allegations of the first five (5) causes of action mirrored the original complaint. The Parties agreed that the two new causes of action were not subject to the pending motion for summary judgment because they had not been pled at the time of the filing of the motion.

On December 22, 2015, the Court entered an order dismissing the first five causes of action against the Defendants, namely false arrest/false imprisonment, gross negligence, slander/libel per se, assault/personal injury, and civil conspiracy, finding "the suit was brought after the applicable statute of limitations expired on these causes of action." Judge Keesley's Order filed December 28, 2015. The Court did not make any findings as to the two new causes of action. Accordingly, only two causes of action, Malicious Prosecution and a 42 USC §1983 claim, remained to be adjudicated against the Defendants.

In his Amended Complaint, the Plaintiff makes various allegations of fact against the individual defendants, complaining of incidents that allegedly occurred between the years 2009 to 2012. He asserts that the Defendants arrested him on numerous occasions with malice, without probable cause, and in violation of his civil rights, and that on each occasion,

the charges against the Plaintiff were eventually resolved in his favor. (Amd. Compl. ¶¶ 45 – 48). The incidents are as follows:

- (1) The first incident complained of occurred in July 2009, whereby Officer Dickson allegedly wrongfully arrested the Plaintiff and wrongfully accused the Plaintiff of kidnapping. With this incident, the Plaintiff was placed under arrest, but he was never charged with kidnapping or any other offense. (Amd. Compl. ¶ 15).
- (2) Then, in March 2010, the Plaintiff alleges that he was arrested twice by Defendant Norberg for attempting to contact his ex-wife regarding visitation with his child. (Amd. Compl. ¶¶ 20 – 21). The evidence presented at the hearing of the Defendant's motion showed that the Plaintiff was charged with harassment and with the unlawful use of a telephone. The evidence shows that these charges were dismissed on September 8, 2011 and June 5, 2012, respectively.
- (3) Next, the Plaintiff alleges that on March 10, 2010 he was arrested by Defendants Babbiewicz and Tubbs without a warrant for possession of burglary tools and harassment. (Amd. Compl. ¶ 18). According to the documents presented by both parties, this charge was *nolle prossed* on October 14, 2013.
- (4) Directly after this arrest, in March 2010, the Plaintiff alleges that Defendant Hebda used false reports to convince the magistrate judge to deny the Plaintiff's bail. (Amd. Compl. ¶ 19).

- (5) Again, on March 17, 2010, the Plaintiff alleges that he was falsely arrested by Defendant Gonzales and charged with offenses such as stalking and possession of burglary tools. (Amd. Compl. ¶ 22). The record presented by both parties shows that these charges were *nolle prossed* on October 14, 2013.
- (6) Finally, the Plaintiff alleges that in February 2012 Defendant Dickson filed a false police report against the Plaintiff alleging traffic violations following a motor vehicle collision. (Amd. Compl. ¶ 17). However, the record reflects that officers found both vehicles to be at fault for the motor vehicle accident, and neither party was cited for a violation.

DISCUSSION

- I. The Plaintiff failed to institute either cause of action within the applicable statute of limitations; therefore, his claims fail as a matter of law.**
- A. The majority of the incidents in the Plaintiff's complaint fall outside the applicable statute of limitations period for malicious prosecution claims.**

“Under the common law, the limitations period for a plaintiff's malicious prosecution claim commences when the proceedings brought against him are resolved in his favor.” Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 390 (4th Cir. 2014), *cert. denied sub nom. Baltimore City Police Dep't v. Owens*, 135 S. Ct. 1893, 191 L. Ed. 2d 762 (2015). “Where an accused establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained.” McKenney v. Jack Eckerd Co., 304 S.C. 21, 22, 402 S.E.2d 887, 887-88 (1991). Accordingly, a plaintiff's statute of limitations for a malicious prosecution claim begins to run on the date that the *nolle prosequi* is entered. Owens, 767 F. 3d at 390. South Carolina recognizes a two-

year statute of limitations for malicious prosecution claims brought against employees of the state, who fall within the provisions of the South Carolina Tort Claims Act. Loadholt v. Cribb, No. 2004-UP-238, 2004 WL 6251537, at *3 (S.C. Ct. App. Apr. 12, 2004) *citing to* Joubert v. S. Carolina Dep't of Soc. Servs., 341 S.C. 176, 183, 534 S.E.2d 1, 5 (Ct. App. 2000).¹

The Plaintiff presents six (6) incidents occurring between the years 2009 to 2012, described at length above, four (4) of which are barred by the two-year statute of limitations. First, the Plaintiff alleges that in July of 2009 Defendant Dickson wrongfully arrested him and threatened to charge him with kidnapping. (Amd. Compl. ¶ 15). This incident occurred in 2009 and no formal charges were filed; therefore, the Plaintiff failed to meet the two-year statute of limitations. Next, in March of 2010 the Plaintiff alleges false arrest by Defendant Norberg, but the evidence shows that these charges were dismissed on September 8, 2011 by Order for Destruction of Arrest Records, signed by Beaufort Magistrate Judge Clifford Bush, III. (See "Order for Destruction of Arrest Records," signed Feb. 14, 2012; Exhibit A). Then, the Plaintiff alleges that in March 2010 Defendant Hebda asked the judge to deny the Plaintiff's bail (Amd. Compl. ¶ 19). This, too, falls outside the two year statute of limitations. Finally, the Plaintiff alleges that in February of 2012 Defendant Dickson filed a false accident report about the Plaintiff (Amd. Compl. ¶ 17), which is, again, outside of the two-year statute of limitations. The incidents that occurred on March 10, 2010 and March 17, 2010 that were *Nolle Prossed* on October 14, 2013 are not barred by two-year statute of

¹ It has already been established by Order of this Court that the Defendants are subject to the provisions of the Tort Claims Act. Judge Keesley's Order entered December 28, 2015. It has further been established that the Plaintiff failed to file a verified claim, thus the two year statute applies. Judge Dukes' Order entered December 10, 2014.

limitations. However, as explained below, the Defendants are entitled to summary judgment as to those two (2) incidents as well.

B. All of the incidents in the Plaintiff's complaint fall outside the applicable statute of limitations period for § 1983 claims.

There is no statute of limitations specified by 42 U.S.C. § 1983; therefore, the proper statute of limitations in a § 1983 claim is that of the forum state's statute of limitations for personal injury claims. Wilson v. Garcia, 471 U.S. 261, 276 (1985), *superseded by statute on other grounds* Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004); *see also* Nat'l Adver. Co. v. City of Raleigh, 947 F.2d 1158, 1161 (4th Cir.1991). In South Carolina, the statute of limitations for a personal injury claim is three years. S.C.Code Ann. § 15-3-530(5). "Actions must be commenced within three years after the plaintiff knew, or by the exercise of reasonable diligence should have known, that a cause of action existed." S.C.Code Ann. § 15-3-530. Therefore, for the Plaintiff to maintain an action under 42 U.S.C § 1983 for a violation of his federal rights against the Defendants, the Plaintiff must have brought the action three years after each offense complained of. The Plaintiff fails to meet the requisite three-year statute of limitations to bring a § 1983 claim as to all of the Defendants' alleged acts.

The Plaintiff's Amended Complaint adding a cause of action under § 1983 was filed on October 8, 2015. None of the events that the Plaintiff complains of in his pleadings happened within three years of October 8, 2015. In fact, the last of the alleged events happened in February of 2012. The Plaintiff was aware that an action under 42 U.S.C. § 1983 existed at the time that each of the events allegedly occurred because he claims that

under each set of facts he was wrongfully accused and/or arrested. However, the Plaintiff waited until October 8, 2015 to amend his complaint to include a § 1983 action against the Defendants. The Plaintiff had three years from the date of each incident to file a § 1983 action. The Plaintiff failed to do so, and the statute of limitations as to the § 1983 cause of action has run. Therefore, the § 1983 claim against the Defendants must be dismissed as a matter of law as barred by the applicable statute of limitations.

C. The Plaintiff's claims do not relate back to the filing date of the original complaint.

I find that the Plaintiff's claims under § 1983 and for malicious prosecution do not relate back to the date of his original filing, April 21, 2014. An amendment to a pleading relates back to the date of the original pleading "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." Rule 15(c), SCRCP. But "the central requirement here is that the party defending against the new claim have sufficient notice of it, *i.e.*, 'the new claim must be 'logically related' to the *matters originally pleaded* so that the defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.'" Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 222-23, 525 S.E.2d 888, 897 (Ct. App. 1999) (cited by Wright v. Am. Bankers Life Assur. Co. of Florida, 586 F. Supp. 2d 464, 469 (D.S.C. 2008)). "The factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in

support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back.” Id.

The Plaintiff cannot relate his § 1983 and malicious prosecution claims back to his original complaint. The Defendants did not have notice of the new claims because the new claims are unrelated to the original allegations. The new § 1983 claim is based on an alleged violation of the Plaintiff's constitutional rights. None of the allegations of the Plaintiff's original complaint alleged any constitutional violations, and there was no indication whatsoever on April 21, 2014 that the Plaintiff had any intention of claiming a violation of his rights. Likewise, the new malicious prosecution claim relates to the Defendants' actions in prosecuting the Plaintiff, and in no way relates to the original actions. Further, the Plaintiff will rely on newly obtained and different evidence to prove both new claims. In the original actions, the Plaintiff had to establish that the Defendants acted negligently. The Plaintiff must now establish that the Defendants violated clearly established constitutional rights and maliciously instituted proceedings without probable cause. The Plaintiff, in his affidavit and at the hearing of this motion, presented new evidence relating to his criminal prosecution that was not presented in his original action. I find that the Defendants would be unfairly prejudiced if the Plaintiff were allowed to relate his new §1983 and Malicious Prosecution claims back to his original complaint.

Additionally, even assuming that the Plaintiff's new claims do relate back to his original complaint, the majority of the Plaintiff's new claims are still time-barred based on the applicable statute of limitations periods discussed above.

II. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for malicious prosecution.

In order for the Plaintiff to maintain an action for malicious prosecution, the Plaintiff must show: (1) the institution or continuation of original judicial civil or criminal proceedings, (2) by the Defendant, (3) termination of the proceeding in the Plaintiff's favor, (4) malice in instituting such proceedings, (5) want of probable cause, and (6) resulting injury or damage. Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607,608 (1965).

With many of the incidents complained of, the Plaintiff fails to meet the first and second element of his malicious prosecution claim because the Plaintiff's allegations do not involve "the institution of original judicial civil or criminal proceedings... by the Defendant," therefore; these actions against the Defendants should be dismissed. For example, the Plaintiff complains that he was detained in July 2009 and threatened with a kidnapping charge, but no actual charges were ever initiated by Defendant Dickson. (Amd. Compl. ¶ 15). The Plaintiff also complains that Defendant Hebda asked a magistrate judge to deny the Plaintiff's bail, but this too was not an action instituted by Defendant Hebda. (Amd. Compl. ¶ 19). Additionally, in February 2012 the Plaintiff complains that Defendant Dickson made a false traffic report (Amd. Compl. ¶ 17); however, Officer Dickson's incident report states that no citations were issued to the Plaintiff or any other driver.

Next, the Plaintiff fails to establish that the proceedings against him were terminated in his favor. The fact that a charge is *nolle prossed* does not guarantee that a charge was dismissed in the Plaintiff's favor. See Law v. S. Carolina Dep't of Corr., 368 S.C. 424, 435–36, 629 S.E.2d 642, 648–49 (2006) (holding that where the reason for the *nolle prosse* was because the arresting agency chose to pursue charges in a federal court instead of state court, the reasoning did not imply the plaintiff's innocence). The evidence shows that two of the

Plaintiff's charges were *nolle prossed* because the state lacked sufficient evidence to prosecute simply based on the fact that the victim (the Plaintiff's ex-wife) was an uncooperative witness. This reasoning is insufficient to show the Plaintiff's innocence.

The Plaintiff also fails to show that the Defendants acted with malice or with lack of probable cause. The burden falls on the Plaintiff to show the absence of probable cause, and "the Defendant must be absolved from liability if plaintiff fails to show that the prosecution was instituted maliciously and without probable cause." Parrott, 246 S.C. at 322. Additionally, "although malice may be inferred from a want of probable cause, a want of probable cause cannot be inferred from any degree of malice." Parrott, 246 S.C. at 322; Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). Probable cause is defined as:

The [existence] of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

Parrott, 246 S.C. at 321; Elletson v. Dixie Home Stores, 231 S.C. 565, 572, 99 S.E.2d 384, 387 (1957); Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). In determining the existence of probable cause, "the facts must be regarded from the point of view of the prosecuting party; the question is not what the actual facts were, but what the prosecuting party honestly believed them to be." Brown v. Leonard, No. 2008-UP-039, 2008 WL 9832870, at *3 (S.C. Ct. App. Jan. 11, 2008), *citing to* Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006). "Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one

conclusion.” Id. Many of the facts of this case are substantially similar to those of Leonard. In Leonard, the South Carolina Court of Appeals held that an individual officer, Deputy Leonard, was not liable for malicious prosecution where the record reflected that he based his arrest of the plaintiff on statements made by witnesses on-site directly following an altercation. Leonard at *3. The court stated that “the magistrate ultimately found that probable cause existed upon issuance of the warrant. The existence of probable cause is apparent from the record.” Id. The court explained that:

While Brown asserts that Leonard did not see or observe Brown punching or assaulting anyone, this assertion does not entitle Brown to maintain a malicious prosecution action. The deputy provided statements under oath to the magistrate about facts which suggested that a crime had been committed. The magistrate found probable cause that a crime had been committed. On appeal, Brown does not challenge the finding of probable cause by the magistrate. Instead, the gravamen of Brown's claim is that the statements made were allegedly false. His inconsistent and conclusory allegation that no one provided any statements to the deputy is unsupported by the record and the record is lacking as to any basis upon which Brown acquired such personal knowledge.

Leonard, at *4.

Here, the Plaintiff fails to show any malice or want of probable cause by the Defendants in instituting proceedings against the Plaintiff. Like in Leonard, the evidence presented shows that the Defendants based all of their arrests of the Plaintiff on statements given by witnesses after the fact, and warrants were issued for each arrest. This is sufficient to show probable cause. The Plaintiff's argument is that the Defendants based their arrests on fabricated facts and statements. However, the record reflects that with each incident where the Plaintiff was arrested and charged, the Defendants had sufficient information to constitute probable cause. The Plaintiff alleges that in March 2010 Defendant Norberg

falsely arrested him for contacting his ex-wife (Amd. Compl. ¶¶ 20 – 21), but the record reflects that Defendant Norberg was informed by the Plaintiff's ex-wife that the Plaintiff was calling her directly and harassing her on numerous occasions in 2010. Furthermore, the Plaintiff alleges that around this same time Defendants falsely arrested him for possession of burglary tools, stalking, and burglary (Amd. Compl. ¶¶ 18 & 22), but the record reflects that the Defendants were informed by the Plaintiff's ex-wife that the Plaintiff had been by the ex-wife's residence on multiple occasions, had attempted to enter the residence using tools, and even broke into the ex-wife's residence on one occasion. With each of these arrests, a warrant was obtained, meaning that with each incident, the magistrate judge found that probable cause existed for the Plaintiff's arrest. Therefore, probable cause existed and this case falls squarely within the facts of Leonard and Law. The Plaintiff fails to meet his burden of showing a want of probable cause for any of the alleged incidents, entitling the Defendants to a grant of summary judgment on the Plaintiff's malicious prosecution claim.

Finally, to maintain an action for malicious prosecution, the Plaintiff must also show that he was damaged by the actions of the Defendants. The Plaintiff provides no evidence of any injury as a result of the alleged conduct of the Defendants. The Plaintiff's claim for malicious prosecution must fail as a matter of law.

III. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for a violation under 42 U.S.C. § 1983.

In order for the Plaintiff to assert a claim under 42 U.S.C. § 1983, the Plaintiff has to show “that (1) the actions of the police officers deprived him of an actual constitutional right and (2) the right was clearly established at the time of the alleged violation.” Camden v.

Hilton, 360 S.C. 164, 177, 600 S.E.2d 88, 94 (Ct. App. 2004). Furthermore, “the doctrine of qualified immunity shields police officers acting in their official capacity from suits for damages under 42 U.S.C § 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known.” Id. “A defense of qualified immunity may not be rebutted by evidence that the defendant's conduct was malicious or otherwise improperly motivated.” Camden, 360 S.C. at 179-80, *citing to* Crawford- El v. Britton, 523 U.S. 574 (2004). Put another way, “qualified immunity now depends on the objective reasonableness of an officials’ conduct, as measured by reference to clearly established law, not upon malice or other subjective factors,” and “the only inquiry is whether a reasonable person could have believed his actions lawful at the time they were undertaken.” Camden, 360 S.C. at 179-80, *citing to* Williams v. Treen, 671 F.2d 892, 896 (5th Cir.1982); Leibowitz v. United States Dept. of Justice, 729 F.Supp. 556, 561 (E.D.Mich.S. Div. 1989).

Here, the Defendants acted in their official capacity as a reasonable officer would have under similar circumstances, and their actions were lawful. The Defendants were acting on statements made by the Plaintiff's ex-wife on every occasion, as well as on information they obtained from their own investigation of the incidents. The evidence presented to the Defendants before every arrest indicated that an illegal act had been committed by the Plaintiff. The Defendants also obtained arrest warrants for each action. Therefore, the Defendants were at all times acting as a reasonable officer would, making lawful arrests of the Plaintiff. The Plaintiff fails to show that the Defendants violated any of his constitutional rights. The Plaintiff alleges that the Defendants acted with malice in

arresting the Plaintiff, but the Court need not make this determination, as the analysis only involves the objective standard of reasonableness. All evidence before the court shows that the Defendants are entitled to qualified immunity, and the Plaintiff's § 1983 action must be dismissed.

IV. Pursuant to the South Carolina Tort Claims Act, the Plaintiff fails to state a claim upon which relief can be granted against the Defendants in their individual capacities.

The Plaintiff has failed to state a cause of action against the individual Defendants for which relief can be granted. The Plaintiff seeks a malicious prosecution claim against individual officers of the Bluffton Police Department. However, it has already been established in this action that the Defendants in this suit are subject to the provisions of the South Carolina Tort Claims Act. Judge Keesley's Order filed December 28, 2015. Section 15-78-20 of the South Carolina Tort Claims Act does not allow the Plaintiff to sue an individual employee directly for negligence in his official capacity. Therefore, all of the Plaintiff's allegations of malicious prosecution against the Defendants in their official capacities fails to state a claim as a matter of law.

V. The Defendants are entitled to discretionary immunity pursuant to the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act provides discretionary immunity for losses resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). "Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using

accepted professional standards.” Sabb v. S. Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). “Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision,” and “the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense.” Summer v. Carpenter, 328 S.C. 36, 46, 492 S.E.2d 55, 60 (1997).

I find that the Defendants were exercising discretionary immunity in each of the instances alleged by the Plaintiff. On every occasion complained of by the Plaintiff, the Defendants received information pertaining to the Plaintiff, made the determination that an intervention or arrest was necessary, and made a conscious choice to arrest, detain, question, or search the Plaintiff. The Defendants were at all times acting within their official capacities as employees of the Bluffton Police Department. Therefore, the Defendants are entitled to discretionary immunity, and summary judgment is proper.

VI. The Officers are state officials and may not be sued under 42 U.S.C. § 1983.

The Civil Rights Act, 42 U.S.C. § 1983, does not allow suits against States and their officials. “42 U.S.C. § 1983 provides a [forum] to remedy many deprivations of civil liberties, but it does not provide a [forum] for litigants who seek a remedy against a State for alleged deprivations of civil liberties.” Will v. Mich. Dep’t of State Police, 491 U.S. 58, 66 (1989); see Board of Trustees of the Univ. of Ala. V. Garrett, 531 U.S. 356 (2001) (holding that the Eleventh Amendment prohibits non-consenting states from being sued in federal or state court by private individuals).

Neither the State, nor a State official acting in an official capacity, are “persons” for purposes of actions under § 1983. “[A] suit against a state official in his or her official

capacity is not a suit against the official but rather is a suit against the official's office....We hold that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Id.* at 71; *see also Scheuer v. Rhodes*, 416 U.S. 232 (1974).

The Plaintiff did not sue any of these officers individually. In fact, the Plaintiff admitted at hearing that he was suing Officers Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales for their actions taken while serving as officers of the Bluffton Police Department. Therefore, a § 1983 action may not be brought against these officers and they are entitled to judgment as a matter of law.

Therefore as discussed above, it is:

ORDERED that the Defendants' motion for summary judgment is GRANTED.

IT IS SO ORDERED.

Special Circuit Judge Marvin H. Dukes, III

Beaufort, South Carolina

May 9, 2017



Beaufort Common Pleas

Case Caption: Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number: 2014CP0700943

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-05-22 14:11:52 page 18 of 18

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER**

This matter is before the Court on the Plaintiff's Motion to Reconsider this Court's granting of the Defendants' Motion for Summary Judgment. In his motion, the Plaintiff raises the same arguments raised at the hearing of Defendants' Motion for Summary Judgment. Defendants respectfully submit this Memorandum in Opposition to the Plaintiff's Motion to Reconsider.

On June 13, 2016 the Defendants, six individual officers of the Bluffton Police Department, filed a Motion for Summary Judgment to dismiss the Plaintiff's Malicious Prosecution and §1983 claims. On December 7, 2016, Judge Dukes considered the Plaintiff's Malicious Prosecution and §1983 claims as described in the Plaintiff's Amended Complaint. After extensive oral argument and careful consideration, Judge Dukes held that: (1) the Plaintiff's claims failed as a matter of law because the Plaintiff failed to institute his causes of action within the applicable statutes of limitation and the Plaintiff's Malicious Prosecution and §1983 claims do not relate back to the filing of the original Complaint; (2)

the Plaintiff failed to produce a scintilla of evidence to prove the elements of either cause of action; (3) pursuant to the South Carolina Tort Claims Act, the Plaintiff cannot sue the Defendants in their individual capacities and the Defendants are entitled to discretionary immunity; and (4) as officers acting in their official capacity, the Defendants may not be sued under § 1983.

The Defendants would respectfully ask that the Court uphold its decision granting summary judgment as to all of the Plaintiff's causes of action against the Defendants. The Defendants oppose the Plaintiff's Motion to Reconsider on the grounds set forth in the Defendants' Memorandum in Support of Motion for Summary Judgment and at the oral argument upon Defendants' Motion for Summary Judgment.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not." *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). "The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument," and the decision to grant or deny a motion to reconsider will be reviewed for an abuse of discretion. Rule 59(f), SCRPC; *Pollard v. City of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). The Federal Rules provide additional guidance for Rule 59(e), SCRPC. The Federal Rules of Civil Procedure notes that a "Court's reconsideration of a prior order is an extraordinary remedy which should be used

only sparingly.” *Flynn v. Terrebonne Parish School Bd.*, 348 F. Supp. 2d 769 (E.D. La. 2004). Furthermore, “when issues have been carefully considered and decisions rendered, the only reason which should commend reconsideration of that decision is a change in the factual or legal underpinnings upon which a decision was based.” *Taylor Woodrow Const. Corp. v. Sarasota/Manatee Airport Authority*, 814 F. Supp. 1072 (M.D. Fla. 1993) (see also *Ruscavage v. Zuratt*, 831 F. Supp. 417 (E.D. Pa. 1993) (“The purpose of a motion to alter or amend a judgment under [Federal Rule 59(e)] is to correct manifest errors of law or fact or to present newly discovered evidence”).

ARGUMENT

There is no new evidence presented here. The Plaintiff continues to rely on his two (2) self-serving affidavits, which provide little evidence other than the Plaintiff’s own account of the arrests. The Defendants have presented numerous warrants, incident reports, and affidavits recanting the witness statements and facts upon which each officer relied in making the arrests. Since the granting of the Defendants’ Motion to Reconsider, nothing new has been discovered and no facts or legal analyses have changed. Therefore, the Plaintiff’s Motion to Reconsider should be denied.

