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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-07134
Appellate Case No. 2012-213441

Glenda Couram..... Appellant,

v.

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles in their official and individual capacities ..... Respondent

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RECORD ON APPEAL
Corrected

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~~**VOLUME I**~~

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[1] Unable to locate any orders of Federal Magistrate Paige Gossett – any Order made by her outside scheduling Orders and the Rosoboro Order to dismiss were superseded by the Federal District Court Judges Perry and Seymour

II. PLEADINGS (continued)

III. MOTIONS, MEMORANDUMS, LETTERS AND OTHER DOCUMENTS

[2] The defendants may have determined the outcome of this Appeal in7 their favor and hope to use this favorable decision to dismiss new cause of action filed after the dismissal of this matter on Appeal – *Pro se* does not believe this court can dismiss the March 2013 claims until they are actually filed and heard in a lower court.

1st Mark Order

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

Glenda Renee Couram,	)	Civil Action No. 3:10-001-MJP-PJG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**ORDER**
South Carolina Department of Motor Vehicles; Lula N. Davis; Connie Rhett; and Shirley Rivers, in their Individual capacities,	)	
	)	
Defendants,	)	
	)	

This matter is before the Court pursuant to a report and recommendation submitted on November 12, 2010 by United States Magistrate Judge Paige J. Gossett, to whom it was referred for review under 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rules. Also, there is before the Court a "Motion to Remand/Removal to State Court and Request to Amend Complaint" that was filed by Plaintiff on December 14, 2010.

In the underlying action, Plaintiff Glenda Renee Couram ("Plaintiff"), proceeding *pro se*, seeks monetary damages from her current employer, the South Carolina Department of Motor Vehicles (SCDMV), asserting alleged violations of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e – 2000e-17, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, and the Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206. Specifically, Plaintiff contends that the SCDMV failed to promote her and subjected her to a hostile work environment because of her age, paid her lower wages than her younger colleagues,

and retaliated against her by demoting her on the basis of her age. Plaintiff also asserts state law claims for outrage and civil conspiracy.

I. BACKGROUND

Plaintiff is a fifty-two (52) year old African-American female. Plaintiff has been an employee of the South Carolina Department of Motor Vehicles (SCDMV) since October 2004, when she was hired as a temporary employee in the data entry section. On June 19, 2006, Plaintiff was hired into a full-time position as a Compliance Specialist in the tickets branch of SCDMV's driver records section. She was reassigned to a position within the information management branch of driver records on December 8, 2008, without loss of pay or title. Plaintiff remains employed by the SCDMV in this position to the present day.

On November 13, 2008, Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission (EEOC). She asserted that she had been discriminated against, harassed, subjected to a hostile work environment, in violation of the Age Discrimination in Employment Act of 1967, and retaliated against her for engaging in unspecified, protected activity.[1]

After receiving notice of the right to sue, Plaintiff timely commenced this action against the Defendant on January 4, 2010. On August 11, 2010, the Defendants moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Defendants assert that summary judgment is warranted because (1) Plaintiff's claims pursuant the ADEA are barred by state sovereign immunity; (2) Plaintiff's claims pursuant to the EPA or Title VII fail because her complaints are based on age and neither statute forbids age discrimination; (3)

Plaintiff cannot establish *prima facie* cases of either age discrimination, age harassment, or retaliation because of age; (4) Plaintiff's claim for outrage is barred by the South Carolina Workers' Compensation Act; and (5) Plaintiff fails to establish a *prima facie* case of civil conspiracy. In her response to the Defendants' motion for summary judgment, Plaintiff urged the Court to deny summary judgment due to the Defendants' failure to meet the requirements of Rule 56(c).

Upon her review, the Magistrate Judge observes that the SCDMV is immune from suit in federal court pursuant to the Eleventh Amendment to the United States Constitution and it has not waived its immunity. The Magistrate Judge observes that Plaintiff's ADEA claims against individual Defendants Davis, Rhett, and Rivers fail as a matter of law because the ADEA does not provide for actions against these defendants in their individual capacities. Citing Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir. 1994) (Accordingly, we [the Court] rejected the claim of individual liability under the ADEA); Lissau v. Southern Food Service, Inc., 159 F.3d 177, 180 (4th Cir. 1998) (holding that there is no individual liability under the ADEA or Title VII); see also McNeal v. Montgomery Cnty., Md., 307 Fed. Appx. 766, 775 n.6 (4th Cir. 2009) (unpublished) ("[O]nly an employer, not an individual employee, may be held liable under the ADEA."). The Magistrate Judge further observes that the Plaintiff's evidence fails to establish a *prima facie* case of either outrage or civil conspiracy.[2] Therefore, the Magistrate

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[1] Plaintiff only checked boxes for age discrimination and retaliation on her Charge of Discrimination, EEOC Form 5, which documents the type of discrimination Plaintiff claims she suffered. (See Docket Entry No. 48 – 2.)

[2] The Magistrate Judge also found that the claim for outrage, commonly referred to as intentional infliction of emotional distress, is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. See S.C. Code Ann. § 42-1-540 (making the Act the exclusive remedy for employees seeking damages for personal injuries arising out of and in the course of their employment); see also Dickert v. Metropolitan Life Ins. Co., 428

Judge recommends granting the Defendants' motion for summary judgment.[3]

Plaintiff submitted various objections to the Magistrate Judge's Report and Recommendation. Plaintiff first voices her displeasure with the way the Magistrate Judge adjudicated discovery issues. Plaintiff then objects to the Magistrate Judge's observation that her claims are based solely on the ADEA and argues that she has appropriately brought claims under Title VII and 42 U.S.C. § 1983. Plaintiff further asserts that the South Carolina Tort Claims Act abrogates the State's Sovereign Immunity and the tort of outrage is not barred by the exclusivity provisions of the Workers' Compensation Act. Finally, Plaintiff argues that the breadth of her allegations support her claim for civil conspiracy since participation in a conspiracy is a question of fact. Plaintiff asks the Court to reject the Magistrate Judge's recommendation and allow Plaintiff her day in Court.

Additionally, on December 14, 2010, Plaintiff filed a "Motion to Remand/Removal to State Court and Request to Amend Complaint." In this motion, Plaintiff asks the Court to remand her claims to state court if jurisdiction is appropriate there. In the alternative, Plaintiff requests that the Court allow her to amend the Complaint to add claims for religious discrimination and harassment.

S.E.2d 700 (S.C. 1993) (holding that intentional infliction of emotional distress, assault and battery, and mental trauma were covered by the exclusive remedy provision of the Workers' Compensation Act).

[3] The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

II. ANALYSIS

A. Age Discrimination in Employment Act Claims

Plaintiff alleges that the SCDMV unlawfully discriminated against her based upon her age by failing to promote her, paying her disparate wages, subjecting her to a hostile work environment, and retaliating against her by demoting her. The ADEA addresses age related employment issues by making it "unlawful for an employer...to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age...." 29 U.S.C. § 623(a)(1). However, as the Magistrate Judge has observed, the SCDMV and individual Defendants Davis, Rhett, and Rivers are immune from an ADEA suit in federal court pursuant to the Eleventh Amendment to the United States Constitution.

The Eleventh Amendment provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." U.S. Const. art. XI. The Supreme Court has consistently construed the Eleventh Amendment to bar suits against a state brought by its own citizens in federal court. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 (1984). The immunity from suit conferred by the Eleventh Amendment extends both to suits against the state itself, suits against state agencies such as the SCDMV and its governing body, officers, and agents, which function as an arm or alter ego of the state.[4] Pennhurst, supra, at 100; see also Regents of the Univ. of California v.

[4] The SCDMV is without question a department of the State of South Carolina. See S.C. Code Ann. § 56-1-5.

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Doe, 519 U.S. 425, 429 (1997); Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); Alabama v. Pugh, 438 U.S. 781 (1978); Hughes v. Blankenship, 672 F.2d 403 (4th Cir. 1982); Jensen v. Conrad, 570 F. Supp. 91, 96-97 (D.S.C. 1983); Coffin v. South Carolina Dep't of Social Services, 562 F. Supp. 579, 584 (D.S.C. 1983); United States v. State of South Carolina, 445 F.Supp. 1094, 1100 (D.S.C. 1977). Eleventh Amendment immunity can be overcome if the state waives its constitutional immunity and consents to suit or, if Congress abrogates the state's immunity pursuant to its authority to enforce substantive provisions "by appropriate legislation." See U.S. Const. art. XIII, § 2; art. XIV, § 5; art. XV, § 2.

Clearly, the State of South Carolina has not waived its immunity regarding claims such as those asserted by the Plaintiff herein. See S.C. Code Ann. § 15-78-20(e) (expressly stating that the State of South Carolina does not waive sovereign immunity from suit in federal court). Additionally, Congress did not exercise its power to abrogate a state's Eleventh Amendment immunity in enacting the ADEA. Kimel v. Florida Bd. of Regents, 528 U.S. 62, 91 (2000). Thus, absent consent to suit or federal legislation abrogating the constitutional immunity of the State of South Carolina, neither the SCDMV nor individual Defendants Davis, Rhett, and Rivers, sued in their official capacities, are subject to suit under the ADEA. Moreover, to the extent that Plaintiff asserts claims under the ADEA against individual Defendants Davis, Rhett, and Rivers in their individual capacities, the ADEA does not allow the Court to impose such liability. See Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir. 1994); see also Lissau v. Southern Food Service, Inc., 159 F.3d 177, 180 (4th Cir. 1998) (holding that there is no individual liability under the ADEA or Title VII); McNeal v. Montgomery Cnty., Md., 307 Fed. Appx. 766, 775 n.6

(4th Cir. 2009) (unpublished) ("[O]nly an employer, not an individual employee, may be held liable under the ADEA."). Accordingly, the Defendants' motion for summary judgment regarding Plaintiff's federal age claims should be granted.

B. Other Federal Claims

The Court agrees with the Magistrate Judge that although Plaintiff mentions Title VII and the EPA in her filings, her allegations regarding discrimination and retaliation are all based on age rather than any class protected under Title VII or the EPA. The Court further agrees with the Magistrate Judge that any claims arising under 42 U.S.C. § 1983 for alleged due process violations of the Fourteenth Amendment are not properly before the Court. See Zombro v. Baltimore City Police Dep't, 868 F.2d 1364, 1366-71 (4th Cir. 1989) (holding that a plaintiff could not bypass the procedural and substantive provisions of the ADEA by pleading an age discrimination claim against defendants as a § 1983 claim). Accordingly, the Court overrules Plaintiff's objections to the Magistrate Judge's recommendation regarding claims brought pursuant to Title VII, the EPA, and 42 U.S.C. § 1983.

C. State Law Claims

In addition to her federal age claims, Plaintiff also alleges state common law causes of action for civil conspiracy and outrage, which is commonly referred to as intentional infliction of emotional distress (IIED). The Court's jurisdiction over the state law claims is premised on supplemental jurisdiction. See 28 U.S.C. § 1367(a). The court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3); see also Shanaghan v. Cahill, 58 F.3d 106, 109 (4th Cir.1995) ("The

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doctrine of supplemental jurisdiction indicates that federal courts generally have discretion to retain or dismiss state law claims when the federal basis for an action drops away."). "[T]rial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." Shanaghan, 58 F.3d at 110. The Court has been instructed to consider the following factors when making this determination: (1) "convenience and fairness to the parties," (2) "the existence of any underlying issues of federal policy," (3) "comity," and (4) "considerations of judicial economy." Id. (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n. 7 (1988)). These factors, in this regard, support dismissal. Accordingly, pursuant to 28 U.S.C. § 1367(c)(3), the Court dismisses Plaintiff's state law claims for civil conspiracy and outrage without prejudice.

D. Plaintiff's Motion to Remand/Removal to State Court and Request to Amend Complaint

After submitting her objections to the Magistrate Judge's Report and Recommendation, Plaintiff filed a "Motion to Remand/Removal to State Court and Request to Amend Complaint" on December 14, 2010. Plaintiff seeks to have the Court remand her claims to state court if jurisdiction is appropriate there. This request cannot be granted because a federal court cannot remand a case to state court that was originally filed in federal court, even if a state court turns out to be the appropriate forum. In the alternative, Plaintiff seeks to amend the Complaint to add claims for religious discrimination and harassment.

Because amendment under Rule 15(a)(1) of the Federal Rules of Civil Procedure is unavailable to Plaintiff at this point in the litigation[5], she can only amend the Complaint with the

[5] Under Federal Rule of Civil Procedure 15(a)(1), a plaintiff may amend his complaint one time as a matter of course

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opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2). Since the Defendants have not provided written consent to an amendment, the Court is instructed that "leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." Laber v. Harvey, 438 F.3d 404, 426 – 27 (4th Cir. 2006) (citing Foman v. Davis, 371 U.S. 178, 182 (1962); Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986)). Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing. Id.

In this case, Plaintiff has requested amendment to add claims for religious discrimination and harassment which were not identified in her Charge of Discrimination. These claims are further being added well after the Magistrate Judge has recommended granting summary judgment on the other federal claims in this matter. Therefore, Plaintiff's motion to amend is hereby denied.

III. CONCLUSION

Upon careful consideration of the record and for the foregoing reasons, the Court approves the Magistrate Judge's recommendation to grant Defendants' motion for summary judgment as to Plaintiff claims for violating the Age Discrimination in Employment Act. Accordingly, the Defendants' motion for summary judgment as to Plaintiff's claims that the Defendants have violated the Age Discrimination in Employment Act is hereby **GRANTED**. The Defendants' motion for summary judgment is **DENIED** to the extent the motion seeks

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before the defendant files a responsive pleading. Fed. R. Civ. P. 15(a)(1). Here, the Defendants have filed their

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dismissal with prejudice of the Plaintiff's state law claims for civil conspiracy and outrage. Instead, pursuant to 28 U.S.C. § 1367(c), Plaintiff's state law claims for civil conspiracy and outrage are hereby **DISMISSED** without prejudice. It is further ordered that Plaintiff's Motion to Remand and Request to Amend Complaint is **DENIED.**

IT IS SO ORDERED.

s/MATTHEW J. PERRY, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
March 10, 2011

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responsive pleading and, therefore, amendment under Rule 15(a)(1) is unavailable to Plaintiff.

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

Glenda Renee Couram, Plaintiff, v. South Carolina Department of Motor Vehicles; Lula N. Davis; Connie Rhett; and Shirley Rivers, in their Individual capacities, Defendants.	)	Case No. 3:10-001-MJP-PJG **ORDER**

This matter is before the Court by way of a motion filed by the Defendants pursuant to Rule 59(e) of the Federal Rules of Civil Procedure collectively seeking to amend the Judgment of this Court filed on March 11, 2011. For the reasons stated below, the Court denies the Defendants' motion.

I. RELEVANT PROCEDURAL HISTORY

On January 4, 2010, Plaintiff timely commenced this action against the Defendants alleging violations of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e – 2000e-17, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, and the Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206. (Pl.'s Compl., Docket No. 1.) Plaintiff also alleged state law claims for outrage (commonly known as Intentional Infliction of Emotional Distress) and civil conspiracy. After answering the Complaint and engaging in discovery, the Defendants moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on August 11, 2010. (Docket No. 48.) Upon consideration of the record before the Court, the Magistrate Judge issued a Report and Recommendation on November 12, 2010 in

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which she recommended granting the Defendants' motion for summary judgment. Plaintiff timely submitted various objections to the Magistrate Judge's Report and Recommendation.

On March 10, 2011, the Court issued an Order granting summary judgment to Defendants as to all of Plaintiff's claims based on violations of federal law. The Court declined to exercise supplemental jurisdiction over the Plaintiff's remaining state-law based claims for outrage and civil conspiracy, and dismissed these state law claims without prejudice. On March 17, 2010, Defendants filed the present motion requesting dismissal of Plaintiff's outrage and civil conspiracy claims.

On March 21, 2011, Plaintiff appealed the Court's March 10, 2011 Order to the United States Court of Appeals for the Fourth Circuit. (Docket No. 102.)

II. LEGAL STANDARD

Under Rule 59(e) of the Federal Rules of Civil Procedure, a court may "alter or amend the judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." Robinson v. Wix Filtration Corp., 599 F.3d 403, 407 (4th Cir. 2010); see also Collison v. Int'l Chemical Workers Union, 34 F.3d 233, 235 (4th Cir. 1994). "[T]he rule permits a district court to correct its own errors, 'sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.'" Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). However, Rule 59 motions do not serve as an opportunity to rehash issues already ruled upon because a litigant is displeased with the result. See Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993) (stating that "mere disagreement does not support a Rule 59(e) motion"); see also Consulting Eng'rs, Inc. v. Geometric Software Solutions & Structure Works LLC, 2007 WL 2021901, at *2 (D.S.C. July 6, 2007) ("A party's mere disagreement with the

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court's ruling does not warrant a Rule 59(e) motion, and such motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted."). Moreover, where, as here, a motion to amend a judgment under Rule 59(e) is filed before the notice of an appeal from the underlying judgment, the district court retains jurisdiction to dispose of a motion to alter or amend a judgment. See Fed. R. App. P. 4(a)(4); see also Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 59 (1982).

III. ANALYSIS

In support of their motion for relief pursuant to Rule 59(e), the Defendants argue that the Court should in its discretion exercise supplemental jurisdiction over Plaintiff's state law causes of action for outrage and civil conspiracy and dismiss these claims with prejudice. The Defendants assert that dismissal of Plaintiff's state law claims is appropriate upon consideration of factors such as "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." Citing Talamantes v. Berkeley Co. Sch. Dist., 340 F.Supp.2d 684, 690 (D.S.C. 2004). The Defendants fail however to identify an intervening change in the law, newly developed evidence, or clear error of law or manifest injustice which warrant altering the Court's prior opinion declining to exercise jurisdiction over Plaintiff state law claims. In fact, the Defendants admit that it is within the Court's discretion to determine whether or not to exercise supplemental jurisdiction over Plaintiff's causes of action for outrage and civil conspiracy. In this regard, the Court finds that the Defendants' arguments in their entirety do not warrant the Court to grant the relief requested by the Defendants in their motion. Accordingly, the Defendants' Motion to Amend is denied.

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IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Defendant's Motion to Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/Matthew J. Perry, Jr.
MATTHEW J. PERRY, JR.
SENIOR UNITED STATES DISTRICT JUDGE

May 5, 2011
Columbia, South Carolina

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FILED: August 30, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1253
(3:10-cv-00001-MJP)

GLENDA RENEE COURAM

Plaintiff - Appellant

v.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES; LULA N. DAVIS, in their individual capacities; CONNIE RHETT, in their individual capacities; SHIRLEY RIVERS, in their individual capacities

Defendants - Appellees

ORDER

Upon consideration of the motion to dismiss this case pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, and there appearing no opposition, the court grants the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

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FILED: August 30, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1253
(3:10-cv-00001-MJP)

GLENDA RENEE COURAM

Plaintiff - Appellant

v.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES; LULA N. DAVIS, in their individual capacities; CONNIE RHETT, in their individual capacities; SHIRLEY RIVERS, in their individual capacities

Defendants - Appellees

RULE 42(b) MANDATE

This court's order dismissing this appeal pursuant to Local Rule 42(b) takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

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

Glenda R. Couram; Plaintiff, vs. Lula N. Davis; Shirley Rivers; Constance Rhett, a/k/a Connie; Marcia Adams, Former Director or Current Director of SCDMV; Dottie Blankenship; Tosha Autry; SC Department of Motor Vehicles, in their official and individual capacities; Steven W. Lake; Defendants.	)	C/A No.: 3:12-cv-3200-MBS-PJG **ROSEBORO ORDER TO PLAINTIFF**

One or more defendants has filed a motion to dismiss (pursuant to Fed. R. Civ. P. 12) or a motion for summary judgment (pursuant to Fed. R. Civ. P. 56) asking the court to dismiss your case. Because you are not represented by counsel, this "Roseboro Order"[1] is issued to advise you of the dismissal/summary judgment procedures and the possible consequences if you fail to respond adequately to defendant's motion. Please carefully review this information, including the attached excerpts of the Federal Rules of Civil Procedure regarding motions to dismiss and motions for summary judgment.

You have 34 days from the date of this order to file any material in opposition to the motion that defendant filed. If you fail to respond adequately, the court may grant the defendant's motion, which may end your case.

Explanation of Motions to Dismiss

Motions to dismiss can be filed pursuant to Fed. R. Civ. P. 12. Many motions to dismiss are filed under Fed. R. Civ. P. 12(b)(6), in which defendants usually argue that the law does not provide a right to relief for claims that a plaintiff makes in his complaint. Because motions to dismiss usually concern questions of law and not questions of fact, the court presumes as true the plausible facts of the complaint for the purpose of a motion to dismiss.

The court decides a motion to dismiss on the basis of the applicable law and the pleadings, meaning the complaint, defendant's answer (if any), the exhibits attached to the

[1]The court enters this order in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) (requiring the court provide explanation of dismissal/summary judgment procedures to *pro se* litigants).

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complaint, documents that the complaint incorporates by reference (provided they are both undisputed and pertinent to the pleaded claims), and materials of which the court may take judicial notice. In some cases, the parties present materials outside of the pleadings, such as affidavits or declarations in support of or in opposition to the motion to dismiss. If the court, in its discretion, considers materials outside of the pleadings, the motion to dismiss is converted to a motion for summary judgment under Fed. R. Civ. P. 56. See Fed. R. Civ. P. 56(d).

Explanation of Motions for Summary Judgment

Motions for summary judgment filed by defendants pursuant to Fed. R. Civ. P. 56 argue that the plaintiff's claims are not supported by the specific facts of the case. For example, in a civil rights case brought under 42 U.S.C. § 1983, a defendant may argue in a motion for summary judgment that the facts in the plaintiff's case do not rise to the level of a constitutional violation that would entitle him to relief. Because motions for summary judgment concern both questions of law and questions of fact, if the court finds that there is not any genuine dispute as to any material fact on a claim, the court will determine which party is entitled to judgment under the law. The court decides a motion for summary judgment on the basis of the applicable law, the pleadings, discovery, affidavits, declarations, and any other properly-submitted evidence.

Your Response to the Defendant's Motion

Your filing in opposition to the defendant's motion should be captioned either as "Response to Motion to Dismiss" or "Response to Summary Judgment," as applicable, and should include the following: (1) an explanation of your version of the facts, if different from defendant's version of the facts; and (2) your legal argument regarding why the court should not grant the motion and end your case. Rule 56(c) requires that you support your version of all disputed facts with material such as depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials. Your failure to support facts in dispute with such material may result in the court granting the motion. Any affidavits or declarations you file in opposition to summary judgment must be based on personal knowledge, contain facts admissible in evidence, and be signed by a person who would be competent to testify on matters contained in the affidavit or declaration if called to testify about them at trial. The court will not consider affidavits, declarations, or exhibits that are unrelated to this case, nor will it consider affidavits or declarations that contain only conclusory statements or argument of facts or law. If you fail to dispute the defendant's version of the facts with proper support of your own version, the court may consider the defendant's facts as undisputed.

All affidavits, declarations, or other evidence you submit to the court must be made in good faith and the facts sworn to in the affidavit or affirmed in the declaration must be true. All affidavits and declarations submitted in this case are submitted under penalties of perjury or subornation of perjury. 18 U.S.C. §§ 1621 and 1622. If the court finds that a

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party has presented affidavits, declarations, or other evidence in bad faith or only to delay the action, the court may order sanctions, payment of fees, or hold that party in contempt of court.

IT IS SO ORDERED.

s/Paige J. Gossett
Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

August 10, 2012
Columbia, South Carolina

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

Glenda R. Couram, Plaintiff, vs. Lula N. Davis; Shirley Rivers; Constance Rhett; Marcia Adams, former director or current director of SCDMV; Dottie Blankenship; Tosha Autry; SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	C/A No. 3:11-3200-MBS-PJG **ORDER AND OPINION**

On June 27, 2012, this court issued an order adopting the recommendation of the Magistrate Judge and denying Plaintiff's motion to remand because Plaintiff's proposed amended complaint contained federal causes of action. On July 11, 2012, Plaintiff filed a motion requesting that the court reconsider this order. The court notes that on August 7, 2012, Plaintiff filed an amended complaint. The court further notes that this amended complaint does not contain any federal causes of action. The court declines to exercise supplemental jurisdiction over Plaintiff's state law claims and accordingly remands this action to state court. *See* 28 U.S.C. § 1367(c); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988). Plaintiff's motion for reconsideration is denied as moot.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

August 20, 2012.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Glenda R. Couram,)
)
Plaintiff,)
)
v.)
)
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities,)
)
Defendants.)

C/A NO.: 2011-CP-40-07134

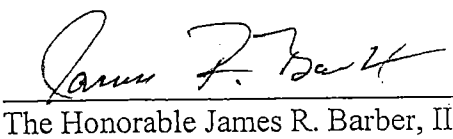
ORDER GRANTING MOTION FOR CONTINUANCE

This matter comes before me upon the Defendants' Motion for Continuance from the case being placed on the jury roster until a term of Court not earlier than January 7, 2012. This case is currently noticed on the jury roster for October 29, 2012.

This action was remanded to this Court on or about August 21, 2012 from the U.S. District Court following the dismissal of federal claims in the action. Currently, there are two motions pending: (1) Defendants' Motion to Dismiss, which was filed while the case was still pending in the U.S. District Court, and (2) Plaintiff's Motion to Amend Complaint. These motions are scheduled to be heard during the week of November 5, 2012.

FOR GOOD CAUSE HAVING BEEN SHOWN, this case is and shall be continued on the jury roster until on or after January 7, 2013. IT IS FURTHER ORDERED THAT this case shall continue with discovery and trial preparation until there is a decision on the above pending motions or until the case is called for trial.

AND IT IS SO ORDERED.



The Honorable James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

10/11, 2012
Columbia, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	)	C/A No.: 2011-CP-40-07134 **ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT AND DISMISSING PLAINTIFF'S CLAIMS WITH PREJUDICE**

THIS MATTER came before the Court on November 5, 2012, concerning the Motion to Amend Complaint of Plaintiff Glenda R. Couram, and the Motion to Dismiss of Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants"). Both motions were calendared to be heard during the week of November 5, 2012 by Order of The Honorable James R. Barber, III, filed on October 16, 2012.

Following a hearing on the matter and review of arguments and pleadings submitted by all parties, for the reasons detailed below, this Court DENIES Plaintiff's Motion to Amend Complaint and DISMISSES this lawsuit with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff has been an employee of SCDMV since October 2004, when she was hired as a temporary employee. On June 19, 2006, Plaintiff became employed in a full-time position, and remains employed at SCDMV to this date.

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Plaintiff originally filed this case on October 25, 2011, alleging the following causes of action: (1) a Title VII retaliation claim, (2) a claim for various violations of the South Carolina Human Affairs Law, (3) a "free speech" claim under the U.S. Constitution, (4) an unspecified claim for alleged violations of Constitutional rights under 42 U.S.C. § 1981(a), (5) a claim for deprivation of rights under 42 U.S.C. § 1983, (6) an unspecified claim under the S.C. Tort Claims Act, (7) claims for intentional and negligent infliction of emotional distress, (8) a civil conspiracy claim, and (9) a claim for gross negligence under the S.C. Tort Claims Act.[1]

The case was removed to the U.S. District Court. Thereafter, the parties engaged in an extensive motions practice, primarily addressing whether Plaintiff had brought federal causes of action and whether the case should be remanded to state court.

On August 7, 2012, U.S. Magistrate Judge Paige Gossett issued an Order granting Plaintiff's Motion to Amend her Complaint, which Plaintiff styled as her "Amended Complaint in Complaince [*sic*] with Order" (hereinafter referenced as Plaintiff's "Third Amended Complaint").

On August 9, 2012, Defendants filed their Motion to Dismiss the Third Amended Complaint in the U.S. District Court pursuant to FED R. CIV. P. 12(b)(6).

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[1] Plaintiff also filed an earlier federal lawsuit in January 2010 against many of the same Defendants and raising some of the same claims. The federal causes of action were dismissed with prejudice on March 10, 2011, and Defendants' motion under Rule 59(e) was dismissed on May 6, 2011. *Couram v. South Carolina Dept. of Motor Vehicles*, 2011 WL 891298 (D.S.C. March 10, 2011) and 2011 WL 1743264 (D.S.C. May 6, 2011). The federal court declined to exercise jurisdiction over the two remaining state law claims – intentional infliction of emotional distress and civil conspiracy – and dismissed them without prejudice. Under 28 U.S.C. § 1367(d), the statute of limitations on these state law claims was tolled for 30 days following dismissal from federal court. Because Plaintiff did not file her current complaint until October 25, 2011, the emotional distress and civil conspiracy claims do not "relate back" to her earlier complaint from 2010. *Jinks v. Richland County*, 538 U.S. 456, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003).

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On August 21, 2012, the U.S. District Court remanded the entire case to this Court, noting that the Third Amended Complaint "does not contain any federal causes of action." The ruling also "decline[d] to exercise supplemental jurisdiction over Plaintiff's state law claims and accordingly remand[ed] this action to state court." (*See* Order and Opinion of Chief U.S. District Judge Margaret B. Seymour, dated August 21, 2012).

On September 11, 2012, after the case had been remanded to state court, Plaintiff filed a response to the Defendants' Motion to Dismiss in the U.S. District Court. The response included Plaintiff's Motion to Amend her Complaint and a proposed Fourth Amended Complaint. This motion was heard before this Court on November 5, 2012, along with the Defendants' response, as well as argument concerning Defendants' Motion to Dismiss.

PLAINTIFF'S THIRD AMENDED COMPLAINT

In her Third Amended Complaint, Plaintiff describes her numerous complaints and frustrations about the manner in which she was managed by (1) her supervisors and immediate chain of command – Lula N. Davis, Shirley Rivers, and Constance "Connie" Rhett, (2) current and former SCDMV executive and Human Resources leadership – Marcia Adams, Dottie Blankenship, Tosha Autry, and Steven W. Lake, and (3) the agency itself. Plaintiff generally complains about unspecified but "repeated acts of willful, reckless harassment, abuse, threats by her fellow employees, including supervisors." (Third Amended Complaint, ¶ 2). She also alleges that all Defendants:

- "intentionally or recklessly subjected the plaintiff to harassing conduct in direct violation of the [South Carolina Tort Claims Act],"
- failed "to act with simple and ordinary care in their actions towards the plaintiff,"
- "intended to inflict emotional distress" on her,

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- "took an active part in the further *[sic]* of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm Plaintiffs [*sic*] as set forth in this complaint," and

- "allowed defamation of the Plaintiff's character and reputation, destroyed her professionalism, caused the Plaintiff to live and work in fear of loss of employment/livelihood, stress due to daily uncertainty of employment, allowed false allegation [*sic*]."

(Third Amended Complaint, ¶¶ 24, 32, 36, 42, 48). Plaintiff grouped her allegations under five (5) separate causes of action, each stated against all Defendants:

1. Plaintiff's First Cause of Action did not state a cause of action, but instead simply referenced the South Carolina Tort Claims Act (SCTCA).

2. Plaintiff's Second Cause of Action was entitled "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."

3. Plaintiff's Third Cause of Action also did not state a cause of action, but instead attempted to "disclaim" the affirmative defense of Workers' Compensation Act exclusivity to her claims for emotional distress.

4. Plaintiff's Fourth Cause of Action was for Civil Conspiracy.

5. Plaintiff's Fifth Cause of Action was for Defamation.

PLAINTIFF'S PROPOSED FOURTH AMENDED COMPLAINT

In Plaintiff's proposed Fourth Amended Complaint, Plaintiff names the same Defendants as in her Third Amended Complaint, but more fulsomely describes the ways in which she believes her supervisors and SCDMV leadership mistreated her. Specifically, in her Fourth Amended Complaint, Plaintiff describes her dealings with her supervisors and SCDMV leadership from the beginning of her employment until her transfer in November 2008.[2] (Fourth

[2] According to SCDMV, Plaintiff was actually reassigned, effective December 8, 2008, to another position in the Information Management branch of the Driver Records section under a

Amended Complaint, ¶¶ 24-77). Thereafter, she changed the manner in which she attempted to state her causes of action as follows:

1. A "gross negligence" claim pursuant to the South Carolina Tort Claims Act (SCTCA) as to all Defendants for conduct allegedly taking place on or before December 2008. (Fourth Amended Complaint, ¶¶ 79-96).

2. A claim styled as "Worker Compensation and/or Willful, Reckless Infliction of Emotional Distress [*sic*]" against all Defendants. (Fourth Amended Complaint, ¶¶ 97-103).

3. A claim for "Defamation" against all Defendants. (Fourth Amended Complaint, ¶¶ 104-109).

4. A claim for Civil Conspiracy against all Defendants. (Fourth Amended Complaint, ¶¶ 110-119).

LEGAL DISCUSSION

I. PLAINTIFF'S MOTION TO AMEND HER COMPLAINT IS FUTILE, BECAUSE HER CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-78-110.

Plaintiff has moved to amend her Complaint under Rule 15, S.C.R.Civ.P. Although leave to amend should generally be "freely given," our appellate courts have held that it may be denied where the proposed amendment would be futile. *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (S.C. App. 1997); *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 680-681 (S.C. App. 2010), *rev'd on other grounds*, --- S.E.2d ----, 2012 WL 4808545 (S.C. October 10, 2012). In this case, because Plaintiff's proposed amendments would be futile, her motion is denied.

As an initial matter, the claims alleged by Plaintiff in either her Third or Fourth Amended Complaints are subject to a two (2) year statute of limitations. *Flateau v. Harrelson*, 355 S.C.

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new supervisor, Gail Allison. However, for purposes of this motion, whether the date of the move to her new position was in November or December 2008 is of no consequence.

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197, 208 584 S.E.2d 413, 418-419 (S.C. App. 2003) (S.C. Tort Claims Act's two-year statute of limitations governed common law causes of action for outrage, invasion of privacy, and civil conspiracy against individual state employees). This is because Plaintiff did not file a "verified claim" under the provisions of S.C. Code Ann. § 15-78-80, which requires, in pertinent part, as follows:

> (a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:
>
> (1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;
>
> (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;
>
> (3) where the identification of the proper defendant is in doubt, with the Attorney General.
>
> (b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.
>
> (c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.
>
> (d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.
>
> (e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(emphasis added).

While Plaintiff has argued that her filing a Charge of Discrimination with the Equal Employment Opportunity Commission and/or the South Carolina Human Affairs Commission is the equivalent of a "verified complaint" under S.C. Code Ann. § 15-78-80, she is mistaken. Filing a verified claim under the S.C. Tort Claims Act is not a mere formality, and not subject to "substantial compliance." Indeed, South Carolina's courts have "repeatedly held strict compliance with the verified claim statute is mandatory." *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 189, 534 S.E.2d 1, 8 (S.C. App. 2000) (citations omitted).

In the instant case, presuming the latest date of the alleged "loss" was on or before December 8, 2008, Plaintiff would need to have filed her verified claim under the S.C. Tort Claims Act on or before December 8, 2009 to extend the statute of limitations for torts brought against the Defendants from two to three years under S.C. Code Ann. § 15-78-110. Because she has not done so, under S.C. Code Ann. § 15-78-110, Plaintiff's claims are governed by a two-year statute of limitations. Because Plaintiff's allegations are based on actions that purportedly occurred on or before December 8, 2008, and because she filed the current lawsuit on October 25, 2011, each of her claims must be dismissed with prejudice as untimely.[3]

II. EVEN IF IT WERE TIMELY, PLAINTIFF'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS MUST BE DISMISSED BECAUSE IT IS BARRED UNDER THE DOCTRINE OF EXCLUSIVITY OF THE WORKERS' COMPENSATION ACT AS TO SCDMV AND ALL INDIVIDUAL DEFENDANTS IN THEIR "OFFICIAL" CAPACITY.

Plaintiff's claim for emotional distress is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. *See* S.C. Code Ann. § 42–1–540 (making the Act the exclusive remedy for employees seeking damages for personal injuries arising out of and in the

[3] The two-year statute of limitations applies to the individual Defendants as well, regardless of whether they acted within the scope of their official duty. *Flateau*, 355 S.C. at 208, 584 S.E.2d at 418-419.

course of their employment); *Dickert v. Metropolitan Life Ins. Co.,* 311 S.C. 218, 428 S.E.2d 700 (1993) (holding that intentional infliction of emotional distress, assault and battery, and mental trauma were covered by the exclusive remedy provision of the Workers' Compensation Act). Further, the SCTCA explicitly provides as an exception to the waiver of sovereign immunity that "[t]he governmental entity is not liable for a loss resulting from ... any claim covered by the South Carolina Workers' Compensation Act." S.C. Code Ann. § 15–78–60. Thus, under South Carolina law, Plaintiff's exclusive remedy for damages against SCDMV resulting from any alleged intentional infliction of emotional distress is under the Workers' Compensation Act. *See* S.C. Code Ann. § 42–1–540.

Similarly, to the extent that Plaintiff seeks to sue the individual Defendants in their "official" capacities for emotional distress, her claims are also barred, since "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 ... [and] is no different from a suit against the State itself." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Because this claim cannot be brought against SCDMV, it also cannot be brought against the individual Defendants in their "official" capacities, and to that extent, it must be dismissed with prejudice.

III. PLAINTIFF'S DEFAMATION CLAIM MUST BE DISMISSED BECAUSE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS, AND IT OTHERWISE FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As set forth in her proposed Fourth Amended Complaint, Plaintiff's claim for defamation does not set forth specific statements that she believes the Defendants made concerning her, or the persons to which the statements were allegedly made. Indeed, the only specific reference to

any specific statement was a reference made to her as a "vexatious litigant" by the undersigned in the pleadings in this case.

As an initial matter, to the extent Plaintiff's defamation claim is based on acts occurred prior to October 25, 2009, it is barred by the applicable two-year statute of limitations. S.C. Code Ann. § 15-3-550 (establishing a two-year statute of limitations on defamation claims).

To the extent Plaintiff wishes to file a defamation claim based on the Defendants' reference to her as a "vexatious litigant" in their pleadings before this Court, or the U.S. District Court for the District of South Carolina, it has long recognized that statements contained in pleadings, even if defamatory, are absolutely privileged. *Pond Place Partners, Inc. v. Poole,* 351 S.C. 1, 22-23, 567 S.E.2d 881, 892-893 (S.C. App. 2002). While Defendants – through counsel – have requested in prior pleadings that the U.S. District Court admonish Plaintiff for harassing and frivolous behavior, such a request or statement cannot form the basis of a defamation claim as a matter of law. For these reasons, Plaintiff's defamation claim is dismissed with prejudice.

IV. PLAINTIFF'S CAUSE OF ACTION FOR CIVIL CONSPIRACY MUST BE DISMISSED BECAUSE IT IS BARRED UNDER *LAWSON V. SOUTH CAROLINA DEPT. OF CORRECTIONS.*

As explained above, Plaintiff's claim for civil conspiracy is barred by the applicable statute of limitations. It is also barred because, as a matter of law, Plaintiff's allegations do not state a cause of action for civil conspiracy under *Lawson v. South Carolian Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000), especially in view of the fact that Plaintiff has remained an employee of SCDMV, and by her own account has been employed at SCDMV for nearly a decade.

In *Lawson*, an employee of the South Carolina Department of Corrections (SCDC) sued two of his supervisors for allegedly conspiring to terminate his employment. 340 S.C. at 349,

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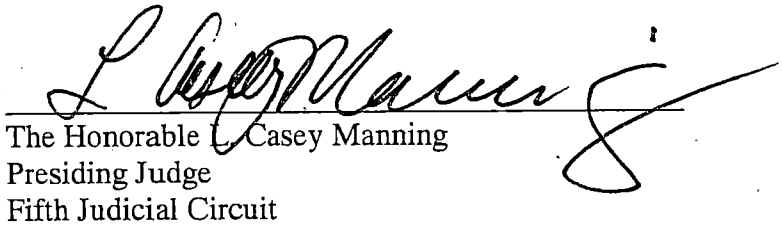
532 S.E.2d at 260. The South Carolina Supreme Court granted summary judgment on the claim, noting that "[a]llegations based solely upon two supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action." 340 S.C. at 352, 532 S.E.2d at 261-262.

Similarly, the types of complaints made by Plaintiff – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson*, especially in view of the fact that – unlike the employee in *Lawson* – the Plaintiff has not been terminated. For this reason alone, her civil conspiracy claim must be dismissed with prejudice.

CONCLUSION

For the reasons stated in this Order, following a hearing on the matter and review of arguments and pleadings submitted by all parties, for the reasons detailed below, this Court DENIES Plaintiff's Motion to Amend Complaint and DISMISSES this lawsuit with prejudice.

IT IS SO ORDERED.



The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

11-8, 2012
Columbia, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Glenda R. Couram,

Plaintiff,

v.

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities,

Defendants.

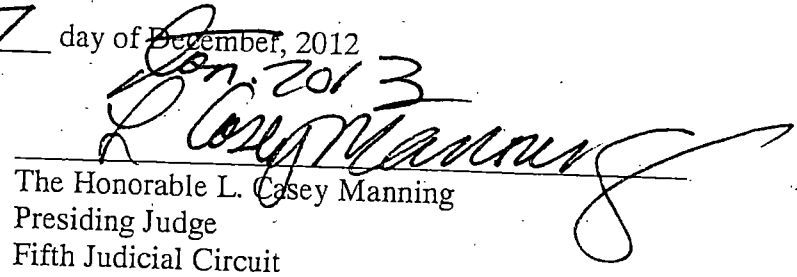
C/A No.: 2011-CP-40-07134

ORDER
DENYING PLAINTIFF'S MOTION TO RECONSIDER

THIS MATTER came before the Court on November 5, 2012, concerning the Motion to Amend Complaint of Plaintiff Glenda R. Couram, and the Motion to Dismiss of Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants").

Following a hearing on the matter and review of arguments and pleadings submitted by all parties, this Court denied Plaintiff's Motion to Amend Complaint and dismissed this lawsuit with prejudice. Plaintiff then filed a Motion to Reconsider. After review of the motion and arguments therein, The Motion to Reconsider is hereby **DENIED**.

IT IS SO ORDERED this 7 day of ~~December~~ Jan, 2012 2013



The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

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

Glenda Renee Couram,	)	CIVIL ACTION NO: 3:11-cv-00001-MIP-RG
	)	
Plaintiff,	)	COMPLAINT – Title VII Civil Rights
	)	Wages Discrimination
vs.	)	Age Discrimination
	)	Hostile Work Environment - Outrage
	)	Retaliation
	)	Civil Conspiracy
The South Carolina Department of	)	
Motor Vehicles; Lula N. Davis,	)	
Connie Rhett and Shirley Rivers	)	
in their individual capacities	)	
	)	
Defendant(s)	)	DEMAND FOR JURY TRIAL
	)	

The Plaintiff, complaining of the defendant herein, would respectfully allege(s) as follows:

1. The plaintiff is a citizen and resident of Lexington County, South Carolina and has served as an employee of the South Carolina Department of Motor Vehicles (DMV) initially as a temporary and hired permanently on or about July 2006 for a total of appropriately five years.

2. The defendant, South Carolina Department of Motor Vehicles (hereafter known as DMV) is a state entity, with offices throughout the state, organized and operating pursuant to the laws of the State of South Carolina headquartered in Blythewood, SC.

3. Lula N. Davis is/was plaintiff's immediate supervisor in Tickets supervised by Ms. Rivers

4. Connie Rhett, supervisor of Driver Records

5. Shirley Rivers Manger of Driver Records/Services; Supervisor of Rhett and Davis

6. This is an action brought under Title VII of the Civil Rights Act of 1967 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the bases of Age Discrimination in Employment Act of 1967 (ADEA) ADEA 29, U.S.C. Section 626(b) age

discrimination, wages discrimination, hostile work environment and retaliation to provide appropriate relief to plaintiff who was adversely affected by such practices

7. Plaintiff alleges that defendants discriminated against her through harassment on the bases of age, wages, and retaliation

8. The plaintiff has exhausted her claims at the administrative level and has received the appropriate Notice of Right to Sue from the United States Equal Employment Opportunity Commission (EEOC) on or about October 14, 2009; and properly filed this complaint within the 90 days of receipt of the Right to Sue. (Plaintiff filed charges of discrimination with the EEOC on or about October, 2008)

PARTIES AND JURISDICTION/VENUE

9. The plaintiff realleges paragraphs 1 through 8 aforesaid

10. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 as amended, for employment discrimination. Jurisdiction is specifically conferred on this Court by 42 U.S.C. Section 2000e(5). Equitable and other relief are also sought under 42 U.S.C. 2000e(5)(g). Jurisdiction is also based on 28 U.S.C. Sections 1331, 1343 and 42 U.S.C. Sections 1981 et seq. Where employment discrimination is alleged, jurisdiction is conferred by 29 U.S.C. Sections 626(c)(1) and 626(e) and appropriate relief is also sought

11. Venue lies within the Columbia Division pursuant to 28 U.S.C. Section 1391 because the defendant's principal office is located in this judicial division and most of the events giving rise to this claim occurred in the Richland County, within the Columbia Division

12. At all relevant times, defendant is a state government entity employing continuously more than 500 employees

13. The plaintiff is a 51-year old black female who has obtained a Bachelor Degree and an Associates Degree in Public Services from Columbia College and Midlands Technical College respectfully

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14. The plaintiff has consistently performed her duties and responsibilities in a positive and professional manner, receiving citations and favorable evaluations over the course of her employment with DMV

STATEMENT OF CLAIMS/FACTS

15. The plaintiff realleges paragraphs 1 through 14 aforesaid

16. That the plaintiff applied for every position qualified for with DMV (qualified for the majority via education and/or experience) and the majority of those positions went to younger employees either from in house or brought in from outside the agency

17. That the plaintiff has never received an unfavorable evaluation throughout her employment with the defendant

18. That the plaintiff worked temporarily in the Office of General Counsel from, December 2007 to April 2008 without being fully compensated according to the salaries of those she replaced temporarily. (Plaintiff applied for and interviewed for the very position she was loaned out to. The position was given to a younger employee who was also the daughter of another employee employed with DMV. The plaintiff now believes it was never the intent of General Counsel, Valenta nor Ms. Phelps to hire the plaintiff but interview plaintiff for replacing the younger employees when they went on maternity leave.

19. That the plaintiff was not compensated appropriately in that both employees were at a higher pay level than the plaintiff

20. That the plaintiff, while in the Office of General Counsel was approached by Ms. Stalvey, Office Manager, to assist another employee with a computer problem, the plaintiff went to assist and within a few seconds of plaintiff's arrival while analyzing the problem the Stalvey stated **"I'll go get a younger employee to fix the problem;"** which was an insult to the plaintiff abilities and age

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21. That the plaintiff, when the younger employee resigned shortly after returning from maternity leave, applied for the very same position; when called for an interview plaintiff requested Ms. Stalvey not call her down for an interview if she had no intention of hiring her, she was assured that was not the case, however, as it turned out it was the case

22. That the plaintiff endured the constant insult of being called "**Ms. Glen**" despite requesting continuously not to be referred to in that manner and even explained why she felt degraded was told numerous times it was a "**show of respect for someone her age.**" Plaintiff was eventually forced into Data Entry with employees who were her exact age and older

23. That the plaintiff after Lisa Jones, team leader, left experienced increased harassment from Davis to the extent that she sent an e-mail to Rivers telling her of the harassment she was experiencing

24. That the plaintiff was eventually called in regarding the e-mail Rivers laughed off the plaintiff's concerns and explained away the behavior as what she would do in Davis' place

25. That the plaintiff in mid 2008 felt so harassed by Davis that she went to the team leader, Kay Boland, in confidence to ask why Davis constantly singled her out for harassment. Shortly thereafter the plaintiff found herself in a meeting with Rivers, Phelps and Wannamaker to explain her conversation with the team leader

26. That the plaintiff was all of sudden after her meeting with Marcia Adams put out to cross-train on or about September 2008, and a younger employee given her responsibilities

27. That the defendant consistently accused the plaintiff of making errors to the extent that plaintiff had to found unique ways to identify her work to avoid the accusations out of fear if Davis continued it would be used against her in evaluations, etc., and result in loss of employment

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28. That the plaintiff was accused of making errors on mandatory tickets in front of another supervisor, Ms. Rhett, and had to prove she was not the person who made the errors another employee (Misty) made the errors 2008

29. That the defendant Davis told other employees (Janice) in front of the plaintiff not to assist if she asked for assistance in or about October 2008. It was a if each time the plaintiff tried to connect with workmates Davis sabotaged her

30. That the defendant had the plaintiff in River's office constantly it seemed most Fridays and prior to a holiday leaving plaintiff with long weekends to wonder if she would have a job upon her return (starting in 2007 and escalated severely in 2008)

31. That the plaintiff became so stressed at the constant meetings she purchased a recorder to avoid her word against Davis scenario

32. That the plaintiff sent a memo to Davis, Rivers and HR about her intent to record the conversations between herself and Davis

33. That the defendant made inappropriate innuendos and comments to the plaintiff about her work and personally (examples available upon request)

34. That the defendant on or about mid 2008 wrote official memos for plaintiff's personnel file outlining inappropriate gestures and speech

35. That the plaintiff after her pay was docked in or about August/September 2008 requested a meeting with the Director of DMV (HR Director and Phelps was included at the Director's request)

36. In that meeting, Plaintiff requested those present to please look into the defendants behavior towards her, find out what pattern abuse suddenly occurred in April 2008 that warranted such extreme of having her pay docked for using personal sick leave, identify what was so wrong with the plaintiff to warrant the abuse she was receiving from the defendants

37. That the plaintiff made all aware at the above meeting that she was going to file a complaint to the EEOC for harassment/hostile work environment; she was told she was black and the supervisor was black and both female had no grounds for filing

38. That the plaintiff was told in that meeting with Marcia Adams that she could not be forced from her position; that the director would look into her request to get her pay reinstated and in direct retaliation she was told by the Director she would not to be allowed to leave the supervision of Rivers

39. That the Director and HR declarations seemed to have given Human Resources, defendants, et al., permission to force plaintiff out of her position in December of 2008, to a lesser position in Data Entry under the cover that since plaintiff's salary did not change it would not count as a demotion

40. That the plaintiff believes that a Data Entry operator from a Compliance Specialist is in and of itself a demotion much less the decreased responsibilities and being assigned to work outside the Canteen without adequate lighting

41. That the plaintiff is in a section of DMV that is referred to and known as Data Entry; when phones are answered it is either with a simple hello or Data Entry with no reference to Driver Records/Services or DMV; and, prior to DMV relocating from Blythewood Data Entry was housed in a separate location than Driver Records/Services

42. The plaintiff informed everyone twice she did not want the position and she could not do data entry for 7.5 hrs each day after years of doing so while in school her fingers could not take the constant pounding any longer again it appears plaintiff was set up to fail

43. That the plaintiff on or about November 2008, was again called into a meeting this time with Internal Affairs, Rivers, Davis, Phelps, were she was informed of their intent to do an internal investigation

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44. That the plaintiff in that meeting was told she was recording conversations of all employees. Plaintiff asked why, no one else had power over the plaintiff what purpose would it serve and that she had informed HR and Rivers via e-mail of the recording

45. That the plaintiff after the above meeting was told of a job opening by Rivers and Phelps and they scheduled her for an interview, plaintiff went to the interview at their request and heard no more about the job an additional embarrassment and humiliation with others involved (cruel and unusual punishment)

46. That the defendant, Davis, on or about October 2008, assaulted the plaintiff accidentally or with intent by "bumping" plaintiff while she was sitting at her desk writing in a pad after being told she could not use the computer which was essential to how the plaintiff did her job

47. That the defendant's verbal abuse became so extreme that the plaintiff had no choice but to ask Davis to "back up off her." To which Davis stated "what was plaintiff going to do hit her" to which plaintiff responded she "did not hit people she sued them." This incident took place on or about late October/November 2008 after the meeting with the Director of DMV, HR Director, Phelps and was mentioned by plaintiff during the meeting involving internal affairs – All done after the plaintiff filed to the EEOC.

