

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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SC Court of Appeals

APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-33-00306

Appellant Case No. 2018-002061

Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants,

RECORD ON APPEAL

Volume I

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May 6, 2019

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STATE OF SOUTH CAROLINA ~~IN~~ OCT 25 PM 3:59 THE COURT OF COMMON PLEAS

COUNTY OF MARION

TWELFTH JUDICIAL CIRCUIT

Anderson Brothers Bank,

CLERK OF COURT

Civil Action No. 2013-CP-33-00306

Plaintiff,

v.

**ORDER DENYING DEFENDANTS'
MOTION TO ALTER OR AMEND
JUDGMENT**Dazarhea Monique Parson, a/k/a Dazarhea
D. Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., et al.,

Defendants.

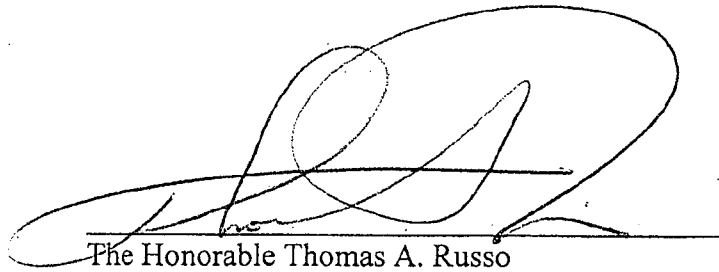
THIS MATTER comes before the Court on Defendants' Motion to Alter or Amend Judgment, pursuant to Rule 59(e), SCRC.

Having considered its original Order, the relevant law, and the memorandum of Defendants pursuant to SCRC 59(f), the Court is not persuaded that it made any errors of law in its original ruling, or that the law or circumstances surrounding the case have changed over the past several weeks. To briefly address Defendants' arguments, most of the issues outlined in the motion were raised at the hearing and initially considered by the Court; however, these items were not addressed in the Order because the Court found no merit to those arguments, many of which amounted to mere allegations with no evidentiary basis. The Court would further note that Mrs. Porter's involvement in this matter had no impact on or relevance to the underlying foreclosure; therefore, her very limited involvement as a notary and as an agent of the Plaintiff at the judicial sale of the property was not improper and would not necessitate the recusal of Special Referee Porter. Finally, whether or not to take judicial notice of a fact lies within the discretion of the Court, and the Court did not find it necessary to take judicial notice of the items Defendants raised in their motion.

Therefore, Defendant's Motion to Alter or Amend is respectfully **DENIED**. PAGE _____

Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

AND IT IS SO ORDERED.

A large, stylized handwritten signature in black ink, appearing to read 'Thomas A. Russo', is written over a horizontal line.

The Honorable Thomas A. Russo
Presiding Judge for the Twelfth Circuit

October 25, 2018
Florence, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Anderson Brothers Bank,
Plaintiff,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., et al.,

Defendants.

Case No. 2013-CP-33-0306

**ORDER DENYING DEFENDANTS'
PETITION FOR RELIEF FROM VOID
JUDGMENT 60(b)(4) AND CHALLENGE
OF JURISDICTION**

THIS MATTER COMES BEFORE THE COURT upon Defendants' *Petition for Relief from Void Judgment 60(b)(4) & Challenge of Jurisdiction* (the "Petition") filed on or about June 4, 2018. In the Petition, Defendants seek to vacate "the void foreclosure (default) judgment and order for sale." The Court conducted a hearing on the Petition on August 20, 2018, before the Honorable Thomas A. Russo. Present at the hearing were Suzanne Taylor Graham Grigg, Esq., attorney for Plaintiff Anderson Brother Bank ("ABB"), and Defendants, Dazarhea Monique Parson and A. Tyrone Parson, Jr.

Based on the Petition, the pleadings, the public record including prior state and federal court case dockets, and the arguments made by the parties at the hearing, the Court hereby denies the Petition because it was not filed within a reasonable time period as required by Rule 60(b), SCRCP, and no conflict of interest exists, as alleged by Defendants.

BACKGROUND

1. The facts stated herein are gathered from the public record, specifically from the case dockets in (a) Marion County Court of Common Pleas Case No. 2013-CP-33-00306 (the

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

BOOK PAGE

Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

“Foreclosure Action”); (b) S.C. Court of Appeals Case No. 2013-001824; (c) S.C. Supreme Court Case No. 2015-000761; (d) S.C. Court of Appeals Case No. 2015-002230; (e) S.C. Supreme Court Case No. 2016-001441; and (f) U.S. District Court for the District of South Carolina Case No. 4:17-cv-00708-RBH-KDW. The Court hereby takes judicial notice of the public record filings in these six cases. *See* S.C. R. Evid. 201; *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

2. In the Foreclosure Action, which was initially filed in 2013, the Honorable Haigh Porter entered that certain *Special Referee’s Judgment of Foreclosure and Sale* (the “Foreclosure Order”), wherein the trial court adjudicated the Foreclosure Action in favor of ABB and ordered, in relevant part, that the property located at 3456 Quail Roost Road in Mullins (the “Subject Property”) be sold at public auction. Defendants were present at the hearing conducted by the Honorable Haigh Porter.

3. Pursuant to the Foreclosure Order, the Subject Property was sold at public auction to ABB on September 10, 2013. At the foreclosure sale, E.R.V. Bidding, Inc. (“ERV”), which is a company that routinely submits bids on behalf of lenders at foreclosure sales, entered a bid on behalf of ABB. An employee of ERV, Mrs. Betsy Porter, the wife of the Honorable Haigh Porter, submitted the successful bid.

4. Defendants appealed the Foreclosure Order to the South Carolina Court of Appeals on August 28, 2013, but failed to obtain a satisfactory bond. Due to such failure, the foreclosure sale proceeded. The appeal raised some of the very same issues raised in the Petition. On December 15, 2014, the Court of Appeals dismissed that appeal with rehearing denied on March 12, 2015.

5. Defendants then petitioned the South Carolina Supreme Court for a writ of certiorari, and the Supreme Court denied certiorari on May 7, 2015.

6. During the pendency of the above-referenced appeals, ABB filed that certain Petition for Writ of Assistance in the Foreclosure Action on March 28, 2014, seeking an order from the trial court requiring the removal of Defendants, along with their personal property, from the Subject Property so that ABB could be put in peaceable possession of the Subject Property it owns in fee simple. Pursuant to that certain Rule to Show Cause filed in the Foreclosure Action on March 28, 2014, the trial court set a hearing on the Petition for Writ of Assistance for April 30, 2014.

7. Pursuant to that certain Order Granting Writ of Assistance filed in the Foreclosure Action on January 5, 2015, the trial court concluded that ABB was entitled to an order commanding the Sheriff's Department to eject and remove Defendants and their personal property from the Subject Property.

8. After the Supreme Court denied certiorari on May 7, 2015, as mentioned above, the trial court filed an additional Writ of Assistance in the Foreclosure Action on September 25, 2015, to provide the Marion County Sheriff's Department with a more recent order, wherein the trial court directed the Sheriff's Department to eject Defendants and deliver possession to ABB.

9. The Writ of Assistance was executed and Defendants were ultimately removed from the Subject Property. The Deed remains in the name of the Plaintiff, ABB.

10. Defendants filed another meritless appeal, this time of the Writ of Assistance, with the South Carolina Court of Appeals on October 30, 2015, which the Court of Appeals dismissed on January 13, 2016, and denied rehearing on June 10, 2016. Defendants filed a writ of certiorari with the South Carolina Supreme Court on July 8, 2016, which the Supreme Court denied on March 24, 2017.

11. Since 2016, Defendants have filed numerous petitions, injunctions, etc. in this Court seeking to void the Foreclosure Order, to no avail.

DISCUSSION

12. Pursuant to Rule 60(b), SCRPC, “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b) goes on to say that such motion shall be made within a reasonable time, and for reasons (1), (2) or (3) above, not more than one year after entry of the judgment.

13. The Court denies Defendants’ Petition for two reasons. First, there is no legal or factual basis for the Court to find that the judgment is void under Rule 60(b)(4), SCRPC, which appears to be the sole basis for the Defendants’ Petition. “The definition of ‘void’ under the rule only encompasses judgments from courts which failed to provide proper due process or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *McDaniel v. U.S. Fidelity & Guaranty Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). The judgment obtained by ABB in this case is valid and binding in all respects under South Carolina law; the Circuit Court had jurisdiction over the foreclosure action, as the Subject Property is located in Marion County, and there is no evidence of a lack of due process afforded to Defendants. As the record reflects, Defendants were served and present at the hearing in the Foreclosure Action.

14. Defendants further argue that a conflict of interest exists because Judge Porter's wife submitted a bid at the foreclosure sale. As Mrs. Porter was employed with ERV, both at that time and as of date of this Order, that ground is baseless.

15. Second, the Court denies Defendants' Petition because it was not made within a reasonable time under Rule 60(b), SCRPC. In *McDaniel v. U.S. Fidelity and Guaranty Co.*, the South Carolina Court of Appeals held that "[w]hether or not McDaniel made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge's sound discretion," and "[t]he special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion." *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871. Further, in *Edwards v. Edwards*, the South Carolina Court of Appeals found that the trial court did not abuse its discretion in finding a party's Rule 60(b) motion made eighteen (18) months after entry of the final order was not made within a reasonable time. *Edwards v. Edwards*, No. 2011-UP-047, 2011 WL 11733062, at *1 (S.C. Ct. App. Feb. 4, 2011). See also *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42; 48, 590 S.E.2d 502, 505 (Ct. App. 2003) (finding four years was unreasonable period of time).

16. The Foreclosure Order was entered on August 5, 2013, approximately four and a half years prior to the filing of the Petition. This time period does not comply with the "reasonable time" requirement set forth in Rule 60(b).

17. For the foregoing reasons, the Defendants' Petition must be denied.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Petition for Relief from Void Judgment 60(b)(4) and Challenge of Jurisdiction is hereby DENIED;

AND IT IS SO ORDERED.

[signature page to follow]

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE CIRCUIT COURT

Arnold Tyron Parson,

Plaintiff,

vs.

Marion County Sheriff's Department and
Anderson Brothers Bank,

Defendants.

Case No. 2017-CP-33-00776

**ORDER DISMISSING PLAINTIFFS
CLAIMS AGAINST ANDERSON
BROTHERS BANK**

MAY 16 AM 10:11
MARION COUNTY SC
SHERIFF M. GRAY
CLERK OF COURT

FILED

THIS MATTER COMES BEFORE THE COURT upon Defendant Anderson Brothers Bank's ("ABB") Motion to Dismiss (the "Motion") filed on November 27, 2017. In the Motion, ABB sought to dismiss the Plaintiff's causes of action against it for (a) false arrest and imprisonment; (b) defamation; and (c) negligence/gross negligence, as alleged in the Plaintiff's Complaint filed on October 20, 2017. The Court conducted a hearing on the Motion on March 26, 2018, before the Honorable Michael G. Nettles. Present at the hearing were Suzanne Taylor Graham Grigg, Esq., attorney for ABB, and Louis Morant, Esq., attorney for the Plaintiff.

Based on the Motion, the pleadings, the public record including prior state and federal court case dockets, and the arguments of ABB's counsel, the Court hereby grants the Motion and dismisses all of the Plaintiff's causes of action against ABB in this case.

BACKGROUND

1. The facts stated herein are gathered from the public record, specifically from the case dockets in (a) Marion County Court of Common Pleas Case No. 2013-CP-33-00306 (the "Foreclosure Action"); (b) S.C. Court of Appeals Case No. 2013-001824; (c) S.C. Supreme Court Case No. 2015-000761; (d) S.C. Court of Appeals Case No. 2015-002230; (e) S.C.

Supreme Court Case No. 2016-001441; and (f) U.S. District Court for the District of South Carolina Case No. 4:17-cv-00708-RBH-KDW.¹ The Court hereby takes judicial notice of the public record filings in these six cases. See S.C. R. Evid. 201; *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

2. The gravamen of the Plaintiff's causes of action against ABB center around his presence at the eviction of his son and daughter-in-law from the property his son and daughter-in-law owned in Marion County, subject to ABB's mortgage.

3. In the Marion County Foreclosure Action ABB filed in 2013 (Case No. 2013-CP-33-00306), the Honorable Haigh Porter entered that certain Special Referee's Judgement of Foreclosure and Sale (the "Foreclosure Order"), wherein the trial court adjudicated the Foreclosure Action in favor of ABB and ordered, in relevant part, that the property located at 3456 Quail Roost Road in Mullins (the "Subject Property") be sold at public auction. The Plaintiff was not a Defendant in the Foreclosure Action because he did not hold an interest in the Subject Property. The Plaintiff's son – A. Tyrone Parson, Jr. – and his daughter-in-law – Dazarhea Monique Parson – were the owners of the Subject Property and named Defendants in the Foreclosure Action.

4. Pursuant to the Foreclosure Order, the Subject Property was sold at public auction to ABB on September 10, 2013.

5. The Plaintiff's son and daughter-in-law appealed the Foreclosure Order to the South Carolina Court of Appeals on August 28, 2013, but failed to obtain a satisfactory bond. Due to such failure, the foreclosure sale proceeded and the subject property was sold with ABB being the successful bidder. On December 15, 2014, the Court of Appeals dismissed that appeal

¹ These six cases involve the Plaintiff's son and/or daughter-in-law, and the claims, defenses, and orders entered in these cases all directly relate to the Plaintiff's allegations against ABB in this case.

with rehearing denied on March 12, 2015. The Plaintiff's son and daughter-in-law then petitioned the South Carolina Supreme Court for a writ of certiorari, and the Supreme Court denied certiorari on May 7, 2015.

6. During the pendency of the above-referenced appeals, ABB filed that certain Petition for Writ of Assistance in the Foreclosure Action on March 28, 2014, seeking an order from the trial court requiring the removal of the Plaintiff's son and daughter-in-law, along with their personal property, from the Subject Property so that ABB could be put in peaceable possession of the Subject Property it owns in fee simple. Pursuant to that certain Rule to Show Cause filed in the Foreclosure Action on March 28, 2014, the trial court set a hearing on the Petition for Writ of Assistance for April 30, 2014.

7. Pursuant to that certain Order Granting Writ of Assistance filed in the Foreclosure Action on January 5, 2015, the trial court concluded that ABB was entitled to an order commanding the Sheriff's Department to eject and remove the Plaintiff's son, daughter-in-law, and their personal property from the Subject Property.

8. After the Supreme Court denied certiorari on May 7, 2015, as mentioned above, the trial court filed an additional Writ of Assistance in the Foreclosure Action on September 25, 2015, to provide the Marion County Sheriff's Department with a more recent order, wherein the trial court directed the Sheriff's Department:

[A]fter 30 days of receiving this Writ, go and enter upon said land and premises and that you eject and remove Respondents [Arnold and Dazarhea Parson], with any and all persons claiming under the Respondents therefrom; that you remove therefrom all personal property of the Respondents and any and all persons claiming under the Respondents; and that you deliver to said Petitioner [ABB] or its agent, successors and assigns full, quiet and peaceable possession of the land and premises without delay and that you maintain, keep and defend its possession according to the tenor and true intent of the judgment of this court.

Pursuant to those certain Affidavits of Personal Service filed in the Foreclosure Action, the Plaintiff's son and daughter-in-law were personally served with the Writ of Assistance on October 1, 2015, which informed them that the Sheriff's Department would be taking the above action 30 days after entry of the Writ of Assistance.