Moreover, the Plaintiff cannot now raise new arguments. The Plaintiff, for the first time since the institution of this action, parses out the difference between a “not guilty” holding on July 10, 2012¹ for an “unlawful use of a telephone” charge, and a dismissed

¹ An Order for Destruction of Arrest Records, signed by Judge Clifford Bush III on July 10, 2012, reveals that the Plaintiff was found not guilty on June 5, 2012 for a charge of “Unlawful Use of Telephone.” (See Exhibit A)

action on February 14, 2012² for a “harassment” charge. (Mot to Reconsider, Pg. 5). The Plaintiff also reveals a trespassing charge that was reversed on appeal on May 30, 2012.³ (Mot to Reconsider, Pg. 5). The Plaintiff alleges for the first time that the dates recited in the Defendants’ motion and in Judge Dukes’ Order are “incorrect and contain omissions” and brings up new incidents not raised in his Amended Complaint. (Mot to Reconsider, Pg. 5). Since receiving the Defendants’ Memorandum in Support of their Motion for Summary Judgment, the Plaintiff has filed two (2) self-serving Affidavits; one (1) Memorandum in Opposition; one (1) Supplement Brief; one (1) Objection to Proposed Order; and presented an oral argument before Judge Dukes. Not once did the Plaintiff declare that the Defendants were incorrect or in any way mistaken about the dates recited in the Order. The Plaintiff cannot now rely on these new arguments in asking the Court to reconsider its prior findings. Even assuming, *arguendo*, that the Plaintiff could raise new arguments, his claims still fail. The Plaintiff brings up an “Unlawful Use of Telephone” charge, for which he was found “not guilty” on June 5, 2012. (Exhibit A). The Plaintiff also raises a “Harrassment” charge, which was dismissed on September 8, 2011. (Exhibit B). The Statute of Limitations for the Plaintiff’s Malicious Prosecution claim began to run on each of those dates. Despite the dissecting of these dates the Plaintiff’s claims still fail because he did not file his Amended Complaint until October 8, 2015, far more than two (2) years after each charge was dismissed.

² An Order for Destruction of Arrest Records, signed by Judge Clifford Bush III on February 14, 2012, reveals that the Plaintiff’s harassment charge was dismissed on September 8, 2011. (*See* Exhibit B)

³ The Plaintiff does not produce, and the Defendants have no evidence of, any trespassing charge reversed on May 30, 2012.

CONCLUSION

For the reasons set forth above, the Defendants respectfully ask that the Court deny the Plaintiff's Motion to Reconsider.

GRIFFITH SHARP & LIIPFERT, LLC

s/ *E. Mitchell Griffith*

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ATTORNEYS FOR DEFENDANTS

January _____, 2017
Beaufort, South Carolina

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION

NO. 2014-CP-07-00943

MOTION TO RECONSIDER

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2016 DEC 22 PM 1:49

PLAINTIFF JOSEPH SUN, moves the court to reconsider its Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiff's Motion to Compel, a copy of which Plaintiff received on December 13, 2016, and shows the court as follows:

1. On about October 28, 2016, Defendants' counsel served all parties and the court by emails a copy of Defendants' proposed Order Granting Defendants' Motion for Summary Judgment.

Plaintiff on about November 16, 2016 served all parties and the court his Objections to Defendants' Proposed Order. As aforesaid, Plaintiff received a copy of the new electronically signed and filed Order on December 13, 2016 and timely files his motion to reconsider.

2. It appears that the signed and filed Order of December 7, 2016, Granting Defendants' Motion for Summary Judgment is identical to the aforesaid Defendants' proposed Order by email, showing the court made no consideration on Plaintiff's Objection. Plaintiff will also rely on his previously filed Objection to Defendants' Proposed Order in his request for reconsideration.

LEGAL STANDARD ON THE DETERMINATION OF SUMMARY JUDGMENT

3. In determining whether any triable issues of fact exist, the court must view the evidence and

all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party, the Plaintiff Joseph Sun. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). See also, *McLaughlin v. Williams*, 379 S.C. 451, 455–56, 665 S.E.2d 667, 670 (Ct.App.2008). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). Citing, *Simmons v. Berkeley Elec. Coop. Inc.*, 404 S.C. 172, 744 S.E.2d 580 (S.C. App., 2013)

4. In granting a summary judgment to the defendants, the court must apply the standard pursuant to *Rule 56(c), SCRPC*.” *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). “Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Id.* at 122, 708 S.E.2d at 769; see also, *Rule 56(c), SCRPC*. “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (2005).

5. In his original complaint filed on April 21, 2014, Plaintiff asserted several causes of action including but not limited to, false arrest/false imprisonment, gross negligence, slander/libel per se, personal injury and damages and civil conspiracy. After the defendants were served with the complaint, they filed their answers and several motions, resulting in dismissal of the Town and the Police Department from the case and summary judgment in favor of the personal defendants on the

first five (5) causes of actions based on the expiration of the statute of limitation. (Page 3, Order.)

6. The correctness of all those dismissals and summary judgment is not an issue in this motion, and all previous court orders may be appealed in the end. On April 28, 2015, Plaintiff filed a motion to amend and add two causes of action, namely malicious prosecution and a 42 U.S.C. §1983 claim. Plaintiff's motion to amend was granted on November 13, 2015.

Rule 15©, SCRCP provides that:

"© Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."

Therefore, the Court Order of November 13, 2015 became the "law of the case" relating all claims alleged in the amended complaint to the original date of filing on April 21, 2014.

Specifically, in his Amended Complaint (Page 3 of 11) which was verified and a trial by jury demanded, Plaintiff alleges that:

"12. All of the Defendants' wrongful, malicious and unconscionable acts were motivated and instigated by their prejudice and malice against the Plaintiff, their lack of proper training, and the lack of proper oversight of these officers by Bluffton Police Department. These Defendants were influenced by each other and wrongfully directed by their superiors to target the Plaintiff for harassment and other tortuous acts due to the defendants lack of training, their personal malice and prejudice against the Plaintiff, and their lack of proper oversight and training.

13. All Defendants committed wrongful and tortuous acts against the Plaintiff with actual fraud and actual malice, and with the intent to cause harm to the Plaintiff.

14. All Defendant Officers, ... knowingly and intentionally conspired with and aided and abetted each other, including Plaintiff's ex-wife, in a scheme of malicious and wrongful activity, to repeatedly have Plaintiff arrested and put in jail for numerous fabricated and unwarranted charges. They then maliciously attempted to prosecute the Plaintiff in Bluffton Municipal Court and the Beaufort County Court of General Sessions.”

7. In support of his aforesaid allegations, Plaintiff filed his Affidavit of Joseph Sun and another Supplemental Affidavit of Joseph Sun prior to the hearing on September 16, 2016. In his first affidavit, Plaintiff attached copies of court orders and *nolle prossed* documents on all the six (6) charges which he alleges that he had been maliciously prosecuted. In his supplemental affidavit, Plaintiff Sun averred under oath how he was arrested at his home without any given reason or probable cause and was released later but charged with trespass, on Highway 46 by Defendant Babkiewicz without probable cause claiming a “traffic stop” (See affidavit of Babkiewicz attached in Defendants’ motion for summary judgment.)

Supplemental Affidavit of Joseph Sun conflicted affidavit of Defendant Gonzales who made false testimony which can be proven by the recorded video taken by Gonzales. Due to his desire to get his truck back that night, Plaintiff Sun testified on the video that he had been in his home some time in the past ever since his home was bought in 2007 with no dates specified. But Defendant Gonzales in his affidavit committed perjury by swearing under oath that Sun admitted to be in his home on March 16 and 17, 2010 when the video he took himself can show that no such admission was ever made. Most of all, Beaufort County Detention Center record shows that Plaintiff Sun was still in jail on March 16, 2010.

In order to preserve Plaintiff's right to appeal on issues raised at the trial court level and ruled on by the court, Plaintiff hereby specifically assigns numerically all his issues and respectfully asks the court to make finding of facts and conclusion of law on each.

Issue 1: The list of incidents prepared by the defendants and adopted by the court on Page 4 and 5 of the Order is incorrect and contained omissions of some incidents as shown in Affidavit of Joseph Sun. Attached Exhibits in Sun's affidavit shows all the charges against Plaintiff were resolved in his favor as follows:

(1) Plaintiff Sun was arrested and charged with unlawful use of telephone without probable cause by Defendant Bryan Norberg, and Sun was found "not guilty" on July 10, 2012, within the two (2) year statute of limitation from the filing date of complaint on April 21, 2014 for the cause of action on malicious prosecution. Defendants simply fabricated certain erroneous dates in their proposed order.

(2) Plaintiff Sun was arrested and charged with Harassment without probable cause by Defendant Babkiewicz and the charge was dismissed on February 14, 2012 within the three (3) year statute of limitation for the cause of action on 42 U.S.C. §1983.

(3) Plaintiff Sun was arrested on Highway 46 and charged with Trespassing without probable cause by Defendant BABKIEWICZ. The conviction was reversed on appeal on May 30, 2012 within the two (2) year statute of limitation when Complaint was filed on April 21, 2014.

(4) As shown in his Supplemental Affidavit, Plaintiff Sun was arrested and charged at the Bluffton Police Department after interrogation without probable cause by the joint effort and conspiracy of defendant Gonzales, Norberg and Tubbs on the three (3) felony charges of burglary, possession of burglary tools and stalking. Defendants Babkiewicz, Tubbs and Norberg after

arresting Plaintiff Sun on Highway 46 on about March 12, 2010 without probable cause, they illegally searched Sun's truck and found a bolt cutter, a lock picking tool set and some other hardware all of which Sun used in his storage business, then these defendant took Sun to Beaufort Magistrate to get an arrest warrant using their illegally seized evidence after Sun was arrested without probable cause. While Sun was detained in the Beaufort County Detention Center, these defendants then went before a grand jury and obtained the three (3) indictments (as shown and attached in Affidavit of Joseph Sun, Indictments #2010GS0700765, 2010GS0700787 and 2010GS0700788) to maliciously prosecute Sun. All Indictments were *nolle prossed* on October 14, 2013. The initial complaint was filed only six (6) months later on April 21, 2014, within the two year statute of limitation for malicious prosecution and three (3) years for 42 U.S.C. §1983.

Plaintiff asks the court to provide a finding of facts and conclusion of law on how his alleged causes of action on Malicious Prosecution and 42 U.S.C. §1983 could possibly be filed outside of the statute of limitation on the aforesaid six (6) arrests and charges as defendants have erroneously alleged in their proposed order adopted by the court.

Issue 2: As the issue of statute of limitation could bar Plaintiff from proceeding in this complaint entirely, Plaintiff asks the court to make finding of facts and conclusion of law on how the defendants could arbitrarily and erroneously claim, on Page 6 of proposed Order, that,

"The Plaintiff filed his amended complaint adding the two new claims on October 8, 2015. At that time, this court held that the Plaintiff's five (5) other state law claims were barred by the two year statute of limitations. Judge Keesley's Order filed December 28, 2015. Therefore, it stands to reason that the Plaintiff's malicious prosecution claim is also barred."

Plaintiff points out that the court may have adopted the defendant's erroneous argument as it appears that they have misunderstood that the two newly added causes of action - malicious

prosecution and 42 U.S.C. §1983 - accrued on the same dates of arrests and prosecution of the Plaintiff as the other previously dismissed causes of action, when they did not and could not have as a matter of law. The court order correctly cited earlier on Page 5 that "Under the common law, the limitations period for a plaintiff's malicious prosecution claim commences when the proceedings brought against him are resolved in his favor. Accordingly, a plaintiff's statute of limitations for a malicious prosecution claim begins to run on the date that the *nolle prosequi* is entered." Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379,390 (4th Cir. 2014).

Whereas, the other previously dismissed five causes of action had their claims commenced when the arrests and charges were lodged against the Plaintiff.

With the guidance of aforesaid case laws, it is obvious that the defendants' attempt to use the Judge Keesley's Order filed December 28, 2015 which refers to the prior order of December 10, 2014 as "law of the case" in dismissing the first five causes of action on the ground of expiration of the statute of limitation, is erroneous because the two added causes of action Malicious Prosecution and 42 U.S.C. §1983 commenced not when defendants wrongful acts on the first five (5) counts were committed, but when the charges were resolved in Plaintiff's favor at a much later date.

In other words, the same acts, events and occurrences caused by the defendants give rise to multiple causes of actions commenced on different dates.

Issue 3: Plaintiff alleges all the arrests and prosecution were committed by the defendants without probable cause to harass and injure him in retaliation of his filing of the civil rights suits against the Bluffton Police Department and Officer. Defendants in their motion and proposed order seem to claim that they had probable cause and that their malicious actions against Plaintiff

Sun were based on complaints by some other persons. Since probable cause does not turn on plaintiff's guilt or innocence but upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crime charged. *Kinton v. Mobile Home Industries, Inc.*, 274 S.C. 179, 262 S.E.2d 727, 728 (1980)

On this issue raised by Plaintiff for the purpose of appeal that all defendants' arrests and subsequent prosecution were committed maliciously without probable cause, Plaintiff asks the court to make all finding of facts and conclusion of law on each and every one of the aforesaid six (6) arrests and charges - Items (1) through (4) where item (4) includes three indictments - on all the facts and complaints from witnesses on why the defendants as reasonable officers believed Plaintiff Sun had committed acts which could be guilty of the crimes charged. *Kinton, supra*. Defendants in their proposed order which the court adopted entirely simply and summarily stated that "Plaintiff fails to establish that the proceedings against him were terminated in his favor." Should discovery be allowed in this case, Plaintiff can show that all defendants acted without probable cause in all their arrests and charged, and the resolution in Plaintiff's favor is the only outcome of all the charges against the Plaintiff because he is innocent.

The defendants fail to show any evidence or complaint from any witnesses that would lead a reasonable officer to believe Plaintiff Sun had committed any criminal acts. Plaintiff's two affidavits have presented more than a scintilla of evidence to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, *supra*. Probable cause and guilt or innocence are generally matters to be determined by the jury. In this case Plaintiff Sun was disallowed any discovery in opposition to defendants motion for summary judgment. Therefore, summary judgment should not have been awarded to the defendants prematurely by assuming they had

probable cause when there was nothing that could show that any reasonable officer would believe that Plaintiff could have committed any criminal act.

Issue 4: Plaintiff request the court to state finding of facts and conclusion of law that the defendants have negated any Plaintiff's allegations in his Amended Complaint (on Page 3 of this motion.) And his two (2) affidavits filed in opposition to defendants motion. *Turner v. Milliman*, supra. "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.*; see also, *Rule 56©, SCRPC*. "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, supra.

Issue 5: This court denied Plaintiff's motion to compel discovery without giving any reason when defendants have not fully responded to Plaintiff's initial requests for admission, and failed to respond to Plaintiff's interrogatories and request for the production of documents. It appears that the court is relying on this case being dismissed entirely based on the expiration of statute of limitation. Plaintiff has shown that the added causes of action by the amended complaint were filed within the statute of limitation, therefore, the motion to compel discovery should be granted or a hearing be scheduled and Plaintiff be allowed to complete his discovery.

Issue 6: The Supreme Court of South Carolina in the case *Baughman v. American Telephone and Telegraph Company*, 306 S.C. 101, 410 S.E.2d 537 (1991) held that:

"Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full

and fair opportunity to complete discovery. 10A Wright & Miller, Federal Practice and Procedure s 2741, p. 543 (1983); 6 Moore's Federal Practice P 56.02[6], p. 56-39 (2d ed. 1990); see, e.g., First Chicago Int'l v. United Exchange Co., 836 F.2d 1375 (D.C.Cir.1988); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir.1985); Tyler v. City of Enterprise, 521 So.2d 951 (Ala.1988); Gangadean v. Leumi Fin. Corp., 13 Ariz.App. 534, 478 P.2d 532 (1970); Commercial Bank of Kendall v. Heiman, 322 So.2d 564 (Fla.Dist.Ct.App.1975); Board of Education v. Van Buren & Firestone, Architects, Inc., 165 W.Va. 140, 267 S.E.2d 440 (1980); cf. **544Rule 56(f), S.C.R.C.P.FN4"

When given adequate discovery, Plaintiff will be able to obtain evidence by defendants' testimonies and documents and other things to prove his case as alleged in his amended complaint as alleged on Page 3-4 of this brief.

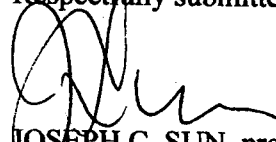
Issue 7: As stated in Plaintiff's response to defendants' motion, his motion to amend to add the cause of actions six (6) and seven (7) was granted on November 13, 2015. All additional causes of action related back to the original date of filing. Defendants' argument in their motion claiming that they would not relate back is untimely and erroneous according to S.C. Supreme Court holding in *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004) where SC supreme court reversed a denial of motion to amend on similar argument made by defendants. The Supreme Court also held that the burden is on the defendants opposing the amendment to show prejudice, not the Plaintiff who amended the complaint.[357 S.C. 175] The Supreme Court held that as long as the facts are the same (regardless of cause of action), there could be no prejudice. All defendants' erroneous argument in opposition to "relating back" should be raised before Plaintiff's motion to amend was granted. *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999) Defendants knew at the hearing on motion to amend that Plaintiff was seeking to "relate back" Counts 6 and 7. On November 13, 2015 when the court granted Plaintiff's motion to amend, the relating back had already occurred and granted. It became the law of the case.

CONCLUSION

Based on the foregoing, Plaintiff prays the court to reconsider its Order of December 7, 2016 and deny defendants' motion for summary judgment and grant Plaintiff's motion to compel discovery. In the alternative, to preserve all the issues on appeal, Plaintiff requests that the court articulate its finding of facts and conclusion of law on the seven (7) issues raised in Plaintiff's motion to reconsider. Without the court's ruling on Plaintiff's arguments in the seven issues raised in this motion to reconsider, the court of appeal will only remand for further determination.

This 21st day of December, 2016.

Respectfully submitted,


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

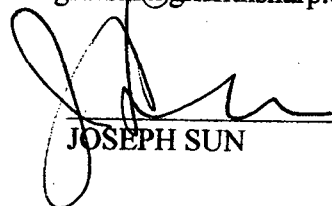
This is to certify that I have this date served the Defendants a copy of the Plaintiff's Motion to Reconsider, by depositing a copy of same in the U.S. Mail postage prepaid to:
And by email to:

E. Mitchell Griffith, Esq.

P. O. Drawer 570
Beaufort, SC 29901

This 22nd day of December, 2016.

hmeyer@griffithsharp.com
lsmyth@griffithsharp.com
mgriffith@griffithsharp.com


JOSEPH SUN

2016 DEC 22 PM 1:49
JERRI ANN ROSENHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA**

**JOSEPH C. SUN,
Plaintiff,**

v.

**TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.**

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

**CIVIL ACTION
NO. 2014-CP-07-00943**

**OBJECTION TO DEFENDANTS'
PROPOSED ORDER**

1.

In the determination of the within defendants motion for summary judgment regarding Plaintiff's Amended Complaint, it is undisputed that Malicious Prosecution and 42 USC §1983 are the only claims remained to be adjudicated against the Defendants. (See proposed order Page 3.) Since these two latter claims were added to the within case by Court Order granting Amendment on November 13, 2015, the original unverified complaint was replaced by the verified Amended Complaint filed on October 8, 2015. Therefore, Plaintiff would object to defendants repeated reference to the "unverified" complaint as it serve them no purpose, and is irrelevant in the determination of the within motion, but would give an impression that the amended complaint is also unverified when it is.

2.

Important to note that the Court Order of December 28, 2015 granting defendants summary judgment on the original complaint based on statute of limitation, the Court recognized that "The Parties agreed that the two new causes of action were not subject to the present motion as they had

not been pleaded when the motion was filed.” (Page 2, Order) Therefore, that court order and the “law of the case” it referred to has no effect on the within motion for summary judgment.

3.

The accrual of the causes of actions for the filing of the referenced last two counts (6) and (7) are not the same as the first five (5) counts which were dismissed by an earlier court order. The first five causes of action (1) through (5) accrued when the alleged wrongful acts and incidents were committed by the defendants at much earlier dates (about two years earlier, mostly in 2010). But causes of action (6) and (7) did not accrue until all charges against Plaintiff were resolved in his favor in the latter part of 2012 and 2013, all within the two years statute of limitation for malicious prosecution and three years statute of limitation for 42 USC §1983¹.

4.

The verified amended complaint was filed on October 8, 2015. By Order of November 13, 2015, the motion to amend was granted. Therefore, Rule 15(c), SCRCF applies:

“(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.”

5.

Since Plaintiff has not alleged any new facts (conduct, transaction or occurrence) already set

¹ This within motion for summary judgment is not controlled by the “law of the case” doctrine regarding the statute of limitation referred to in the prior court order of December 28, 2015 because now we are dealing with the new causes of action of malicious prosecution and violation of plaintiff’s civil rights pursuant to 42 USC §1983. These two new causes of action did not accrue when the wrongful acts were committed in 2010 as alleged in the original complaint, but rather, they accrued at a much later date after the charged were terminated in Plaintiff’s favor. (See attached court records attached in Affidavit and Supplemental Affidavits of Joseph Sun filed in response to Defendants’ Motion for Summary Judgment.)

forth in the original pleadings², therefore, Counts (6) and (7) relate back to the date of the original pleading filed on April 21, 2014. Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004).

Defendants argument in the proposed order is erroneous and groundless, most of all, they had not raised the objection at the hearing on motion to amend, therefore, the Order to amend and relate back to the date of the original pleading became “the law of the case” on November 13, 2015³.

6.

Wherefore, defendants’ motion for summary judgment on the ground of statute of limitation regarding Counts (6) and (7) must be denied. The court put aside Plaintiff’s motion to compel discovery at the hearing on September 16, 2016 just to give the defendants a chance to argue their defense based on the statute of limitation which if granted would end the case and therefore not require any discovery as no evidence would be admitted.

7.

As Plaintiff has shown that Counts (6) and (7) are filed within the statute of limitation, discovery on those two issue should not be deprived. Plaintiff can discover facts and evidence which can conflict defendants claims in their motion for summary judgment and proposed order, especially in the area of probable cause, their conspiracy and malicious intents. Therefore, any determination on the remaining arguments in defendants’ motion for summary judgment should be postponed until after Plaintiff has taken Defendants’ deposition. Plaintiff will continue to present his objection in the event that his motion to postpone is denied.

² Defendants in their proposed order merely stated their wishful thinking and pretentious conclusion with no facts in support of any new conducts, transactions or occurrences. Defendants failed to learn that the wrongful acts they committed can fit in several different causes of action.

³ Even if they had objected to the relating back issue, they would not prevail based on the S.C. Supreme Court holding in *Stanley v. Kirkpatrick*, *supra*.

8.

Should the court find that Plaintiff had filed his complaint within the statute of limitation on Counts (6) Malicious Prosecution and (7) 42 USC §1983, given adequate discovery Plaintiff can show that defendants prosecuted him without probable cause therefore were malicious, that they knowingly and intentionally conspired with and aided and abetted one another and other persons, and that they committed their wrongful acts with actual malice and fraud, and with intent to injure Plaintiff as their vengeance and retaliation against a previous lawsuit filed against them. Plaintiff has alleged and shown that he has suffered severe damages and injury.

9.

The followings are erroneous arguments and conclusion made by the defendants in their proposed order:

a/ In their second paragraph on Page 6, Defendants proposed that “this Court already held that the Plaintiff’s five (5) other state law claims were barred by the two-year statute of limitations. Judge Keesley’s Order filed December 28, 2015. Therefore, it stands to reason that the Plaintiff’s malicious prosecution claim is also barred.”