48. That the plaintiff was so harassed and stressed that she became extremely ill physically and mentally and was prescribed anxiety medication (Proof and time frame can be provided)

49. That the plaintiff requested a sick leave day on or about April 2008, due to fatigue and illness

50. That the defendant decided plaintiff was not sick and could not pre-plan a sick day and requested a written excuse by plaintiff's doctor

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51. That the defendant, Davis, so severely harassed the plaintiff for a doctor's excused that entire 7.5 hours the only break came during defendant's lunch when Davis returned started the harassment all over again to include Rhett

52. That the plaintiff was taken into a room with Rhett and harassed to such an extent that plaintiff asked to go down to HR to **stop** Davis

53. That the plaintiff, during this whole episode had a running nose, coughing, running a fever was asked by Tosha Autry if she was so sick why was she in the office - (In attendance Dottie Blankenship, Employees Relations Manager - Tosha Autry and Davis)

54. As a result of this meeting plaintiff was found to have abused her personal sick leave with no evidence or pattern of abuse which ultimately resulted in plaintiff being placed on probation for six months and the meeting with DMV Director at plaintiff's request

55. That after the plaintiff was removed from her normal duties the defendant and team leader, Kay Boland, would constantly double team to harass the plaintiff to the extent that she had to leave work an hour after arrival crying on or about September 2008; which resulted in plaintiff pay being docked; this occurred approximately two weeks before plaintiff's probation would have ended

56. That the plaintiff had been on medication for anxiety approximately a year as a result of defendant's actions however on or about September 2008 the harassment became so severe that plaintiff was forced to apply for FLMA to protect her job due to the extreme mental and verbal abuse

57. That the plaintiff accepted Davis and Rivers decision to change the plaintiff's job to one that Davis had primary control over in late September this is when defendant began in earnest to systematically oust the plaintiff (for example, the defendant had Rivers sit with plaintiff observe how she separated/piled tickets in comparison to a younger employee

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(plaintiff saw Rivers with Misty before she showed up at plaintiff work station), defendant begin searching plaintiff's desk when she left for the day, etc.

58. That the plaintiff was not given the standard amount of time (typically three months to learn a new job) to learn the new aspect of doing A's instead of mandatory/B

59. That the defendant along with team leader, Kay Boland in October came into plaintiff work space to show her the exact method to separate one ticket from the other the plaintiff has been separated tickets for close to two years up to this cross training

60. That the defendant created written instructions on how to separate tickets that was not in existence prior to plaintiff being cross-trained Kay Boland verbally instructed as she did with the plaintiff until Davis became actively involved telling plaintiff do a job one way and Boland telling her to do it another creating further anxiety in plaintiff to avoid being insubordinate (examples available upon request)

61. That after one incident defendant came in one morning and belittle the plaintiff for not having any work plaintiff tried to keep work and when Davis found out she again became abusive verbally telling plaintiff not to keep work at her desk and she took to searching the plaintiff's desk when she left for the day

62. That after this incident plaintiff was paraded around the office and instructed very loudly were the keys were to get work (another supervisor, Rhett, was present during this humiliation and embarrassment, it was demonstrated exactly how the plaintiff was go get the key, put it in the lock open the drawer and take workout

63. That due to the defendant(s) harassment plaintiff was forced to apply for family medical leave placed on anxiety medication and was forced to away from work due to that non relentless/persistent hostile/never ending harassment hourly, daily, weekly

64. That the plaintiff on several occasions asked Rivers if she was going to be fired that how much fear/stress plaintiff lived with each day

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65. That the plaintiff was told she could not use the phones, could not go get work from the mail room must wait on a team leader or the Davis

66. That the plaintiff on several occasion tried to connect with the defendant by telling her about a job she did while in school (Wachovia) Davis' response was "so you were the one messing up my account." Another occasion, the defendant and Misty was looking up a word plaintiff asked if she could help defendant's response "they knew what they were doing."

67. That the plaintiff reported this to Ms. Rivers and her response was that the plaintiff was not minding her own business and she would have responded in the same manner

68. That the plaintiff after being told about cross training in October 2008, after many complaints from Davis - Rivers came over to first spend time with Misty a younger employee and one who had been doing the work and hired after the plaintiff and then she sat with the plaintiff so she could demonstrate how she separated one ticket from the other.

69. That the plaintiff was hired and assigned to do research, she was not allowed to do mandatory research when the other employee who worked with plaintiff was out the defendant asked another employee (Valerie - younger) to do the mandatory research and had to explain the process instead of asking the plaintiff

70. That the plaintiff had to deal with the defendant's petty relentless malicious behavior during a time when she was dealing with issues outside of work with the stress of a hysterectomy, plaintiff missed hearing that a biopsy was recommended in mid 2008 and just learned of that recommendation two months ago 2009. Fever blisters (stress related) that started up in August 2008 with the illness that lead to her pay being docked after running a fever that did not stop developing until on or about March 2009

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71. That the defendant used every means available in her campaign to demean, embarrass, and diminish the plaintiff to force her to quit or in a position to be fired.

72. That the defendant used physical assault to accomplish her goals without regard to how the loss of employment will devastate the plaintiff.

73. The plaintiff was also dealing with a bankruptcy that she was not out of until August of 2008 loss of her job will have destroyed/devastated/obliterate the plaintiff leaving her homeless on top of that she was not able to enjoy that feeling of accomplishment when she paid her car off and graduated from bankruptcy

74. The plaintiff was blamed if some one in tickets sneezed for example Kay Boland, team leader after one employee sneezed (who had the tendency to sneeze several times in a row) came over to discuss Walmart water with the plaintiff. This became such a concern that on the last occasion the plaintiff asked Davis why she was always the first person asked when some one sneezed or something was smelled by someone. Davis' response was to go to Valerie it was learned Valerie was the one who sprayed what ever it was that may or may not have caused the sneeze.

75. That the defendant in 2006/07 had plaintiff brought into an office to sign papers regarding alcohol and drug use on the job and the consequences and her roll in the process. Plaintiff have never come to work smelling of alcohol or acted in any way in life at DMV or any other job showing such behavior. Never have been called into any ones office to sign such a document

FIRST CAUSE OF ACTION
AGE DISCRIMINAITON ACT OF 1967
IN VIOLATION OF TITLE VII

76. Plaintiff realleges paragraphs 1-75 hereby incorporated verbatim

77. The plaintiff has been an employee of the defendant for approximately five years and has performed her duties in an exemplary according policy and procedure, receiving commendations and positive evaluations over her tenure with DMV from supervisors and others

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78. Through out plaintiff's employment with defendants, plaintiff has applied for every position that became available in house and outside

79. Plaintiff has an Associates Degree in Public Service (Paralegal) from Midlands Technical College and a Social Work (BS) degree from Columbia College

80. Plaintiff was passed over time and time again despite her education, background and experience for younger employees

81. As a direct and proximate result of age discrimination, the plaintiff is entitled to recover back pay, front pay, liquidated damages and intangible damages, as well as an award of attorney's fees and costs.

SECOND CAUSE OF ACTION
EQUAL PAY/COMPENSATION DISCRIMINATION
IN VIOLATION OF TITLE VII
EQUAL PAY ACT OF 1963

82. Plaintiff realleges paragraphs 1-81 hereby incorporated verbatim

83. The defendants willfully and intentionally failed to compensate plaintiff according to pay scale based on the duties performed between the months of December 2006 to April 2007 in the Office of General Counsel

84. Both younger employees were out on maternity leave and General Counsel requested the plaintiff on loan to fill in. General Counsel knowingly requested the plaintiff knowing she was being paid at a lower salary and knew of the plaintiff experience due to her interviewing for one of the positions she filled in for

85. Plaintiff was also docked two days pay for using a benefit earned without due cause or a violation of policy

86. Plaintiff loss of pay was a direct result of the defendants' hostile acts towards the plaintiff

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87. Plaintiff loss of pay was an intentionally means to force the plaintiff to quit her employment and deprive the plaintiff of income and livelihood

88. As a direct, willful/intentional, and proximate result of equal pay discrimination, the plaintiff is entitled to recover back pay, front pay, liquidated damages and intangible damages, as well as an award of attorney's fees and costs.

THIRD CAUSE OF ACTION
HOSTILE WORK ENVIRONMENT
IN VIOLATION OF TITLE VII

89. Plaintiff realleges par0agraphs 1-88 hereby incorporated verbatim

90. That the plaintiff is an employee as defined by Federal and State Law

91. That the defendant is an employer as defined by Federal and State Law

92. That the plaintiff was subjected to a hostile work environment while employed with the defendants

93. That the plaintiff endured verbal, ~~mental,~~ physical and mental abuse as a result of the hostile work environment as described herein

94. That the plaintiff work environment was hostile

95. That the harassment the plaintiff was subjected to was pervasive

96. That the defendant is the direct and proximate cause of damage to the plaintiff

97. That the plaintiff is entitled to damages from the defendant in the amount of actual, compensatory, consequential and punitive damages.

FOURTH CAUSE OF ACTION RETALIATION FOR ENGAGING
IN PROTECTED ACTIVITIY IN VIOLAITON OF TITLE VII
AGAINST ALL DEFENDANTS

98. Plaintiff realleges paragraphs 1-97 hereby incorporated verbatim

99. That the plaintiff continuously complained of the defendants' hostile disparate actions resulting in a hostile work environment

100. That as a result of the plaintiff's complaints the plaintiff suffered retaliation

101. That the defendants demoted the plaintiff albeit at the same rate of pay but as proof will show a demotion in status, in opportunity, promotions, responsibility, etc

103. That the defendant Davis has made decisions regarding the plaintiff that are disparate

104. That the plaintiff's ability to be employed again with any state agency including DMV is forever damaged without repair (as a 51-year old black woman plaintiff chances of reemployment in private and public was already limited)

105. That Davis and Rivers, has subjected the plaintiff to a series of baseless criticisms, harsh treatment, without cause, unfairly, and unprofessionally

106. The defendants allowed charges to be brought against the plaintiff that has no merit or basis whatsoever

107. The aforesaid conduct is in direct retaliation deprived/veiled efforts to cause the plaintiff to be fired losing her livelihood ability to survive or to force plaintiff to quit her primary means of support

108. Through the efforts of the defendants the plaintiff has not been able to move forward in the agency and has effectively moved backward in her employment to a dead end

109. By virtue of the conduct set forth above plaintiff was subjected to unlawful retaliatory conduct by being demoted and humiliated which commenced immediately after she complained to the Director of DMV, et al., and after engaging in protected activity and from which a retaliatory motive can be inferred

110. As a direct and proximate result of the said retaliation, plaintiff sustained economic damage set forth in status, responsibilities and future income, past and future loss of earnings and benefits, according to proof to be presented at trial.

111. As a further direct and proximate result of said retaliation, plaintiff sustained general damages for severe mental and emotional distress, in sums according to proof to be presented at trial.

113. Plaintiff is further entitled to statutory attorney fees pursuant to 42 U.S.C. Section 2000(e) et. seq.

OUTRAGE
(NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL AND WANTON CONDUCT)

114. Plaintiff realleges paragraphs 1-113 hereby incorporated verbatim.

115. That the plaintiff suffered damage that were a direct and proximate result of the negligent, grossly negligent, reckless, willful and wanton acts, delicts and omissions on the part of the defendants acting through its employees acting within the course of their employment in one, more, or all of the following particulars, to wit:

116. That as a direct result of defendants' actions, plaintiff has suffered irreparable injuries, including but not limited to loss of pay, benefits, and other economic losses past and future, emotional pain and suffering, mental anguish, humiliation, embarrassment, personal indignity and other intangible injuries for all of which she should be compensated.

AGAINST THE DEFENDANTS DAVIS, RHETT AND RIVERS IN THEIR INDIVIDUAL CAPACITIES AND AS PENDENT STATE CLAIM (TORT - CIVIL CONSPIRACY)

117. Plaintiff realleges paragraphs 1-~~117~~ 116 hereby incorporated verbatim

118. That the plaintiff was subjected to signing a document regarding reporting to work intoxicated, etc., was subjected to this type of discrimination for the first time in her employment life.

119. That the defendants acted with malice to place false information/documents in the plaintiff's personnel file without due evidence of wrong doing by the plaintiff

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120. That the defendants as supervisors should know or should have known the consequences of such actions to the short term and long term consequence on the plaintiff's employment current and future

121. That the defendants had the power to destroy the plaintiff by such actions

122. That the defendants set up a situation that lead to the plaintiff's pay being docked as a result of their conduct towards the plaintiff

123. That the defendant along with Rivers changed the plaintiff's job responsibilities to suit their purpose of getting rid of the plaintiff either thru plaintiff quitting or being forced out through firing

124. That the defendants constantly had the plaintiff in her office from one week it seemed to the next to the extent the plaintiff started asking if she was being fired/let go

125. That the defendants threaten the plaintiff with an internal affairs investigation the cause is not clear

126. That the defendants harassed the plaintiff to the extent that she purchased a recording to record conversation between herself and Davis

127. That the defendants removed the plaintiff from a job that she had been doing since April of 2007 placed her in "cross training" in late September 2008, with no intentions of allowing her to return to her duties and systematically sit up a situation that showed the plaintiff as being incompetent

128. That the defendants worried the plaintiff to such an extent that in late September early October the plaintiff was so distressed after she left within 45 minutes her arrival crying and was out for two days resulting in docking of her pay

129. That the defendant, Davis, berated the plaintiff in front of other supervisors, and work mates; paraded her around the office under the pretense of showing her were the work was while belittling the plaintiff

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130. That the defendant told other employees not to help or speak with the plaintiff; schemed along with other employees to conspire to report false statements and actions

131. That after seeking the help Marcia Adams plaintiff was told she was not allowed to move forward in DMV "must remain under Rivers supervision" which appeared to have been followed thru on when plaintiff was sent for an interview by Phelps and Rivers with another supervisor and never contacted again and the following week was forced into Data Entry under Rivers supervision

132. That the defendants during the months of September to December were acting with full support of SCDMV Human Resources and Director of DMV after being told that the plaintiff had no grounds to file a complaint because everyone was black and female. After that statement the actions off all involved intensified to the extent that the plaintiff was out of office on FLMA in December of 2008 due to the stress and actions of all powers that be

133. That the plaintiff was clearly targeted for malicious, wrongful, vengeful and personal reasons by such defendants who in carrying out these steps were acting outside of the course and scope of their duties and responsibilities with DMV

134. That the defendant was so enraged with the plaintiff that she told the plaintiff to not use the phones and in the end to stop using the computer both an essential part of plaintiffs job, nor was plaintiff allowed access to driver license pictures through her time working on mandatory when plaintiff asked she was told Rivers would look into it

135. That the plaintiff after one more morning of belittlement by the defendant asked the defendant to back off and the defendant responded what would plaintiff do hit her – the defendants actions were reminiscent of someone who wanted the plaintiff to respond in a manner that was unprofessional that would lead to plaintiff's dismissal. Instead, plaintiff responded she did not hit people she sued them which she did when she filed to the EEOC on or about October 2008.

136. The above wrongful and conspiratorial conduct was improper, unethical and done with purpose of which subverts the South Carolina Human Affairs law.

137. That the defendants with Human Resources and the Director's blessing launch a campaign from false allegations to spiteful and malicious behavior designed to bring about the plaintiff's removal from DMV and further to ruin her reputation and to cause her special damages which only they, through the various positions held by them within DMV, could put together and implement

138. That the defendants' actions were done in conscious knowledge of the falsity of such charges and in reckless disregard for the truth

139. That the defendants' actions are outside of the course and scope of their duties and responsibilities of these defendants and for which they enjoy no immunity

140. These actions on the part of these defendants and others constitute an unlawful civil conspiracy for which they are individually liable

141. As a direct and proximate result of the individual defendants' civil conspiracy, the plaintiff has sustained the loss of her reputation and what status she had, loss of income and retirement benefits, loss of earning capacity, embarrassment, humiliation, emotional distress and mental suffering.

142. These defendants are further liable for punitive damages for their intentional and malicious acts toward the plaintiff.

143. Proof of the extent of the damage done by the defendants is available thru medical records and FLMA

144. At one point during this process defendant Davis and Wannamaker was standing outside plaintiff cube discussing the merits of their cell phone at the exact time plaintiff was due to leave for the day.

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WHEREFORE, the plaintiff prays for judgment against the defendant(s) DMV for an award of actual/general damages to be assessed by a jury, special damages, loss of earnings (back pay and front pay), as well as an award of punitive damages, prejudgment interest against the individual defendants in amounts to be established by a jury according to proof. The plaintiff further prays for an award of attorney's fees from the defendant(s) DMV and for the costs of this action. The plaintiff further prays for appropriate equitable relief, including reinstatement to her former position with back pay and continued full benefits.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES

Respectfully submitted by:

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DATED this ~~31st~~ 4th day of ~~December 2009~~ January 2010
Lexington, South Carolina

2919

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDCIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
Glenda R. Couram)	
Plaintiff)	
)	**COMPLAINT**
v)	
)	
Lula N. Davis, Shirley Rivers, Constance)	
"Connie" Rhett, Marcia Adams, Former)	
Director or Current Director of SCDMV,)	
Dottie Blankenship, Tosha Autry,)	
SC Department of Motor Vehicles in their)	
official and individual capacities)	
Defendants)	JURY TRIAL DEMANDED
)	

The Plaintiff, Glenda Couram, ***pro se*** complaining of the defendant herein, would respectfully allege(s) as follows:

I. JURISDICTION AND VENUE[1]

1. This action is for injunctive relief, damages and is brought pursuant to 42 U.S.C. §1981, 1983[2] by violation of the First and Fourteenth Amendment of the Constitution; SC Human Affairs Law (hereafter known as SCHAC) § 1-13-10, §1-13-20, *et seq.*; SC Torts Law Act (hereafter known as TCA or SCTCA) § 15-78-20; Intentional Injury Exception to the Workers Compensation Exclusivity (Intentional and Negligent Infliction of Emotional Distress) § 42-1-540 ; Civil Conspiracy; Gross Negligence[3] SC Code Ann. §15-78-60(25), §15-78-70 *et. seq.*, (2005); Continuing Violations/Action Doctrine[4];

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[1] **Disclaimer**: The plaintiff's age discrimination claims is not subject to the Federal jurisdiction as plaintiff is a state employee any claims stated should remain under state jurisdiction due to South Carolina's Eleventh Amendment immunity from suit in federal court. Accordingly, the federal court has no jurisdiction over suits involving the TCA. (S.C. Code Ann. §15-78-20(e)) and is not subject to removal. *(Alden v. Maine, 527 U.S. 706, 713, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999) and Kimel v Florida Board of Regents,* 528 U.S. 62 (2000);

[2] Actions brought under 42 U.S.C. § 1983 are governed by the personal injury statute of limitations of the state in which the cause of action accrued.

[3] In that the plaintiff went to Rivers in early 2008 to inform her of the harassment from Davis; that the plaintiff wrote a grievance in May of 2008 and September 2008 information HR (Dottie Blankenship) of the verbal, harassment and hostility she was enduring both failed to act – Rivers condone the behavior of Davis and Blankenship via e-mail told plaintiff she could not file a

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2. This action is also brought pursuant to plaintiff's stand alone TITLE VII - Anti-Retaliation claim under Provision § 704(a); 42 U.S.C. § 2000e-3(a) – as she was engaged in "Opposition Clause" and or the "Participation Clause" of this protected activity at the time she was retaliated against and prior to filing the EECO/SHAC complaint.[5]

3 Plaintiff also invokes the supplemental jurisdiction of this Court to consider the Federal claim of Retaliation under Title VII of the Civil Rights Act of 1964[6], as amended, 42 U.S.C. §§ 2000e *et seq.*, Anti-Retaliation Provision § 704(a)[7] (hereinafter "Title VII");.

4. Three essential elements of this complaint (FRCP Rule 8(A)): 1) A statement setting forth the court's jurisdiction over the case; 2) A statement of claim specifically stating that the plaintiff is entitled to some sort of relief; 3) A demand for judgment in the plaintiff's favor, for whatever relief the plaintiff seeks (e.g., monetary damages, injunction etc.).

5. Personal jurisdiction is established as all of the defendants and the plaintiff reside in the State of South Carolina and are employed with the South Carolina Department of Motor Vehicles (hereafter, SCDMV or DMV) who does business in Richland County were the complaint or violations took place; address 10311 Blythewood, SC.

6. Thereby, the Fifth 5th Judicial Court of Richland County retains jurisdiction over this matter in regards to state and federal claims.

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grievance at the stage she was in the process in direct violation of Section 7, Chapter 1 of the Progressive Discipline Model (2004) "harassment-words, gestures, and actions which tend to annoy, alarm, or abuse another person"

[4] The continuing violations doctrine, by contrast, focuses on whether the alleged ongoing violation and a defendant's *past* conduct are sufficiently connected, rather than isolated incidents.

[5] No underlying charge required.

[6] Retaliation for engaging in a protected activity.

[7] Title VII's anti-retaliation provisions state that it is unlawful to discriminate against an employee "because he has ***opposed any practice*** made an unlawful employment practice by this subchapter," or "because he has made a charge, testified, assisted, or ***participated in any manner in an investigation, proceeding, or hearing*** under this subchapter." 42 U.S.C. § 2000e-3(a). These prohibitions are respectively known as the "Opposition Clause" and the "Participation Clause." There need not be an underlying charge,

II. PRO SE STANDARD[8]

7. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-6 above with the same force and effect as if herein set forth.

8. The plaintiff is ***pro se***; the Court has a higher standard when faced with a motion to dismiss.... A court faced with a motion to dismiss a ***pro se*** complaint must read the complaint's allegations expansively[9]....

9. ***Pro se*** litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements.[10]

10. The courts provide ***pro se*** parties wide latitude when construing their pleadings and papers. When interpreting ***pro se*** papers, the Court should use common sense to determine what relief the party desires.

III. PARTIES

A. PLAINTIFF

11. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-10 above with the same force and effect as if herein set forth.

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[8] White v. Bloom, 621 F.2d 276 makes this point clear and states

[9] Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

[10] Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).

12. Glenda R Couram, currently residing in Lexington County, South Carolina and employed at the South Carolina Department of Motor Vehicles' Headquarters, located in Richland County, Blythewood, SC;

13. Plaintiff has been employed since July 2006, as a permanent employee with DMV. Plaintiff actual start date as a temporary employee was on or about October 2004;

14. Plaintiff gained "permanent status with rights" on July 16, 2007 to present.

B. DEFENDANTS

15. Marcia Adams, former Executive Director of the SC Department of Motor Vehicles and or Current Director of SCDMV;

16. Dottie Blankenship, Director of Human Resources at the SC DMV;

17. Tosha Autry, Employee Relations Manager (SCDMV);

18. Shirley Rivers, Director of Drivers Records/Services and Data Entry and Supervisor of Davis and Rhett (SCDMV);

19. Lula N. Davis, supervisor in Drivers Records (Tkts) and or Services; Supervised by Rivers;

20. Constance "Connie" Rhett, supervisor in Drivers Records and or Services; Supervise by Rivers;

21. Other defendants Jane Does and other John Does who acted in conspiracy with one or more defendants to violate plaintiff's right by demanding punishment, etc.,

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-21 above with the same force and effect as if herein set forth.

23. Plaintiff filed charges of discrimination originally on or about October 29th, 2008, and signed the complaint under the dual filing section of the SCHAC form on November 13th, 2008.

24. The plaintiff has exhausted all administrative remedies as required under law and received the appropriate Notice of Right to Sue from the United States Equal Employment Opportunity Commission (EEOC) on or about October 9th, 2009;

25. Plaintiff properly and timely filed this complaint within the 90 days of receipt of the Right to Sue letter on or about January 4th, 2010.[11]

V. FACTS/ESTABLISHED -- CAUSAL CONNECTION -- TIME LINE

26. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-25 above with the same force and effect as if herein set forth.

27. Plaintiff at the time of the defendants' violation of federal and state laws was 49 years of age. She is a black female who has been employed with SCDMV since October 2004 as a temporary employee and gained permanent status in July 2007. Plaintiffs' qualifications: A Bachelors Degree in Social Work from Columbia College, An Associates' Degree in Public Service (Paralegal) from Midlands Technical College and a Certificate in Medical Coding.

28. April 2008, plaintiff was publicly accused of abusing leave – sick leave and placed on six (6) months probation, there was prior notice, no oral or written counseling at the time the accusation was made; there was no pattern of abuse.

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[11] In Federal Court where on March 10, 2010, the Court dismissed plaintiff's ADEA claims. The court did not acknowledge the Plaintiffs' Title VII – Anti Retaliation claims stating all the claims were ADEA and declined jurisdiction over the plaintiff state pendant claims; Plaintiff has filed an "informal brief" to have the March 10, 2010 Order vacated as the Federal Court did not appear to have jurisdiction over the ADEA claims as the plaintiff is a state employee and could not sue in Federal Court due to the 11th Amendment.

29. Davis returned from leave saw the plaintiff 's request for sick leave and announced out of the blue that plaintiff was abusing her leave and that she needed a doctor's excuse due there was no rhyme or reason for her actions or allegations.

30. Davis continued the accusations though out the day when plaintiff informed her she knew what her illness was and was going to see her doctor the following week and could not afford an appointment.

31. Even with that, Davis continued the verbal abuse in front of the entire 3rd floor, she went to lunch and returned with Rhett and continued with the abuse until the plaintiff asked to go down to HR.

32. May 2008, plaintiff filed a grievance, to her knowledge she never received a response to this grievance nor was any action taken.

33. September 8th, 2008, plaintiff was forced from work after arriving by the actions of Boland at Davis instructions and the surveillance of plaintiff – Boland was in plaintiff cube within minutes of her arrival going over her work, showing her how to do the work taking a ticket and putting in a pile, checking her work, etc., as a result of the constant interference plaintiff had an anxiety attack and notified the appropriate person and left within 15 minutes of her arrival (20 miles one way).

34. September 9th and 10th – plaintiff called in unable to come into work still suffering from the stress, anxiety, fear of loss of employment, fear of additional abuse.

35. The sick leave was used for a personal illness, upon her return (as plaintiff was within a month of the probation ending) upon her return she was docked two days pay for using sick

leave for a personal illness. Davis called plaintiff at home during her illness to abuse her further.

36. September 2008, plaintiff re-filed the grievance, she received an e-mail response from Dottie Blankenship, Director of HR on or about September 22, 2008, that told her should could not file a grievance until she received a Level III reprimand; there was no investigation regarding the harassment or the hostile work environment.

37. After the pay loss plaintiff could ill afford she applied for FMLA in fear that this would happen again. She had been prescribed anti depressant/anxiety medication her blood pressure was also up because of the stress and was having other medial concerns. FMLA was granted in October 2008.

38. Late September 2008, plaintiff requested a meeting with the Executive Director, Marcia Adams to discuss the harassment and hostility, and to get help in getting her pay back as an investigation would have revealed the behavior as unwarranted abusive.

39. The meeting was scheduled for October 4th, in the meeting was Marcia Adams, Steven Lake Director of Support Services (not sure) and Annie Phelps, supervisor of Rivers.

40. In that meeting, plaintiff explained what was going on; she told the director of the continuing harassment and hostile work environment the verbal abuse and the daily constant attacks from Davis and Boland.

41. As the meeting progressed plaintiff told the group that she was intending to file a complaint with the EEOC for harassment and a hostile work environment. She was then asked a series of questions by Steven Lake who announced plaintiff had no claim.

42. Directly after his comments, Adams made the following retaliatory decision along with other remarks while plaintiff was engaged in the well established protected activity: "Plaintiff was told she had to remain under Rivers' supervision" plaintiff had been blacklisted and any promotional opportunity had virtually disappeared.

43. Within days of that edict, Adams, Blankenship, Autry, Phelps, Rivers and Davis began gathering document and falsifying information to enter into the plaintiff's personnel file under Adams signature after she engaged in the protected activity on October 4th. In order for the ultimate result of termination the offenses had to be to the extent that required Adams signature and in violation of due process and Policy the defendants made that happen.

44. After that meeting, the sick leave on September 9th and 10th was reclassified to "unauthorized leave" which is a Level II reprimand requiring Adam's signature.

45. For those days of personal illness plaintiff followed protocol and called in as required by State policy and DMV policy, and reported to the authorized person during both days of illness.

46. The second retaliatory reprimand involved false allegations that plaintiff's violated SCDVM policy in completing her work, however, plaintiff was learning a new job and doing her best to accommodate Davis and Boland who both was telling her how to process the work. Whenever, Boland was not in Davis would tell the plaintiff to the work one way and then Boland would return and tell her to the work another or to go back to processing the work as instructed prior to Davis' interference. The policy plaintiff was accused of violating was what Boland asked of her during the cross training -- to hold the CDL tickets for her to dispose of -- Boland was out of the office and plaintiff was following her instructions as the

trainer and team leader when Davis by going thru her desk took the tickets that resulted in the reprimand for violating DMV policy.

47. *In mid-August plaintiff was informed by Boland that she was being pulled from her job that she had been doing since April 2007, under the guise that she was going to be cross trained on "A" work. Plaintiff began working on the "A" work on or about the last week of August2008 after completing the Mandatory work she was in the middle of completing;*

48. The plaintiff had been doing the "A" work for less than two months when she received the reprimand signed by Adams for violating company policy in regarding to processing CDL tickets. There were no written instructions on processing "A" work prior to plaintiff being pulled. Rivers instructed the writing of the instructions in October 2008, after seeing the notes plaintiff wrote during verbal instructions from Boland, she said, she "thought Lisa had written them."

49. The written instructions came about during a meeting with Rivers, present was the plaintiff, Boland and Davis. Plaintiff showed Rivers her notes and she requested that Davis and Boland write up procedure on processing "A" work. (There were no written instructions prior to on or about October 9th, 2008).

50. Training was done verbally. It was how the plaintiff was trained on mandatory work and processing of mandatory tickets, how she was trained on receiving driver licenses, etc.

51. How to process "A" work was handed out on or about October 11th, 2008 (written by Davis and Boland).

52. This was the violation of DMV policy plaintiff received the second reprimand for under the signature of Adams, et.al.

53. Shortly thereafter plaintiff was forcibly demoted to data entry and told she would be terminated if there "was one more infraction Tosha Autry" I believe, Blankenship was in attendance.

54. Note: the data entry position according to Rivers had been open for some time she was unable to fill it. After the October 4th meeting plaintiff had turned down the position several times and she was told she could not be forced out of her job. Instead of returning the plaintiff to her previous job as was to happen after the cross-training, plaintiff was demoted to Data Entry a major step back for the plaintiff.

55. November 2008 - plaintiff was threatened by Phelps, et al., with an internal affairs investigation by Carl McClary, Director of Integrity and Accountability who was present. The meeting was a result of a e-mail from Valarie Townsend a co-worker who became upset when she asked plaintiff to code tickets that Davis told her she could not do, so plaintiff asked Valerie to get Davis' permission first – apparently Davis and Rivers had Valerie send the e-mail to HR that implied she was training the plaintiff.

56. Directly after that meeting Rivers called the plaintiff to tell her to go down and interview for a job in "facial recognition," plaintiff declined because of what Adams had decreed. Shortly afterwards, Phelps called, plaintiff went down for the interview – the hiring supervisor and McClary was present – plaintiff never heard anything more about the job.

57. After that interview she was called in and demoted as outlined above.

58. Each position taken from the plaintiff or not given to the plaintiff was given to younger employees. The mandatory work was assigned to a younger employee Jocelyn; Rivers at Davis' request compared plaintiff's work to a younger employee Misty, who had

been in place less time than the older employees. Plaintiff was demoted into an aged area – employees ranging in age from 45 to retirement and beyond. At one point, when the plaintiff needed help in reading a name on a ticket she went to a co worker and Davis followed telling Janice not to help the plaintiff figure out the name.

60. Plaintiff was treated differently than a younger similar situated employee when she was accused of abusing her sick leave – Jovanna Davis – documents evidence available.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
VIOLATION OF
TITLE VII – ANTI RETALIATION - §704(a),
42 U.S.C. § 2000e-3(a)

61. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-60 above with the same force and effect as if herein set forth

62. That the Plaintiff was discriminated against for engaging in opposition or participation[12] to a well established law in violation of her rights under Title VII – Anti-Retaliation Law,

63. That the defendants violated §704(a) in retaliating against the plaintiff for engaging in a protected activity that deprived her of employment opportunities and grossly violating her rights under federal and state law.

[12] § 704(a) of Title VII of the 1964 Civil Right Act (42 U.SC. section 2000e-3(a)) forbids an employer from retaliating against an employee who has filed a claim or complaint of discrimination. In the language of the statute, an employer cannot discriminate against an employee who has "'opposed any practice' made unlawful under Title VII or 'made a charge, testified, assisted, or participated in' a Title VII proceeding or investigation." (Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53, 126 S.Ct. 2405, 2408 (2006). The "**unlawful retaliation is not dependent on the merits of the underlying discrimination complaint....**

SECOND CAUSE OF ACTION
VIOLATION OF
SC HUMAN AFFAIRS LAWS (SCHAC)
DISCRIMINATION LAWS
§ 1-13-10 and §1-13-20 *et seq.*

64. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-63 above with the same force and effect as if herein set forth.

65. Plaintiff was discriminated against due to her age or interference of age in violation of her right to equal employment opportunity as protected by the laws overseen by SCHAC §1-13-80,

66. That the defendants violated §1-13-80(a)(2) in demoting the plaintiff segregating her in a way that deprived her or tended to deprive her of employment opportunities and that adversely affected her employment status due to the plaintiff's age,

67. That substantially changed her job duties and responsibilities as well depriving of any promotional or growth within the agency thereby continuing to fail to promote the plaintiff due to her age in violation of federal and state law,

68. The defendants allowed a hostile environment along with harassment in violation of her rights to equal employment opportunity protected by SCHAC.

69. The defendants violated plaintiff rights in failing to promote[13] her she is a member of a protected class or group; she applied for numerous positions that she was educationally

[13] Incidents of failure to promote:. In 2006, Plaintiff applied for and interviewed for a position in the Office of General Counsel which was given to a considerably younger black employee and daughter of a long time employee when that employee and the other employee went out maternity leave at the same time the plaintiff was loaned out to do their jobs from on or about late October 2006 to about April 2007 (Plaintiff has a BA, Associates in Public Service and medical coding certificate). Plaintiff continued to apply for positions two positions she more than a qualified for in Human Resources with to two external employees both white and considerably younger than the plaintiff; the employee in OCG returned and left with two months of her return plaintiff reapplied for the position and was interviewed she did not the position instead it appears they decided not to fill the position (the state does not give up slots that easily); Plaintiff continued to apply for positions in early 2008 she applied for a position with

qualified for as well work experienced and she was rejected for the positions under circumstances given rise to an inference of unlawful discrimination. [14]

THIRD CAUSE OF ACTION
VIOLATION OF THE RIGHT TO FREE SPEECH GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

70. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-69 above with the same force and effect as if herein set forth

71. That the defendants' actions violated the plaintiffs' right to free expression and exercise of free speech, as guaranteed by the First and Fourteenth Amendments to the United States Constitution,

72. That as a result of defendants' retaliation for plaintiff's expression of free speech, the plaintiff's have sustained compensatory damages and property injuries, emotional distress, mental anguish, and harm to reputation, for which they now file this cause of action.

73. That the plaintiff has also incurred costs as a result of defendants' conduct,

74. Furthermore, because the defendants' conduct involves reckless or callous indifference to the plaintiff's rights, as well as being motivated by evil motive or intent, the plaintiff is also entitled to punitive damages from the defendants.

International Affairs that was given to a younger white employee and the last position after the edict was in "facial recognition the plaintiff interview at River's and Phelps' request – put ended up being demoted.

[14] Plaintiff was subject to remarks such as from Stalvey who interviewed her for the OCG position – she asked plaintiff to assist with a computer problem with plaintiff showed up she stated "I am going to get a younger employee they know computers; Another remark heard by plaintiff "we finally got rid of that old woman." Harassment – plaintiff for several years asked that she not be called "Ms. Glen" she asked Davis and Rivers to ask the younger employee not to call her by that term and they did nothing to stop the harassment; when plaintiff asked why they continued to refer to her in that way the response was "to show respect for your age."

FOURTH CAUSE OF ACTION
VIOLATION OF CONSTITUATIONAL RIGHTS
42 U.S.C. § 1981(a) 1994[15]

75. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-74 above with the same force and effect as if herein set forth.

76. The plaintiff was continuously subjected to discrimination because of her age in violation of her constitutional rights to equal employment opportunity from those acting under "color of state") as protected by SC Human Affairs Commission (SHAC).

77. The plaintiff in opposition to the employer's age discriminatory practice towards her was retaliated against and treated differently than a similar situated younger. As protected under the *Opposition Clause of Title VII, § 704(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a),*

78. The plaintiff has performed her job satisfactorily from the beginning of hire in or about July 2006 to date.

79. Plaintiff has received satisfactory evaluations throughout her employment history and did not have any adverse actions in her personnel file prior to filing the EEOC complaint in regards to the discriminatory actions of the defendants towards the plaintiff under "color of state."

[15] Hostile work environment in violation of 42 U.S.C. § 2000e(b) (1994), and retaliation the last retaliation was on October 7th, as the plaintiff's continued to harass the plaintiff they had employees to line up next to plaintiff work space to received foodstuffs while plaintiff was working. Whenever the third floor had such an event in the past the employees never lined up in the work area but against the back wall outside the work space – for some reason Ms. Rhett had the employee's line up as indicated interfering further with the plaintiff's work.

FIFTH CAUSE OF ACTION
DEPRIVATION OF CIVIL RIGHTS
VIOLATION OF 42 U.S.C., *§1983*

80. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-79 above with the same force and effect as if herein set forth.

81. 42 U.S.C. § 1983 states:

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

82. Defendants, acting under "color of a state" statute, ordinance, regulation, custom or usage, as alleged above, have subjected plaintiffs to a deprivation of rights, privileges, or immunities guaranteed to it by the United States Constitution, federal and state law.

83. Their actions violated the plaintiff's right to equal employment opportunity as protected by 42 U.S.C. §1983.

84. The plaintiff request injunctive relief in the defendants' official capacity "[A] suit for prospective injunctive relief provides a narrow, but well-established, exception to Eleventh Amendment immunity; and damages in their personal/individual capacities as allowed under well established law.

66

SIXTH CAUSE OF ACTION
SC TORT CLAIM ACT (TCA)
Title 15 - Civil Remedies and Procedures
§15-78-10, *et seq., Chapter78*

85. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-84 above with the same force and effect as if herein set forth

86. The TCA further provides the limitations period is extended an additional year -for a total of three years -when the claimant files a verified claim within one year of the loss or injury. (S.C. Code Ann. §15-78-80 & -100),[16]

87. The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the TCA is upon the governmental entity asserting it as an affirmative defense. (*City of Hartsville v. South Carolina Municipal Ins. & Risk Financing*, 382 S.C. 535, 677 Seed 574 (2009)),

88. That Pursuant to S.C. Code Ann. §15-78-70(a), "[a]n employee of a governmental entity who commits a tort while acting within the scope of this official duty is not liable therefore ...." **The exception to the rule:** If it can be proved that the employee's conduct was not within the scope of his official duties or that the conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude,

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[16] **STATUTE OF LIMITATIONS THREE YEARS** - S.C. Code Ann. § 15-78-110 (Supp. 2002). A three-year statute of limitations is available to a party who files a "verified claim." See S.C. Code Ann. § 15-78-80 (Supp. 2002); see also Joubert v. South Carolina Dep't of Soc. Servs., 341 S.C. 176, 534 S.E.2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). Section 15-78-80 expressly requires the party to file a verified claim in order to benefit from the three-year limitations period. Joubert, 341 S.C. at 186, 534 S.E.2d at 6. In order to trigger the three-year statute of limitations under § 15-78-110, a party must follow the procedure outlined in § 15-78-80. Id. at 187, 534 S.E.2d at 6.

89. That the TCA specifically reserves SC's Eleventh Amendment Immunity from suit in federal court and accordingly, the federal court has no jurisdiction over suits involving the TCA - (S.C. Code Ann. §15-78-20(e)).

SEVENTH CAUSE OF ACTION
INTENTIONAL INJURY EXCEPTION TO THE WORKERS' COMPENSATION EXCLUSIVITY
IIED & NIED
SC TORTS CLAIMS ACT § 42-1-540
(Against All Defendants in their Individual or Official Capacities)

90. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-89 above with the same force and effect as if herein set forth

91. That the defendants intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of their conduct,

92. That the defendants' conduct was extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized community,

93. That the actions of the defendants were the cause of the plaintiff's distress,

94. That the intentional injury to the plaintiff was not accidental or incidental to her employment but due the deliberate intentional actions of the defendants

95. That the emotional distress suffered by the plaintiff was severe and of such a nature that no reasonable person could be expected to endure it,

96. That the Workers' Compensation Act is not the exclusive remedy to intentional acts against an employee's non work related injury.[17]

[17] . . . **Giving the intentional injury exception to section 42-1-540 its most narrow construction, ... only those injuries inflicted by an employer who acts with a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage.** An exception to the exclusivity provision exists where the injury is not accidental but rather results from the intentional act of the employer or its alter ego. Cason v. Duke Energy Corp., 348 S.C. 544, 560 S.E.2d 891 (2002); (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego [Dickert v.

EIGHTH CAUSE OF ACTION
SC TORTS CLAIMS ACT
CIVIL CONSPIRACY[18][19]
S.C. Code Ann. § 15-78-70
(Against All Defendants in their Individual or Official Capacities)

97. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-96 above with the same force and effect as if herein set forth.

98. That the defendants in planning, agreeing to perform, and performing the acts alleged in this complaint, took an active part in the further of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm plaintiffs as set forth in this complaint,

99. That the defendants acted as one in conspiring and interfering with the plaintiff's at-will employment given the volatility of such employment, interfering with plaintiff's means of making a living, their daily constant and hourly interference with her effectively and efficiently doing the new job by surveillance,

100. That the actions of the defendant has done far reaching irreparable harm that will and has forever damaged her reputation and defamed her character and any employment

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Met. Life Ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1993)]; (3) where the tort is slander and the injury is to reputation [e.g., Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538 (1992)];

[18] "The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "[T]he gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." Id. "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006). The case law makes clear that the concern is with a plaintiff receiving a double recovery. See Kuznik v. Bees Ferry Assocs., 538 S.E.2d 15, 31 (S.C. Ct. App. 2000) ("An action for civil conspiracy will not lie if a plaintiff has obtained relief through other avenues."). Here, because the jury only awarded damages on one of the two claims in this case, there is no possibility that plaintiff received an impermissible double recovery. See Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 596 S.E.2d 51, 60 (S.C. 2004)

[19] The defendants had a meeting of the minds in or about August/September 2008, if not earlier) which can be proven by the documents plaintiff obtained through the Freedom of Information Act (FOIA) from the EEOC and their own actions to further their conspiracy towards the plaintiff;

opportunities available to her given her age and South Carolina and (SCDMV) biasness towards older workers,

101. That the defendants to further their conspiracy instigated a situation that put plaintiff in violation of policy at the final stage of termination in less than two months as stated by Tosha Autry when the plaintiff was told of her demotion – 'one more infraction and you will be terminated,'

NINTH CAUSE OF ACTION
GROSS NEGLIGENCE[20]
SC TORTS CLAIMS ACT
S.C. Code Ann. §15-78-60(25) (2005)
S.C. Code Ann. §15-78-70
(Against All Defendants in their Individual or Official Capacities)

102. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-101 above with the same force and effect as if herein set forth.

103. That by the removal of the plaintiff from a job that she excelled at that required little contact with Davis to placing plaintiff in Davis' direct path with full contact was grossly negligent,

104. That by failing to act the defendants allowed defamation of the plaintiff's character and reputation, destroyed her professionalism, caused the plaintiff to live and work in fear of loss of employment/livelihood, stress due to the daily uncertainty of employment, allowed false allegations (allowed Davis to place a document in plaintiff's file stating she was making

[20] In that the plaintiff went to Rivers in early 2008 to inform her of the harassment from Davis; that the plaintiff wrote a grievance in May of 2008 and September 2008 information HR (Dottie Blankenship) of the verbal, harassment and hostility she was enduring both failed to act – Rivers condone the behavior of Davis and Blankenship via e-mail told plaintiff she could not file a grievance at the stage she was in the process in direct violation of Section 7, Chapter 1 of the Progressive Discipline Model (2004) "harassment-words, gestures, and actions which tend to annoy, alarm, or abuse another person"

gestures and sounds and she was to cease they were unable to articulate what the gestures and sounds were so plaintiff could stop, she even asked Adams on October 4th to find out);

105. That the defendants acted with intent and with gross neglect in failing to act according to SCDMV HR 202 Policy of the State of South Carolina or even in their own Policy that is a direct model of the State or should be as an "arm of the state," (Policy in effect at the time of this complaint July 2006 - April 2008),

106. That the defendants failed to act when they were put on notice of the continuing verbal, hostile environment and harassment the plaintiff was undergoing at the hands of Davis as condoned by Rivers and Blankenship failed to act stating that there was no duty to act at Level I and II range,[21]

107. That the defendants failed to show the slightest care when it came to the plaintiff and the concerns she made known to them in violation of the plaintiff's right to a "violence free workplace." (Revised and adopted 2004)

VII. JURY DEMAND

108. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-104 above with the same force and effect as if herein set forth.

109. The plaintiff, hereby, demand a trial by jury of all issues so friable.

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[21] (Plaintiff wrote grievances in May 2008 and September 2008 and she reported the harassment to Rivers who met with her but condone Davis' behavior). SC courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances." Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952); Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988);This degree of negligence connotes the failure to exercise even a slight degree of care. Wilson v. Etheredge, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); Anderson v. Ballenger, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932); § 7, Chapter 1 Title 1 of the 1976 Code of Laws, Article, Workplace Violence Policy (Section 1-1-1410) "harassment-words, gestures, and actions which tend to annoy, alarm or abuse another person; Progressive Discipline Model (adopted in 2004);

PRAYER FOR RELIEF

VIII. WHEREFORE, plaintiffs respectfully request that this Court enter final judgment in favor of the plaintiff and against the defendants, providing for the following relief:

a) Compensatory damages in an amount authorized by Title VII §704 of $300,000;

b) Damages as it relates to South Carolina Human Affairs Commission for the age discrimination violation as well as retaliation under this provision as it applies as dictated by law and other damages as appropriate.

c) All damages resulting from the defendants' violation of plaintiff's constitutional rights as alleged herein;

d) All compensatory damages for plaintiff's financial injuries;

e) Punitive damages, as authorized by 42 U.S.C. §§ 1981 and 1983, in the amount of Two (2) million dollars or an reasonable and appropriate by the jury[22];

f) Pre-judgment and post-judgment interest at the maximum legal rates; costs of court; and any other relief, at law or in equity, to which the plaintiff may be entitled and which this Court deems just and proper; pecuniary.

g) Plaintiff request judgment for actual, compensatory and general damages in the deemed appropriate;

IX. WHEREFORE, plaintiff respectfully requests special damages:

h) Plaintiff request special damages in the amount of $600,000 for loss of pay, loss of income in taking this matter to court and the use of annual leave, malice and actual fraud to

[22] Punitive damages are sometimes awarded when a defendant's actions are not merely negligent but intentionally harmful or reckless, to punish and deter such gross misconduct, but such damages are formally non-compensatory; "Punitive damages are recoverable in §1983 suit where defendant's conduct is motivated by an evil motive or intent, or where it involves reckless or callous indifference to plaintiff's federally protected rights). Smith v. Wade, 461 U.S. 30, 50-51 ((1983); Clark v. Taylor, 710 F.2d 4, 14 (1st Cir. 1983). Miga, *supra* at 355.