9. The Marion County Sheriff's Department arrived at the Subject Property on November 2, 2015, to carry out the directions of the trial court in the Writ of Assistance. The Plaintiff was present at the Subject Property on November 2, 2015, when the Marion County Sheriff's Department were attempting to evict the Plaintiff's son and daughter-in-law. The Marion County Sheriff's Department arrested the Plaintiff at the Subject Property on November 2, 2015.

10. The Plaintiff's son and daughter-in-law filed another meritless appeal, this time of the Writ of Assistance, with the South Carolina Court of Appeals on October 30, 2015, which the Court of Appeals dismissed on January 13, 2016, and denied rehearing on June 10, 2016. The Plaintiff's son and daughter-in-law again filed a writ of certiorari with the South Carolina Supreme Court on July 8, 2016, which the Supreme Court denied on March 24, 2017.

DISCUSSION

11. Pursuant to Rule 12(b)(6), SCRPC, dismissal of a claim is proper if it fails to state facts sufficient to constitute a cause of action. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007).

12. Because the basis for Plaintiff's claims against ABB is that the eviction on November 2, 2015 was wrongful, the Plaintiff is essentially seeking to collaterally attack the Foreclosure Order and the Writ of Assistance subsequently entered by the trial court on September 25, 2015. The Court concludes that the Plaintiff is collaterally estopped from

attacking the validity of the trial court's Writ of Assistance because the question of whether eviction was proper was actually litigated by the trial court in the Foreclosure Action, directly determined by the trial Court, and necessary to effectuate the judgment in the Foreclosure Action. *See Carolina Renewal, Inc. v. S.C. Dept. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) ("The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.")

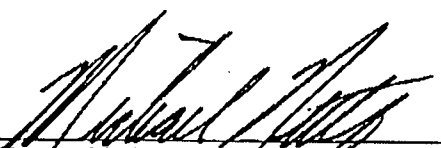
13. Therefore, because the trial court granted ABB's Petition for Writ of Assistance in the Foreclosure Action, which led to the Marion County Sheriff's Department's eviction of the Plaintiff's son and daughter-in-law from the Subject Property, the Plaintiff's allegations that ABB's actions in seeking the eviction gave rise to claims against ABB for (a) false arrest and imprisonment; (b) defamation; and (c) negligence/gross negligence must fail. The facts alleged by the Plaintiff and those which are available in the public record stated hereinabove support the Court's conclusion that the Plaintiff's allegations against ABB fail to state facts sufficient to constitute a cause of action.

14. With respect to the appeal filed by the Plaintiff's son and daughter-in-law on October 30, 2015, three days before the eviction, the Court concludes that such appeal of the Writ of Assistance did not serve to stay the effect of the Writ of Assistance because the Writ of Assistance was merely an ancillary order to the previously appealed Foreclosure Order. As noted above, the Plaintiff's son's and daughter-in-law's appeals of the Foreclosure Order had been previously dismissed by the Court of Appeals, with certiorari denied by the Supreme Court, by the time of the eviction on November 2, 2015.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all of the Plaintiff's claims against ABB are dismissed pursuant to Rule 12(b)(6), SCRPC;

AND IT IS SO ORDERED.

5-8-, 2018
Marion, South Carolina


The Honorable Michael G. Nettles
Circuit Court Judge

The South Carolina Court of Appeals

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., South
Carolina Department of Revenue, and South Carolina
Department of Motor Vehicles, Defendants,

Of whom Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels Parson, and A.
Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr. are the
Appellants.

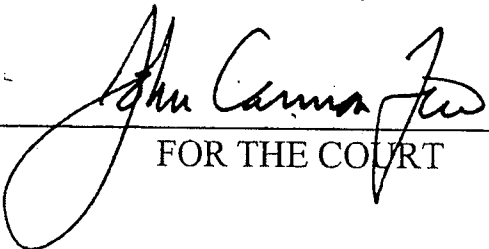
Appellate Case No. 2013-001824

ORDER

This court issued two previous orders, one on April 3, 2014 and another on September 30, 2014, requiring Appellants to serve and file an amended record on appeal in full compliance with Rule 210 of the South Carolina Appellate Court Rules. Our September 30 order stated "the record must contain all documents referenced in the parties' designations of matter. **Failure to comply with this order will result in dismissal of this appeal.**" (emphasis added). Appellants timely served and filed an amended record, but it still has numerous deficiencies. Most significantly, Appellants did not include all the items listed in Respondent's designation of matter.

Respondents have filed a motion to compel Appellants to file a corrected record on appeal. Appellants have filed a return stating the "attorney's for respondents have firsthand knowledge of each and every document, exhibit, and the like of which they wish to have entered into the record on appeal." Appellants' response

indicates they refuse to comply with this Court's orders. This Court dismisses the appeal for Appellants' refusal to comply with our previous orders and failure to file a record on appeal adhering to the requirements of Rule 210, SCACR.


FOR THE COURT

Columbia, South Carolina

cc: Dazarhea Monique Parson
A. Tyrone Parson, Jr.
Suzanne G. Grigg, Esquire
Kirsten Elena Small, Esquire

FILED
12/18/14

The South Carolina Court of Appeals

Anderson Brothers Bank, Respondent,

v.

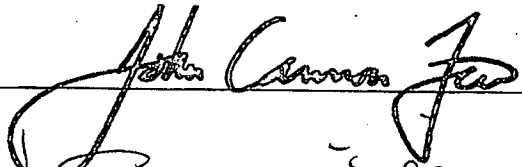
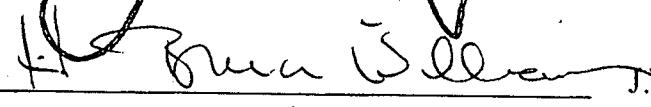
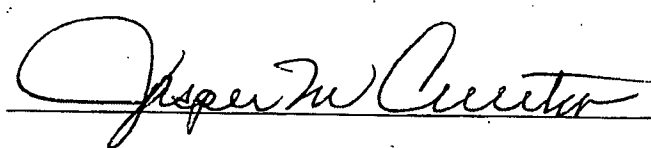
Dazarhea Monique Parson, a/k/a Dazarhea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., South
Carolina Department of Revenue, and South Carolina
Department of Motor Vehicles, Defendants,

Of whom Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels Parson, and A.
Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr. are the
Appellants.

Appellate Case No. 2013-001824

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 A.J.

Columbia, South Carolina

cc: Dazarhea Monique Parson
A. Tyrone Parson, Jr.
Suzanne G. Grigg, Esquire
Kirsten Elena Small, Esquire

The Supreme Court of South Carolina

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson,
a/k/a Dazarhea Monique Daniels Parson; A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr.; South
Carolina Department of Revenue; and South Carolina
Department of Motor Vehicles, Defendants,

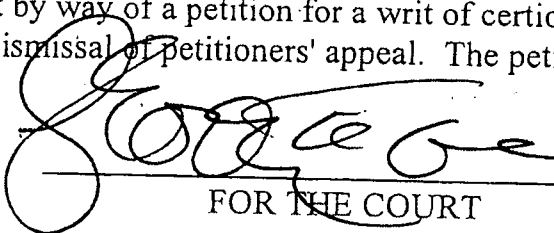
Of Whom Dazarhea Monique Parson, a/k/a Dazarea D.
Parson, a/k/a Dazarhea Monique Daniels Parson ; and A.
Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., are
Petitioners.

Appellate Case No. 2015-000761

Lower Court Case No. 2013-CP-33-00306

ORDER

This matter is before the Court by way of a petition for a writ of certiorari to review the Court of Appeals' dismissal of petitioners' appeal. The petition is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

May 7, 2015

cc:

Suzanne G. Grigg, Esquire

Kirsten Elena Small, Esquire

A. Tyrone Parson, Jr.

Dazarhea Monique Parson

The Honorable Sherry R. Rhodes

The Honorable Jenny Kitchings

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Anderson Brothers Bank,
Plaintiff,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., *et.al.*,

Defendants.

Anderson Brothers Bank,
Petitioner,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson and A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr.,

Respondents.

IN THE CIRCUIT COURT

Case No. 2013-CP-33-306

**ORDER GRANTING WRIT OF
ASSISTANCE**

111
NP
THIS MATTER having come before the undersigned Special Referee for Marion County for hearing on April 30, 2014, upon the Petition for Writ of Assistance filed in the Office of the Clerk of Court for Marion County on March 28, 2014, by Anderson Brothers Bank ("Petitioner").

And whereas the undersigned Special Referee for Marion County entered the Rule to Show Cause against Dazarhea Monique Parson, A/K/A Dazarhea D. Parson, A/K/A Dazarhea Monique Daniels Parson and A. Tyrone Parson, Jr. A/K/A Arnold Tyrone Parson, Jr. (the "Rule

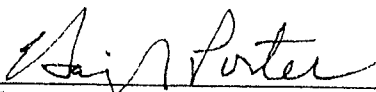
EXHIBIT

H

Assistance should be granted;

NOW, THEREFORE, I hereby command that the Sheriff of Marion County (the "Sheriff") go to and enter upon said land and premises and that the Sheriff eject and remove Respondents, with any and all persons claiming under the Respondents therefrom; that the Sheriff remove therefrom all personal property of the Respondents and any and all persons claiming under the Respondents; and that the Sheriff deliver to said Petitioner or its agent, successors and assigns full, quiet and peaceable possession of the land and premises without delay and that the Sheriff maintain, keep and defend its possession according to the tenor and true intent of the judgment of this Court.

AND IT IS SO ORDERED this 5th day of January 2015.


The Honorable Haigh Porter
Special Referee for Marion County

#3
Florence, South Carolina

EXHIBIT "A"

All that certain piece, parcel or lot of land lying and being situate on the southeast side of Quail Roost Drive near the City of Mullins, Marion County, South Carolina. Said lot being shown and designated as Lot No. 34 on a map of Quail Roost Subdivision, Phase I, by Pittman-Lesson Survey Company dated January 24, 1999, and recorded in Plat Book 282, Page 7, Office of Clerk of Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description.

Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property.

DERIVATION: This is the same property conveyed to Anderson Brothers Bank by that certain Deed by Judicial Order of Special Referee dated October 16, 2013, and recorded October 24, 2013, in the Marion County Clerk of Court's Office in Book 253 at Page 104.

TMS: 034-00-00-255-000

ADDRESS: 3546 Quail Roost Road, Mullins, SC 29574

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Anderson Brothers Bank,

Plaintiff,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., *et.al.*,

Defendants.

Anderson Brothers Bank,

Petitioner,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson and A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr.,

Respondents.

IN THE CIRCUIT COURT

Case No. 2013-CP-33-306

WRIT OF ASSISTANCE

MARION COUNTY
SHERIFF R. RHODES
CLERK OF COURT

2015 SEP 25 P 2:51

BOOK PAGE

FILED

TO: **THE SHERIFF OF MARION COUNTY, SOUTH CAROLINA,**
GREETINGS:

WHEREAS, by a judgment of this Court it was, among other things, adjudged and decreed that the purchaser at the Special Referee's sale of the premises described more fully in said judgment and on Exhibit "A" attached hereto and made a part hereof, should, on production of the Deed by Judicial Order of Special Referee (the "Deed") be put forthwith into full, quiet and peaceable possession of the said premises; and

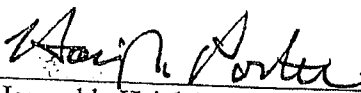
EXHIBIT

I

WHEREAS, the Special Referee for Marion County, South Carolina has issued to the Petitioner herein, Anderson Brothers Bank ("ABB") the purchaser at such sale, the Deed therefore, a portion of which land and premises are now possessed and occupied by the Respondents herein;

42
NOW, THEREFORE, upon hearing the testimony presented at the hearing on the Rule to Show Cause Against Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., I hereby command that you, after 30 days of receiving this Writ, go to and enter upon said land and premises and that you eject and remove Respondents, with any and all persons claiming under the Respondents therefrom; that you remove therefrom all personal property of the Respondents and any and all persons claiming under the Respondents; and that you deliver to said Petitioner or its agent, successors and assigns full, quiet and peaceable possession of the land and premises without delay and that you maintain, keep and defend its possession according to the tenor and true intent of the judgment of this Court.

AND IT IS SO ORDERED this 21st day of September 2015.


The Honorable Haigh Porter
Special Referee for Marion County

Florence, South Carolina

EXHIBIT "A"

All that certain piece, parcel or lot of land lying and being situate on the southeast side of Quail Roost Drive near the City of Mullins, Marion County, South Carolina. Said lot being shown and designated as Lot No. 34 on a map of Quail Roost Subdivision, Phase I, by Pittman-Lesson Survey Company dated January 24, 1999, and recorded in Plat Book 282, Page 7, Office of Clerk of Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description.

Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property.

DERIVATION: This is the same property conveyed to Anderson Brothers Bank by that certain Deed by Judicial Order of Special Referee dated October 16, 2013, and recorded October 24, 2013, in the Marion County Clerk of Court's Office in Book 253 at Page 104.

TMS: 034-00-00-255-000

ADDRESS: 3546 Quail Roost Road, Mullins, SC 29574

The South Carolina Court of Appeals

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson; A. Tyrone
Parson, Jr., a/k/a Arnold Tyrone Parson, Jr.; South
Carolina Department of Revenue; and South Carolina
Department of Motor Vehicles, Defendants,

Of whom Dazarhea Monique Parson, a/k/a Dazarea D.
Parson, a/k/a Dazarhea Monique Daniels Parson and A.
Tyrone Parson, Jr., a/k/a Arnold Tyrone Parson, Jr. are
the Appellants.

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson; A. Tyrone
Parson, Jr., a/k/a Arnold Tyrone Parson, Jr., Appellants.

Appellate Case No. 2015-002230

ORDER

In August 2013, Appellants appealed an order and judgment of foreclosure and sale in civil case 2013-CP-33-306 to this court. That appeal was dismissed,¹ and the remittitur was sent on May 13, 2015. Appellants now appeal a writ of assistance from the same civil action. However, because Appellants' prior appeal

¹ See *Anderson Bros. Bank v. Parson*, S.C. Ct. App. Order dated Dec. 18, 2014.

has ended and Appellants no longer reside at the subject property, the parties' rights as to the property are settled and this court is unable to alter them. As a result, any judgment by this court in the current appeal would not offer Appellants practical relief, and this appeal is moot. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief."). Accordingly, the appeal is dismissed. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) ("Before any action can be maintained, there must exist a justiciable controversy."); *id.* at 431, 468 S.E.2d at 864 ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."). The remittitur will be sent as provided by Rule 221(b), SCACR.²


FOR THE COURT

Columbia, South Carolina

cc: Dazarhea Monique Parson
Arnold Tyrone Parson, Jr.
Suzanne G. Grigg, Esquire

FILED
1/13/16

² Appellants have filed a motion to file their transcript out of time and a motion for leave to file a Rule 60(b), SCRCP, motion with the circuit court. Because this appeal is dismissed, we decline to rule on the motions.

The South Carolina Court of Appeals

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., South
Carolina Department of Revenue and South Carolina
Department of Motor Vehicles, Defendants,

Of whom Dazarhea Monique Parson, a/k/a Dazarea D.
Parson, a/k/a Dazarhea Monique Daniels Parson and A.
Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr. are the
Appellants.

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., Appellants.

Appellate Case No. 2015-002230

ORDER

Appellants have filed a petition to rehear the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating this appeal. Accordingly, the petition for rehearing is denied.

Thomas Eluff J.

James T. McDaniel

Joseph W. Cretton A.J.

Columbia, South Carolina

cc:

Dazarhea Monique Parson

Arnold Tyrone Parson, Jr.