Defendants were trying to use the “law of the case” referred to by Judge Keesley to include the last two (2) causes of action (6) and (7). **That they cannot do** as explained previously in Paragraphs 3-5 on Page 2 and Footnote 1 and 2 because of the difference in the accrual of causes of action. Furthermore, the Court Order states on Page 2 clearly that,

“The parties agreed that the two new causes of action were not subject to the present motion as they had not been pleaded when the motion was filed.”

b/ Their third paragraph on Page 6 where defendants proposed “the Plaintiff presents six (6)

incidents occurring between the years 2009 to 2012” Those are defendants intentional erroneous interpretation of Plaintiff’s complaint. Defendants’ description of three incidents of which Plaintiff has not claimed as part of malicious prosecution because Plaintiff was not arrested and jailed. Their inclusion is misleading and irrelevant therefore should be stricken from the order because those incidents were alleged to show the wrongful acts of the defendants as the pattern of their malice against Plaintiff and the first arrest of Officer Dickson in 2009 after which Plaintiff filed a federal lawsuit against Dickson, was the reason for defendants’ retaliation by maliciously prosecuting Plaintiff and depriving his civil right to due process of the law by repeatedly arresting and prosecuting him without any probable cause.

Defendants used those irrelevant incidents as their “smoke screen” to cover up and avoid detection of their malicious outrageous acts of arresting Plaintiff on Highway 46 (May River Road) without any probable cause, and committed illegal search and seizure of Plaintiff’s truck and used the illegally seized items to go to Beaufort Municipal Judge to get warrants for Plaintiff’s arrest and to have him put in jail. Then on March 17, 2010, Norberg and Gonzales arrested Plaintiff after an interrogatory without probable cause and after they promised Sun of no arrest and getting back his truck. Those actionable incidents defendants intentionally omitted. Plaintiff request the court to include these three (3) incidents, to wit, two arrests without probable cause on Highway 46 and after the interrogation at the Bluffton Police Department, and the illegal search and seizure of Plaintiff’s truck. Plaintiff further asks the court to make findings of fact on what are the “probable cause” including names of witnesses and crimes which Plaintiff allegedly had committed.⁴

c/ Defendants proposed a false statement without any factual support on Page 7, end of second

⁴ Without the record on Plaintiff’s request on the issues and the erroneous finding of facts and conclusion of law, all appeals will fail.

paragraph that “The Plaintiff fails to meet the requisite three-year statute of limitations to bring a §1983 claim as to all of the Defendants’ alleged acts.”⁵ Defendants’ erroneous conclusion is based on the wrong assumption that Counts (6) on Malicious Prosecution and Count (7) on 42 USC §1983 have their causes of action accrued when defendants committed their wrongful acts against the Plaintiff. But they are wrong because these two causes of action accrued at a much later dates in 2013 and 2014 after charges were terminated in Plaintiff’s favor, and Plaintiff’s amended complaint related the claims back to date of filing the original pleading on April 21, 2014.⁶

d/ The Fourth Circuit Court of Appeals, in the case of *Austin v. Paramount Parks*, 195 F.3d 715 (4th Cir., 1999) held that,

Section 1983 provides in relevant part as follows:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . . 42 U.S.C.A. § 1983.”

The 4th Circuit further held that,

“In *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978), the Supreme Court held that municipalities and other local governmental bodies constitute “persons” within the meaning of § 1983, see *id.* at 688-89.” *Id.*

All evidence so far in the case, with copies of all the arrest warrants, incident reports and affidavits presented by the defendants and plaintiff, show that Defendants Norberg, Tubbs, Babkiewicz and Gonzales were acting under color of state law in South Carolina as Bluffton Police

⁵ No finding of facts nor case law in support.

⁶ In any event, the three (3) indicted charges were nolo prossed on October 14, 2013 when the motion to amend complaint was filed on April 27, 2015, heard on September 9, 2015 and order issued on November 13, 2015. Defendant had notice of the motion to amend on April 27, 2015, therefore, even without the relating back, the retroactive effect put the date of the amended complaint within the two (2) year statute of limitation.

officers, subjected or caused to be subjected, the plaintiff who is a citizen of the United States, to the deprivation of his rights under the Constitution and law of the United States. All other defendants were acting as their co-conspirators as alleged. Plaintiff has suffered severe damages and injury, including but not limited to, about six (6) months total in jail, loss of personal property and money. Therefore, the defendants are liable to the Plaintiff in an action at law and suit in equity.

Because defendants' violation of § 1983 is based on their malicious prosecution of Plaintiff, the cause of action also accrued at the same time when the charges were resolved in Plaintiff's favor mostly in 2013 therefore all within the statute of limitation.

e/ There is an important cause of action alleged in the original complaint and amended complaint which the defendants have totally ignored and unaddressed is the issue of retaliation by the defendants in conspiracy against Plaintiff's dismissed suit against Defendant Dickson in 2009, therefore summary judgment in their favor must fail. Instead, defendants either pretentiously or carelessly, overlooked Plaintiff's allegations of "a pattern of scheme and vengeance against the Plaintiff as a result of him bringing that lawsuit." on Page 2, Paragraph 10, Amended Complaint.

Instead, the proposed order repeatedly made frivolous arguments on the earlier incident in 2009 regarding defendant Dickson and claims that it was outside of statute of limitation when Plaintiff has not made any claim of malicious prosecution on that incident which was alleged as a cause of defendants' retaliation.

The United States Supreme Court in the case of *Hartman v. Moore*, 126 S. Ct. 1695, 1701, 547 U.S. 250, 164 L.Ed.2d 441 (S.Ct., 2006), held that:

"Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right," *Crawford-El v. Britton*, 523 U.S. 574, 588, n. 10, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998), and the law is settled that as a general matter the First Amendment prohibits

government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out, *id.*, at 592, 118 S. Ct. 1584, 140 L. Ed. 2d 759; see also *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972) (noting that the government may not punish a person or deprive him of a benefit on the basis of his "constitutionally protected speech"). Some official actions adverse to such a speaker might well be unexceptionable if taken on other grounds, but when nonretaliatory grounds are in fact insufficient to provoke the adverse consequences, we have held that retaliation is subject to recovery as the but-for cause of official action offending the Constitution. See *Crawford-El*, *supra*, at 593, 118 S. Ct. 1584, 140 L. Ed. 2d 759; *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 283-284, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977) (adverse action against government employee cannot be taken if it is in response to the employee's "exercise of constitutionally protected First Amendment freedoms")."

The cited case pertains to retaliation against First Amendment of free speech, whereas here Plaintiff is suing defendants for retaliation against his previous lawsuit. Both activities are protected by the Constitution therefore the same case applies here. The supreme Court opined that,

"As for the invitation to rely on common-law parallels, we certainly are ready to look at the elements of common-law torts when we think about elements of actions for constitutional violations, see *Carey v. Piphus*, 435 U.S. 247, 258, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978)" *Id.* @ 1702.

Therefore, both the causes of action of malicious prosecution and 42 USC §1983 accrued on the same dates when all charges were resolved in Plaintiff's favor.

10.

Defendants' argument on Page 9 of their proposed order regarding §1983 is erroneous and their cited cases actually confirm that the cause of action on Counts (6) and (7) in the amended complaint should all relate back to the original complaint because a simple look can tell there was no new facts presented⁷, particularly Count (7) where only one statement on defendants' wrongful acts violated Plaintiff's Constitutional rights therefore actionable under 42 USC §1983.

⁷ Plaintiff was relying on the same evidence, acts, transactions and occurrences, committed by the defendants

11.

On Page 10 of the proposed order, defendants try to allege that Plaintiff has not provided evidence to constitute cause of action for malicious prosecution. Defendants further made false and pretentious interpretation of Plaintiff's amended complaint, where they only cited incidents with no arrests which were alleged for the purpose of demonstrating a pattern of retaliation and conspiracy. As stated earlier, defendants were attempting to use a smoke screen by alleging irrelevant matters as their defense, to cover up and avoid detection of all their malicious and unconstitutional acts of arresting Plaintiff numerous times without probable cause on Highway 46, their illegal search and seizure and the arrest using fraud and without probable cause after the interrogation at mid-night at the Bluffton Police Department.

12.

On the issue of the charges against Plaintiff were resolved in his favor, Defendants were very studious but pretentious, in citing numerous case law regarding the requirement of "innocence" as a prerequisite for malicious prosecution. Whether Plaintiff can prove his innocence to the jury in the trial to complete his claim for malicious prosecution remain to be seen. However, Plaintiff has claimed defendants repeatedly arrested him without probable cause, especially those arrests averred in his two affidavits filed in opposition to Defendants' motion for summary judgment. Not only his affidavits are uncontroverted, even if they are, in the determination of a motion for summary judgment, evidence must be taken and construed in favor of the non-movant Plaintiff. Plaintiff has, through his affidavits and attached incident reports, made a prima facie case on the numerous arrests without probable cause or warrant⁸, therefore, a favorable interpretation for him as required by Rule

⁸ Defendants try vaguely to claim summarily that ex-wife or some one complained with no specificity. Plaintiff's affidavits and allegations in conflict prevent summary judgment. Rule 56, SCRCP.

56, SCRCPP, would be his innocence in the determination of summary judgment.

13.

Plaintiff objects to defendants proposed order as a whole in their citation of numerous case laws regarding probable cause, statute of limitation and illegal acts, etc. committed by Plaintiff. Then defendants falsely and actually fraudulently claim that their arrests were based on complaints of crimes committed by Plaintiff. Defendants have not cited one scintilla of evidence which even slightly show that someone has complained that Plaintiff had committed any criminal act - not one. Defendants cannot be allowed to simply cite the case laws and make the court to agree that there is evidence to fit in their case law to get a summary judgment. They have not shown anything!

14.

As to their pretentious claim that there was some vague complaint that Plaintiff had got in his marital home therefore they had probable cause to seize those tools. Not only those are defendants' fabrication of a conclusory statement with no specificity. That is another erroneous and pretentious argument. They were so anxious to injure and retaliate against Plaintiff by their false arrests and malicious prosecution that they ignored that any search and seizure after an arrest without probable cause is illegal and inadmissible. Whether Plaintiff had some tools or he had a bomb in his truck is immaterial by the "fruits of the poisonous tree" doctrine, nothing they seized is legal or admissible. Defendants cannot be allowed to claim the benefit of the poisonous fruits. They have not shown with any evidence, except fraudulent and false claims, that they had probable cause to arrest Plaintiff, then conduct their search of his truck. Plaintiff asks the court to articulate detailed finding of facts of probable cause of that arrest in his truck.

15.

Should the court rule in favor of any of defendants false, fabricated or pretentious claims of probable cause for Plaintiff's arrests, Plaintiff respectfully asks the court to give all specificities in its finding of facts, with dates and times of the incidents, names of witnesses, the reason they are credible and all details of what and which officer defendants had heard and seen, and the conclusion of law on why "there is no genuine issue as to any material fact and that the moving party defendants is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

16.

The remainder of the proposed order is erroneous and frivolous. To entitle the defendants to qualified immunity, The Fourth Circuit Court of Appeals has summarized this test as follows:

"Ruling on a defense of qualified immunity therefore requires (1) identification of the specific right allegedly violated; (2) determining whether at the time of the alleged violation the right was clearly established; and (3) if so, then determining whether a reasonable person in the officer's position would have known that doing what he did would violate that right. The first two of these present pure questions of law for the courts. *Harlow*, 457 U.S. at 818, 102 S.Ct. at 2738. The third, which involves application of Harlow's objective test to the particular conduct at issue, may require factual determinations respecting disputed aspects of that conduct. *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6, 107 S.Ct. 3034, 3042 n. 6, 97 L.Ed.2d 523 (1987).

Pritchett v. Alford, 973 F.2d 307, 312 (4th Cir.1992).

Qualified immunity is a question of facts for the jury therefore defendants cannot claim summary judgment. Most of all, no defendant has furnished any evidence from any witness to show he is entitled to qualified immunity. Plaintiff is suing the defendants pursuant to both the South Carolina Tort Claims Acts and 42 U.S.C.A. §1983 as well as common law tort. Defendants arguments on

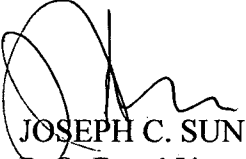
Pages 14 through 17 are erroneous and frivolous. They simply cite some case laws and statute and state a conclusion on behalf of the court that "I find that the defendants are entitled to summary judgment" with absolutely no finding of facts, and expect the court to sign an order in their favor.

17.

Plaintiff respectfully points out that there is a motion to postpone ruling on summary judgment and a motion to compel discovery pending before the court. Except on the issue of statute of limitation, after completion of discovery, Plaintiff will have much evidence to supplement in conflict of defendants affidavits and incident reports presented by the defendants.

This objection will be filed in the case and sent as an email to expedite the court's consideration.

Respectfully submitted,



JOSEPH C. SUN
P. O. Box 151
Bluffton, SC 29910

CERTIFICATE OF SERVICE

This is to certify that pursuant to the email and attachment from the defendants' counsel on the proposed order, I had already served the defendants and the court a copy of my Objection to Defendants' Proposed Order by emails on November 17, 2016 to the following addresses:

to the court : hmcleod@bcgov.net

to the defendants: hmeyer@griffithsharp.com

mgriffith@griffithsharp.com

lsmyth@griffithsharp.com

This 22nd day of November, 2016.



Handwritten signature of Joseph C. Sun, consisting of a large, stylized 'J' and 'S' followed by a horizontal line.

JOSEPH C. SUN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION TO COMPEL**

This matter is before me on the motion of Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales ("the Defendants"), dated June 13, 2016, for summary judgment pursuant to Rule 56, SCRCF. Present at the hearing were Hillary G. Meyer and E. Mitchell Griffith, attorneys for the Defendants, and the Plaintiff, Joseph C. Sun, proceeding pro se. Also scheduled was Plaintiff's Motion to Compel, filed July 21, 2016.

LEGAL STANDARD

"[A] motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRCF). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party."

Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). Moreover, “although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion.” Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006).

FACTS

The Plaintiff brought this action against the Town of Bluffton, the Bluffton Police Department and the individual defendants named above pursuant to the S.C. Tort Claims Act. § 15-78-10 *et. seq.* (“The Act”). These individuals are police officers and employees of the Town of Bluffton. As employees of the Town of Bluffton, they are subject to the Act. The Plaintiff’s original complaint was filed on April 21, 2014 and served on the Defendants thereafter. The original complaint asserted false arrest/ false imprisonment, gross negligence, slander/ libel per se, assault/ personal injury, and civil conspiracy. The Defendants filed a timely answer asserting various defenses and specifically as an affirmative defense raised the statute of limitations. The Town of Bluffton and Bluffton Police Department were represented by separate counsel, and they moved the Court to dismiss the complaint as being outside of the statute of limitations and therefore untimely filed. On December 28, 2014, the Court entered an order dismissing the complaint against the town and the police department finding “the Plaintiff failed to file a verified claim, thus the two year statute applies” and “the incidents giving rise to the Plaintiff’s cause of action all occurred outside of the two year period.” Judge Dukes’ Order filed December 10, 2014.

On April 28, 2015, the Plaintiff filed a motion to amend and add two causes of action, namely Malicious Prosecution and a 42 USC §1983 claim against Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales. Thereafter, on August 28, 2015, these Defendants filed a motion for Summary Judgment. Prior to the hearing on the motion for Summary Judgment, on October 8, 2015 the Court granted the Plaintiff's motion to amend which added the two new causes of action. However, the allegations of the first five (5) causes of action mirrored the original complaint. The Parties agreed that the two new causes of action were not subject to the pending motion for summary judgment because they had not been pled at the time of the filing of the motion.

On December 22, 2015, the Court entered an order dismissing the first five causes of action against the Defendants, namely false arrest/false imprisonment, gross negligence, slander/libel per se, assault/personal injury, and civil conspiracy, finding "the suit was brought after the applicable statute of limitations expired on these causes of action." Judge Keesley's Order filed December 28, 2015. The Court did not make any findings as to the two new causes of action. Accordingly, only two causes of action, Malicious Prosecution and a 42 USC §1983 claim, remained to be adjudicated against the Defendants.

In his Amended Complaint, the Plaintiff makes various allegations of fact against the individual defendants, complaining of incidents that allegedly occurred between the years 2009 to 2012. He asserts that the Defendants arrested him on numerous occasions with malice, without probable cause, and in violation of his civil rights, and that on each occasion,

the charges against the Plaintiff were eventually resolved in his favor. (Amd. Compl. ¶¶ 45 – 48). The incidents are as follows:

- (1) The first incident complained of occurred in July 2009, whereby Officer Dickson allegedly wrongfully arrested the Plaintiff and wrongfully accused the Plaintiff of kidnapping. With this incident, the Plaintiff was placed under arrest, but he was never charged with kidnapping or any other offense. (Amd. Compl. ¶ 15).
- (2) Then, in March 2010, the Plaintiff alleges that he was arrested twice by Defendant Norberg for attempting to contact his ex-wife regarding visitation with his child. (Amd. Compl. ¶¶ 20 – 21). The Plaintiff was charged with harassment, but these charges were dismissed on September 8, 2011. (See “Order for Destruction of Arrest Records,” signed Feb. 14, 2012; Exhibit A).
- (3) Next, the Plaintiff alleges that on March 10, 2010 he was arrested by Defendants Babkiewicz and Tubbs without a warrant for possession of burglary tools and harassment. (Amd. Compl. ¶ 18). This charge was nolle prossed on October 14, 2013. (Nolle Prose forms, signed by Assistant Solicitor; Exhibit B; see also Public Index Search, J. Sun; Exhibit C).
- (4) Directly after this arrest, in March 2010, the Plaintiff alleges that Defendant Hebda used false reports to convince the magistrate judge to deny the Plaintiff's bail. (Amd. Compl. ¶ 19).
- (5) Again, on March 17, 2010, the Plaintiff alleges that he was falsely arrested by Defendant Gonzales and charged with offenses such as stalking and

possession of burglary tools. (Amd. Compl. ¶ 22). These charges were nolle prossed on October 14, 2013. (Nolle Prosse forms, signed by Assistant Solicitor; Exhibit B; see also Public Index Search, J. Sun; Exhibit C).

- (6) Finally, the Plaintiff alleges that in February 2012 Defendant Dickson filed a false police report against the Plaintiff alleging traffic violations following a motor vehicle collision. (Amd. Compl. ¶ 17). However, the record reflects that officers found both vehicles to be at fault for the motor vehicle accident, and neither party was cited for a violation. (Traffic Incident Report, Feb. 9, 2012; Exhibit D).

DISCUSSION

I. The Plaintiff failed to institute either cause of action within the applicable statute of limitations; therefore, his claims fail as a matter of law.

A. The Plaintiff's malicious prosecution claim was brought outside the applicable statute of limitations period.

"Under the common law, the limitations period for a plaintiff's malicious prosecution claim commences when the proceedings brought against him are resolved in his favor." Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 390 (4th Cir. 2014), *cert. denied sub nom. Baltimore City Police Dep't v. Owens*, 135 S. Ct. 1893, 191 L. Ed. 2d 762 (2015). "Where an accused establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained." McKenney v. Jack Eckerd Co., 304 S.C. 21, 22, 402 S.E.2d 887, 887-88 (1991). Accordingly, a plaintiff's statute of limitations for a malicious prosecution claim begins to run on the date that the *nolle prosequi* is entered. Owens, 767 F. 3d at 390. South Carolina recognizes a two-

year statute of limitations for malicious prosecution claims brought against employees of the state, who fall within the provisions of the South Carolina Tort Claims Act. Loadholt v. Cribb, No. 2004-UP-238, 2004 WL 6251537, at *3 (S.C. Ct. App. Apr. 12, 2004) *citing to* Joubert v. S. Carolina Dep't of Soc. Servs., 341 S.C. 176, 183, 534 S.E.2d 1, 5 (Ct. App. 2000).¹

The Plaintiff filed his amended complaint adding the two new claims on October 8, 2015. At that time, this Court already held that the Plaintiff's five (5) other state law claims were barred by the two-year statute of limitations. Judge Keesley's Order filed December 28, 2015. Therefore, it stands to reason that the Plaintiff's malicious prosecution claim is also barred.

In any event, the Plaintiff presents six (6) incidents occurring between the years 2009 to 2012, described at length above, four of which are barred by the two-year statute of limitations. First, the Plaintiff alleges that in July of 2009 Defendant Dickson wrongfully arrested him and threatened to charge him with kidnapping. (Amd. Compl. ¶ 15). This incident occurred in 2009 and no formal charges were filed; therefore, the Plaintiff failed to meet the two-year statute of limitations. Next, in March of 2010 the Plaintiff alleges false arrest by Defendant Norberg, but the evidence shows that these charges were dismissed on September 8, 2011 by Order for Destruction of Arrest Records, signed by Beaufort Magistrate Judge Clifford Bush, III. Then, the Plaintiff alleges that in March 2010 Defendant Hebda asked the judge to deny the Plaintiff's bail (Amd. Compl. ¶ 19). This, too, falls outside the two year statute of limitations. Finally, the Plaintiff alleges that in February

¹ It has already been established by Order of this Court that the Defendants are subject to the provisions of the Tort Claims Act. Judge Keesley's Order entered December 28, 2015. It has further been established that the Plaintiff failed to file a verified claim, thus the two year statute applies. Judge Dukes' Order entered December 10, 2014.

of 2012 Defendant Dickson filed a false accident report about the Plaintiff (Amd. Compl. ¶ 17), which is, again, outside of the two-year statute of limitations.

B. The Plaintiff's § 1983 claim was brought outside the applicable statute of limitations period.

There is no statute of limitations specified by 42 U.S.C. § 1983; therefore, the proper statute of limitations in a § 1983 claim is that of the forum state's statute of limitations for personal injury claims. Wilson v. Garcia, 471 U.S. 261, 276 (1985), *superseded by statute on other grounds* Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004); see also Nat'l Adver. Co. v. City of Raleigh, 947 F.2d 1158, 1161 (4th Cir.1991). In South Carolina, the statute of limitations for a personal injury claim is three years. S.C.Code Ann. § 15-3-530(5). "Actions must be commenced within three years after the plaintiff knew, or by the exercise of reasonable diligence should have known, that a cause of action existed." S.C.Code Ann. § 15-3-530. Therefore, for the Plaintiff to maintain an action under 42 U.S.C § 1983 for a violation of his federal rights against the Defendants, the Plaintiff must have brought the action three years after each offense complained of. The Plaintiff fails to meet the requisite three-year statute of limitations to bring a § 1983 claim as to all of the Defendants' alleged acts.

The Plaintiff's Amended Complaint adding a cause of action under § 1983 was filed on October 8, 2015. None of the events that the Plaintiff complains of in his pleadings happened within three years of October 8, 2015. In fact, the last of the alleged events happened in February of 2012. The Plaintiff was aware that an action under 42 U.S.C. § 1983 existed at the time that each of the events allegedly occurred because he claims that

under each set of facts he was wrongfully accused and/or arrested. However, the Plaintiff waited until October 8, 2015 to amend his complaint to include a § 1983 action against the Defendants. The Plaintiff had three years from the date of each incident to file a § 1983 action. The Plaintiff failed to do so, and the statute of limitations as to the § 1983 cause of action has run. Therefore, the § 1983 claim against the Defendants must be dismissed as a matter of law as barred by the applicable statute of limitations.

C. The Plaintiff's claims do not relate back to the filing date of the original complaint.

I find that the Plaintiff's claims under § 1983 and for malicious prosecution do not relate back to the date of his original filing, April 21, 2014. An amendment to a pleading relates back to the date of the original pleading "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." Rule 15(c), SCRCP. But "the central requirement here is that the party defending against the new claim have sufficient notice of it, *i.e.*, 'the new claim must be 'logically related' to the *matters originally pleaded* so that the defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.'" Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 222-23, 525 S.E.2d 888, 897 (Ct. App. 1999) (cited by Wright v. Am. Bankers Life Assur. Co. of Florida, 586 F. Supp. 2d 464, 469 (D.S.C. 2008)). "The factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in

support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back.” Id.