DECLARATION

I, the undersigned, declare under penalty of perjury that the statements made in the above complaint are true and correct to the best of my knowledge, information, and belief

Respectfully submitted by;

Glenda R. Couram, ***pro se***
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 25th Day of October 2011
Lexington County, South Carolina

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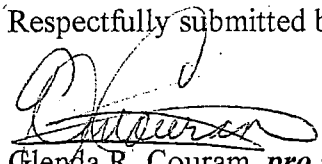
be assessed against all of the defendants jointly and severally; and or losses non pecuniary loses.

i) Plaintiff requests injunctive relief;

j) To be promoted with her status as a permanent employee to remain in place or the time in data entry to be used as the six month probation.

Respectfully submitted by:



Glenda R. Couram, ***pro se***
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 25th Day of October 2011
Lexington County, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDCIAL CIRCUIT

Glenda R. Couram
Plaintiff

v

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles in their official and individual capacities
Defendants

CERTIFICATE OF SERVICE

JURY TRIAL DEMANDED

I certify that, on this 25th day of October, I served a recorded copy of the Summons, Complaint and Certificate of Service on the following by Hand Delivery via South Carolina Rule of Civil Procedures (SCRCP) (5(b)(1) and by depositing in the US Mail, in an envelope with sufficient postage affixed, to the addressee as listed below:

Tosha Autry
Mgr Employee Relations
Building C, 2nd Floor
10311 Wilson Blvd
Blythewood, SC 29016

Dottie Blankenship
Director of Human Resources
Building C, 2nd Floor
10311 Wilson Blvd
Blythewood, SC 29016

Marcia Adams or Current Director
Director's Office 2nd Floor
Building C, 2nd Floor
10311 Wilson Blvd,
Blythewood, SC 29016

Shirley Rivers
Drivers Records/Services
Building C., 3rd Floor
10311 Wilson Blvd
Blythewood, SC 29016

Lula N. Davis
Drivers Records/Services
Building C., 3rd Floor
10311 Wilson Blvd,
Blythewood, SC 29016

Constance "Connie" Rhett
Drivers Records/Services
Building C., 3rd Floor
10311 Wilson Blvd
Blythewood, SC 29016

REGISTERED AGENT
Mason A Summers, Esq.,
Richard, Plowden & Robinson, PA
PO Box 7788
1900 Barnwell Street
Columbia, SC 29201

signature on next page

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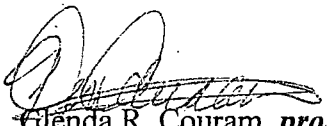
Respectfully submitted by;



Glenda R. Couram, ***pro se***
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 25th Day of October 2011
Lexington County, South Carolina

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
C/A No.: 3:11-cv-03200-MBS-PJG

Glenda R. Couram,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**ANSWER OF DEFENDANTS**
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities,	)	
	)	
Defendants.	)	

NOW COME Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants"), by and through counsel, answering the Complaint of *pro se* Plaintiff Glenda Renee Couram, and denying all allegations and claims not specifically admitted, as follows:

INTRODUCTION

On January 4, 2010, *pro se* Plaintiff previously filed an action similar to the instant lawsuit captioned as *Couram v. South Carolina Department of Motor Vehicles, Lula N. Davis, Connie Rhett, and Shirley Rivers, in their individual capacities*, Civil Action No. 3:10-cv-00001-MJP-PJG (hereinafter "Couram I"). In that case, Plaintiff brought causes of action for (1) an alleged "retaliation" violation of Title VII of the Civil Rights of 1964, as amended, (2) alleged age discrimination under

the Age Discrimination in Employment Act (ADEA), (3) as alleged pay violation under the Equal Pay Act, and (4) state law claims for outrage and civil conspiracy. On March 11, 2011, this Court granted the Defendants' Motion for Summary Judgment as to all of Plaintiff's federal claims, dismissing them with prejudice, and dismissed Plaintiff's state law claims without prejudice. (See Order attached Exhibit "A").

In the current action, Plaintiff brings causes of action for (1) "retaliation" in violation of Title VII of the Civil Rights of 1964, as amended, which is identical to the Title VII cause of action dismissed in Couram I, (2) an "age discrimination" claim under the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-80, (3) a "free speech" retaliation claim under the First and Fourteenth Amendments of the U.S. Constitution, (4) a purported claim under 42 U.S.C. § 1981a based on allegations of retaliatory age discrimination, although 42 U.S.C. § 1981a only authorizes specific types of damages in cases of intentional discrimination and does not create any separate private rights of action, *Brown v. Berkeley County School Dist.*, 339 F.Supp.2d 715, 720 (D.S.C. 2004), (5) a claim under 42 U.S.C. § 1983 for an unspecified violation of "plaintiff's right to equal employment opportunity," (6) an unspecified cause of action under the S.C. Tort Claims Act, although the S.C. Tort Claims Act is only a limited waiver of sovereign immunity for tort claims against government entities and does not create new substantive causes of action, *Hawkins v. City of Greenville*, 358 S.C. 280, 292-93, 594 S.E.2d 557, 563-64 (S.C. App.2004); (7) a claim for intentional and negligent infliction of emotional distress "against all Defendants in their individual and official capacities," (8) a claim for civil conspiracy "against all Defendants in their individual and official capacities," and (9) a claim for "Gross Negligence" against "all Defendants in their individual and official capacities."

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Generally, Defendants deny any allegations or assertions in Plaintiff's Complaint, and refer the Court to the rendition of facts set forth in its Memorandum of Law in Support of Defendants' Motion for Summary Judgment, filed with the Court on August 11, 2010. (See Memorandum attached Exhibit "B"). With regard to Plaintiff's specific allegations, Defendants state as follows.

ANSWER TO PLAINTIFF' S SPECIFIC ALLEGATIONS

1. In Paragraphs 1 through 6 of Plaintiff's Complaint, Plaintiff generally describes her causes of action and the jurisdictional basis of her Complaint. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in Paragraphs 1 through 6 of Plaintiff's Complaint.

2. In Paragraphs 7 through 10 of Plaintiff's Complaint, Plaintiff attempts to set forth the legal standard for review of a *pro se* complaint. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in Paragraphs 7 through 10 of Plaintiff's Complaint.

3. In Paragraphs 11 through 14 of Plaintiff's Complaint, Plaintiff attempts to describe herself as, among other things, a "permanent employee" of SCDMV. Plaintiff is, in fact, a "covered employee" of SCDMV as defined by the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310, et seq. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in paragraphs 11 through 14 of Plaintiff's Complaint.

4. In Paragraphs 15 through 21 of Plaintiff's Complaint, Plaintiff attempts to describe the Defendants. Plaintiff has not sued "Jane Does or John Does" as referenced in Paragraph 21 of her Complaint. To the extent Plaintiff has attempted to list the titles of the individual Defendants, the titles they have speak for themselves. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in paragraphs 15 through 21 of Plaintiff's Complaint.

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5. In Paragraphs 22 through 25 of Plaintiff's Complaint, Plaintiff attempts to allege that she has "exhausted all administrative remedies as required under the law," which is a demonstrably untrue statement. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in Paragraphs 22 through 25 of Plaintiff's Complaint.

6. In Paragraphs 26 through 60 of Plaintiff's Complaint, Plaintiff attempts to make various factual allegations to support her claims. Unless otherwise explicitly admitted in this Answer, Defendants deny the allegations in Paragraphs 26 through 60 of Plaintiff's Complaint, and refer the Court to the rendition of facts set forth in its Memorandum of Law in Support of Defendants' Motion for Summary Judgment, filed with the Court on August 11, 2010. (See Memorandum attached Exhibit "B").

FIRST CAUSE OF ACTION
(RETALIATION IN VIOLATION OF TITLE VII)

7. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 60 of Plaintiff's Complaint as if set forth fully herein.

8. Defendants deny the allegations in Paragraphs 61 through 63 of Plaintiff's Complaint, or further state that Plaintiff's identical claim has already been dismissed with prejudice in her previous suit.

SECOND CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA HUMAN AFFAIRS LAW)

9. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 63 of Plaintiff's Complaint as if set forth fully herein.

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10. Defendants deny the allegations in Paragraphs 64 through 69 of Plaintiff's Complaint. Further, Defendants note that Plaintiff's Second Cause of Action is both administratively barred and time-barred.

THIRD CAUSE OF ACTION
(VIOLATION OF FIRST AND FOURTEENTH AMENDMENTS)

11. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 69 of Plaintiff's Complaint as if set forth fully herein.

12. Defendants deny the allegations in Paragraphs 70 through 74 of Plaintiff's Complaint.

FOURTH CAUSE OF ACTION
(VIOLATION OF 42 U.S.C. § 1981A)

13. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 74 of Plaintiff's Complaint as if set forth fully herein.

14. Defendants deny the allegations in Paragraphs 75 through 79 of Plaintiff's Complaint.

FIFTH CAUSE OF ACTION
(VIOLATION OF 42 U.S.C. § 1983)

15. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 79 of Plaintiff's Complaint as if set forth fully herein.

16. Defendants deny the allegations in Paragraphs 80 through 84 of Plaintiff's Complaint.

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SIXTH CAUSE OF ACTION
(SOUTH CAROLINA TORT CLAIMS ACT)

17. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 84 of Plaintiff's Complaint as if set forth fully herein.

18. Defendants deny the allegations in Paragraphs 85 through 89 of Plaintiff's Complaint.

SEVENTH CAUSE OF ACTION
(INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

19. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 89 of Plaintiff's Complaint as if set forth fully herein.

20. Defendants deny the allegations in Paragraphs 90 through 96 of Plaintiff's Complaint.

EIGHTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

21. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 96 of Plaintiff's Complaint as if set forth fully herein.

22. Defendants deny the allegations in Paragraphs 97 through 101 of Plaintiff's Complaint.

NINTH CAUSE OF ACTION
(GROSS NEGLIGENCE)

23. Defendants incorporate by reference all responses to the allegations in Paragraphs 1 through 101 of Plaintiff's Complaint as if set forth fully herein.

24. Defendants deny the allegations in Paragraphs 102 through 108 of Plaintiff's Complaint.

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25. Defendants note that Plaintiff has demanded a jury on all issues so triable in Paragraph of her Complaint.

NOW THEREFORE, having answered fully answered the allegations set forth in Plaintiff's Complaint, the Defendants in this action set forth their AFFIRMATIVE DEFENSES AND COUNTERCLAIMS:

FOR A FIRST DEFENSE

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action or claim upon which relief may be granted against these Defendants under Rule 12(b)(6), FED. R. CIV. P.

FOR A SECOND DEFENSE

2. Plaintiff's claims are barred, in whole or in part, under the applicable statute of limitations and the doctrines of collateral estoppel and *res judicata*.

FOR A THIRD DEFENSE

3. The Plaintiff has failed to comply with the pre-conditions to suit prescribed by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and all amendments thereto; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; and the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10 *et seq.*, including her failure to exhaust administrative remedies.

FOR A FOURTH DEFENSE

4. To the extent Plaintiff has not commenced this action within 90 days of her receipt of the appropriate Notice of Right to Sue from the United States Equal Employment Opportunity Commission or the South Carolina Human Affairs Commission, her claims under Title VII of the

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Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and all amendments thereto, or the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, are barred. Further, in the event that Plaintiff has not commenced these claims within the time limitations set forth by the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-90, the claims are time-barred.

FOR A FIFTH DEFENSE

5. To the extent Plaintiff's claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and all amendments thereto; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; and the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10 *et seq.*, are based on conduct occurring prior to 300 days of the filing of Plaintiff's charge with the United States Equal Employment Opportunity Commission and/or the South Carolina Human Affairs Commission, such claims are not actionable.

FOR A SIXTH DEFENSE

6. To the extent Plaintiff's claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and all amendments thereto; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; and the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10 *et seq.*, allege a basis or bases of unlawful discrimination different from that specified in Plaintiff's charge filed with the United States Equal Employment Opportunity Commission and/or the South Carolina Human Affairs Commission, such claims are not actionable.

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FOR A SEVENTH DEFENSE

7. Plaintiff has not suffered any significant, adverse employment action because of religion, age, gender, race, retaliation or any other category protected by federal or state law.

FOR A EIGHTH DEFENSE

8. The conduct of Defendants is not the proximate cause of the Plaintiff's injuries, if any, which the Defendants specifically deny.

FOR A NINTH DEFENSE

9. The Plaintiff has failed to mitigate any damages she has allegedly suffered, and her claims are otherwise barred by the doctrines of waiver, estoppel, and/or unclean hands.

FOR A TENTH DEFENSE

10. To the extent Plaintiff has alleged a claim under the Equal Pay Act, 29 U.S.C. § 206, it must fail, because Plaintiff had failed to establish an appropriate "comparator," and because any pay differential has been established due to a factor other than sex.

FOR AN ELEVENTH DEFENSE

11. Some of Plaintiff's claims are barred by the doctrine of workers' compensation exclusivity.

FOR A TWELFTH DEFENSE

12. The Plaintiff's tort claims are barred, in whole or in part, by the South Carolina Tort Claims Act.

FOR A THIRTEENTH DEFENSE

13. Plaintiff has failed to allege facts sufficient to sustain a claim for civil conspiracy.

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FOR A FOURTEENTH DEFENSE

14. The Plaintiff's claim for civil conspiracy is barred because she can show no "special damages" related solely to the claim for civil conspiracy.

FOR A FIFTEENTH DEFENSE

15. Plaintiff's claim for civil conspiracy is barred by the doctrine of intracorporate conspiracy.

FOR A SIXTEENTH DEFENSE

16. The Plaintiff's claim for civil conspiracy is barred because her allegations relevant to the claim are repetitive of those supporting other claims.

FOR A SEVENTEENTH DEFENSE

17. Plaintiff cannot state a claim for civil conspiracy against the Defendants because Plaintiff was a "public official" within the meaning of *Angus v. Burroughs & Chapin Co.*, 596 S.E.2d 67, 70 (S.C. App. 2004) (*Angus I*), *rev'd on other grounds*, 368 S.C. 167, 628 S.E.2d 261 (S.C. 2006) (*Angus II*), and because there is no evidence that the Defendants acted outside the scope of their duties.

FOR AN EIGHTEENTH DEFENSE

18. An individual defendant who is a state official acting in his or her official capacity is not subject to suit under the provisions of 42 U.S.C. § 1983 as a matter of law.

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FOR A NINETEENTH DEFENSE

19. To the extent Plaintiff has alleged a cause of action under 42 U.S.C. § 1983 against state agencies or individuals in their official capacities, the Plaintiff's claims are barred by the Eleventh Amendment to the U.S. Constitution and must be dismissed.

FOR A TWENTIETH DEFENSE

20. The Defendants did not violate any clearly established federal, statutory, or constitutional rights, and are entitled to qualified immunity as a complete bar to any federal claims against them in this action as a matter of law.

FOR A TWENTY-FIRST DEFENSE

21. The Defendants hereby give notice of their intent, under the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"), S.C. Code Ann. § 15-36-10(D), to pursue remedies against the Plaintiff provided under the Act, including, but not limited to, those remedies referenced under S.C. Code Ann. § 15-36-10(C).

FOR A TWENTY-SECOND DEFENSE

22. That to the extent this action is one seeking to collect punitive damages brought against these Defendants, such an action for punitive damages is barred as a matter of law for a number of reasons, including but not limited to: the due process clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment to the United States Constitution; an arguable extension of the prohibition of the excessive fines clause of the Eighth Amendment, as applied to the states through the Fourteenth Amendment; an arguable extension of the provisions of the Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment; relevant provisions of the South Carolina Constitution, including,

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but not limited to, Article I, Section 3; all of which are asserted as bars to recovery of punitive damages against these Defendants.

14. That, moreover, as the present case and statutory law standard to measure and confer power to a jury to award punitive damages under South Carolina law has not been formulated to comport with federal or state constitutional rights and guarantees, lacks objective criteria, lacks a meaningful standard, is void for vagueness, and violates constitutional due process and equal protection procedural protection; an award of punitive damages would violate these Defendants' constitutional rights and guarantees.

15. That, further, the Plaintiff has failed as a matter of law to state a claim for which punitive damage relief is available against these Defendants.

WHEREFORE, having fully answered the Complaint herein, Defendants request:

1. that the relief sought by Plaintiff be denied in each and every respect;
2. that the claims asserted by Plaintiff be denied in each and every respect;
3. that the claims asserted by Plaintiff be dismissed in their entirety with prejudice;
4. that Defendants be awarded its costs and attorneys' fees under applicable case and statutory laws and such other and further relief as this Court may deem just and proper.

Dated this the 29th day of November, 2011.

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Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

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COUNSEL FOR DEFENDANTS LULA N. DAVIS, SHIRLEY RIVERS, CONSTANCE "CONNIE" RHETT, MARCIA ADAMS, FORMER DIRECTOR OR CURRENT DIRECTOR OF SCDMV, DOTTIE BLANKENSHIP, TOSHA AUTRY, SC DEPARTMENT OF MOTOR VEHICLES, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

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

Glenda R. Couram Plaintiff	)	C/N: 3:11-cv-03200-MBS-PJG
v	)	AMENDED COMPLAINT IN COMPLAINCE WITH ORDER
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, SC Department of Motor Vehicles, in their official and individual capacities Defendants	)	JURY TRIAL DEMANDED

NOW COMES the Plaintiff, Glenda Couram, ***pro se*** complaining of the defendants respectfully submit this amended complaint and alleges as follows:

Pro se, Plaintiff, Glenda Couram, sues Defendants, Steven Lake, Marcia Adams, Lula N. Davis, Shirley Rivers, Tosha Autry, and Dottie Blankenship in their official and individual capacities and the South Carolina Department of Motor Vehicles (SCDMV) an arm of the State of South Carolina and its laws with extensive operations in South Carolina, and states as follows:

I. NATURE OF THE ACTION

1. The plaintiff seeks damages, and other appropriate relief based on the SCDMV express, written contractual obligations to provide a workplace free of harassment and discrimination as well as for violation of its common law duties to the plaintiff the SCHAC and SCTCA and other appropriate laws.

2. The plaintiff was the victim of repeated acts of willful, reckless harassment, abuse, threats, by her fellow employees, including supervisors. Despite the plaintiff's repeated

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complaints and written grievances complaining of her treatment to her supervisors, and to Human Resources, there was never any action taken against any of the employees who continually harassed, abused, threatened, or discriminated against her instead the defendants conspired to take the plaintiff employment by falsifying documents to accomplish an illegal purposes.

II. JURISDICTION AND VENUE

3. The plaintiff is employed by SCDMV from October 2004 to present.

4. The plaintiff is currently, and was during the relevant period, a citizen and resident of South Carolina in Lexington County working and is working in Richland County

5. Venue is proper pursuant to S.C. Code § 15-7-30, as South Carolina Department of Motor Vehicles has operations in Richland County, as well as satellite offices throughout the State of South Carolina the actions set forth herein occurred in Richland County.

6. Jurisdiction of this Court is invoked pursuant to South Carolina Human Affairs Commission Laws SC (SCHAC) §1-13-10 et.seq, South Carolina Torts Claims Act (SCTCA) §15-78-10 et.seq.

7. Original subject matter jurisdiction of this action is conferred on the Richland County Fifth Judicial Circuit for the State of South Carolina inasmuch as the matters in controversy in this case arise under the Constitution of South Carolina and its laws administered by SC HAC and the SCTCA;

8. All of the events complained of hereinafter occurred within the County of Richland, State of South Carolina. Inasmuch as the Defendants, the SC Department of Motor Vehicles, Headquartered in Blythewood located in the County of Richland are political subdivisions of the State of South Carolina conducting business within the County of Richland and others counties

throughout the State of South Carolina and the Defendants are therefore, subject to the jurisdiction of this Court for violations of the Plaintiff's Constitutional and other legal rights afforded her under the laws of the State of South Carolina and the United States.

9. SC Human Affairs Discrimination Law (hereafter known as SCHAC) § 1-13-10, §1-13-20, *et seq.*, SC Torts Law Act (hereafter known as SCTCA) § 15-78-20; Under the Intentional Injury Exception to the Workers' Compensation Exclusivity Law; Intentional and Negligent Infliction of Emotional Distress); Civil Conspiracy; Gross Negligence, SC Code Ann. §15-78-60(25), §15-78-70 et.seq., (2005);

10. Personal jurisdiction is established as all of the defendants and the Plaintiff reside in the State of South Carolina and are employed with the South Carolina Department of Motor Vehicles (hereafter, SCDMV or DMV) who does business in Richland County were the complaint or violations took place; address 10311 Wilson Blvd., Blythewood, SC.

III. PRO SE STANDARD

11. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-10 above with the same force and effect as if herein set forth.

12. The Plaintiff is ***pro se***; the Court has a higher standard when faced with a motion to dismiss.... A court faced with a motion to dismiss a ***pro se*** complaint must read the complaint's allegations expansively....

13. ***Pro se*** litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements.

IV. PARTIES

A. PLAINTIFF

14. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-13 above with the same force and effect as if herein set forth

15. Plaintiff Glenda "Glen" Couram, currently residing in Lexington County, South Carolina and employed at the South Carolina Department of Motor Vehicles' Headquarters, located in Richland County, Blythewood, SC;

16. Plaintiff has been employed since July 2006, as a permanent employee with DMV. Plaintiff actual start date as a temporary employee was on or about October 2004;

17. Plaintiff gained "permanent status with rights" on July 16, 2007 to present.

B. DEFENDANTS

18. Marcia Adams, Steven W. Lake, Dottie Blankenship, Director of HR; the Director Office of SCDMV and; Tosha Autry, Employee Relations Manager (SCDMV); Shirley Rivers, Director of Drivers Records/Services and Data Entry; Lula N. Davis; Constance "Connie" Rhett, supervisor;

19. Other defendants, Jane Does and other John Does who acted in conspiracy with one or more defendants to violate Plaintiff's right by demanding punishment, etc., to be named later as Plaintiff reserves the right to add Defendants.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
SC TORT CLAIMS ACT (SCTCA)
§15-78-10, *et seq., Chapter78*
S.C. Code Ann. §15-78-20(e)
(Against All Defendants in their Individual or Official Capacities)

20. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-19 above with the same force and effect as if herein set forth ,

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21. The SCTCA further provides the limitations period is extended an additional year -for a total of three years -when the claimant files a verified claim within one year of the loss or injury; (S.C. Code Ann. §15-78-80 & -100),[1]

22. The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the SC TCA is upon the governmental entity asserting it as an affirmative defense.

SECOND CAUSE OF ACTION
(Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress)
(Against All Defendants in their Individual or Official Capacities)

23. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-22 above with the same force and effect as if herein set forth,

24. The defendants and their agents intentionally or recklessly subjected the plaintiff to harassing conduct in direct violation of the SCTCA.

25. The defendants' actions were so extreme and outrageous as to exceed all possible bounds of decency.

26. The emotional distress that the plaintiff suffered at the hands of the defendants' was so severe that no reasonable person could be expected to endure it.

27. Due to the deliberately negligence of the defendants or as a direct and proximate result of the defendants' actions the plaintiff has suffered and continues to suffer, lost advancement

[1] **STATUTE OF LIMITATIONS THREE YEARS** - S.C. Code Ann. § 15-78-110 (Supp. 2002). A three-year statute of limitations is available to a party who files a "verified claim." See S.C. Code Ann. § 15-78-80 (Supp. 2002); see also Joubert v. South Carolina Dep't of Soc. Servs., 341 S.C. 176, 534 S.E.2d 1 (Ct. App. 2000) (if Plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). Section 15-78-80 expressly requires the party to file a verified claim in order to benefit from the three-year limitations period. Joubert, 341 S.C. at 186, 534 S.E.2d at 6. In order to trigger the three-year statute of limitations under § 15-78-110, a party must follow the procedure outlined in § 15-78-80. Id. at 187, 534 S.E.2d at 6. §1983 is governed by state law statute of limitations

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opportunities (she was told she could not move forward by Adams), humiliation, embarrassment, loss of reputation and emotional distress.

28. The Plaintiff was continuously subjected to in violation of her constitutional rights to from those acting under "color of law") as protected by SCTCA as exclusive remedy.

29. The defendants had a duty of care owned to the plaintiff.

30. They breached that duty by willingly violating their own well established policies and procedures for their own self serving gain and in violations of the rules of the State of South Carolina, the SC Budget and Control Board, SCTCA Laws.

31. The defendants acted with gross negligence failing to act with slight care.

32. The defendants failed to act with simple and ordinary care in their actions towards the plaintiff that is required of a person of ordinary prudence.

33. Plaintiff seeks actual and punitive damages to redress her damages as allowed under the SCTCA.

34. That the defendants acted with intent and with gross neglect in failing to act according to SCDMV HR 202 Policy of the State of South Carolina or even in their own Policy that is a direct model of the State or should be as an "arm of the state," (Policy in effect at the time of this complaint July 2006 - April 2008).[2]

THIRD CAUSE OF ACTION
EXCEPTION TO THE SC WORKERS' COMPENSATION EXCLUSIVITY
(Against All Defendants in their Individual or Official Capacities)

[2] (Plaintiff wrote grievances in May 2008 and September 2008 and she reported the harassment to Rivers who met with her but condone Davis' behavior). SC courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances." Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952); Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988);This degree of negligence connotes the failure to exercise even a slight degree of care. Wilson v. Etheredge, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); Anderson v. Ballenger, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932); § 7, Chapter 1 Title 1 of the 1976 Code of Laws, Article, Workplace Violence Policy (Section 1-1-1410) "harassment-words, gestures, and actions which tend to annoy, alarm or abuse another person; Progressive Discipline Model (adopted in 2004);

35. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-34 above with the same force and effect as if herein set forth

36. That the defendants intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of their conduct,

37. That the defendants' conduct was extreme and outrageous, beyond all possible b37ounds of decency, and utterly intolerable in a civilized community,

38. That the actions of the defendants were the cause of the Plaintiff's distress,

39. That the intentional injury to the Plaintiff was not accidental or incidental to her employment but due the deliberate intentional actions of the defendants,

40. That the emotional distress suffered by the Plaintiff was severe and of such a nature that no reasonable person could be expected to endure it.[3]

FOURTH CAUSE OF ACTION
CIVIL CONSPIRACY[4]
S.C. Code Ann. § 15-78-70
(Against All Defendants in their Individual or Official Capacities)

41. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-40 above with the same force and effect as if herein set forth.

42. That the defendants in planning, agreeing to perform, and performing the acts alleged in this complaint, took an active part in the further of the conspiracy created and formed among

[3] . . . **Giving the intentional injury exception to section 42-1-540 its most narrow construction, ... only those injuries inflicted by an employer who acts with a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage.** An exception to the exclusivity provision exists where the injury is not accidental but rather results from the intentional act of the employer or its alter ego. Cason v. Duke Energy Corp., 348 S.C. 544, 560 S.E.2d 891 (2002); (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego [Dickert v. Met. Life Ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1993)]; (3) where the tort is slander and the injury is to reputation [e.g., Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538 (1992)];

[4] The defendants had a meeting of the minds in or about August/September 2008, if not earlier) which can be proven by the documents Plaintiff obtained through the Freedom of Information Act (FOIA)

themselves a conspiracy to defraud, cheat and otherwise harm Plaintiffs as set forth in this complaint,

43. That the defendants acted as one in conspiring and interfering with the Plaintiff's at-will employment given the volatility of such employment, interfering with Plaintiff's means of making a living, their daily constant and hourly interference with her effectively and efficiently doing the new job by surveillance,

44. That the actions of the defendant has done far reaching irreparable harm that will and has forever damaged her reputation and defamed her character and any employment opportunities available to her given her age and South Carolina and (SCDMV) biasness towards older workers,

45. That the defendants to further their conspiracy instigated a situation that put Plaintiff in violation of policy at the final stages for termination in violation of the SCTCA.

FIFTH CAUSE OF ACTION
DEFAMATION
(Against All Defendants in their Individual or Official Capacities)

46. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1-45 above with the same force and effect as if herein set forth.

47. That by the removal of the Plaintiff from a job that she excelled at that required little contact with Davis to placing Plaintiff in Davis' direct path with full contact was grossly negligent,

48. That by failing to act the defendants allowed defamation of the Plaintiff's character and reputation, destroyed her professionalism, caused the Plaintiff to live and work in fear of loss of employment/livelihood, stress due to the daily uncertainty of employment, allowed false allegation,

49. That the defendants acted with intent and with gross neglect in failing to act according to SCDMV HR 202 Policy of the State of South Carolina or even in their own Policy that is a direct model of the State or should be as an "arm of the state," (Policy in effect at the time of this complaint July 2006 - April 2008),

50. The defendants continue to defame the plaintiff by having her labeled a vexatious litigant the maligning of the plaintiff has been relentless through this process,

51. That the defendants failed to show the slightest care when it came to the Plaintiff and the concerns she made known to them in violation of the Plaintiff's right to a "violence free workplace." (Revised and adopted 2004).

PRAYER FOR RELIEF

VI. WHEREFORE, Plaintiff respectfully request that this Court enter final judgment in favor of the Plaintiff and against the defendants, providing for the following relief;

a. Order defendants make whole the pro se plaintiff by providing appropriate back pay, lost pay based on special damages with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful actions of the defendants.

b. Order defendants to make whole the plaintiff by providing compensation for past and future pecuniary losses resulting from the unlawful actions, including but not limited to job search expenses, in amounts to be determined at trial.

c. Order defendants to make whole the plaintiff by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in this complaint, including but not limited to continued emotional pain, suffering, stress, headaches,

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inconvenience, loss of enjoyment of life, humiliation, loss of self-esteem, and well established laws of the State of South Carolina in amounts to be determined at trial.

d. Order defendants to pay the plaintiff punitive[5] damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

e. Grant such further relief as the Court deems necessary and proper in the public interest.

f. Award the plaintiff any legal costs of this action

g) Plaintiff request judgment for actual, punitive, compensatory and general damages as this

Civil Conspiracy:

h) Plaintiff request special damages in the amount of $250,000 for loss of pay (dock pay), humiliation and embarrassment in not being able to pay bills as a result of the loss of income, loss of income in taking this matter to court and the use of annual leave, malice and actual fraud to be assessed against all of the defendants jointly and severally; and or losses non pecuniary loses in their conspiracy against the plaintiff.

i) Plaintiff requests injunctive relief as appropriate under SCTCA;

j) The Plaintiff, hereby, respectfully **request a trial by jury of all facts**.

Respectfully submitted,

Glenda R. Couram, *pro se*
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 16th day of July 2012
Lexington County, South Carolina

[5] Punitive damages are sometimes awarded when a defendant's actions are not merely negligent but intentionally harmful or reckless, to punish and deter such gross misconduct, but such damages are formally non-compensatory; "Punitive damages are recoverable in §1983 suit where defendant's conduct is motivated by an evil motive or intent, or where it involves reckless or callous indifference to Plaintiff's federally protected rights). Smith v. Wade, 461 U.S. 30, 50-51 ((1983); Clark v. Taylor, 710 F.2d 4, 14 (1st Cir. 1983). Miga, *supra* at 355.

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DECLARATION

I, the undersigned, declare under penalty of perjury that the statements made in the above complaint are true and correct to the best of my knowledge, information, and belief;

Respectfully submitted,

Glenda R. Couram, ***pro se***
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 16th day of July 2012
Lexington County, South Carolina

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

Glenda R. Couram Plaintiff	)	**C/N: 3:11-cv-03200-MBS-PJG**
v	)	**CERTIFICATE/AFFIDAVIT OF SERVICE**
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, SC Department of Motor Vehicles, in their official and individual capacities Defendants	)	**JURY TRIAL DEMANDED**

I certify that on this 16th day of July 2012, the attached Amended Complaint, Memorandum in Support and Certificate of Service was personally deposited in a US Postal Service mail box to the attorneys listed below with adequate postage attached.

Eugene H. Matthews, Esq.,
Richard, Plowden & Robinson, PA
PO Box 7788
1900 Barnwell Street
Columbia, SC 29201

SC Attorney General Office
The Honorable Alan Wilson
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Respectfully submitted by;

Glenda R. Couram, *pro se*
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 16th day of July 2012
Lexington County, South Carolina

Held to return to Court

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

Glenda R. Couram Plaintiff	)	C/N: 3:11-cv-03200-MBS-PJG
v	)	FOURTH AMENDED COMPLAINT
Steven W. Lake, Marcia Adams, Shirley Rivers, Lula N. Davis, Constance "Connie" Rhett, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities Defendants	)	JURY TRIAL DEMANDED

NOW COMES the Plaintiff, Glenda Couram, ***pro se*** complaining of the defendants respectfully submit this amended complaint and alleges as follows:

I. NATURE OF THE ACTION

1. The plaintiff seek appropriate relief as appropriate under SCTCA the exclusive remedy for government state employees acting under "color of state law" - Gross Negligence, Defamation, Intentional Infliction of Emotional Distress (IIED); applicable relief under the SC Workers Compensation Laws Exclusivity as it relates to Intentional Infliction of Emotional Distress (IIED) and relief under the and Common laws of the State of South Carolina of: Civil Conspiracy; §15-78-60(25), §15-78-70 et seq., (2005), and other appropriate laws.

2. Also relief under any other applicable laws determined by the court.

II. JURISDICTION AND VENUE

3. The plaintiff is currently, and was during the relevant period, a citizen and resident of South Carolina in Lexington County working and is working in Richland County

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4. Venue is proper pursuant to S.C. Code § 15-7-30, as South Carolina Department of Motor Vehicles as "arm of the state" has operations in Richland County,

5. As well as satellite offices throughout the State of South Carolina the actions set forth herein occurred in Richland County.

6. Jurisdiction of this Court is invoked pursuant under Title 15 - Civil Remedies and Procedures Chapter 78: SCTCA - § 15-78-10 et seq.; and Common Law violations.

7. Original subject matter jurisdiction of this action is conferred on the Richland County Fifth Judicial Circuit for the State of South Carolina inasmuch as the matters in controversy in this case arise under the laws of the State of South Carolina.

8. All of the events complained of hereinafter occurred within the County of Richland, State of South Carolina.

9. Inasmuch as the defendants, the SC Department of Motor Vehicles, Headquartered in Blythewood located in the County of Richland are political subdivisions of the State of South Carolina conducting business within the County of Richland and others counties throughout the State of South Carolina and the Defendants are therefore, subject to the jurisdiction of this Court for violations of the Plaintiff's Constitutional and other legal rights afforded her under the laws of the State of South Carolina and the United States.

10. Personal jurisdiction is established as all of the defendants and the Plaintiff reside in the State of South Carolina and are employed with the South Carolina Department of Motor Vehicles (hereafter, SCDMV) who does business in Richland County were the complaint or violations took place; address 10311 Wilson Blvd., Blythewood, SC.

III. PARTIES - FACTS COMMON TO ALL CLAIMS

A. PLAINTIFF

11. Plaintiff repeats and re-alleges and incorporates by reference the allegations in the above paragraphs with the same force and effect as if herein set forth

12. Plaintiff, Glenda "Glen" Couram, currently residing in Lexington County, South Carolina and employed at the South Carolina Department of Motor Vehicles' Headquarters, located in Richland County, Blythewood, SC;

13. The plaintiff is employed by SCDMV. She was hired on as a temp in or around October 2004 as a temporary employee working in insurance area entering accident reports, in 2006, she was hired on a permanent employee without status assigned to the tickets section of Driver Records as a researcher;

14. Plaintiff gained full status in July 2007,

15. In or around October 2007, plaintiff was asked to fill for two employees in the Office of General Counsel (OGC) who went out on maternity she remained in OGC until on or around late March 2008 (work she did is outlined in a recommendation letter by Stalvey; she returned to tickets were she was assigned to do mandatory work and working with court documents trained by Lisa Jones.

16. Plaintiff gained "covered/permanent status with rights" on July 16, 2007 to present.

B. DEFENDANTS

17. Marcia Adams, Steven W. Lake, Dottie Blankenship, Director of Human Resources; the Director's Office of SCDMV; Tosha Autry, Employee Relations Manager (SCDMV); Shirley Rivers, Director of Drivers Records/Services and Data Entry; Lula N. Davis; Constance "Connie" Rhett, supervisors; Marcia Adams Former Director of SCDMV now Director of the SC

Budget and Control and Steven W. Lake, Office of Finance with the SC Department of Juvenile Justice;[1]

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES AND STATUTE REQUIREMENTS – COMMON TO ALL CLAIMS

18. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth.

19. Plaintiff a black female at the age of 49, filed charges of age discrimination, failure to promote, harassment, a hostile work environment, etc., and retaliation for engaging in a protected activity originally on or about October 29th, 2008, and signed the complaint under the dual filing section of the SCHAC form on November 13th, 2008.

20. The case was dismissed in a final Order by Judge Perry on or about May 2011. Solely on the ADEA claims

21. Plaintiff properly and timely filed a complaint within the 90 days of receipt of the Right to Sue letter on or about January 4th, 2010 in Federal Court – Columbia Districts.[2][2]

22. Well within the Statute of Limitations plaintiff refiled these claims in the State Court – Richland County Fifth Judicial District on or about October 21, 2011,

23. In compliance with the three year statute of limitation for SCTCA and personal injury Common Law.

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[1] Walker and Adams were initially not identified by: Line 19 -- Other defendants, Jane Does and other John Does who acted in conspiracy with one or more defendants to violate Plaintiff's right by demanding punishment, etc., to be named later as Plaintiff reserves the right to add Defendants.

[2] Judge Perry's Order (March 2011 and May 2011 Motion to Reconsider filed by the defendants) was based on the magistrate's report and recommendations that all claims fell under the ADEA. The Title VII retaliation claim was for failure to promote due to the ADEA, despite the clear Charge from the EEOC which clearly says the retaliation was for Title VII (retaliation box check and the statement "retaliation for engaging in a protected activity.")

VI. FACTS COMMON TO ALL CAUSES OF ACTIONS

24. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth.

25. Plaintiff at the time the defendants' caused her injury under "color of state law" was 49 years of age.

26. Plaintiffs' qualifications: Bachelors Degree in Social Work from Columbia College, An Associates' Degree in Public Service from Midlands Technical College and a Certificate in Medical Coding and Life experience.

27. Plaintiff in tickets from on or about July 2006 to October 2007 before being asked to fill in for two younger employees who were going out on maternity leave (one was hired over plaintiff for the position – plaintiff interviewed).[3]

28. Plaintiff began training in the Office of General Counsel and remained until on or about late March 2008 (under the supervision of Sherry Stalvey and Val Valenta.[4]

29. Plaintiff returned to the third floor on or about late March 2008; and assigned to do mandatory work and work with the court however plaintiff was not allowed to fully to the job because Davis nor Rivers would allow how to get mail, use the phones or access to DL ID photos commons to the position that the was allowed to the previous employee.

VII. STATEMENT OF FACTS/EVENTS TO BE INCORPORATED-ALLEGDED IN ALL CAUSES OF ACTION (TIMELINE) AND COMMON TO ALL CAUSES OF ACTION

30. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth.

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[3] Plaintiff was never compensated as the two employees earned more than she. In or about October 2007.
[4] Plaintiff has a letter of recommendation from Stalvey at the plaintiff request for Davis.

31. On or about late April 14, 2008, (plaintiff had put in a sick leave request on Monday of that week for sick leave due to personal illness).; upon Davis' return on Thursday, she first accepted the leave and then she returned about an hour later and publicly accused the plaintiff of abuse of sick leave and requesting a doctor's excuse,

32. There was no prior notice of abuse there was no oral counseling, there was no written counseling at the time of the accusation, there was no pattern of abuse no proof to sustain the accusation.

33. She wanted a doctors excuse, and continued the verbal abuse in front of the entire 3rd floor, she went to lunch and returned with Rhett and continued with the abuse until the plaintiff asked to go down to HR.

34. The meeting which included Blankenship and Autry end with Autry asking the plaintiff why was she at work if she was so sick.

35. In or about May 2008, plaintiff was called into a meeting and placed on six (6) months probation for abusing all leave (annual and sick). (Davis always approved the annual leave prior to usage). According to policy sick leave was available for personal illness, doctor appointments, etc., per SCDMV policy.

36. In or about mid-August Boland told the plaintiff she was being pulled from job to be crossed trained on "A" work. Plaintiff was not able to start the work until on or about September due finishing up her other work. (Plaintiff went from Research, to the Office of General Counsel, to Mandatory B and court documents to writing "9"s on tickets.

37. Boland verbally trained the plaintiff with plaintiff making work.

38. The entire experience was harassing with constant interference from Davis she would tell plaintiff to take an entire box of tickets; plaintiff had never done "A" work before and then became upset when the work was not finished by the day's end.

39. Then Davis would send Misty to plaintiff cube to take work and when I ran out she became upset, plaintiff started keeping research at her desk when she ran out of work and Davis took that away.

40. When Boland was out Davis would tell plaintiff to do work in a completely different way; for example, Boland told the plaintiff to code point tickets, Davis would tell her she was not allowed to code point tickets. Boland told plaintiff to hold the CDL tickets, Davis would tell her not to.

41. (When plaintiff was doing research prior to going to OGC, Davis refused to allow her to research Mandatory tickets, when the compliance specialist was out who did mandatory research Davis would train others even plaintiff was the backup).

42. The situation became so abusive, harassing and hostile that on September 8, 2008, plaintiff came in to work within five minutes Boland was in her cube going through her work, telling plaintiff how to sort the work, how to lay work out on her desk, she went on for quite a while plaintiff started to hyperventilate and had to leave work within the half hour of arriving, left an e-mail for Davis and Rivers, sought out Rhett to let her know she told plaintiff to tell Boland, which had been done. Plaintiff left, and had a full anxiety attack in her car.

43. Plaintiff remained away from work for two days September 9 and 10, plaintiff was only a few weeks from the probation ending upon her return she was docked two days pay.

44. Plaintiff had gone to Rivers for help (in or about May 2008) but was told she would do exactly what Davis was doing; she went to Boland the team leader to ask why Davis disliked that

ended with Boland breaking the confidence and a meeting with Wannamaker, Rivers and Phelps. Plaintiff had no idea what they were talking about until she saw the smiles on their faces and realized that Boland has broken her confidence and then explained and was told to follow protocol next time even though this was not a matter for protocol just a need to find out what she was doing to Davis for her to dislike her so much (Davis was in control of plaintiff's job).

45. On or about mid April 2008, plaintiff was written up and placed on six (6) months' probation. (Signed by Davis and Rivers)

46. On or about May 2008, plaintiff filed a grievance to Human Resource Director – Blankenship. There was never a response to the grievances nor was any action taken, plaintiff ran into Blankenship in the elevator and asked about the grievances and was sent an e-mail saying there was nothing that could be done until plaintiff was at a Level III reprimand dismissal;

47. On or about August 2008, plaintiff was informed by Boland that she was being pulled from her regular job and crossing training on "A" works.

48. Plaintiff after completing the mandatory work began the cross training on or about late August 2008. (Prior to this change plaintiff did not work with Davis except for administrative purposes).

49. The interference in plaintiff work began, the non-stop harassment, watching, desk searching, repeated visit to her desk, walking up behind the plaintiff to see what she was doing startling her repeatedly when Davis was aware the plaintiff had an issue with people walking up behind plaintiff, the defendant did not care and continued the behavior, getting in plaintiff's space.

50. (Plaintiff got permission to have desk and computer moved so that she would not be surprised and would see others coming up and Davis was aware of the change and reason).

51. September 8th, 2008, after her arrival (8am) Boland was in plaintiff cube within minutes asking how much work she had, standing over the plaintiff going through her work, showing her how to do the work taking a ticket and putting in a pile, checking her work, etc., as a result of the constant interference plaintiff had an anxiety attack and notified the appropriate person and left within 15 minutes of her arrival (20 miles one way).

52. September 9th and 10th – plaintiff called in unable to make herself come into work still suffering from the stress, anxiety, fear of loss of employment, fear of additional abuse, fear of continued harassment, non-stop interference in her work to the extent that she had to leave her job after just arriving with notice to the appropriate person.

53. At the time plaintiff was within weeks of the end of the 6 months probation.

54. While on leave Davis[5] called the plaintiff at home to continue the harassment. Plaintiff had called in according to procedure,

55. On or about September 11, 2011, upon returning to work plaintiff was docked two days pay.

56. September 2008, plaintiff re-filed the grievance, she received an e-mail response from Dottie Blankenship, Director of HR on or about September 22, 2008, that told her she could not file a grievance until she received a Level III reprimand – firing level; there was no investigation regarding the harassment or the hostile work environment.

57. After the pay loss plaintiff could not afford she applied for FMLA (at Rivers' suggestion) in fear that this would happen again. She had been prescribed anti depressant/anxiety medication her blood pressure was also up and was having other medial concerns such a possible outpatient operation.

[5] Davis would tell other employees not speak to the plaintiff in front of plaintiff (Janice).

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58. FMLA was granted in or about October 2008.

59. Late September 2008, plaintiff requested a meeting with the Executive Director, Marcia Adams to discuss the harassment and hostility, and to get help in getting her pay reinstated.

60. The meeting was scheduled for October 2th, in the meeting was Marcia Adams, Steven Lake Director of Support Services (not sure) and Annie Phelps, supervisor of Rivers.

61. On or about October 2th, plaintiff explained what was going on; she told Adams, Phelps and Walker of the continuing harassment and hostile work environment the verbal abuse and the daily constant attacks from Davis and Boland and that Rivers would not help.

62. As the October 2th meeting progressed plaintiff told the group that she was going to file a complaint with the EEOC for harassment and a hostile work environment.

63. Walker asked plaintiff a series of questions then announced plaintiff had no claim.

64. Directly after his comments, Adams struck out at the plaintiff and made the following retaliatory decisions along with other remarks while plaintiff was engaged in a protected activity: "plaintiff was to remain under Rivers' supervision" she was no longer able to move forward with DMV. Adams blacklisted and ended any promotional opportunity for the plaintiff and ended the "open door policy" for the plaintiff.

65. Within days of that edict, Adams, Blankenship, Autry, Phelps, Rivers and Davis began conspiring gathering documents and falsifying information to enter into the plaintiff's personnel file under Adams signature after she engaged in the protected activity on October 2th.

66. The first reprimand came within days of the October 2th, 2008 meeting, the approved sick leave on September 9th and 10th was reclassified as "unauthorized leave," under Adam's signature. Level 1 reprimand,

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67. The plaintiff had been doing the "A" work for less than two months when she received the second reprimand signed by Adams for violating company policy in regarding to processing CDL tickets. (There were no written instructions on processing "A" work prior to plaintiff being pulled. Rivers instructed the writing of the instructions in or about October 11, 2008, she said, she "thought Lisa had written them.")

68. Lisa trained the plaintiff verbally on how to mandatory work and the court documents and processing of mandatory tickets, on receiving driver licenses, etc.

69. So begin the process of dismissal to level III.

70. November 2008, the second reprimand came delivered by Autry and Blankenship and was for violating DMV policies and procedure. It was the result of a document created on October 9, 2008 by Boland and Davis at Rivers request. (Plaintiff was in the meeting firsthand knowledge).[6]

71. November 2008 - plaintiff was told by Phelps she was calling for an Integrity and Accountability investigation by Karl McClary, Director who was present also Rivers and Davis.

72. The meeting was a result of an e-mail from Valarie Townsend non supervisor or team leader who became upset when she asked plaintiff to code tickets that Davis told her she could not do, plaintiff asked Valerie to get Davis' permission first – Davis and Rivers had Valerie send the e-mail to HR that implied she was training the plaintiff (copy of e-mail available)

73. Directly after that meeting Rivers called the plaintiff to tell her to go down and interview for a job in "facial recognition," plaintiff declined because of what Adams had decreed. Shortly afterwards, Phelps called, plaintiff went down for the interview – the hiring supervisor and

[6] The policy plaintiff was accused of violating was what Boland asked of her during the cross training -- to hold the CDL tickets for Boland to dispose of -- Boland was out of the office and plaintiff was following her instructions as the trainer (plaintiff had been process A work for less than two months. Davis going thru plaintiff's desk took the tickets that resulted in the second reprimand for violating DMV policy. The policy was a written document by Boland and Davis dated October 9th, 2008.

McClary was present. McClary told plaintiff the job was temporary if the plaintiff had unknowingly accepted it would have resulted in loss of all benefits and status.

74. On or about November 2008, plaintiff was forcibly demoted to data entry and told she would be terminated if there "was one more infraction - Tosha Autry" Blankenship was in attendance also.

75. (Positions applied for by the plaintiff were given to younger employees (a fact). The mandatory work was reassigned to a younger employee Jocelyn);

76. Plaintiff was demoted into an aged area – employees ranging in age from 45 to retirement age, a good many had retired and was rehired after five years of Teri Program, others were preparing to retire.

77. Plaintiff was treated differently than a younger similar situated employee when she was accused of abusing sick leave – Jovanna Davis evidence available.