Suzanne G. Grigg, Esquire

Kirsten Elena Small, Esquire

FILED

June 10, 2016

The South Carolina Court of Appeals

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., South
Carolina Department of Revenue and South Carolina
Department of Motor Vehicles, Defendants,

Of whom Dazarhea Monique Parson, a/k/a Dazarea D.
Parson, a/k/a Dazarhea Monique Daniels Parson and A.
Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr. are the
Appellants.

Anderson Brothers Bank, Respondent,

v.

Dazarhea Monique Parson, a/k/a Dazarea D. Parson,
a/k/a Dazarhea Monique Daniels Parson, A. Tyrone
Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., Appellants.

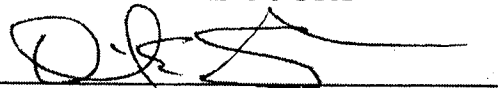
Appellate Case No. 2015-002230

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

March 24, 2017

Columbia, South Carolina

cc:

The Honorable Jenny Abbott Kitchings

Dazarhea Monique Parson

Arnold Tyrone Parson, Jr.

Suzanne G. Grigg, Esquire

Kirsten Elena Small, Esquire

The Honorable Christy M. Gray

201300036011 EXEMPT
SHERRY R. RHODES
CLERK OF COURTS
MARION COUNTY, SC
10-24-2013 03:36 pm.
REC FEE: 11.00

Instrument Vol Page
201300036011 OR 253 104

STATE OF SOUTH CAROLINA

COUNTY OF MARION

**DEED
BY
JUDICIAL ORDER
OF
SPECIAL REFEREE**

WHEREAS a foreclosure action in the Circuit Court in Marion County, South Carolina by Anderson Brothers Bank, Plaintiff, against Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Case No. 2013-CP-33-306 was heard by the Honorable Haigh Porter, Special Referee for Marion County, by an Order of Reference from the Circuit Court; and

WHEREAS the Special Referee did order and decree on August 5, 2013, that the property hereinafter described should be sold at public sale by the said Court on the terms and for the purposes stated in the Special Referee's Order and Judgment of Foreclosure and Sale (the "Order and Decree") filed with the Office of the Clerk of Court for Marion County on August 16, 2013; and

WHEREAS the Special Referee, after public advertisement of the said property as required by law, openly and publicly, at public auction, sold the said property for the highest bid received to Anderson Brothers Bank (the "Grantee") on September 10, 2013, for the credit bid of Nineteen Thousand Dollars and 00/100 (\$19,000.00), which sale remained open for upset bids for a period of thirty (30) days with no upset bids having been received, and the Grantee having paid the costs.

NOW, KNOW ALL MEN, that I, the undersigned Special Referee for Marion County, South Carolina, in consideration of the said bid paid as aforesaid by the Grantee, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto said Grantee, its successors and assigns:



13838
October 24
34
B
205
(2-24)

All that certain piece, parcel or lot of land lying and being situate on the southeast side of Quail Roost Drive near the City of Mullins, Marion County, South Carolina. Said lot being shown and designated as Lot No. 34 on a map of Quail Roost Subdivision, Phase I, by Pittman-Lesson Survey Company dated January 24, 1999, and recorded in Plat Book 282, Page 7, Office of Clerk of Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description.

Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property.

DERIVATION: This is the same property conveyed to Dazarhea Daniels Parson and A. Tyrone Parson, Jr. by deed from FBSA 1, LLC dated March 28, 2012, recorded April 4, 2012, in Book 195 at Page 239.

TMS: 034-00-00-255-000

ADDRESS: 3546 Quail Roost Road, Mullins, South Carolina 29574.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same, and of all other persons rightfully claiming from, under, or by these or any of them.

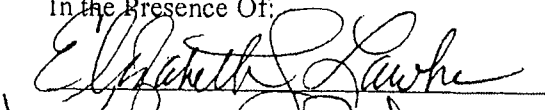
TO HAVE AND TO HOLD, all and singular the premises before mentioned unto said Grantee, its successors and assigns forever.

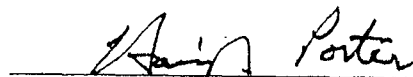
IN WITNESS WHEREOF, I, the Special Referee for Marion County, South Carolina, under and by virtue of the aforesaid Order and Decree, have here unto set my hand and seal, this

16 day of October 2013.

SIGNED, SEALED AND DELIVERED

In the Presence Of:



The Honorable Haigh Porter
Special Referee for Marion County

STATE OF SOUTH CAROLINA

COUNTY OF MARION

PERSONALLY APPEARED before me Elizabeth S. Lawhon and made oath that s/he saw Haigh Porter, Special Referee for Marion County, South Carolina, sign, seal and deliver the within Deed; and, that deponent together with Haigh Porter signed their names as witnesses thereto.

SWORN to and subscribed before me
this 16th day of October 2013.

Gaige Pook (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/2/15

Elizabeth J. Lau L
Witness

ENTER IN GRANTOR INDEX:

Haigh Porter
Special Referee for Marion County

ENTER IN GRANTEE INDEX:

Anderson Brothers Bank
ATTN: S. "Rusty" Richardson, CPA, CCA, EVP
101 N. Main Street
P.O. Box 310
Mullins, SC 29574

RETURN TO:

Suzanne Taylor Graham Grigg, Esquire
NEXSEN, PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Attorney for Anderson Brothers Bank

STATE OF SOUTH CAROLINA
COUNTY OF MARION

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is known as 3546 Quail Roost Road, Mullins, South Carolina 29574, bearing Marion County Parcel Number: 034-00-00-255-000. The property was transferred by Deed of The Honorable Haigh Porter, Special Referee for Marion County, S.C. to Anderson Brothers Bank on October 16, 2013.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X _____ exempt from the deed recording fee under exemption #13 (See Information section of affidavit):
Grantee is the Plaintiff in an equity action of foreclosure
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ___ or No ___ to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: _____
 - (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Anderson Brothers Bank.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 22nd

day of October 2013

Suzanne Taylor Graham Grigg
Notary Public for South Carolina

My Commission Expires: 3/15/20

Suzanne Taylor Graham Grigg
Responsible Person Connected with the Transaction

Suzanne Taylor Graham Grigg, Esquire
Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim used to confirm title vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Arnold Parson Jr.,	) C/A No. 4:17-00708-RBH-KDW
	)
Plaintiff,	)
	)
v.	) Report and Recommendation
	)
Darren Miles; Danny Lee Herring; John Doe 1-18; Jane	)
Doe 1-2; and County of Marion,	)
	)
Defendants.	)
_____	)

Plaintiff, proceeding pro se, filed this 42 U.S.C. § 1983 action alleging Defendants violated his constitutional rights. This matter is before the court on Defendants Darren Miles, John Doe 1-18; Jane Doe 1-2, and the County of Marion's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 36. Additionally, Defendant Danny Lee Herring ("Defendant Herring") filed a Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 45. Plaintiff filed Responses to these Motions on July 6, 2017, and July 18, 2017. ECF Nos. 49, 77. Additionally, on August 16, 2017, Plaintiff filed two supplements to his Responses. *See* ECF No. 84, 85. No Defendant filed a Reply. This case was referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(e) and (f), D.S.C. Because these Motions to Dismiss are dispositive, a Report and Recommendation ("R&R") is entered for the court's review.

I. Background

Plaintiff, a resident of Marion County, initially filed this matter on March 15, 2017. ECF No. 1. There, he alleged his constitutional rights were violated by members of the Marion County "Special Opts" organization on November 2, 2015, when they arrived at his home

without a warrant and proceeded to search his dwelling and destroy his personal property. *Id.* at 4. Plaintiff twice amended his Complaint, making his Second Amended Complaint the operative pleading in this matter. *See* ECF Nos. 14, 24. In his Second Amended Complaint, Plaintiff brings suit against:

18 Special Opts Officers of Marion County, South Carolina, who unlawfully entered upon private property in possession of Plaintiff, arrested and imprisoned Plaintiff without a lawful fourth amendment warrant or consent, unlawfully turned over Plaintiff's private property, house, and private belongings to third parties (Intruders who then threw all Plaintiff and plaintiff's family belongings out in rain during a State of Emergency), and against the County of Marion as the employers, masters, and supervisors of Special Opts personnel for failure to supervise, to assure proper training of personnel, or to implement meaningful procedures to discourage lawless official conduct or to take corrective action with respect to Special Opt personnel whose vicious propensities were notorious *vi et armis*, which are sued as a person under 42 USC 1983.

ECF No. 24 at ¶ 1. Plaintiff brings this § 1983 action for violations of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments as well as Article 1 Section 10 of the Constitution of the United States. *Id.* at ¶ 2.

Concerning the named Defendants, Plaintiff maintains that Defendant Darren Miles was a Lieutenant for the Marion County Special Opts Unit and employed by the County of Marion. *Id.* at ¶ 5. Plaintiff alleges Defendant Miles entered his home on November 2, 2015, without consent or a warrant and allowed other Defendants to enter his property as well. *Id.* Plaintiff brings suit against Defendant Miles in both his official and individual capacity. *Id.*

Plaintiff maintains that Defendant County of Marion is a "municipal corporation within the State of South Carolina [and] either directly or indirectly trained, controlled, made policy for, employed, supervised, compensated, ratified, enriched, or rewarded some or all of the other

defendants for their actions on November 2, 2015.” *Id.* at ¶ 6. Plaintiff maintains Defendant “County of Marion is being sued as a person.” *Id.*¹

Additionally, Plaintiff named Danny Lee Herring, owner of Danny Lee Herring Construction, as a Defendant. *Id.* at ¶ 15. Plaintiff alleges that Defendant Herring also entered his home without consent and threw Plaintiff and his family’s belongings onto “the front yard during a State of Emergency, with heavy rains that caused disastrous flooding during the month of October and November in 2015.” *Id.* Plaintiff represents that he is suing Defendant Herring under a respondeat superior theory. *Id.*

Finally, Plaintiff brings suit against John and Jane Doe Defendants who Plaintiff alleges are:

unknown persons employed with [Danny Lee Herring] who either without consent nor warrant entered upon Plaintiff’s private property, house, helped in throwing all Plaintiff and plaintiff’s family private belongings from within the house outside on the front lawn in the rain, or stood back, watched, and did nothing to stop other Defendants that entered Plaintiffs house and threw all Plaintiff and plaintiff’s family private belongings from within Plaintiff house outside on wet front lawn during heavy rain.

Id. at ¶ 16. Plaintiff alleges that all Defendants were “acting under the color of law and pursuant to their authority as Marion County Special Opts personnel or public officials.” *Id.* at ¶ 17.

¹ The undersigned notes that Plaintiff named the following individuals as Defendants in his Second Amended Complaint: Buddy Collins, Elista H. Smith, John Q. Atkinson, Oscar Foxworth, Thomas E. Shaw, Allen W. Floyd, Milton W. Troy II, and Tim Harper. ECF No. 24 at ¶¶ 7-14. However, in an R&R entered on May 26, 2017, the undersigned recommended these individuals be summarily dismissed as defendants to the action because Plaintiff’s Second Amended Complaint “contains no allegations of wrongdoing by these Defendants.” ECF No. 29 at 3. Rather, the undersigned found “Plaintiff explicitly admits that these Defendants were not involved in the events that form the basis for his claims and states that they are only ‘nominally listed.’” *Id.* On June 22, 2017, the District Court adopted and incorporated the May 26, 2017 R&R over Plaintiff’s objection. ECF No. 39. Therefore, these individuals were never properly served and never became proper parties to this action.

Plaintiff maintains that on the morning of November 2, 2015, he was awakened by loud knocks on the front door of his house and observed multiple men and women (who Plaintiff references as the Marion County Special Ops Officers) dressed in tactical gear and heavily armed with military-styled weapons, including machine guns and sniper rifles. *Id.* at ¶¶ 19-21. Plaintiff represents there were multiple cars and trucks with flashing lights outside his home. *Id.* at ¶ 21. Plaintiff maintains he feared for his life and called 911. *Id.* at ¶ 22. While 911 responders were on the line, Plaintiff alleges he opened his front door and stepped out onto the front porch with both hands in the air. *Id.* at ¶ 23.

Plaintiff alleges that while he was on the front porch he was met with several of the heavily-armed Marion County Special Ops Officers. *Id.* at ¶ 24. Thereafter, Plaintiff maintains that “Defendant Officers, Miles, John and Jane Doe searched and arrested Plaintiff without producing a lawful fourth amendment warrant or having consent, to either search or arrest Plaintiff.” *Id.* at ¶ 25. Plaintiff represents no one ever presented him with an affidavit or criminal complaint, so Plaintiff asked an unknown Defendant “where is the warrant for [my] arrest[?]” and Defendant Doe responded: “‘We don’t need one’ slamming car door in Plaintiff’s face.” *Id.* at ¶¶ 26-27. At that point, Plaintiff represents he told the Defendants that they were violating his rights if they went into his house. *Id.* at ¶ 28. However, Plaintiff alleges the officers entered his home over his objections and without his consent, with military-styled weapons drawn and began to search through Plaintiff’s private property. *Id.* at ¶ 29. Plaintiff represents that certain John Doe Defendants stated to other John/Jane Doe Defendants, “We’re going to have some issues behind this.” *Id.* at ¶ 30.

Plaintiff maintains he was then taken to the Marion County Jail and arrested at approximately 10:15 a.m. *Id.* at ¶ 31; 36. Plaintiff alleges he was never read his Miranda rights.

Id. at ¶ 38. Plaintiff represents that on the way to the Jail Plaintiff stated, “He is a diabetic, he has high blood pressure, COPD, and that the cuffs were extremely tight.” *Id.* at ¶ 32. Plaintiff maintains that the handcuffs were “so tight [that] sharp pains ran from his hand to his shoulder causing him to shake.” *Id.* at ¶ 33. Plaintiff alleges that he demanded to see a magistrate once he arrived at the Jail but instead a hold was placed on Plaintiff. *Id.* at ¶¶ 34-35. Thereafter, Plaintiff maintains he was taken for booking procedures, including mugshots and fingerprinting, and “placed in a holding cell until a cell became open in Cell block D.” *Id.* at ¶ 35.

Plaintiff maintains he was released after being held against his will on November 3, 2015. *Id.* at ¶ 37. Upon his release, Plaintiff represents that he discovered that all his family’s belongings were destroyed from mold and mildew because of the “heavy rain that caused a state of emergency for Marion County in November 2015.” *Id.* at ¶ 39. Plaintiff alleges that he went to Georgetown Memorial Hospital because he was in pain and could barely move his right index finger and while there x-rays were taken of his wrist and hand. *Id.* at ¶ 40. Plaintiff alleges that his wrist and hand still bear the scar of the handcuffs. *Id.* Plaintiff maintains that doctors told him his hand was swollen from his index finger to his wrist, there was possible nerve damage, and an MRI was needed for more detail. *Id.* at ¶ 41. Plaintiff maintains that doctors prescribed him pain medication. *Id.*

Concerning the alleged home invasion, Plaintiff represents that no breach of peace occurred prior to the arrival of Special Ops. *Id.* at ¶ 42. In short, Plaintiff alleges that the Special Ops group had no legal reason to be on his private property, and Defendants were acting as trespassers. *Id.* at ¶¶ 44-46. As a result of being ousted from their home, Plaintiff alleges that he and his family were left to fend for themselves during a state of emergency and had no medicine, warm clothing, food, money, keepsakes, ways to make a living, or ways to protect themselves

from the elements. *Id.* at ¶ 47. Plaintiff maintains he and his family were deprived of a home for approximately four months. *Id.* at ¶ 48. However, Plaintiff represents that he has since regained possession of his home located in Mullins, SC. *Id.* at ¶ 49. Plaintiff alleges he has not regained his personal belongings and has been deprived of them “indefinitely.” *Id.* at ¶ 50.