The Plaintiff cannot relate his § 1983 and malicious prosecution claims back to his original complaint. The Defendants did not have notice of the new claims because the new claims are unrelated to the original allegations. The new § 1983 claim is based on an alleged violation of the Plaintiff's constitutional rights. None of the allegations of the Plaintiff's original complaint alleged any constitutional violations, and there was no indication whatsoever on April 21, 2014 that the Plaintiff had any intention of claiming a violation of his rights. Likewise, the new malicious prosecution claim relates to the Defendants' actions in prosecuting the Plaintiff, and in no way relates to the original actions. Further, the Plaintiff will rely on newly obtained and different evidence to prove both new claims. In the original actions, the Plaintiff had to establish that the Defendants acted negligently. The Plaintiff must now establish that the Defendants violated clearly established constitutional rights and maliciously instituted proceedings without probable cause. The Plaintiff, in his affidavit and at the hearing of this motion, presented new evidence relating to his criminal prosecution that was not presented in his original action. I find that the Defendants would be unfairly prejudiced if the Plaintiff were allowed to relate his new §1983 and Malicious Prosecution claims back to his original complaint.

Additionally, even assuming that the Plaintiff's new claims do relate back to his original complaint, the majority of the Plaintiff's new claims are still time-barred based on the applicable statute of limitations periods discussed above.

II. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for malicious prosecution.

In order for the Plaintiff to maintain an action for malicious prosecution, the Plaintiff must show: (1) the institution or continuation of original judicial civil or criminal proceedings, (2) by the Defendant, (3) termination of the proceeding in the Plaintiff's favor, (4) malice in instituting such proceedings, (5) want of probable cause, and (6) resulting injury or damage. Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607,608 (1965).

With many of the incidents complained of, the Plaintiff fails to meet the first and second element of his malicious prosecution claim because the Plaintiff's allegations do not involve "the institution of original judicial civil or criminal proceedings... by the Defendant," therefore; these actions against the Defendants should be dismissed. For example, the Plaintiff complains that he was detained in July 2009 and threatened with a kidnapping charge, but no actual charges were ever initiated by Defendant Dickson. (Amd. Compl. ¶ 15). The Plaintiff also complains that Defendant Hebda asked a magistrate judge to deny the Plaintiff's bail, but this too was not an action instituted by Defendant Hebda. (Amd. Compl. ¶ 19). Additionally, in February 2012 the Plaintiff complains that Defendant Dickson made a false traffic report (Amd. Compl. ¶ 17); however, Officer Dickson's incident report states that no citations were issued to the Plaintiff or any other driver.

Next, the Plaintiff fails to establish that the proceedings against him were terminated in his favor. The fact that a charge is *nolle prossed* does not guarantee that a charge was dismissed in the Plaintiff's favor. See Law v. S. Carolina Dep't of Corr., 368 S.C. 424, 435–36, 629 S.E.2d 642, 648–49 (2006) (holding that where the reason for the *nolle prosee* was because the arresting agency chose to pursue charges in a federal court instead of state court,

the reasoning did not imply the plaintiff's innocence). The evidence shows that two of the Plaintiff's charges were *nolle prossed* because the state lacked sufficient evidence to prosecute simply based on the fact that the victim (the Plaintiff's ex-wife) was an uncooperative witness. This reasoning is insufficient to show the Plaintiff's innocence.

The Plaintiff also fails to show that the Defendants acted with malice or with lack of probable cause. The burden falls on the Plaintiff to show the absence of probable cause, and "the Defendant must be absolved from liability if plaintiff fails to show that the prosecution was instituted maliciously and without probable cause." Parrott, 246 S.C. at 322. Additionally, "although malice may be inferred from a want of probable cause, a want of probable cause cannot be inferred from any degree of malice." Parrott, 246 S.C. at 322; Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). Probable cause is defined as:

The [existence] of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

Parrott, 246 S.C. at 321; Elletson v. Dixie Home Stores, 231 S.C. 565, 572, 99 S.E.2d 384, 387 (1957); Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). In determining the existence of probable cause, "the facts must be regarded from the point of view of the prosecuting party; the question is not what the actual facts were, but what the prosecuting party honestly believed them to be." Brown v. Leonard, No. 2008-UP-039, 2008 WL 9832870, at *3 (S.C. Ct. App. Jan. 11, 2008), *citing to* Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006). "Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious

prosecution, it may be decided as a matter of law when the evidence yields but one conclusion.” Id. Many of the facts of this case are substantially similar to those of Leonard. In Leonard, the South Carolina Court of Appeals held that an individual officer, Deputy Leonard, was not liable for malicious prosecution where the record reflected that he based his arrest of the plaintiff on statements made by witnesses on-site directly following an altercation. Leonard at *3. The court stated that “the magistrate ultimately found that probable cause existed upon issuance of the warrant. The existence of probable cause is apparent from the record.” Id. The court explained that:

While Brown asserts that Leonard did not see or observe Brown punching or assaulting anyone, this assertion does not entitle Brown to maintain a malicious prosecution action. The deputy provided statements under oath to the magistrate about facts which suggested that a crime had been committed. The magistrate found probable cause that a crime had been committed. On appeal, Brown does not challenge the finding of probable cause by the magistrate. Instead, the gravamen of Brown's claim is that the statements made were allegedly false. His inconsistent and conclusory allegation that no one provided any statements to the deputy is unsupported by the record and the record is lacking as to any basis upon which Brown acquired such personal knowledge.

Leonard, at *4.

Here, the Plaintiff fails to show any malice or want of probable cause by the Defendants in instituting proceedings against the Plaintiff. Like in Leonard, the evidence presented shows that the Defendants based all of their arrests of the Plaintiff on statements given by witnesses after the fact, and warrants were issued for each arrest. This is sufficient to show probable cause. The Plaintiff's argument is that the Defendants based their arrests on fabricated facts and statements. However, the record reflects that with each incident where the Plaintiff was arrested and charged, the Defendants had sufficient information to

constitute probable cause. The Plaintiff alleges that in March 2010 Defendant Norberg falsely arrested him for contacting his ex-wife (Amd. Compl. ¶¶ 20 – 21), but the record reflects that Defendant Norberg was informed by the Plaintiff's ex-wife that the Plaintiff was calling her directly and harassing her on numerous occasions in 2010. Furthermore, the Plaintiff alleges that around this same time Defendants falsely arrested him for possession of burglary tools, stalking, and burglary (Amd. Compl. ¶¶ 18 & 22), but the record reflects that the Defendants were informed by the Plaintiff's ex-wife that the Plaintiff had been by the ex-wife's residence on multiple occasions, had attempted to enter the residence using tools, and even broke into the ex-wife's residence on one occasion. With each of these arrests, a warrant was obtained, meaning that with each incident, the magistrate judge found that probable cause existed for the Plaintiff's arrest. Therefore, probable cause existed and this case falls squarely within the facts of Leonard and Law. The Plaintiff fails to meet his burden of showing a want of probable cause for any of the alleged incidents, entitling the Defendants to a grant of summary judgment on the Plaintiff's malicious prosecution claim.

Finally, to maintain an action for malicious prosecution, the Plaintiff must also show that he was damaged by the actions of the Defendants. The Plaintiff provides no evidence of any injury as a result of the alleged conduct of the Defendants. The Plaintiff's claim for malicious prosecution must fail as a matter of law.

III. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for a violation under 42 U.S.C. § 1983.

In order for the Plaintiff to assert a claim under 42 U.S.C. § 1983, the Plaintiff has to show “that (1) the actions of the police officers deprived him of an actual constitutional right

and (2) the right was clearly established at the time of the alleged violation.” Camden v. Hilton, 360 S.C. 164, 177, 600 S.E.2d 88, 94 (Ct. App. 2004). Furthermore, “the doctrine of qualified immunity shields police officers acting in their official capacity from suits for damages under 42 U.S.C § 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known.” Id. “A defense of qualified immunity may not be rebutted by evidence that the defendant’s conduct was malicious or otherwise improperly motivated.” Camden, 360 S.C. at 179-80, *citing to* Crawford- El v. Britton, 523 U.S. 574 (2004). Put another way, “qualified immunity now depends on the objective reasonableness of an officials’ conduct, as measured by reference to clearly established law, not upon malice or other subjective factors,” and “the only inquiry is whether a reasonable person could have believed his actions lawful at the time they were undertaken.” Camden, 360 S.C. at 179-80, *citing to* Williams v. Treen, 671 F.2d 892, 896 (5th Cir.1982); Leibowitz v. United States Dept. of Justice, 729 F.Supp. 556, 561 (E.D.Mich.S. Div. 1989).

Here, the Defendants acted in their official capacity as a reasonable officer would have under similar circumstances, and their actions were lawful. The Defendants were acting on statements made by the Plaintiff’s ex-wife on every occasion, as well as on information they obtained from their own investigation of the incidents. The evidence presented to the Defendants before every arrest indicated that an illegal act had been committed by the Plaintiff. The Defendants also obtained arrest warrants for each action. Therefore, the Defendants were at all times acting as a reasonable officer would, making lawful arrests of the Plaintiff. The Plaintiff fails to show that the Defendants violated any of

his constitutional rights. The Plaintiff alleges that the Defendants acted with malice in arresting the Plaintiff, but the court need not make this determination, as the analysis only involves the objective standard of reasonableness. All evidence before the court shows that the Defendants are entitled to qualified immunity, and the Plaintiff's § 1983 action must be dismissed.

IV. Pursuant to the South Carolina Tort Claims Act, the Plaintiff fails to state a claim upon which relief can be granted against the Defendants in their individual capacities.

The Plaintiff has failed to state a cause of action against the individual Defendants for which relief can be granted. The Plaintiff seeks a malicious prosecution claim against individual officers of the Bluffton Police Department. However, it has already been established in this action that the Defendants in this suit are subject to the provisions of the South Carolina Tort Claims Act. Judge Keesley's Order filed December 28, 2015. Section 15-78-20 of the South Carolina Tort Claims Act does not allow the Plaintiff to sue an individual employee directly for negligence in his official capacity, so the Plaintiff's malicious prosecution claim against the Defendants in their official capacities fails to state a claim as a matter of law.

V. The Defendants are entitled to discretionary immunity pursuant to the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act provides discretionary immunity for losses resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). "Discretionary immunity is contingent on proof the government entity, faced with

alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.” Sabb v. S. Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). “Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision,” and “the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense.” Summer v. Carpenter, 328 S.C. 36, 46, 492 S.E.2d 55, 60 (1997).

I find that the Defendants were exercising discretionary immunity in each of the instances alleged by the Plaintiff. On every occasion complained of by the Plaintiff, the Defendants received information pertaining to the Plaintiff, made the determination that an intervention or arrest was necessary, and made a conscious choice to arrest, detain, question, or search the Plaintiff. The Defendants were at all times acting within their official capacities as employees of the Bluffton Police Department. Therefore, the Defendants are entitled to discretionary immunity, and summary judgment is proper.

VI. The Officers are state officials and may not be sued under 42 U.S.C. § 1983.

The Civil Rights Act, 42 U.S.C. § 1983, does not allow suits against States and their officials. “42 U.S.C. § 1983 provides a [forum] to remedy many deprivations of civil liberties, but it does not provide a [forum] for litigants who seek a remedy against a State for alleged deprivations of civil liberties.” Will v. Mich. Dep’t of State Police, 491 U.S. 58, 66 (1989); see Board of Trustees of the Univ. of Ala. V. Garrett, 531 U.S. 356 (2001) (holding that the Eleventh Amendment prohibits non-consenting states from being sued in federal or state court by private individuals).

Neither the State, nor a State official acting in an official capacity, are “persons” for

purposes of actions under § 1983. “[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office....We hold that neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Id.* at 71; *see also Scheuer v. Rhodes*, 416 U.S. 232 (1974).

The Plaintiff did not sue any of these officers individually. In fact, the Plaintiff admitted at hearing that he was suing Officers Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales for their actions taken while serving as officers of the Bluffton Police Department. Therefore, a § 1983 action may not be brought against these officers and they are entitled to judgment as a matter of law.

Therefore as discussed above, it is:

ORDERED that Plaintiff’s Motion to Compel is DENIED and Defendants’ Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

Special Circuit Judge Marvin H. Dukes, III

Beaufort, South Carolina

December_____, 2016



Beaufort Common Pleas

Case Caption: Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number: 2014CP0700943

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2016-12-07 11:25:59 page 18 of 18

CERTIFICATE OF SERVICE

On December 9, 2016, I served *Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiff's Motion to Compel* pursuant to Rule 5, SCRPC by depositing it in the United States mail, with postage prepaid, and addressed as follows:

Joseph C. Sun
PO Box 151
Bluffton, SC 29910


Linda D. Smyth

Beaufort, South Carolina

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,
Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

MOTION TO POSTPONE
DETERMINATION OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

PLAINTIFF JOSEPH SUN moves the court to postpone the determination of Defendants' Motion for Summary Judgment on the ground that there is an unresolved motion to compel discovery still pending before the court which was filed prior to Defendants' Motion for Summary Judgment and was already scheduled before the court for the same hearing on September 16, 2016.

At the start of the aforesaid hearing, Plaintiff reminded the court that his Motion to Compel Discovery was also scheduled for that morning. For unspecified reason, the court indicated to put Plaintiff's motion to compel on hold and proceeded to hear Defendants' motion for summary judgment and thereafter the hearing was adjourned. The defendants have now served Plaintiff their proposed order without allowing Plaintiff the benefit of any meaningful discovery in the case.

The defendants intentionally, erroneously and groundlessly failed to answer all Plaintiff's requests for discovery as shown in his motion to compel which included the request for the production of documents and things, interrogatories and request for admissions. Most importantly, defendants' have not allowed Plaintiff any deposition pursuant to Rul 30, SCRPC. Plaintiff needs to rely on his discovery to conflict defendants' motion which contains mostly hearsay, some false

and some perjured testimonies. Specifically, Plaintiff has the right to know what are the probable causes the defendants claim to have when they arrested and charged Plaintiff on the six (6) charges as Plaintiff had listed in his affidavits already filed in opposition to defendants' motion. On at least two (2) arrests, Plaintiff was arrested without a warrant or probable cause. Plaintiff also has the right to know all details of the witnesses (their names and addresses) and the facts the defendants based on to establish their probable causes. All defendants relied on their entire motion so far is some hearsay that ex-wife and her lawyer told them Plaintiff was nearby and that Plaintiff was "not supposed" to be around with not a scintilla of specificity. Plaintiff was in jail for a total of about six months in 2010 because of defendants' wrongful and some criminal acts. Plaintiff has the right to know where Defendant Gonzales obtained his evidence that allowed him to state under oath in his affidavit that Plaintiff had admitted to be in his marital home on March 16, 2010 when Detention Center record shows that Plaintiff was still in jail that day. Most of all, the video taken by Gonzales himself can prove that Gonzales was lying under oath about the March 16 and 17 date which is not in the video recording. Gonzales simply fabricated that in his affidavit. A deposition can obtain evidence from Gonzales that he had malicious, calculated and may be criminal intent, and that he did not make a mistake on the March 16 and 17 date.

The disallowance of Plaintiff's discovery (by disregarding his motion to compel) in this case is a denial of his civil rights to due process of the law. In the hearing on Plaintiff's motion to compel discovery, Plaintiff would ask the court to set out timelines, terms and conditions to complete his discovery particularly the depositions. In 2015, defendant counsels had refused to answer all Plaintiff's written requests for discovery or cooperate on the deposition of the defendants, as shown in the Motion to compel. Defendants counsels also misinterpreted the rules and implied

that Plaintiff had to pay each defendant \$25.00 for the deposition.

To preserve the record in this case for the purpose of appeal should it be necessary, Plaintiff had filed a formal Request for Hearing on his pending Motion to Compel Discovery and the within motion to postpone final determination of defendants' motion for summary judgment until Plaintiff's motion to compel discovery has been heard and full discovery including depositions of the defendants are completed.

Wherefore, Plaintiff prays the court to postpone the determination of defendants motion for summary judgment until after the court has heard his motion to compel discovery and that Plaintiff has completed his discovery pursuant to SCRCF.

This 30th day of October, 2016.

Respectfully submitted,


JOSEPH SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

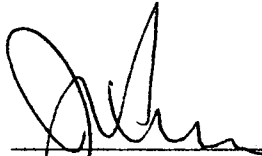
This is to certify that I have this date served the Defendants a copy of the Plaintiff's Motion to postpone determination of defendant's motion for summary judgment and my Request for Hearing, by depositing a copy of same in the U.S. Mail postage prepaid to:

E. Mitchell Griffith, Esq.
P. O. Drawer 570
Beaufort, SC 29901

and

by email to: Hmeyer@griffithsharp.com

This 31st day of October, 2016.


JOSEPH SUN

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,
Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

REQUEST FOR HEARING

PLAINTIFF JOSEPH SUN, hereby requests the court to schedule a hearing on his pending Motion to Compel Discovery which hearing should take about 45 minutes. Plaintiff has shown in his Motion to postpone determination of defendant's motion for summary judgment, already filed in this case that he needs the discovery to obtain admissible evidence to conflict and oppose defendants motion, and that it is a deprivation of his civil rights to due process by not allowing him to be heard on his motion.

The court should take notice that Plaintiff's motion to compel discovery was actually filed prior to Defendants' motion for summary judgment and was also scheduled to be heard in the same hearing on September 16, 2016.

Respectfully submitted,


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

**COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA**

JOSEPH C. SUN,

Plaintiff,

v.

**TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.**

Defendants.

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

CIVIL ACTION

NO. 2014-CP-07-00943

**PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

This is a supplemental response which contains essentially the extracted content of an email already sent to the court in response to the court's email stating its intended ruling and invited the parties' comments. Plaintiff replied with his objection email which is now rewritten in this supplemental response and filed to preserve Plaintiff's objection to the Court's intended ruling. This supplemental brief contains some additional grounds of objection and arguments.

Plaintiff's initial objection is defendants' noncompliance to the arbitration in 2015 in this case as required by Rule 3, South Carolina Alternative Dispute Resolution (ADR) which was originally scheduled (or attempted to be scheduled¹) but was unresponded to by defendants after being contacted by the arbitrator. The aforesaid arbitration which Plaintiff has not waived but attempting to get defendants cooperation in scheduling a hearing was put aside when in fact, Plaintiff's motion to compel was to be a part of the arbitration. Plaintiff asks the court for sanction on defendants' noncompliance.

¹ Plaintiff first received in 2015 a letter from an attorney informing him of the court's schedule on arbitration. Plaintiff called the attorney back and told her to call defendants' counsel to arrange for arbitration. Plaintiff had not heard back.

Plaintiff objects to the court's intended ruling regarding defendants' motion for summary judgment on the following grounds:

(1) There was indication that prior to the September 16, 2016 hearing, the court had already prepared to make a favorable ruling for the defendants because when Plaintiff asked the court about his pending motion to compel, the court responded by stating it would put it on hold until the motion for summary judgment was ruled on even though Plaintiff's motion to compel was filed before Defendants' motion for summary judgment.² But Plaintiff needed the answers and discovery material to oppose defendants' motion. The additional discovery (especially deposition which was requested in a letter), could obtain evidence and admissions from the defendants to refute their arguments and show that they had committed malice and wrongdoings (including schemes and conspiracy) in their arrest and malicious prosecution of Joseph Sun. It appears that the court had already decided not to let Plaintiff have those discovery material as compelled in his motion because the granting of defendants' motion for summary judgment would end the case.

That morning, both parties proceeded to make arguments on the motion for summary judgment. The court had deprived Plaintiff the evidence to oppose the defendants' motion, then grant them a summary judgment. This supplemental brief therefore also serves as Plaintiff's objection to the court's ignoring of his motion to compel discovery and proceed to only hear defendants' motion for summary judgment. In fact, Plaintiff still asks for a ruling on the merits of

² A hearing was initially scheduled on July 12, 2016 at 2:00 p.m. on Plaintiff's motion to compel. Defendants counsel got an untimely continuance about 2 days prior to that hearing based on his conflict of schedule and the hearing was continued to September 16, 2016 before this court. Prior to the hearing, in September, 2016 defendants filed their motion for summary judgment and served Plaintiff their memorandum in support on September 7, 2016. At the September 16 hearing, this court put Plaintiff's motion to compel which was to be heard in July 2016 aside and proceeded to hear and grant defendants motion for summary judgment.

his pending motion to compel discovery and a written order be issued.

(2) Plaintiff make this restatement of some facts based on the two Affidavits of Joseph Sun:

Plaintiff filed the within action on April 21, 2014. The Exhibits attached with Affidavit of Joseph Sun show that: (1) On July 10, 2012, Sun was acquitted of the charge of Unlawful Telephone Call. (2) On February 14, 2012, he was acquitted of the charge of Harassment. (3) On May 30, 2012, he was acquitted of the charge of trespass by reversal of conviction. (4) Indictment 2010GS0700787 on the charge of burglary was nolle prosequere on October 14, 2013. (5) Indictment 2010GS0700765 on the charge of possession of burglary tools was nolle prosequere on October 14, 2013, and (6) Indictment 2010GS0700788 on the charge of Stalking was nolle prosequere on October 14, 2013. Except for the second (2) charge of Harassment, Plaintiff's complaint was filed within the two (2) years Statute of Limitation for tort claim and 3 years for §1983 after all charges were resolved in his favor. The second charge had missed the tort claim but was filed within 3 years statute of limitation for §1983.

As stated in Plaintiff's response to defendants' motion, his motion to amend to add the cause of actions six (6) and seven (7) was granted on November 13, 2015. All additional causes of action related back to the original date of filing. Defendants' argument in their motion claiming that they would not relate back is untimely and erroneous according to S.C. Supreme Court holding in *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004) where SC supreme court reversed a denial of motion to amend on similar argument made by defendants. The Supreme Court also held that the burden is on the defendants opposing the amendment to show prejudice, not the Plaintiff who amended the complaint.[357 S.C. 175] The Supreme Court held that as long as the facts are the same (regardless of cause of action), there could be no prejudice. All defendants' erroneous

argument in opposition to "relating back" should be raised before Plaintiff's motion to amend was granted. *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999) Defendants knew at the hearing on motion to amend that Plaintiff was seeking to "relate back" Counts 6 and 7. On November 13, 2015 when the court granted Plaintiff's motion to amend, the relating back had already occurred and granted. It became the law of the case. Defendants cannot complain now! Therefore, defendants motion for summary judgment on the ground regarding statute of limitation must be denied because five of the six charges against Plaintiff were resolved in his favor less than 2 years prior to the filing of this complaint for the cause of action under Tort Claims and within 3 years for the §1983 claim, and the "harassment" charge was dismissed within 3 years prior, on the cause of action under §1983.

Therefore, in the court's order granting summary judgment, this very important issue of "relating back" must be addressed and the court's determination be stated clearly.

(3) Again, referring back to Plaintiff's aforesaid response (Page 2) on his allegations in his Amended Complaint, Plaintiff alleges that defendants committed their wrongful acts with actual fraud and malice, all the arrests were made without probable cause or warrant. The Supplemental Affidavit of Joseph Sun shows that Defendants Babkiewicz, Norberg and Tubbs arrested Sun with no reason whatsoever on the highway and then drove to the Beaufort Magistrate to fabricate some ground for a warrant afterwards so they could maliciously prosecute Sun. That is in violation of due process actionable under 42 UCS§ 1983 and malicious prosecution. Plaintiff cited case laws in support in aforesaid response that lack of probable cause is a showing of malice.