V. CLAIMS FOR RELIEF -- COMMON TO ALL CAUSES OF ACTION AS FOLLOWS

78. The burden of establishing a limitation upon liability or an exception to the waiver of qualified immunity under the SCTCA is upon the governmental entity asserting it as an affirmative defense.

It is the plaintiff belief and declaration that as a result of the defendants' negligent actions she will never be able to go to a director, supervisor or any other person with any problems or issues out of fear of what took place on October 2nd, 2008. She will never be able to exercise free speech or use what is commonly known as the "open door" policy.

FIRST CAUSE OF ACTION
SC TORTS CLAIMS ACT (SCTCA)
GROSS NEGLIGENCE
TITLE 78 - § 15-78-10 et seq.
(defendants in their official capacities
and applicable individual/personal capacities)

79. Plaintiff incorporates by reference all paragraphs above as though restated and re-alleged herein verbatim.

80. The plaintiff with direct information and belief declare that the defendants acted with gross negligence when they failed to "exercise slight care" or absence of care that is necessary under the circumstances" causing the plaintiff injury and damages,

81. The plaintiff with direct information and belief declare that the defendants were grossly negligent when they failed to provide the plaintiff the same rights allowed younger employees in regards to leave usage,

82. The plaintiff with direct information and belief declare that defendants was grossly negligent when plaintiff was told she had to remain under Rivers supervisor, interfering with her promotion opportunities and transfer opportunities,

83. The plaintiff with direct information and belief declare the defendants intentionally and negligently failed to prevent a hostile work environment along with harassment after being put on notice,

84. The plaintiff with direct information and belief believes that the defendants were grossly negligent when they knowingly struck out at the plaintiff in violation of well established law when she complained of the hostile work environment and harassment and told her of her intent to file a complaint to the EEOC,

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85. The plaintiff with direct information and belief declare that the defendants falsely accused the plaintiff of abusing annual and sick and with gross negligence documented this false accusation in the plaintiff personally file, there was no pattern of abuse, no prior notice of abuse,

86. The plaintiff with direct information and belief declare that the defendants was grossly negligent when they failed to uphold plaintiff rights under the policies and procedures of the State of South Carolina and SCDMV,

87. That the plaintiff with direct information and belief declare that the defendants used legitimate policies and procedures when they abused the progressive discipline process they were entrusted to uphold to gain an illegal outcome by legal means,

88. That the plaintiff with direct information and belief declare, the defendants individually and/or collectively, made false statements and misrepresentations in taking certain action or failing to take certain action as required under the policies and procedures of SCDMV and the State of South Carolina,

89. That the plaintiff declares and believes that the defendants failed to show the slightest care when it came to the plaintiff and the concerns she made known to them in violation of the plaintiff's right to a "violence free workplace." (Revised and adopted 2004),

90. That the plaintiff declares and believes that the defendants owed the plaintiff a duty of care, they failed and breached that duty by negligent act or omission resulting in damages to the plaintiff by deliberately with knowledge and forethought placing the plaintiff in Davis direct path the result of such an action was foreseeable,

91. The defendants with full knowledge failed to act causing the plaintiff to live and work in daily fear of loss of employment/livelihood, a state of anxiety and stress by doing so they were the direct and proximate cause of the plaintiff injury,

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92. That the plaintiff declares and believes that the defendants failed to do what they ought to have done for individuals and officials in positions of trust breaching their duty by failing to meet the standard of care as officers, directors and supervisors' are charged,

93. The plaintiff declares and believes the defendants failed to act with simple and ordinary care in their actions towards the plaintiff not only in their individual but their official capacities,[7]

94. The plaintiff declares and believes the defendants abused their authority when they forced the plaintiff into data entry, into a position she repeatedly stated she did not want and could not do because of her fingers in her right hand, she was still forced into a position that was demeaning and humiliating given her background with DMV, her education and life experience,

95. The plaintiff declares and believes that the defendants acted with intent and with gross negligence in failing to act according to SCDMV HR 202 Policy of the State of South Carolina or even in their own Policy that is a direct model of the State or should be as an "arm of the state," (Policy in effect at the time of this complaint July 2006 - April 2008),[8]

96. Plaintiff seeks actual damages, aggravated/general, pecuniary loss, non pecuniary loss and comprehensive damages, and all other applicable damages including punitive damages as applicable.

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[7] The emotional distress that the plaintiff suffered by the defendants actions as she herself details in a memo to the EEOC saying how she continually monitored the plaintiff interrupting her work, her concentration, knowing the plaintiff had issues with someone walking up behind her causing a nervous reaction, plaintiff had an allergic reaction to Davis' perfume and she informed Davis of this but she would continue to come into the plaintiff's work station, in her personal space frequently throughout the day; on or about April 2008, Davis spent the entire day worrying, harassing the plaintiff only breaking to go to lunch with Rhett and upon her return started all over again 8am to on or about 2:30 pm., in regards to a submitted request for planned sick leave, telling plaintiff she could not plan sick leave. Upon the date of her doctor's appointment the doctor verified her illness the previous week and provided a doctor's excuse that Davis questioned and wanted additional information on the excuse.

[8] (Plaintiff wrote two grievances in or about May 2008 and she reported the harassment to Rivers who met with her but condoned Davis' behavior). SC courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances." This degree of negligence connotes the failure to exercise even a slight degree Violence Policy (Section 1-1-1410) "harassment-words, gestures, and actions which tend to annoy, alarm or abuse another person; Progressive Discipline Model (adopted in 2004);

SECOND CAUSE OF ACTION
Worker Compensation and or Willful, Reckless Infliction of Emotional Distress (in their individual/personal and their official capacities as applicable)

97. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth,

98. That the plaintiff declares and believes that the defendants intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of their lack of care,

99. That the plaintiff declares and believes that the defendants' conduct was extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized community,

100. That the plaintiff declares and believes that the defendants' actions were the actual and proximate and deliberate cause of the plaintiff's distress and injury in violation of Title 42 § 42-1-160, "Injury" and "personal injury", that the intentional injury to the plaintiff was not accidental or incidental to her employment but due the deliberate intentional actions of the defendants,[9]

101. That the plaintiff declares and believes the individual defendants caused the plaintiff emotional distress, each defendants conduct was intentional and malicious and done for the purpose of causing plaintiff to suffer humiliation, mental anguish, and emotional and physical distress, force her resignation,[10]

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[9] . . . **Giving the intentional injury exception to section 42-1-540 its most narrow construction, ... only those injuries inflicted by an employer who acts with a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage.** An exception to the exclusivity provision exist where the injury is not accidental but rather results from the intentional act of the employer or its alter ego.

[10] With complete disregard of whether or not the plaintiff would find other employment given her age and race.

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102. The plaintiff declares and believes that her injuries were not work related or accidental because her injuries were a direct result of the defendants' actions to remove her from her employment for their personal gain and plaintiff justifiably believed she could rely upon defendants to act in compliance with the standard of care of reasonable officers, directors and supervisors to prevent harm/injury to her,

103. Plaintiff seeks actual damages, general, pecuniary loss, non pecuniary loss and comprehensive damages, and all other applicable damages including punitive damages;

FOURTH CAUSE OF ACTION
DEFAMATION (CONTINUED)
(Against All Defendants in their Individual or Official Capacities)

104. Plaintiff repeats and re-allege and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth.

105. The plaintiff declares and believes the defendants made false and defamatory statements about the plaintiff the accusations were verbal and written and published to a third party,

106. The plaintiff declares and believes the defendants as the publishers and instigators were at fault, as a result of their actions caused harm and injury to the, plaintiff's work ethic, to her character, reputation with her co workers and destroyed her self confidence, and professionalism,

107. The plaintiff declares and believes the defendants continued to allow defamation to the plaintiff by attempting to have her labeled a vexatious litigant,

108. The plaintiff declares and believes that defendants in their ongoing efforts to discredit harm and strike out at the plaintiff continues to defame and undermine the plaintiff by attempting to have her labeled a vexatious litigant - the accusation was made to interrupt the legal process to have the court deny the plaintiff from timely filing documents, answering documents necessary

to perfect services on the defendants, the accusation was and is unfounded, groundless and self serving and made to hurt and injury the plaintiff and circumvent the legal process.

109. Plaintiff seeks actual damages, general, pecuniary loss, non pecuniary loss and comprehensive damages, and all other applicable damages including punitive damages.

FOURTH CAUSE OF ACTION
COMMON LAW CIVIL CONSPIRACY
S.C. Code Ann. § 15-78-70
(all defendants in their individual/personal)[11]

110. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs above with the same force and effect as if herein set forth,

111. The plaintiff declares and believes the seven individually named defendants conspired together for their own personal and malicious reasons to force the plaintiff dismissal causing injury to the plaintiff which caused special damages;

112. The plaintiff believes and declares that each defendant personally and for their own personal gain conspired to further their conspiracy by instigating a situation that put the plaintiff in violation of written instructions created by Davis and Boland on or about October 19 at Rivers request and used it to create an offense that would allow a Level II reprimand,

113. The plaintiff declares and believes that the defendants acted for their own personal gain and not for the gain of SCDMV when they conspired to destroy the plaintiff's relationship with her employer to facilitate her dismissal,

114. The plaintiff declares and believes that the defendants acted for their own personal gain when they worked in harmony to destroy the plaintiff's good work ethic and reputation with her employer and workmates.[12]

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[11] And official as applicable

115. The plaintiff declares and believes the defendants conspired for their own personal gain when they had Davis began a log after the October 2, 2008,[13]

116. Plaintiff believes and declares that the defendants "met, schemed, planned and conspired and put together an agenda to purposely harm and injury the plaintiff,

117. Plaintiff believes and declares that the defendants conduct was not within the scope of their official duties and that the conduct constituted actual fraud, actual malice, intent to harm, and a crime involving moral turpitude. See S.C. Code Ann. § 15-78-70(b) (2005).

118. Plaintiff believes and declares that the defendants had personal motives and conducted a biased investigation, calling into question the plaintiff integrity with the Director of Integrity and Accountability even having him set on a purposed job interview Rivers and Phelps insisted plaintiff interview for,

119. Plaintiff allege special damages to include loss of two days docked pay, cost of filing this action, stamps, ink, a laptop computer, internet service, consultation fees, medical expenses not covered by insurance, on-going medication costs, future cost for arthritis in plaintiff's right hand (figures), cost of defending meritless allegations of plaintiff being a vexatious litigant, cost associated with motions to remand, and any other calculable cost as deemed appropriate by this court.

PRAYER FOR RELIEF

VI. WHEREFORE, Plaintiff respectfully request that this Court enter final judgment in favor of the Plaintiff and against the defendants, providing for the following relief;

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[12] The plaintiff received a solid recommendation letter from the Office Manager of OCG[12], there is no basis for the accusations of abuse leave, running out of leave, no record of lateness, no records of disrespect, insubordination, no record of failing to follow and supervisor or SCDMV policy prior to October 2nd, 2008',

[13] the plaintiff obtained these documents thru the Freedom of Information Act (FOIA),

a. Order defendants to make whole the pro se plaintiff by providing appropriate back and front pay if applicable,

b. Order defendants to make whole the plaintiff by providing compensation for past and future pecuniary losses resulting from the unlawful actions, including but not limited to job search expenses, in amounts to be determined at trial,

c. Order defendants to make whole the plaintiff by providing compensation for past and future non-pecuniary losses/damages resulting from the unlawful practices complained of in this complaint, including but not limited to continued emotional pain, suffering, stress, headaches, inconvenience, loss of enjoyment of life, humiliation, loss of self-esteem, and well established laws of the State of South Carolina in amounts to be determined at trial.

d. Order defendants to pay the plaintiff punitive damages for their malicious and reckless conduct, as described above, in amounts to be determined at trial, if applicable.

e. Grant such further relief as the Court deems necessary and proper in the public interest.

f. Plaintiff request actual, punitive, compensatory, aggravated and general damages as this,

Civil Conspiracy Special Damages:[14]

g. Plaintiff request special damages of two days docked pay (September 9 and 10) for using sick leave, consultation fees, paper, ink, a lap top (2008), cost of bring this action to court, medical bills, medication, stamps, humiliation and embarrassment in not being able to pay bills as a result of the loss of income, future medical costs for arthritis in the plaintiff right hand (fingers) and any other applicable calculable costs;

[14] See letter dated March 19th, 2010, requested by the defendant's attorney after the deposition in 2010. The letter listed calculable special damages.

h. All compensatory, punitive (from each individual defendant as applicable), aggravated, general damages and fees a provided for under state law and determined by this court damages related to aggravation of pre-existing conditions.

JURY REQUEST - The Plaintiff, hereby, **request a trial by jury of all** triable facts.

Respectfully submitted,

Glenda R. Couram, *pro se*
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 10th day of September 2012
Lexington County, South Carolina

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 11-1253
3:10-cv-00001-MJP-PJG

Glenda Renee Couram, Plaintiff, vs. The South Carolina Department of Motor Vehicles; Lula N. Davis, Connie Rhett and Shirley Rivers *in their individual capacities* Defendant(s)	)	**MOTION NOTICE/REQUEST TO REINSTATE APPEAL**

PLAINTIFF'S MOTION TO REQUEST REINSTATEMENT OF RIGHT TO APPEAL COURT ORDERS OF MARCH 10, 2011 (RECONDERATION DENIAL MAY 5, 2011)

COMES NOW, Appellant/Plaintiff Glenda R Couram acting ***pro se*** files this motion to set aside the court order filed on August 31st, 2011, granting dismissal of plaintiff's right to appeal.

Plaintiff on or about July 21st, 2011, after receiving the notice form the court regarding her Notice of Appeal asked for an extension to gather the necessary information to file the appeal. The court granted the extension with the file date as August 25th, 2011. In the letter from the court it stated that the court frowned on granting extensions greater than thirty (30) days.

Plaintiff was in the process of obtaining the case laws and other information to file the initial brief, however, before she could complete the appeal she became very ill once again and could was unable to meet the due date of August 25th, 2011. In compliance, when the plaintiff realized she would not be able to complete the Initial Brief on time she complied with the court's request and wrote the letter pursuant to Rule 42 asking that her right to appeal be dismissed.

The plaintiff in this motion is asking that this honorable court vacate the Order/Rule (42) Mandate granting the voluntary dismissal filed on August 31st, 2011, and reinstates plaintiff's appeal rights.

Plaintiff is including with this request an informal brief in regards to the above complaint.

Respectfully submitted by,

Glenda R. Couram, ***pro se***
104 Macaw Lane
Lexington, SC 29073
803 896-7509

Dated this 14th, Day of October 2011
Lexington County South Carolina

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No.: 11-1253
3:10-cv-00001-MJP-PJG

INFORMAL BRIEF

RE: Glenda Couram, Plaintiff v South Department of Motor Vehicles, Lula Davis, Constance Rhett and Shirley Rivers in individual capacities - Defendants

1. JURISDICTION

A. Name of court from which you are appealing: US District Court of South Carolina – Columbia Division – pursuant to 28 U.S.C. § 1331 – 1332 et seq., 28 USC § 1330-1369 and 28 U.S.C. § 1441-1452; U.S.C. §1291; (42 U.S.C. § 1981, 1982, 1983, et.seq

This appeal presents several questions – all of which are subject to *de novo* review as a matter of law from this court. *PMA Capital Ins. Co. v. US Airways, Inc.*, 271 *Va. 352, 357-58; 626 S.E.2d 369, 372 (2006);*

If the district court lacked subject matter jurisdiction over the ADEA claims, it has jurisdiction "merely for the purpose of correcting the error of the lower court in entertaining the suit." *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986).

B. Date(s) of order or orders you are appealing:

a) Report and Recommendations were filed on November 12, 2010;

b) Judge Perry's Order on or about March 10th, 2011;

c) The defendant's filed a Motion for Reconsideration on or about March 23rd, 2011; where the judge declined subject matter jurisdiction over plaintiff's state pendant claims dismissing without prejudice – After plaintiff filed notice of Appeal;

d) On May 5, 2011, the Judge filed his response denying the defendants' request to dismiss the state pendant claims with prejudice;

d) August 24th, 2011, Plaintiff sent a voluntary notice pursuant to Rule 42 asking the Court to dismiss her right to file an appeal due to illness and already receiving an extension;

f) On Order/Mandate, August 31st, 2011, the court granted the request pursuant to mandate 42;

g) September 2011, plaintiff sent a request to the court to reinstate her right to appeal. The court sent back a notice that she had to file a motion and an informal brief;

2. ISSUES FOR REVIEW

1. Whether the lower court erred in dismissing the plaintiff's claims for failure to state a prima facie case

2. Whether the lower court erred in retaining subject matter jurisdiction over the plaintiff's ADEA claims

3. Whether the magistrate acted without prejudice in allowing the defense attorney to apparently write the report and recommendations

4. Whether or not the lower court erred or abuses its discretion when the magistrate appeared to have allowed the defense to write the report and recommendations for her signature thereby prejudicing the plaintiff [1]

5. Whether or not the magistrate prejudiced the plaintiff when she failed to timely rule on the summary judgment Motion of the Defendants made during the first court hearing prior to discovery – stating she was not familiar with the 11th Amendment and State Sovereign Immunity and plaintiff not being able to bring suit in federal court on the ADEA claims

6. Whether or not the lower court circumvented justice when it dismissed all of plaintiff's claims as being ADEA based

7. Whether or not the lower court erred when it failed to respond plaintiff's August 2010, motion asking to remand/dismiss, request to amend complaint – the court did not respond until the report and recommendations November 12th, 2011,

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[1] **Abuse of Discretion**: We review the denial of a request for discovery for an abuse of discretion. Conner v. United States, 434 F.3d 676, 680 (4th Cir. 2006); Harrods Ltd. v. Sixty Internet Domain Names, 302 F.3d 214, 244 (4th Cir. 2002). "An abuse of discretion may be found where 'denial of discovery has caused substantial prejudice.'" Nicholas v. Wyndham Int'l, Inc., 373 F.3d 537, 542 (4th Cir. 2004) (quoting M & M Med. Supplies & Serv., Inc. v. Pleasant Valley Hosp., Inc., 981 F.2d 160, 163 (4th Cir. 1992)). A district court's denial of a motion to amend the complaint is reviewed for abuse of discretion. *Glaser v. Enzo Biochem, Inc., 464 F.3d 474, 476 (4th Cir. 2006)*

stating she could not give legal advice in the footnote instead of applying the pro se standard

8. Whether or not the lower court erred when it stated in the March 10th, Order that plaintiff did not make the Motion to remand/dismiss, amend until December 2010, making the request untimely.

9. Whether or not the magistrate prejudiced the plaintiff by in not allowing her to voluntarily dismiss the complaint in order to timely re-file the ADEA claims in the correct court or the court could have timely dismissed without prejudice based on *Kimel* (see attached)

10. Whether or not the lower court erred when the magistrate stated in her report that the plaintiff's sur-reply was untimely thereby preventing the plaintiff from introducing "smoking gun" evidence of a "similarly situated" much younger employee who was treated better than the plaintiff (Jovanna Davis).

11. Whether or not the magistrate prejudiced the plaintiff cause a motion to dismiss to be made without full review of all the evidence submitted by the plaintiff

12. Whether the magistrate prejudiced the plaintiff by factoring the defendants' attorney's deployment (November 19th, 2010), over well established law as it relates to discovery, evidence and dealings with a ***pro se*** litigant? (Attachment)

13. Whether or not the lower court erred by not allowing ***pro se*** plaintiff to fully adjudicated/orally present all applicable statute and laws such as the continuing violation doctrine – as it applies to failure to promote, harassment and a hostile work environment. (See attached)

14. Whether the lower court erred when it failed to acknowledge plaintiff's Title VII – Anti-retaliation cause of action based on "engaging in a protected activity" given the plaintiff provided each element to prove or show a prima facie case. Plaintiff provided dates, names and a time frame that proves retaliation under Title VII. Disregarding the complaint filed to the EEOC.

15. Whether the lower court erred when it determined plaintiff could not establish facts that entitled her to relief and could show any genuine issues of material fact based on the pro standard and the requirement to read liberally the submission of the ***pro se*** litigant (attachment)

16. Whether the lower court erred when it determined that the plaintiff did not set forth any genuine issues of material fact that would allow her fully adjudicate her case on its merit?

17. Did the lower court err when it determined that the plaintiff could prove no set of facts, when she supplied direct evidence (in the sur-reply) and circumstantial evidence that not only showed an inference of age discrimination but provided direct proof her case against the defendants

18. Did the lower court err when it denied the plaintiff could not establish disparate treatment as part of a prima facie case, when the plaintiff provided names, dates, documents that showed that she could establish disparate treatment, etc?,

19. Did the lower court err when it dismissed plaintiff claims of failure to promote when she provided dates and positions applied for that were filled by younger employee; positions that she was more qualified for via experience and education?

20. Did the lower court err in not applying the continuing violation doctrine to the plaintiff hostile work environment and harassment claims clearly marked on EEOC complaint form (see attached)

21. Did the lower court err when it determined the plaintiff was not retaliated against for "engaging in a protected activity" under Title VII the retaliation taking place prior to the formal complaint to the EEOC of age discrimination?

22. Did the magistrate show prejudice in violation of well established law when she concluded that one aspect of the plaintiff's cause of action for harassment and hostile work environment was the defendants' way of showing southern courtesy was this an issue of material fact for the jury (see attached)

23. Whether the lower court erred when it dismissed plaintiff's Title VII Anti-retaliation claims based on opposition and participation and **there need not be an** underlying charge to make such a claim;

24. Whether the lower court erred in disregarding plaintiff's retaliation claim under Title VII because there is no immunity qualified or otherwise, so they took control over the plaintiff complaint and made it into what the defendants wanted thereby prejudicing the plaintiff

25. Whether the lower court erred in failing to allow the plaintiff's Title VII retaliation claim when they have subject matter jurisdiction – there is clear proof the plaintiff engaged in a protected activity prior to filing the formal EEOC complaint (e-mail submitted as evidence and sequence of events beginning September 22 to October 2010.

3. **SUPPORTING FACTS (SEE ATTACHED)**

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4. **STANDARD OF REIVEW**

The appropriate standard of review over a district court's dismissal of a claim under Rule 12(b) (6) is de novo or plenary; *Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st Cir. 1994)*. This standard also applies to the district court's denial to grant leave to amend the complaint, (remand or allow voluntary dismissal).

The allegations in a complaint are to be taken as true, and the court is to determine whether, under any theory, the allegations are sufficient to state a cause of action in accordance with the law. Conversely, the court may also affirm the district court's dismissal order under any independently sufficient grounds. Id.

The magistrate's report and recommendations states quite clearly her disbelief in the plaintiff, stating everything submitted was self-serving and without merit, untruthful even

going so far as to deny evidence that would provide the plaintiff a day in court and proof of claims. (See attached)

5. ARGUMENT

This complaint the subject of this appeal was dismissed as to the plaintiff ADEA claims; the court decided to ignore the Title VII cause of action. The complaint was dismissed pursuant to Rule 12(b) (6) – not on summary judgment – the court determined the plaintiff could not prove a prima facie case and dismissed with prejudice the ADEA claims.

The court dismissed the compliant, without allowing the plaintiff an opportunity to fully adjudicate or to orally present her argument as in the magistrate report the US judge concluded plaintiff had nothing that would grant her relief.

The court as plaintiff knows has the right to allow an amendment or not, it also has the duty to dismiss a claim without prejudice in the interest of justice, to allow voluntary dismissal of a claim but for whatever it reason it decided that the plaintiff did not deserve their discretion.

Under rule 12(b)(6) a compliant should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory that advances, the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." *Bowers v Hardwick, 478 US 186, 201 (1986) (emphasis added).*

The cause of action the lower court appeared to have jurisdiction over it choose to ignore and stated that the retaliation was "age-based only" not because of plaintiff "engaging in a protected activity" which is clearly stated on the EEOC complaint," and the retaliation box was checked separately from the ADEA or age discrimination box.

It is not even necessary that a plaintiff request appropriate relief, properly categorize legal theories, or point to any legal theory at all. *Toll v. Carroll Touch, Inc.*, 977 F.2d 1129, 1134 (7th Cir., 1992) (complaint need not point to appropriate status or law to raise a claim for relief; complaint sufficiently states a claim even if it points to no legal theory or even if it points to wrong legal theory, as long as "relief is possible under any set of facts that *could be established* consistent with the allegations") (emphasis supplied). (See attached)

The party moving for dismissal must show "*beyond doubt* that the plaintiff can prove no set of facts in support of his claim [that] would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (emphasis supplied). If the court reviewed the materials as required plaintiff has no doubt that her Title VII claim should be reinstated and remand to the federal court for adjudication on its merits and the court should vacate the dismissal of plaintiff's age discrimination ADEA claim to allow it to be filed in the appropriate state court.

Moreover, the likelihood that a plaintiff will ultimately prevail on his claims has no place in determining whether or not to grant a motion to dismiss. *Scheuer v. Rhodes*, 416 *U.S. 232, 236 (1974)* (issue is not whether plaintiff will prevail but whether claimant is entitled to offer evidence to support claims).

Additionally, when making a determination as to the sufficiency of a complaint, initial pleadings must be construed liberally. *United States v. Uvalde Consol. Indep. Sch. Dist., 625 F.2d 547, 549 (5th Cir. 1890).* This is especially true for a ***pro se*** Complaint under *Haines v. Kerner et al.*, 404 U.S. 519.

With respect to this action, I contend that the district court erred in determining that there is no theory of law under which plaintiff can be granted relief. The court erred in retaining subject matter jurisdiction over the ADEA claim (harassment/hostile work

environment continuing violation – failure to promote, etc.); and it erred when it disregarded Title VII claim which did not require or have an underlying charge at the time of the retaliation.

6. RELIEF SOUGHT

I ask this court to review the complaint, de novo, to perform again the examination referred to in Bowers, and to vacate/reverse the District Court's March 10, 2011, Order dismissing the complaint based on the ADEA and the outrage claim.

I ask this court to review the complaint as it relates to the plaintiff's Title VII anti retaliation complaint that the claim be reinstated and remanded and allowed to be adjudicated as the merits immunity is not applicable.

The arguments advanced herein constitute plaintiff's reasons for contenting that the complaint ought not to have been dismissed either as it relates to age discrimination and the Title VII actions; however, if this court finds other reasons as a result of its examination, it should use its authority to reverse the dismissal on those grounds.

That this court review plaintiff's complaint to determine if there were in fact no issues of genuine material fact that precluded the dismissal of ADEA **and** Title VII claims.

*In **Miles v. Dell, Inc.,*** 429 F.3d 480, 96 FEP 1633 (4th Cir. 2005) the court stated that the plaintiff failed to check "retaliation" box on EEOC charge, and the claim could not reasonably been expected to follow from an administrative investigation of the charge. That the charge did not mention protected activity or opposition.... [2] [3]

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[2] ***Miles v. Dell, Inc.,*** 429 F.3d 480, 96 FEP 1633 (4th Cir. 2005) Plaintiff failed to check "retaliation" box on EEOC charge, and claim could not reasonably been expected to follow from an administrative investigation of the charge. Charge did not mention protected activity or opposition. Letter by employee's lawyer five months later, not served on employer, does not cure defect

[3] Burlington N. & Sante Fe Ry. v. White, 548 U.S. 53, 68 (2006) (holding that to establish an adverse employment action for purposes of a Title VII retaliation claim, "a plaintiff must show that a reasonable employee would have found the challenged

That was not the case in this complaint; the plaintiff checked or the EEOC intake person checked the "retaliation" box on the EEOC charge and the claim or complaint clearly stated the charge clearly state that the Title VII retaliation was for engaging in a protected activity and relief should be granted by law.

7. **Prior appeals (for appellants only)**

A. Have you filed other cases in this court? No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Finally, as a pro se litigant, inexperienced in the art of drafting pleadings, I would appreciate the opportunity to offer oral argument in support of this informal brief.

Respectfully submitted by,

Glenda R. Couram, ***pro se***
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Dated this 11th, day of October 2011
Lexington County South Carolina

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action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination") (internal quotations and citations omitted

INFORMAL BRIEF ATTACHMENT
No.: 11-1253
3:10-cv-00001-MJP-PJG

PRO SE STANDARD OF REVIEW

White v Bloom 621 F.2d 276, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case ...,; *Poling v K Hovnanian Enterprises, 99 F. Supp., 2d 502, 506-07; U.S v Sanchez, 88 F.3d 1243 (D.C. Cir. 1996)* .... "protect pro se litigants against consequences of technical errors if injustice would otherwise result....

JUDGES' RESPONSIBILITY – SUBJECT MATTER JURISDICTION

Plaintiff complaint filed in Federal Court should have been dismissed for lack of subject matter jurisdiction in federal court because the defendant is immune from suit pursuant to the Eleventh Amendment."

The District Court of Columbia did not have authority to rule on the ADEA claims filed by Plaintiff a state employee, plaintiff's motion to the Magistrate should have been honor because of the following information.

State Sovereign Immunity ..... Under the 11th Amendment to the United States Constitution, federal courts are prohibited **from exercising jurisdiction in civil lawsuits for money damages between a state government and a private party**. *Kimel v. Florida Board of Regents, 528 U.S. 62 (2000)* – the leading case law on State Sovereign Immunity and the 11th Amendment;

CASE LAW THE FOURTH CIRCUIT 11TH AMENDMENT

In effect, the Eleventh Amendment limits the ability of a federal district court to exercise its subject-matter jurisdiction over an action brought against a state or one of its entities.

Although not a true limit on the subject-matter jurisdiction of the federal courts, the Eleventh Amendment is "**a block on the exercise of that jurisdiction.**" *Biggs v. Meadows, 66 F.3d 56, 60 (4th Cir. 1995); cf. Smith v. Wisconsin Dep't of Agric., Trade & Consumer Protection, 23 F.3d 1134, 1140 (7th Cir. 1994)* (stating that "federal courts do not have subject-matter jurisdiction over suits against a state"). As a result, the district court lacked the ability to exercise subject-matter jurisdiction over this action.

Under a Fed. R. Civ. P. 12(b)(1) challenge to subject matter jurisdiction, "no presumptive truthfulness attaches to plaintiff's allegations" — "the trial court's jurisdiction is at issue," and plaintiff has the burden of proof. *Mortenson v. First Federal Savings and Loan Ass'n, 549 F.2d 884, 891 (3d Cir.1977); see Anjelino v. The New York Times Co., 200 F.3d 73, 87 (3d Cir. 1999).*

The judges – in the Columbia District Court (added) ..... lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1.) *Jones v. United States, 255 F.3d 507, 511 (8th Cir. 2001)* ("it is axiomatic that . . . sovereign immunity implicates our subject matter jurisdiction" and "in cases implicating subject matter jurisdiction, federal courts are obliged to raise the issue **sue sponte** (authority to act without prompting) even where the parties themselves have failed to do so"; "); *Long v. Area Manager, Bureau of Reclamation, 236 F.3d 910, 916 (8th Cir. 2001)* (noting that question of subject matter jurisdiction like Eleventh Amendment immunity may be raised **sua sponte** at any time)

McGinty v. State of New York, 251 F.3d 84 (2nd Cir. 2001) (district court lacked subject matter jurisdiction over ADEA claims because of Eleventh Amendment sovereign immunity.

"Therefore, plaintiff's ADEA claim against defendant State of South Carolina was ..... **barred by Eleventh Amendment immunity, and the court lacks subject matter jurisdiction over this matter.**

In *Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998).* The Court held in Steel Co. that a federal court **must** determine that it has subject-matter jurisdiction over the case before it can pass on the merits of that case. *Id. at 89-101, 118 S.Ct. 1003.*

Plaintiff has also learned that when the Judges in this matter acted as they did they acted without authority "**ultra vires**" **act** without legal authority. By considering the merits of Plaintiff's case on the merits as they did they did so without authority and lack subject-matter jurisdiction

A federal court has an independent obligation to assess its subject-matter jurisdiction, and it will "raise a lack of subject-matter jurisdiction on its own motion." Id. Because subject-matter limitations "serve institutional interests," they "must be policed by the courts on their own initiative even at the highest level." *Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999).*

In *Clark v. Barnard, 108 U.S. 436, 447, 2 S.Ct. 878, 27 L.Ed. 780 (1883)* (characterizing the State's sovereign immunity as "a personal privilege which it may waive at pleasure").

For example, the Court has consistently held that a State's voluntary appearance in federal court effects a waiver of Eleventh Amendment immunity. *Lapides v. Board of Regents of Univ. Sys. of Ga., 535 U.S. 613, 624, 122 S.Ct. 1640, 152 L.Ed.2d 806 (2002); Gardner v. New Jersey, 329 U.S. 565, 574, 67 S.Ct. 467, 91 L.Ed. 504 (1947); Gunter v. Atlantic Coast Line R.R. Co., 200 U.S. 273, 284, 26 S.Ct. 252, 50 L.Ed. 477 (1906); Clark, 108 U.S. at 447, 2 S.Ct. 878.*

Thus, like qualified immunity for state officers, "[t]he entitlement [conferred by the Eleventh Amendment] is an immunity from suit rather than a mere defense to liability; and it is effectively lost if a case is erroneously permitted to go to trial." *Id. at 144, 113 S.Ct. 684 (internal quotations omitted).* In the qualified-immunity context, the Supreme Court has stressed "the importance of resolving immunity questions at the earliest possible stage in litigation." *Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001); Hunter v. Bryant, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (per curiam).* Given the States' unique dignitary interest in avoiding suit, see *Alden v. Maine, 527 U.S. 706, 713, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999)*, it is no less important to resolve Eleventh Amendment immunity questions as soon as possible after the State asserts its immunity – in this case the state made that request on the first day before the judge, she stated she was not familiar with the request.

TO SURVIVE MOTION TO DISMISS 12(b)(6)

In order to survive a motion to dismiss, *Swierkiewicz v. Sorema N.A., 534 U.S. 506, 510-15 (2002)*, a civil rights plaintiff retains the burden of alleging facts sufficient to state a claim entitling her to relief. See *Jordan v. Alternative Res. Corp., 458 F.3d 332, 346-47 (4th Cir. 2006).*

Before granting a Rule 12(b)(6) motion to dismiss, this court accepts as true the facts as alleged in the complaint, views them in the light most favorable to the plaintiff, and recognizes that dismissal is inappropriate "unless it appears **to a certainty** that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." Id. at 1134 & n.4 (internal quotation marks omitted); see *Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)* (explaining that dismissal for failure to state a claim is proper "only if it is clear that no

relief could be granted under any set of facts that could be proved consistent with the allegations").

Ostrzenski v. Seigel, 177 F.3d 245, 252-53 (4th Cir. 1999) (recognizing that rather than dismiss a defective pleading with prejudice, a plaintiff should "be given every opportunity to cure a formal defect in his pleading[,] . . . even though the court doubts that plaintiff will be able to overcome the defects"); see *also Teachers' Retirement System Of LA v. Hunter, 477 F.3d 162, 170 (4th Cir. 2007)* ("[U]nder this scheme of notice pleading and broad discovery, consideration of a motion to dismiss must account for the possibility that a noticed claim could become legally sufficient if the necessary facts were to be developed during discovery.").

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007) (holding that a court must "consider the complaint in its entirety" when ruling on a Rule 12(b)(6) motion to dismiss. *Page v. Bolger, 645 F.2d 227, 233 (4th Cir. 1981)* (holding that for purposes of a disparate treatment claim, an adverse employment action must be an act that affects hiring, granting leave, promoting and compensating). [1]

SUMMARY JUDGEMENT (56)

Summary judgment is appropriate 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 judgment as a matter of law." Rule 56(c), SCRCP; *see Bessinger v. Bi-Lo, Inc., 329 S.C. 617, 619, 496 S.E.2d 33, 34 (Ct. App. 1998)*. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences from it must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997)*.

[1] Puryear v County of Roanoke - . No. 99-2359; Argued May 4, 2000 -- June 13, 2000

The Fourth Circuit has stated that summary judgment is "seldom appropriate" in discrimination cases.

Genuine issues of material fact *Shaw v Stroud 13 F.3d 791, 798 (4th Cir. 1994)*

Summary judgment is frequently used to dispose of cases where the plaintiff fails to show that he was treated less favorably than persons outside his protected classification. If the plaintiff "fails to identify similarly situated, nonminority employees who were treated more favorably, [the] case must fail because the burden is on [the plaintiff] to establish such disparate treatment as part of [a] prima facie case." (33) Either the plaintiff can identify such comparators or not.

RETALIATION ACTIONABLE - NO UNDERLYING VIOLATION REQUIRED

Retaliation is a **separate** cause of action under Title VII - Individuals are protected from retaliation if they have a reasonable and good faith belief that the employment practices they have opposed were illegal under anti-discrimination laws. An individual need not be right, however. Illegal retaliation can occur even when there has been no underlying violation of law.

Burlington N. & Sante Fe Ry. v. White, 548 U.S. 53, 68 (2006) (holding that to establish an adverse employment action for purposes of a Title VII retaliation claim, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination") (internal quotations and citations omitted).

Ross v. Communications Satellite Corp., 759 F.2d... 759 F.2d at 357 n. 1 (anti-retaliation provision applies even where underlying discrimination claim was not meritorious).

(1) filing a charge of discrimination, (2) participating in an investigation, or (3) opposing discriminatory practices.

The retaliation statute, 42 U.S.C. § 2000e-3(a), provides, in pertinent part:

[i]t shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

> [1] The "opposition clause" makes it "an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by [Title VII]." 42 U.S.C. §2000e–3(a).
>
> [2] The "participation clause" makes it "an unlawful employment practice for an employer to discriminate against any of his employees ... because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. §2000e–3(a).

Section 704(a) of the Title VII of the 1964 Civil Rights Act, 42 USC §2000e-3(a), provides in pertinent part:

It shall be unlawful employment practice for an employer to discriminate against any of his employees... because he has opposed any practice, made an unlawful employment practice under this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title;

PROVING RETATLION

In order to establish a prima facie case of retaliation under this statute, a plaintiff must show: (1) that she engaged in statutorily protected activity; (2) an adverse employment action; and (3) a causal connection between the activity and the adverse action.

Thompson v.. Potomac Elec. Power Co., 312 F.3d 645, 650 (4th Cir.2002); *Anderson v. G.D.C., Inc.*, 281 F.3d 452, 458 (4th Cir.2002); *Guess v. City of Miramar, 889 So.2d 840, 846*

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(Fla. 4th DCA 2004) (citing Harper v. Blockbuster Entn't Corp., 139 F.3d 1385, 1388 (11th Cir.1998));[2]

The Fourth Circuit has expansively interpreted what constitutes protected activity under the statute's participation clause, indicating that "the provision is meant to sweep broadly." *Glover v. South Carolina Law Enforcement Div., 170 F.3d 411, 414 (4th Cir.1999) (citing Merritt v. Dillard Paper Co., 120 F.3d 1181, 1186 (11th Cir.1997)).*

To qualify as an "adverse employment action," the employer must have engaged in activity adversely affecting the "terms, conditions, or benefits of employment." *Von Gunten v. Maryland, 243 F.3d 858, 866 (4th Cir.2001)*;

RECENT DECISION - RETALTION

Okoli v. City of Baltimore, No. 08-2198 (4th Cir. Aug. 8, 2011); (question is whether the complaint concerns conduct between an employer and its employee); Opposition and Participation clause.*Karpel v. Inova Health Sys. Servs., 134 F.3d 1222, 1228 (4th Cir. 1998).*

Retaliation claims are also subject to the McDonnell-Douglas analytical framework. *Hawkins v. PepsiCo, Inc., 203 F.3d 274, 281 n.1 (4th Cir. 2000); Karpel, 134 F.3d at 1227-28.* Once the prima facie case of retaliation has been proven, the defendant must put forth a legitimate non-discriminatory reason for the adverse employment action. *Nichols v. Ashland Hosp. Corp., 251 F.3d 496, 502 (4th Cir. 2001)* (citing McDonnell Douglas, supra). The burden

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[2] Plaintiff should not be left with no remedy: Bankston v. White (9th Cir. October 1, 2003) 345 F.3d 768; In determining a summary judgment motion, the court's function is not to assess the truth of the matter asserted. Anderson, 477 U.S. at 249. The court may not make credibility determinations, or weigh the evidence. Id. at 252.
Reprimand and Reassignment. In *DiMeglio v. Haines*, 45 F.3d 790, 804, n.6 (4th Cir. 1995) the Court held that a reprimand and reassignment may constitute an actionable adverse employment action for retaliation; *but see Boone v. Goldin*, 178 F.3d 253, 256 (4th Cir. 1999) (reassignment to a job with "some modest stress" is not a cognizable adverse employment action).
Surveillance. In *Warren v. Halstead Indus.*, 802 F.2d 746 (1986), *aff'd on reh'g*, 835 F.2d 535 (4th Cir. 1988) (en banc) the Court held that workplace harassment in the form of surveillance was actionable retaliation (black employees sought to discuss selective treatment with plant manager, which was denied, and after which the immediate supervisor began keeping note cards documenting performance. Plaintiff's termination two weeks later for "wasting company time" and "lack of cooperation," based on the note cards, was held actionable retaliation).

then shifts back to the plaintiff to show the proffered reason is merely a pretext for discrimination. *Id.*

The plaintiff must show that the proffered reason is "'unworthy of credence' or [offer] other forms of circumstantial evidence sufficiently probative of [retaliation]." *Mereish,* 359 F.3d at 336 (*quoting Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256, 67 L. Ed. 2d 207, 101 S. Ct. 1089 (1981)). Greene v. Swain County P'ship for Health, 342 F. Supp. 2d 442, 453 (D.N.C., 2004).*

The retaliation claim **is independent of the underlying discrimination** claim – and could be successful even if the underlying discrimination claim was unsuccessful.

ADEA, 29 U.S.C. § 623(d) (2000);

A failure to promote; as with other "ultimate employment actions," a failure to promote an employee constitutes an adverse employment action for the purposes of § 2000e-3 retaliation. *Bryant v. Aiken Reg. Med. Ctrs., Inc., 333 F3d. 536 (4th Cir. 2003); Von Gunten v. Maryland, 243 F.3d 858, 865 (4th Cir. 2001); Page v. Bolger, 645 F.2d 227, 233 (4th Cir. 1981).*

CONTINUING VIOLATION DOCTRINE HARASSMENT, HOSTILE WORK ENVIRONMENT AND RETIALATION – RECENT VIOLATIONS

The "continuing violation" doctrine allows a plaintiff in a discrimination lawsuit to admit evidence of similar wrongful acts occurring outside the period of limitation for liability and damage purposes if (1) there is at least one similar wrongful act within the statute, and (2) the other acts are similar in nature so as to show a pattern or policy of discrimination. The court barred recovery for any act of discrimination occurring more than one year before the filing of an employee's action unless those earlier acts of discrimination were so subtle as not to alert the employee to the existence of a claim for discrimination. *Gilliam v. SC Dept of Juvenile Justice,*

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474 F.3d 134, 99 FEP 865 (4th Cir. 2007) - under *Morgan*, only some of the activity had to fall within the 300-day window, and employee could benefit from continuing violation.

The continuing violation party must establish (1) that at least one act occurred during the statutory period; and (2) that the discriminatory character of the acts must become cognizable when viewed cumulatively in light of later acts.

March 24th, 2011 on or about the defendants billed the plaintiff for their exploratory deposition which is not the normal practice of the state an attorney told the plaintiff that "you must have really made them mad." The bill of cost was not itemized.

October 7th, 2011 - During the appreciation day on Friday, the defendants had the employees line up right beside her desk while she tried to work up until this date the events were set up against the back wall facing the parking lot but Ms. Rhett had the set right behind the plaintiff cube with the employee lined up beside her work station instead of outside the work areas as was the normal practice in the last five years of the plaintiff's employment.

HOSTILE WORK ENVIRONMENT CLAIMS OF DISCRIMINATION

The Court began its continuing violations theory analysis of hostile work environment claims by making four preliminary observations: (1) the very nature of such claims is that they involve "repeated conduct;" (2) therefore an unlawful employment practice involving such claims "cannot be said to occur on any particular day;" (3) rather, they occur "over a series of days or perhaps years;" and (4) "in direct contrast to discrete acts, a single act of harassment may not be actionable on its own." *Id.*

Next, the Court noted that to determine whether an actionable hostile work environment claim even exists it is necessary to "look to 'all the circumstances,' including the 'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a

mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Id.* at 2074 (citing *Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993)*). The Court then reasoned that a "hostile work environment claim is comprised of (sic) a series of separate acts that collectively constitute one 'unlawful employment practice.'" *Id.* (citing 42 U.S.C. § 2000e-5(e)(1)). In sum, the majority held:

It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim *occurs within the filing period*, the entire time period may be considered by a court for the purposes of determining liability.

Id. (emphasis added). Stated slightly differently, the Court re-emphasized its holding this way:

Given, therefore, that incidents comprising a hostile work environment are part of one unlawful employment practice, the employer may be liable for all acts that are part of this single claim. In order for the charge to be timely, the employee need only file a charge within 180 or 300 days of *any act* that is part of the hostile work environment.

Id. at 2075 (emphasis added).

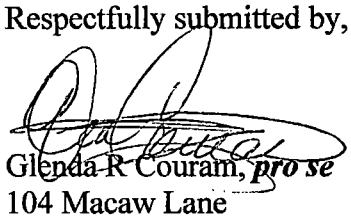
The Court also clarified that an act falling within the statutory time period for filing "need not . . . be the last act." *Id.* at 2074. Rather, as "long as the employer has engaged in enough activity to make out an actionable hostile environment claim, an unlawful employment practice has 'occurred,' even if it is still occurring." *Id.*

By way of example, the Court explained that in a scenario where acts contributing to a hostile environment occur on days 1-100 and on day 401 — but not in between on days 101-400 — a charge filed in connection with the day 401 incident could, nevertheless, still pull in the acts that occurred on days 1-100 for liability purposes "so long as each act is part of the whole," since

a hostile work environment constitutes one "'unlawful employment practice.'" *Id.* at 2075. On the other hand, the Court made clear that:

[I]f an act on day 401 had *no relation* to the acts between days 1-100, or for some other reason, such as certain intervening action by the employer, was no longer part of the same hostile work environment claim, then the employee cannot recover for the previous acts, at least not by reference to the day 401 act. *Id.* (emphasis added).

Respectfully submitted by,



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grcouram@hotmail.com

Dated this 14th, day of October 2011
Lexington County South Carolina

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1253
(3:10-cv-00001-MJP)

GLENDA RENEE COURAM,

PLAINTIFF-APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES; LULA N. DAVIS; CONNIE RHETT; and SHIRLEY RIVERS, in their individual capacities,

DEFENDANTS-APPELLEES.

RESPONSE OF APPELLEES SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, LULA N. DAVIS, CONNIE RHETT, AND SHIRLEY RIVERS IN OPPOSITION TO APPELLANT GLENDA COURAM'S MOTION TO REINSTATE HER APPEAL

Pro se plaintiff-appellant Glenda Renee Couram ("Couram") has filed a motion dated October 14, 2011, requesting that this Court reinstate her appeal, which was previously voluntarily dismissed pursuant to Couram's request. Pursuant to Rule 27(a)(3) of the Federal Rules of Appellate Procedure as well as the Order of the Court dated October 18, 2011, requiring a response to Couram's motion, the defendants-appellees, South Carolina Department of Motor Vehicles, Lula N. Davis, Connie Rhett, and Shirley Rivers, through their undersigned counsel, hereby respectfully

submit their response in opposition to Couram's motion to reinstate her appeal.

This Court gave Couram every opportunity to timely and properly file and serve her informal brief in the above-captioned proceeding when this matter was previously pending before the Court, including extending the filing deadline for an additional thirty (30) days, and yet she failed to do so. There is no proper basis for now permitting Couram to have a second bite at the apple by reinstating her appeal.

In addition, the overwhelming weight of legal authority, as discussed below, weighs against allowing a party to reinstate an appeal after she has already had it voluntarily dismissed and the period for appeal has expired. Moreover, there are simply no exceptional circumstances present here that could justify allowing Couram to reinstate her appeal, and she has failed to provide any reason that would adequately justify the extraordinary remedy that she now seeks. Furthermore, allowing Couram to reinstate her appeal would cause substantial prejudice to the defendants-appellees because they would have to incur further expense in defending a meritless appeal that had previously been concluded. Also, considerations of public policy, of preservation of valuable judicial resources, and of the importance of finality

of judicial decisions also weigh in favor of denying a party the ability to untimely reinstate an appeal after the appeal has been voluntarily dismissed.

Background

Couram filed this action on January 4, 2010, seeking monetary damages from her current employer, the South Carolina Department of Motor Vehicles (SCDMV), and asserting alleged violations of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e-2000e-17, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, and the Equal Pay Act of 1963(EPA), 29 U.S.C. § 206. Specifically, Couram contended that SCDMV failed to promote her and subjected her to a hostile work environment because of her age, paid her lower wages than her younger colleagues, and retaliated against her by demoting her on the basis of her age. Couram also asserted state law claims for outrage and civil conspiracy.

The defendants denied her allegations, denied any liability and filed a motion for summary judgment. The defendants asserted that summary judgment was appropriate because (1) Couram's claims pursuant to the ADEA are barred by state sovereign immunity; (2) her claims pursuant to the EPA or Title VII fail because her complaints are based on age and neither statute forbids age discrimination; (3) she cannot establish prima

facie cases of either age discrimination, age harassment, or retaliation because of age; (4) her claim for outrage is barred by the South Carolina Workers' Compensation Act; and (5) she failed to establish a prima facie case of civil conspiracy.