Under his “Federal Causes of Action,” Plaintiff alleges Defendants violated his First, Fourth, Eighth, and Fifth and Fourteenth Amendment rights. *Id.* at ¶¶ 62-69. Concerning his First Amendment claim, Plaintiff maintains his First Amendment “freedom of expression and redress of grievances was denied by Defendants Marion County Special Ops Officers when they unlawfully entered upon Plaintiff[’s] private property, and divested Plaintiff and his family of their actual possession and control of their private property, house, and private belongings without due process of law.” *Id.* at ¶ 64. Plaintiff alleges his Fourth Amendment right “to be secure in his house, papers, and effects from unreasonable or unprovoked attacks as unreasonable searches, and seizures by Defendants was violated by Defendants actions o[n] November 2, 2015.” *Id.* at ¶ 65. Plaintiff maintains “[he] suffered both physical and emotional cruel and unusual punishment in violation of the [E]ighth Amendment by the unreasonable actions of Defendants on November 2, 2015 by depriving Plaintiff and his family of food, clothing, shelter, and a means to make a living, as well as causing medical cost and expenses.” *Id.* at ¶ 66. Plaintiff alleges his Fifth and Fourteenth Amendment rights to due process were violated when Defendants “entered upon his private property and house without a warrant, and took possession of the private property and house, and allowed Intruders to take possession of Plaintiff[’]s private property, house, and private belongings.” *Id.* at ¶ 67. Finally, concerning his federal/constitutional rights, Plaintiff alleges:

[his] substantive rights to life, liberty, and pursuit of happiness were denied by Defendants Marion County Special Ops when they organized and were allowed to organize as a standing army in times of peace, and invaded Plaintiff[']s private property, and house by troops which were kept up, trained, and controlled by Defendant County as used without the exception of riot, insurrections, or invasion in violation of Article 1 Section 10 Subsection 3 of [the] United States Constitution.

Id. at ¶ 68. As a result of these violations of his constitutional rights, Plaintiff maintains he and his family have suffered “tremendous and irreparable emotional and mental harm, and [they] are entitled to nominal, compensatory, and punitive damages.” *Id.* at ¶ 69.

Additionally, Plaintiff brings several state-law causes of action and alleges that Defendants violated the following portions of the South Carolina Constitution: Article 1 § 2—freedom of speech and redress of grievances; Article 1 § 3—due process; Article 1 § 10—invasion of privacy; Article 1 § 13—taking of private property; Article 1 § 15—cruel and unusual punishment; Article 1 § 22—right to be heard; and Article 1 § 23—“Constitutional Provisions Mandatory.” *Id.* at ¶¶ 71-77. Plaintiff also maintains that Defendants arrested him pursuant to section 22-5-150 (“Breach of Peace”) of the South Carolina Code without order or warrant issued by a Marion County Summary Court Magistrate. *Id.* at ¶ 78. Therefore, Plaintiff maintains he was falsely and unlawfully arrested. *Id.* Plaintiff alleges that the “action of the 18 Defendants Marion County Special Ops Officers Miles, Jane, and John Doe on November 2, 2015 were illegal pursuant to S.C. Code Ann. § 16-7-10 (Illegal acts during State of Emergency).” *Id.* at ¶ 79. Plaintiff maintains his family has suffered and continues to suffer tremendous and irreparable emotional, and mental harm and is entitled to recover nominal, compensatory, and punitive damages as a proximate result of the state-law causes of action. *Id.* at ¶ 80. Plaintiff asks the court for several declaratory judgments, \$20,000,000 in compensatory and nominal damages, \$100,000,000 in punitive damages; costs and disbursement of this action;

attorney's fees incurred pursuant to 42 U.S.C. section 1988, and further relief this Court deems proper. *Id.* (see subparagraphs a.-m.).

II. Standard of Review

Defendants have moved to dismiss this action based on Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on the plaintiff. *Richmond, Fredericksburg & Potomac R. Co. v. U.S.*, 945 F.2d 765, 768 (1991). "In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Id.* The district court should apply the standard applicable to a motion for summary judgment, under which the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists. *Id.* The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. *Id.*

Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, Plaintiff must only plead "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). In order for Plaintiff's Complaint to survive Defendant's Motion to Dismiss, Plaintiff does not need to plead detailed factual allegations in his Complaint. *See id.* However, the United States Supreme Court has held that a plaintiff's grounds for relief requires more than just stating legal conclusions and elements of a cause of action. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986) (noting that, on a motion to dismiss, a court is "not bound to accept as true a legal conclusion couched as a factual

allegation.”). Plaintiff’s complaint must contain sufficient factual allegations that make a claim for relief plausible, not just possible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp.*, 550 U.S. at 570. This court must accept Plaintiff’s factual allegations as true and draw all reasonable inferences in his favor. *See E.I. du Pont de Nemours & Co. v. Kolon Indus.*, 637 F.3d 435, 440 (4th Cir. 2011).

III. Analysis

A. Defendant Herring’s Motion to Dismiss²

1. Subject Matter Jurisdiction

Defendant Herring argues the court should dismiss this Complaint for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* Doctrine and Rule 12(b)(1) of the Federal Rules of Civil Procedure. ECF No. 45 at 6. Defendant Herring maintains that Defendants were directed to take action by a Marion County trial court in a Writ of Assistance “because Plaintiff failed to voluntarily vacate the Subject Property and remove his personal property.” *Id.* at 6-7. Further, Defendant Herring represents that Plaintiff’s allegations against him “should be summarily viewed as a complaint that Defendant Herring assisted the Sheriff’s Department Defendants in executing the directive in a valid court order.” *Id.* at 7.

The *Rooker-Feldman* doctrine holds that “lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.” *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam). A “party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court.”

² Though Defendant Herring filed his Motion after the other Defendants, the undersigned will review his arguments first because some concern the subject matter jurisdiction of this court.

Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994). According to the Fourth Circuit Court of Appeals:

The controlling question in the *Rooker-Feldman* analysis is whether a party seeks the federal district court to review a state court decision and pass upon the merits of that state court decision, not whether the state court judgment is presently subject to reversal or modification. Put another way, if in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered or must take action that would render the judgment ineffectual, *Rooker-Feldman* is implicated.

Jordahl v. Democratic Party of Virginia, 122 F.3d 192, 202 (4th Cir. 1997) (internal quotations omitted). The *Rooker-Feldman* doctrine “is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

Defendant Herring outlined the state foreclosure proceeding timeline and court holdings for the court. The undersigned has reviewed the state court foreclosure proceedings and takes judicial notice of these court documents. See *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (federal courts may take judicial notice of proceedings in other courts if those proceedings have a direct relation to matters at issue); see also *St. Louis Baptist Temple, Inc. v. FDIC.*, 605 F.2d 1169, 1172 (10th Cir. 1979) (same); *United States ex rel. Geisler v. Walters*, 510 F.2d 887 (3d Cir. 1975) (same); *Rhodes v. Houston*, 309 F.2d 959 (8th Cir. 1963) (same). On August 16, 2013, a Special Referee for Marion County entered an Order and Judgment of Foreclosure and Sale (the “Foreclosure Order”). ECF No. 45-1. After a hearing on July 29, 2013, in which Plaintiff appeared, the Special Referee entered a judgment of foreclose in favor of Anderson Brothers Bank (“ABB”), and ordered the Subject property—located at 3546

Quail Roost Road in Mullins, SC 29574—be sold at public auction. *Id.* The order indicated that Plaintiff owed ABB a “total debt” of Twenty-Seven Thousand Five Hundred Ninety Two and 93/100 Dollars (\$27,592.93). *Id.* at 6-7. On October 24, 2013, the Special Referee entered an Order of Report on Sale and Disbursements, stating that the Subject Property was sold at public auction to ABB. ECF No. 45-2. The Special Referee also entered and recorded the Deed to the Subject Property on October 24, 2013, wherein ABB obtained fee simple title ownership to the Subject Property. ECF No. 45-3. Plaintiff appealed the orders of the Special Referee to the South Carolina Court of Appeals on August 28, 2013. ECF No. 45-4 at 2. The court of appeals dismissed the appeal on December 18, 2014, and denied Plaintiff Petition for rehearing on March 12, 2015. *Id.* at 1. Thereafter, Plaintiff filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, and the supreme court denied certiorari on May 7, 2015. ECF No. 45-5.

During the pendency of Plaintiff’s appeal of the Special Referee’s Orders, on March 28, 2014, ABB filed a Petition for Writ of Assistance with Marion County seeking an order requiring the removal of Plaintiff and his personal property from the Subject Property. ECF No. 45-6. Specifically, ABB asked for assistance from the Marion County Sheriff’s Office in removing Plaintiff and all his personal belongings from the Subject Property so that it could have “peaceable possession” of Subject Property as its lawful owner. *Id.* In a Rule to Show Cause filed with Marion County on March 28, 2014, Plaintiff was ordered to appear at a hearing set for April 30, 2014, at 11:00 a.m. ECF No. 45-7. Plaintiff was instructed to show cause, if able, as to why: “1. [He] should not be removed by the Marion County Sheriff from the premises located at: 3546 Quail Roost Road, Mullins, SC 29574; and 2. The relief in the attached Petition should not be granted.” *Id.* The Marion County Special Referee granted ABB’s Writ of Assistance in an

order signed on January 5, 2015. ECF No. 45-8. There, the Special Referee instructed the following:

I hereby command that the Sheriff of Marion County (the "Sheriff") go to and enter upon said land and premises and that the Sheriff eject and remove [Plaintiff], with any and all persons claiming under the [Plaintiff] therefrom; that the Sheriff remove therefrom all personal property of the [Plaintiff] and any and all persons claiming under the [Plaintiff], and that the Sheriff deliver to said [Plaintiff] or its agent, successors and assigns full, quiet and peaceable possession of the land and premises without delay and that the Sheriff maintain, keep and defend its possession according to the tenor and true intent of the judgment of this Court.

Id. at 2. On September 25, 2015, the Special Referee filed another Writ of Assistance directed at the Sheriff of Marion County. ECF No. 45-9. There, the Special Referee commanded that:

[Sheriff], after 30 days of receiving this Writ, go to and enter upon said land and premises and [] eject and remove [Plaintiff], with any and all persons claiming under the [Plaintiff] therefrom; that [Sheriff] remove therefrom all personal property of the [Plaintiff] and any and all persons claiming under the [Plaintiff]; and that [Sheriff] deliver to [ABB] full, quiet and peaceable possession of the land and premises without delay and that you maintain, keep and defend its possession according to the tenor and true intent of the judgment of this Court.

Id. at 2. Plaintiff was personally served with the Writ of Assistance and Copy of the Special Referee's Deed of Judicial Order on October 1, 2015. ECF No. 45-10.³

Based on the timeline of events, court hearings, and court orders leading to Plaintiff's eviction from his home, the undersigned finds there is no subject matter jurisdiction over the majority of Plaintiff's causes of action. A finding that Plaintiff's constitutional rights were violated (by a court-ordered eviction) would indicate that Plaintiff somehow had a propriety interest in the Subject Property. However, such a finding would be contrary to the legal

³ Plaintiff filed another appeal with the South Carolina Court of Appeals on October 30, 2015. ECF No. 45-11. The appellate court dismissed Plaintiff's appeal on January 13, 2016, and denied Plaintiff's request for rehearing on June 10, 2016. *Id.* Thereafter Plaintiff filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on July 8, 2016, and the supreme court denied the Petition on March 24, 2017. ECF No. 45-12.

conclusion of the Marion County Special Referee which is precisely the conclusion that the *Rooker-Feldman* doctrine prohibits. See *Smalley v. Shapiro & Burson, LLP*, 526 F. App'x 231, 236 (4th Cir. 2013) (internal citations omitted) (“[I]f in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render the judgment ineffectual, *Rooker-Feldman* is implicated, [and] [t]he doctrine applies not only to matters directly addressed by the state court, but also to claims which are inextricably intertwined with state court decisions.”). The *Rooker-Feldman* doctrine has consistently been applied in the context of foreclosure actions. See e.g., *id.*; *Stanfield v. CitiMortgage, Inc.*, No. 2:09-2711-MBS-RS, 2010 WL 3257721, at *7 (D.S.C. July 16, 2010), report and recommendation adopted, No. 2:09-2711-MBS, 2010 WL 3257722 (D.S.C. Aug. 16, 2010); *Sluder v. Nationstar Mortg., LLC*, No. 4:16-CV-3199-BHH-TER, 2017 WL 3530521. Further, the Fourth Circuit Court of Appeals and other appellate courts have used the doctrine to bar § 1983 claims where the plaintiff alleges his constitutional rights were violated. See e.g., *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192 (4th Cir. 1997) (barring a § 1983 claim alleging violations of First and Fourteenth Amendments for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine); *Woodhull v. Fierle*, 554 F. App'x 785 (11th Cir. 2013) (finding the *Rooker-Feldman* barred a suit where plaintiff alleged state court judges seized her property in violation of the Fourth Amendment); see also *Ananiev v. Freitas*, 37 F. Supp. 3d 297, 312 (D.D.C.), aff'd, 587 F. App'x 661 (D.C. Cir. 2014) (“If, however, service of the Writ of Possession and Notice of Eviction occurred after [foreclosure proceedings], the Court lacks subject matter jurisdiction over the plaintiff's Fourth Amendment claim under the *Rooker-Feldman* doctrine and it must be dismissed under Federal Rule of Civil Procedure 12(b)(1).”).

Plaintiff represents that he has taken possession over the Subject property. ECF No. 24 at ¶ 49. However, the Marion County court records indicate, that ABB took fee simple title to the Subject Property on October 24, 2013. ECF No. 45 at 5. Therefore, as Defendant Herring maintains: "Plaintiff and his wife remain entrenched in the Subject Property in violation of multiple court orders." *Id.* The undersigned has carefully reviewed all of Plaintiff's filings, including flash drives he has submitted with the court. Plaintiff never presents any evidence indicating he or his family has a legal property interest in the subject property or any evidence invalidating the Special Referee's orders. *See* ECF Nos. 49, 50, 77, 78, 84, 85. Rather, Plaintiff simply ignores the court documents instructing the Marion County Sheriff's Officer to evict all persons and personal property from the Subject Property. However, this court cannot ignore these court orders and legal conclusions.

The undersigned finds that the *Rooker-Feldman* doctrine bars Plaintiff's § 1983 claims for violations of his First, Fourth,⁴ Eighth, Fifth and Fourteenth Amendment rights. Pursuant to the Special Referee's order, the Marion County Sheriff's Office was legally required to take action, was not a trespasser, and did not violate any of Plaintiff or his family's constitutional rights by evicting (not arresting) Plaintiff and his family. However, the undersigned finds that Plaintiff's § 1983 cause of action for cruel and unusual punishment is not disposed of under the *Rooker-Feldman* doctrine because the Special Referee's legal findings concerning ownership and necessary eviction would not affect whether unlawful force was used on Plaintiff during the

⁴ Specifically, the undersigned is referencing Plaintiff's § 1983 cause of action for a Fourth Amendment search and seizure violation, not a cause of action for a Fourth Amendment excessive force claim.

course of his arrest.⁵ Therefore, the undersigned recommends dismissing all of Plaintiff's federal causes of action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure except Plaintiff's cause of action for excessive force during the course of his arrest.⁶

2. Failure to state facts upon which relief can be granted

In his second argument to the court, Defendant Herring argues Plaintiff's factual allegations "along with the documents available in the public record fail to state a claim for violation of Plaintiff's civil rights under Section 1983." ECF No. 45 at 7. Because Plaintiff had no possessory rights in the subject property, Defendant Herring argues his entry onto the subject property did not violate any of Plaintiff's rights. *Id.* Furthermore, Defendant Herring maintains his "alleged actions are immune from liability under Section 1983 because such actions were at the discretion of the trial court's Writ of Assistance." *Id.* at 7.