Defendants' affidavits and attachments do not show any probable cause of crimes³ likely

³ Even giving defendant Babkiewicz the benefit of doubt (contrary to Rule 56, SCRPC) of his vague and false affidavit, there may be a violation of family court pendente lite order.

committed to give them the right to arrest and prosecute Sun. They simply made numerous vague and false claims that they talked to ex-wife or someone that morning therefore they arrested Sun in his garage. Sun signed a paper and was released. Babkiewicz did not state any probable cause for Sun's second arrest on May River Road and the illegal search and seizure in the afternoon. Defendant is just trying to muddy the water to confuse the court. Even so, according to Rule 56, SCRCF, any confusion or doubt must be resolved in favor of the non-movant Sun. Babkiewicz affidavit Para.12 and 13 referred to Exhibits A and B which are incident reports that show no crime was committed, and incident reports were not written under oath. The incident reports are just hearsay and story telling with no truth or consequence. They cannot use that to get summary judgment against Sun's conflicting affidavit under oath. Defendants should not arrest Sun without probable cause, then took Sun to Beaufort Magistrate to falsely swear arrest warrants against Sun after their illegal search and seizure. Defendants Babkiewicz, Norberg and Tubbs have not provided any other evidence to justify any probable cause. There can be no "discretionary immunity" for a scheme and conspiracy to arrest and prosecute Sun without probable cause of any crimes committed. There was no "discretionary immunity" for Babkiewicz, Norberg and Tubbs to arrest, curse at Sun on the highway, illegally search and seize tools from his truck for no reason much less probable cause, then drove to Beaufort Municipal judge to fabricate arrest warrants. There can be no "discretionary immunity" for Gonzales and Norberg to impound Sun's truck which was lawfully parked at his home while Sun was in jail, then lulled Sun to go to Bluffton Police Department at midnight by falsely promising him "No Arrest" and the return of Sun's truck, then harassing and pressuring Sun at the interrogation into making some statement which Gonzales could distort and lie

into what he falsely claimed as an admission of breaking into Sun's own home⁴, and had Sun arrested and maliciously prosecuted. All those were premeditated wrongful if not criminal activities (of perjury) and schemes committed by the defendants against Sun.

Joseph Sun's Supplemental Affidavit has conflicted Babkiewicz' affidavit. Sun averred that while he was driving lawfully on May River Road, Defendant Babkiewicz rushed to him and arrested him and impounded his truck. Even if Babkiewicz Affidavit on his arrest warrant is taken as truth, it only states that "Joseph Sun went to 18 6th Avenue after being told not to go to the house by Bluffton Police earlier." What was the crime committed? The house was and still is Sun's home, therefore, there cannot possibly be any probable cause for Sun's arrest and charges of possession of tools, in violation of Criminal Code 16-11-0020 as stated by Babkiewicz in Warrant J-350995. All defendants erroneously claimed the violation of pendente lite order was crime.

(4) As to the Gonzales Affidavit, he lied that "I determined that Joseph Sun had broken into LiLing Sun's residence, stole 3 bolt locks, broke a piece of glass in the master closet and wrote you die in Chinese." He has not stated how he "determined" that falsity by his malicious trick (as explained previously in Para. (3)) and coercion. Gonzales further lied that Sun did enter the residence and wrote "you die" **on the date of the warrant** (March 16 and 17). Gonzales' perjury is conflicted by Sun's affidavit and can be proven false with the video recording which he took. Plaintiff must be given opportunity to proven Gonzales lies with the recording he took on Sun's interrogation at the police department.

Gonzales' perjury is on Para. 8 of his Affidavit that "Mr. Sun informed me that between the dates of March 16 and 17, 2010, he did enter the residence located at 18 Sixth Ave. To get some

⁴ Except as result of the Pendente Lite Order at the family court, Sun had full legal right to be at his own home or garage any time and for as long as he wished.

personal...” Plaintiff was telling Gonzales as proven with the video recording, that in the past he had entered his home⁵. Because Gonzales’ false promises, his attempt to distort Plaintiff statement to falsely claim as an admission for the date of March 16 and 17, and his lies contrary to the video recording, he has provided ample evidence of his malice and perjury in his affidavit. Plaintiff affidavit has conflicted Gonzales’s lies. The video recording and Beaufort Detention Center record can show Gonzales’ perjury. Plaintiff had not and could not have admitted he was in his Bluffton home on March 16 and 17 because he was still in jail at the detention center on March 16, 2010 until he was released on bond late that date without any transportation. He had to stay at a nearby motel that night and meet with his counsel Tootle, Esq. the next day⁶ in Beaufort. Therefore, Gonzales is not entitled to summary judgment under any theory of defense.

(5) Plaintiff stated in his supplemental affidavit under oath that he did not admit any of what happened on the date Gonzales claimed. Plaintiff alleges that defendants conspired in a scheme to injure him in retaliation of lawsuits filed in 2009. Plaintiff testified that Gonzales told him in the detention that he would see that Plaintiff would stay in jail for a long time. That is actionable under 42 USC§ 1983. Defendants then erroneously claim that the 2009 incident was a separate claim and asked the court to grant a summary judgment on expiration of the statute of limitation. Defendants’ conspiracy to deprive Plaintiff his civil rights is actionable under 42 USC§ 1985(3).

(6) Defendants tried to argue that a requirement of “resolving in favor of Plaintiff” in the cause

⁵ Because of Gonzales’ coercion and promise of no arrest which Plaintiff believed but turned out to be false, Plaintiff said he had been in his home in the past, because the house was his home since 2007 up to now. Plaintiff never said and could not possibly be in his home on March 16 and 17 because he was in jail at Beaufort Detention Center.

⁶ That was why Plaintiff stated in the video that he had been in his home (meaning in the past from 2007-2009) but Gonzales lied that it was on Mar 16 and 17.

of action of malicious prosecution is the finding of innocence, which is supported by some case law. But there is no case law that requires the finding of innocence be determined prior to the summary judgment stage. Plaintiff can reverse the burden and prove his innocence at the trial by the jury on the three (3) cases that were nolo prossed. There is no case law that says it would be too late at the trial to allege in the complaint. Any doubt or uncertainty must be resolved in favor of the non-movant Sun. Furthermore, there are three (3) other malicious prosecuted charges that were acquitted or dismissed as shown in Sun's Affidavit. Sun's innocence was proven in those charges.

Law enforcement should be respected as they supposedly serve the community. But when they committed wrongful acts some would shock the conscience, they also must be accountable. By predisposing a ruling in their favor, allowing their unsworn statements to prevail against Sun's affidavits and the video tape recording which they took themselves, and construing all inferences in their favor, this court has made them above the law. That type of police only exists in Russia or Syria, not in the United States of America. In this summary judgment so far as the court stated that it is convinced that Defendants position in their memo is correct when many of their statements are false unsupported by any affidavit, only numerous incident reports none was written under oath and can be proven false in the trial, and most importantly, nothing in their incident report alleged crimes committed by Sun or their allegations are conflicted by Sun's affidavits.

In the consideration of a motion for summary judgment, Rule 56, SCRCP must be followed. Defendants must "show that there is no genuine issue as to any material fact and that they are entitled to a judgment as a matter of law." Defendants have not met this burden because the genuine issues of material facts stated on Page 2 of Plaintiff's response supported by his two affidavits and responsive briefs remained to be tried by a jury. Most of all, Defendants' affidavits

and incident reports are conflicted by Plaintiff's affidavits.

Plaintiff respectfully request that defendants motion for summary judgment be denied. Should the court insist on granting defendants a summary judgment, Plaintiff asks the court to cite the exact statements in Defendants' affidavits and/or incident report showing that Plaintiff had likely committed a crime (not just the family court order), thereby probable cause had established to have Sun arrested and prosecuted.

Most importantly, the Order should contain a finding of facts and conclusion of law on the criminal statutes that Joseph Sun was accused of committed when all the thousands of pages of incident reports only repeatedly said Sun was not supposed to be in the area or in the marital home and complaints came from the ex-wife and her CODA counsel.⁷ Sun should not be maliciously prosecuted just because ex-wife and her lawyer did not like him during a divorce. Defendants helped the ex-wife party to injure her opponent in the divorce when no crime was committed and now they want to get a summary judgment as a matter of law? But first they have to witness themselves, have probable cause or see evidence of criminal acts committed and describe how the criminal statute Sun had violated on each and everyone of the charges. Their report should be under oath with names of witnesses, time and date of occurrences, not just hearsay incident reports. Plaintiff respectfully ask the court to include that in the finding of facts.

Lastly, Plaintiff asks to be served with the court orders timely according to the date of the order (or inform him to come pick it up); time is of the essence for all further proceedings (both for reconsideration and appeal).

Also a very important matter, Plaintiff respectfully ask the court not to ignore or overlook to

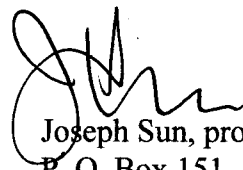
⁷ Plaintiff is asking the court to state the finding of exact criminal acts that Plaintiff was accused of committed.

make a ruling on his motion to compel discovery, whether it is ignored, denied or moot. He has the right to a ruling on his motion. Plaintiff asks the court to enter an order on its disposition.

Furthermore, Plaintiff has the right to the return or compensation (if they are lost) from the defendants and the Town of Bluffton, of all the properties seized by the defendants from his truck subsequent to their unlawful arrest on May River Road without probable cause or warrant, and the hard drive they seized (or stolen) from his computer and anything else at his home while he was wrongfully incarcerated by them. (ex-wife did not know how to take the hard drive out of Sun's computer.) All charges have ended in Plaintiff's favor.

This 20 day of October, 2016

Respectfully submitted,



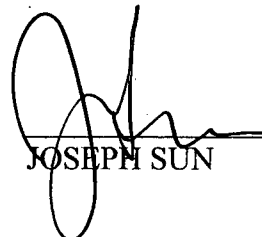
Joseph Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Defendants a copy of the Supplemental Response to Defendants' Motion for Summary Judgment, by depositing a copy of same in the U.S. Mail postage prepaid to:

E. Mitchell Griffith, Esq.
P. O. Drawer 570
Beaufort, SC 29901

This 24th day of October, 2016.


JOSEPH SUN

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

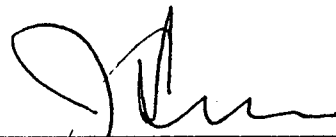
CIVIL ACTION

NO. 2014-CP-07-00943

VERIFICATION

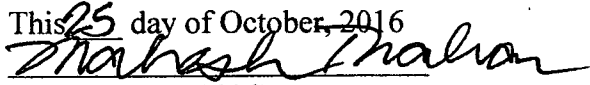
2016 OCT 25 PM 4:53
CLERK OF COURT
BEAUFORT COUNTY, SC

PERSONALLY appeared before me, JOSEPH C. SUN, who after being duly sworn, deposes and says that he is the Plaintiff this case, that he has read all foregoing statements and contents of his Supplemental Response to Defendants' Motion for Summary Judgment and that all matters and things herein contained are true and correct to his personal knowledge except those matters alleged on information and belief, and as to those he believes the same to be true and correct.


JOSEPH C. SUN

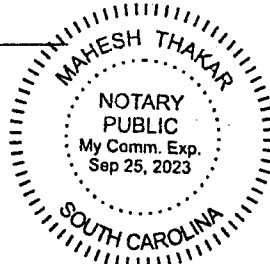
Sworn to and subscribed before me

This 25 day of October, 2016



NOTARY PUBLIC

My Commission Expires on



COUNTY OF BEAUFORT)
STATE OF SOUTH CAROLINA)

JOSEPH C. SUN,)

Plaintiff,)

v.)

TOWN OF BLUFFTON, BLUFFTON)

POLICE DEPARTMENT, BRYAN)

NORBERG, ANGELA TUBBS,)

JOSEPH BABKIEWICZ, CLAUDIA)

HEBDA, JEFFERY DICKSON and)

CHRISTIAN GONZALES.)

Defendants.)

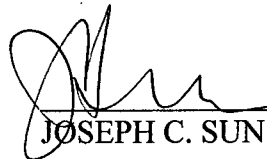
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION

NO. 2014-CP-07-00943

VERIFICATION

PERSONALLY appeared before me, JOSEPH C. SUN, who after being duly sworn, deposes and says that he is the Plaintiff this case, that he has read all foregoing statements and contents of his Supplemental Response to Defendants' Motion for Summary Judgment and that all matters and things herein contained are true and correct to his personal knowledge except those matters alleged on information and belief, and as to those he believes the same to be true and correct.


JOSEPH C. SUN

Sworn to and subscribed before me
This ____ day of October, 2016

NOTARY PUBLIC

My Commission Expires on _____

99

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,
Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

SUPPLEMENTAL
AFFIDAVIT OF JOSEPH SUN

Personally appeared before me, Joseph Sun who after being duly sworn, deposes and says:

1. I am Joseph Sun, the Plaintiff in this case. I am in good health mentally and physically. I testify herein based on my personal knowledge and belief to supplement my previously filed affidavit in opposition to Defendants' Motion for Summary Judgment.
2. Contrary to the affidavit of Joseph Babkiewicz, on March 10, 2010, I went to the marital home located at 18 6th Avenue in Bluffton, SC 29910 to deliver a sprinkler pool I bought for my daughter Abigail to be put in the yard. I told my daughter Abigail on the phone that I would bring her the sprinkler pool with my truck and leave it in the yard for her the morning of 3/10/2010. I also told her to tell her mother about that therefore I assumed that LiLing knew about my coming. The marital home was fully paid for and titled in the name of my mother Ah Tsao Sun in 2007. The facts on how my ex-wife and CODA lawyer was able to get temporary possession of the marital home using an altered warranty deed had been testified in detail in affidavits, briefs and hearings in both the divorce case, the appeal and the civil case filed at the Court of Common Pleas Case No. 2011-CP-07-2546. As I testified in my previous affidavit, I had taken the altered warranty deed to

the attention of the Bluffton Police who ignored the matter and closed the case.

3. On March 10, 2010, there was no court order or law which forbade me from meeting my daughter in the yard of the aforesaid marital home after I followed the Family Court Order and relinquished the house to allowed the use by ex-wife. The arrest by Bluffton police was illegal. When I was on the marital property getting ready to unload the sprinkler pool, I saw several Bluffton Police cars stopped and got out at my home. In 2009, my home was invaded by several Bluffton Police, particularly Defendant Jeffery Dickson who brutalized me and broke my cell phone, put me under arrest for several hours, all without a warrant or probable cause. Even though I was released afterwards, my bad memory gave me fear of them. So I went inside the garage which was a separate building about 30 feet from the house and hid myself. Again, there was no law that would prohibit me from doing that because I was at my own garage.

4. That morning, Bluffton police hired a locksmith to pick the lock to my garage door, came in and arrested me. They forced me to sign a restraining order and I was released. I went to a neighbor's house on a nearby street and tried to negotiate the rental of a room. When I was leaving to go back to my temporary home in Ridgeland, a Bluffton Police car for no reason stopped me on Highway 46 and placed me under arrest again. It was Defendants Joseph Babkiewicz, Angela Tubbs and Bryan Norberg who arrested me. Defendant Norberg cursed at me that I needed to grow up and not to split hair while Defendants Babkiewicz and Tubbs searched my truck and seized several ordinary tools. I have a video recording of this incident and I never recovered those property. They had no warrant and never told me why they arrested me. Defendant Babkiewicz stated falsely that he made a "traffic stop" in his affidavit. The police video shows that as soon as he stopped me, without saying anything else or making any investigation, he put the handcuffs on

me and put me in his car. Then he called a wrecker to impound my truck. What Bluffton police committed was an illegal arrest, not a "stop". Their search and seizure of my truck was also illegal in violation of my civil rights.

5. Then Defendant Babkiewicz drove me to Beaufort where I found out later was the office of Municipal Judge Jeff Bush and obtained warrants against me for harassment and possession of burglary tools. I was taken to Beaufort detention center and booked. Up to that time (afternoon of March 10, 2010), I had committed no crime or violated any court order. I have read certain incident reports that Bluffton Police claimed that Christine Varg from CODA prior to any restraining order was signed, told them I was not allowed to go to the marital home by the Family Court. Varg was lying or stretching the truth because the temporary order only stated that I had to relinquish the marital home which I did, it did not say I could not return to the property for lawful purposes, like leaving a sprinkler pool in the yard for my eight year old daughter. There was no testimony anywhere that shows any defendant Bluffton Officers had read a court order that prohibited me from going on my own home and property for lawful activity. Therefore, their multiple arrests against me have to be in bad faith for vindictive reasons. Assuming all incident reports are true which they are not, there is no evidence of criminal acts. The Family Court Pendente Lite Order is attached.

6. The affidavit of Defendant Christian Gonzales is another false affidavit with numerous omissions of the truth. On March 17, 2010, I was sleeping at my Ridgeland home at about 11:30 p.m. near midnight when Defendant Gonzales called me and told me that my truck in Bluffton was impounded. I asked him why as it was lawfully parked. He promised me that if I come to Bluffton for an interrogation, he would help me get my truck back. I further asked him would he or any other officer arrest me if I came down. He promised me No. Therefore, I drove for 40 minutes to

Bluffton from Ridgeland for the interrogation because I wanted my truck back. While I was driving, I called Gonzales again and asked him if I would be arrested. Again he promised me No.

7. After I arrived, Gonzales asked many times if I had been inside the marital home which was purchased and paid in full by my mother in Canada. I repeatedly said I had not been inside nor had I written any Chinese Characters of "You Die" because I had never been in China except meeting ex-wife, and could not read or write Chinese. I asked him to release my truck so I could go home. But Gonzales would not let me have my truck and repeatedly asked me the same questions, therefore, I knew that unless I told him what he liked to hear regarding my entry to the house and the "You Die" in Chinese, I would not get my truck back. So I told him that writing "You Die" or even wishing someone to die is not a crime, but I never admitted anything. He repeatedly asked me if I had ever been inside the house, I told him "sure I had been inside that house" because it was and still is my home at this time, meaning some time in the past since 2007 after the house was bought by my mother I had been inside the house.

8. Not only I had not admitted anything as Gonzales has falsely stated in his affidavit (Para. 5) that "Upon investigation of the incident, I determined that Joseph Sun had broken into LiLing's residence, stole 3 bolt locks, broke a piece of glass and wrote "you die" in Chinese". There was no facts in his Exhibit A except LiLing's false and fabricated belief. The last part (about 3-4 seconds) of the video recording taken by Gonzales which the Family court judge stopped the video at the contempt hearing therefore did not hear because I was already handcuffed by Defendant Norberg and leaving the room, I asked Gonzales in passing that "I thought you told me I would not be arrested." Gonzales said "Not tonight, but I will tomorrow." All that is still a part of the video recording available today. Yet, in the Family Court contempt hearing when asked if he had

promised me no arrest, Gonzales testified that he could not remember. Gonzales admitted in the Family Court hearing that he promised to get my truck back. South Carolina case laws led by U.S. Supreme Court doctrine have held that any admission induced by promises was inadmissible. *State v. Peake*, *State v. Doby*, *State v. Crawley and Jackson v. Denno* (Citations omitted.) My admission was not voluntary but coerced with promises as I saw no other way I could get my truck back. The inadmissible video recording could not be used to prosecute me.

9. There are several incident reports contained in Defendants Memorandum regarding harassment, trespassing, broken glass or stolen property. I have no involvement in any of those allegations. There was no alleged facts or even indicia that I was involved except ex-wife LiLing said "she believed" it was me. They also heard CODA Varg and Matyusheky falsely claimed I was not allowed to be near the property which was my mother's house. The defendants could easily find out the truth that Varg and Matyusheky made false and fabricated claims, had they asked questions such as "Can I see the Court Order or any document that shows what you say is true"¹ or ask ex-wife LiLing "Why do you believe Joseph Sun did those things."² Instead, they simple take any and all false accusation against Joseph Sun without supporting facts or independent investigation and repeatedly arrested and prosecuted me. By asking more questions, including non-existent purchase

¹ Incident reports repeatedly said that ex-wife LiLing and CODA Varg and Matyusheky told Bluffton Police that Joseph Sun was not allowed on the property which was not the same as court order's language of requiring me to relinquish the marital home. The Pendente Lite Order allowed me to exercise visitation with my daughter which included phone calls and picking her up at the marital hone.

² Regardless of the false allegations in the incident report and police affidavit, defendants just because ex-wife LiLing claimed someone broke in her home, put glass in clothes, stole some locks and wrote "you die" in Chinese, and these defendants and their police accomplices immediately falsely accused me of the acts and arrested and charged me. They never even asked LiLing "why do you believe ex-husband Joseph came."

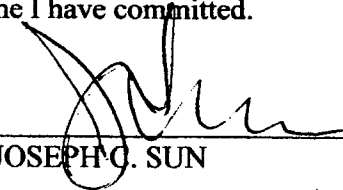
receipts, the police could determined that LiLing had lied about the entire fabricated incident. But there was no investigation or questioning.

10. In the incident report prepared and signed by Defendant Norberg who obtained an arrest warrant against me using a false affidavit that I was forbidden to call my ex-wife. The Family Court Pendente Lite Order shows that I was only required to "relinquish possession" of the marital home but was allowed to make phone communication with ex-wife on matters pertaining to my daughter such as visitation. Defendant Norberg chose to fabricate his own restriction and recklessly disregard the truth to arrest me when he could easily read the Pendente Lite order and understand my legal rights, therefore, he must be liable to my damages and injury.

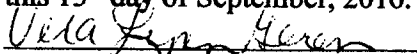
11. In reality, all the defendants and other individuals conspired in an effort of lynching against me ever since 2009 by conspiring and aiding and abetting one another and the perpetrators of crimes and fraud, namely ex-wife LiLing Walsh, CODA and its employees "Varg and Matyu." Just to say a few of their crimes and fraud: they used an altered warranty deed to obtain temporary possession of the marital home, after serving me with the notice of temporary hearing in the divorce case by Certified Mail only the day before the hearing so I had no lawyer, then by intentionally and knowingly falsely interpreting the Pendente Lite Order to have me arrested numerous times and jailed, and allowing ex-wife LiLing to break in my Ridgeland home (not the Bluffton marital home) to commit burglary and theft by destroying and stealing all valuables inside a Sentry safe using sledge hammer and grinder. Then while I was in jail extensively in 2010 (total about 6 months) caused by the defendants conspired effort, all defendants aided and abetted ex-wife and CODA employees to incapacitate me so ex-wife and CODA could commit numerous crimes of forgery, perjury, theft by taking and extortion against my mother.

12. While I was in jail, CODA lawyer and the sequestrator in the divorce case repeatedly contacted my 90 year old mother in Canada for money initially an amount of \$250,000.00. The old lady knew nothing about the case except her son was in jail indefinitely. They sent her subpoena and threatened her that unless she gave them money, she would have to come to court in Beaufort County. Finally, my mother agreed to give them \$75,000.00 in cash, the Toyota car and a 1 ½ karat diamond ring as a settlement when she knew nothing about and had nothing to do with the divorce case. In addition to directly causing me damages and injury, these defendants officers aided and abetted crimes and fraud committed by ex-wife and CODA employees by recklessly disregarding the truth, my rights to the Constitution and the Pendente Lite Order.

13. This is a grand case of the defendants Bluffton Police Officers, knowingly and intentionally conspired with and aided and abetted several perpetrators of crimes and fraud by injuring and incapacitating the victims of the crimes who are me and my mother who died in 1911. All the defendants and Bluffton police supervisors cannot be heard that they were acting on good faith doing their jobs. They intentionally and knowingly ignored the Family Court Pendente Lite Order and arrested me numerous times illegally including illegal search and seizure. All my presence on the marital property (after I relinquished the home) and phone calls were lawful and pursuant to the Pendente Lite Order. I also lost a hard drive in my computer in my Bluffton home after Bluffton Police came without search warrant when I was in jail. They repeatedly said they wanted to put me in jail for a long time but could not show me any crime I have committed.


JOSEPH C. SUN

Sworn to and subscribed before me
this 13th day of September, 2016.


NOTARY PUBLIC, SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/27/17

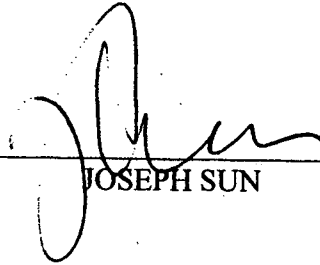
CERTIFICATE OF SERVICE

This is to certify that I have this date served the defendants a copy of the Supplemental Affidavit of Joseph Sun by depositing a copy of same in the U.S. Mail addressed to:

E. Mitchell Griffith, Esq.
600 Monson Street
P. O. Drawer 570
Beaufort, SC 29901

and by email sent to: mgriffith@griffithsharp.com

This 13th day of September, 2016.



JOSEPH SUN

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LILING SUN,

Plaintiff

v.

JOSEPH SUN,

Defendant.