U.S. Magistrate Paige J. Gossett issued a Report & Recommendation dated November 12, 2010, in which she recommended that the defendants' motion for summary judgment be granted. The Magistrate found that SCDMV is immune from suit in federal court pursuant to the Eleventh Amendment to the United States Constitution and that it has not waived its immunity. The Magistrate Judge found that Couram's ADEA claims against individual defendants Davis, Rhett, and Rivers fail as a matter of law because the ADEA does not provide for actions against these defendants in their individual capacities. The Magistrate Judge further concluded that Couram's evidence failed to establish a prima facie case of either outrage or civil conspiracy.

Couram submitted to the District Court various objections to the Report and Recommendation including an unwarranted attack on the integrity and honesty of the Magistrate Judge. [Entry No.89.] She also filed a "Motion to Remand/Removal to State Court and Request to Amend Complaint" in which she asked the Court to remand her claims to state court

if jurisdiction is appropriate there. I n the alternative, she requested that the District Court allow her to amend the Complaint to add claims for religious discrimination and harassment.

By Order dated March 10, 2011, the District Court Judge, the Honorable Matthew J. Perry, approved the Magistrate Judge's recommendation to grant the defendants' motion for summary judgment as to Couram's ADEA claims. The District Court denied the defendants' motion for summary judgment to the extent the motion sought dismissal with prejudice of the state law claims for civil conspiracy and outrage. Instead, pursuant to 28 U.S.C. § 1367(c), the Court dismissed Couram's state law claims for civil conspiracy and outrage without prejudice. Also, the Court denied her Motion to Remand and Request to Amend Complaint.

On March 17, 2011, the defendants filed a motion to alter or amend the judgment pursuant to Rule 59(e). On March 21, 2011, Couram filed a notice of appeal [Entry No. 102]. The defendants' Rule 59(e) motion to alter or amend the judgment was denied on May 6, 2011.

After the appeal was docketed at the Fourth Circuit Court of Appeals, an Informal Briefing Order was issued on June 30, 2011, which established a due date of July 25, 2011, for the filing and service of Couram's Informal Opening Brief. Couram thereafter filed a motion requesting an extension of

thirty (30) days in which to file her brief, and this motion was granted by the Court, extending the deadline until August 25, 2011.

By letter dated August 24, 2011, Couram advised the Court that she no longer wished to pursue her appeal and that she was dismissing the appeal pursuant to Rule 42(b), FRAP. She stated in her letter that she planned to pursue her remedies against the defendants in state court. Pursuant to her request to have the appeal voluntarily dismissed, the Court issued an Order on August 30 dismissing the appeal pursuant to rule 42(b). The Court also issued a Mandate that same day. On September 19, the Court received a letter from Couram asking if she could reopen the appeal. [Document 21.] In her September 19 letter, Couram indicated that she had found new legal authority to support her claims and she included an attachment to the letter listing various citations to cases and federal rules that she believes supports her claims. [Id.] Her letter states, "In this letter, I want to ask if it is possible to reopen and file the appeal given the information I found a few days ago (see attached)." [Id.] On October 14, Couram filed a formal motion to reopen the appeal and an informal brief.

Argument

Couram Should Not Be Permitted to Reinstate Her Appeal.

The general rule among federal courts is that "an appeal, once voluntarily dismissed, will not be reinstated." 16AA Charles Alan Wright, et al. Federal Practice & Procedure § 3988 (4th ed. 2008). "[T]he appellant who changes his or her mind after a voluntary dismissal is out of luck if a timely notice of appeal can no longer be filed." Id; see also 2A Fed. Proc., L. Ed. § 3:566 (Aug. 2011) ("If an appeal is voluntarily dismissed, this places the parties in the same position as if no notice of appeal had ever been filed, and the appeal cannot be reinstated unless a new notice of appeal is filed within the appeal time prescribed by the rules. Thus, a motion seeking reinstatement of a voluntarily dismissed notice cannot resurrect a notice after the time for appeal has elapsed."); 5 Am. Jur. 2d Appellate Review § 257 (2007) (citing Williams v. U.S., 553 F.2d 420 (5th Cir. 1977) ("If an appeal is voluntarily dismissed, such dismissal places the parties in the same position as if no notice of appeal was ever filed, and under such circumstances the appeal cannot be reinstated unless a new notice of appeal is timely filed."); Barrow v. Falck, 977 F.2d 1100, 1103 (7th Cir.1992) ("A notice of appeal filed and dismissed voluntarily is gone, no more effective in conferring jurisdiction on a court than a notice never filed," citing

Williams); Futernick v. Sumpter, 207 F.3d 305, 312 (6th Cir.2000) (quoting with approval above quoted passage from Barrow). To the same effect is United States v. Arevalo, 408 F.3d 1233, 1236 (9th Cir.2005). See also United States v. Outen, 286 F.3d 622, 631 & n. 5 (2d Cir.2002) ("A withdrawal of an appeal ... brings the appeal to an end," quoting with approval the above quoted language from Barrow).

Parties in civil cases are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R.App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R.App. P. 4(a)(5), or reopens the appeal period under Fed. R.App. P. 4(a)(6). "[T] he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007).

In this case, the district court's Order was entered on March 10, 2011. On March 17, 2011, the defendants filed a motion to alter or amend the judgment pursuant to Rule 59(e). On March 21, 2011, Couram filed a notice of appeal [Entry No. 102]. The defendants' Rule 59(e) motion to alter or amend the judgment was denied on May 6, 2011. [Entry No. 116.] Pursuant to Rule 4(a)(4), Fed. R. App. P., the 30 day appeal period began to run on May 6, 2011, when Judge Perry disposed of the pending motion to alter or

amend, and this appeal period therefore lapsed on Monday, June 6, 2011. The cases and other authority cited above support the conclusions that a voluntary withdrawal of an appeal places the parties in the same position as if no notice of appeal was ever filed and that under such circumstances an appeal cannot be reinstated unless a new notice of appeal is timely filed. Here, the time for timely filing a notice of appeal has expired. The defendants respectfully submit the Court of Appeals lacks jurisdiction to re-open this appeal at this late date.

Additionally, in her motion Couram has cited no legal authority in support of her request to reinstate the appeal. Furthermore, Couram has provided no valid basis or reason for reinstating the appeal. There are no extraordinary circumstances that would justify reopening the appeal. In her letter to the Court filed September 19, 2011, Couram advances as one of her primary reasons for seeking to reopen the appeal that she has recently found new legal research that she believes helps her case. [Document 21.] In her motion, she simply states that she was unable to meet the Court's previous briefing schedule deadlines because she was ill and did not want to seek a second 30 day extension because her understanding is that "the court frowned on granting extensions greater than thirty (30) days." [Couram's Motion Notice/Request To Reinstate Appeal, page 1.] These are not valid

reasons for seeking an untimely reinstatement of an appeal that was previously voluntarily dismissed. With respect to her claim of previous illness, Couram could have sought, and likely would have been granted a second extension, if she had been seriously ill. But she never asked the Court for a second extension.

Also, considerations of public policy, of preservation of valuable judicial resources, and of the importance of finality of judicial decisions also weigh in favor of denying a party the ability to untimely reinstate an appeal after the appeal has been voluntarily dismissed. A party who petitions a federal appellate court for a voluntary dismissal should not be allowed to untimely reopen the appeal because he or she changes their mind. In refusing to allow an appellant to reopen an appeal after it had been dismissed voluntarily, the Ninth Circuit in Barrow v. Falck, 977 F.2d 1100 (7th Cir. 1992) explained:

> A timely notice of appeal is essential to appellate jurisdiction. A notice of appeal filed and dismissed voluntarily is gone, no more effective in conferring jurisdiction on a court than a notice never filed. Attempts to resurrect notices of appeal must be treated the same as belated notices of appeal. The time limits for filing an appeal require the losing party to choose between accepting the judgment and pursuing appellate review. The loser may not dither. Filing and dismissing an appeal prevents appellate review, and we do not think that it should place the judgment in limbo—open to review whenever the losing side changes its mind. The structure of the rules is set against such delay and uncertainty.

Id. at 1103 (citations omitted).

Finally, reinstatement of this appeal would unfairly prejudice the defendants. The defendants, and their counsel, rightfully believed that this appeal had been concluded when the Court of Appeals granted Couram's request for a voluntary dismissal and issued an Order of dismissal and the Mandate. They believed the Order of dismissal and Mandate of this Court were final. If the Court were to now reopen this appeal, the defendants would incur substantial expense in having to prepare a brief and defending this appeal. The defendants should not have to bear the burden and cost of an appeal at this juncture simply because the appellant has changed her mind about whether she wants to pursue an appeal.

Conclusion

For the foregoing reasons, the defendants respectfully request that the Court deny and dismiss Couram's request to reinstate this appeal.

Respectfully submitted,

s/ Mason A. Summers

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ATTORNEYS FOR APPELLEES

October 20, 2011

436 - 2009 - 00108N

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
INTAKE QUESTIONNAIRE

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. **Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.**

1. Personal Information

Last Name: Couram First Name: Glenda "Glen" MI: Renee

Street or Mailing Address: 104 Macaw Lane Apt Or Unit #:

City: Lexington County: Lexington State: South Carolina ZIP: 29073

Phone Numbers: Home: (803) 957-5210 Work: (803) 896-9571

Cell: ( ) Email Address: grcouram@hotmail.com

Date of Birth: 11/03/1958 Sex: Male ___ Female: x Do You Have a Disability? Yes ☐ No ☒

Please answer each of the next three questions. i. Are you Hispanic or Latino? Yes ☐ No ☒

ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaska Native ☐ Asian

☒ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White

iii. What is your National Origin? US Citizen from VA

Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: No One Relationship:

Address: City: State: Zip Code:

Home Phone: ( ) Other Phone: ( )

I believe that I was discriminated against by the following organization(s): (Check those that apply)

Employer X Union ___ Employment Agency ___ Other (Please Specify) ___

2. Organization Contact Information

Organization #1 Name: SC Department of Motor Vehicles

Address: 10311 Wilson Blvd, PO Box 1498 **County:** Richland

City: Blythewood **State:** SC **Zip:** 29016 **Phone:** (803) 896-9975

Type of Business: Public Service Job Location if different from Org. Address:

Human Resources Director or Owner Name: Dottie Blankenship **Phone:** 803 896-9975

Number of Employees in the Organization at All Locations: Please Check (√) One

Less Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☐ More 500 ☒

Organization #2 Name:

Address: **County:**

City: **State:** **Zip:** **Phone:** ( )

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Type of Business: Public Service Job Location if different from Org. Address:

Human Resources Director or Owner Name: Dottie Blankenship, Director HR **Phone:** 803 896-9975

Number of Employees in the Organization at All Locations: Please Check (√) One

Less Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☐ More 500 ☒

3. **Your Employment Data** (Complete as many items as you can)

Date Hired: 7/2006 Job Title At Hire: Temp 10/04 then Compliance Specialist Perm 7/2006

Pay Rate When Hired: 21500 Last or Current Pay Rate: 21445 on or about

Job Title at Time of Alleged Discrimination: Compliance Specialist

Name and Title of Immediate Supervisor: Lula N. Davis

If Applicant, Date You Applied for Job 4/2006 **Job Title Applied For** Compliance Specialist

4. **What is the reason (basis) for your claim of employment discrimination?**

FOR EXAMPLE, if you are over the age of 40 and feel you were treated worse than younger employees ***or*** *you have other evidence of discrimination, you should check (√)* **AGE.** *If you feel that you were treated worse than those not of your race* ***or*** *you have other evidence of discrimination, you should check (√)* ***RACE.*** *If you feel the adverse treatment was due to multiple reasons, such as your sex, religion and national origin, you should check all three. If you complained about discrimination, participated in someone else's complaint or if you filed a charge of discrimination and a negative action was threatened or taken, you should check (√)* ***RETALIATION.***

Race ☐ Sex ☐ Age ☒ Disability ☐ National Origin ☐ Color ☐ Religion ☐ Retaliation ☒ Pregnancy ☐

Other reason (basis) for discrimination (Explain).

5. **What happened to you that you believe was discriminatory? <u>Include the date(s) of harm, action(s) and include the name(s) and title(s) of the persons who you believe discriminated against you</u>. (Example: 10/02/06 - Written Warning from Supervisor, Mr. John Soto)**

A) Date: 4/2008 Action: Written Notice of misuse of time (all), if get sick between that date and November 2008 will be docked - Ms. Davis provided not reason she just up and decided I was abusing my time, they still will not give rsn

Name and Title of Person(s) Responsible: Ms. Lula N. Davis and Shirley Rivers

B) Date: August 11, 2008 Action: Written notice that I cannot make any gestures, did not tell what gestures and could not make any sound did not tell what sounds.

Name and Title of Person(s) Responsible: Ms. Davis and Rivers

Describe any other actions you believe were discriminatory.
September 9, I came in to work but because of Ms. Davis and Boland bullying that week I could not stay had a panic attack, hyperventilating had to leave went home after sitting in car for 1/2 hr and went to bed out on Sept 10 and 11th back on the 12th. As a result, my pay was docked for those two days. Also told Ms. Davis I came in and was working at time she stated, she "doubted it" docked for 7.25 on the 10th and 7.50 on the 11th. I spoke to HR and Ms. Adams, Director of DMV. Ms. Davis had no grounds to write me up the first time and I cannot get a reason why she did. They just say read policy.

August 2008 - I was demoted from my regular work B and put on a lower job A - Ms. Rivers stated, I was being cross trained and Ms. Boland stated will go back to regular work after learning A. Ms. Davis when I started doing B kept me in Ms. Rivers office saying was too slow, etc., She did the same thing with the A's, then took me in an office told me I was slow and was going to put me on misc work and data entry after the meeting with HR and informing of EEOC filing. I had been doing B for almost a year and to August of 2008. They stated I was being cross-trained but I do not believe they ever intended for me to go back to B.

(Attach additional pages if needed to complete your response.)

6. **What reason(s) were given to you for the acts you consider discriminatory? By whom? Title?**
Not sure how to answer

7. **Name and describe others who were in the same situation as you. Explain any similar or different treatment. Who was treated worse, who was treated better, and who was treated the same? Provide race, sex, age, national origin, religion, and/or disability status of comparator if known and if connected with your claim of discrimination. Add additional sheets if needed.**

Full Name	Job Title	Description
1. No One she just concentrated on me		
2.		
3.		

Answer questions 8-10 only if you are claiming discrimination based on disability. If not, skip to question 11.

8. **Please check all that apply:**
   - ☐ Yes, I have an actual disability
   - ☐ I have had an actual disability in the past
   - ☐ No disability but the organization treats me as if I am disabled

9. **If you are alleging discrimination because of your disability, what is the name of your disability? How does your disability affect your daily life or work activities, e.g., what does your disability prevent or limit you from doing, if anything? (Example: lifting, sleeping normally, breathing normally, pulling, walking, climbing, caring for yourself, working, etc.).**

10. **Did you ask your employer for any assistance or change in working condition because of your disability?**
    Yes ☐ No ☐

    Did you need this assistance or change in working condition in order to do your job?
    Yes ☐ No ☐

    If "YES", when? _____ **To whom did you make the request? Provide full name of person** _____ **How did you ask (verbally or in writing)?** _____

    Describe the assistance or change in working condition requested?

11. **Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and indicate what they will say. Add additional pages if necessary.**

	NAME	JOB TITLE	ADDRESS & PHONE NUMBER
A.	Everyone in Tickets.	Compliance	803 896-9571
B.	They will testify to what has been happening and behavior of Ms. Davis See attached		
C.			

12. **Have you filed a charge previously in this matter with EEOC or another agency?** Yes ☐ No ☒

13. **If you have filed a complaint with another agency, provide name of agency and date of filing:**

14. **Have you sought help about this situation from a union, an attorney, or any other source?**

Yes ☐ No ☒ - If yes, from whom and when? Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so within either 180 or 300 days from the day you knew about the discrimination. The amount of time you have depends on whether the employer is located in a place where a state or local government agency has laws similar to the EEOC's laws. **If you do not file a charge of discrimination within the time limits, you will lose your rights. If you want to file a charge, you should check Box 1, below. If you would like more information before deciding whether to file a charge or you are worried or have concerns about EEOC's notifying the employer, union, or employment agency about your filing a charge, you may wish to check Box 2, below.**

Box 1

☒ I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that **the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name.** I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, or retaliation for opposing discrimination.

Box 2

☐ I want to talk to an EEOC employee before deciding whether to file a charge of discrimination. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

~~160~~
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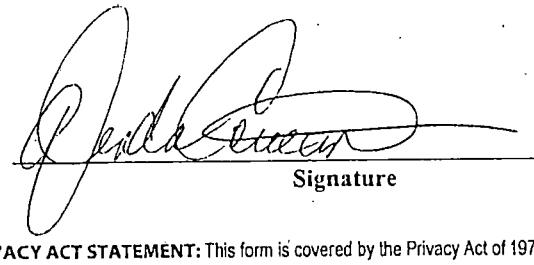

Signature

10/24/08

Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1. FORM NUMBER/TITLE/DATE. EEOC Intake Questionnaire (9/20/08).
2. AUTHORITY. 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626. 42 U.S.C. 12117(a)
3. PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. ROUTINE USES. EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. The providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge of discrimination. It is not mandatory that this form be used to provide the requested information.

5. (continued)

Harassment continues to date - 10/23 she hung over my shoulder telling me not to type any more will write me up I type because of her behavior and my anxiety and fear of loss of job.
The same thing occurred on 10/24, she told me I could not write either hanging over my shoulder and speaking loudly

Being forced to apply for FLMA, I do not feel I qualify for, except Ms. Davis and Boland's behavior I can control my anxiety as a result of their actions. Room on 10/23/08

August 2008, Ms. Davis stood in the hall way and **yelled** why I was in her office, we go in all the time to leave work

A few days later, she yelled about what work I was doing.

There is a lot more!!!! Today, 10/24/08, accused me of threatening her when I asked her back off. Said do not threaten Dee.

These are the person in my section who can testify to what has happened and is happening (803) 896-9599, if choose to.

Uricka Jacobs
Kay Boland, Team Leader
Valerie Townsend - Today: gave job I was qualified (more) to do. Did not know how research
Stacey Myer
Karen Serenco
Deborah Cox
Cookie Sanderson
Janet Bowen
Carol Byars
Willie Ann Hart
Misty Mack
Deborah King
Joycelyn Archie - Trained to do my job
Lisa Jones who is not longer employed – was Team Leader

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: [ ] FEPA [X] EEOC

Agency(ies) Charge No(s): 436-2009-00108

South Carolina Human Affairs Commission and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth
Mrs. Glenda Couram	(803) 957-5210	11-03-1958

Street Address / City, State and ZIP Code: 104 Macaw Lane, Lexington, SC 29073

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name	No. Employees, Members	Phone No. (Include Area Code)
SC DEPARTMENT OF MOTOR VEHICLES	500 or More	(803) 896-9707

Street Address / City, State and ZIP Code: P.O. Box 1498, 10311 Wilson Blvd., Blythewood, SC 29016

Name	No. Employees, Members	Phone No. (Include Area Code)

Street Address / City, State and ZIP Code:

DISCRIMINATION BASED ON (Check appropriate box(es).)

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN

[X] RETALIATION [X] AGE [ ] DISABILITY [ ] OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest / Latest: 11-03-2008

[X] CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

1. From February 2007 through the present, I have been harassed by Lula Davis, Supervisor. In April 2008, I received a written disciplinary action. In August 2008, I was demoted from B to A work. On approximately September 12, 2008, I received a written disciplinary action and my pay was docked for September 10 and 11, 2008. In September 2008, I reported discrimination to Dottie Blankenship, HR Director, Marsha Adams, Agency Director, and Annie Thelp, Director of Driver Records. From September 2008 to the present, the harassment by Adams has intensified. Hostile Work Envir. Shirley Rivers was also informed Feb or about

2. The reason given by Davis for issuing me the disciplinary action was for abusing time. The reason given by Davis for demoting me was for cross-training. The reason given by Davis for issuing me the disciplinary action in September was due to my actions in April 2008.

3. I believe I have been discriminated against in violation of the Age Discrimination in Employment Act of 1967, as amended, based on my age, ~~52~~ 49, and in retaliation for engaging in protected activity. Also, Recvd disciplinary notice for making gestures + comm., mis Sept/Aug 08

Charge originally filed on October 29, 2008.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

11/13/08 — Date

Glenda Couram — Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

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Enclosure with EEOC Form 131 (5/01)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. . . . . Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

EEOC FORM 131 (5/01)

U.S. Equal Employment Opportunity Commission

Mrs. Marcia Adams
Executive Director
SC DEPARTMENT OF MOTOR VEHICLES
PO Box 1498
Blythewood, SC 29016

PERSON FILING CHARGE

Glenda Couram

THIS PERSON *(check one or both)*

[X] Claims To Be Aggrieved

[ ] Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

436-2009-00108

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

[ ] Title VII of the Civil Rights Act

[ ] The Americans with Disabilities Act

[X] The Age Discrimination in Employment Act

[ ] The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. [ ] No action is required by you at this time.

2. [ ] Please call the EEOC Representative listed below concerning the further handling of this charge.

3. [X] Please provide by 19-DEC-08 a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

4. [ ] Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

5. [ ] EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to

If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Patricia B. Fuller,
Director

EEOC Representative

Telephone (864) 241-4401

Greenville Local Office
301 North Main St
Suite 1402
Greenville, SC 29601

Enclosure(s): [X] Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN [X] AGE [ ] DISABILITY [X] RETALIATION [ ] OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
November 18, 2008	Patricia B. Fuller, Local Office Director	

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Greenville Local Office

Landmark Building
301 North Main Street
Suite 1402
Greenville, SC 29601
(864) 241-4400
TTY (864) 241-4403
FAX (864) 241-4416

November 18, 2008

Charge No.: 436-2009-00108

Marcia Adams
Executive Director
SC DEPARTMENT OF MOTOR VEHICLES
PO Box 1498
Blythewood, SC 29016

Dear Mrs. Adams:

The above-referenced charge has been filed against your company. The charge is being considered for mediation by the Equal Employment Opportunity Commission (EEOC). Mediation is an informal process in which those involved in the dispute jointly explore and try to reconcile their differences. Mediation is offered as an alternative to the often lengthy investigative process traditionally used to determine the merits of the charges of discrimination filed with EEOC. The purpose of mediation is to help the parties reach a fair and expeditious resolution of the charge prior to an investigation. Mediation focuses on resolving the underlying dispute by addressing the interest of both parties. It is not a forum for reaching a determination on whether discrimination occurred. Therefore, any agreement reached during mediation does not constitute an admission that discrimination occurred. However, the agreement will resolve the employment dispute.

The majority of mediations are completed in only one session. If the charge is resolved through the mediation process, EEOC will cease its processing of the charge.

Participation in the mediation program is completely *voluntary*. If the charge is selected for mediation and you decide to participate in the mediation program, the person representing your company at the mediation conference **must have authority** to make a decision regarding resolving the charge. Enclosed for your information is a mediation fact sheet that may answer any questions that you have about the program.

EEOC Form 161 (2/08)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Glenda Couram
104 Macaw Lane
Lexington, SC 29073

From: Greenville Local Office
301 North Main St
Suite 1402
Greenville, SC 29601

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
436-2009-00108	Mark A. Delledonne, Investigator	(864) 241-4411

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Patricia B. Fuller

Patricia B. Fuller,
Local Office Director

OCT 14 2009
(Date Mailed)

Enclosures(s)

cc: Eugene Matthews
Richarson Plowden Robinson, P.A.
PO Drawer 7788
Columbia, SC 29202

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HUMAN AFFAIRS COMMISSION

Raymond Buxton, II
Commissioner

2611 Forest Drive, Suite 200, Post Office Box 4490
Columbia, South Carolina 29240
(803) 737-7800 FAX: (803) 253-4191

To file complaints dial (803) 737-7800 or 1-800-521-0725 (In-State Only)

May 16, 2013

Ms. Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073

Dear Ms. Couram:

Re: SHAC No. 2-13-156D/RET

Enclosed is a copy of your charge of employment discrimination to be processed by the South Carolina Human Affairs Commission (SHAC). Please use the above SHAC number when contacting SHAC staff regarding your complaint. Your complaint is also filed with the U.S. Equal Employment Opportunity Commission (EEOC). When SHAC completes the investigation of your complaint, you can ask EEOC to review SHAC's findings.

You have a right to file a complaint of discrimination. However, you may find that you are treated badly just because you filed a complaint or helped to fight discrimination. This is called Retaliation and it is against the law.

To resolve your complaint quickly, you and the Respondent (the parties) may consider participating in the agency's mediation program. Mediation is voluntary, fair to everyone and takes much less time to talk about the complaint and bring it to an end. It takes place on an informal basis (not court) and is run by mediators who understand everyone's concerns. The mediator helps each party to reach an agreement to resolve the matter. If both of you agree to participate in mediation and an agreement is reached, your complaint is closed. If not, you can still have your complaint investigated by SHAC. Please read the enclosed brochure, "The Mediation Option", for more information.

Your full cooperation is needed to process your complaint. You must let SHAC know if you change your address or telephone number, and if you will be away from home for a long time. We must be able to contact you at all times.

Please call me at 1-800-521-0725 or (803) 737-7851 no later than ten calendar days from the date of this letter to have this complaint mediated or investigated.

Sincerely,

Vicki Miller

Vicki A. Miller
Admin. Asst.

Enclosures

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~~169B~~
B1

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

www.RichardsonPlowden.com
REPLY TO COLUMBIA
E-mail address for Eugene H. Matthews
ematthews@richardsonplowden.com

Certified Specialist in Employment & Labor Law
by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

September 10, 2012

HAND-DELIVERED
The Honorable Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Suite 205
Columbia, SC 29201

RE: Glenda R. Couram v. Lula N. Davis, et al.
Former Richland County C/A No.: 2011-CP-40-07134
Our File No.: 181-545

Dear Ms. McBride:

Enclosed please find the Order and Opinion of The Honorable Margaret Seymour, Chief United States District Judge, filed August 21, 2012, which remands the above referenced matter to state court.

Also enclosed are two three-ring binders containing the federal court pleadings which were filed in this case. Most recently, Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint [NEF 62] on August 9, 2012 *(see Tab 47)*, which we would like to have calendared for a hearing as soon as possible.

Should you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews

EHM/jlm
Enclosures as Stated

cc: Glenda R. Couram, *pro se* (w/o encl.)

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

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by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

September 14, 2012

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073

RE: Glenda R. Couram v. Lula N. Davis, et al.
Richland County C/A No.: 2011-CP-40-07134
Our File No.: 181-545

Dear Ms. Couram:

Under Judge Seymour's Order, this case was remanded to State Court on August 21, 2012. The Amended Complaint was filed on August 7, 2012 [NEF Dkt. # 60].

The pleadings filed in the Federal Court were transmitted to the State Court on September 10, 2012. You were copied on the transmittal letter. Order sent, [illegible]

We previously filed a Motion to Dismiss your claims in this case, and have asked the State Court to calendar it for hearing. - Filed to Federal magistrate prior to Judge Seymour's Order

I have also received your Response to our Motion to Dismiss, which you filed with the U.S. District Court on September 11, 2012. Since you also filed a proposed Fourth Amended Complaint, I presume you also wish to file a Motion for Leave to Amend the Complaint again.

Because the case has already been remanded to State Court, if you wish to file your Response to our Motion to Dismiss, please do so by filing it with the State Court. If you wish to file a Motion to Amend your Complaint, you should file your motion with the State Court. Other than transmitting the pleadings filed with the Federal Court prior to September 2012, our office will not file any documents on your behalf with the State Court. You may contact the Clerk of Court if you have any questions.

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews

Eugene H. Matthews

EHM/jlm

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RICHARDSON PLOWDEN
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gmatthews@richardsonplowden.com

Certified Specialist in Employment & Labor Law
by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

October 11, 2012

HAND DELIVERED
The Honorable James R. Barber III
Chief Administrative Judge
Fifth Judicial Circuit
PO Box 2766
Columbia, SC 29202-2766

RE: *Glenda R. Couram v. Lula N. Davis, et al.*
Former Richland County C/A No.: 2011-CP-40-07134
Our File No.: 181-545

Dear Judge Barber:

As you are aware, the above-referenced case was remanded to this Court from the U.S. District Court by the order of U.S. District Judge Margaret Seymour, on August 21, 2012.

There are two motions currently pending:

(1) Defendants filed a Motion to Dismiss while the case was still pending in the U.S. District Court

(2) Plaintiff, who is appearing *pro se*, has filed a Motion to Amend Complaint, which is also currently pending.

I understand that you have scheduled a hearing on these two motions during the week of **November 5, 2012**.

I also understand that the parties should continue to prepare the case for its ultimate disposition, and that the case is subject to be called for trial no earlier than **Monday, January 7, 2013**.

At your direction, I am filing the Motion for Continuance referencing these dates, along with a proposed Order confirming the same, and a motion fee of $25.00. I am copying *pro se* Plaintiff with this letter and the attachments.

Should you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

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With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews

EHM/jlm
Enclosures as Stated

cc: Glenda R. Couram, *pro se*

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	))))))))))))))	C/A NO.: 2011-CP-40-07134 **MOTION FOR CONTINUANCE**

NOW COMES Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities, and the SC Department of Motor Vehicles, by and through counsel, and move to continue this action until a term of court not earlier than **Monday, January 7, 2013**.

This action was remanded to this Court on or about August 21, 2012 from the U.S. District Court, District of South Carolina, following the dismissal of federal claims in the action. There are two motions currently pending:

(1) Defendants filed a Motion to Dismiss while the case was still pending in the U.S. District Court

(2) Plaintiff, who is appearing *pro se*, has filed a Motion to Amend Complaint, which is also currently pending.

These motions are currently scheduled to be heard during the week of **Monday, November 5, 2012**.

Plaintiff, who is proceeding *pro se*, is being contemporaneously served with this motion and proposed order.

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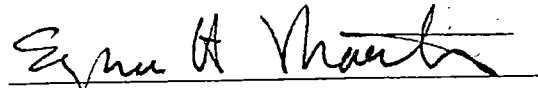
Dated this the 11th day of October, 2012.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



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Email: gmatthews@RichardsonPlowden.com

COUNSEL FOR DEFENDANTS LULA N. DAVIS, SHIRLEY RIVERS, CONSTANCE "CONNIE" RHETT, MARCIA ADAMS, DOTTIE BLANKENSHIP, TOSHA AUTRY, STEVEN W. LAKE, AND SC DEPARTMENT OF MOTOR VEHICLES, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIFTH JUDCIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	**C/A NO.: 2011-CP-40-07134**
Glenda R. Couram Plaintiff	)	
	)	PLAINITFF'S RESPONSE TO DEFENDANTS' MOTION FOR CONTINUANCE
v	)	
Steven W. Lake, Marcia Adams, Shirley Rivers, Lula N. Davis, Constance "Connie" Rhett, Dottie Blankenship, Tosha Autry, and SC Department of Motor Vehicles, in their official and individual capacities	)	
Defendants	)	**JURY TRIAL DEMANDED**

NOW COMES the *pro se* Plaintiff, Glenda Couram in response to the Defendants' Motion for Continuance dated October 11, 2012 to move or continue the above action until a term of court not earlier than **Monday, January 7, 2013**.

This action was remanded back to the Fifth Judicial Circuit by Order of the Honorable Judge Margaret Seymour, Chief Federal Judge of the U.S. District Court of South Carolina on or about August 20, 2012. The actual transmittal/remand took placed on or about September 9, 2012.

Contrary to the defendants' inaccurate implication, there was **no**[1] dismissal of any federal claims in this action the only matter before the U.S. District Court was the question of jurisdiction and remand. This complaint was filed initially on October 20, 2011 in the Fifth Judicial Court of Richland County; and removed by the defendants on or about November 21, 2011.[2]

[1] The late Honorable Judge Matthew Perry (Chief U.S. District Judge) dismissed the plaintiff's federal claims in or about March 2011 and denied the defendants' Motion to Reconsideration in or about May 2011, of exercising jurisdiction over the plaintiff's state pendant claims. Plaintiff timely filed the state claims on October 20, 2011.
[22] Federal Court per FRCP §1447 and §1446.

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ACTUAL MOTIONS BEFORE THE COURT:

1). The defendants' Motion to Dismiss filed on or about August 9, 2012 and filed prior to Judge Seymour's Order to Remand dated on or about August 20, 2012;

2) The plaintiff's response to the defendants' Motion to Dismiss filed on or about September 9, 2012 and;

3) The plaintiff's Motion to Amend filed on or about September 9, 2012, based on SCRCP.

Judge Seymour's filed her initial Order and Opinion on or about June 28, 2012 in that Order she gave the plaintiff's an opportunity to amend her complaint removing all federal claims. The plaintiff's complied with Judge Seymour's Order and Opinion and filed a Motion for Reconsideration and amended complaint dated on or about July 11, 2012 (well within the 30 days). On or about August 20, 2012 Judge Seymour responded and remanded the complaint back to state court (and mooted the plaintiff's Motion for Reconsideration).

The plaintiff received the defendants' Motion to Dismiss and the Rosoboro Order from the federal magistrate on or about August 14, 2012; per the magistrate's instructions plaintiff head until September 14 to respond (three days for mail).

The plaintiff asks that the defendant's Motion for Continuance and proposed Order submitted by the defendants October 12, 2012, reflect both sides of the equation as follows:

For the week of ***November 5th*** the court schedule to hear as follows:

1) the Defendants' Motion to Dismiss;

2) the Plaintiff's response to the Motion to Dismiss;

3) the plaintiff's Motion to Amend, and

4) that a trial date be set as all discovery has been completed, the defense has a witness list from the plaintiff and would be more than happy to provide the list again.

The Court and defendants via their attorney is being contemporaneously (at the same time) being served with this response and request to their Motion for a Continuance and to their proposed order (with the changes) to be signed by the court.

Respectfully submitted by;

Glenda R. Couram, ***pro se***
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Dated this 15th Day of October 2012
Lexington County, South Carolina

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
C/A No.: 3:11-cv-03200-MBS-PJG

Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	)	**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT [NEF DKT. 60]**

NOW COME Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants"),[1] by and through counsel, and pursuant to FED R. CIV. P. 12(b)(6), move to dismiss the Amended Complaint of *pro se* Plaintiff [NEF Dkt. # 60] in its entirety with prejudice, as set forth below.

PROCEDURAL BACKGROUND

Most recently, on August 7, 2012, U.S. Magistrate Judge Paige Gossett issued an Order granting Plaintiff's Third Motion to Amend her Complaint. The Amended Complaint [NEF Dkt. # 60] was filed on the same date. Defendants now move to dismiss the Amended Complaint with prejudice.

[1] Although none of the Defendants named in this caption have been served with this Amended Complaint [NEF Dkt. # 60], the undersigned accepts service on behalf of all Defendants named in the caption.

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THE AMENDED COMPLAINT

With regard to the substance of Plaintiff's most recent proposed Amended Complaint, Plaintiff generally complains about unspecified but allegedly "repeated acts of willful, reckless harassment, abuse, threats by her fellow employees, including supervisors." (Amended Complaint, ¶ 2). She also variously alleges that all Defendants:

- "intentionally or recklessly subjected the plaintiff to harassing conduct in direct violation of the [South Carolina Tort Claims Act],"
- failed "to act with simple and ordinary care in their actions towards the plaintiff,"
- "intended to inflict emotional distress" on her,
- "took an active part in the further *[sic]* of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm Plaintiffs [*sic*] as set forth in this complaint," and
- "allowed defamation of the Plaintiff's character and reputation, destroyed her professionalism, caused the Plaintiff to live and work in fear of loss of employment/livelihood, stress due to daily uncertainty of employment, allowed false allegation [*sic*]."

(Amended Complaint, ¶¶ 24, 32, 36, 42, 48).

Plaintiff fails to point to any specific instance or occurrence to support her allegations, but she has grouped her allegations under five (5) separate causes of action:

1. Plaintiff's First Cause of Action appears not to state a cause of action, but instead simply references the South Carolina Tort Claims Act (SCTCA).
2. Plaintiff's Second Cause of Action is referenced as "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."
3. Plaintiff's Third Cause of Action appears not to state a cause of action, but instead attempts to "disclaim" the affirmative defense of Workers' Compensation Act exclusivity to her claims for emotional distress.
4. Plaintiff's Fourth Cause of Action is for Civil Conspiracy.

5. Plaintiff's Fifth Cause of Action is for Defamation.

Each of these causes of action is stated against all Defendants. For the reasons set forth below, each of Plaintiff's claims must be dismissed with prejudice.

LEGAL ARGUMENT

I. BECAUSE PLAINTIFF'S AMENDED COMPLAINT CONTAINS NOTHING OTHER THAN A JUMBLE OF CONCLUSORY ALLEGATIONS, RECITATIONS OF LEGAL ELEMENTS, AND OTHER LEGAL CONCLUSIONS, IT DOES NOT MEET MINIMUM PLEADING REQUIREMENTS AND MUST BE DISMISSED UNDER THE *IQBAL-TWOMBLEY* PLEADING STANDARD.

As an initial matter, Plaintiff makes no effort in her Amended Complaint to identify any specific instance or occurrence allegedly taken by any of the Defendants. Under the standard of pleading set forth in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), a plaintiff's complaint must set forth a plausible – not merely "conceivable" – claim for relief against a defendant. Further, a complaint is insufficient to survive FED R. CIV. P. 12(b)(6) if it relies upon "naked assertions devoid of further factual enhancement." 129 S.Ct. at 1949. For instance, in *Iqbal*, the plaintiff failed to allege facts plausibly showing that Attorney General Ashcroft and FBI Director Mueller purposefully adopted a detention policy for high interest individuals because of their race, religion, or national origin. While plaintiff alleged that Ashcroft was the "principal architect" of the policy, and that Mueller was "instrumental" in adopting and executing the policy, these allegations did not satisfy the standards of FED R. CIV. P. 12(b)(6):

> These bare assertions, much like the pleading of conspiracy in *Twombly*, amount to nothing more than a "formulaic recitation of the elements" of a constitutional discrimination claim, namely, that petitioners adopted a policy "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." As such, the allegations are

> conclusory and not entitled to be assumed true...It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.

129 S.Ct. at 1951 (citations omitted) (emphasis added); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

In the instant case, Plaintiff's Amended Complaint is devoid of any allegation – other than the "conclusory allegations" described above – that might satisfy the pleading standard set forth in *Iqbal* and *Twombley*. For these reasons, Plaintiff's claims against all Defendants must be dismissed.

II. PLAINTIFF'S FIRST AND THIRD CAUSES OF ACTION DO NOT STATE ACTUAL CLAIMS AGAINST THE DEFENDANTS, AND FOR THAT REASON ALONE, THEY MUST BE DISMISSED WITH PREJUDICE.

Plaintiff's First Cause of Action, set forth at ¶¶ 20-22 of the Amended Complaint, simply references the South Carolina Tort Claims Act (SCTCA). The SCTCA addresses and defines certain circumstances under which a public entity or employee is immune from state causes of action. However, it does not provide for a separate cause of action against any defendant. *Arthurs ex rel. Estate of Munn v. Aiken Cty.*, 346 S.C. 97, 105, 551 S.E.2d 579, 583 (2001).

Similarly, Plaintiff's Third Cause of Action, set forth at ¶¶ 35-40 of the Amended Complaint, appears to repeat some of her conclusory allegations in support of her Second Cause of Action for emotional distress, but does not state a separate cause of action. Instead, Plaintiff appears to attempt to "disclaim" an anticipated affirmative defense of the exclusivity of the Workers' Compensation Act as a remedy for her claims for emotional distress. In any event, the Third Cause of Action fails to state a cognizable claim.

For these reasons alone, Plaintiff's First and Third Causes of Action must be dismissed.

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III. PLAINTIFF'S SECOND CAUSE OF ACTION FOR EMOTIONAL DISTRESS MUST BE DISMISSED BECAUSE IT DOES NOT MEET THE *IQBAL-TWOMBLEY* PLEADING STANDARD, AND BECAUSE IT IS BARRED UNDER THE DOCTRINE OF EXCLUSIVITY OF THE WORKERS' COMPENSATION ACT AS TO SCDMV AND ALL INDIVIDUAL DEFENDANTS IN THEIR "OFFICIAL" CAPACITY.

Plaintiff's Second Cause of Action, set forth at ¶¶ 23-34 of the Amended Complaint, is referenced as one for "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."[2] For the reasons stated above, this claim fails because Plaintiff's conclusory but otherwise unspecified allegations do not meet the pleading standard set forth in *Iqbal* and *Twombley*.

Moreover, as this Court stated in *Couram v. South Carolina Dept. of Motor Vehicles*, 2010 WL 6065084, at *3 (D.S.C. November 12, 2010) (slip op. attached), Plaintiff's claim against SCDMV for intentional infliction of emotional distress is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. *See* S.C.Code Ann. § 42–1–540 (making the Act the exclusive remedy for employees seeking damages for personal injuries arising out of and in the course of their employment); *Dickert v. Metropolitan Life Ins. Co.*, 428 S.E.2d 700 (S.C. 1993) (holding that intentional infliction of emotional distress, assault and battery, and mental trauma were covered by the exclusive remedy provision of the Workers' Compensation Act). Further, the SCTCA explicitly provides as an exception to the waiver of sovereign immunity that "[t]he governmental entity is not liable for a loss resulting from ... any claim covered by the South Carolina Workers' Compensation Act." S.C.Code Ann. § 15–78–60. Thus, under South Carolina law, Plaintiff's exclusive remedy for damages against SCDMV

[2] The claim includes an allegation that Plaintiff "was continuously subjected to in [*sic*] violation of her constitutional rights to from [*sic*] those acting under "color of law") [*sic*] as protected by SCTCA as exclusive remedy." (Plaintiff's Proposed Amended Complaint, ¶ 28). The allegation is garbled, but appears to refer to Plaintiff's earlier pleadings under 42 U.S.C. § 1983, which concerns alleged constitutional violations of those acting under the color of state law.

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resulting from any alleged intentional infliction of emotional distress is under the Workers' Compensation Act. *See* S.C.Code Ann. § 42–1–540.

Similarly, to the extent that Plaintiff seeks to sue the individual Defendants in their "official" capacities for emotional distress, her claims are also barred. It is elementary that "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 ... [and] is no different from a suit against the State itself." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Because this claim cannot be brought against SCDMV, it also cannot be brought against the individual Defendants in their "official" capacities.

IV. PLAINTIFF'S FOURTH CAUSE OF ACTION FOR CIVIL CONSPIRACY MUST BE DISMISSED BECAUSE IT IS BARRED UNDER THE INTRACORPORATE CONSPIRACY DOCTRINE, BECAUSE PLAINTIFF FAILS TO ALLEGE SPECIAL DAMAGES, AND BECAUSE HER CLAIM IS BARRED UNDER *LAWSON V. SOUTH CAROLINA DEPT. OF CORRECTIONS.*

Plaintiff's Fourth Cause of Action, set forth at ¶¶ 41-45 of the Amended Complaint, attempts to state a claim for civil conspiracy.[3] For the reasons set forth below, this cause of action must be dismissed with prejudice.

A. PLAINTIFF'S FOURTH CAUSE OF ACTION MUST BE DISMISSED BECAUSE IT IS BARRED UNDER THE INTRACORPORATE CONSPIRACY DOCTRINE.

Plaintiff alleges that all Defendants – including SCDMV – "acted as one in conspiring and interfering with the Plaintiff's at-will employment" at SCDMV. (Amended Complaint, ¶

[3] Plaintiff also appears to seek to insert the Age Discrimination in Employment Act (ADEA) into this Cause of Action, alleging that SCDMV acted in accordance with its "biasness towards older workers." (Plaintiff's Proposed Complaint, ¶ 44). In any event, such a claim would fail as a matter of law. *See Zombro v. Baltimore City Police Dep't,* 868 F.2d 1364, 1366–71 (4th Cir. 1989) (holding that a plaintiff could not bypass the procedural and substantive provisions of the ADEA by pleading an age discrimination claim against defendants as a § 1983 claim).

43). As the South Carolina Supreme Court recently noted, it is well-settled that a corporation cannot conspire with itself, or when the alleged acts arise in the context of a principal-agent relationship, because such acts do not involve separate entities. *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006).

Plaintiff's allegations arise in the context of the principal-agent relationship. One of the Defendants sued for civil conspiracy is SCDMV, and each of the individual Defendants is being sued because he or she is – or was – a supervisor or official at SCDMV. As stated in *McMillan*,

> 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. As a result, we hold that 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.

367 S.C. at 564, 626 S.E.2d at 887. For this reason alone, Plaintiff's civil conspiracy claim must be dismissed with prejudice.

B. PLAINTIFF'S FOURTH CAUSE OF ACTION MUST BE DISMISSED BECAUSE SHE FAILS TO ALLEGE SPECIAL DAMAGES RELATED TO HER CLAIM.

Plaintiff alleges that Defendants' alleged civil conspiracy has "forever damaged her reputation and defamed her character and any employment opportunities available to her given her age and South Carolina and (SCDMV) biasness towards older workers" [*sic*]. (Amended Complaint, ¶ 44).

The elements of damages related to her civil conspiracy claim – damage to reputation and to her employment prospects – are identical to her claims for damages related to her emotional distress claim, where she alleges that "she has suffered and continues to suffer lost advancement

opportunities (she was told she could not move forward by Adams), humiliation, embarrassment, loss of reputation and emotional distress." (Amended Complaint, ¶ 27).

Under these circumstances, Plaintiff's civil conspiracy claim must be dismissed. As recently stated in *Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831-832 (S.C. App. 2012):

> Furthermore, civil conspiracy requires that the plaintiff claim special damages. In this case, the Gordons' amended complaint fails to allege any special damages incurred as a result of any conspiracy. They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages. *See Hackworth v. Greywood at Hammett, LLC,* 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct.App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Accordingly, we conclude the circuit did not err in granting a directed verdict.

The appellate court in *Gordon* based its decision on established precedent, recently set forth in *Hackworth*, which specifically provided as follows:

> If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed...In this case, Greywood has repeated verbatim the same damages in its civil conspiracy claim as are alleged in its claim for breach of contract accompanied by a fraudulent act. Nothing in the claim informs the Hackworths what special damages are alleged as part of Greywood's civil conspiracy claim. Accordingly, we believe under the case law cited above, Greywood failed to properly plead its civil conspiracy cause of action, and therefore, the trial court did not error in dismissing the claim.

385 S.C. 110, 117, 682 S.E.2d 871, 875-876 (citations omitted); *see also Lawson v. South Carolina Dept. of Corrections*, 340 S.C. 346, 352, 532 S.E.2d 259, 261-262 (2000).

For these reasons alone, this Court must dismiss the Plaintiff's civil conspiracy claim with prejudice.

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C. PLAINTIFF'S FOURTH CAUSE OF ACTION MUST BE DISMISSED BECAUSE HER ALLEGATIONS FAIL TO STATE CIVIL CONSPIRACY CLAIM UNDER *LAWSON V. SOUTH CAROLINA DEPT. OF CORRECTIONS.*

Plaintiff alleges that the Defendants conspired to interfere "with Plaintiff's at-will employment," and that they "instigated a situation that put Plaintiff in violation of policy at the final stages for termination in violation of the SCTCA." (Amended Complaint, ¶¶ 43, 45). As a matter of law, these allegations do not state a cause of action for civil conspiracy, especially in view of the fact that Plaintiff has remained an employee of SCDMV, and by her own account has been employed at SCDMV for nearly a decade.

In *Lawson*, an employee of the South Carolina Department of Corrections (SCDC) sued two of his supervisors for allegedly conspiring to terminate his employment. 340 S.C. at 349, 532 S.E.2d at 260. The South Carolina Supreme Court granted summary judgment on the claim, noting that "[a]llegations based solely upon two supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action." 340 S.C. at 352, 532 S.E.2d at 261-262.

Similarly, the types of complaints made by Plaintiff – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson*. For this reason alone, her civil conspiracy claim must be dismissed with prejudice.

V. PLAINTIFF'S FIFTH CAUSE OF ACTION MUST BE DISMISSED BECAUSE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS, AND IT OTHERWISE FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiff's Fifth Cause of Action, set forth at ¶¶ 46-51 of the Amended Complaint, attempts to state a claim for defamation. Plaintiff fails to reference a single statement or

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declaration in her Amended Complaint that she believes is defamatory. Indeed, she appears to base her defamation claim on the following allegations:

- That the Defendants were "grossly negligent" because they "removed [her] from a job that she excelled at [*sic*] required little contact with Davis to placing Plaintiff in Davis' direct path with full contact," and that "by failing to act the defendants allowed defamation of the Plaintiff's character and reputation, destroyed her professionalism, caused Plaintiff to live in fear of loss of employment/livelihood, stress due to the daily uncertainty of employment, allowed false allegation..." [*sic*]. (Amended Complaint, ¶¶ 47-48).

- That the Defendants "continue to defame the plaintiff by having her labeled as a vexatious litigant [sic] the maligning of the plaintiff has been relentless through the process." (Amended Complaint, ¶ 50).

As an initial matter, to the extent her defamation claim is based on her reassignment in 2008, Plaintiff's defamation claim is barred by the applicable two-year statute of limitations. S.C. Code Ann. § 15-3-550 (establishing a two-year statute of limitations on defamation claims).

Further, in order to prove defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Plaintiff has failed in practically every respect to state these elements in her Amended Complaint, much less meet the *Iqbal-Twombley* standard for sufficiently pleading a defamation claim. For this reason alone, her claim must be dismissed.