Rule 8 of the Federal Rules of Civil Procedure requires that complaints shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose behind Rule 8 is to give the defendant fair notice of the claims and the grounds upon which it

⁵ Plaintiff alleged a § 1983 cause of action for an Eighth Amendment violation. The undersigned notes the proper cause of action would be a violation of the Fourth Amendment for excessive force during the course of an arrest. However, the undersigned must liberally construe Plaintiff's pro se pleadings and therefore will consider his excessive force claim.

⁶ Based on other district court holdings, the undersigned does not recommend that the District Court find Plaintiff's excessive force claim so intertwined with Plaintiff's state-court adjudications that it is also barred under *Rooker-Feldman*. See, *Benhaim v. Borough of Highland Park*, 79 F. Supp. 3d 513, 520–21 (D.N.J. 2015) (holding *Rooker-Feldman* doctrine inapplicable because plaintiff's excessive force claim was not an issue in plaintiff's criminal trial; therefore, "[t]he state court cannot be said to have adjudicated [plaintiff's] excessive force claim [and Plaintiff's] excessive force claim [is not] inextricably intertwined with [plaintiff's] criminal conviction."); *Busch v. Torres*, 905 F. Supp. 766, 772 (C.D. Cal. 1995) (finding all of plaintiff's claims, except plaintiff's first claim which the court liberally construed as a claim for excessive force under the Fourth Amendment, "necessarily require review of the execution of the state court writ of possession issued in the unlawful detainer action, and are barred under the *Rooker-Feldman* doctrine.").

rests. *Twombly*, 550 U.S. at 555. Further, the plaintiff is obligated to provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .” *Id.* The factual allegations must be enough to raise a right to relief above the speculative level. *Id.* “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*, 556 U.S. at 678. The *Twombly* Court noted that defendants will not know how to respond to conclusory allegations, especially when “the pleadings mentioned no specific time, place, or person involved in the alleged conspiracies.” *Twombly*, 550 U.S. at 565 n.10. However, *Twombly* did not expressly hold that a Plaintiff must assert specific time, place, and persons involved in order to comply with Rule 8. *See Ashcroft*, 556 U.S. at 678 (internal *Twombly* citation omitted) (“As the Court held in *Twombly*, [] the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”); *Starr v. Sony BMG Music Entm’t*, 592 F.3d 314, 325 (2d Cir. 2010) (finding the *Twombly* court noted, in dicta, that the pleadings there mentioned no specific time, place, or person involved in the alleged conspiracies and rejected defendants’ argument that *Twombly* requires a plaintiff identify the specific time, place, or person related to each conspiracy allegation); *Milliken & Co. v. CNA Holdings, Inc.*, 3:08-CV-578-RV, 2011 WL 3444013, at *5 (W.D.N.C. Aug. 8, 2011) (finding other courts have held a plaintiff can survive a motion to dismiss even though he fails to answer who, what, when and where).

As indicated in the previous section, the undersigned finds this court has subject-matter jurisdiction over Plaintiff’s excessive force claim. However, the undersigned finds that this claim does not survive initial pleading requirements in regards to Defendant Herring. Specifically, Plaintiff has not alleged that Defendant Herring took part in his arrest, used excessive force on

him, or put handcuffs on him. Based on Plaintiff's failure to allege specific facts concerning Defendant Herring's actions during the course of his arrest, the undersigned finds there is no "reasonable inference" that Defendant Herring can be liable for this alleged misconduct. *Ashcroft*, 556 U.S. at 678. Therefore, the undersigned recommends granting Defendant Herring's Motion to Dismiss pursuant to Rule 12(b)(6) and that Plaintiff's case against Defendant Herring be dismissed entirely because of Plaintiff's failure to satisfy minimum pleading standards.⁷

B. Remaining Defendants' Motion to Dismiss

Defendants Darren Miles, John Doe 1-18; Jane Doe 1-2; and Marion County ("Remaining Defendants") argue they are immune from suit under the Eleventh Amendment, and therefore, Plaintiff's Second Amended Complaint fails to state a claim for which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 36 at 2-4. Remaining Defendants argue that the Eleventh Amendment bars state agencies and heads of state agencies in their official capacities from suits in federal court. *Id.* at 3. Furthermore, Remaining Defendants argue that Sheriff's Departments are state agencies, not municipal departments, and Marion County is not responsible for the operation of the Marion County Sheriff's Department. *Id.* at 3-4.

1. Eleventh Amendment Immunity

The undersigned recommends dismissing Plaintiff's allegations against these Defendants to the extent Plaintiff alleges they acted in their official capacities. The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any

⁷ Because the undersigned recommends dismissal of all federal claims against this Defendant, the court should not exercise supplemental jurisdiction related to any state law claims. In any event, the undersigned notes that Plaintiff's state-law claims are either inextricably intertwined with the state court foreclosure action or do not implicate actions taken by this Defendant.

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. amend. XI. The United States Supreme Court has long held that the Eleventh Amendment also precludes suits against a state by one of its own citizens. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). This immunity extends not only to suits against a state per se, but also to suits against agents and instrumentalities of the state. *Cash v. Granville Cnty. Bd. of Ed.*, 242 F.3d 219, 222 (4th Cir. 2001). Because Defendant Miles was an agent or employee of the State of South Carolina when acting in his official capacity, he is not a “person” within the meaning of 42 U.S.C. § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“[N]either a state nor its officials acting in their official capacities are ‘persons’ under § 1983.”). A state cannot, without its consent, be sued in a District Court of the United States by one of its own citizens upon the claim that the case is one that arises under the Constitution and laws of the United States. *Edelman*, 415 U.S. at 663. The State of South Carolina has not consented to be sued in this case. S.C. Code Ann. § 15-78-20(e). As an arm of the State, and John and Jane Doe Defendants, in their official capacities, are immune from suit under the Eleventh Amendment. Accordingly, the undersigned recommends that Plaintiff’s claims against Remaining Defendants in their official capacities be dismissed.

2. Marion County as a Party

The undersigned recommends dismissing Marion County as a party to this action because Marion County cannot be liable for the conduct of the Marion County Sheriff’s Department or employees of the Marion County Sheriff’s Department as a matter of law or based on vicarious liability. Essentially, Marion County Sheriff’s Department employees are state rather than county employees. Article V, section 24 of the South Carolina Constitution provides:

There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner; and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation.

The General Assembly also may provide by law for the age and qualifications of sheriffs and coroners, and the selection, duties, and compensation of other appropriate officials to enforce the criminal laws of the State, to prosecute persons under these laws, and to carry on the administrative functions of the courts of the State.

The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.

This section of the South Carolina Constitution makes it clear that county sheriffs and county sheriff's departments are state and not county officers or offices. Simply put, the Constitution allows each county to elect a sheriff who then serves a four-year term and is paid by the South Carolina General Assembly rather than the county for which he or she serves. South Carolina courts have also held or noted that the state's governing body rather than county officials control a County Sheriff and a County Sheriff's Department. *See Wyatt v. Fowler*, 484 S.E.2d 590, 593 (S.C. 1997) ("[D]eputies and sheriffs are state officials and therefore not liable in their official capacity under § 1983."); *Cone v. Nettles*, 417 S.E.2d 523, 524-25 (S.C. 1992) (citing and relying on reasoning in *Gulledge v. Smart*, 691 F. Supp. 947 (D.C.S.C. 1988), *aff'd* 878 F.2d 379 (4th Cir. 1989), to hold sheriffs and deputies are state, not county, officials); *Hucks v. Cty. of Union*, No. 2006-UP-323, 2006 WL 7286762, at *1 (S.C. Ct. App. Sept. 6, 2006) (internal citations omitted) ("The law is clear that sheriffs and deputy sheriffs are not employees of their respective counties. Sheriffs are constitutional officer[s] in South Carolina. The state, rather than the respective counties, has the potential power of control over sheriffs. The sheriff of each county is an elected office established by our state constitution. The supreme court has long

held that deputy sheriffs are not employees of the county.”); *see also Cromer v. Brown*, 88 F.3d 1315, 1318 (4th Cir. 1996) (finding South Carolina sheriffs are arms of the state and entitled to Eleventh Amendment immunity from claims for damages in their official capacity); *McCall v. Williams*, 52 F. Supp. 2d 611, 615 (D.S.C. 1999) (“[A] deputy sheriff is considered an arm of the State. . . .”); *Watterson v. Fowler*, No. C.A. 9:06-1064-PMD-GC, 2006 WL 1663801, at *4 (D.S.C. June 8, 2006), *report and recommendation adopted*, No. 9:06-1064-PMD-GCK, 2006 WL 1687431 (D.S.C. Apr. 12, 2006) (“[I]n South Carolina, a county Sheriff and the Sheriff’s Department are entitled to Eleventh Amendment protection.”).

Therefore, neither Marion County Sheriff’s Department nor the sheriff or sheriff’s deputies are employees of Marion County. Thus, there is no legal or vicarious liability basis on which Marion County may be a party to this lawsuit based on the conduct of the Sheriff’s Department or its employees. Accordingly, the undersigned recommends granting these Defendants’ Motion to Dismiss Marion County as a party to this action.

3. South Carolina Tort Claims Act/Supplemental Jurisdiction

Remaining Defendants argue Plaintiff’s remaining state law claims must be brought in a state court within the boundaries of the South Carolina pursuant to the South Carolina Tort Claims Act (“SCTCA”). ECF No. 36 at 4-6. Specifically, Remaining Defendants argue “Plaintiff cannot also pursue a claim under the [SCTCA] in this Court.” *Id.* at 5. Further, these Defendants argue that “given the impending dismissal of Plaintiff’s federal claim(s), it is also appropriate for this Court to decline to exercise supplemental jurisdiction over his state law tort law claims.” *Id.* at 6. Should the District Court accept this R&R, Plaintiff’s only remaining federal claim will be a § 1983 cause of action for excessive force during the course of Plaintiff’s arrest. Further, the only remaining Defendants in this action will be Defendant Officer Miles and the John and Jane Doe

Defendants acting in their *individual* capacities (because the undersigned has already found it is appropriate to grant Eleventh Amendment to these Defendants to the extent Plaintiff alleges they were acting in their official capacities).

Turning the language of the SCTCA, the SCTCA grants to the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability for any tort, except as waived therein. S.C. Code Ann. § 15-78-20(b). Section 15-78-70(a) provides that “[t]his chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” However, an employee does not have immunity from suit “if it is proved that the employee’s conduct was not within the scope of his 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). Subsection 60 of the SCTCA provides immunity to governmental entities for a number of actions. “Provision relating to limitations and exemptions are to be liberally construed to limit the state’s liability.” *Wade v. Berkeley Cty.*, 498 S.E.2d 684, 688 (S.C. Ct. App. 1998). “The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.” *Newkirk v. Enzor*, No. 4:13-CV-01635-RMG, 2015 WL 3853167, at *9 (D.S.C. June 19, 2015), *appeal dismissed sub nom.*, No. 15-1795, 2017 WL 56718 (4th Cir. Jan. 5, 2017).

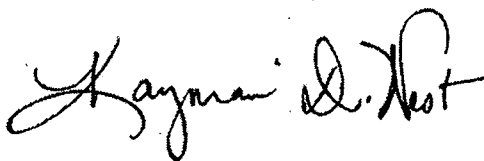
Outside of his federal claims, Plaintiff brings causes of action for Defendants’ violations of certain sections of the South Carolina Constitution; false arrest and unlawful imprisonment in violation of section 22-5-140 of the South Carolina Code; and “illegal acts during a state of emergency” in violation of section 16-7-10 of the South Carolina Code. ECF No. 24 at ¶¶ 71-79.

The SCTCA is inapplicable to these state causes of action and Defendants who remain as parties to this action. Therefore, the undersigned recommends that Plaintiff's state causes of action survive Remaining Defendants' Motion to Dismiss. The undersigned makes no finding concerning whether these actions will survive the summary judgment stage and is only recommending a finding they survive Defendants' motion to dismiss pursuant to Rule 12(b)(6).

IV. Conclusion and Recommendation

Based on the foregoing, it is recommended that Defendant Herring's Motion to Dismiss, ECF No. 45, be GRANTED. Concerning the Remaining Defendants, the undersigned recommends their Motion to Dismiss, ECF No. 36, be GRANTED in part and DENIED in part. The Motion should be granted to the extent Plaintiff seeks to sue them in their official capacities and to the extent Plaintiff has sued Marion County. Should the district court adopt this R&R, the only remaining cause of action is Plaintiff's § 1983 cause of action for excessive force during the course of his arrest as well as Plaintiff's state-law causes of action against Defendant Miles, John Doe 1-18, and Jane Doe 1-2.

IT IS SO RECOMMENDED.



October 6, 2017
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Arnold Parson, Jr.,

Plaintiff,

v.

Darren Miles, Danny Lee Herring,
John Doe 1-18, Jane Doe 1-2, and
County of Marion,

Defendants.

Civil Action No.: 4:17-cv-00708-RBH-KDW

ORDER

Plaintiff Arnold Parson, Jr., proceeding pro se, filed this action in this Court pursuant to 42 U.S.C. § 1983 against the above-captioned Defendants. The matter is before the Court for consideration of the parties' objections to the Report and Recommendation ("R & R") of United States Magistrate Judge Kaymani D. West, who recommends (1) granting the motion to dismiss filed by Defendant Danny Lee Herring and (2) granting in part and denying in part the motion to dismiss filed by Defendants Darren Miles, John Doe 1-18, Jane Doe 1-2, and the County of Marion.¹ See ECF Nos. 95, 102, & 103.

Legal Standards

I. Review of the R & R

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge's recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept,

¹ The Magistrate Judge issued the R & R in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

UNITED STATES DISTRICT COURT
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¹ The Magistrate Judge issued the R & R in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

The Court must engage in a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate [Judge]'s proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge's recommendation. *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983).

II. Federal Rule of Civil Procedure 12(b)(1)

When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on the plaintiff. In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment. The district court should apply the standard applicable to a motion for summary judgment, under which the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists. The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.

Richmond, Fredericksburg & Potomac R. Co. v. United States, 945 F.2d 765, 768 (4th Cir. 1991) (internal citations omitted); see also *Balfour Beatty Infrastructure, Inc. v. Mayor & City Council of Baltimore*, 855 F.3d 247, 251 (4th Cir. 2017) ("A Rule 12(b)(1) motion to dismiss should be granted only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as

a matter of law.” (internal quotation marks omitted)).

III. Federal Rule of Civil Procedure 12(b)(6)

It is established that “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). [The Fourth Circuit] ha[s] recognized that “facial plausibility is established once . . . the complaint’s factual allegations produce an inference . . . strong enough to nudge the plaintiff’s claims ‘across the line from conceivable to plausible.’” *See Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 256 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 570). In assessing the sufficiency of a complaint, [a court must] assume as true all its well-pleaded facts and draw all reasonable inferences in favor of the plaintiff. *Id.* at 253. Thus, to satisfy the plausibility standard, a plaintiff is not required to plead factual allegations in great detail, but the allegations must contain sufficient factual heft “to allow a court, drawing on ‘judicial experience and common sense,’ to infer ‘more than the mere possibility’” of that which is alleged. *Id.* at 256 (quoting *Iqbal*, 556 U.S. at 679).