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT

FILE BOOK NO. 09-DR-07-00628

PENDENTE LITE ORDER

Date of Hearing:
Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:
Court Reporter:

June 25, 2009
Hon. Peter L. Fuge
Olesya Matyushevsky
Pro Se
Deborah A. Anderson

2009 JUN 25 PM 3:45
CLERK OF COURT
BEAUFORT COUNTY, SC

This matter comes before this Court upon the filing of Summons and Complaint for Separate Maintenance and Support on April 21, 2009. The Final Hearing was scheduled June 12, 2009 but was continued by Plaintiff for good cause, that being Insufficient time allotted. Hon. Peter L. Fuge granted the continuance. Subsequently, Notice of Motion and Motion for Temporary Relief was filed on June 8, 2009. The Defendant was given notice of this hearing through certified mail.

Present at the Hearing were the Plaintiff, with her attorney of record, Olesya Matyushevsky, Esquire, and the Defendant appeared Pro Se.

Prior to the hearing the Plaintiff presented Affidavits in support of the Plaintiff's position. After fully reviewing the pleadings, the Affidavits, and financial declarations, as well as listening

Certified - A True Copy

Elizabeth M. Smith
Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

to the arguments of counsel and the Defendant, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. I find that the Plaintiff is a citizen and resident of Beaufort County, South Carolina currently residing in Beaufort, South Carolina.
2. I find that the Defendant is a citizen and resident of Beaufort County, South Carolina currently residing in Bluffton, South Carolina.
3. I find that the Plaintiff and Defendant were lawfully married on May 14, 1999, in Beaufort, South Carolina.
4. I find that born of this marriage was one child to-wit: Abigail Sun, born April 27, 2001. I further find that no other children are expected as of this date.
5. I find that that on or about March 10, 2009 the parties separated and have lived separate and apart since that date.
6. I find that based on the testimony it is necessary for the best interest of the child that the Plaintiff have temporary physical and legal custody of the child. Therefore, I find that the Plaintiff is granted sole physical custody of the child.
7. I find that the Defendant will have visitation with the child every Saturday between 9 A.M. and 6 P.M. The exchange should take place at Sonic Drive-In parking lot in Bluffton, South Carolina.
8. I find that neither party shall pay child support at this time until further Order by this Court.
9. I find that the Defendant must immediately turn over the engagement ring to the

Plaintiff. Superseded.

10. I find that the Defendant must immediately leave the marital home located at 18 6th Avenue, Bluffton, South Carolina.
11. I find that the Plaintiff shall take immediate possession of the marital home until further Order of this Court.
12. I find that the Defendant must immediately turn over possession of Toyota Corolla 2009 to the Plaintiff.
13. I find that neither party will expose the child to violent conduct.
14. I find that neither party will make or allow disparaging comments about the other parent/party or his/her family in the presence of the child.
15. I find that neither party will discuss this case with or in the presence of the child.
16. I find that neither party will expose the child to any illegal or criminal activity.
17. I find that both parties are prohibited from using each others and the minor child's Social Security Numbers.
18. I find that the parties are mutually restrained from harassing, interfering or bothering the other at either school, place of employment, or place of residence.
19. I find that the parties are mutually restrained from coming about each other more than 100 feet except to exchange the minor child for visitation.
20. I find that both parties will make themselves available for phone communication with the other for the purpose of discussion pertaining solely to the child. provided however, that neither parent harass or burden the other with excessive or abusive telephone calls or any such other nonproductive communication.
21. I find that the neither party will remove the child from South Carolina without a Court Order.



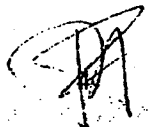
22. I find that a Guardian *Ad Litem* shall be appointed in this case. I appoint Attorney Regina M. Strickroth.
23. I find that a Sequestrator shall be appointed in this case. I appoint Attorney Thad Vincent to investigate:
- a. All properties owned by both parties in the last ten (10) years;
 - b. All bank accounts owned by both parties in the last ten (10) years;
 - c. The Defendant's bankruptcy proceedings that was filed in Atlanta, GA;
 - d. Any and all records of opening of lock boxes owned by both parties;
 - i. Both parties are prohibited from opening lock boxes as of June 25, 2009;
 - e. Possible Medicaid and Food Stamp Fraud;
24. The parties are granted full pretrial discovery pursuant to the South Carolina Rules of Civil Procedure.
25. I find that the remainder of the matters shall be held in abeyance until a Final Hearing can be held.

CONCLUSIONS OF LAW

1. I CONCLUDE THIS Court has subject matter and personal jurisdiction to hear these matters.
2. I conclude that venue is proper in Beaufort County, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, PENDENTE LITE:

A. The Plaintiff is granted temporary sole custody of the minor child. The Plaintiff is the primary physical custodian with the Defendant having every Saturday between 9 A.M. and



6 P.M visitation. The exchange shall take place at Sonic Drive-In parking lot in Bluffton, SC. The Plaintiff shall have temporary custody of the minor child at all other times.

B. Neither party shall pay child support at this time until further Order by this Court.

C. The Defendant is ordered to turn over the engagement ring to the Plaintiff.

D. The Defendant is ordered to immediately relinquish possession of the marital home located at 18 6th Avenue, Bluffton, South Carolina, to the Plaintiff until further Order of this Court.

E. The Defendant is ordered to immediately turn over possession of Toyota Corolla 2009 to the Plaintiff.

F. Neither party will expose the child to violent conduct.

G. Neither party will make or allow disparaging comments about the other parent/party or his/her family in the presence of the child.

H. Neither party will discuss this case with or in the presence of the child.

I. Neither party will expose the child to any illegal or criminal activity.

J. Both parties are prohibited from using each others and the minor child's Social Security Number.

K. The parties are mutually restrained from harassing, interfering or bothering the other at either place of employment or place of residence.

SA
13

L. The parties are mutually restrained from coming about each other more than 100 feet except to exchange the minor child for visitation

M. Both parties will make themselves available for phone communication with the other for the purpose of discussion pertaining solely to the child, provided however, that neither parent harass or burden the other with excessive or abusive telephone calls or any such other nonproductive communication.

N. Neither party will remove the children from South Carolina without a Court Order.

O. A Guardian Ad Litem is appointed in this case. I appoint Attorney Regina M. Strickroth.

P. I find that a Sequestrator is appointed in this case. I appoint Attorney Thad Vincent to investigate:

- a. All properties owned by both parties in the last ten (10) years;
- b. All bank accounts owned by both parties in the last ten (10) years;
- c. The Defendant's bankruptcy proceedings that was filed in Atlanta, GA;
- d. Any and all records of opening of lock boxes owned by both parties;
 - i. Both parties are prohibited from opening lock boxes as of June 25, 2009;
- e. Possible Medicaid and Food Stamp Fraud;

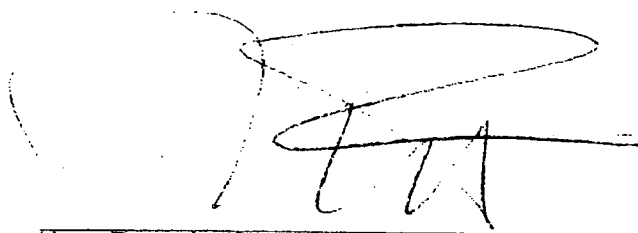
Q. The parties are granted full pretrial discovery pursuant to the South Carolina Rules of Civil Procedure.



R. I find that the remainder of the matters shall be held in abeyance until a Final Hearing can be held.

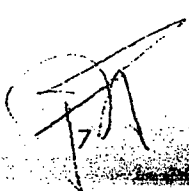
S All other matters shall be held in abeyance until the Final Hearing in this matter.

AND IT IS SO ORDERED!



Hon. Peter L. Fuge
Presiding Family Court Judge

June 25, 2009
Beaufort, South Carolina



COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2016 JUL 21 PM 3:23

JOSEPH C. SUN,

JERRI ANN ROSENEAU
Plaintiff, BEAUFORT COUNTY, S.C.
CLERK OF COURT

v.

CIVIL ACTION

NO. 2014-CP-07-00943

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.

MOTION TO COMPEL DISCOVERY

COMES NOW, PLAINTIFF JOSEPH SUN and moves the court pursuant to Rule 37, SCRPC, for an order requiring the defendants to answer fully, completely and adequately, Plaintiff's requests for discovery which included requests for admission and production of documents, and interrogatories, all pursuant to SCRPC and shows the court as follows:

- (1) During the latter part of 2015, Plaintiff's counsel withdrew from the case and Plaintiff had to proceed without counsel pro se due to his financial difficulty. Plaintiff is 70 years old, had health problems and was hospitalized for severe headaches and elevated blood pressure early this year. The defendants responded to his aforesaid requests for discovery some time in December 2015 incompletely and with numerous objections. Plaintiff is now in a more stable health condition to address the court on his motion to compel discovery.
- (2) Plaintiff served the Defendants thirty-one (31) requests for admissions. In their answers (Exhibit A), several defendants objected to Plaintiff's requests after a total of 20 answers and refused to answer any more.

Rule 36, SCRPC provides that,

“(c) Limitation. A party may serve on any other party more than one set of requests to admit, but the total number of all requests to one party shall not exceed twenty requests, including subparts”

In their objections to Plaintiff's requests for admission, Defendants misinterpreted the rule to limit total number of requests for all six (6) defendants to be twenty (20) when the aforesaid rule clearly states the limitation is for requests to “one party.” Each defendant is one individual party. In Plaintiff's requests for admission though unseparated on each defendant, it was clear that each request was propounded to a specific defendant or party. There were only a maximum of seven (7) requests made for Defendants Babkiewicz and Dickson, while all other defendants were served less. Therefore, Defendants objection is erroneous.

(3) On the three requests (3) - (5), Defendant Claudia Hebda stated she could “neither admit nor deny” without any reason given which is noncompliance of Rule 36(a) requiring that,

“The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.”

The Rule further requires that, “An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.”

(4) Plaintiff served a total of forty-one (41) interrogatories on the six (6) defendants who served their answers with numerous objections and/or incomplete and/or evasive answers. (See Exhibit B.) Specifically as shown in Exhibit B, Defendants Answers to Interrogatories 13 through 18, 20, 23 and 35, consist of only one identical objection, “This information is fully available in the incident reports provided by the Defendants.”

Defendants' response to Plaintiff's interrogatories is a nullity - equivalent to a refusal to respond. Due to the defendants effort to target against Plaintiff between 2009 and 2011 or later,

Plaintiff was questioned and restrained by the defendants and their accomplices numerous times sometimes on the same day based on unknown or fabricated accuses. There were thousands of pages of documents and/or incident reports in the possession of the defendants, some of which are just meaningless fabrications. Plaintiff was asking the defendants what were their legal basis of arresting and charging Plaintiff so many times, with not one single conviction. The defendants now is telling Plaintiff that he can go find his answers from all the thousands of pages of the so called "incident reports." Defendants are disallowing Plaintiff discovery pursuant to SCRCF.

(5) Exhibit B can show that Defendants refused to answer Interrogatories 21, 34, 36 and 37 on their ground that "the information requested is not relevant, nor will it lead to the discovery of any relevant information." Defendants' response was made in bad faith with their attempt to coverup and avoid the discovery of their wrongdoings and schemes which Plaintiff alleges in his Amended Complaint - Paragraphs 10, 11-14 of Page 2 and 3. All questions in Plaintiff's Interrogatories sought information which would directly or indirectly lead to the discovery of relevant and admissible evidence in the trial regarding defendants conspiracy, aiding and abetting one another, their scheme and tactics of their wrongful activity against the Plaintiff.

(6) Defendants made several false and/or erroneous and/or fabricated statements in their answers that several causes of action alleged in Plaintiff's amended complaint in Paragraphs 25-28, 30, 31 42 and 43 were previously dismissed. (See Exhibit C.) When asked to produce those documents in support of their false allegations of dismissal, they pretentiously said that "the information requested is as easily obtained by the Plaintiff as it is by the Defendant."

Defendants have not stated a legally permissible ground of their objection. Just because they claim Plaintiff can obtain such information does not alleviate their requirement to comply with Rule

34, SCRCF to produce. The defendants simply made a false statement that Plaintiff can "obtain such information" and made an attempt to deny Plaintiff's pretrial discovery.

(7) Several defendants refused to answer Plaintiff's Interrogatories falsely claiming "Inapplicable" because the questions related to the Requests of Admission which they refused to answer by erroneously interpreting Rule 36 to limit the number of questions to 20 for all defendants.

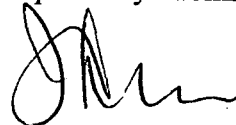
(8) Plaintiff made several telephone calls and wrote several letters in his attempt to seek Defendants' counsels' cooperation in his pretrial discovery. (A copy of the last letter written to Defendants counsel asking for cooperation on the scheduling of the deposition of the defendant officers is attached as Exhibit D.) Plaintiff has not received any response from defendants' counsel.

Wherefore, Plaintiff prays the court to hold a hearing to compel the defendants to respond to and/or answer all Plaintiff's requests for discovery as shown in the attached Exhibits and cooperate with the Plaintiff in scheduling a deposition on the six (6) defendant officers.

Plaintiff further prays the court to award him the expenses and costs of preparing the within motion to compel and award him attorneys fees if and when he has obtained legal representation in the within motion and hearing.

This 20th day of July, 2016.

Respectfully submitted,



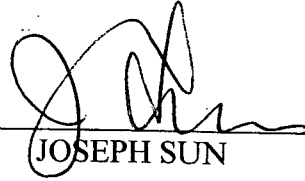
JOSEPH SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Defendants a copy of the Plaintiff's Motion to Compel Discovery, by depositing a copy of same in the U.S. Mail postage prepaid to:

E. Mitchell Griffith, Esq.
P. O. Drawer 570
Beaufort, SC 29901

This 20th day of July, 2016.


JOSEPH SUN

2016 JUL 21 PM 3:23
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,
Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

In their motion, Defendants ask the court to grant them a summary judgment as to cause of action six (6) and seven (7) of Plaintiff's Amended Complaint, on the grounds that Plaintiff did not commence his action against them within the applicable statute of limitations and on the grounds that there is insufficient evidence to prove those causes of action against them. Defendants motion is erroneous in fact and in law, and most importantly, they have not shown that they have negated any triable issues in Plaintiff's complaint, therefore genuine issues of material facts remain in this case. Furthermore, they have refused to allow Plaintiff a complete and meaningful discovery in this case, therefore, their motion must be denied.

Plaintiff will first address the ground of malicious prosecution. The South Carolina Supreme Court in *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (2014) held that,

"[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."

Law v. S.C. Dep't of Corr., 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (first alteration in original) (citations omitted). "An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause." *Id.*

"Malice is defined as 'the deliberate[,] intentional doing of an act without just cause or excuse.'" *Id.* at 437, 629 S.E.2d at 649 (quoting *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982)). "Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice." *Id.* "In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution." *Id.*

Plaintiff Joseph Sun in his Amended Complaint (Page 3 of 11) alleges that,

"12. All of the Defendants' wrongful, malicious and unconscionable acts were motivated and instigated by their prejudice and malice against the Plaintiff, their lack of proper training, and the lack of proper oversight of these officers by Bluffton Police Department. These Defendants were influenced by each other and wrongfully directed by their superiors to target the Plaintiff for harassment and other tortuous acts due to the defendants lack of training, their personal malice and prejudice against the Plaintiff, and their lack of proper oversight and training.

13. All Defendants committed wrongful and tortuous acts against the Plaintiff with actual fraud and actual malice, and with the intent to cause harm to the Plaintiff.

14. All Defendant Officers, ... knowingly and intentionally conspired with and aided and abetted each other, including Plaintiff's ex-wife, in a scheme of malicious and wrongful activity, to repeatedly have Plaintiff arrested and put in jail for numerous fabricated and unwarranted charges. They then maliciously attempted to prosecute the Plaintiff in Bluffton Municipal Court and the Beaufort County Court of General Sessions."

Plaintiff in his Amended Complaint adequately alleges all the requirements to maintain an action for malicious prosecution. His Affidavit (Affidavit of Joseph Sun) filed in opposition to defendants motion furnished evidence of the dates of the termination in his favor of all charges

lodged by the defendants against him. Plaintiff also provided testimony showing that some officers wanted him imprisoned maliciously without lawful reasons.

Defendants' motion for summary judgment contains only an empty statement indicating what they like to show, with no evidence or argument in support. Defendants have furnished nothing that could pierce Plaintiff's allegations. As genuine issues of material facts as alleged in the Amended Complaint exist, Defendants are not entitled to a summary judgment as a matter of law.

Defendants submitted a motion governed by Rule 56(c) of the South Carolina Rules of Civil Procedure. This rule provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.*

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary

judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

For several months, Plaintiff has tried to exercise his rights to pretrial discovery by serving his requests for admission and production of documents, and interrogatories on the defendants counsel. Defendants’ responses consist of numerous groundless objections¹ and/or incomplete and evasive answers. After numerous phone calls and letters to defendants’ counsel of Plaintiff’s desire to take the defendants’ deposition, there has been no cooperation from defendants’ counsel, therefore, Plaintiff wrote Defendants counsel on his need of a motion to compel discovery. (Letter to defendants counsel attached.) Defendants hastily filed the within motion for summary judgment. Plaintiff has now filed a motion to compel discovery seeking admissible evidence to prove his allegations as aforesaid in his Amended Complaint.

The South Carolina Supreme Court in the case of *Baughman v. American Telephone and Telegraph Company*, 410 S.E.2d 537, 306 S.C. 101 (1991) held that,

“Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975); see also

¹ On Plaintiff’s Request for Admissions, the request was made on one document for all six (6) personal defendants. Rule 36, SCRCF has a limit of 20 questions for one defendant. But defendants misused the rule and refused answering after 20 questions for all defendants.

On Plaintiff’s Interrogatories, defendants made numerous objections and refusal to answer by using the excuse of “overly broad”, “not relevant nor will it lead to discovery of any relevant information.”

Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986)

("an extreme remedy to be cautiously invoked").

This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.

10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983);

6 Moore's Federal Practice p. 56.02, p. 56-39 (2d ed. 1990); see, e.g., *First Chicago*

Int'l v. United Exchange Co., 836 F.2d 1375 (D.C.Cir.1988); *Gary Plastic*

Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230

(2d Cir.1985); *Tyler v. City of Enterprise*, 521 So.2d 951 (Ala.1988);

Gangadean v. Leumi Fin. Corp., 13 Ariz.App. 534, 478 P.2d 532 (1970);

Commercial Bank of Kendall v. Heiman, 322 So.2d 564 (Fla.Dist.Ct.App.1975);

Board of Education v. Van Buren & Firestone, Architects, Inc., 165 W.Va. 140,

267 S.E.2d 440 (1980); cf. *Rule 56(f)*

Plaintiff pro se recently took over the case from counsel who had made no pretrial discovery after defendants repeatedly filed several motions to dismiss and to substitute counsel, Plaintiff should be allowed to complete his discovery in this case.

South Carolina Code of Law SECTION 15-3-550(1) provides a statute of limitation of two years on an action for libel, slander, or false imprisonment. South Carolina Supreme Court in the case of *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 held that,

"Tort Claims Act; the applicable statute of limitations reads as follows in pertinent part:

"Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered...." S.C.Code Ann. § 15-78-110 (Supp.2001)."

Section 15-5-530(5) provides that "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545" has a statute of limitation of three (3) years.

Plaintiff's motion to add the cause of action six (6) and seven (7) was granted by the court on November 13, 2015. Rule 15(c) provides that "Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates

back to the date of the original pleading.” Therefore, Plaintiff’s Amended Complaint relates back to the date of the original pleading of April 21, 2014.

Plaintiff’s amended cause of action seven (7) in the Amended Complaint on the violation of Plaintiff’s civil rights pursuant to 42USCA §1983 is based on the Supremacy Clause of the Constitution where the United States Supreme Court in the case of *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332, 58 USLW 4755, 60 Ed. Law Rep. 358 (1990) held that,

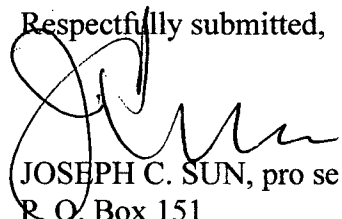
“Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide more convenient forum-although both might well be true-but because the Constitution and laws passed pursuant to it are as much laws in states as laws passed by state legislatures; supremacy clause makes those laws "the Supreme Law of the Land," and charges state courts with coordinate responsibility to enforce those laws according to their regular modes of procedure. U.S.C.A. Const. Art. 6,cl. 2.”

CONCLUSION

By the forgoing reasons, Defendants motion for Summary Judgment should be denied.

This 11th day of July, 2016.

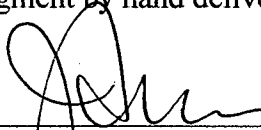
Respectfully submitted,


JOSEPH C. SUN, pro se
P.O. Box 151
Bluffton, SC 29910
843-226-8788

CERTIFICATE OF SERVICE

This is to certify that I have this date served the defendants a copy of the Plaintiff’s Response to Defendants’ Motion for Summary Judgment by hand delivery a copy of same to their counsel at the hearing.

July 12, 2016.



JOSEPH SUN

P. O. Box 151
Bluffton, SC 29910

May 9, 2016

E. Mitchell Griffith, Esq
GRIFFITH SHARP LIIPFERT
600 Monson Street
P. O. Box 570
Beaufort, SC 29901

Re: Joseph C. Sun v. Bryan Norberg, et al.
Beaufort Court of Common Pleas Civil Action No. 2014-CP-07-00943

Dear Mr. Griffith:

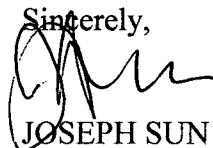
I left a voice mail on Ms. Hillary Jones' extension last week regarding the mediation in the referenced case. I am almost 69 years old and cannot remember exactly what my message was. I indicated that the case is still in discovery and not ready for mediation.

I write this letter as my request to take the deposition of all the police defendants, namely, Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson and Christian Gonzales. I could and may be should have served your office a Notice of Deposition pursuant to Rule 30, SCRPC. But I like to let you choose the day, any day in the next 60 days, starting at 10 a.m., at your convenience. I am already retired, so I am quite flexible and can do it most any day except between June 24 through July 5, 2016, when I have family visitation, and may be one or two other days when I have doctors appointments, etc.

I will be taking the deposition of all aforesaid defendants in one day. Unless you have a special choice, I intend to use the office of Ray Swartz & Associates, located at 514 North Magnolia Street, Summerville, SC 29483. Their phone number is 800-822-8711. As you can see, the deposition of each defendant will not be long because they will all be finished in one day. Three (3) of them need be there at 10:00 a.m. and the other three (3) be there at about 1:00 pm. The depositions of Bryan Norberg, Joseph Babkiewicz and Christian Gonzales will be longer. The other three should be between 30-60 minutes each. You can let me know the time and date that they will appear for the deposition.

As I said earlier, I am only giving you and the defendants the courtesy and convenience in this discovery. If you prefer, I can also serve you with a Notice of Deposition, with a time and date that I specify for each defendant. Please let me know as soon as possible. If you prefer, you can call me at 843-226-8788.

Thank you for your cooperation.

Sincerely,

JOSEPH SUN

P. O. Box 151
Bluffton, SC 29910

June 12, 2016

E. Mitchell Griffith, Esq
GRIFFITH SHARP LIIPFERT
600 Monson Street
P. O. Box 570
Beaufort, SC 29901

Re: Joseph C. Sun v. Bryan Norberg, et al.
Beaufort Court of Common Pleas Civil Action No. 2014-CP-07-00943

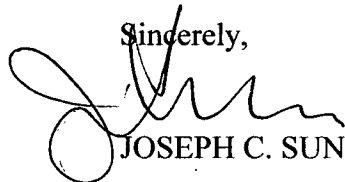
Dear Mr. Griffith:

As you know I wrote you a letter dated May 9, 2016 requesting cooperation on scheduling a deposition of all the defendants in the referenced case. I was going to let you choose time and date and even the location of the deposition within 60 days. That was over a month ago. Since then I received a notice from the court that unless I progress in the case expeditiously, it may be dismissed. Therefore, I can no longer wait for the 60 days indefinitely. I must insist on taking the aforesaid deposition as soon as possible, definitely scheduling it within the next five (5) days.