Finally, to the extent Plaintiff wishes to file a defamation claim based on the Defendants' referencing her as a "vexatious litigant" in their pleadings before this Court, South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged. *Pond*

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Place Partners, Inc. v. Poole, 351 S.C. 1, 22-23, 567 S.E.2d 881, 892-893 (S.C. App. 2002). For these reasons, Plaintiff's defamation claim must be dismissed with prejudice

CONCLUSION

Plaintiff's Amended Complaint has failed to state any claim for which relief can be granted. For the reasons set forth above, Plaintiff's Amended Complaint [NEF Dkt. 60] must be DISMISSED with prejudice, and this Court should grant the Defendants such other relief as the Court deems just and proper.

Dated this the 9th day of August, 2012.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

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

Glenda R. Couram Plaintiff	)	**C/N: 3:11-cv-03200-MBS-PJG**
v	)	**MEMORANDUM OF SUPPORT PLAINITFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**
Steven W. Lake, Marcia Adams, Shirley Rivers, Lula N. Davis, Constance "Connie" Rhett, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities Defendants	)	**JURY TRIAL DEMANDED**

NOW COMES, the ***pro se*** plaintiff, Glenda Couram's response to the defendants Motion to Dismiss. Plaintiff move to deny the defendants' request to dismiss and request she be granted a default judgment as the defendants has failed to answer the amended complaint as it relates to the defendants in their official capacities and in their personal/individual capacities.

Plaintiff filed this complaint initially on or about October 21, 2011, in her chosen forum the Fifth Judicial Court of South Carolina, Richland County, under the pleading requirements of South Carolina Rules of Civil Procedures (SCRCP) Rule 8(a) which requires the pleader to provide a "short and plain statement of the facts showing that the pleader is entitled to relief."

The plaintiff was in compliance with the SCRCP Rule 8, requirement as the defendant were able to file an Answer to the complaint on November 29, 2011 seven days after they filed a Notice of Removal on or about November 22, 2011. Plaintiff filed a Motion for Remand on or about December 9, 2011.

In Judge Seymour's Order and Opinion, on or about June 29, 2012, she instructed the plaintiff to file an amended complaint that would remove all references to a federal questions

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plaintiff complaint with this Order, consulted with an Attorney to insure compliance and submitted an amended complaint on or about July 16, 2012.

The plaintiff received an Order by Judge Seymour dated on or about August 20th, on or about August 28th, 2012, that remanded plaintiff's compliant back to state court, declining to exercise supplemental jurisdiction based on the ruling in **Carnegie**-Mellon University **v**. Cohill, 484 U.S. 343, 350; and there not being any federal question.

I. LEGAL STANDARD OF REVIEW

A. SOUTH CAROLINA SUPREME COURT STANDARD OF REVIEW

When reviewing the grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). 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.*; Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party.

B. SOUTH CAROLINA COURT REQUIRES ONLY A MERE SCINTILLA OF EVIDENCE

In *Anders v. South Carolina Farm Bureau Mut. Ins. Co.*, the court of appeals stated that "[a]t the summary judgment stage of the proceedings, it [is] only necessary for the [nonmoving party] to submit a scintilla of evidence warranting determination by a jury;" 307 S.C. 371, 375, 415 S.E.2d 406, 408 (Ct. App. 1992).

The SC Supreme Court, held that in 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.** *See 587 - Hancock v. Mid-South Management Co., Inc.* Opinion No. 26587 - Heard November 5, 2008 – January 26, 2009;

C. SUMMARY JUDGMENT

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law; *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); B & B *Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn there from must be viewed in the light most favorable to the nonmoving party.; *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). If triable issues exist, those issues must go to the jury; *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). See also *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (1999).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law; *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant; *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (Ct.App.1998). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.

D. DIRECTED VERDICT RULE 50[1]

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn there from in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt; *Steinke v. South Carolina Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should have been denied; *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence; *Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002).*

II. PLAINTIFF'S RESPONSE TO THE DEFENDANT'S LEGAL ARGUMENT TO DISMISS BASED ON IQBAL-TWOMBLE PLEADING STANDARD IN FEDERAL COURTS (DISTRICT) – SHOULD BE MOTE AS THIS MATTER HAS BEEN REMANDED

The defendants request that this court dismiss the plaintiff's third amended complaint[2] because she sites nothing but a jumble of conclusory allegation, recitations of legal elements, and other legal conclusions, and it does not meet the minimum pleadings requirements and must be dismissed under the Iqbal-Twombly pleading standard.

Even if this standard applied to the action currently before the court the plaintiff's allegations are not "threadbare" they provide this court and the defendants with the how, when and where of each action and cause as well as context that lead to and caused injury and harm to her. See *Fowler v.*

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[1] FRCP Rule 50(a) Reeves v *Sanderson Plumbing Products, inc., Certiorari to the United States Court of Appeals* for the Fifth Circuit No. 99-536. Argued March 21, 2000--Decided June 12, 2000

[2] Plaintiff in response to Judge Seymour's Order on or about July 2012, filed an Amended complaint that should supersede the complaint the defendants are making the request on. The plaintiff submitted the complaint along with a motion for reconsideration that has not been responded to at this time of this submission.

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UPMC Shadyside, 578 F.3d 203, 209–12(3d Cir. 2009); *United States ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 853–55 (7th Cir. 2009) (noting that "no complaint needs to rule out all possible defenses."); [t]he complaint names specific parts shipped on specific dates, and it relates details of payment." In this instance, the court wrote, "accusations are not vague."

In Acc *Myles v. A & L*, 2009 U.S. Dist. LEXIS 115638, at **7–8 (W.D.N.Y. 2009); plaintiff does not state how often such comments were made, but alleges that he 'repeatedly' complained to management about the harassment. Although the complaint is not specific about the frequency of the comments, such specificity is not required at this stage of the litigation.

Under the notice pleading practice established by Rule 8, plaintiff is not required to set forth all facts on which he relies to support his claim.... Viewing the allegations in the light most favorable to plaintiff, the court finds that the plaintiff has stated 'a claim to relief that is plausible on its face.'

As the plaintiff had no intention of refiling in federal court and her complaint was based on the standard of pleading of the State of South Carolina Rules of Civil Procedure (Rule 8(2)); "(2) A short and plain statement of the facts showing that the pleader is entitled to relief."

The plaintiff has provided the court with more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions. In the original complaint filed in the Fifth Judicial Court the defendants were given the exact information and were able to file an Answer on December 9th, 2011.

The factual allegations has given this court and the state court enough factual information that would be enough to raise a right to relief and is well above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact)." As the Fourth Circuit has held, a plaintiff "must sufficiently allege facts to allow the Court to infer that all elements of each of his causes of action exist," *Jordan v. Alternative Res. Corp.*, 458 F.3d 332, 344–45 (4th Cir. 2006).

III. PRO STANDARD OF REVIEW

Because *pro se* complaint "represent the work of an untutored hand requiring special judicial solicitude," courts must "construe *pro se* complaints liberally." *Baudette v. City of Hampton*, 775 F.2d 1274, 1277–1278 (4th Cir. 1985). Fourth Circuit precedent "expresse[s] the indisputable desire that those litigants with meritorious claims should not be tripped up in court on technical niceties." *Id.* at 1277–78 (citation omitted). See *Swierkiewicz v. Sorema N.A.*, the Supreme Court reversed both the trial and appellate courts' dismissal of age and national origin discrimination complaints. 534 U.S. 506 (2002); "the Federal Rules do not contain a heightened pleading standard for employment discrimination suits." The Court made clear that requiring "greater specificity for particular claims" "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.* at 515 (quoting *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U. S. 163, 168 (1993)).

See *Erickson v. Pardus*, 551 U.S. (2007) it is also well established that "[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall*, 935 F.2d at 1110.

In *Smith v Smith*, the South Carolina Court of Appeals ruled that Rule 8 of the SCRCP, provides for liberal construction of the pleadings. Rule 8(f) requires courts to construe pleadings so "as to do substantial justice to all parties." "To ensure substantial justice to the parties, the pleadings must be liberally construed." *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000), *aff'd as modified on other grounds*, 354 S.C. 416, 581 S.E.2d 169 (2003).

To ensure substantial justice to the parties, the pleadings must be liberally construed. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).

The United States Supreme Court ruled in *Erickson v Pardus, et.al*, 551 U. S. ____ (2007), Opinion 06-7317, that specific facts are not necessary; the statement need only. .give the defendant fair, notice of what the . . . claim is and the grounds upon which it rests... In addition, when ruling on

a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint; *Bell Atlantic Corp., supra*, at ___ (slip op., at 8.9) (citing *Swierkiewicz* v. *Sorema N. A.*, 534 U. S. 506, 508, n. 1(2002).

The Fourth Circuit's departure in 2010, *(Couram v SCDMV*, Rivers, Davis, et.al,) from the liberal pleading standards set forth by Rule 8(a)(2) and was even more pronounced in that that the plaintiff, as she is currently proceeding, *pro se*, from the litigation's outset, without counsel. "A document filed ***pro se*** is to be liberally construed, *Estelle*, 429 U. S., at 106, and a *pro se* complaint, however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers, *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ.Proc. 8(f) (.All pleadings shall be so construed as to do substantial justice).

VI. THE DEFENDANTS' REQUEST TO DISMISS PLAINTIFF SCTCA CLAIMS FOR FAILURE TO STATE A CAUSE OF ACTION SHOULD BE DENIED[3]

On or about November 29, 2011, the defendants were able to answer the plaintiff's claims, they were able to understand that the plaintiff was bringing causes of action against the defendants under the SCTCA and responded accordingly therefore they cannot come in at this stage and claim failure to state a cause of action. As their response or answer was extensive showing they clearly understood the plaintiff causes and there was no failure to state a cause of action under SCTCA for gross negligence and or negligence and intentional infliction of emotional distress.

The South Carolina Supreme Court ruled in *Edward Mims v. Babcock Center, Inc.*, et al Opinion No. 27160 Filed August 15, 2012; to establish liability in a negligence action, the claimant must show: (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach; *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79,

[3] This Court has repeatedly stated that the burden of establishing a limitation on liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. E.g., Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Strange v. South Carolina Dep't of Highways and Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994); Foster v. South Carolina Dep't of Highways and Pub. Transp., 306 S.C. 519, 413 S.E.2d 31 (1992).

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88, 502 S.E.2d 78, 82 (1998). See *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). [4]

The Tort Claims Act is "the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b);" S.C. Code Ann. § 15-78-20(b) (Supp. 1999). Under the Tort Claims Act, the governmental entity is liable for torts "in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein," S.C. Code Ann. § 15-78-40 (Supp. 1999).

S.C. Code Ann. § 15-78-60(25) (2005):

The plaintiff has made allegations of gross negligence the allegations are not vague or incoherent. The plaintiff has identified each defendant and their roles in the injury done to her in violation of their duty to the plaintiff. The defendants were made of aware of the harassment and abuse the plaintiff was enduring. The plaintiff went to Rivers, Davis, the Team leader, Autry, Blankenship and ultimately Adams, Phelps and Walker; the plaintiff e-mailed the defendants, verbally told them of the harassment and hostility, and sent grievances to the defendants who continued to fail to act which they had a duty towards the plaintiff.

They action were not within the scope of their employment as the rules and obligation are clearly outlined as to the proper course – via state and federal laws and they failed in their duty towards the plaintiff.

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[4] *(1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office. A person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted.*

South Carolina courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances," *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Gross negligence essentially involves an "intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do;" *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). This degree of negligence connotes the failure to exercise even a slight degree of care. *Wilson v. Etheredge*, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); See *Anderson v. Ballenger*, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932).

V. THE DEFENDANTS REQUEST TO DISMISS PLAITNIFF CLAIMS UNDER WORKER COMPENSATION AND OR COMMON LAW INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS SHOULD BE DENIED

The intentional emotional distress suffered and is being suffered by the plaintiff was not accidental the plaintiff's job was not stressful and when she was removed in or about August 2008, she was placed in a even less stressful job writing '9's on miscellaneous tickets and putting them in piles, Davis denied her the more complex duties of working with the 'A" tickets.

The defendants were aware of the plaintiff's need to not be walked up on and that she would have a reaction to someone sneaking up on her or if she did not hear their approach, Davis in her own records spoke of how she would do this very thing to "catch" the plaintiff at something.

The plaintiff was given permission to move her computer so she would be able to see those coming in to see her and the defendants were made aware of this as the plaintiff had to get permission to move the equipment, the defendants were aware of the plaintiff stress and anxiety as Rivers told her to apply for FMLA and once it was approved Davis along with Boland brought her in to "explain" what she could and could not do. The emotional distress suffered by the plaintiff was not accidental but deliberate.

Plaintiff was forcibly demoted into a job she did not want (data entry) - down in the canteen area, she was repeatedly harassed and called out of her name, she told the defendants of her aversion

to strong odors and was told to get a doctor's report, she even told the defendants the harm to her fingers if she was forced to do data entry all day to no avail.

She was forced from her job on September 9th and 10th because of the abuse of Boland and Davis condoned by Rivers as she told the plaintiff she "would do exactly what Davis was doing.

The South Carolina Court of Appeals in an Opinion 3815 - *Edens v. Milliken & Company* -- A common law cause of action will not be barred by the exclusivity provisions when the employer manifests a deliberate intent to injure the employee. This exception is applicable to the intentional infliction of emotional distress. In *Stewart v. McLellan's Stores Co.*, 194 S.C. 50, 9 S.E.2d 35 (1940)], we recognized that an employee can maintain a common law action for the employer's intentional assault and battery. We extend that rule to allow actions for the intentional infliction of emotional distress.

Title 42 § 42-1-160. "Injury" and "personal injury" defined:

(A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and (2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable.

(F) The word "accident" as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time.

Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

VI. COMMON LAWS CLAIMS – INDIVIDUAL CAPACITY v OFFICIAL CAPACITIY

The plaintiff is allowed to sue the defendants in their individual capacities; See *Dickert v. Metropolitan Life Ins.*, 311 S.C. 218, 428 S.E.2d 700 (1993) (co-employee may be held individually liable for intentional tort committed while acting within the scope of employment).

Headley v. Bacon, 828 F.2d 1272, 1279-80 (8th Cir. 1987) (applying federal law in reversing district court's grant of summary judgment to defendant officials sued in both official and personal capacities under § 1983 following suit against city under Title VII and also noting that "litigation involving officials in their official capacity does not preclude re-litigation in their personal capacity").

In *Tyrone Andrews,* v. *J. M. Daw*, 201 F.3d 521 (4th Cir. 2000) held that a government employee in his official capacity is not in privity with himself in his individual capacity ..... See also SC Supreme Court Opinion 4730 - Cricket Cove Ventures, LLC v. Gilland.[5]

Plaintiff is not suing the defendants in their official capacity but in their individual capacity for intentional emotional distress, civil conspiracy and defamation because upon her understanding these claims cannot be brought under the SCTCA. Therefore, she is suing the defendants in their individual capacity for deliberately and recklessly creating and maintaining an environment that allowed for the physical, psychological abuse of the plaintiff, that lead to a break down there actions were so extreme and outrageous that it exceeded all bounds of decency infliction of emotional distress; there actions were reckless to the extent it disregarded the safety and health of the plaintiff and other employees they were duty bound to protect according to policy; there actions has cause severe and permanent physical and psychological injury and damage to the plaintiff to include weight

[5] The defendants quote Will v Mich. Dep't of State Police 491 US 58, 71, 109 S.Ct 2304 (1989 et al., this case deals with §1983; the plaintiff is not suing the defendants in federal court but under the common laws of South Carolina and or SCTCA

gain, other medical issues to include depression severe enough to cause the plaintiff to take two to three days off per doctors orders from work to cope.

VII. THE DEFENDANTS' REQUEST FOR DISMISSAL OF PLAINTIFF'S CIVIL CONSPIRACY CLAIMS SHOULD BE DENIED

A. CIVIL CONSPIRACY

It is *pro se* plaintiff's understanding that whether an employee is acting within the scope of his or her employment is ordinarily a question that must be submitted a jury 'whenever reasonable minds may differ as to whether the defendants were at a certain time involved entirely or partly' in the interest or performance of the SCDMV "an arm" of the State of South Carolina business or within the scope their employment or acting for their own personal interest.

In order to recover for civil conspiracy, the plaintiff must show a combination of two or more persons joined together for the purpose of injuring him and caused him special damages. *McMillan v. Oconee Mem'l Hosp.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (citing *Lawson v. S.C. Dept. of Corr.*, 340 S.C. 346, 352, 532 S.E.2d 259, 261 (2000)). Even an activity that is lawful may be actionable if it is done in an unlawful manner. *Sams v. Bhd. of Ry. & S.S. Clerks, Sumter Lodge No. 6193*, 166 F. Supp. 49, 54 (E.D.S.C. 1956), *aff'd*, 233 F.2d 263 (4th Cir. 1956).

If the plaintiff can show by a scintilla of the evidence be it circumstantial or "[I]n order to establish a conspiracy, evidence, 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." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); *accord Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Peoples Federal*, 358 S.C. at 470, 596 S.E.2d at 57.

As long as sufficient facts are alleged to **make out a *prima facie* civil** conspiracy claim, the plaintiff does not have to explain all of the details of the conspiracy in his complaint. *Charles v. Tex. Co.*, 192 S.C. 82, 5 S.E.2d 464, 472 (1939).

Plaintiff believes and declares that the defendants conduct was not within the scope of their official duties and that the conduct constituted actual fraud, actual malice and intent to harm. *See S.C. Code Ann.* § 15-78-70(b) (2005).

Plaintiff believes and declares that the defendants had personal motives and failed to conduct an investigation of plaintiff's grievances as according to an email by Blankenship the plaintiff was to at a level for dismissal therefore she could not file a grievance apparently meaning she had no duty to investigate.

Plaintiff believes and declares that the defendants "met, schemed, planned and conspired and put together an agenda to purposely harm and cause her injury in order to facilitate a dismissal from her employer that she had a good relationship, plaintiff received satisfactory evaluations to this day, a recommendation letter from the Office of General Council, she does not have a record of lateness, and if thoroughly investigated there is no record of abuse of either sick leave or annual leave, in fact in order to place the plaintiff on probation the defendants included annual leave that was always with their approval; plaintiff always followed the procedures for use of sick leave, she never failed to call in as required, never failed to complete sick leave forms.

Plaintiff did not use sick leave prior or before a holiday unless prior approval was gained, before or after a weekend, after pay day, on one specific day, half days was used according to time for doctor and or dental appointments, there was no excessive absenteeism, and to plaintiff knowledge she never had a zero balance of either sick or annual leave except once when she had to be in court. In or about April 2008, plaintiff provided a doctors excuse as demanded when there was no true grounds to request a doctor excuse by Davis and or Rivers.[6]

In fact, based on the defendants' behavior compared to a much younger employee who had a history of leave abuse the plaintiff was written up without grounds Javonna Davis was not at any

[6] It is important to note that when this false accusation was made the plaintiff put in the request for sick leave on Monday of that week; Davis was out until that Thursday.

time written up or place on any type of probation to plaintiff's knowledge. Plaintiff was forcibly demoted were Javonna Davis was promoted (plaintiff can provide the court with Javonna record and history of personnel actions); obtained from the defendants attorney.

Plaintiff believes and declares that the defendants conspired against her for personal reasons that constitute intentional acts outside the scope of their employment.[7] See *Pridgen v. Ward.*

The plaintiff's civil conspiracy claim is not against SCDMV but against the seven defendants in their personal/individual capacities as is clearly declared in the original compliant and against individual defendants who did not have the power to terminate her employment. The plaintiff served at the will of the State of South Carolina (SCDMV). The defendants' are not immune from suit by the plaintiff for civil conspiracy in their individual/personal capacities as is clearly seen in **Swicegood v Lott** and the unpublished opinion in **Anthony Calvin v Ward** et.al.

Plaintiff believes and declares that the defendants (Adams) were grossly negligent when she told the plaintiff she had to remain under Rivers supervision after the October 2nd meeting, stopping any promotional opportunities within DMV and or transfer with in another area of DMV, in taking this course Adams was grossly negligent and not acting within the scope her employment because she violated the policies and procedures of the SCHAC, the EEOC as well as the policies and policies and procedures of SCDMV as an "arm of the state."

Plaintiff believes and declares that the defendants (Rivers, Davis and Phelps) showed gross negligence when they called the plaintiff into an internal affairs investigation with the Karl McClary Manager/Director of Integrity and Accountability and letter insisted the plaintiff interview for a position "facial recognition" with the hiring authority and in the presence of McClary.

Davis and Rhett was also grossly neglected when they called the plaintiff out and paraded her among her co workers in a demeaning and self servicing manner to cause humiliation and

[7] Opinion from the South Carolina Supreme Court - 4770 - *Pridgen v. Ward* Heard October 7, 2010 – Filed December 22, 2010

embarrassment to the plaintiff the anger and demeaning explanation provided by Davis were personal towards the plaintiff and Rhett did nothing to intervene as the senior supervisor.

The plaintiff believes and with information declares that the defendants were not acting in the scope of their employment when they implemented or carried out their orchestrated conspiratorial objective, and (3) they are not entitled to immunity under the South Carolina Tort Claims Act. See also *Pridgen v. Ward.*

In South Carolina a tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage; *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). See also *Lee v. Chesterfield Gen. Hosp., Inc.*, 344 S.E.2d 379, 382 (S.C. Ct. App. 1986).

Contrary to what the defense wants this court to believe based on *Lawson* the defendant **did not merely talk** about terminating the plaintiff they orchestrate, conspired, had a meeting of the mind and implemented a coordinated plan to cause harm to the plaintiff for their own personal gain, one strong reason is the comments of Phelps in her affidavit to the court, Adams striking out at the plaintiff for coming to her for help, the plaintiff removal from her established job that placed her in direct daily contact with Davis (the defendants were fully aware the plaintiff felt Davis disliked her and was interfering with her job via the broken confidentiality of Boland).

The defendants failed to conduct any type of progressive discipline when it came to the plaintiff, there was no pattern of abuse to justify Davis allegations, and the plaintiff even provided the doctor's excuse Davis and Rivers wanted but because of their dislike for the plaintiff it made no difference in their plans to get rid of the plaintiff.

In or about November 2008, the defendants even went so far as to force the plaintiff into a job that was demeaning and humiliating to force her quitting, unfortunately plaintiff was a 49 year old black woman in South Carolina and to obtain a job with the retirement and benefits she had would have been impossible, she could not transfer or be promoted per Adams and to try would have

been humiliating and embarrassing, she had just gotten out of bankruptcy in August 2008, she had no choice but to accept the humiliation or be back where she started in 2004.

The circumstantial evidence and direct evidence[8] provided or that will be provided by the plaintiff will clearly show a strong suggestion that there was a common plan not just a conversation among the defendants as the defense suggest; see the ruling by the South Carolina Supreme court *Pridgen v. Ward* Opinion No. 4770, decided on December 22, 2010 and the unpublished opinion of the Fourth Circuit Court Anthony v. Ward, (4th Cir. 2009), No. 07-1932.

The causal connection is that the plaintiff on October 2, 2008, went to a scheduled meeting with Adams the Director of SCDMV (Walker and Phelps); after complaining and explaining, to get her pay back and letting them know she was filing a complaint for harassment and a hostile work environment. Adams after being assured by Walker that plaintiff did not have grounds to file to the EEOC immediately told the plaintiff that she could not be promoted or transferred; within that same month a good employee with no personnel issues and a satisfactory record with her employer ended up with two job ending reprimands and then told after being forced into data entry that one more problem she would be terminated and only after the plaintiff told Autry and Blankenship that she filed to the EEOC (on or about October 29, 2012) did thing stop; all of this took placed between October 2nd to October 29th, 2008.

B. SPECIAL DAMAGES

The plaintiff has alleged special damages,

1. Plaintiff alleged special damages in a letter sent to the defendants in or about March 29, 2010, at the defendants' request.

2. Plaintiff alleged special damages in her complaint filed to the Fifth Judicial Court of Richland County, in or about October 21, 2011,

3. Plaintiff alleged special damages in the amended complaints,

[8] Javonna Davis

4. Plaintiff listed calculable special damages of docked pay, cost of medication, medical bills, consultation fees, costs for ink, stamps, paper, laptop computer, the necessity of obtaining internet service, future medical cost related to her right hand as a result of working in data entry - the pain her fingers are more pronounced, the stiffness more pain, and aggravation of a pre-existing condition as applicable.

If the court determine that plaintiff did not adequately allege special damages plaintiff respectfully as that she be allowed to amend her complaint pursuant to Rule 15. The defendants' request that the court dismiss plaintiff's claims for failure to allege special damages should be denied.

C. INTRACORPATE IMMUNITY DOCTRINE EXCEPTION:

The South Carolina Court of Appeals held that although "a corporation, as a legal person in contemplation of law, cannot conspire with itself," "**the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties;**" *Lee*, 344 S.E.2d at 383.

The Fourth Circuit has recognized **"personal stake exception**," holding that (under Virginia's civil conspiracy law) "the intracorporate immunity doctrine does not apply where a corporate officer has an independent personal stake in achieving the corporation's illegal objectives," *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 179 (4th Cir. 2002).

The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. *Lee*, 289 S.C. 6, 344 S.E.2d 379. "[A]n unlawful act is not a necessary element of the tort." *Id.* at 11, 344 S.E.2d at 382. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

The defendants ask that the court dismiss plaintiff's claims based on *Lawson v SCDC* There is no relationship or correlation between *Lawson v SCDC ruling*. *Lawson* sued the SCDC only which

g) September 11, plaintiff returned to work and was docked two days pay even though she called in both days, and used the sick leave for personal illness per the policies and procedures of SCDMV and the State of South Carolina and excused by her doctor,

h) Plaintiff in September after her return applied for and was granted FMLA, effective in or about the first of October 2008,

i) In an effort to keep her job and get her pay back plaintiff went to the Director of DMV, Adams, and told her Walker and Phelps what was happening, October 2, 2008.

j) Adams struck out and or retaliated against the plaintiff, directly after that meeting the defendants planned and implement the policies and procedures to dismiss the plaintiff from her employment

l) The first reprimand for unauthorized leave under Adams' signature – leave from September 9 and 10, Level 1[10],

m) The second reprimand came on or about October 9, 2008,

n) On or about late October early November 2008, plaintiff was brought before Karl McClary, Director or Manager of Integrity and Accountability,

o) Directly after that meeting Rivers and Phelps each called the plaintiff to insisted she interview for a job. In attendance the hiring person and McClary (told plaintiff this was a temporary position,

p) On or about mid or late November 2008, plaintiff was called into a meeting with Tosha Autry and Dottie Blankenship, where she was told she was forcibly being transferred to data entry (a position plaintiff turned down several times) and was told by Tosha Autry any other issues and she would be at Level III and will be dismissed – this was last chance.

Unlike *Lawson v SCDC* there was no discussion to terminate the plaintiff the dots were all in place for her dismissal all the defendants needed was to orchestrate one more infraction thus forcibly demoting the plaintiff. The defendants set the plaintiff up to be fired and all the defendants need was that one action for whoever and their conspiracy would be successfully done.

Plaintiff had been employed as a permanent employee since July of 2006, she gained permanent status on or about July 16, 2008, at the time this accorded she had not been with DMV for

[10] According to policy 3 reprimands would lead to dismissal and comes under Adams signature

"nearly a decade." To date she has only been employed as permanent for about seven years. This action was filed with the EEOC in 2008 plaintiff was 49 years of age.

To follow the logic of the defendants' plaintiff could have gotten angry and quit when she was forced into data entry – a place she did not want to be or a demeaning job she never wanted to do again but having just come out of bankruptcy quitting a paying job with benefits would not have been a "bright" move for a 49 year old. See, *Miller v. At Corporation Nos.* 00-1277, 00-1928; Argued Jan. 24, 2001. -- May 07, 2001; U.S. Supreme Court *Ford Motor Co. v. EEOC,* 458, U 219 (1982).

The plaintiff could have quit and filed this action but if she had quit she would not have gotten unemployment and would have been back where she started in 2004, this time she would not have been able to file bankruptcy. More importantly plaintiff at her age and race would never have found a position with the benefits she has with SCDMV. The plaintiff quitting would have made the defendants happy but would have devastated the plaintiff, sure she would have sued for back and front pay if she happened to have won this action whenever, in the mean time she would have no car, no house and no place to live, benefits, etc.

Plaintiff is suing seven defendants unlike *Lawson* and unlike Lawson she is suing the defendants in their individual[11] capacities.

Therefore the defendants request that her action be dismissed on the "precedent" in *Lawson* clearly does not apply in the matter before this court and the defendant's request to dismiss should be denied as without merit.

The defendants were **wholly** involved and dedicated in a personal endeavor they had a goal and that was to punished and get rid of the plaintiff. Perhaps because she went to Adams as Phelps found hard to believe.

[11] Unpublished Opinion 4th Circuit, Calvin Anthony v Robert Ward, Charles Sheppard in their individual capacities. Argued May 12, 2009 Decided July 7, 2009; No. 07-1932

The Fourth Circuit has recognized a "personal stake exception," holding that (under Virginia's civil conspiracy law) "the intracorporate immunity doctrine does not apply where a corporate officer has an independent personal stake in achieving the corporation's illegal objectives," ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) (internal quotations omitted). See *Greenville Pub. Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974) *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves."); (emphasis added); Garza v. City of Omaha, 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.").

The intracorporate conspiracy doctrine in South Carolina draws its origins from Goble v. American Railway Express Co., where the state Supreme Court indicated that "it is impossible to conceive that a conspiracy between a corporation and its agents may be established by the act of such agents alone," 115 S.E. 900, 903 (S.C. 1923).

More recently, the South Carolina Court of Appeals held that although "a corporation, as a legal person in contemplation of law, cannot conspire with itself," "the agents of a corporation **are legally capable, as individuals**, of conspiracy among themselves or with third parties." Lee, 344 S.E.2d at 383.

The district court below interpreted the above cases as distinguishing between two types of civil conspiracies: (1) principal-agent conspiracies and (2) conspiracies between agents of a corporation. Based on its reading of South Carolina case law, the court concluded that the intracorporate conspiracy doctrine in South Carolina only applies to principal-agent conspiracies. Because the facts of this case placed it "squarely within" the latter context, the district court concluded that an instruction on civil conspiracy was unwarranted. J.A. 2071.

North Carolina Court of Appeals entertained only two cases even discussing intracorporate immunity doctrine, and neither case contains such a holding. Defendant cites *State ex rel. Cooper v. Ridgeway Brands, Mfg., LLC* at 799 and *Lenzer v. Flaherty*, 106 N.C. App. 496 (N.C. Ct. App. 1992). First, *Ridgeway Brands* does not deal with a subsidiary and its parents, but rather a corporation and its agents, officers and employees. *Lenzer* also did not involve a parent and its subsidiary. More importantly, in *Lenzer*, the Court of Appeals in 1992 stated their research discloses no North Carolina case in which the doctrine has been adopted as a defense to civil conspiracy. As noted above, neither *Ridgeway Brands* nor *Lenzer* apply the doctrine as defendant claims the Court should here.

The Defendant cites three unpublished cases from the Superior Court of North Carolina, two from Wade County and one from Mecklenburg County. The first case, *Garlock v. Hilliard*, 2000 WL 33914616 (N.C. Super. 2000) again does not deal with the parent and its subsidiary corporation but rather with a corporation's agents' officers and employees. The next case, *State ex rel. Cooper v. McClure*, 2004 WL 2965983 (N.C. Super. 2004) recites the doctrine found in *Copperweld Corp. v. Independence Corp.*, 467 U.S. 752, 758-759 (1984) holding that a corporation, its subsidiaries, officers and employees do not provide a sufficient number of actors to carry out an anti-trust conspiracy. The *McClure* Court, however, found the doctrine did not apply since the actors were not in the same consulting firm. The case before the Supreme Court dealt specifically with the interpretation of the antitrust laws, not a common law conspiracy action. Finally, the Defendant cites *Maurer v. SlickEdit, Inc.*, 2005 WL 1412496 (N.C. Super. 2005). See *Garlock v. Hilliard.*

Again, no appellate court in North Carolina has considered the application of the doctrine of intracorporate immunity to a corporation and its subsidiary. And, there is no requirement that a state court must follow a United States Supreme Court decision's interpretation of federal antitrust laws when the state is dealing with a common law right of action.

The application of the doctrine to a corporation and its subsidiary ignores their separate legal existence. This conspiracy was alleged and could not exist without the conduct of actors in each corporation. The application of any immunity doctrine results in an injustice to these North Carolina Plaintiffs and Class Members. Each wrongdoer should have to account to those they have injured. *See Novotny v. Great American Federal Sav. & Loan, Ass'n.*, 584 F.2d 1235 (3rd Cir. 1978) vacated on other grounds 442 U.S. 366 (1979), holding that the intracorporate doctrine should be limited to anti-trust cases (leading precedent for minority view).

The doctrine also has been heavily criticized by a number of legal writers. See Barry Horwitz, *A Fresh Look at a Stale Doctrine: How Public Policy and the Tenets of Piercing the Corporate Veil Dictate the Inapplicability of the Intracorporate Conspiracy Doctrine to the Civil Rights Arena,* 3 NW J.L. & Soc. Pol'y 131, footnote 15 (Winter 2008); and Kenneth P. Quinn, *he Intra-Enterprise Conspiracy Doctrine: Toward an Equitable Approach,* 33 DePaul L. Rev. 105, footnote 15 (Fall 1983).

Further, courts have refused to say a corporation and its subsidiary are "one" and have enforced the distinct status of each. For a smattering of cases upholding a parent and its subsidiary distinct status, see: *F.W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354 (1982) (as to taxation); *United Paperworks v. T.P. Property Corp.*, 583 F.2d 33 (1st Cir. 1978) (as to collective bargaining agreement); *Engel v. Teleprompter Corp.*, 703 F.2d 127, 134 (1st Cir. 1983) (as to ownership of stock); *In re Gibraltor Amusements, Ltd.*, 291 F.2d 22 (2nd Cir.) (as to separate creditors in bankruptcy); *CM Corp. v. Oberer Dev. Co.*, 631 F.2d 536, 538 (7th Cir. 1980) (refusal to impose liability on parent for breach of subsidiary); *Stoehr v. American Honda Motor Co.*, 429 F.Supp.763, 766 (D. Neb. 1977) (service on subsidiary not service on parent); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 108-12 (1969) (judgment against wholly-owned subsidiary not binding on parent).

Two culprits scheming and taking money that is not theirs should be required to respond in damages for the injuries they each caused and are continuing to cause.

IX. THE DEFENDANTS REQUEST TO DISMISS THE PLAINTIFF'S DEFAMATION CLAIMS SHOULD BE DENIED AS THE ACCUSATION ARE ON GOING

A Vexatious Litigant is accusation unique to a *pro se person* it implies the person is not balanced mentally, who files a lawsuit with the knowledge that it has no legal basis, with its purpose to bother, annoy, embarrass and cause legal expenses to the defendant. Vexatious litigation includes continuing a lawsuit after discovery of the facts shows it has absolutely no merit.

The label of vexatious litigant denies the *pro se* access to the legal process, she is blacklisted, every constitutional right the defendants enjoy would be denied the pro se litigant, such as due process, makes him or her a pariah in the legal process, if the defendants won the accusation the

The plaintiff was blacklisted by Adams which constitutes a permanent and lifelong (see §391(b) (4)) government defamation. "Where a person's good name, reputation, honor, or integrity is at stake as in the placed case she already suffers from being blacklisted listed as a result of the actions of the defendants. Plaintiff has no creditability at her place of employment and the defendants sought to solidify that in the legal system.

The deprivation of any civil right for past conduct is punishment for such conduct. Disqualification from the privilege of appearing in the courts has been imposed as punishment. *Cummings v. State of Missouri* (1866) 71 U.S. 277,320.

The plaintiff was called a vexatious litigant not because it was pertinent, relevant or germane to this action before the court but to hurt, injure, defame, to destroy a reputation, to make it seem as if the plaintiff was unbalanced in some way as a means to mislead, to win at all cost, even if it was a blatant lie by an officer of the court.

The accusation was not pertinent, relevant or germane to the issue before the court. The accusation was purely done to prevent the plaintiff from having access to the judicial system, a

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means to retaliate for the plaintiff filing of this legal action for knowing she could file in state court, for knowing she could file a motion to remain, for knowing she could prefect service, for just being. The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write, **subject only to one limitation**, that what is said or **written bears upon the subject of litigation, that is, are pertinent, relevant, and germane thereto**.

The defendants could show nor prove any set of facts, could prove no elements to make the defamatory allegations. Plaintiff did nothing that the South Carolina and Federal Rules of Procedure did not allow.

In *Texas Company v. C.W. Brewer & Company*, 180 S.C. 325, 185 S.E.2d 623 (1936), the Supreme Court established that pleadings, although they may constitute libel on their own, are absolutely privileged if **they are relevant and legitimately related to the issues and inquiry at trial**.

The Court later confirmed in the case of *McKesson & Robbins v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945), that pleadings, even if defamatory, are absolutely privileged. "Libelous or defamatory statements in pleadings, **when pertinent or material or relevant to real issues** involved, are privileged, that the pertinence or materiality or relevancy of such statements is for the determination of the Court and not a jury, and that in determining this issue pleadings must be liberally interpreted and all doubt resolved in favor of relevancy." Id. at 275, 33 S.E.2d at 587.

The above authority accords with the Restatement (Second) of Torts § 587 (1977), which provides: A party to a private litigation ... is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has **some relation to the proceeding**.

Defamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, is absolutely privileged; and it is

immaterial that the allegations are false and malicious and are made under a cover and pretense of a wrongful or groundless suit.... The weight of American authority is that the privilege is absolute when, ***and only*** when, the matter tendered is pertinent or material or relevant.

IX. IF THIS COURT IS INCLINED TO RULE FOR DISMISSALTHE PLAINTIFF REQUEST TO BE ALLOWED TO AMEND HER COMPLAINT TO CURE ANY DEFECTS SUCH AS FAILURE TO STATE A CLAIM (SEE, *STAN LABER V. FRANCIS J. HARVEY, SECRETARY OF THE ARMY.* NO. 04-2132. DECIDED 2006

Under the rules of SCRCP Rule 15, the plaintiff filed her original complaint on or about October 21, 2011, in the Richland County Fifth Judicial Court; the defendants filed a Motion to Remove on or about November 21, 2011, and then their answer on or about November 29, 2011.

> *Amendments of pleadings are controlled by Rule 15, SCRCP, which provides in pertinent part:* ***15(a). Amendments.*** *A party may amend his pleading once as a matter of course at any time* ***before or within*** *30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice_any other party. (Emphasis added). See Opinion 3915 - Parker v. Spartanburg Sanitary Sewer District;*
>
> *Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998). The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999);Pruitt, 330 S.C. at 489, 499 S.E.2d at 253. This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987).*

'A district court may not deny a motion to further amend simply because it has entered judgment against the plaintiff - be it a judgment of dismissal, a summary judgment, or a judgment after a trial on the merits (Rule 5). See, e.g., Foman, 371 U.S. at 182, 83 S.Ct. 227 (reversing district court's denial of motion to amend made after the district court entered judgment of dismissal); *Charles Allen Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure* § 1488 (2d ed.1990) (collecting cases); cf. *Ostrzenski*, 177 F.3d at 252-53 (4th Cir.1999) (noting that

district court should not dismiss a complaint with prejudice under Fed.R.Civ.P. 12(b)(6) without first giving the plaintiff leave to amend).

Pursuant to Federal Rules of Civil Procedures (FRCP) and South Carolina Rules of Civil Procedure (SCRCP) Rule 15(a), the Court may grant leave to file an amended pleading: party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

The defendants have stated that the plaintiff's compliant was a "jumble" of conclusory allegations. Therefore, the plaintiff ask that she be allowed to clarify this complaint further pursuant to Rule 15, "leave to amend should be freely given" there is no prejudice to the defendants as there has not been a trial or discover conducted.

An amended complaint is submitted with this request to deny the defendants request to dismiss the plaintiff complaint as the plaintiff has complied with the requirements of Rule 8 and her complaint is not subject to dismissal.

Respectfully submitted by:

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Dated this 10th day of September 2012
Lexington County, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	))))))))))))))	C/A No.: 2011-CP-40-07134 **SUPPLEMENT TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT AND DEFENDANTS' RESPONSE TO PLAINTIFF'S FOURTH MOTION TO AMEND COMPLAINT**

NOW COME Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants"), by and through counsel, and supplement their Motion to Dismiss under S.C.R.Civ.P. 12(b)(6). As detailed below, Plaintiff[1] – who is appearing *pro se* – has also filed a Fourth Motion to Amend her Complaint, to which Defendants now respond.

For the reasons set forth below, Defendants respectfully request that this Court GRANT the Defendants' Motion to Dismiss Plaintiff's Third Complaint and DENY Plaintiff's Fourth Motion to Amend her Complaint.

[1] Plaintiff has been an employee of SCDMV since October 2004, when she was hired as a temporary employee. On June 19, 2006, Plaintiff became employed in a full-time position, and remains employed at SCDMV to this date.

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PROCEDURAL BACKGROUND

Plaintiff originally filed this case on October 25, 2011, alleging the following causes of action: (1) a Title VII retaliation claim, (2) a claim for various violations of the South Carolina Human Affairs Law, (3) a "free speech" claim under the U.S. Constitution, (4) an unspecified claim for alleged violations of Constitutional rights under 42 U.S.C. § 1981(a), (5) a claim for deprivation of rights under 42 U.S.C. § 1983, (6) an unspecified claim under the S.C. Tort Claims Act, (7) claims for intentional and negligent infliction of emotional distress, (8) a civil conspiracy claim, and (9) a claim for gross negligence under the S.C. Tort Claims Act.[2]

The case was removed to the U.S. District Court. Thereafter, the parties engaged in an extensive motions practice, primarily addressing whether Plaintiff had brought federal causes of action and whether the case should be remanded to state court.

On August 7, 2012, U.S. Magistrate Judge Paige Gossett issued an Order granting Plaintiff's Third Motion to Amend her Complaint, which Plaintiff styled as her "Amended Complaint in Complaince [*sic*] with Order" (hereinafter referenced as Plaintiff's "Third Amended Complaint").

On August 9, 2012, Defendants filed their Motion to Dismiss the Third Amended Complaint in the U.S. District Court pursuant to FED R. CIV. P. 12(b)(6).

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[2] Plaintiff also filed an earlier federal lawsuit in January 2010 against many of the same defendants and raising some of the same claims. The federal causes of action were dismissed with prejudice on March 10, 2011, and Defendants' motion under Rule 59(e) was dismissed on May 6, 2011. *Couram v. South Carolina Dept. of Motor Vehicles*, 2011 WL 891298 (D.S.C. March 10, 2011) and 2011 WL 1743264 (D.S.C. May 6, 2011) (slip ops. attached). The federal court declined to exercise jurisdiction over the two remaining state law claims – intentional infliction of emotional distress and civil conspiracy – and dismissed them without prejudice. Under 28 U.S.C. § 1367(d), the statute of limitations on these state law claims was tolled for 30 days following dismissal from federal court. Because Plaintiff did not file her current complaint until October 25, 2011, the emotional distress and civil conspiracy claims do not "relate back" to her earlier complaint from 2010. *Jinks v. Richland County*, 538 U.S. 456, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003).

On August 21, 2012, the U.S. District Court remanded the entire case to this Court, noting that the Third Amended Complaint "does not contain any federal causes of action." The ruling also "decline[d] to exercise supplemental jurisdiction over Plaintiff's state law claims and accordingly remand[ed] this action to state court." (Order and Opinion of Chief U.S. District Judge Margaret B. Seymour).

On September 11, 2012, after the case had been remanded to state court, Plaintiff filed a response to the Defendants' Motion to Dismiss in the U.S. District Court. The response included a Fourth Motion to Amend her Complaint and included Plaintiff's proposed Fourth Amended Complaint.

The Defendants' Motion to Dismiss and Plaintiff's Fourth Motion to Amend Complaint have been set for hearing in the Court of Common Pleas of Richland County on November 5, 2012. In order to conform to the Court Rules of South Carolina, this pleading (1) supplements the Defendants' original Motion to Dismiss, and (2) responds to Plaintiff's Fourth Motion to Amend her Complaint.

PLAINTIFF'S THIRD AMENDED COMPLAINT

In her Third Amended Complaint, Plaintiff describes her numerous complaints and frustrations about the manner in which she was managed by (1) her supervisors and immediate chain of command – Lula N. Davis, Shirley Rivers, and Constance "Connie" Rhett, (2) current and former SCDMV executive and Human Resources leadership – Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and (3) the agency itself. Plaintiff generally complains about unspecified but allegedly "repeated acts of willful, reckless harassment, abuse, threats by her fellow employees, including supervisors." (Third Amended Complaint, ¶ 2). She also variously alleges that all Defendants:

- "intentionally or recklessly subjected the plaintiff to harassing conduct in direct violation of the [South Carolina Tort Claims Act],"
- failed "to act with simple and ordinary care in their actions towards the plaintiff,"
- "intended to inflict emotional distress" on her,
- "took an active part in the further *[sic]* of the conspiracy created and formed among themselves a conspiracy to defraud, cheat and otherwise harm Plaintiffs [*sic*] as set forth in this complaint," and
- "allowed defamation of the Plaintiff's character and reputation, destroyed her professionalism, caused the Plaintiff to live and work in fear of loss of employment/livelihood, stress due to daily uncertainty of employment, allowed false allegation [*sic*]."

(Third Amended Complaint, ¶¶ 24, 32, 36, 42, 48). Although Plaintiff failed to point to any specific instance or occurrence to support her allegations, she grouped her allegations under five (5) separate causes of action:

1. Plaintiff's First Cause of Action did not state a cause of action, but instead simply referenced the South Carolina Tort Claims Act (SCTCA).
2. Plaintiff's Second Cause of Action was entitled "Intentional/Negligent – Gross – Willful, Reckless Infliction of Emotional Distress [*sic*]."
3. Plaintiff's Third Cause of Action also did not state a cause of action, but instead attempted to "disclaim" the affirmative defense of Workers' Compensation Act exclusivity to her claims for emotional distress.
4. Plaintiff's Fourth Cause of Action was for Civil Conspiracy.
5. Plaintiff's Fifth Cause of Action was for Defamation.

Each of these causes of action was stated against all Defendants. For the reasons set forth below, each of Plaintiff's claims must be dismissed with prejudice.

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PLAINTIFF'S PROPOSED FOURTH AMENDED COMPLAINT

In Plaintiff's proposed Fourth Amended Complaint, Plaintiff names the same Defendants as in her Third Amended Complaint, but more fulsomely describes the ways in which she believes her supervisors and SCDMV leadership mistreated her. Specifically, in her Fourth Amended Complaint, Plaintiff describes her dealings with her supervisors and SCDMV leadership from the beginning of her employment until her transfer in November 2008.[3] (Fourth Amended Complaint, ¶¶ 24-77). Thereafter, she changed the manner in which she attempted to state her causes of action as follows:

1. A "gross negligence" claim pursuant to the South Carolina Tort Claims Act (SCTCA) as to all Defendants for conduct allegedly taking place on or before December 2008. (Fourth Amended Complaint, ¶¶ 79-96).

2. A claim styled as "Worker Compensation and/or Willful, Reckless Infliction of Emotional Distress [*sic*]" against all Defendants. (Fourth Amended Complaint, ¶¶ 97-103).

3. A claim for "Defamation" against all Defendants. (Fourth Amended Complaint, ¶¶ 104-109).

4. A claim for Civil Conspiracy against all Defendants. (Fourth Amended Complaint, ¶¶ 110-119).

Although Plaintiff has attempted to reform her causes of action in her Fourth Amended Complaint, for the reasons set forth below, each of Plaintiff's claims fail to state a claim for which relief can be granted, and must be dismissed with prejudice.

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[3] Plaintiff was actually reassigned, effective December 8, 2008, to another position in the Information Management branch of the Driver Records section under a new supervisor, Gail Allison. However, for purposes of this motion, whether the date of the move to her new position was in November or December 2008 is of no consequence.

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LEGAL ARGUMENT

I. EVEN IF PLAINTIFF'S AMENDED COMPLAINT(S) RELATE BACK TO HER INITIAL FILING OF OCTOBER 25, 2011, ALL OF HER CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-78-110.

As an initial matter, the claims alleged by Plaintiff in either her Third or Fourth Amended Complaints are subject to a two (2) year statute of limitations. *Flateau v. Harrelson*, 355 S.C. 197, 208 584 S.E.2d 413, 418-419 (S.C. App. 2003) (S.C. Tort Claims Act's two-year statute of limitations governed common law causes of action for outrage, invasion of privacy, and civil conspiracy against individual state employees). This is because Plaintiff did not file a "verified claim" under the provisions of S.C. Code Ann. § 15-78-80, which requires, in pertinent part, as follows:

> (a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:
>
> (1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;
>
> (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;
>
> (3) where the identification of the proper defendant is in doubt, with the Attorney General.
>
> (b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.
>
> (c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.
>
> (d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

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> (e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(emphasis added). In the instant case, presuming the latest date of the alleged "loss" was on or before December 8, 2008, Plaintiff would need to have filed her verified claim under the S.C. Tort Claims Act on or before December 8, 2009 to extend the statute of limitations for torts brought against the Defendants from two to three years under S.C. Code Ann. § 15-78-110.

Plaintiff has not alleged – and cannot allege – that she filed a verified claim with either the South Carolina Budget & Control Board and/or SCDMV on or before December 8, 2009, or for that matter, at any time. Nor is filing a verified claim a mere formality, or otherwise subject to "substantial compliance." Indeed, South Carolina's courts have "repeatedly held strict compliance with the verified claim statute is mandatory." *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 189, 534 S.E.2d 1, 8 (S.C. App. 2000) (citations omitted).