Nanni v. Aberdeen Marketplace, Inc., 878 F.3d 447, 452 (4th Cir. 2017). When considering a Rule 12(b)(6) motion, a court “may properly take judicial notice of matters of public record.” *Philips v. Pitt Cty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Discussion²

In 2013, the special referee for Marion County entered an order and judgment of foreclosure and sale for property located at 3546 Quail Roost Road in Mullins, South Carolina; the order identified Plaintiff Arnold Parson, Jr. as one of the defendants in the foreclosure action. *See* ECF Nos. 45-1, 45-2, 45-3. In 2014 and 2015, the South Carolina Court of Appeals and the South Carolina Supreme Court

² The R & R thoroughly summarizes the factual and procedural background of this case, as well as the applicable legal standards.

rejected Plaintiff's appeal of the foreclosure action. *See* ECF Nos. 45-4 & 45-5. Also in **2014 and 2015**, the special referee issued a writ of assistance identifying Plaintiff and the 3546 Quail Roost Road property and commanding the Sheriff of Marion County to "go to and enter upon said land and . . . eject and remove [Plaintiff]" and "all personal property of [Plaintiff]." *See* ECF Nos. 45-6, 45-7, 45-8, 45-9, & 45-10. Plaintiff was served with a copy of the writ of assistance on **October 1, 2015**. *See* ECF No. 45-10. **On October 30, 2015**, Plaintiff appealed the writ of assistance, and both the South Carolina Court of Appeals and the South Carolina Supreme Court rejected the appeal.³ *See* ECF No. 45-11; *see also* ECF No. 103-2 at pp. 1-5. **On November 2, 2015**, the Marion County Sheriff's Office executed the writ of assistance at Plaintiff's residence at 3546 Quail Roost Road, and Plaintiff was arrested.⁴ *See* ECF Nos. 49-2 & 49-3.

Then, **on March 15, 2017**, Plaintiff filed this § 1983 action in this Court alleging his constitutional rights were violated when "Marion County Special Ops Officers" unlawfully entered his property at 3546 Quail Roost Road **on November 2, 2015** (during a state of emergency), searched his house, arrested him with excessive force, took him to jail, and caused his family's personal belongings to be destroyed. *See* ECF No. 1; Second Amended Complaint [ECF No. 24].⁵ Plaintiff sues the following Defendants: Danny Lee Herring, Darren Miles, Marion County, as well as John Does 1-18 and Jane Does 1-2 ("the Doe Defendants"). Plaintiff alleges that Defendant Herring is the owner of

³ Plaintiff also filed a motion for relief in the Marion County circuit court and sent this motion and other documents to the Marion County Sheriff's Office in October 2015. *See* ECF Nos. 103-1, 103-3, & 103-5.

⁴ Plaintiff apparently was arrested on charges of trespassing and breach of peace. *See* ECF Nos. 49-2, 49-3, 103-7, & 107-1. Plaintiff has submitted documents indicating these charges were dismissed by court orders. *See* ECF Nos. 49-3 & 103-7; *see also* ECF No. 104 (electronic flash drive that contains an audio recording of a hearing before a Marion County magistrate judge).

⁵ As the Magistrate Judge correctly notes, Plaintiff's Second Amended Complaint is the operative pleading. *See* R & R at p. 2. The Second Amended Complaint does not reference the foreclosure action or writ of assistance.

a construction company, that Defendant Miles is the “Lieutenant for [the] Marion County Special Ops Unit,” and that the Doe Defendants are “unknown Marion County Special Ops Officers.” *See* Sec. Am. Compl. at ¶¶ 5, 15–16.

Defendant Herring has filed a motion to dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure and has submitted court documents from the state foreclosure proceedings, and Defendants Miles, Marion County, and the Does (collectively, “the Remaining Defendants”) have filed a motion to dismiss pursuant to Rule 12(b)(6). *See* ECF Nos. 36 & 45. Plaintiff has filed responses in opposition to both motions and has submitted documents related to his November 2, 2015 arrest. *See* ECF Nos. 49, 77, 84, & 85. The Magistrate Judge has entered an R & R recommending that the Court grant Defendant Herring’s motion and that the Court grant in part and deny in part the Remaining Defendants’ motion. *See* R & R [ECF No. 95] at p. 22. The Remaining Defendants and Plaintiff have filed objections to the R & R, and Plaintiff has filed a reply to the Remaining Defendants’ objections. *See* ECF Nos. 102, 103, 104, & 107.

I. Defendant Herring’s Motion to Dismiss

The Magistrate Judge recommends granting Defendant Herring’s motion to dismiss filed pursuant to Rule 12(b)(1) and Rule 12(b)(6) because (1) the *Rooker-Feldman*⁶ doctrine bars all of Plaintiff’s federal claims except his § 1983 excessive force claim, and (2) Plaintiff’s excessive force claim fails to allege specific facts concerning Defendant Herring’s actions during the course of his arrest. *See* R & R at pp. 9–17. Thus, the Magistrate Judge recommends dismissing Defendant Herring

⁶ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). “The *Rooker-Feldman* doctrine followed from Congress’ careful assignment of federal subject matter jurisdiction, allocating *original* jurisdiction to the district courts in, for example, 28 U.S.C. § 1330(a) (actions against foreign states), § 1331 (federal question jurisdiction), and § 1332(a) (diversity jurisdiction), while allocating *appellate* jurisdiction over final state court judgments to the Supreme Court in § 1257(a).” *Thana v. Bd. of License Comm’rs for Charles Cty., Md.*, 827 F.3d 314, 318–19 (4th Cir. 2016).

from this case. *Id.* at p. 17. Plaintiff objects to the Magistrate Judge's recommendation. *See* Pl.'s Objs. [ECF No. 103] at pp. 2–8.⁷

First, Plaintiff argues the Magistrate Judge erroneously relied on “matters outside the pleadings” to address Defendant Herring’s motion to dismiss.⁸ *See* Pl.’s Objs. at pp. 2–7. The Court rejects Plaintiff’s argument because the Magistrate Judge simply took judicial notice of the records from the state court foreclosure proceedings involving Plaintiff’s property located at 3546 Quail Roost Road in Mullins, South Carolina—the same property involved in this lawsuit. Such judicial notice is proper “at any stage of the proceeding,” Fed. R. Evid. 201(d), including on a motion to dismiss under Rule 12(b)(1) (lack of subject matter jurisdiction) or Rule 12(b)(6) (failure to state a claim). *See Philips*, 572 F.3d at 180 (judicial notice on a Rule 12(b)(6) motion); *Richmond*, 945 F.2d at 768 (recognizing a court may address a Rule 12(b)(1) motion by “consider[ing] evidence outside the pleadings without converting the proceeding to one for summary judgment”). *See also Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“[F]ederal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue[.]”); *see, e.g., Pena v. HSBC Bank USA, Nat. Ass’n*, 633 F. App’x 580 (4th Cir. 2015) (taking judicial notice of foreclosure proceedings on a Rule 12(b)(6) motion); *McGhie v. Headen*, 2018 WL 1020132, at *2 (W.D.N.C. Feb. 22, 2018) (same). In other words, the Magistrate Judge did not improperly convert Defendant Herring’s motion to dismiss to one for summary judgment by judicially noticing the state court foreclosure records.

⁷ Defendant Herring has not filed objections to the R & R.

⁸ Plaintiff cites and relies upon Federal Rule of Civil Procedure 12(d), which provides: “If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” Fed. R. Civ. P. 12(d).

Second, Plaintiff challenges the Magistrate Judge's application of the *Rooker-Feldman* doctrine. See Pl.'s Objs. at pp. 2, 7-8. The *Rooker-Feldman* doctrine is "jurisdictional," *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003), and it precludes "'lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments.'" *Thana*, 827 F.3d at 319 (quoting *Lance v. Dennis*, 546 U.S. 459, 463 (2006)). The doctrine is "narrow and focused," *id.*, and "confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Lance*, 546 U.S. at 464 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). "Thus, if a plaintiff in federal court does not seek review of the state court judgment itself but instead '*presents an independent claim*, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court.'" *Thana*, 827 F.3d at 320 (internal quotation marks omitted).

Here, Plaintiff alleges that on November 2, 2015, Marion County officials unlawfully entered his property located at 3546 Quail Roost Road and proceeded to violate his constitutional rights. See Sec. Am. Compl. at ¶ 1. However, before Plaintiff filed this federal lawsuit, a state court foreclosure judgment and writ of assistance had long since been issued (and unsuccessfully appealed from), and the special referee had commanded the Sheriff of Marion County to execute the judgment by ejecting and removing Plaintiff and his personal property from the premises at 3546 Quail Roost Road. While Plaintiff does not explicitly seek reversal of the foreclosure proceedings, he implicitly asks this federal Court to review and reject the state court proceedings given that he seeks a declaration that his constitutional rights were violated when he was forcibly ejected from his home as well as compensation for the allegedly unconstitutional actions. Plaintiff effectively asks the Court to nullify the state court

foreclosure judgment. The *Rooker-Feldman* doctrine prohibits such federal action, and therefore the Court agrees with the Magistrate Judge that subject matter jurisdiction is lacking for all of Plaintiff's federal claims except his § 1983 excessive force claim (which presents an independent claim that does not call into question the validity of the state court foreclosure judgment or writ of assistance, *see Thana*, 827 F.3d at 320–22). *See, e.g., McGhie*, 2018 WL 1020132, at *1 (involving a “[c]omplaint alleg[ing] an improper seizure by the sheriff” and finding the *Rooker-Feldman* doctrine applied because “[w]hile Plaintiff does not explicitly ask the Court to reverse the foreclosure proceedings, he is asking for compensation deriving from those actions”); *Parker v. Spencer*, No. 4:13-CV-00430-RBH, 2015 WL 3870277 (D.S.C. June 23, 2015) (finding the *Rooker-Feldman* doctrine precluded federal review of a state court foreclosure proceeding).⁹

Finally, the Court notes Plaintiff does not specifically object to the Magistrate Judge's conclusion that his § 1983 excessive force claim fails to allege specific facts pertaining to Defendant Herring, and therefore Rule 12(b)(6) dismissal is warranted for this claim. *See Diamond*, 416 F.3d at 315 (stating a district court need only review the record for clear error in the absence of a specific objection to the R & R). The Court agrees with the Magistrate Judge's conclusion that Defendant Herring should be dismissed from this case because no federal claims remain against him.

The Court will grant Defendant Herring's motion to dismiss.

II. The Remaining Defendants' Motion to Dismiss

The Magistrate Judge recommends granting in part and denying in part the Remaining

⁹ As the Magistrate Judge explains, the fact that Plaintiff alleges violations of 42 U.S.C. § 1983 does not overcome the constraints of the *Rooker-Feldman* doctrine (except for his § 1983 excessive force claim, which does not call into question the validity of the state court foreclosure judgment or writ of assistance). *See R & R* at p. 13; *see, e.g., Shooting Point, L.L.C. v. Cwinning*, 368 F.3d 379, 385 (4th Cir. 2004) (dismissing § 1983 claims based on the *Rooker-Feldman* doctrine).

Defendants' motion to dismiss filed pursuant to Rule 12(b)(6). *See* R & R at pp. 17–22. Specifically, the Magistrate Judge recommends (1) dismissing Plaintiff's official capacity claims on Eleventh Amendment immunity grounds, (2) dismissing Defendant Marion County because the Marion County Sheriff and deputy sheriffs are state (not county) officials, (3) not dismissing Plaintiff's § 1983 excessive force claim asserted against Defendant Miles and the Doe Defendants in their individual capacities, and (4) not dismissing Plaintiff's state law claims asserted against Defendant Miles and the Doe Defendants at this stage of the litigation. *Id.* The Remaining Defendants and Plaintiff have filed objections, and Plaintiff has filed a reply to the Remaining Defendants' objections. *See* ECF Nos. 102, 103, 104, & 107.

A. Remaining Defendants' Objections

The Remaining Defendants present three objections to the R & R. First, they argue the Magistrate Judge erred by concluding the South Carolina Tort Claims Act¹⁰ is inapplicable to Plaintiff's state law claims. *See* Rem. Defs.' Objs. [ECF No. 102] at pp. 1–3. Second, they argue the Magistrate Judge erred by concluding that Plaintiff's state law claims should not be dismissed despite the prior order of the special referee. *Id.* at pp. 3–4.

On pages 21 and 22 of the R & R, the Magistrate Judge identified Plaintiff's state law claims and recommended they not be dismissed at this time.¹¹ However, the Court notes all these claims would

¹⁰ S.C. Code Ann. §§ 15–78–10 *et seq.*

¹¹ The Magistrate Judge summarizes Plaintiff's state law claims as follows: "Outside of his federal claims, Plaintiff brings causes of action for Defendants' violations of certain sections of the South Carolina Constitution; false arrest and unlawful imprisonment in violation of section 22–5–140 of the South Carolina Code; and 'illegal acts during a state of emergency' in violation of section 16–7–10 of the South Carolina Code." R & R at p. 21 (citing Sec. Am. Compl. at ¶¶ 71–79, which is labeled "Pendant Cause of Action"). Plaintiff does not object to the Magistrate Judge's interpretation of his state law claims, and the Court discerns no clear error in the Magistrate Judge's interpretation of them. Notably, Plaintiff has *not* alleged state law claims for assault and battery.

call into question the validity of the state foreclosure judgment and writ of assistance, and therefore the Court lacks subject matter jurisdiction over them pursuant to the *Rooker-Feldman* doctrine. See *Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 196 (4th Cir. 2002) (recognizing “the *Rooker-Feldman* doctrine is jurisdictional” and a court is “obliged to address it before proceeding further in [its] analysis”); Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Although the Remaining Defendants did not move to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) or the *Rooker-Feldman* doctrine in their motion, they do reference “the prior [o]rder of the [s]pecial [r]eferee” in their objections.¹² See Rem. Defs.’ Objs. at p. 3. Moreover, the *Rooker-Feldman* doctrine is jurisdictional and therefore the Court may raise it *sua sponte* in addressing Plaintiff’s claims against the Remaining Defendants. See *Friedman’s*, 290 F.3d at 195 (citing *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192, 197 n.5 (4th Cir. 1997)). Because the Court finds it lacks subject matter jurisdiction over Plaintiff’s state law claims based on the *Rooker-Feldman* doctrine, the Court need not reach the Remaining Defendants’ argument concerning the applicability of the South Carolina Tort Claims Act.¹³ Accordingly, the Court will dismiss Plaintiff’s state law claims for lack of subject matter jurisdiction and modify the R & R to reflect that fact.

Finally, the Remaining Defendants assert the Magistrate Judge erred by not dismissing

¹² Plaintiff has addressed the *Rooker-Feldman* doctrine in his filings.

¹³ The Court notes Plaintiff filed this action in this federal Court (this action was not removed from state court). The South Carolina Tort Claims Act specifies that it is *not* “a waiver of the state’s or political subdivision’s immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.” S.C. Code Ann. § 15-78-20(e). Thus, “[s]uits brought under the South Carolina Tort Claims Act must be brought in a state court within the boundaries of South Carolina.” *Smith v. Ozmint*, 394 F. Supp. 2d 787, 791 (D.S.C. 2005) (citing S.C. Code Ann. § 15-78-20(e)).