I tried to call your office over a week ago and left a message. Since I have not heard from you, I am assuming you are not interested in cooperating on the deposition. In addition, you have not fully answered my discovery sent to you several months ago. Your grounds and objections are evasive and disallowed by the South Carolina Civil Procedure.

Unless I hear from your office within five (5) days on the aforesaid deposition and a satisfactory supplement of your incomplete and evasive answers to my discovery, I will be filing a motion to compel discovery. I received a copy of the Defendants' Motion for Summary Judgment yesterday. Your motion is erroneous and I will respond in time. Since it only pertains to Cause of Actions six (6) and seven (7), it has no effect on my discovery on the entire case.

Thank you for your attention.

Sincerely,

JOSEPH C. SUN

COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

TOWN OF BLUFFTON, BLUFFTON
POLICE DEPARTMENT, BRYAN
NORBERG, ANGELA TUBBS,
JOSEPH BABKIEWICZ, CLAUDIA
HEBDA, JEFFERY DICKSON and
CHRISTIAN GONZALES.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION
NO. 2014-CP-07-00943

AFFIDAVIT OF JOSEPH SUN

Personally appeared before me, Joseph Sun who after being duly sworn, deposes and says:

1. I am Joseph Sun, the Plaintiff in this case. I am in good health mentally and physically. I testify herein based on my personal knowledge and belief in opposition to Defendants' Motion for Summary Judgment.
2. In the trial of this case, I intend to prove that during the period of my divorce with ex-wife LiLing Walsh in 2009 and 2010, all the defendants in this case, conspired and aided and abetted one another and with other persons, based on impermissible and wrongful reasons, knowingly and intentionally, caused me to be arrested and prosecuted without probable cause or investigation. I have suffered severe personal damages and injury caused by the wrongful acts of the defendants.
3. During 2010, I was arrested numerous times at my private residence in Bluffton, on nearby public streets and I was tricked to voluntarily go to the Bluffton Police Department for questioning based on lies and false promises from some of the defendants as their scheme to have me arrested based on fabricated probable cause. All total six (6) charges, some misdemeanors and some felonies, were all dismissed, acquitted or nolle prossed. In addition, there were other wrongful acts

committed by them such as illegal search and seizure of my personal property.

4. I was arrested and charged with "unlawful use of telephone" when evidence in the trial showed I only called ex-wife for visitation of my minor daughter pursuant to Family Court order. I was arrested and charged with "harassment" when evidence showed that I came to my mother's house in Bluffton where ex-wife stayed temporarily to give my daughter a toy I bought for her. I was arrested and charged with "possession of burglary tools" after certain defendants illegally stopped me on the street and found some ordinary tools in my truck which I used in my business. Then they added on the indictments of burglary and stalking because they claimed that I was inside my mother's house which is the house I have been lawfully residing continuously ever since 2007 up to this date, except for a few months in 2010 when ex-wife and her divorce lawyer used a forged warranty deed to falsely show the Family Court that the house was deeded to ex-wife LiLing. At the time I personally asked Officer Duke and Captain Tanner-McCall of Bluffton Police to look at the original forgery and to investigate the forged warranty deed but they refused. The aforesaid constituted all the "criminal acts" these defendants claimed that I had been involved.

5. I was repeatedly arrested by the joint and conspired efforts of the defendants and others and put in the Beaufort County detention center several times for a total of more than six (6) months in jail. Some time in September 2010, I appeared in the divorce trial in handcuffs at the Beaufort Family Court. The trial ended in a Property Settlement and a Divorce Decree where ex-wife was given custody of my daughter and a \$75,000.00 in cash from my mother in Canada. There was no evidence of any domestic violence or misconduct by me in the entire divorce trial. Yet, Defendants Norberg, Babkiewicz and Gonzales all had threatened, scolded and told me at different times, some are recorded in the police vehicles, indicating that they would make sure that I would be arrested

and put in jail for a long time. When I asked them what exactly had I done, Babkiewicz just said, "You know what you have done." It appeared that they were simply trying to find a way to hurt me for personal prejudice. I believe they have knowledge of my past litigiousness and civil rights suit against Officer Dickson in the past.

6. My 90 year old mother in Canada was very depressed after she found out her son was put in jail indefinitely for several months when I had not committed any crime. My mother informed me and sent me copies that my ex-wife and her divorce lawyer were calling and sending legal papers to her demanding large sums of money, in the beginning demanding more than \$200,000.00 and finally accepting \$75,000.00. My mother finally collapsed and fell on the steps and went into a coma. She was put in the hospital and never recovered. She died several months later.

7. The aforesaid charge of "unlawful use of telephone" was tried and I was found not guilty on July 10, 2012 as shown on Beaufort County Magistrate Court Order as Exhibit A. The charge of "harassment" was dismissed by the Beaufort Magistrate Court on February 14, 2012 as shown on Beaufort Magistrate Court Order Exhibit B. The charge of "Trespass" was reversed on appeal on May 30, 2012 as shown on Beaufort County Court of Common Pleas Order Exhibit C.

7. The three (3) Indictments of Warrant numbers J351002, J351003 and J350995 were nolle prossed on October 14, 2013 by the Beaufort County Solicitor as shown on Exhibits D-F. When I went to Bluffton Police Department to show Captain McCall-Tanner the aforesaid forged warranty deed, I gave the police department my ex-wife's address in Virginia if they needed to find her. When I called several weeks later, Bluffton Police said they had closed my case.

8. On April 21, 2014, I filed the within civil action against the defendants for the wrongful acts they had committed against me. I was initially represented by Ken Tootle, Esq. On about April 27,

2015, I filed a Motion to Amend Complaint with an attached Amended Complaint. After a hearing and careful consideration of the arguments of all parties, this court on November 13, 2015 entered an Order granting Plaintiff's Motion to Amend Complaint.

9. Ken Tootle, Esq. had withdrawn from the case at this time because I had no more money to pay his fees. I am 69 years old retired with no employment. I receive only a small Social Security check every money and nothing else. I am proceeding in this case pro se at this time until I can retain a lawyer I can afford. I have suffered litigation expenses and attorney fees paid so far.

Respectfully submitted,



JOSEPH C. SUN

Sworn and subscribed to before me
this _____ day of July, 2016.



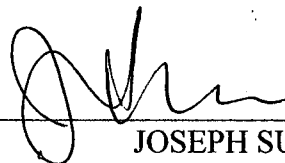
NOTARY PUBLIC
My Commission Expires _____

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Defendants a copy of the Affidavit of Joseph Sun, by depositing a copy of same in the U.S. Mail postage prepaid to:

E. Mitchell Griffith, Esq.
600 Monson Street
P. O. Drawer 570
Beaufort, SC 29901

This 7th day of July, 2016. _____



JOSEPH SUN

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0700943

Joseph Sun	Town Of Bluffton Bryan Norberg Joseph Babkiewicz Jeffrey Dickson	Bluffton Police Department Angela Tubbs Claudia Hebda Christian Gonzales
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Motion to Amend Complaint dated 4/28/15 is hereby granted

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

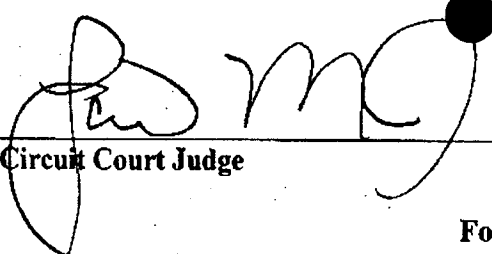
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2155
Judge Code

9/9/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on **9th Day of Septemeber 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **10th Day of September 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth L. Tootle PO Box 1321 Beaufort, SC 29901
Joseph Sun Po Box 151 Bluffton, SC 29910

Ernest Mitchell Griffith PO Drawer 570 Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Meghan M. Neilan – Scheduling Clerk

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No: 2014-CP-07-00943

JOSEPH C. SUN,

Plaintiff,

Vs.

AMENDED COMPLAINT

TOWN OF BLUFFTON, BLUFFTON

POLICE DEPARTMENT, BRYAN NORBERG,

ANGELA TUBBS, JOSEPH BABKIEWICZ,

CLAUDIA HEBDA, JEFFREY DICKSON and

CHRISTIAN GONZALES,

Defendants.

2015 OCT -8 AM 11:40
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

JOSEPH C. SUN, the Plaintiff herein, respectfully shows unto this Honorable Court and alleges:

1. The Plaintiff is a resident of Beaufort County, South Carolina and has been an actual resident of said county and state for a period in excess of one year immediately and continuously prior to the institution of this action.
2. Defendant Town Of Bluffton is a municipality and political subdivision of the State Of South Carolina as defined in the S.C. Tort Claims Act, Section 15-78-10 *et seq.* of the Code of Laws of South Carolina, duly organized and existing under the laws of the State of South Carolina and situate in Beaufort County, South Carolina.
3. The Defendant Bluffton Police Department is the law enforcement department for Defendant Town Of Bluffton.
4. The Defendant Brian Norberg is, or was at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.
5. The Defendant Angela Tubbs is, or was at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police

Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

6. The Defendant Joseph Babkiewicz is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

7. The Defendant Claudia Hebda is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

8. The Defendant Jefferey Dickson is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

9. The Defendant Christian Gonzales is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

10. In the year 2009 the Plaintiff brought a lawsuit in Federal Court against Bluffton Police Department and Officer Jeffrey Dickson individually. Since that time the Bluffton Police Department, by and through the individually named defendants, have conducted a pattern of scheme and vengeance against the Plaintiff as a result of him bringing that action.

11. That commencing with the year 2009, and continuing through the year 2013, the Defendant Officers, with help from and in conspiracy with one another and other unnamed officers and individuals, committed numerous wrongful, deceptive, and malicious acts against the Plaintiff, wrongfully causing the Plaintiff to be arrested numerous times and wrongfully jailed for a period in excess of one hundred sixty (160) days; suffer monetary damages; incur emotional and physical injury; and his automobile to be impounded several times, resulting in additional expenses the Plaintiff was required to pay as a result of the Defendants wrongful acts.

12. All of the Defendants wrongful, malicious and unconscionable acts were motivated and instigated by their prejudice and malice against the Plaintiff, their lack of proper training, and the lack of proper oversight of these officers by Bluffton Police Department. These Defendants were influenced by each other and wrongfully directed by their superiors to target the Plaintiff for harassment and other tortuous acts due to the Defendants lack of training, their personal malice and prejudice against the Plaintiff, and their lack of proper oversight and training.

13. The Plaintiff wrote lengthy letters to the Bluffton Police Department Chief Of Police and to the Mayor of the Town Of Bluffton informing them of the constant harassment and ill treatment committed by the Defendant Officers and requesting an impartial and truthful investigation of the wrong doings of the Police Officers. All of Plaintiff's letters and requests were either ignored or denied. Defendant Officers were instructed by Bluffton Police Department to ignore Plaintiff's complaints. As a result, all of wrongful and tortuous activities by the Defendant Officers were condoned, authorized, instructed and done with the full knowledge and consent of the Town Of Bluffton and the Bluffton Police Department. All Defendants committed wrongful and tortuous acts against the Plaintiff with actual fraud and actual malice, and with the intent to cause harm to the Plaintiff.

14. All Defendant Officers, beginning in year 2009 and continuing through year 2013, knowingly and intentionally conspired with and aided and abetted each other, including Plaintiff's ex-wife, in a scheme of malicious and wrongful activity, to repeatedly have Plaintiff arrested and put in jail for numerous fabricated and unwarranted charges. They then maliciously attempted to prosecute the Plaintiff in Bluffton Municipal Court and the Beaufort County Court of General Sessions. After having been arrested five times and incarcerated in the detention center for many days, all misdemeanor charges brought against the Plaintiff were either dismissed or Plaintiff was found not guilty by the Bluffton Magistrate's Court. All General Sessions charges brought against the Plaintiff were nolle prossed by the Solicitor.

15. In July, 2009, Defendant Jeffrey Dickson, based upon some totally fabricated pretense, wrongfully arrested Plaintiff at his home in Bluffton Park, Bluffton, South Carolina. In the process of the unwarranted arrest Defendant Dickson, without provocation or just cause injured Plaintiff's arms and shoulders and broke Plaintiff's cell phone.

Dickson caused damage to the front door of Plaintiff home. Dickson informed Plaintiff that he was charging Plaintiff with kidnapping. Dickson thereafter hand-cuffed Plaintiff and put him in the back seat of his parked patrol car leaving him, in the heat of the summer, in the back of Dickson's patrol car, without air-conditioning, for a period in excess of two hours. The Plaintiff complained to Dickson about the intense heat and the pain in his arms and shoulders exacerbated by the handcuffs of his hands tightly behind his back. Defendant Dickson informed Plaintiff that, if he did not want to suffer more, he would be quiet and stop complaining. Approximately three hours after being arrested by Defendant Dickson, Plaintiff was released one of Dickson's superior officers, allowed to exit the patrol car, and returned to his freedom. The Plaintiff found it necessary to seek medical attention for the pain and injury occurring to his arms, shoulders and wrists as a result of Dickson's actions. Up to this date Plaintiff has not been charged with kidnapping, or any other crime, arising from this incident.

16. In 2012 the Plaintiff requested the Bluffton Police Department that it reimburse him for the damage done by Dickson to Plaintiff's cell phone and his front door, however the Bluffton Police Department refused to do so.

17. In February, 2012 the Plaintiff was involved in an automobile accident when a car driven by a person from Alberta, Canada side swiped Plaintiff's vehicle on Simmonsville Road in the Town of Bluffton. The Plaintiff was operating his vehicle in a lawful and safe manner. Immediately after the accident the Plaintiff called Bluffton Police Department to report the accident. Police Officer Danyov appeared at the scene to make a report. Defendant Dickson was the supervisor of the shift and he instructed Officer Danyov to find that the Plaintiff was at fault in the accident and to file a false report finding that the Plaintiff was at fault for trying to pass the Canadian driver unlawfully by driving on a median to pass, therefore causing the accident. Plaintiff took photographs of the accident scene and sent them to both parties insurance company. The photographs clearly showed there to be no median at the location of the accident. The police report submitted by Officer Danyov at the direction of Defendant Dickson was intentionally false. Subsequently the insurance company for the Canadian driver admitted liability for the accident.

18. During March, 2010 the Plaintiff was operating his vehicle on May River Road in the Town of Bluffton. Defendant Babkiewicz, following directions given to him by his

supervisor Defendant Angela Tubbs, stopped Plaintiff without probable cause or reasonable suspicion and arrested him without a warrant. He and Defendant Tubbs thereafter conducted an illegal search of Plaintiff's vehicle and seized several ordinary hand tools, claiming the hand tools were "burglary tools". Defendant Norberg arrived at the scene and cursed the Plaintiff. These Defendant Officers carried the Plaintiff to the Beaufort Detention Center and confined him therein on the fabricated charges of harassment and possession of burglary tools. Plaintiff's vehicle was impounded.

19. The next business day Plaintiff was afforded a bond hearing conducted by a Magistrate at the detention center. Defendant Claudia Hebda appeared at the bond hearing and requested the Magistrate to deny bail to the Plaintiff so he would have to stay confined in the detention center. Defendant Hebda gave no legitimate reason why bond should be denied stating only that Plaintiff's ex-wife did not want him released. Additionally, Defendant Hebda presented to the Magistrate false police reports as reasons Plaintiff should be denied bond. After two weeks of confinement in the detention center Plaintiff was able to obtain his release by paying a bondsman \$450.00 to post a \$4,500.00 bond for his release. Additionally, Plaintiff had to pay \$400.00 to recover his vehicle from impoundment. A subsequent trial in the Magistrate's Court resulted in Plaintiff being found "not guilty" of the harassment charge.

20. During March, 2010 Plaintiff was scheduled to have visitation with his daughter pursuant to an order from the Family Court. Plaintiff's ex-wife failed to appear at the designated place for the exchange of the child. Plaintiff contacted Bluffton Police Department for assistance and met with Officer Ferrelli of the Bluffton Police. Plaintiff presented a certified copy of the Family Court Order to Officer Ferrelli which substantiated Plaintiff's visitation. Officer Ferrelli contacted his supervisor, Defendant Bryan Norberg and, acting on instructions given to him by Norberg, instructed the Plaintiff to leave the Town of Bluffton and refused to assist Plaintiff by contacting Plaintiff's ex-wife regarding the visitation. Ferrelli advised Plaintiff that the Family Court Order was invalid. The Plaintiff was forced to contact his ex-wife himself which afforded Defendant Norberg the opportunity to arrest Plaintiff for violating the Family Court Order which Norberg falsely claimed restrained the parties from contact with each other.

21. After Plaintiff was released from jail in March, 2010 he desired visitation with his child as authorized by the Family Court Order. Plaintiff contacted his ex-wife via telephone to arrange the visitation. As a result, Defendant Norberg arranged for the issuance of an arrest warrant for Unlawful Use Of Telephone and Plaintiff was arrested and again confined in the detention center. Plaintiff was required to pay a bondsman \$600.00 to place a \$6,000.00 bond procuring Plaintiff's release. In 2012 Plaintiff was acquitted of the charge in Beaufort County Magistrate's Court.

22. On or about March 17, 2010, at about midnight while the Plaintiff was asleep in his home, Defendant Christian Gonzales called Plaintiff requesting he come to Bluffton Police Department for questioning. Leary of the prior tactics utilized by Bluffton Police Department, Plaintiff was given two promises from Defendant Gonzales: (1) that Gonzales would assist Plaintiff in recovering his vehicle from impoundment; and (2) that Plaintiff would not be arrested that night. In reliance on those promises, Plaintiff drove to Bluffton Police Department for questioning. After intense questioning for hours utilizing scheming and harassing tactics, Defendant Norberg, in contradiction of the promises made to Plaintiff by Officer Gonzales in their scheme to continually harass Plaintiff, arrested the Plaintiff charging him with various fabricated offenses, including "Possession Of Burglary Tools" arising from the incident earlier in March when Plaintiff was illegally stopped by Officer Babkiewicz and ordinary hand tools were confiscated by Babkiewicz and Tubbs, and "Stalking". These charges were completely fabricated by and through the joint efforts of Defendants Norberg, Babkiewicz, Tubbs, and Bluffton Police Department, working individually, together, and in conspiracy with one another Plaintiff was again confined in the detention center by Bluffton Police Department.

23. After being confined in the detention center for more than two weeks Plaintiff was given a \$300,000.00 bond by the Magistrate. Plaintiff was forced to pay a bondsman \$30,000.00 to place the bond and procure his release from the detention center. Additionally, Plaintiff was required to pay \$500.00 to procure the release of his vehicle from impoundment. In 2013 the Solicitor nolle prossed all charges brought against Plaintiff in the Court of General Sessions including the Burglary, Possession Of Burglary Tools and Stalking charges.

FOR A FIRST CAUSE OF ACTION
(False Arrest/False Imprisonment)

24. That each and every allegation contained in paragraphs one (1) through twenty-three (23) are re-asserted and re-alleged herein as if set forth verbatim.
25. That the Defendants jointly, severally and in combination with each other, through their negligence and/or gross negligence caused the Plaintiff to repeatedly be restrained and incarcerated against his will.
26. That the restraint and incarceration of the Plaintiff by the Defendants was intentional.
27. That no grounds in law or in fact could support the seizure, restraint and incarceration of the Plaintiff and was contrary to the laws and the constitution of South Carolina.
28. That as a direct and proximate result of the errors, omissions, intentional acts and gross negligence of the Defendants, jointly, severally and in combination thereof, the Plaintiff suffered loss of his liberty, was falsely arrested, had to expend money to procure his release from incarceration, suffered shame, shock humiliation, degradation and mental anguish, and incur legal costs to regain his rightful freedom.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

29. Each and every allegation contained in paragraphs one (1) through twenty-eight (28) are realleged herein to the same extent as if set forth verbatim.
30. That the Defendants jointly, severally and in combination with each other were malicious, negligent and grossly negligent by depriving the Plaintiff of his liberty in the following particulars:
- a. By repeatedly arresting and incarcerating the Plaintiff when in law and fact no crime was committed by the Plaintiff.
 - b. In failing to properly supervise and train its employees.

- c. In attempting to make non-criminal acts of the Plaintiff appear to be a crime when, in fact, no crime was committed by the Plaintiff.
- d. By failing to actually read and understand the statutes used to charge and incarcerate the Plaintiff.
- e. In failing to implement proper procedures to avoid unlawful arrest.
- f. In failing to use due care and caution to prevent wrongful arrests.
- g. In failing to use even slight care and caution to prevent unlawful arrests.
- h. In other ways to be proven at trial.

31. That as a direct and proximate cause of the malice, negligence and gross negligence of the Defendants, jointly, severally and in combination thereof, the Plaintiff suffered a loss of his liberty, was repeatedly falsely arrested, falsely charged with numerous crimes, had to expend money to secure his release from incarceration, suffered shame, shock, humiliation, degradation and mental anguish and incur legal costs to regain his rightful freedom.

FOR A THIRD CAUSE OF ACTION
(Slander/Libel Per Se)

32. Each and every allegation contained in Paragraphs one (1) through thirty-one (31) are realleged herein to the same extent as if set forth verbatim.

33. That the Defendants falsely accused Plaintiff of committing criminal acts, which he did not commit, and which is actionable per se.

34. That the actions of the Defendants were done in reckless disregard of the truth.

35. That the Defendants knew or should have known that the arrest of the Plaintiff is public information, available on line and published through scandal sheets and blotters.

36. That as a direct and proximate result of the actions of the Defendants in defaming the Plaintiff's name and reputation, the Defendants, jointly, severally and in combination thereof, have caused the Plaintiff to suffer shame, shock, humiliation and mental anguish and had to expend money to secure his release from incarceration.

FOR A FOURTH CAUSE OF ACTION

(Assault/Personal Injury)

37. Each and every allegation contained in Paragraphs one (1) through thirty-six (36) are re-alleged herein to the same extent as if set forth verbatim.

38. That as a result of the cruel and physical treatment of the Plaintiff by Officer Dickson, wherein he physically assaulted the Plaintiff, the Plaintiff suffered physical injuries to his arms, wrists, neck and back.

39. That the physical injuries to the Plaintiff were caused directly and proximately by the assault of Plaintiff by Officer Dickson.

40. The Plaintiff sustained damages as a result of his assault by Officer Dickson, including injury to his neck, wrists, arms and back. The Plaintiff incurred pain and was required to seek medical attention for his injuries.

FOR A FIFTH CAUSE OF ACTION

(Civil Conspiracy)

41. Each and every allegation contained in Paragraphs one (1) through forty (40) are re-alleged herein to the same extent as if set forth verbatim.

42. That the Defendants, in combination of two, more or all of them, conspired together for the purpose of injuring the Plaintiff.

43. That as a direct and proximate result of such conspiracy by and between the Defendants, the Plaintiff suffered a loss of his liberty, was falsely repeatedly arrested, falsely charged with crimes, had to expend money to secure his release from incarceration, suffered shame, shock, humiliation, degradation and mental anguish and incurred legal costs to regain his rightful freedom.

FOR A SIXTH CAUSE OF ACTION

(Malicious Prosecution)

44. Each and every allegation contained in Paragraphs one (1) through forty-three (43) are realleged herein to the same extent as if set forth verbatim.

45. That commencing with the year 2009 and continuing through the year 2013 the Defendant Officers, acting individually and in concert each with the other, acting without

probable cause and acting with malice, caused the Plaintiff to be arrested at least five times for alleged violations of law, returnable to either Magistrates Court or Court of General Sessions. Based upon such unlawful arrests the Plaintiff was incarcerated in the Beaufort County Detention Center for a period in excess of one hundred sixty (160) days. In the year 2013 the Plaintiff herein was acquitted of all the charges brought in Magistrates Court. Also during the year 2013 the Solicitors Office for the Fourteenth Judicial Circuit, Beaufort County, South Carolina nolle prossed all charges pending against the Plaintiff in General Sessions Court.