Thus, under S.C. Code Ann. § 15-78-110, Plaintiff's claims are governed by a two-year statute of limitations. Because Plaintiff's allegations are based on actions that purportedly occurred on or before December 8, 2008, and because she filed the current lawsuit on October 25, 2011, each of her claims must be dismissed with prejudice as untimely.[4]

[4] The two-year statute of limitations applies to the individual Defendants as well, regardless of whether they acted within the scope of their official duty. *Flateau*, 355 S.C. at 208, 584 S.E.2d at 418-419; *Joubert*, 341 S.C. at 184-185, 534 S.E.2d at 5.

II. PLAINTIFF'S SECOND CAUSE OF ACTION MUST BE DISMISSED FOR EMOTIONAL DISTRESS BECAUSE IT IS BARRED UNDER THE DOCTRINE OF EXCLUSIVITY OF THE WORKERS' COMPENSATION ACT AS TO SCDMV AND ALL INDIVIDUAL DEFENDANTS IN THEIR "OFFICIAL" CAPACITY.

Plaintiff's claim for emotional distress, as was previously stated in *Couram v. South Carolina Dept. of Motor Vehicles*, 2010 WL 6065084, at *3 (D.S.C. November 12, 2010) (slip op. attached), is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. *See* S.C.Code Ann. § 42–1–540 (making the Act the exclusive remedy for employees seeking damages for personal injuries arising out of and in the course of their employment); *Dickert v. Metropolitan Life Ins. Co.*, 428 S.E.2d 700 (S.C. 1993) (holding that intentional infliction of emotional distress, assault and battery, and mental trauma were covered by the exclusive remedy provision of the Workers' Compensation Act). Further, the SCTCA explicitly provides as an exception to the waiver of sovereign immunity that "[t]he governmental entity is not liable for a loss resulting from ... any claim covered by the South Carolina Workers' Compensation Act." S.C.Code Ann. § 15–78–60. Thus, under South Carolina law, Plaintiff's exclusive remedy for damages against SCDMV resulting from any alleged intentional infliction of emotional distress is under the Workers' Compensation Act. *See* S.C.Code Ann. § 42–1–540.

Similarly, to the extent that Plaintiff seeks to sue the individual Defendants in their "official" capacities for emotional distress, her claims are also barred. It is elementary that "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 ... [and] is no different from a suit against the State itself." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Because this claim cannot be brought against SCDMV, it also cannot be brought against the individual Defendants in their "official" capacities.

III. PLAINTIFF'S DEFAMATION CLAIM MUST BE DISMISSED BECAUSE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS, AND IT OTHERWISE FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As set forth in her proposed Fourth Amended Complaint, Plaintiff's claim for defamation does not set forth specific statements that she believes the Defendants made concerning her, or the persons to which the statements were allegedly made. Indeed, the only specific reference to any specific statement was a reference made to her as a "vexatious litigant" by the undersigned in the pleadings in this case.

As an initial matter, to the extent Plaintiff's defamation claim is based on acts occurred prior to October 25, 2009, it is barred by the applicable two-year statute of limitations. S.C. Code Ann. § 15-3-550 (establishing a two-year statute of limitations on defamation claims).

Further, in order to prove defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Plaintiff has failed in every respect to state these elements in her Amended Complaints. For this reason alone, her claim must be dismissed.

Finally, to the extent Plaintiff wishes to file a defamation claim based on the Defendants' referencing her as a "vexatious litigant" in their pleadings before this Court, South Carolina has long recognized that statements pleadings, even if defamatory, are absolutely privileged. *Pond Place Partners, Inc. v. Poole,* 351 S.C. 1, 22-23, 567 S.E.2d 881, 892-893 (S.C. App. 2002). While Defendants – through counsel – have requested in pleadings that the Court admonish Plaintiff for her harassing and frivolous behavior, such a request or statement cannot form the basis of a defamation claim as a matter of law.

For these reasons, Plaintiff's defamation claim must be dismissed with prejudice.

IV. PLAINTIFF'S CAUSE OF ACTION FOR CIVIL CONSPIRACY MUST BE DISMISSED BECAUSE IT IS BARRED UNDER THE INTRACORPORATE CONSPIRACY DOCTRINE, AND BECAUSE HER CLAIM IS BARRED UNDER *LAWSON V. SOUTH CAROLINA DEPT. OF CORRECTIONS.*

Plaintiff's claim for civil conspiracy is set forth at ¶¶ 110-119 of the proposed Fourth Amended Complaint. In addition to the fact that the claim is barred by the applicable statute of limitations, this cause of action is also barred for the reasons set forth below, and must be dismissed with prejudice. 3yr statute

A. PLAINTIFF'S FOURTH CAUSE OF ACTION MUST BE DISMISSED BECAUSE IT IS BARRED UNDER THE INTRACORPORATE CONSPIRACY DOCTRINE.

Plaintiff brings her civil conspiracy claim against "all Defendants" – including SCDMV – for allegedly conspiring to injure her. As the South Carolina Supreme Court recently noted, it is well-settled that a corporation cannot conspire with itself, or when the alleged acts arise in the context of a principal-agent relationship, because such acts do not involve separate entities. *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006).

Plaintiff's allegations arise in the context of the principal-agent relationship. One of the Defendants sued for civil conspiracy is SCDMV, NOT and each of the individual Defendants is being sued because he or she is – or was – a supervisor or official at SCDMV. As stated in *McMillan*,

HA + HR Relation

> 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. As a result, we hold that 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.

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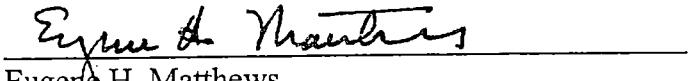
Dated this the 30th day of October, 2012.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



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COUNSEL FOR DEFENDANTS LULA N. DAVIS, SHIRLEY RIVERS, CONSTANCE "CONNIE" RHETT, MARCIA ADAMS, DOTTIE BLANKENSHIP, TOSHA AUTRY, STEVEN W. LAKE, AND SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	))))))))))))))	C/A No.: 2011-CP-40-07134 **CERTIFICATE OF SERVICE**

I, the undersigned counsel for the Defendants, do hereby certify that I have served a copy of the *SUPPLEMENT TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT AND DEFENDANTS' RESPONSE TO PLAINTIFF'S FOURTH MOTION TO AMEND COMPLAINT* by causing a copy of the same to be personally deposited in the United States Postal Service mail, first class postage prepaid, with the return address clearly visible, addressed to the *pro se* Plaintiff as indicated below on this 30th day of October, 2012:

Glenda Renee Couram
104 Macaw Lane
Lexington, SC 29073

JENNIFER L. MILES
Legal Assistant to Eugene H. Matthews

October 30, 2012
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2011-CP-40-07134

Glenda R. Couram
Plaintiff

v

Marcia Adams, Steven W. Lake, Shirley Rivers, Lula N. Davis, Constance "Connie" Rhett, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and their individual capacities

Defendants

MEMORANDUM FOR RECONSIDERATION

JURY TRIAL DEMANDED

NOW COME *pro se* Plaintiff, Glenda Couram, hereby moves this court, under and pursuant to SCRCP 59(e) and L.Civ.R. 6.3, for Reconsideration of Order signed by Judge Casey Manning on November 8, 2012, clocked in by the Clerk of Court on or about November 15, 2012, mailed or served on the Plaintiff on or about November 16, 2012, received via mail by plaintiff on or about November 19, 2012 (Exhibit A) the Order granted the defendants' motions to dismiss with prejudice.

The Fourth Circuit has held a motion to reconsider should be granted for only three reasons: (1) to follow an intervening change in controlling law; (2) on account of new evidence; or (3) to correct a clear error of law or prevent manifest injustice; *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir.1993).

The court has erred in failing to apply the correct controlling laws and statutes when it comes to seeing justice done in this matter, has failed to review all evidence based on the face of

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plaintiff's complaint as required[1] to include evidence already submitted via completion of discovery; to the court's from the federal court, and plaintiff believe there is clear and glaring errors in this court's decision making and humbly request the court timely and thoroughly review its previous findings in the interest of justice and reverse its ruling in favor of the plaintiff.

I. Factual and Background

This court originally scheduled the plaintiff's claims after remand from federal court for the week of October 29, 2012. (The defendants' attorney met with the judge outside the presence of the *pro se*[2] and was granted a continuance for good cause and had the court date moved to sometime in January).

The plaintiff submitted a response to remind the court that she had filed a response to the defendants' Motion to dismiss on or about September 10, 2012, the court when it signed the Order never acknowledge the response.

Judge Barber scheduled the Plaintiff's Motion to Amend for November 5, 2012, but neglected to include the fact that the defendants would also present their Motion to Dismiss on that same day and it was not on the court schedule, just the Motion to Amend; plaintiff Objected to no avail.

In the meantime, the defendants served the plaintiff on or about October 30, 2012 a with a supplement to their Motion to Dismiss submitted on August 9, 2012 hat she received on or about November 2, 2012 that had for first time an affirmative defenses (1) challenging the three statute of limitations with a contrived date of December 8, 2008 to December 8, 2009 as the date of injury by the defendants.

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[1] The court is obligated to accept as true the well-pleaded factual allegations of the **non moving party (plaintiff)** complaint, at this stage. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-51 (2009). It's as if the court has decided the plaintiff is incapable of knowing fact from fiction and the defendants is the only ones who can tell truth

[2] (per Judge Barber assistance that was allowed for administrative purposes)

The plaintiff objected twice to the defendants' actions and informed the court she had not had the required amount of time to respond to the new first time defenses to the supplement the defendants showed Judge Barber's Order to Manning allowed the defendants to procede based on that Order. The plaintiff timely objected twice, Judge Manning refused to allow the plaintiff to adequately spoke and present her case.

While Judge Barber allowed the defendants a continuance for the jury roster he did not the plaintiff prays give the defense attorney a license to ambush the plaintiff as she saw it – the plaintiff has been in enough courts to know that what happen is not the norm.

II. Reconsider order and reverse based on documented evidence that proves the defendants presented misleading and submitted contrived information to the Court (or as the Defendants says self-serving evidence)

EXHIBIT TWO

The EEOC under the charge[3] # 436-2009-00108N sent the charges and or claims to SCDMV an "arm" of the State of South Carolina and authorized via SC Code of Laws §15-78-70 et seq., to accept the claims by SC Budget and Control Board.

According to state and federal laws governing discrimination the plaintiff *could not bring a private cause of action* until she exhausted all of the administrative remedies dictated by SCHAC[4] (EXHIBIT Four) and the EEOC and only after they completed their investigation would the plaintiff be given a Right to Sue letter by one of the agencies giving her leave to pursue her claims in court.

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[3] In the written charge and or claims sent to Adams by the EEOC was a copy of the charge, notice about settlement, information requiring a position, statement and request for document production. The defendants were also sent a copy of the intake questionnaire.

[4] That exception allows a filing with the EEOC after 180 days if "the person aggrieved has initially instituted proceedings with a State or local agency WITH AUTHORITY TO GRANT OR SEEK RELIEF FROM SUCH PRACTICE . . ." See 447 U.S. 807 100 S.Ct. 2486 65 L.Ed.2d 532 MOHASCO CORPORATION, Petitioner,v. Ralph H. SILVER No. 79-616. The EEOC sent the claims to SC HAC who sent it back because the continuing violation box was check by the investigator Mark Delledonne of the EEOC

The plaintiff originally filed her complaint in January 4, 2010 after the receipt of a Right to Sue letter from the EECO dated October 14, 2009.[5] In that complaint the plaintiff filed charges of age discrimination under the ADEA, retaliation claims under Title VII – "retaliated against for engaging in a protected activity", claims of a continuing hostile work environment, harassment, failure to promote, wage discrimination (which was dropped), etc., (The plaintiff named SCDMV, Rivers, Davis and Rhett in their official and individual capacities).

Plaintiff's federal claims were dismissed with prejudice by Order of Judge Matthew Perry in or about March 2011 (the defendant's Motion for Reconsideration was denied on or about May 2011). Judge Perry declined to exercise jurisdiction over plaintiff state pendant claims of outrage (NIED/IED), civil conspiracy, etc., giving plaintiff permission to refile those claims in State Court.

On or about October 25, 2011[6], well within the three year statute of limitations (See Exhibit IV – US Secretary of State CERD Report #85) plaintiff refiled her state claims in the Richland County Circuit Court of South Carolina.

> 85. Public accommodations cases and cases alleging acts of discrimination not covered by existing laws are received by Intake staff. Such complaints are directed to the Community Relations staff for investigations and resolution. The statute of limitations **for filing complaints in this area is three years after the discriminatory act occurred.**

On or about November 21, 2011 the defendants removed the plaintiff's complaint from State court to federal. Plaintiff timely filed a motion to remand on or about December 9, 2011.

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[5] Tolled for 90 days; the verified claims, pre suit of discrimination charges was submitted to Marcia Adams Executive Director of SCDMV by Patricia Fuller with the EEOC on or about November 18, 2008. Who submitted to their designee Eugene Matthews per Paige Stephens former Benefits Manager of SC DMV (See Exhibit III)

[6] (She named SCDMV, Adams, Walker, Autry, Rhett, Davis, Rivers and Blankenship in their official and individual capacities).

Judge Seymour on or about June 2012, responded to the Plaintiff Objections to the magistrates Report and Recommendations instructing the plaintiff to remove all federal questions from her complaint to effect remand.

Plaintiff filed the Motion to Reconsider on or about July 28, 2012, along with the amended complaint per Judge Seymour's Order. Judge Seymour had not responded to the Motion to Reconsider when the Magistrate on or about August 7, 2012, decided to accepted the third amended complaint that was no longer in motion.

The defendants filed a Motion to Dismiss on or about August 9, 2011. Plaintiff received on or about August 11, 2012 and filed a response on or about September 10, 2012.

In the mean while, the US Chief District Judge Margaret Seymour signed an Order of remand on or about August 20, 2012. (Any Orders of Magistrate Judge Gossett according to the rules were nullified by the Order of Chief District Judge Seymour). The rules governing the actions of the magistrate judge read as follows:

> Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., the magistrate is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

The plaintiff filed a response to the defendants Motion to Dismiss and filed the second amended complaint (to this court) on or about September 10, 2012.

As *pro se* the plaintiff was under the understanding that the district court would remand the file or transmit the case back to state court. Via a letter from the defendants dated on or about September 11, 2012, she learned they transmitted the case back to this court.

Plaintiff also completed service on all seven defendants including filing claims to the Attorney General to ensure service because up and until August 9th, 2012 the defendants nor their attorney acknowledged service.

The plaintiff's complaint which list state and federal claims was **not** originally filed as the court and defendants state on October 25, 2011, **but on** January 4, 2010 within the 90 days allowed by Federal law (*See Whitton v Freds, Inc.)*; which should mean that the plaintiff's state claims would **relate** back to the January 4, 2010, initial complaint, the court just declined to exercise jurisdiction over the state claims §1367. It was refiled on October 25, 2012.

The plaintiff had until on or about November 13, 2011 to refile the state pendant claims and state discrimination claims in State Court which she timely refiled on or about October 25, 2011. (See Exhibit II).

III. Reconsider the action time frame or table

October 24, 2008	Plaintiff filled out and signed the intake questionnaire,
November 3, 2008	Letter from EEOC Investigator stating they notified SCHAC and SCDMV
November 13, 2008	Plaintiff signed the charge forms and complaint
November 18, 2008	Adams sent the Notice of Charge and deadline date to respond and provide all documents requested due by December 19, 2008
October 14, 2009	Plaintiff was sent the right to sue letter
January 4, 2010	Plaintiff filed charges in court within the 90 days

IV. Reconsideration of length of employment

The plaintiff has never told this court or the district court that she has been with SCDMV for "almost a decade" to her knowledge. In fact, the plaintiff was not an employee of SCDMV in 2004 she was a temporary employed with Temp-O, from 2004 to on or about July 2006.

In or about July 16, 2006 the plaintiff was hired as a permanent full time employee with SCDMV and at the time she filed her charges of discrimination the plaintiff had been employed for about two years.[7] Making the plaintiff an employee for only two years when she filed this action and currently a total of six years.

[7] Plaintiff's current total length of employee is six (6) years.

The plaintiff choose to keep her employment 1) because she needed to make a living, the plaintiff is over 50 years of age quitting without another position was not an option. Loss of employment would have been loss of benefits, pension , 401k, etc.,

Plaintiff's decision to remain employed does not and should not allow the court to condone violation of plaintiff's civil rights and give the defendants a license to break and violate well established laws because the plaintiff remained employed. The plaintiff each day faces humiliation and the knowledge that she will not amount to anything where before even though she was denied promotions she at least had hope now there is none due to the actions of the seven individual defendants, just the necessity of making a living and the fear that once this action is over she will either be forced to quit or be fired.[8]

V. Reconsideration of Injury Date and Filing

One clear error that this court has made is accepting a made up date by the defendants to mislead the court into believing the plaintiff's suit begin in December 8, 2008 to December 8, 2009, their ever increasing efforts to deceive. (Exhibit II)

Nowhere in the document submitted and obtained via discovery says this is the date of injury - nowhere in any documents submitted by this plaintiff to either of the two courts does the plaintiff allege these dates. [9]

The court has erred by taking the defendants contrived dates as gospel instead of reviewing the evidence before it and see it as true as is the standard set by the South Carolina

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[8] When Judge Manning issued his Order the defendants gathered around the plaintiff work station and basically "high fived" each other that is how the plaintiff learned of the ruling.

[9] Thorough out this process the defendants have lead, applied case law that has been overturned such *Reeves v Sanderson Plumbing* and for whatever reason court has taken whatever has been said or written by the defendants' attorney has true which is not suppose to be how this works. Another case law that is being used is *Lawson v SCDC* the case has no bearing on the complaint filed by the plaintiff and then there is *Will v Michigan Police Department* The defense has also made it a point to inform both these courts of his service in Iraq. The actions should shock the consciousness of this court and if it does not perhaps the Court of Appeal, SC Supreme Court or US Supreme Court.

Supreme Court and the US Supreme Court . These dates show up for the first time in the Defendants' supplement to their motion to dismiss filed on or about October 30, 2012.

VI. Reconsider and ensure the Court is Applying the correct Standard of Review

It is well settled and understood that a SCRP Rule 59(e) motion for reconsideration is appropriate when "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court." *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990), (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

See *Waunakee*, 906 F.2d_at 1191-92 (quoting *Belmont v. Barb*_ 637, 641 (N.Y. Sup. 1869) (Cardozo, J.)). Otherwise, ignoring properly preserved legal error timely brought to the district court's attention after the entry of judgment would put the parties through the unnecessary expense and delay of having to appeal the case to get the error corrected. *Divane v. Krull Electric Co.*, 194 F.3d 845, 850 (7th Cir. 1999) (quoting *Moro v. Shell Oil* Co., 91 F.3d 872, 876 (7th Cir. 1996)).

Plaintiff asserts this court's Order has been mislead by the defendants causing it to misapply laws they are to uphold. Plaintiff asks the court to make a thorough review of the defendants' actions. To insure its Orders are not making erroneous assertions that incorrectly reference plaintiff's complaint and supporting materials, and which, in addition, makes assertions that are the exact opposite of what plaintiff contends. Accordingly, plaintiff seeks alternative relief as follows:

A) Rescission of the Order granting defendants' Motion to Dismiss; or

B) Modification of the Order granting defendants' Motion to Dismiss to the status of "dismissed without prejudice", together with a reasonable time for refiling of the complaint; or

C) At a bare minimum, removal of language from the Order that goes far beyond that which is necessary for purposes of rendering a decision in this case, and/or which concerns issues that are not properly before this court.

The court is obligated to accept as true the well-pleaded factual allegations of the **pro se plaintiff** complaint, at this stage. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-51 (2009).

In reviewing the complaint, the court accepts all well-pleaded allegations of the complaint as true and construes the facts and reasonable inferences derived therefrom in the light **most favorable to the plaintiff**. *Venkatraman v. REI Systems, Inc.*, 417 F.3d 418, 420 (4th Cir. 2005).

VII. Court Reconsider by reviewing the existing evidence, facts and new evidence and revoke its Order to dismiss and allow the plaintiff to per Rule 15 as the plaintiff's action against the Defendants is not Futile and there are clear issues of genuine material fact in place for a jury §15-78-110 and the Statute of Limitations has not run on the plaintiff's claims

It is well established that requests to amend pursuant to Rule 15 of the SCRCP should be "freely given" and that if the granting of amending a complete would be futile the request should be denied. However, in this matter before this court to disallow the request to amend would be a miscarriage of justice. The plaintiff claims does not fall within the two year statute of limitations but the three year.

Despite the courts determine in its November 2012 Order the plaintiff motion is amend is not futile and based on sound law and legal premise – plaintiff with the attention of SCHAC AND the EEOC has ensure compliance with §15-78-110.

A verified claim for damages is a claim that list the loss and how the loss occurred, what caused the loss, the extent of the loss, the time and place of the loss, the names of all person involved, if known and the amount of the loss.

The EEOC filed the loss with the SCDMV[10] – Executive Director Marcia Adams §15-78-110(d) – October 29, 2008 (well within the year of loss) who filed with their required designee stipulated by the Budget and Control Board Richardson, Plowden and Robinson – Eugene H, Matthews, Esq. §15-78-110(b)(c)

The law states that a person cannot file a private claim in court until SCHAC and the EEOC is notified and allowed to investigate the claim and only after they issue a determination can a employee bring action against the state agency.

Joubert v SC Dept of Social Services as case dealing with loss of licensing, etc., "There are two ways to assert damages against a state agency under our Tort Claims Act: 1) the filing of a "verified claim" pursuant to § 15-78-80(a); **or 2) the institution of an action against the appropriate agency** as happened here. *See* S.C. Code Ann. §§ 15-78-80(a) & 15-78-90(b) (Supp. 1999). The **Act defines a claim as "any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty."** S.C. Code Ann. § 15-78-30(b) (Supp. 1999)."

"A twofold purpose is served by a requirement of this kind. First, the governmental entity is put on notice so that it can both conduct an investigation while the facts are fresh and preserve the evidence. *Cochran v. City of Sumter*, 242 S.C. 382, 131 S.E.2d 153 (1963), overruled on other grounds, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Second, a verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent."[11]

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[10] SCDMV is the plaintiff's employer. The plaintiff also filed grievances (2) and she sent an e-mail to Dottie Blankenship of her intention to file an action of discrimination.

[11] In *Jones v. Calvert Group Ltd.*, 4th Cir., No. 07-1680, 1/05/09. The Fourth Circuit ruled that before an individual may file a lawsuit under Title VII or the ADEA, he or she is required to file (or cross-file) a charge of discrimination

VIII. Plaintiff ask the Court to Reconsider its agreement with the defendants as to the December 8, 2008[12] date of injury and beginning of statutory requirements to file a claim

The plaintiff did not file a claim between December 8, 2008 and December 9, 2009 because she had already filed a claim on or about October 9, 2008 and verified it on November 13, 2008 and she sent those claims to the appropriate authorities per §15-78-70 et seq. (As stated previously the December 8, 2008 date must be related to the demotion to data entry which supports the plaintiff's claim of retaliation).

IX. Plaintiff request the court reconsider its use of *Flauteau*

The two year statute of limitations does not apply to this matter before this court **even** if it did the defendants in this action are being sued in their individual capacities for intentional torts therefore there is a three year statute of limitations.

> Three year §15-3-530(5) 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;[13]
>
> Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) **must be commenced within three years** after the

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with the EEOC. The charge is legally sufficient only if it describes with particularity the parties and the actions or practices of which the individual is complaining. The scope of a plaintiff's right to file a federal lawsuit is determined by the contents of that charge; that is, the lawsuit must be based upon the claims described in the charge, or reasonably related to those described in the charge. Typically, a claim submitted to federal court will be dismissed if the EEOC charge alleges one basis of discrimination, and the formal litigation alleges another, unrelated basis.

[12] As the records will show the date provide by the defendants are the date the plaintiff was demoted to data entry under Gail Allison who is supervised by Shirley Rivers

[13] Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) **must be commenced within three years** after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. In determining when a cause of action arose under section 15-3-530, we apply the "discovery rule." See Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989), overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div., 319 S.C. 556, 462 S.E.2d 858 (1995). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). Under this rule, a cause of action accrues for purposes of the statute of limitations when a plaintiff has notice that he might have a remedy for a harm. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Hedgepath, 348 S.C. at 355-56, 559 S.E.2d at 336; Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

X. Controlling case law governing liability in personal and individual capacities

1. *Watt v. Fowler*, et al Opinion No. 24606 - Filed April 21, 1997

2. *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991), the United State Supreme Court held state officials sued in their individual capacities are "persons" for purposes of § 1983. Accordingly, the trial judge erred in directing a verdict on the §1983 claim against Deputy Fowler in his individual capacity.

3. **Andrews v. Daw**, in his individual capacity, No. 98-6329. Argued: Dec. 1,1999 -- January 27, 2000 US Court of Appeals:

> We disagree with the district court's decision and hold that a government employee in his official capacity is not in privity with himself in his individual capacity for purposes of res judicata.
>
> The distinction between a suit against a government employee in his official capacity and a suit against that same official in his individual capacity is readily apparent in this case. This Court affirmed the district court's dismissal of Andrews's first suit against Daw in Daw's official capacity on Eleventh Amendment immunity grounds without addressing the issue of Daw's personal liability under § 1983. This disposition makes it clear that Daw **merely served as a representative of the government when sued in his official capacity and did not represent "precisely the same legal right" as he did when sued in his individual capacity**. Accordingly, we hold that a government official in his official capacity **is not in privity** with himself in his individual capacity for purposes of res judicata.
>
> See *Headley v. Bacon,* 828 F.2d 1272, 1279-80 (8th Cir.1987)
>
> *See Roy v. City of Augusta,* 712 F.2d 1517, 1521-22 (1st Cir.1983) (res judicata did not **bar suit against individuals sued in their personal capacities who appeared in earlier action in** their official capacities);
>
> *See Unimex, Inc. v. United States Dep't of Hous. & Urban Dev.,* 594 F.2d 1060, 1061 n. 3 (5th Cir.1979) (per curiam)
>
> III. In sum, we hold that a government employee in his official capacity is not in privity with himself in his individual capacity for purposes of res judicata, and, therefore, the district court erred in dismissing Andrews's suit on that ground. *Daws*

XII. Reconsider Lawson as a controlling case in barring the Plaintiff's civil conspiracy Claims -- controlling case

1. See *4770 - Pridgen v. Ward decided December 22, 2012* -- "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*, Op. No: 4730 (S.C. Ct. App. Filed Aug. 25, 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.

2. *Anthony v Ward No.* 07-1932. Unpublished. US Court of Appeals for the Fourth Circuit

LAWSON v SCDC is not the controlling law in this action

Lawson is a whistleblower cause of action. The plaintiff was retaliated against for engaging in protected activity which she was federally and stately allowed to do without threat of retaliation.

Unlike Lawson the plaintiff has pointed out provisions and policies that says an employee cannot be retaliated against for engaging in a protected activity, that a person should not have to suffer humiliation, harassment and a hostile work environment, a person has a right to not have her pay docked for no reason except at the whim of supervisor and her supervisor, that a person should not be demoted and forced of her job, have employees destroy her career or opportunities with her employer, be demoted , be denied promotion due to her age, especially when has written grievances and followed all avenues but the people with the authority refused to act when they are obligated by law to act.

Unlike Lawson the plaintiff did file a report, grievances and charges.

Unlike Lawson the plaintiff did not hear to employees talking about dismissing her, she heard, was written up and put in a position to be dismissed, the defendants used a legal process to obtain an illegal purpose, they signed documents, something two on the same line with a third signature.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff.; LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711, 713 (1988). There are seven individually named defendants.

Unlike Lawson the plaintiff listed and alleged special damages.

Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989).

The defendants not merely have a discussion the planned, conspired and implemented and only Stopped on December 8, when they were informed the plaintiff had filed to the EEOC.

The plaintiff's conspiracy allegations are based on actions of seven defendants:

- actions that lead to her being demoted to an aged area in the SCDMV (data entry),
- her being blacklisted as a direct retaliation of engaging in a protected activity
- her never having the opportunity to move forward with the state which will forever be a data entry operator with a four year degree,
- the defendants planned and implemented actions that conspired to harm the plaintiff,
- Placed documented evidence of their heir efforts to have the plaintiff dismissed in the plaintiff's personnel file
- they had the plaintiff pay docked two days for using sick leave, based on unfounded allegations of misusing leave,
- retaliated against the plaintiff when she engaged in a protected activity in violation of well established state and federal law

- the defendants began the process of placing two out of three unfounded reprimands in the plaintiff personnel file – with one as Autry stated being her dismissal from her employment.

The ultimate retaliatory act against the plaintiff occurred in a meeting with Tosha Autry – Employee Relations Manager and Dottie Blankenship – Director of Human Resources in or about December 2008[14]; were the plaintiff was demoted to data entry under the remaining overall supervisor of Rivers as dictated by Adams and the immediate supervision of Gail Allison.

Autry told the plaintiff during this meeting that she was demoted down to data entry and if there was one more infraction she would be dismissed as this was her last warning and the third reprimand.

Where the time between the events is too great to establish causation based solely on temporal proximity, a plaintiff must present "other relevant evidence . . . to establish causation," such as "continuing retaliatory conduct and animus" in the intervening period. Lettieri v. Equant Inc., 478 F.3d 640, 650 (4th Cir. 2007).

ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) ("[T]he intracorporate immunity doctrine **does not** apply where a corporate 'officer has an independent personal stake in achieving the corporation's illegal objectives.'" (quoting *Greenville Pub. Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974))); *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves.") (emphasis added); *Garza v. City of Omaha*, 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, **an**

[14] Plaintiff reported the forced demotion to the EEOC investigatory on or about December 2008.

intracorporate conspiracy may be established where individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.").

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).

The Court went on to say that "An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business." *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). "**On the other hand**, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment." *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986).

XIII. Reconsider plaintiff claims for negligent and intentional infliction of emotional distress And exclusivity of the Workers Compensation Act – SCDMV and individual named defendants as

S.C. Code Ann. § 42-1-540 (1985) (emphasis added).

The Workers' Compensation Act is the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, Op. No. 3763 (S.C. Ct. App. filed March 22, 2004) (Shearhouse Adv. Sh. No. 12 at 16); *see also Strickland v. Galloway*, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002) ("In circumstances in which the South Carolina Workers' Compensation Act covers an **employee's work-related accident**, the Act provides the exclusive remedy against the employer."). The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee

sustains a work-related injury. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

Fourth District Court of Appeal held in *Kovatck v. California Casualty Management Co.*, 65 Cal.App.4th 1256 (1998) that a plaintiff could state a claim for intentional infliction of emotional distress against his or her employer based on the harassment of the supervisor.

To establish a claim for negligent infliction of emotional distress, a plaintiff must allege that "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress, and (3) the conduct did in fact cause the plaintiff severe emotional distress." *Gardner v. Gardner*, 334 N.C. 662, 665-66, 435 S.E.2d 324, 327 (1993) (citations omitted).

In *Edens v. Milliken & Company* the South Carolina Supreme Court - the intentional tort exception is created through a deliberate intent to injure: The exception to the exclusivity provision is **based upon the nature** of the act that caused the injury—whether it was intentional or accidental. **Only** injuries caused by an "accident" are within the jurisdiction of the Commission. Intentional infliction of emotional distress is not an "accident." "[T]he employer will not be heard to allege that the injury was 'accidental' and therefore was under the exclusive provisions of the Workmen's Compensation Act, **when he himself intentionally committed** the act." 2A Larson, The Law of Workmen's Compensation § 68-11 (1989). **A common law cause of action will not be barred by the exclusivity provisions when the employer manifests a deliberate intent to injure the employee.** This exception is applicable to the intentional infliction of emotional distress. In *Stewart [v. McLellan's Stores Co.*, 194 S.C. 50, 9 S.E.2d 35 (1940)], we recognized that an employee can maintain a common law action for the employer's intentional assault and battery. We extend that rule to allow actions for the intentional infliction

of emotional distress. As this is the only type of tort which is involved in this case, we express no opinion as to the application of the exception to other intentional torts.

In *Peay v. U.S. Silica Co.*, 313 S.C. 91, 437 S.E.2d 64 (1993), the South Carolina Supreme Court inculcated: **It is well settled that a common law cause of action is not barred by section 42-1-540 if the employer acted with a deliberate or specific intent to injure the employee.** See also 2A Larson's Workmen's Compensation Law § 68.10 (1993) (hereinafter "Larson's"). . . . Giving the intentional injury exception to section 42-1-540 its most narrow construction, we find that only those injuries inflicted by an employer who acts with **a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage.** Accord 2A Larson's, § 68.13. Consequently, we decline to follow

XVI. Reconsideration of plaintiff claims for Defamation

The plaintiff has brought charges of defamation that are written or oral communications that injures a third person reputation. The defendants has libeled and slandered the plaintiff verbally and in writing as the many documents and her own first had testimony will show. The defendants has ruined the plaintiff reputation by accusing her of abusing her leave not only with her at well employer but with any future supervisors or directors as these accusations are in her personnel file the accusation were made with malice and with the full intent to lead to the dismissal of the plaintiff as abuse of leave is a dismissing for employment offense.

Adams has told third parties that the plaintiff cannot be removed from the supervision of Rivers. She told the plaintiff in front of Lake and Phelps the plaintiff was under no circumstances be removed from the supervision of Rivers after the plaintiff engaged in a protected activity on October 6, 2008 and reported to her of the abuse, hostile work environment, harassment, etc.,

she was enduring at the hands of the defendants to include having her pay docked for use of sick leave.

Adams in this instance was acting with intentional and gross negligence and outside the scope of her employment when she violated clearly established federal and state rights of the plaintiff not retaliate against the plaintiff for engaging in a protected activity,.

XV. South Carolina Torts Claims Act (SCTCA)

The Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities **are "liable for their torts in the same manner and to the same extent** as a private individual under like circumstances," subject to certain limitations and exemptions provided in the Act. S.C.Code Ann. § 15-78-40 (Supp.2003).

The plaintiff has named and has sued the defendants in their individual capacities and according the SC TCA the defendants are just as liable for their intentional torts as the plaintiff and any private individual.

The defendant had no more right to violate or take away the plaintiff civil rights than she would if she had conspired, concealed and implemented a plan as the defendants did after October 6, 2008. The defendants even went so far as to dock the plaintiff's pay for legitimate use of sick leave.

STATUTORY PROTECTIONS

Discrimination: An employee may not be discharged (or discriminated against) in retaliation for opposing an unlawful discriminatory practice. Nor may an employee be discharged (or discriminated against) in retaliation for making a charge, testifying, assisting, or participating in an investigation, proceeding, or hearing under the South Carolina Human Affairs

Law. The South Carolina Human Affairs Law prohibits discrimination on the basis of race, religion, color, sex, age, national origin, or disability. S.C. Code Ann. § 1-13-80(F).

In *Whitten v. Fred's, Inc.* 09-1265-- April 01, 2010 the Fourth Circuit reversed a grant of summary judgment for the employer, concluding that the plaintiff had met the filing requirements under South Carolina law. The employer contended that the plaintiff could not sue under the South Carolina law because she had never filed a Charge with SCHAC. The Fourth Circuit rejected this reasoning, concluding that filing an EEOC Charge that was forwarded to SCHAC met this procedural requirement.

(1) **Dismissal** in this case is particularly unwarranted given that the statute of limitations has not run at the time the plaintiff refiled her complaint in this court on or about October 25, 2011; (2) the plaintiff did file a verified claim with SCHAC and the EEOC who filed the charges or claim to Marcia Adams, Executive Director of SC DMV on or about October 28, 2008 (see exhibits), who submitted those claims to here designee the acting Attorney Matthews; (3) the plaintiff has sued each of the defendants under SCTCA Law for intentional wrong doing as the act clearly state that state employees are liable for their intentional torts as everyone else and the law allows personal suit against state employees who has acted outside the scope of their office; (4) discovery has been conducted and completed and this court has all of the evidence submitted by the plaintiff that could allow a jury to rule in her favor; (5) Under §1983 the plaintiff is not required to file a verified claim, file to SCHAC or the EEOC to bring an action for monetary damages against each state defendant in their individual capacities and there is three year statute of limitations; (6) this action is not being brought in federal court therefore that defendants can be sued in their individual capacities in state court for intentional torts, gross negligence, civil conspiracy, intentional and negligent infliction of emotional distress

as intentional torts are not covered under the exclusivity of the workers compensation act – it is the exception – the act is for accident occurring in the course of employment it does not support intentional actions to calm harm; (7) the defendants intentional or unintentionally provided this court with wrong dates of offense and the dates of December 8, 2008[15] to December 8, 2009 goes to prove the retaliation continually suffered by the plaintiff until she was given permission via the Right to Sue letter to dated October 14, 2009, and within 90 days the plaintiff brought suit against the SCDMV and the individual defendants which she did in January 1, 2010 (See *Whitton v Freds, Inc.*); (8) there is no statute of limitation on claims brought under §1983 and if there was it would be three years not two via rulings of the US Supreme Court; (8) §15-3-550(5)(7) govern the statute of limitations in this action before this court.

Under the SCTCA, an action must be commenced within two years[16], three years if a verified claim or pre suit is filed of the incident giving rise to the cause of action. S.C. Code Ann. §§ 15-78-100 and 15-78-110; *Hackworth v. Greenville County and Greenville County Sheriff's Department*, 637 S.E.2d 320, 322 (S.C. Ct. App. 2006).

In the plaintiff's causes of action, she has clearly alleged the defendants actions were "intentional, gross and malicious, etc." and outside the scope of their employment. The SCTCA does not grant an employee "immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his or official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b).

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[15] Plaintiff was forcibly demoted down to data entry, she believes, on this date by Autry and Blankenship under the supervision of Gail Allison who is supervised by Shirley Rivers therefore she as instructed by Adams remains under Rivers supervision.
The court should also note that the dates of December 8, 2008 to December 8. 2009 has never played a factor in these proceedings, not in federal court were discovery was completed and not in this court until the defendants' supplement to their Motion to Dismiss filed after defendants' attorney spoke to Judge Barber outside the presence of the plaintiff.

[16] If a plaintiff files a statutorily-defined verified claim 1 within one year of the loss or injury, the statute of limitations is extended to three years. *See* S.C. Code Ann. §§ 15-78-80, 15-78-110. There is no indication in this case that the plaintiff filed a verified claim.

In such a case, a government employee **can be** held personally liable. Based upon the allegations in the complaint, the SCTCA statute of limitations would not apply to these claims. The statute of limitations for a gross negligence claims is three years and therefore the plaintiff claims would be timely. *Id.* § 15-3-530(5).

Based on the above information this court should reconsideration it's Order to dismiss the actions against Adams, Rivers, Walker, Rhett, Davis, Autry and Blankenship all named individually and in their individually capacities).[17]

The plaintiff has made allegation of personal involvement that constituted the intentional infliction of emotional distress which is an act of a personal nature and not in the furtherance of the employer's business therefore the defendants can be held liable in their individual capacties.

The defendants further argue that they cannot be held liable under a *respondeat superior* theory on the § 1983 claims. The doctrine of *respondeat superior* generally is inapplicable §1983 suits. *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978); *Vinnedge v. Gibbs*, 550 F.2d 926, 928-29 (4th Cir. 1977).

However, the defendants could potentially be held liable under a supervisory theory of liability. The plaintiff must establish three elements to hold a supervisor liable for a constitutional injury inflicted by a subordinate: (1) the supervisor had actual or constructive knowledge that a subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury to people like the plaintiff; (2) the supervisor's response **was so inadequate** as to constitute deliberate indifference or tacit authorization of the subordinate's conduct; and (3) there is an "affirmative causal link" between the supervisor's inaction and the plaintiff's constitutional injury. *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir.), *cert. denied*, 513 U.S. 813 (1994).

[17] The actions of the defendants should shock the consciousness of this court

As discovery has been completed the plaintiff can show that the "were aware of their actions against her, and that they each were complicit as participants for . . . failing to halt and correct such actions."

Given the above this court should reconsider it Order and revoke and instate the plaintiff actions as the plaintiff's pleading is sufficient to survive a motion to dismiss. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ... [f]actual allegations must be enough to raise a right to relief above the speculative level.").

However, as the plaintiff is suing in state court and the defendants in their individual capacities they are liable and §1983 allows them to be sued in this capacity.

The Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities **are "liable for their torts in the same manner and to the same extent** as a private individual under like circumstances," subject to certain limitations and exemptions provided in the Act. S.C.Code Ann. § 15-78-40 (Supp.2003). Flateau, 355 S.C. at 204, 584 S.E.2d at 416.

In making its ruling the court did not take into account the documented evidence filed with the court clearly tells the court the actual and true sequence of events prior to the filing of this claim – nor did the court consider the fact that discovery has been complete in this matter. and already submitted into evidence.

In the case of *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989), the Supreme Court analyzed the interplay between § 1983 and the Eleventh Amendment of the Constitution and stated:

> Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal

> forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity (cites omitted) or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity.

Plaintiff is well aware she cannot sue the defendants in federal court in their official capacities. She is suing the defendants in state court in their individual capacities. This matter was remand from federal court.

See *Scheuer v. Rhodes,* 416 U.S. 232, 237 (1974), *overruled on other grounds,*

See *Davis v. Scherer,* 468 U.S. 183 (1984). A plaintiff who seeks damages for violation of constitutional or statutory rights may overcome the defendant official's qualified immunity only by showing that those rights were clearly established at the time of the conduct at issue

Harlow v. *Fitzgerald,* 457 U.S. 800 (1982),

In conclusion, the plaintiff asks this court to revoke or repeal its Order dated on or about November 15, 2012. That the court rule in her favor as there appears to be no defense for the defendants action given the amount self serving actions they have thus fair demonstrated. If the court does not rule in the plaintiff favor on a directed verdict the plaintiff as that this matter is placed on the docket to be heard at the court earliest date as this matter is not or should not be subject to dismissal.

If the court does not see fit to do the right the thing in the interest of justice plaintiff ask this court to clarify its position for appeal purposes.

Respectfully submitted by,

Glenda R. Couram, *pro se*
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 25th day of November 2012
Lexington County, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, and SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	))))))))))))))	C/A No.: 2011-CP-40-07134 **DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION UNDER RULE 59(e), S.C.R.Civ.P.**

On November 5, 2012, this Court heard oral arguments and reviewed the briefs submitted by parties concerning the Motion to Amend Complaint of Plaintiff Glenda R. Couram, and the Motion to Dismiss of Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and the South Carolina Department of Motor Vehicles ("SCDMV"), in their official and individual capacities (hereinafter collectively the "Defendants"). Both motions were calendared to be heard during the week of November 5, 2012 by Order of The Honorable James R. Barber, III, filed on October 16, 2012. (See Order, attached as Exhibit "A").

On November 15, 2012, this Court filed an order denying the Plaintiff's Motion to Amend Complaint, granting the Defendants' Motion to Dismiss, and dismissing the case with prejudice.

On November 25, 2012, Plaintiff served a "Memorandum for Reconsideration" upon counsel for Defendants under Rule 59(e), S.C.R.Civ.P. She generally faults the Court for erring

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"in failing to apply the correct controlling laws and statutes when it comes to seeing justice done in the matter..." (Plaintiff's Motion, p. 1).

For the reasons detailed below, this Court should DENY Plaintiff's Motion for Reconsideration.

LEGAL ARGUMENT

Plaintiff is a *pro se* litigant and her pleadings are not uniformly clear. In her most recent pleading – her Motion for Reconsideration – she has included citations to legal authority that are relevant to her previously-dismissed federal claims and has engaged in *ad hominem* attacks against opposing litigants and counsel. Nevertheless, in a light most favorable to her, it appears to Defendants that Plaintiff is attempting to make the following arguments in her Motion for Reconsideration:

1. Judge Barber scheduled the Plaintiff's Motion to Amend her Complaint for hearing on November 5, 2012, but did not schedule Defendants' Motion to Dismiss. (Plaintiff's Motion, p. 2).

2. Plaintiff did not have proper notice of the statute of limitations defense that Defendants raised at the hearing on November 5, 2012. (Plaintiff's Motion, p. 2).

3. Judge Manning did not allow Plaintiff adequate time to present her case. (Plaintiff's Motion, p. 3).

4. Defendants mislead the Court as to the proper date that Statute of Limitations on her claims began to run. (Plaintiff's Motion, pp. 3).

5. Plaintiff's Charges of Discrimination filed with the EEOC and South Carolina Human Affairs Commission (SCHAC) served as a "verified claim" under the South Carolina Tort Claims Act. (Plaintiff's Motion, pp. 9-10, 20).

6. The Court should use the three-year statute of limitations found at S.C. Code Ann. § 15-3-530(5) rather than the two-year statute of limitations period in the South Carolina Tort Claims Act. (Plaintiff's Motion, pp. 11-12).

7. Plaintiff's circumstances are different from the plaintiff's circumstances in *Lawson v. South Carolina Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000), regarding her claim for civil conspiracy. (Plaintiff's Motion, pp. 13-16).

8. The doctrine of workers' compensation exclusivity does not bar Plaintiff from bringing her claim for intentional infliction of emotional distress. (Plaintiff's Motion, pp. 16-18).

9. Finally, "[i]f the court does not see fit to do the right [] thing in the interest of justice plaintiff ask [*sic*] this court to clarify its position for appeal purposes." (Plaintiff's Motion, p. 24).

None of these arguments has any merit, as detailed below.

1. Regarding Judge Barber's Order, Plaintiff is simply wrong. The Order was filed on October 16, 2012, specifically states that both the Defendants' Motion to Dismiss and the Plaintiff's Motion to Amend Complaint were scheduled to be heard during the week of November 5, 2012. (See Exhibit "A").

2. As to notice regarding the Defendants' statute of limitations defense, Plaintiff's allegation is again simply contrary to her own representations. Plaintiff actually admitted receiving the Defendants' supplementary memorandum prior to the hearing. (Plaintiff's Motion, p. 2). It is also undisputed that Defendants raised the issue of limitations in their Motion to Dismiss filed in federal court in September 2012, and even did so as an affirmative defense in their Answer filed in federal court on November 29, 2011.

3. Judge Manning meticulously allowed Plaintiff to speak at length at the hearing, as the record of the hearing will reflect.

4. As to Plaintiff's allegations that Defendants misled the Court as to the proper date that the Statute of Limitations on her claims began to run, Plaintiff appears to be confused on the concept of "discovery" as it relates to beginning of the limitations period. According to Plaintiff's own pleadings, the most recent date related to the actions of which she complains is December 8, 2008. Nothing in her pleadings indicates otherwise. Because she did not file her claim until October 2011, the Statute of Limitations applicable to her claims expired prior to the commencement of this lawsuit.

5. For the reasons explained in Defendants' earlier memoranda, and the plain text of S.C. Code Ann. § 15-78-80, Plaintiff's Charges of Discrimination filed with the EEOC and South Carolina Human Affairs Commission (SCHAC) may <u>not</u> serve as a "verified claim" under the South Carolina Tort Claims Act (SCTCA), as this Court has previously observed.

6. Because of Plaintiff's failure to abide by the standards for "verified claims" under the SCTCA, the two-year limitations period found at S.C. Code Ann. § 15-78-110 must apply to her claims for the reasons explained in Defendants' earlier memoranda, and pursuant to the plain text of the S.C. Code Ann. § 15-78-80, and the ruling in *Flateau v. Harrelson*, 355 S.C. 197, 208 584 S.E.2d 413, 418-419 (S.C. App. 2003).

7. Plaintiff misunderstands the relevance of the holding in *Lawson v. South Carolina Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000), to her civil conspiracy claim. Simply put, the types of complaints made by Plaintiff – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson.* This is especially in view of the fact that, unlike the employee in *Lawson*, the Plaintiff has not been terminated.

8. In arguing that the doctrine of workers' compensation exclusivity does not bar Plaintiff from bringing her claim for intentional infliction of emotional distress, Plaintiff simply ignores the South Carolina Supreme Court's holding in *Loges v. Mack Trucks, Inc.,* 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992), and *Dickert v. Metropolitan Life Ins. Co.,* 311 S.C. 218, 428 S.E.2d 700 (1993), that intentional infliction of emotional distress claims are covered by the exclusive remedy provision of the Workers' Compensation Act as to claims against SCDMV and individual defendants in their official capacities.

9. With regard to Plaintiff's contention that "[i]f the court does not see fit to do the right [] thing in the interest of justice plaintiff ask [*sic*] this court to clarify its position for appeal purposes," Defendants observe that the Court has correctly applied the appropriate standards of review to the pleadings in this case, and has reached a clear, cogent, and just decision on the grounds that it has set forth. There is, therefore, no occasion for the Court to further "clarify" its "position."

CONCLUSION

For the reasons stated above, Plaintiff's Motion for Reconsideration is without merit. Therefore, this Court should DENY the Plaintiff's motion and grant the Defendants such other relief as the Court deems just and proper.

Dated this the 3rd day of December, 2012.

Respectfully submitted,

367 S.C. at 564, 626 S.E.2d at 887. For this reason alone, Plaintiff's civil conspiracy claim must be dismissed with prejudice.