Plaintiff's § 1983 excessive force claim pursuant to Rule 12(b)(6). *See* Rem. Defs.' Objs. at pp. 4–5. The Remaining Defendants argue that probable cause supported Plaintiff's arrest and that his temporary detention was not constitutionally unreasonable. *See id.* However, the claim identified by the Magistrate Judge is not a claim for unlawful seizure but is instead a claim for excessive force.¹⁴ To state an excessive force claim under the Fourth Amendment, a plaintiff must show that he was seized and that the force used was objectively unreasonable. *See Graham v. Connor*, 490 U.S. 386, 395 (1989) (explaining the “constitutional standard [that] governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest”); *E.W. by & through T.W. v. Dolgos*, 884 F.3d 172 (4th Cir. 2018) (excessive force claim involving handcuffing). Probable cause and the length of detention are not at issue for this claim, as both the R & R and Plaintiff's Second Amended Complaint make clear that the excessive force claim relates to how Plaintiff was handcuffed during his arrest. Specifically, Plaintiff alleges that while being transported to jail, the handcuffs were “extremely tight” and “so tight [that] sharp pains ran from his hand to his shoulder causing him to shake”; that after being released from jail, he went to the hospital because he was in pain and could barely move his right index finger and had X-rays taken of his wrist and hand, which “still bare [sic] the scar of the handcuffs”; that doctors told him his hand was swollen from his index finger to his wrist, there was possible nerve damage, and an MRI was needed; and that “doctors prescribed pain medication.” *See* Sec. Am. Compl. at ¶¶ 32–33, 40–41. Plaintiff sufficiently alleges a plausible § 1983 excessive force

¹⁴ Both the Magistrate Judge and this Court are mindful that a “document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citation omitted). Plaintiff's *pro se* Second Amended Complaint requires such liberal construction.

claim,¹⁵ *see Graham*, 490 U.S. at 395, and therefore the Court cannot dismiss this claim under Rule 12(b)(6).

B. Plaintiff's Objections

In his objections, Plaintiff appears to challenge the Magistrate Judge's finding that Defendant Miles and the Doe Defendants are entitled to Eleventh Amendment immunity for claims asserted against them in their official capacity.¹⁶ *See* Pl.'s Objs. at pp. 8–10. "The Eleventh Amendment immunizes states from suits seeking money damages. This immunity also applies to judgments against a public servant in his official capacity. This is so because such suits against state officers generally represent only another way of pleading an action against an entity of which an officer is an agent." *Adams v. Ferguson*, 884 F.3d 219, __ (4th Cir. 2018) (internal citations, quotation marks, and alteration omitted). In the R & R, the Magistrate Judge thoroughly and correctly explains Defendant Miles and the Doe Defendants, as deputy sheriffs, are state—not county—officials entitled to Eleventh Amendment immunity and therefore are not liable in their official capacity under § 1983. *See* R & R at pp. 17–20.

Plaintiff also asserts the R & R cites the wrong statute from the South Carolina Code regarding breach of peace referenced in his complaint, S.C. Code Ann. § 22–5–140. *See* Pl.'s Objs. at p. 10; Sec. Am. Compl. at ¶ 78. Although the Magistrate Judge incorrectly cites S.C. Code Ann. § 22–5–150 on page 7 of the R & R, she correctly cites S.C. Code Ann. § 22–5–140 on page 21 of the R & R; the citation to § 22–5–150 is simply a typographical error. *Compare* R & R at p. 7, *with id.* at p. 21. In any

¹⁵ To reiterate, Plaintiff's excessive force claim relates to his handcuffing, not to whether probable cause existed for his arrest or whether he was detained for an unreasonable length of time.

¹⁶ Plaintiff does not specifically object to the dismissal of Marion County, and the Court discerns no clear error in the Magistrate Judge's recommendation to dismiss Marion County. *See Diamond*, 416 F.3d at 315.

event, this very minor typographical error makes no difference because as explained above, the Court lacks subject matter jurisdiction over Plaintiff's state law claims based on the *Rooker-Feldman* doctrine and is modifying the R & R to reflect this lack of jurisdiction.

Finally, Plaintiff contends the Magistrate Judge "erred by recommending dismissal of all of Plaintiff[s] Federal Causes of Action." Pl.'s Objs. at p. 10. However, the Magistrate Judge did *not* recommend dismissal of all federal claims but instead recommended that the Court *not* dismiss Plaintiff's § 1983 excessive force claim.¹⁷

C. Summary

The Court will grant in part and deny in part the Remaining Defendants' motion to dismiss. Specifically, the Court will dismiss Defendant Marion County and Plaintiff's state law claims, but will not dismiss Defendant Miles, the Doe Defendants, and Plaintiff's § 1983 excessive force claim.

Conclusion

For the foregoing reasons, the Court adopts the Magistrate Judge's R & R [ECF No. 95] *except as modified with regard to Plaintiff's state law claims*. Accordingly, the Court **GRANTS** Defendant Herring's motion to dismiss [ECF No. 45] and **DISMISSES** Defendant Herring from this case *without prejudice*. The Court **GRANTS IN PART AND DENIES IN PART** the Remaining Defendants' motion to dismiss [ECF No. 36] and **DISMISSES** *without prejudice* Defendant Marion County and

¹⁷ In his objections, Plaintiff requests to amend his complaint (which he has already amended twice) "to add necessary parties . . . and amend any deficiencies" to "cure any defect this [C]ourt may find." Pl.'s Objs. at pp. 10–11. However, Plaintiff has not filed a motion to amend his complaint, and he has not submitted a proposed third amended complaint with his request. Accordingly, the Court denies Plaintiff's request at this time. *See Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 474 (4th Cir. 2014) ("Regardless of the merits of the desired amendment, a district court does not abuse its discretion 'by declining to grant a motion that was never properly made.'" (quoting *Cozzarelli v. Inspire Pharms., Inc.*, 549 F.3d 618, 630–631 (4th Cir. 2008))); *Cozzarelli*, 549 F.3d at 630–31 (finding no abuse of discretion where the plaintiffs requested leave to amend in a response but did not file a motion to amend or a proposed amended complaint). The Court notes that once answers are filed and the Magistrate Judge enters a scheduling order, Plaintiff will have an opportunity and a deadline for filing a motion to amend.

Plaintiff's state law claims. To clarify, Plaintiff's only remaining claim at this time is a § 1983 claim for excessive force and the only remaining Defendants are Darren Miles, John Doe 1-18, and Jane Doe 1-2.

IT IS SO ORDERED.

Florence, South Carolina
March 27, 2018

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

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

Arnold Parson Jr.,	) C/A No. 4:17-00708-RBH-KDW
	)
Plaintiff,	)
	)
v.	) Report and Recommendation,
	) (Concerning Plaintiff's
Darren Miles; John Doe 1-18; and Jane Doe 1-2,	) Motion to Amend,
	) ECF No. 124)
Defendants.	)
_____	)

I. Brief background and current posture of the case

This matter is before the court¹ for consideration of several motions now pending in Plaintiff's 42 U.S.C. § 1983 civil rights claim. Plaintiff's case principally arises from actions allegedly taken on November 2, 2015 in the execution of a Writ of Assistance that had been issued by a special referee concerning a final order and judgment of foreclosure that had been entered in Marion County in 2013. *Anderson Bros. Bank v. Dazarhea Monique Parson, et al.*, 2013-GP-33-00306 (Marion Cnty. (SC) Court of Common Pleas) (generally referred to as the "Foreclosure Action")).² Previously, the undersigned submitted a Report and Recommendation ("R&R") as to Motions to Dismiss filed by Defendants named in Plaintiff's operative Second

¹ This case was referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(e) and (f), D.S.C. Because Defendants' futility challenge to Plaintiff's Motion to Amend requires that the court effectively determine whether the proposed amended pleading "satisf[ies] the requirements of the federal rules[.]" *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008) (internal quotation marks omitted), this Report and Recommendation ("R&R") is entered for the court's review.

² General information about the Foreclosure Action, including the writ of assistance filed therein ("Writ of Assistance"), is available at <https://publicindex.sccourts.org/Marion/PublicIndex/CaseDetails.aspx?County=33&CourtAgency=33002&Casenum=2013CP3300306&CaseType=V&HKey=8557881071171044310153569810010511380735680107975571995386104814885881111224312111611253847948827985> (last viewed August 21, 2018). A court "may properly take judicial notice of matters of public record." *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

Amended Complaint in which it was recommended that those dispositive motions be granted in part and denied in part. ECF No. 95. After considering objections from Plaintiff and from several Defendants, *see* ECF Nos. 102, 103, 107, the court issued an order adopting that R&R in part, ECF No. 114, and finding that only Plaintiff's Fourth Amendment-based claim for excessive force would survive the motions to dismiss. That cause of action was permitted to proceed only as to Defendant Darren Miles and the "Doe Defendants," identified in Plaintiff's Second Amended Complaint as John Doe 1-18 and Jane Doe 1-2. The remainder of Plaintiff's § 1983 claims (claims brought pursuant to the First, Fourth (other than excessive force during arrest), Eighth, Fifth, and Fourteenth Amendment rights) and all of his state-law-based claims were dismissed without prejudice, as were Defendants Danny Lee Herring and County of Marion. Mar. 27, 2018 Order at 13-14, ECF No. 114.³ In short, these defendants and claims were dismissed based on the *Rooker-Feldman* doctrine.⁴ As noted by the court, the *Rooker-Feldman* doctrine is:

"jurisdictional," *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003), and it precludes "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments." *Thana [v. Bd. of License Comm'rs for Charles Cty., Md.]*, 827 F.3d 314, 319 (4th Cir. 2016) (quoting *Lance v. Dennis*, 546 U.S. 459, 463 (2006)).

ECF No. 114 at 7. As explained by the Court,

Here, Plaintiff alleges that on November 2, 2015, Marion County officials unlawfully entered his property located at 3546 Quail Roost Road and proceeded to violate his constitutional rights. *See* Sec. Am. Compl. at ¶ 1. However, before Plaintiff filed this federal lawsuit, a state court foreclosure judgment and writ of

³ Both the R&R and the Order contain detail of the underlying facts and procedural history that is incorporated herein by reference and is only repeated here to the extent necessary to an understanding of the motions under consideration. Please see the R&R, ECF No. 95, and the March 27, 2018 Order, ECF No. 114, for further detail.

⁴ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

assistance had long since been issued (and unsuccessfully appealed from), and the special referee had commanded the Sheriff of Marion County to execute the judgment by ejecting and removing Plaintiff and his personal property from the premises at 3546 Quail Roost Road. While Plaintiff does not explicitly seek reversal of the foreclosure proceedings, he implicitly asks this federal Court to review and reject the state court proceedings given that he seeks a declaration that his constitutional rights were violated when he was forcibly ejected from his home as well as compensation for the allegedly unconstitutional actions. Plaintiff effectively asks the Court to nullify the state court foreclosure judgment. The *Rooker-Feldman* doctrine prohibits such federal action, and therefore the Court agrees with the Magistrate Judge that subject matter jurisdiction is lacking for all of Plaintiff's federal claims except his § 1983 excessive force claim (which presents an independent claim that does not call into question the validity of the state court foreclosure judgment or writ of assistance, *see Thana*, 827 F.3d at 320-22). *See, e.g., McGhie [v. Headen]*, 2018 WL 1020132, at *1 [W.D.N.C. Feb. 22, 2018] (involving a "[c]omplaint alleg[ing] an improper seizure by the sheriff" and finding the *Rooker-Feldman* doctrine applied because "[w]hile Plaintiff does not explicitly ask the Court to reverse the foreclosure proceedings, he is asking for compensation deriving from those actions"); *Parker v. Spencer*, No. 4:13-CV-00430-RBH, 2015 WL 3870277 (D.S.C. June 23, 2015) (finding the *Rooker-Feldman* doctrine precluded federal review of a state court foreclosure proceeding).

* * *

As the Magistrate Judge explains, the fact that Plaintiff alleges violations of 42 U.S.C. § 1983 does not overcome the constraints of the *Rooker-Feldman* doctrine (except for his § 1983 excessive force claim, which does not call into question the validity of the state court foreclosure judgment or writ of assistance). *See R & R* at p. 13; *see, e.g., Shooting Point, L.L.C. v. Cwinning*, 368 F.3d 379, 385 (4th Cir. 2004) (dismissing § 1983 claims based on the *Rooker-Feldman* doctrine).

Id. at 7-8 & n.9. The undersigned further notes that Plaintiff's appeal of the Writ of Assistance itself was denied by the South Carolina Court of Appeals on January 13, 2016. Plaintiff then submitted numerous motions to the state appellate court, which were denied. Plaintiff's writ of certiorari to the South Carolina Supreme Court, submitted in July 2016, was denied by the state supreme court on April 4, 2017—several weeks after the instant federal action was filed on March 15, 2017. *See* ECF Nos. 132-2, 132-3 (Docket information from South Carolina Appellate Case Management System).

In considering the motions to dismiss and Plaintiff's objections to the undersigned's R&R, the court recognized Plaintiff's request to amend his complaint ("which he has already amended twice) 'to add necessary parties . . . and amend any deficiencies' to 'cure any defect this [C]ourt may find.'" ECF No. 114 at 13 n.17 (quoting Pl. Objections, ECF No. 103 at 10-11). The court noted that Plaintiff had yet to submit an appropriate motion to amend or a proposed amended pleading, and advised Plaintiff that a scheduling order would be entered that would give him "an opportunity and a deadline for filing a motion to amend." *Id.*

Remaining Defendants, Miles and the Doe Defendants (sometimes referred to as Remaining Defendants), answered the Second Amended Complaint ("SAC"), and the undersigned issued a scheduling order. The Scheduling Order established April 30, 2018 as the deadline for parties to submit motions to amend pleadings, May 29, 2018 as the discovery deadline, and July 9, 2018 as the deadline for submitting dispositive motions. ECF No. 119.

Now pending are Plaintiff's Motion to Stay Proceedings, ECF No. 143; "Motion for Leave to Amend Complaint and for Joinder of Additional Defendants" ("Motion to Amend"), ECF No. 124 (filed April 30, 2018); Motion to Quash Subpoena, ECF No. 125 (filed May 2, 2018); and the Remaining Defendants' Motion for Summary Judgment, ECF No. 133 (filed May 17, 2018), which is directed to the currently operative SAC. Briefing is complete as to all motions other than the Motion for Summary Judgment. The court granted Plaintiff's request to hold his response deadline in abeyance pending the court's ruling on his Motion to Amend. *See* ECF No. 140 (holding deadline to respond to the Motion for Summary Judgment *and all scheduling order deadlines* in abeyance pending a ruling on the Motion to Amend and Motion to Quash). *See Babatunde v. Ward*, No. CV 4:14-2223-RMG, 2016 WL 375045, at *3 n.2 (D.S.C.

Jan. 29, 2016) (noting that “a motion to amend the complaint should be adjudicated before a later-filed motion for summary judgment”).

As the Motion to Stay and Motion to Quash Subpoena are nondispositive, the undersigned will issue separate orders on them. *Liberty Mut. Fire Ins. Co. v. KB Home*, No. 5:13-CV-831-BR, 2016 WL 5255581, at *2 (E.D.N.C. Sept. 22, 2016) (finding motion to stay litigation that is not dispositive of the case, claim or defense, is properly considered by a magistrate judge); *see also Manning v. Herman*, No. 1:13-CV-01426, 2014 WL 931095, at *1 (M.D. Pa. Mar. 10, 2014) (collecting cases and noting a request for stay is a “non-dispositive matter, subject to adjudication by a federal magistrate judge.”) (citations omitted). The undersigned addresses herein Plaintiff’s Motion to Amend.