46. As a result of the malicious prosecution the Plaintiff suffered damages: He experienced mental pain and suffering; he experienced fright and nervousness; he experienced indignity, humiliation and embarrassment; he was held out to ridicule and insults; he experienced injury and damage to his reputation and person; he was incarcerated for many days and nights in the detention center and experienced discomfort and injury to his health. As a result of being confined he experienced loss of time and deprivation of society. He was required to expend significant sums of money for attorney fees.

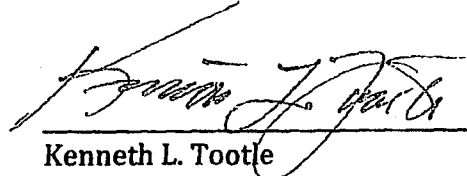
FOR A SEVENTH CAUSE OF ACTION

(Deprivation of Federal Rights Under Color of State Law in Violation of 42 U.S.C. §1983)

47. Each and every allegation contained in Paragraphs 1 through 46 are realleged herein to the same extent as if set forth verbatim.

48. That the individual Defendants, acting alone and/or in concert with the other individual Defendants conspired together and acted together among one another, or with other individuals and/or entities for the purpose of depriving, and did in fact so deprive, the Plaintiff of his civil rights under color of state law, causing Plaintiff to suffer personal injuries and damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, for actual damages, and further prays for actual and punitive damages against all Defendants, together with reasonable attorney fees and the costs of this action.



Kenneth L. Tootle
Attorney for the Plaintiff
P. O. Box 1321
Beaufort, South Carolina 29901
(843) 524-0424

Beaufort, South Carolina
April, 2015.

Sept. 16

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2014-CP-07-00943

JOSEPH C. SUN)

Plaintiff,)

vs.)

TOWN OF BLUFFTON, BLUFFTON)
POLICE DEPARTMENT, BRYAN)
NORBERG, ANGELA TUBBS,)
JOSEPH BABKIEWICZ, CLAUDIA)
HEBDA, JEFFREY DICKSON, AND)
CHRISTIAN GONZALES,)

Defendants.)

ORDER GRANTING MOTION TO
DISMISS

2014 DEC 10 AM 4:20
JEREMY ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter came before me on the Motion of the Defendants, Town of Bluffton and Bluffton Police Department. Present at the hearing of this matter was Mary Lohr on behalf of the Town and Police Department, Kenneth Tootle on behalf of the Plaintiff and Allisa Collins on behalf of the remaining non-moving individual defendants.

First, the Town and Police Department moved to have the Police Department dismissed as it is not a legal entity subject to suit, but rather a department of the Town. I agree that the Police Department is not a separate legal entity, but rather a department of the Town of Bluffton and should be dismissed.

Next, as to the Town of Bluffton, the Plaintiff has alleged claims against the Town for false arrest, gross negligence, slander/liable per se, assault/ personal

1472
146

injury, and civil conspiracy. The Town asserts that these claims as pled by the Plaintiff in the Complaint are barred by the South Carolina Tort Claims Act.

The causes of action asserted by the Plaintiff against the Town are all torts under the law of the State of South Carolina. The South Carolina Tort Claims Act governs all tort claims against governmental entities, see, e.g., Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994); Searcy v. Dep't of Educ. Transp. Div., 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991). It is undisputed that the Town of Bluffton is a "governmental entity" as defined by the Tort Claims Act in S.C.Code Ann. § 15-78-30(d). Section 15-78-60(17) of the Tort Claims Act further provides: "The governmental entity is not liable for a loss resulting from (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, *intent to harm*, or a crime involving moral turpitude." (emphasis added).

A review of the Complaint shows that the Plaintiff has pled numerous times throughout the complaint that the town employees acted with actual malice and an intent to harm him. He specifically pleads that the actions of the employees were motivated by vengeance and a desire to harm him. As such, these causes of action as they are pled are barred by the provisions of Section 15-78-60(17) of the Tort Claims Act.

Additionally, the Town of Bluffton asserts that it cannot be held liable for civil conspiracy. "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." McMillan v.

Oconee Memorial Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006);

Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct.App.2010).

"It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage." Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Id.

A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." McMillan, 367 S.C. at 565, 626 S.E.2d at 887. As a result, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." Id. However, although a corporation cannot conspire with itself, "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct.App.1986).

I find that the rationale set forth above applies to the Town just as it would to a corporation. Additionally, I find that a cause of action for conspiracy cannot be asserted against an entity covered under the Tort Claims Act as an element of conspiracy is "for the purpose of injuring the Plaintiff" is tantamount to an intent to harm and is barred by Section 15-78-60(17) of the Tort Claims Act.

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Moreover, it is noted that the Plaintiff's allegations of conspiracy should fail because he does not plead all the necessary elements to assert a cause of action for conspiracy as set out above. The Plaintiff has failed to assert special damages as required above.

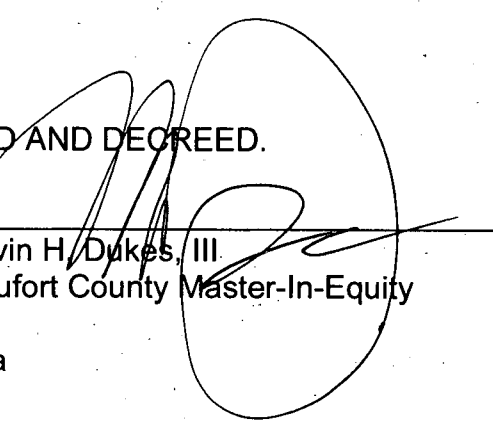
Lastly, the Town asserts the Plaintiff's claims should be barred against the Town as they are time barred by the Tort Claims Act's statute of limitations. The Act provides a strict statute of limitations period:

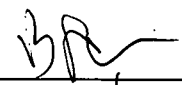
...any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

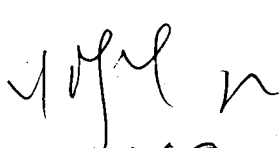
S.C. Code Ann. § 15-78-110.

The Plaintiff failed to file a verified claim, thus the two year statute applies. The incidents giving rise to the Plaintiff's cause of action all occurred outside this two year period. Based on the foregoing, I find these claims are barred by the statute of limitations.

IT IS SO ORDERED, ADJUGED AND DECREED.


Marvin H. Dukes, III.
Beaufort County Master-In-Equity


_____, South Carolina
December 12, 2014


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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JOSEPH C. SUN,

Plaintiff,

vs.

TOWN OF BLUFFTON, BLUFFTON POLICE
DEPARTMENT, BRYAN NORBERG,
ANGELA TUBBS, JOSEPH BABKIEWICZ,
CLAUDIA HEBDA, JEFFREY DICKSON and
CHRISTIAN GONZALES,

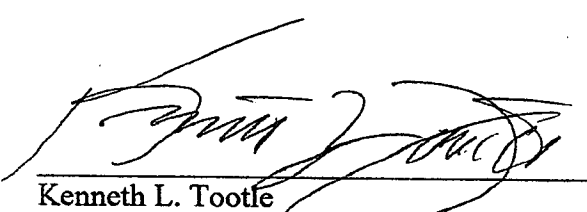
Defendants.

) IN THE COURT OF COMMONPLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-07-00943

SUMMONS

APR 21 PM 1:38
J. ROSENEAU
CLERK OF COURT
J. Y. COURTNEY
J. ROSENEAU
CLERK OF COURT

YOUR ARE SUMMONED and required to Answer the Complaint in this action, a copy of which is hereby served upon you; and to serve a copy of your Answer to the said Complaint upon the subscriber, KENNETH L. TOOTLE, Esquire at his office located at 1015 Prince Street, Post Office Box 1321, Beaufort, South Carolina 29901, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Answer the said Complaint within the time aforesaid the Plaintiff in this action will apply to the Court for the relief prayed for in said Complaint.


Kenneth L. Tootle
Attorney for the Plaintiff
P.O. Box 1321
Beaufort, South Carolina 29901
843-524-0424/843-524-1264 fax

Beaufort, South Carolina
April 21, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) Case No: 2014-CP-07-00943

JOSEPH C. SUN,)
)
 Plaintiff,)
 Vs.) COMPLAINT
)
 TOWN OF BLUFFTON, BLUFFTON)
 POLICE DEPARTMENT, BRYAN NORBERG,)
 ANGELA TUBBS, JOSEPH BABKIEWICZ,)
 CLAUDIA HEBDA, JEFFERY DICKSON and)
 CHRISTIAN GONZALES,)
)
 Defendants.)

2014 APR 21 PM 1:38
 JEREMY A. ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

JOSEPH C. SUN, the Plaintiff herein, respectfully shows unto this Honorable Court and alleges:

1. The Plaintiff is a resident of Beaufort County, South Carolina and has been an actual resident of said county and state for a period in excess of one year immediately and continuously prior to the institution of this action.
2. Defendant Town Of Bluffton is a municipality and political subdivision of the State Of South Carolina as defined in the S.C. Tort Claims Act, Section 15-78-10 *et seq.* of the Code of Laws of South Carolina, duly organized and existing under the laws of the State of South Carolina and situate in Beaufort County, South Carolina.
3. The Defendant Bluffton Police Department is the law enforcement department for Defendant Town Of Bluffton.
4. The Defendant Brian Norberg is, or was at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.
5. The Defendant Angela Tubbs is, or was at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police

Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

6. The Defendant Joseph Babkiewicz is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

7. The Defendant Claudia Hebda is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

8. The Defendant Jefferey Dickson is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

9. The Defendant Christian Gonzales is, or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina.

10. In the year 2009 the Plaintiff brought a lawsuit in Federal Court against Bluffton Police Department and Officer Jeffery Dickson individually. Since that time the Bluffton Police Department, by and through the individually named defendants, have conducted a pattern of scheme and vengeance against the Plaintiff as a result of him bringing that action.

11. That commencing with the year 2009, and continuing through the year 2013, the Defendant Officers, with help from and in conspiracy with one another and other unnamed officers and individuals, committed numerous wrongful, deceptive, and malicious acts against the Plaintiff, wrongfully causing the Plaintiff to be arrested numerous times and wrongfully jailed for a period in excess of one hundred sixty (160) days; suffer monetary damages; incur emotional and physical injury; and his automobile to be impounded several times, resulting in additional expenses the Plaintiff was required to pay as a result of the Defendants wrongful acts.

12. All of the Defendants wrongful, malicious and unconscionable acts were motivated and instigated by their prejudice and malice against the Plaintiff, their lack of proper training, and the lack of proper oversight of these officers by Bluffton Police Department. These Defendants were influenced by each other and wrongfully directed by their superiors to target the Plaintiff for harassment and other tortuous acts due to the Defendants lack of training, their personal malice and prejudice against the Plaintiff, and their lack of proper oversight and training.

13. The Plaintiff wrote lengthy letters to the Bluffton Police Department Chief Of Police and to the Mayor of the Town Of Bluffton informing them of the constant harassment and ill treatment committed by the Defendant Officers and requesting an impartial and truthful investigation of the wrong doings of the Police Officers. All of Plaintiff's letters and requests were either ignored or denied. Defendant Officers were instructed by Bluffton Police Department to ignore Plaintiff's complaints. As a result, all of wrongful and tortuous activities by the Defendant Officers were condoned, authorized, instructed and done with the full knowledge and consent of the Town Of Bluffton and the Bluffton Police Department. All Defendants committed wrongful and tortuous acts against the Plaintiff with actual fraud and actual malice, and with the intent to cause harm to the Plaintiff.

14. All Defendant Officers, beginning in year 2009 and continuing through year 2013, knowingly and intentionally conspired with and aided and abetted each other, including Plaintiff's ex-wife, in a scheme of malicious and wrongful activity, to repeatedly have Plaintiff arrested and put in jail for numerous fabricated and unwarranted charges. They then maliciously attempted to prosecute the Plaintiff in Bluffton Municipal Court and the Beaufort County Court of General Sessions. After having been arrested five times and incarcerated in the detention center for many days, all misdemeanor charges brought against the Plaintiff were either dismissed or Plaintiff was found not guilty by the Bluffton Magistrate's Court. All General Sessions charges brought against the Plaintiff were nolle prossed by the Solicitor.

15. In July, 2009, Defendant Jeffery Dickson, based upon some totally fabricated pretense, wrongfully arrested Plaintiff at his home in Bluffton Park, Bluffton, South Carolina. In the process of the unwarranted arrest Defendant Dickson, without provocation or just cause injured Plaintiff's arms and shoulders and broke Plaintiff's cell phone.

Dickson caused damage to the front door of Plaintiff home. Dickson informed Plaintiff that he was charging Plaintiff with kidnapping. Dickson thereafter hand-cuffed Plaintiff and put him in the back seat of his parked patrol car leaving him, in the heat of the summer, in the back of Dickson's patrol car, without air-conditioning, for a period in excess of two hours. The Plaintiff complained to Dickson about the intense heat and the pain in his arms and shoulders exacerbated by the handcuffs of his hands tightly behind his back. Defendant Dickson informed Plaintiff that, if he did not want to suffer more, he would be quiet and stop complaining. Approximately three hours after being arrested by Defendant Dickson, Plaintiff was released one of Dickson's superior officers, allowed to exit the patrol car, and returned to his freedom. The Plaintiff found it necessary to seek medical attention for the pain and injury occurring to his arms, shoulders and wrists as a result of Dickson's actions. Up to this date Plaintiff has not been charged with kidnapping, or any other crime, arising from this incident.

16. In 2012 the Plaintiff requested the Bluffton Police Department that it reimburse him for the damage done by Dickson to Plaintiff's cell phone and his front door, however the Bluffton Police Department refused to do so.

17. In February, 2012 the Plaintiff was involved in an automobile accident when a car driven by a person from Alberta, Canada side swiped Plaintiff's vehicle on Simmonsville Road in the Town of Bluffton. The Plaintiff was operating his vehicle in a lawful and safe manner. Immediately after the accident the Plaintiff called Bluffton Police Department to report the accident. Police Officer Danyov appeared at the scene to make a report. Defendant Dickson was the supervisor of the shift and he instructed Officer Danyov to find that the Plaintiff was at fault in the accident and to file a false report finding that the Plaintiff was at fault for trying to pass the Canadian driver unlawfully by driving on a median to pass, therefore causing the accident. Plaintiff took photographs of the accident scene and sent them to both parties insurance company. The photographs clearly showed there to be no median at the location of the accident. The police report submitted by Officer Danyov at the direction of Defendant Dickson was intentionally false. Subsequently the insurance company for the Canadian driver admitted liability for the accident.

18. During March, 2010 the Plaintiff was operating his vehicle on May River Road in the Town of Bluffton. Defendant Babkiewicz, following directions given to him by his

supervisor Defendant Angela Tubbs, stopped Plaintiff without probable cause or reasonable suspicion and arrested him without a warrant. He and Defendant Tubbs thereafter conducted an illegal search of Plaintiff's vehicle and seized several ordinary hand tools, claiming the hand tools were "burglary tools". Defendant Norberg arrived at the scene and cursed the Plaintiff. These Defendant Officers carried the Plaintiff to the Beaufort Detention Center and confined him therein on the fabricated charges of harassment and possession of burglary tools. Plaintiff's vehicle was impounded.

19. The next business day Plaintiff was afforded a bond hearing conducted by a Magistrate at the detention center. Defendant Claudia Hebda appeared at the bond hearing and requested the Magistrate to deny bail to the Plaintiff so he would have to stay confined in the detention center. Defendant Hebda gave no legitimate reason why bond should be denied stating only that Plaintiff's ex-wife did not want him released. Additionally, Defendant Hebda presented to the Magistrate false police reports as reasons Plaintiff should be denied bond. After two weeks of confinement in the detention center Plaintiff was able to obtain his release by paying a bondsman \$450.00 to post a \$4,500.00 bond for his release. Additionally, Plaintiff had to pay \$400.00 to recover his vehicle from impoundment. A subsequent trial in the Magistrate's Court resulted in Plaintiff being found "not guilty" of the harassment charge.

20. During March, 2010 Plaintiff was scheduled to have visitation with his daughter pursuant to an order from the Family Court. Plaintiff's ex-wife failed to appear at the designated place for the exchange of the child. Plaintiff contacted Bluffton Police Department for assistance and met with Officer Ferreli of the Bluffton Police. Plaintiff presented a certified copy of the Family Court Order to Officer Ferreli which substantiated Plaintiff's visitation. Officer Ferreli contacted his supervisor, Defendant Bryan Norberg and, acting on instructions given to him by Norberg, instructed the Plaintiff to leave the Town of Bluffton and refused to assist Plaintiff by contacting Plaintiff's ex-wife regarding the visitation. Ferreli advised Plaintiff that the Family Court Order was invalid. The Plaintiff was forced to contact his ex-wife himself which afforded Defendant Norberg the opportunity to arrest Plaintiff for violating the Family Court Order which Norberg falsely claimed restrained the parties from contact with each other.

21. After Plaintiff was released from jail in March, 2010 he desired visitation with his child as authorized by the Family Court Order. Plaintiff contacted his ex-wife via telephone to arrange the visitation. As a result, Defendant Norberg arranged for the issuance of an arrest warrant for Unlawful Use Of Telephone and Plaintiff was arrested and again confined in the detention center. Plaintiff was required to pay a bondsman \$600.00 to place a \$6,000.00 bond procuring Plaintiff's release. In 2012 Plaintiff was acquitted of the charge in Beaufort County Magistrate's Court.

22. On or about March 17, 2010, at about midnight while the Plaintiff was asleep in his home, Defendant Christian Gonzales called Plaintiff requesting he come to Bluffton Police Department for questioning. Leary of the prior tactics utilized by Bluffton Police Department, Plaintiff was given two promises from Defendant Gonzales: (1) that Gonzales would assist Plaintiff in recovering his vehicle from impoundment; and (2) that Plaintiff would not be arrested that night. In reliance on those promises, Plaintiff drove to Bluffton Police Department for questioning. After intense questioning for hours utilizing scheming and harassing tactics, Defendant Norberg, in contradiction of the promises made to Plaintiff by Officer Gonzales in their scheme to continually harass Plaintiff, arrested the Plaintiff charging him with various fabricated offenses, including "Possession Of Burglary Tools" arising from the incident earlier in March when Plaintiff was illegally stopped by Officer Babkiewicz and ordinary hand tools were confiscated by Babkiewicz and Tubbs, and "Stalking". These charges were completely fabricated by and through the joint efforts of Defendants Norberg, Babkiewicz, Tubbs, and Bluffton Police Department, working individually, together, and in conspiracy with one another Plaintiff was again confined in the detention center by Bluffton Police Department.

23. After being confined in the detention center for more than two weeks Plaintiff was given a \$300,000.00 bond by the Magistrate. Plaintiff was forced to pay a bondsman \$30,000.00 to place the bond and procure his release from the detention center. Additionally, Plaintiff was required to pay \$500.00 to procure the release of his vehicle from impoundment. In 2013 the Solicitor nolle prossed all charges brought against Plaintiff in the Court of General Sessions including the Burglary, Possession Of Burglary Tools and Stalking charges.

FOR A FIRST CAUSE OF ACTION
(False Arrest/False Imprisonment)

24. That each and every allegation contained in paragraphs one (1) through twenty-three (23) are re-asserted and re-alleged herein as if set forth verbatim.
25. That the Defendants jointly, severally and in combination with each other, through their negligence and/or gross negligence caused the Plaintiff to repeatedly be restrained and incarcerated against his will.
26. That the restraint and incarceration of the Plaintiff by the Defendants was intentional.
27. That no grounds in law or in fact could support the seizure, restraint and incarceration of the Plaintiff and was contrary to the laws and the constitution of South Carolina.
28. That as a direct and proximate result of the errors, omissions, intentional acts and gross negligence of the Defendants, jointly, severally and in combination thereof, the Plaintiff suffered loss of his liberty, was falsely arrested, had to expend money to procure his release from incarceration, suffered shame, shock humiliation, degradation and mental anguish, and incur legal costs to regain his rightful freedom.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

29. Each and every allegation contained in paragraphs one (1) through twenty-eight (28) are realleged herein to the same extent as if set forth verbatim.
30. That the Defendants jointly, severally and in combination with each other were malicious, negligent and grossly negligent by depriving the Plaintiff of his liberty in the following particulars:
- a. By repeatedly arresting and incarcerating the Plaintiff when in law and fact no crime was committed by the Plaintiff.
 - b. In failing to properly supervise and train its employees.

- c. In attempting to make non-criminal acts of the Plaintiff appear to be a crime when, in fact, no crime was committed by the Plaintiff.
- d. By failing to actually read and understand the statutes used to charge and incarcerate the Plaintiff.
- e. In failing to implement proper procedures to avoid unlawful arrest.
- f. In failing to use due care and caution to prevent wrongful arrests.
- g. In failing to use even slight care and caution to prevent unlawful arrests.
- h. In other ways to be proven at trial.

31. That as a direct and proximate cause of the malice, negligence and gross negligence of the Defendants, jointly, severally and in combination thereof, the Plaintiff suffered a loss of his liberty, was repeatedly falsely arrested, falsely charged with numerous crimes, had to expend money to secure his release from incarceration, suffered shame, shock, humiliation, degradation and mental anguish and incur legal costs to regain his rightful freedom.

FOR A THIRD CAUSE OF ACTION

(Slander/Libel Per Se)

32. Each and every allegation contained in Paragraphs one (1) through thirty-one (31) are realleged herein to the same extent as if set forth verbatim.

33. That the Defendants falsely accused Plaintiff of committing criminal acts, which he did not commit, and which is actionable per se.

34. That the actions of the Defendants were done in reckless disregard of the truth.

35. That the Defendants knew or should have known that the arrest of the Plaintiff is public information, available on line and published through scandal sheets and blotters.

36. That as a direct and proximate result of the actions of the Defendants in defaming the Plaintiff's name and reputation, the Defendants, jointly, severally and in combination thereof, have caused the Plaintiff to suffer shame, shock, humiliation and mental anguish and had to expend money to secure his release from incarceration.

FOR A FOURTH CAUSE OF ACTION

(Assault/Personal Injury)

37. Each and every allegation contained in Paragraphs one (1) through thirty-six (36) are re-alleged herein to the same extent as if set forth verbatim.

38. That as a result of the cruel and physical treatment of the Plaintiff by Officer Dickson, wherein he physically assaulted the Plaintiff, the Plaintiff suffered physical injuries to his arms, wrists, neck and back.

39. That the physical injuries to the Plaintiff were caused directly and proximately by the assault of Plaintiff by Officer Dickson.

40. The Plaintiff sustained damages as a result of his assault by Officer Dickson, including injury to his neck, wrists, arms and back. The Plaintiff incurred pain and was required to seek medical attention for his injuries.

FOR A FIFTH CAUSE OF ACTION

(Civil Conspiracy)

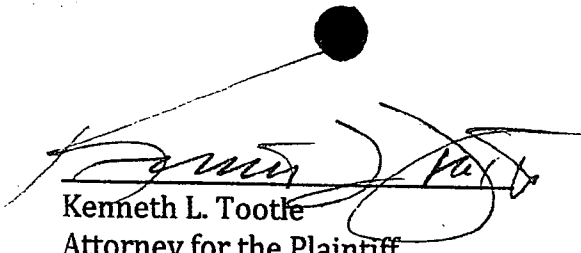
41. Each and every allegation contained in Paragraphs one (1) through forty (40) are re-alleged herein to the same extent as if set forth verbatim.

42. That the Defendants, in combination of two, more or all of them, conspired together for the purpose of injuring the Plaintiff.

43. That as a direct and proximate result of such conspiracy by and between the Defendants, the Plaintiff suffered a loss of his liberty, was falsely repeatedly arrested, falsely charged with crimes, had to expend money to secure his release from incarceration, suffered shame, shock, humiliation, degradation and mental anguish and incurred legal costs to regain his rightful freedom.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, for actual damages, and further prays for actual and punitive damages against all Defendants, together with reasonable attorney fees and the costs of this action.

Beaufort, South Carolina
April 21, 2014.



Kenneth L. Tootle
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P. O. Box 1321
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(843) 524-0424