B. PLAINTIFF'S ALLEGATIONS FAIL TO STATE A CIVIL CONSPIRACY CLAIM UNDER *LAWSON V. SOUTH CAROLINA DEPT. OF CORRECTIONS.*

As a matter of law, Plaintiff's allegations do not state a cause of action for civil conspiracy, especially in view of the fact that Plaintiff has remained an employee of SCDMV, and by her own account has been employed at SCDMV for nearly a decade. *Lawson v. South Carolian Dept. of Corrections,* 340 S.C. 346, 532 S.E.2d 259 (2000). DMV 2004 PT TEMP 2007 - present - 6 yrs

In *Lawson*, an employee of the South Carolina Department of Corrections (SCDC) sued two of his supervisors for allegedly conspiring to terminate his employment. 340 S.C. at 349, 532 S.E.2d at 260. The South Carolina Supreme Court granted summary judgment on the claim, noting that "[a]llegations based solely upon two supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action." 340 S.C. at 352, 532 S.E.2d at 261-262. Not a mere discussion of demand the defendant petition motion a lack for dismissal - that ended upon EEOC

Similarly, the types of complaints made by Plaintiff – that her supervisors and other SCDMV officials conspired to interfere with her employment – are simply not cognizable under the precedent established in *Lawson*. For this reason alone, her civil conspiracy claim must be dismissed with prejudice.

CONCLUSION

Plaintiff's Amended Complaint has failed to state any claim for which relief can be granted. For the reasons set forth above, Plaintiff's Amended Complaint [NEF Dkt. 60] must be DISMISSED with prejudice, and this Court should grant the Defendants such other relief as the Court deems just and proper.

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by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

December 3, 2012

The Honorable Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
PO Box 2766
Columbia, SC 29202-2766

RE: Glenda R. Couram v. Lula N. Davis, et al.
C/A No.: 2011-CP-40-07134
Our File No.: 181-545

Dear Ms. McBride:

Enclosed for filing please find the original and one copy of the *Defendants' Response to Plaintiff's Motion for Reconsideration under Rule 59(e), S.C.R.Civ.P.* in the above matter. I would appreciate your filing the original and returning the extra clocked copy to our office in the self-addressed stamped envelope enclosed.

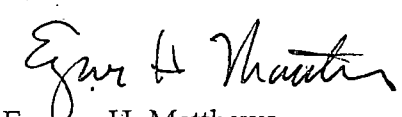
By copy of this letter, I am hereby serving the same upon the *pro se* Plaintiff.

Should you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews

/jlm
Enclosures as Stated

cc: Glenda R. Couram, *pro se* (w/encl.)

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Richland	)	
	)	
	)	
Glenda Couram,	)	
	)	
Plaintiff,	)	Case No: 2011-CP-40-07134
	)	
versus	)	Date: November 5, 2012
	)	
Lula Davis, Shirley Rivers, Constance Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven Lake, and the South Carolina Department of Motor Vehicles, in their official and individual capacities,	)	Columbia, South Carolina
	)	
Defendants.	)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable Cayce Manning

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

Glenda Couram
SELF-REPRESENTED PLAINTIFF

Eugene Matthews, Esquire
ATTORNEY FOR THE DEFENDANTS

TRANSCRIPT PROVIDED FOR: GLENDA COURAM

FOR COPIES CONTACT: DeeAnne Varnadoe
dvarnadoe@sccourts.org
Official Court Reporter
South Carolina Judicial Department

TRANSCRIPT PREPARED FOR GLENDA COURAM

I N D E X

E X H I B I T S

FOR THE PLAINTIFF:

(NONE WERE SUBMITTED FOR THIS HEARING)

FOR THE DEFENDANT:

(NONE WERE SUBMITTED FOR THIS HEARING)

1 P R O C E E D I N G S

2 THE COURT: All right. Number 31 is Couram versus
3 Davis; is that you, sir?
4 MR. MATTHEWS: Yes, sir. I'm representing the
5 Defendants; Gene Matthews, Your Honor. The Plaintiff is
6 Glenda Couram, Your Honor.
7 This is a -- It comes here from or after a remand from
8 federal court.
9 GLENDA COURAM: Excuse me, sir.
10 THE COURT: Yes, ma'am.
11 GLENDA COURAM: I'm the one who filed the Motion to
12 Amend.
13 THE COURT: Ma'am?
14 GLENDA COURAM: I'm the one that filed the Motion to
15 Amend.
16 THE COURT: Okay. All right. Relax.
17 GLENDA COURAM: So shouldn't I go first?
18 THE COURT: Just relax. Let me get the file.
19 (THE COURT REVIEWS DOCUMENTS FROM THE BENCH)
20 THE COURT: You're Ms. Couram?
21 GLENDA COURAM: Yes.
22 THE COURT: Okay. And it's your Motion to Amend?
23 GLENDA COURAM: Yes, sir.
24 THE COURT: All right.
25 MR. MATTHEWS: And our Motion to Dismiss, Your Honor.

1 THE COURT: Okay.
2 GLENDA COURAM: I object to that, sir, because that's
3 ---
4 THE COURT: Just hold on a minute, please. Thank you.
5 (THE COURT REVIEWS DOCUMENTS)
6 THE COURT: And while we're sorting through that, who
7 else is here for whom? I don't think I have anything else
8 here ---
9 MR. MATTHEWS: These are -- these are my clients.
10 THE COURT: Okay. All right.
11 (THE COURT REVIEWS DOCUMENTS)
12 THE COURT: All right. What I have on Number 31 is I
13 have a Motion to Amend that is listed on this docket, and
14 Mr. Matthews, you've indicated that you have a Motion to
15 Dismiss.
16 MR. MATTHEWS: Yes, sir.
17 THE COURT: All right.
18 MR. MATTHEWS: May I approach?
19 (DOCUMENTS ARE PASSED UP TO THE COURT)
20 THE COURT: Yes, ma'am.
21 GLENDA COURAM: I object to the Motion to Dismiss
22 because ---
23 THE COURT: Ma'am?
24 GLENDA COURAM: I object ---
25 THE COURT: That's fine.

1 GLENDA COURAM: --- to the Motion to Dismiss.
2 THE COURT: Let -- let me tell you how it's going to
3 work. You get a chance to say what you want to say and he
4 gets a chance to say what he wants to say, and then I'll
5 give you both a chance to say what you want to say in
6 regards to what each other has said, and then I'll make a
7 decision.
8 Now, what I have listed on my docket is the Motion to
9 Amend. We'll hear that first.
10 MR. MATTHEWS: Very good, Your Honor.
11 THE COURT: All right.
12 MR. MATTHEWS: If I may approach, though?
13 THE COURT: Yes, sir.
14 MR. MATTHEWS: Judge -- Judge Barber has issued this
15 order that ---
16 THE COURT: Okay. That's fine. That's fine.
17 MR. MATTHEWS: --- has brought us here today.
18 THE COURT: We'll take our time, we'll take our time.
19 Everybody is going to get a chance to say everything they
20 want to or need to.
21 (THE COURT REVIEWS DOCUMENTS)
22 THE COURT: This matter is Defendants' Motion for
23 Continuance from the case being placed on the jury roster
24 until they . . .
25 (THE COURT CONTINUES READING DOCUMENTS FROM BENCH)

1 THE COURT: So Judge Barber said to proceed with
2 hearing these motions, but in regards to what my ruling is,
3 it's not set to be set {verbatim} until January.
4 MR. MATTHEWS: That's correct, Your Honor.
5 THE COURT: Okay. All right. So, is everybody ready?
6 MR. MATTHEWS: Yes, sir, Your Honor.
7 THE COURT: And this is your Motion to Amend?
8 GLENDA COURAM: Yes.
9 THE COURT: Is that correct, Ms. Couram?
10 GLENDA COURAM: Yes, sir.
11 THE COURT: All right.
12 GLENDA COURAM: Okay. Are we going to do the Motion
13 to Amend first?
14 THE COURT: Yes, ma'am.
15 GLENDA COURAM: Okay.
16 A Motion to Amend is controlled by Rule 15(a) of the
17 South Carolina Rules of Civil Procedure which provides --
18 which provides, in part, that a party may amend his
19 pleading only by -- only by leave of Court or by written
20 consent of the adverse party, and leave shall be freely
21 given. And, of course, the Couram versus Davis case has
22 the controlling authority. The Defendants would not suffer
23 any prejudice because they have been aware of this action
24 since October 2008.
25 If -- I initially filed -- I'm sorry.

1 THE COURT: Relax.

2 GLENDA COURAM: I'm a little bit nervous. Okay.

3 THE COURT: Relax.

4 GLENDA COURAM: I initially filed this action in 2010,
5 January of 2010, but it was in federal court and the
6 federal court dismissed and Judge Perry ruled on it and so
7 forth, and Judge Perry did not rule on mine because I had a
8 pending claim. He -- he dismissed with prejudice --
9 without prejudice, without prejudice.

10 THE COURT: All right.

11 GLENDA COURAM: Therefore, I was able to bring the
12 claim again in this Court, in the Richland County Court,
13 which I did on October 25th, on or about October 25th.

14 The Defendants moved the case to federal court. They
15 said that I had a federal question, and I wasn't allowed to
16 bring anything -- the federal question back again in
17 federal court according to Judge Perry's order.

18 Judge Seymour on -- on or about August 20th remanded
19 the case back to this Court because there was no longer any
20 federal question, so it was remanded back to this Court.

21 I filed a Motion to Amend because of the fact that
22 everything was based on federal -- federal and civil
23 procedures and I wanted to amend to make sure I had
24 everything in that Complaint related to this Court and how
25 this Court rules and how this system works. So I filed the

1 Amended Complaint which is the Third Amended Complaint, not
2 the Fourth Amended Complaint.
3 So, as I was saying, the -- the section of law that
4 controls that is Rule 15 which says that the Court can --
5 the Court is encouraged to be liberal about allowing
6 motions to amend.
7 Defendants -- The Defendants would not be prejudiced
8 by allowing this -- my Complaint to be amended because of
9 the fact that they were the ones who moved this to federal
10 court and they have been involved in this from the very
11 beginning, even from the time that it went to court in
12 January 2010 up until the time that it was remanded back to
13 this Court in August, and the same attorney has been
14 involved.
15 Also, the only way the Court -- a case should be
16 allowed to be amended is if there is a reason for it, such
17 as if there is any question of whether or not I can succeed
18 in this Court, an Amended Complaint should be allowed
19 according to the rules.
20 And as far as prejudice is concerned, the Court says
21 that a lack of notice that a new issue is going to be
22 tried, which is not the case in this matter, and a lack of
23 opportunity to refute, which is not a matter in this
24 consideration, and that's controlled by *Parker versus*
25 *Spartanburg Sanitary Sewer District*. Do I need to give you

1 the case number and all of that?

2 THE COURT: No, ma'am.

3 GLENDA COURAM: Okay.

4 And it goes on to say that -- the Court goes on to say

5 that the right to amend is so broad that leave to amend a

6 pleading should be -- should be denied only when the

7 amendment will prejudice the opposing party, which I have

8 stated would not happen in this case; and it is quoting --

9 the citing is *Edwards versus the City of Goldsboro*, and

10 that's in the Fourth Circuit Court, and *Johnson versus*

11 *Oroweat Foods Company*, and that is also in the Fourth

12 Circuit Court.

13 Also -- it's also the -- the only way this Court

14 should deny an amended complaint is if it's a futile

15 situation, which is not the case here because I have

16 provided the Court with a prima facie case which I also

17 provided with all my claims and my claims are not statute-

18 barred.

19 So, based on Rule 15(a) of the South Carolina Rules of

20 Civil Procedure and *Foggie versus CSX Transportation*, this

21 Court should allow me to be able to amend my Complaint.

22 THE COURT: All right. Thank you, ma'am.

23 Yes, sir, Mr. Matthews.

24 MR. MATTHEWS: Thank you, Your Honor. If I may

25 approach?

1 THE COURT: Yes, sir.

2 MR. MATTHEWS: I have a copy of our response. I think
3 you already have a copy.

4 THE COURT: You can just sit at the table, Ms. Couram.
5 Thank you.

6 MR. MATTHEWS: Your Honor, as a -- I think that Ms.
7 Couram ---

8 GLENDA COURAM: Sir?

9 MR. MATTHEWS: --- was ---

10 THE COURT: Yes, ma'am.

11 GLENDA COURAM: I still would like to object to Mr.
12 Matthews going on with the Motion to Dismiss -- the
13 dismissal because ---

14 THE COURT: Let me -- let me explain to both of you
15 how it's going to work. You made a Motion to Amend. I
16 listened to you. He needs to respond to that. I'm going
17 to allow him to make his Motion to Dismiss. You've got to
18 listen and then you can respond to it. Have a seat.
19 You may proceed.

20 MR. MATTHEWS: Thank you, Your Honor.

21 Ms. Couram, I think, is correct in going over some of
22 the procedural history of the case. Ms. Couram sued a
23 number of these Defendants under a number of a set of
24 claims, as she said, in January of 2010 in federal court,
25 although that case was dismissed in March of 2010 -- I'm

1 sorry, 2011 -- by Judge Perry and then he declines to
2 exercise jurisdiction over the pending state law claims.
3 The case -- the current case was filed in, as she
4 states, in October of 2011 and, as you know, that's 30 days
5 after the time she would have mutually have been permitted
6 to file under 28 U.S.C. 1637. She re-filed in the circuit
7 court and that is an important issue, we think, as to our
8 statute of limitations argument.
9 The case that was filed in October of 2011 did include
10 a number of federal claims and we moved it into federal
11 court. There was an extensive motions practice over
12 whether or not the case should be remanded. Ultimately,
13 the Court decided that the Amended Complaint that she had
14 filed removed federal causes of action and it was ripe to
15 be remanded to state court and, of course, that's the large
16 box you have sitting behind you.
17 While the case was still -- we had -- and then there
18 is some more recent procedural history we think is also
19 important.
20 On August 7, 2012 is when what has been described in
21 the federal pleadings at least as the Third Amended
22 Complaint was granted. Her Motion to Amend was granted by
23 Judge Gossett.
24 A couple of days later we filed our Motion to Dismiss
25 on August 9.

1 And on August 21, in response to that motion, Judge
2 Seymour was the one who said I'll lift this Complaint, I
3 don't think they are federal claims and I'm not going to
4 exercise jurisdiction over them and you're going back to
5 state court.
6 THE COURT: All right.
7 MR. MATTHEWS: And in the process of going back to
8 state court, on September 11, 2012, the Plaintiff filed a
9 Motion or a Response to our Motion to Dismiss in the
10 federal court which we have included in the -- or which has
11 been included, I think, in the state court pleadings. And
12 it is in that pleading where she brought a motion to or
13 what she called her Motion to Amend, and it included that
14 which she has styled as a Fourth Amended Complaint.
15 We argue that regardless of which Complaint you are
16 considering, whether it's the third one or the fourth one,
17 it should be dismissed.
18 And in the -- in the parlance of the Motion to Amend,
19 we think you should deny the motion because it is futile.
20 The primary reason is this, and with one factual exception,
21 that all of her Complaints, the factual nature of her
22 Complaints as you can see by her Fourth Amended Complaint,
23 occurred on or before December of 2008. The Complaint that
24 she filed in the current case was in October of 2011. The
25 Defendants argue they're state agencies or state employees

1 and because she did not file a verified complaint under the
2 State Tort Claims Act which has a two-year statute of
3 limitations and, in this case, those -- the nature of that
4 Complaint is simply barred by operation of law. That, as
5 you well know, is the definition of futility. If you can't
6 recover from your Complaint, you shouldn't be allowed to
7 amend it even if your proposed Complaint -- and as we say
8 in our pleadings, the differences we see in the Third
9 Amended Complaint or the Fourth Amended Complaint -- there
10 are some differences. She has added some more factual
11 allegations. They occur almost entirely on or before
12 December of 2008. And she has attempted to state her
13 claims with -- with more precision. For instance, using
14 gross negligence from the State Tort Claims Act or -- and I
15 think trying to clarify defamation and some of the
16 conspiracy complaints or emotional distress. All these are
17 torts, and under the operations of the State Tort Claims
18 Act, all are subject to the two-year statute of
19 limitations. And because of the timing, they are simply
20 barred.
21 There are other arguments that we've raised in our
22 Motion that we've handed to you. We would argue before we
23 left the State Tort Claims Act argument, we would just
24 point that under *Joubert* that this is not a substantial
25 compliance-type statute. Strict compliance is mandatory by

1 the South Carolina Supreme Court under *Joubert*.

2 There are other complaints and other facets of the

3 Complaint that are barred by other means. For instance,

4 you know, the emotional distress claim is barred by the

5 Workers' Comp Statute as to the agency or the officials in

6 their official capacity.

7 The defamation claim has to be dismissed, of course,

8 as it has its own two-year statute of limitations.

9 But there's also an issue of -- and here's where

10 there's one -- there's one thing she's raised in her claim

11 that in the pleadings we refer to as a vexatious litigant.

12 Regardless of whether or not that's true, under *Poole*, of

13 course, you can't sue someone for defamation for something

14 that's in a court pleading. That's rather standard and is

15 an absolute privilege that applies to those types of

16 communications and, therefore, if that was her reason to

17 amend the Complaint, then she's barred by law under *Poole*.

18 The Civil Conspiracy Complaints we also think are

19 defective even as they're written under the one statute of

20 limitations issue. She has sued all the Defendants

21 including South Carolina Department of Motor Vehicles, and

22 the Intra-corporate Conspiracy Doctrine applies which means

23 she can't bring her Complaint and, of course, we discussed

24 that.

25 And also under *Lawson versus South Carolina Department*

1 *of Corrections* the law is pretty clear. Her Complaint
2 primarily describes her disputes with many of her
3 supervisors who are with us today, and just some factual
4 background on that, according to our own Complaint.
5 She was employed, I believe, as a temp by SCDMV in
6 2004. She -- she became a -- She went into a full-time
7 position, I believe, in 2006 and she has been employed at
8 SCDMV ever since and continues to this day to be an
9 employee of SCDMV.
10 She is -- has complained in the past about treatment
11 that she believes she received at the hands of some of her
12 supervisors and SCDMV officials. She was transferred from
13 one office in SCDMV to another in December of 2008 which
14 was the inspiration, I think, for many of -- for many of
15 her allegations.
16 Whether you style this as a Motion to Amend or a
17 Motion to Dismiss, we think the -- the outcome is the same.
18 If she is moving to amend her Complaint to what she has
19 styled as the Fourth Amended Complaint, as she states,
20 then, you know, one of the reasons you will not grant that
21 is futility. The law of futility arises here because the -
22 - all of the claims, each one of them, is now barred by the
23 statute of limitations. These events occurred in 2008 and
24 the Complaint was not filed until October of 2011.
25 THE COURT: All right.

1 MR. MATTHEWS: Thank you.

2 THE COURT: Thank you, sir. Yes, ma'am.

3 GLENDA COURAM: And as I was trying to say, I object
4 to him going over the Motion to Dismiss because I did not
5 get an opportunity to -- I did not get their Motion to
6 Dismiss or their Supplemental Motion to Dismiss until
7 November 1st which I believe allows me -- should allow me
8 to at least 15 to 30 days to respond. So the -- and the
9 Motion to Dismiss was not before this Court today.

10 As far as futility is concerned, I did file a verified
11 claim. I filed it with the South Carolina Human Affairs
12 Commission and that was filed on November 13th, if I'm not
13 mistaken. And South Carolina Human Affairs Commission is
14 an agency that is allowed or given the authority by the
15 South Carolina Budget and Control Board to handle claims
16 against the State or against the South Carolina Department
17 of Motor Vehicles.

18 I also filed a Complaint -- the Complaint -- the
19 Complaint also with the EEOC. And the EEOC completed their
20 negotiations or investigation in or around -- well, I got
21 the right to sue letter on October 14th.

22 THE COURT: Of what year, ma'am?

23 GLENDA COURAM: Of 2009.

24 THE COURT: All right.

25 GLENDA COURAM: And the Defendants -- and I filed a

1 Complaint in November or I signed the Complaint to make it
2 an official charge in November of 2008. And when I
3 checked, Mr. Matthews was the registered agent to accept
4 the claims against -- that I filed against the South
5 Carolina Department of Motor Vehicles, as well as the fact
6 that Mr. Matthews was the one that did the investigation or
7 that was involved with the investigation with Mark Deladon
8 {phonetic} with the EEOC.
9 The -- and I -- the rules state that under section 78-
10 30 an agency means the individual office, agency or
11 department, which was the South Carolina Department of
12 Motor Vehicles. A claim means any written demand against
13 the State of South Carolina or a political subdivision for
14 monies only on account -- only on account of loss caused by
15 the tort of any employee of the State. That claim was
16 filed to the South Carolina Human Affairs Commission, and,
17 like I said before, which is authorized to accept these
18 claims and to investigate for the South Carolina Budget and
19 Control Board.
20 Also, a verified claim is -- it also -- the claim that
21 I filed told the Defendants the loss, the extent of the
22 loss, the time and place the loss occurred. It also named
23 all the persons involved and the amount of the loss which
24 for SCDMV, with the EEOC and I think because they have over
25 a thousand employees, almost 500,000, and with the South

1 Carolina Torts Claims Act, it would be 300,000. So that's
2 -- that's -- the Defendants know that.
3 Let's see. A verified claim may be received by a
4 Budget and Control Board or the appropriate agency or
5 political subdivision. If filed, the claim must be
6 received within one year. They received that claim within
7 one year. I had 90 days, according to the EEOC, to file
8 the Complaint in the court, which I complied with. That
9 was -- I was timely in filing that.
10 Also, it goes on to say that the Budget and Control
11 Board has 180 days to do an investigation, which they did.
12 And the EEOC has 300 days -- well, to do -- well, I had 300
13 days to file to the EEOC, I mean. Anyway, that's not the
14 point.
15 And also, Section 15-78-100 -- and I'm really not sure
16 if these apply but I'm going to give them out anyway --
17 except as provided for in Section 15-3-40, an action of
18 damages under this chapter may be instituted at any time
19 within two years after the loss was or should have been
20 discovered, provided that if the claim for damages was
21 filed and disallowed or rejected an action for damages
22 filed in this chapter based upon the same occurrence as the
23 claim, there's a three-year statute of limitations.
24 Also, in -- because I filed a verified claim, that
25 extended me to three years. And my three years -- and that

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1 three years did not end until around November 18th or the
2 13th, which means I was well within when I filed a
3 Complaint on October 25th of this year -- of last year.
4 Also, it goes on to state that as far as the common
5 law claims are concerned, Mr. Matthews said that there was
6 a two-year statute of limitations, and from what I
7 understand that is not true. Section 15-3-530 says that
8 there is a three-year statute of limitations ---
9 THE COURT: He was referring to a two-year statute in
10 connection with suing a state agency, I believe.
11 GLENDA COURAM: Excuse me?
12 THE COURT: Go ahead.
13 GLENDA COURAM: Okay.
14 THE COURT: Don't let me stop you.
15 GLENDA COURAM: According to Section 5 -- 15-3-530 --
16 there is a three-year statute of limitation for civil
17 conspiracy claims for gross negligence and so forth and for
18 common law claims which I was well within and I had timely
19 filed for that in this Court.
20 So my -- my Amended Complaint would not be futile as
21 Mr. Matthews is claiming it would be because I have not
22 missed any of the statute of limitations according to the
23 sections and the code of law by the State of South
24 Carolina.
25 And again, I object going over the Motion to Dismiss

1 at this time because I didn't have a chance to type up or
2 prepare anything to submit to the Court as I should have
3 been allowed.
4 Let me see. Under South Carolina -- the controlling
5 law in this file is not *Lawson* because *Lawson* dealt with
6 the whistle blower claim. And the person in that case did
7 not file a claim with the State, did not file a claim with
8 the EEOC, and all they did was discuss firing that person.
9 This is not the case here. The Defendants not only
10 discussed it, they put in action the effort to get rid of
11 me from -- to push me out of my job in the South Carolina
12 Department of Motor Vehicles.
13 The director of the South Carolina Department of Motor
14 Vehicles retaliated -- retaliated against me when I told --
15 when I went to her about the harassment and the hostile
16 working environment and so forth, and that can be proven as
17 well by documents from the EEOC that I received from the
18 Freedom of Information Act as well as documents that I got
19 from the South Carolina Department of Motor Vehicles and
20 documents from Ms. Davis where she clearly states that she
21 followed me around -- and I won't go into all of that
22 because I should be allowed to go forward in this.
23 As far as the civil conspiracy claim -- conspiracy
24 claim is concerned, the controlling case should be *Lee*
25 *versus Chesterfield* where it said the most recent South

1 Carolina Court of Appeals held that a corporation and a
2 legal person in contemplation of law cannot conspire with
3 itself, but the agents of the corporation are legally
4 capable as individuals -- which I assume these are
5 individuals not only in an official capacity but in an
6 individual capacity -- and they are capable of conspiring
7 among themselves for personal gain.
8 And in this instance, based on the documentation in
9 the file to deprive me of my job, it clearly shows that
10 from October after the date that I spoke to the director,
11 Director Adams, there was a flurry -- flurry of -- of
12 documents put together by HR and signed off by Ms. Rivers
13 and Ms. Davis, and all of this took place right after I
14 went to Ms. Adams. It did not happen before. I have no
15 satisfactory -- unsatisfactory history with the South
16 Carolina Department of Motor Vehicles. I have no history
17 of abusing time. Nothing of that nature.
18 So this -- So amending my Complaint and allowing this
19 to go forward is or would be the right thing to do and this
20 Court should allow that to happen.
21 Also, the elements of a civil conspiracy is a
22 combination of two or more persons. In this instance,
23 there were about four people. And as a matter of fact, in
24 November when they forced me down into data entry, I went
25 from working in the office of General Counsel as a

1 temporary in the office of General Counsel for 44 months,
2 and I worked -- I went from working in tickets upstairs on
3 the third floor and I refused the job in data entry and I
4 was told by Ms. Adams that I could not be forced from my
5 job, but they forced me into data entry and this was
6 located right across from the canteen. There was no
7 lighting and nothing of that nature and the women down
8 there was working without any lights, practically. So
9 later that year in 2008 they moved everybody up on the
10 third floor. They moved all of data entry up onto the
11 third floor after I filed this Complaint. There's been a
12 lot of changes at the South Carolina Department of Motor
13 Vehicles since I filed this Complaint.
14 So I -- and I provided this Court with a prima facie
15 case for gross negligence, a prima facie case for civil
16 conspiracy.
17 And as far as the defame -- the defamation is
18 concerned, Mr. Matthews started that after I filed on
19 October 25th to prevent me, in my understanding, from
20 completing the service on the Defendants because at the
21 time I had not served all of the Defendants; I had only
22 served Mr. Matthews. So -- and then he started with the
23 vicious -- vexatious litigant, which is very -- to be
24 labeled that is a very serious situation because I would
25 not, in fact, have access to the courts.

1 As far as the emotional distress is concerned, that
2 falls under the worker's comp claim if it's a situation
3 where I had an accident at my job, and I didn't. My job
4 was not that difficult. At the time that I was forced down
5 into data entry, I had been reduced to just writing numbers
6 on tickets. I was no longer doing any type of legal work.
7 I was writing numbers on lines on tickets. And then I was
8 forced down into data entry that I did before I even --
9 before I went to school and got a bachelor's degree, a
10 four-year bachelor's degree, and a two-year associate's
11 degree. And I did data entry to get myself through school.
12 And I was forced down into data entry when the Defendants
13 decided that I no longer needed a job.
14 So anyway, this is not a matter for dismissal and I
15 deserve to have a day in court.
16 THE COURT: All right. Thank you, ma'am.
17 GLENDA COURAM: Thank you.
18 THE COURT: Mr. Matthews, any response?
19 MR. MATTHEWS: Thank you, sir. Well, where do we
20 begin?
21 THE COURT: You rest on your statute of limitations
22 claim, I would assume.
23 MR. MATTHEWS: We would do that, but just to correct a
24 couple of items.
25 THE COURT: Yes, sir.

1 MR. MATTHEWS: The point that I was making on *Lawson*
2 is *Lawson*, on its face, concerns not -- it doesn't include
3 -- it addresses civil conspiracy on its face. I included
4 the case for your review.
5 The two-year statute of limitations that is beyond the
6 State Tort Claims Act is the action, and, as you are aware
7 of, the statute of limitations applies to the defamation
8 claim. The defamation claim did not appear until the
9 Amended Complaint that was filed in 2012.
10 In terms of -- and again, in terms of the procedural
11 history, we filed the Motion to Dismiss to the Third
12 Amended Complaint, as the record indicates, on August 9th
13 of 2012, and, of course, that's in the record that was
14 filed in the federal court.
15 In terms of the factual allegations that she has made,
16 you know, a 12(b)6 Motion is not the time to fuss about
17 facts. We presume, as with any complaints, the Court has
18 to take those as pled.
19 With that being said, the arguments that we've raised
20 as to the State Tort Claims Act is not at all effective if
21 she goes to the State's Human Affairs Commission. Under
22 the statute or under the -- with the statutory provisions
23 we've cited in our brief and the State Tort Claims Act,
24 that's not a verified complaint. They are different. And
25 as *Joubert* requires, strict compliance is a requirement on

1 her and on this Court.

2 In terms of not having her day in court, I'll simply
3 say that she's been suing the Department one way or another
4 since January of 2010. That's almost three years. I've
5 actually been recalled to Iraq and come back since she's
6 been suing us. The Complaint that she's not been heard by
7 this Court or several federal courts is ridiculous.
8 In terms of her workers' comp argument, that just
9 flies in the face of *Dickert*. Her argument simply is not -
10 - is not well-stated as *Dickert* does. There is no -- if
11 you -- if you state a claim for intentional affliction of
12 emotional distress, you know, the Workers' Comp Act applies
13 and that is her remedy. That's -- that's not -- that's not
14 really out of the ordinary.

15 And then we will stand on our other arguments. We
16 would simply argue that, first of all, our Motion to
17 Dismiss was filed in August, not last week. We did file a
18 supplement to her -- to respond to her Motion to Amend last
19 week and we included additional factual information -- not
20 factual information, but legal information as applies to
21 state court and as applies to federal court where the
22 motion was originally filed. But to be honest, that's, to
23 us, kind of tomato, tomahto.

24 The Motion to Amend, we think, fails on the argument
25 of futility. We think if you were to grant it, the Motion

1 to Dismiss would apply to it as equally as the Third
2 Amended Complaint.
3 And we would simply commend Your Honor to the
4 arguments that we've raised in our briefs.
5 THE COURT: All right.
6 MR. MATTHEWS: And thank you for your time.
7 THE COURT: All right. Thank you, sir.
8 GLENDA COURAM: Your Honor?
9 THE COURT: Yes, ma'am.
10 GLENDA COURAM: As I stated, *Lawson* -- as far as the
11 civil concerns, in *Lawson*, as I said before, they discussed
12 the dismissal. They did not put into action dismissing the
13 person that was involved in that case. This is not the
14 same situation here, as I've provided to the Court ---
15 THE COURT: Let her finish, please.
16 MR. MATTHEWS: All right. I'll be glad to.
17 GLENDA COURAM: Also, I'd like to submit some case
18 law.
19 THE COURT: Go ahead.
20 GLENDA COURAM: If it's all right?
21 THE COURT: Yes, ma'am.
22 GLENDA COURAM: *E'Van*, from the South Carolina Supreme
23 Court, *versus Bagler or Badger*, and the *Lawson case versus*
24 *South Carolina Department of Corrections*.
25 I'd also like to submit to this Court *Venture*

1 *Investments versus Whaley's Mill, et al*.

2 Do I need to tell you what the cases are about or do I

3 just ---

4 THE COURT: No, ma'am. I'll take note of them.

5 GLENDA COURAM: Okay. And also I'd like to submit,

6 which should be the controlling case in this matter, *Andrew*

7 *versus Ward* to the Court. And I am assuming Mr. Matthews

8 can get copies of his own because I didn't make enough. I

9 didn't have time to do it.

10 THE COURT: That's fine. I think he has a copy.

11 GLENDA COURAM: And also, I'm submitting Roberta Cook

12 or *Gibson versus Bank of America* and Ross versus -- or

13 rather *Pye versus Fox, et al*. There's a lot of people

14 involved in that. And each of these deals -- dealt with --

15 deals with civil conspiracies, statute of limitations as

16 well as the -- as well as *Lawson* and so forth.

17 And, yes, I got the Motion to Dismiss on August 9th

18 and I responded. If you look at your work -- your

19 information that you have from them I've responded to them

20 on the Motion to Dismiss. But for the first time in all

21 this time, Mr. Matthews has brought up the statute of

22 limitations in this matter. He didn't bring it up in 2010

23 or 2008 or 2009, 2011. This is the first time, and this is

24 in this -- this Supplemental Defendant's Motion that he

25 filed or sent and I that received on November 1st that says

1 that I was not within the statute of limitations.
2 Also, as far as the issue of -- as far as the issue of
3 -- I'm sorry, I'm losing my train of thought -- the issue
4 of my day before the Court, I didn't have a trial. I
5 didn't -- there was a directed -- a directed verdict in
6 2011. There was no trial. And I asked to have a jury
7 trial and there was no trial. As a matter of fact, my case
8 was dismissed on -- on the statement of -- on, I think it
9 was *Robert Richardson versus Sanderson*, and that case was
10 overturned by the Supreme Court. I can't remember exactly
11 what it was but it was something like that if you look at
12 the order, and I can get you copies of the order, of all
13 the orders that was sent out.
14 And Judge Gossett is a magistrate. Judge Seymour is
15 the chief judge who nullified whatever it is that Judge
16 Gossett did. And when she remanded my case back to this
17 court, anything that Judge Gossett did was null and void
18 according to the rules because of the fact that anything
19 that Judge Gossett did was not final.
20 As far as this Court is concerned, the only time that
21 I've ever been in this court and had this case was here,
22 and I asked for a jury trial again, a jury trial, and not
23 to be tried by a judge and not to be tried by Judge
24 Gossett; I never agreed to that. And not to be tried by --
25 and I never saw Judge Seymour so that wasn't an issue.

1 The only thing at issue in 2011 was the Motion for
2 Remand. Nothing else should have gone before the federal
3 court until the Court decided whether or not my claim would
4 be -- my case would be remanded back to this state court.
5 There should not have been any Motion to Dismiss.
6 There should not have been any orders for me to respond to
7 a Motion to Dismiss according to what the rules say, unless
8 I'm misunderstanding the rules.
9 And again, the Fourth Circuit and all of the courts
10 say that this case should go before a jury. It should not
11 be just dismissed out of hand.
12 And also the rules state that if there is any
13 conceivable way that a pro se person, plaintiff, or any
14 plaintiff, can win or be successful, then that person
15 should be allowed to go forward.
16 And in this instance, there is every possibility I
17 could be successful in winning this against the South
18 Carolina Department of Motor Vehicles and/or the individual
19 Defendants. And it should not be just dismissed out of
20 hand without my having an opportunity to go before a jury
21 and have a jury decide whether or not this is a viable case
22 or not, win or lose.
23 And I'd like to submit these, if I can.
24 THE COURT: Ma'am?
25 GLENDA COURAM: May I submit these?

1 THE COURT: Sure, sure.

2 GLENDA COURAM: Okay.

3 THE COURT: I'll be happy to take a look at them.

4 Thank you.

5 Anything further, Ms. Couram?

6 GLENDA COURAM: No, sir.

7 THE COURT: All right.

8 GLENDA COURAM: Not at the moment.

9 THE COURT: Yes, sir, Mr. Matthews.

10 MR. MATTHEWS: All right. Just a couple of last

11 comments, Your Honor.

12 The *Lawson* case doesn't -- it actually concerns an

13 employee, the same employee who was fired. I just can't

14 let that misstatement go by.

15 THE COURT: Well, I've heard this about five times

16 already during the course of this argument, but I'll take

17 note of it a sixth time.

18 MR. MATTHEWS: All right.

19 The only last comment I have is this. I've heard Ms.

20 Couram over the years tell the Court that as a pro se

21 litigant she's -- she is due special consideration, and I

22 understand that. But my clients need to hear me say this.

23 They have been sued in one form or another for the past

24 three years. We think the claims are ridiculous.

25 Whenever she tells the Court, I need to have my case

1 heard, or when Judge Perry says, you don't state a claim,
2 that's being heard. If you say, I'm sorry, ma'am, you
3 don't state a claim, that's being heard.
4 And while Ms. Couram is definitely not beneath
5 justice, neither are these people. And they need to hear
6 that, and so does she.
7 That's all.
8 GLENDA COURAM: May I?
9 THE COURT: Ma'am?
10 GLENDA COURAM: I deserve a day in court just like
11 these people.
12 THE COURT: Stop. I've heard enough from both sides.
13 Thank you for your presentations.
14 I'll consider the matters I've heard here today and
15 what's in the file, and I'll make a decision in due course.
16 But I've heard enough, from you and I've heard enough from
17 Mr. Matthews.
18 Thank you all so very much. This hearing is
19 concluded. And y'all will hear from me in due course.
20 MR. MATTHEWS: Thank you, Your Honor.
21 THE COURT: Thank you, sir.
22 (WHEREUPON, THE HEARING IN THE ABOVE-
23 ENTITLED MATTER WAS CONCLUDED.)
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Glenda R. Couram,	)	C/A No.: 2011-CP-40-07134
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**NOTICE TO STATE COURT OF REMOVAL OF ACTION TO U.S. DISTRICT COURT**
Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities,	)	
	)	
Defendant.	)	

NOW COMES Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities, by and through counsel, pursuant to 28 U.S.C. § 1446(d), Fed.R.Civ.P., and notices the removal of the above-captioned case filed by Plaintiff Glenda R. Couram to the U.S. District Court for the District of South Carolina.

The Notice of Removal filed with the U.S. District Court for the District of South Carolina, and its exhibits, are attached.

Dated this the 22nd day of November, 2011.

[Counsel's signature appears on next page]

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Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

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COUNSEL FOR DEFENDANTS LULA N. DAVIS, SHIRLEY RIVERS, CONSTANCE "CONNIE" RHETT, MARCIA ADAMS, FORMER DIRECTOR OR CURRENT DIRECTOR OF SCDMV, DOTTIE BLANKENSHIP, TOSHA AUTRY, SC DEPARTMENT OF MOTOR VEHICLES, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
C/A No.: _____

Glenda R. Couram, Plaintiff, v. Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities, Defendants.	)	**NOTICE OF REMOVAL**

NOW COME Defendants Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Former Director or Current Director of SCDMV, Dottie Blankenship, Tosha Autry, SC Department of Motor Vehicles, in their official and individual capacities, by and through counsel, pursuant to Rule 81(c), Federal Rules of Civil Procedure and the statutes referenced below, to remove the above-captioned case filed by Plaintiff Glenda R. Couram.

In support of this Notice of Removal, SCDC shows as follows:

1. Plaintiff filed this action in the Court of Common Pleas of Richland County on or about October 25, 2011. A copy of the Summons and Complaint is attached as Exhibit A.

2. Plaintiff has not served this action upon Defendants, but Defendants have accepted service of this action as of November 21, 2011.

3. Plaintiff's complaint purports to state causes of action under Title VII of the Civil Rights Act of 1964, as amended; the First and Fourteen Amendments to the U.S. Constitution; 42

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U.S.C. § 1981a; and 42 U.S.C. § 1983. To the extent that any of these causes of action states a claim, this Court exercises original jurisdiction over each of them. For that reason, Plaintiff's complaint may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

5. Exhibit A is a copy of "all process, pleadings, and orders served upon" Defendants in this action, as required by 28 U.S.C. § 1446(a).

6. In accordance with 28 U.S.C. § 1446(d), Defendants are serving this Notice of Removal on *pro se* Plaintiff, and also filing a copy of the Notice of Removal with the Clerk of Court for Richland County.

Dated this the 22nd day of November, 2011.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

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COUNSEL FOR DEFENDANTS LULA N. DAVIS, SHIRLEY RIVERS, CONSTANCE "CONNIE" RHETT, MARCIA ADAMS, FORMER DIRECTOR OR CURRENT DIRECTOR OF SCDMV, DOTTIE BLANKENSHIP, TOSHA AUTRY, SC DEPARTMENT OF MOTOR VEHICLES, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDCIAL CIRCUIT
Glenda R. Couram Plaintiff v Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, SC Dept., of Motor Vehicles, in their official and individual capacities Defendants	Case #: 2011-CP-40071-34 **MOTION TO REMAND**

Motion to Remand and for Costs
On Grounds of Defective Removal and Lack of Federal Question
[Under 28 U.S.C. §1447(c)]

1. Plaintiff files this motion to remand this action back to the Court of Common Pleas of Richland County, on the grounds that Defendants, in filing their notice of removal to this court, appears to have failed to fully to comply with 28 U.S.C. § 1446(a) and (b).

2. Plaintiff contends that defendants failed to include with the notice of removal all of the materials required by 28 U.S.C. § 1446(a), and that Defendants' notice was untimely under 28 U.S.C. § 1446(b). Unless the notice of removal serves as the answer to the Plaintiff complaint the Defendants has not timely answered the complaint which should have been answered on November 25th on or about in ordered to have filed all of the required documents. ; Creekmore, 797 F. Supp. at 508 et.al., Henderson, 920 F. Supp. at 1183 (in writing).

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3. Plaintiff did not notice written consent by all of Defendants consenting to removal to Federal Court as shown by the Defendants question of service on Marcia Adams who is no longer with SCDMV

4. Completion of Service has not been completed on Marcia Adams, currently the Executive Director of SC State Budget and Control Board and Steven W. Lake, currently employed with SC Department of Juvenile Justice.

ARGUEMENT

5. Federal law does not establish a cause of action. The mere fact that a complaint refers to a federal statute does not mean the claim arises under federal law. A Federal-question jurisdiction exists only if federal law creates the cause of action or is an essential element of the claim. If federal law does nothing more than create a standard of care or conduct that is but one element of a cause of action based on state law, no federal jurisdiction exists.

6. The Defendants in the above case filed a notice of removal on or about November 28th. The Plaintiff hereby move to remand the case to the Superior Court of the State of South Carolina, County of Richland, the Court in which this case was pending at the time of removal.

7. In this motion to remand, Plaintiff would like the court to note that she placed a disclaimer as seen in the initial complaint and the attached amended complaint the same manner of disclaimer as in SC Code of Laws, etc., that clearly alerted the Defendants that she was not making any claims that would place this complaint in the jurisdiction of the Federal Court and that if the complaint is read in such a manner it was not the intent of the Plaintiff, **as pro se**.

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

Glenda R. Couram Plaintiff v Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, SC Dept., of Motor Vehicles, in their official and individual capacities Defendants	)	**C/N: 3:11-cv-3200-MBS-PJG** **MOTION TO REMAND AND DISMISS** **JURY TRIAL DEMANDED**

1. This civil action was filed in the Circuit Court of Richland County on October 25th, 2011.

2. The Defendants, excluding Marcia Adams and Steven Lake were served on or about October 25th, 2011. The remaining Defendants were served on or about December 5th, 2011.

3. Plaintiff timely filed a motion to remand after receiving the Defendants; Notice of Removal on or about November 28th, 2011.

4. The Initial and amended complaints assert claims under state law separate and independent from federal law

5. Not all of the claims arise out of the same nucleus of operative fact

6. All of the Defendants and the Plaintiff are citizens of the same state, to wit South Carolina.

7. This court lacks subject matter jurisdiction over all of the claims filed by the Plaintiff including those that mention Title VII, "– Anti- Retaliation Law as parallel or outlined under SC HAC Laws; 1983, 1981 and 1985/6 as the Plaintiff filed the very same claims under state Law. See Disclaimer.

8. In her amended complaint Plaintiff included SC Whistleblower Law and First Amendment violations as well in her initial complaint; Civil Conspiracy Claims under SC TCA; Age Discrimination Claims under SC HAC Laws; Gross Negligence claims under SCTCA Laws; Intentional and Negligent Infliction of Emotional Distress Claims under SCTCA Laws and as stated in the Disclaimer any reference to Federal Laws the "disclaimer controls"

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9. Section §1445 "(c) A civil action in any State court arising under the Worker's Compensation laws of such State are "**never** subject to removal" and may not be removed to any district court of the United States.

As Plaintiff emotional distress negligence claims fall under exclusivity of the under the Workers Compensation Laws they are not subject to removal to Federal court.

10. Wherefore, Plaintiff moves that this court remand all State claims to the Circuit Court of Richland County from which they were removed. And, request that this court remand all claims that are **not** subject to removal such as the Workers' Compensation claims.

CONCLUSION

In conclusion, Plaintiff request that this court remand her complaint in part or in whole, accept her motion to amend filed on or about December 5th, 2012, and dismiss without prejudice her complaint to be re filed within 30 days of the dismissal without prejudice or remand said claims as there is plenty **of doubt** as to the accuracy of the Defendants' request for removal and the if this complaint is well-pleaded to establish a federal question. In addition, if any doubt exists the court federal law requires remand of the complaint to state court.

Respectfully submitted by

Glenda R. Couram, **pro se**
104 Macaw Lane
Lexington, SC 29073
803 896-7509
grcouram@hotmail.com

Dated this 13th day of December 2011
Lexington County, South Carolina

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CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY	CHARGE NUMBER
[X] FEPA [X] EEOC	14C-2013-00548

South Carolina Human Affairs Commission and EEOC

State or local Agency, if any | S.S. No.

NAME (Indicate Mr., Ms., Mrs.)	HOME TELEPHONE (Include Area Code)
Ms. Glenda R. Couram	(803) 358-0127

STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
104 Macaw Lane, Lexington, SC 29073	11/03/1958

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
SC Department of Motor Vehicles (SCDMV)	500 and More	(803) 896-7505

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY
10311 Wilson Blvd., Blythewood, SC 29016	

NAME	TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] AGE
[X] RETALIATION [ ] NATIONAL ORIGIN [X] DISABILITY [ ] OTHER *(Specify)*

DATE DISCRIMINATION TOOK PLACE

EARLIEST (ADEA/EPA)	LATEST (ALL)
03-11-2013	N/A

[X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s))*:

I am being retaliated against for filing a previous charge of discrimination in 2008 for retaliation, age discrimination, etc. against SCDMV and others to include Rivers. I contend that beginning on March 11, 2013 after I asked Ms. Gail Allison, immediate supervisor, (retired as of 419/13) if they were going to fill her position after she retired and a team leader's position (the team leader who retired sat behind me). I was not given a choice, after I filed the previous action and they relocated data entry to the third floor its where they put me but I did not fear Ms Griffin we talked and laughed all the time from day one).

On that same day, March 13, 2013, within an hour of my asking Ms. Allison that question, Ms. Goodwin team leader (supervisor as of 4/29/13) was relocated directly behind me. Ms. Goodwin is someone who I had clashes with at times but we got along. I could go to her with issues, questions and concerns about the work. As a result of Ms. Goodwin's move directly behind me the relationship has changed. I have had elevated panic attacks, constant anxiety (taking extra medication to cope), feelings of dread, in a constant state of fear and an inability to concentrate. Ms.Goodwin is behind me for 7.5 hours a day except for lunch at 1:30 that is the only time I feel safe.

There is constant laughing, talking, etc., and I sat there with the radio at full volume but ultimately I have to leave to get away from the laughing, talking, and meetings with other supervisors, etc., going on behind me. I leave my work area several times a day to handle the anxiety and since of dread.

Continued on attached page 1 of 2

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

Susie M. Kittle 4/30/13

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

4/30/13

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Date

Charging Party *(Signature)*

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CHARGE OF DISCRIMINATION
Page Two

I sent an e-mail to Ms. Allison, Supervisor, Ms. Shirley Rivers, Manager Driver Records and Ms. Allison's Supervisor and Ms. Blankenship, HR Director, explaining that I felt like I had a "gun" at my back and asked to be moved they did nothing to accommodate the disability except to tell Ms. Allison "another team leader was behind her before and I was not going to be moved." I feel like someone on display to others "see what happens when you file a complaint against SCDMV and your supervisors and managers you are placed under constant surveillance at all times when one team leader leaves another is immediately placed behind you and the only way out is to quit your job."

Since March 13, 2013 I now sat in a hostile and harassing work environment. I cannot go to Ms. Goodwin for work issues or administrative issues. I cannot speak with other work mates as I did before when Ms. Griffin was behind me. I sat not speaking afraid of repercussion if I say the wrong thing, in fear, on display, just being seen, unless necessary for work related matters, others not in the unit ask me if I am "okay." When I walk pass others on the floor, I cannot look anyone in the eye.

As a result I, therefore, believe there is a continuation of the retaliation against me for filing the previous action along with continued promotion of a hostile work environment and harassment which started up again within two months of the dismissal of that 2008 compliant on or about February 7, 2013, in violation of federal and state law (Richland County State Court). The American with Disabilities Act and Title VII of the US Civil Rights Act of 1964, as amended, as well as the SC Human Affairs Law, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary for State and Local Requirements) Susie M Little 4/30/13 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. Date Charging Party *(Signature)*	SIGNATURE OF COMPLAINANT 4/30/13 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

EEOC FORM 5 (Test 10/94)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-07134
Appellate Case No. 2012-213441

Glenda Couram..... Appellant,

v.

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles in their official and individual capacities ..... Respondent

---

CERTIFICATE OF COUNSEL
corrected

The undersigned certifies that the Record on Appeal is in substantial compliance and contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted by:

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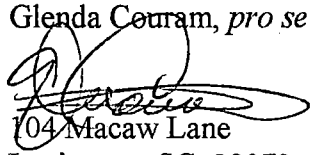
(803) 896-7506 (w)
grcouram@hotmail.com

Dated this 26th, day of September 2013

Glenda Couram, *pro se*



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