II. Motion to Amend, ECF No. 124

Plaintiff filed his Motion to Amend on April 30, 2018. ECF No. 124. The Motion to Amend includes a proposed Third Amended Complaint (“TAC”) in which Plaintiff seeks to add facts learned in discovery, add “additional wrongdoers” as Defendants, “cure any deficiencies” in the SAC, and identify several of the “Doe” Defendants. ECF No. 124 at 1. The proposed additional defendants include former Defendants Herring and County of Marion; Anderson Brothers Bank (“ABB”); Sheriff Mark Richardson, Marion County Sheriff Office; Marion County Animal Control; and 13 DEU (Marion County Special Operations/Drug Enforcement Unit) Officers—Supervisor Judy Barker, Officer Jack McCaskill, Officer Mitchell McCaskill, Officer Charlie Watson, Officer Dewayne Rogers, Officer Jeff Gause, Officer Samantha Jackson, Officer Johnathan Edwards, Officer Robert Page, Officer Michael Latu, Officer Dale Sylvester, Officer Tracey Causey, and Officer Greg Pike. *See* TAC ¶¶ 6-25. In naming each of the 13 DEU Officers, Plaintiff’s proposed TAC also indicates they may also be referred to as

“Collectively Defendant DEU Officers.” *See id.* ¶¶ 9-21. These DEU Officer Defendants are the now-identified “Jane Doe” and “John Doe” Defendants referenced in the SAC. Pl. Mot. 5.

Remaining Defendants [Defendant Miles and the Doe Defendants] filed an opposition to the Motion to Amend on May 17, 2018, arguing, among other things, that Plaintiff’s proposed amendment would violate the law-of-the-case doctrine and would cause the court to revisit causes of action and claims that the court previously dismissed. ECF No. 127 at 8-9. The Remaining Defendants also argue the amendment would be unduly prejudicial and would be futile. ECF No. 127. Plaintiff submitted a Reply to that opposition. ECF No. 131. Counsel for potential Defendant (and former Defendant) Herring and potential Defendant ABB also oppose the amendment based on *Rooker-Feldman* grounds as well as for failure to state a claim as to Defendant Herring. ECF No. 45. Plaintiff filed a reply to this opposition. ECF No. 136.

A. Standard of review

Where, as here, a party seeks leave to amend after a responsive pleading or Rule 12(b) motion has been filed, the party “may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.* “In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

With respect to futility, the court may deny leave to amend “if the proposed amended complaint fails to state a claim under the applicable rules and accompanying standards.” *Katyle v. Penn Nat. Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011). A complaint states a claim if it

contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Asking for plausible grounds . . . does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal [the] evidence” required to prove the claim. *Twombly*, 550 U.S. at 556. In evaluating the complaint, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff,” but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009).

B. Opposition of Defendants Miles and Does, ECF No. 127

As an initial matter, Remaining Defendants argue that Plaintiff’s Motion to Amend should be denied based on Plaintiff’s “bad faith” by waiting to “add new and additional facts and/or parties which could/should have been part of his previous Complaints.” ECF No. 127 at 4. Defendants argue Plaintiff’s motion should be denied because discovery had almost ended by the time Plaintiff filed the motion to amend, and no party had sought to extend the deadlines. *Id.* at 5. The undersigned does not agree with Remaining Defendants that the timing of Plaintiff’s Motion to Amend, standing alone, would be reason to deny the motion. Plaintiff did file his motion within the deadline for motions to amend that was provided in the March 29, 2018 Scheduling Order. ECF No. 119. The court granted Plaintiff’s motion to have the remaining deadlines in the Scheduling Order—discovery and dispositive motions stayed. ECF Nos. 130, 140. Although Remaining Defendants have a pending Motion for Summary Judgment, ECF No. 133, Plaintiff’s

deadline for responding to that motion has been held in abeyance pending a ruling on the Motion to Amend now under consideration. ECF No. 140.

Further, without commenting at this time on the substance of Plaintiff's additional allegations, the undersigned does note that at least some of the information added—the purported identity of the “John Doe” Defendants was not known to Plaintiff at the time of his earlier pleadings. Additionally, regardless of whether his proposed amended pleading is accepted by the court, Plaintiff has attempted to provide information noted to be lacking by the court's order on Defendants' Motion to Dismiss. This, of course, is one of the goals of the liberal pleading standards espoused by the Federal Rules of Civil Procedure. The undersigned declines to find Plaintiff has operated in “bad faith” by filing the Motion to Amend, and it will not be denied on that ground.⁵

The court must now consider Remaining Defendants' argument that the proposed TAC should be denied on futility grounds.

1. Summary of Plaintiff's Proposed Third Amended Complaint

Neither Plaintiff nor any other party has provided a comparison of the operative SAC (ECF No. 24) with the proposed TAC (ECF No. 124-1). The undersigned has closely reviewed the TAC, and notes, as an initial matter, that it includes all of the claims previously pleaded in the SAC—including those already dismissed by the court's March 27, 2018 Order. In addition, Plaintiff now proposes several additional parties and additional causes of action.

As an initial matter, while the TAC includes more paragraphs in its “Ultimate Facts” section, for the most part these additional facts do nothing to add information that changes the

⁵ This is not to say, however, that the court will reconsider claims on which it has already ruled in considering Plaintiff's request for a third amendment of his pleading.

court's prior ruling in principle—that the only 42 U.S.C. § 1983 claims that may go forward are those Fourth Amendment-based claims that do not call into question the validity of the Foreclosure Order or the Writ of Assistance.⁶ That Order did advise Plaintiff he would have the opportunity to *seek* amendment. The Order did not *ensure* Plaintiff that each of his proposed changes to his pleading would be accepted.

To be clear—the court is not at this juncture reconsidering its ruling that the *Rooker-Feldman* doctrine bars all federal claims raised in the SAC other than the Fourth-Amendment claims of excessive force related to the handcuffing of Plaintiff. As ordered on March 27, 2018, these claims are permitted to go forward as to Defendant Miles and the John Doe/Jane Doe Defendants only. The court is not inclined to revisit those rulings as its consideration of the additional facts does not convince it that it would be appropriate. *See e.g. City of Charleston, S.C. v. Hotels.com, LP*, 520 F. Supp. 2d 757, 774-75 (D.S.C. 2007) (finding it appropriate to invoke the law-of-the-case doctrine as to a motion to dismiss that raised same the issues that had been presented and ruled on in connection with a futility-challenge to a prior motion when the new motion did not raise new, material facts that would change the court's prior analysis). In *City of Charleston*, Senior United States District Judge Patrick M. Duffy noted the law-of-the-case doctrine “posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. Law of the case directs a court's discretion. It does not limit the tribunal's power.” *Id.* at 774 (citing *Arizona v. California*, 460 U.S. 605, 618–19 (1983)).

⁶ As discussed below, in addition to the excessive-force claim, the proposed TAC includes Fourth Amendment-based claims related to Plaintiff's arrest itself that do not necessarily call the state court orders into question.

Here, Plaintiff has provided some additional details in his factual allegations, he has not supplied facts sufficient to change the court's analysis as to the claims contained in the SAC. For example, as noted in the March 27, 2018 Order, ECF No. 114 at 4 n.5, Plaintiff's SAC did not reference the Foreclosure Action, Writ of Assistance, or his appeals or post-trial motions. His TAC does include several averments concerning his Rule 60(b) Motion and appeal of the Writ of Assistance, including allegations concerning the notice of same provided to proposed defendants Sheriff Richardson and ABB. TAC ¶¶ 28-46. In the detailed R&R and Order ruling on the prior Motions to Dismiss, the court appropriately took judicial notice of the Foreclosure Action, Writ of Assistance, and Plaintiff's post-trial and appellate attacks on both. *See, e.g.*, ECF No. 95 at 10-12; ECF No. 114 at 3-6 & n.3.⁷ The undersigned is of the opinion that Plaintiff's addition of this information is not occasion to revisit the March 27, 2018 ruling as to the causes of action already considered. As explained in detail in the March 27, 2018 Order, this court will not consider Plaintiff's claim that the Foreclosure Order [or the related Writ of Assistance] was void or otherwise permit causes of action that might call those actions of the state court into question. *Compare Belville v. Ford Motor Co.*, No. CIV.A. 3:13-6529, 2014 WL 3732132, at *2 (S.D.W. Va. July 25, 2014) (finding re-assertion of claims in amended pleading that court previously had dismissed as a matter of law to be "completely futile").

⁷ In any event, should the district court adopt the undersigned's report as to the Motion to Amend, it is proposed that all "Ultimate Facts" as pleaded in the TAC be permitted. While portions of these facts and most of these additional claims are superfluous, it does not seem appropriate for the court to cull them in a paragraph-by-paragraph fashion at this juncture.

The remainder of this analysis focuses, instead, on the new causes of action and additional proposed parties, as well as any salient facts added regarding the proposed claims and parties.⁸

2. Proposed additional (or amended) causes of action

Having conducted a thorough comparison of Plaintiff's proposed TAC with the operative SAC, the undersigned notes the following:

- a. First Cause of Action, "Constitutional Claims" in violation of § 1983, brought as to all proposed Defendants TAC ¶¶ 98-109

In large measure, the proposed First Cause of Action includes § 1983 claims raised in the SAC and already considered: violation of his First Amendment rights (¶ 102); violation of his Fourth Amendment right to be free from unreasonable search and seizure (¶ 103); violation of his Eighth Amendment right to be free from cruel and unusual punishment (¶ 104); violation of his Fifth and Fourteenth Amendment right to equal protection and due process (¶ 105); and his rights to "life liberty, and pursuit of happiness" by Defendants' organizing as a "standing army in times of peace," in violation of Article 1 Section 10 Subsection 3 of the United States Constitution (¶ 106). For the same reasons discussed in the R&R and Order, it is recommended that these portions of Plaintiff's proposed TAC *not* be permitted as they are barred from consideration based on the *Rooker-Feldman* doctrine.

However, further discussion of Plaintiff's proposed Fourth Amendment claim is necessary. As the court noted in considering the SAC, the portion of Plaintiff's Fourth Amendment claim relating to excessive force in the course of his arrest has been permitted to move forward because it "does not call into question the validity of the state court foreclosure

⁸ While this summary provides an overview of the proposed amendments to the now-operative SAC, it is not intended as an exhaustive catalog of each and every proposed additional averment.

judgment or writ of assistance.” ECF No. 114 at 8 n.8; ECF No. 95 at 13. In considering Plaintiff’s Fourth Amendment claims, the court made clear that it was only the portion of the SAC that raised a constitutional claim for excessive force that was being permitted to proceed. ECF No. 114 at 11; *id.* at 12 n.15 (“To reiterate, Plaintiff’s excessive force claim relates to his handcuffing, not to whether probable cause existed for his arrest or whether he was detained for an unreasonable length of time.”). The court pointed out that, based on the SAC, “[p]robable cause and the length of detention are not at issue for this claim[,]” noting the relevant claim in the SAC “relate[d] to how Plaintiff was handcuffed during his arrest[]” only. *Id.*

In Plaintiff’s proposed TAC, he pleads the following causes of § 1983 “Constitutional Claims” that, liberally construed, might be considered challenges both to the force used and to whether probable cause existed for his arrest and as to the length of his detention:

100. “Defendant DEU Officers used excessive force and conducted an unlawful arrest of Plaintiff, both actions in violation of 42 U.S.C. § 1983.

101. “Defendant DEU Officers engaged in an improper and unlawful arrest of the Plaintiff and the use of brutal and excessive force (sniper) in the detention and arrest of Plaintiff.

103. Plaintiff[‘s] fourth amendment right to be secure in his person, house, papers, and effects from unreasonable or unprovoked attacks as unreasonable searches, and seizures, and free from the unreasonable use of excessive force was denied by Defendant MCSO, Defendant DEU Officers, and Defendant Richardson, in particular with they arrested (handcuffing) and imprisoned Plaintiff unlawfully, entered onto Plaintiff[‘s] private property, and divested Plaintiff and his family of their actual possession and control of their private property, house, and private belongings (within house) without due process of law.

Proposed TAC ¶¶ 100, 101, 103. As discussed in the prior order, the portions of these claims that refer to entry onto Plaintiff’s property and divesting them of possessions are not permitted to go forward. Plaintiff has now included a dimension to his Fourth Amendment claim that was not

present in the SAC—whether probable cause existed for his arrest and the length of his detention.

Nonetheless, the undersigned is of the opinion that Plaintiff's now-proffered challenges concerning his arrest and imprisonment, too, are barred based on the *Rooker-Feldman* doctrine. This is so because—although the SAC did not include claims related to Plaintiff's arrest and imprisonment in his § 1983 claims—his state-law “pendant” claims did. In the SAC, Plaintiff alleged that his arrest for breach of the peace pursuant to S.C. Code Ann. § 22-5-140 “without order or warrant” was “in violation of S.C. Code Ann. § 22-5-140 amounting to a False Arrest and Unlawful[] Imprisonment.” SAC ¶ 78. In considering this and all of Plaintiff's state-law tort claims pleaded in the SAC, Judge Harwell “note[d] that all these claims would call into question the validity of the state foreclosure judgment and writ of assistance, and therefore the Court lacks subject matter jurisdiction over them pursuant to the *Rooker-Feldman* doctrine.” ECF No. 114 at 9-10 & n.11.

While § 1983 claims and South Carolina state-law claims related to arrest and imprisonment are different in several respects, whether probable cause existed is an element of both the South Carolina tort of false imprisonment, *Huffman v. Sunshine Recycling, LLC*, 790 S.E.2d 401 (S.C. Ct. App. 2016) (cert. granted by SCSC Sept. 29, 2017), and a § 1983 claim raising Fourth Amendment concerns as to an arrest, *see Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) (noting that, to establish an unreasonable seizure under the Fourth Amendment, the plaintiff must show that the defendant arrested him without probable cause).

Accordingly, Plaintiff's only remaining 1983 Fourth Amendment claim remains one for excessive force concerning his handcuffing during his arrest. In Plaintiff's “First Cause of Action” under § 1983 for “Constitutional Violations,” only those portions of paragraphs 100

and 103 that relate to excessive force in handcuffing may go forward at this time. This is in keeping with the court's prior rulings concerning the *Rooker-Feldman* bar.⁹ As noted above, Plaintiff is not being permitted a "do-over" at this juncture. His additional allegations would call into question the Foreclosure Order and the Writ of Assistance and cannot proceed.

b. Plaintiff's other § 1983 claims—Second through Eighth Causes of Action

Plaintiff's other § 1983 claims are also barred by *Rooker-Feldman* because they call into question the state court's rulings. See TAC ¶¶ 110-15 ("Violation of 42 USC § 1983 Second Cause of Action 'Assault'" in connection with threats of arrest and use of force by knocking and, if no answer, forcing door open); ¶¶ 116-20 ("Violation of 42 USC § 1983 Third Cause of Action 'Battery'"); ¶¶ 122-29 ("Violation of 42 USC § 1983 Fourth Cause of Action 'Intentional Infliction of Emotional Distress/Outrage[]'" in connection with various acts related to execution of the Writ of Assistance and arrest of Plaintiff); ¶¶ 130-46 ("Violation of 42 USC § 1983 Fifth Cause of Action 'False Arrest/Unlawful Imprisonment'" and "Violation of 42 USC § 1983 Sixth Cause of Action 'Malicious Prosecution'" in connection with Plaintiff's arrest during execution of the Writ of Assistance); ¶¶ 147-56 ("Violation of 42 USC § 1983 Seventh Cause of Action 'Negligence/Gross Negligence/Recklessness'" concerning Plaintiff's arrest and Defendants' actions during execution of Writ of Assistance)¹⁰; ¶¶ 157-64 ("Violation of 42 USC § 1983 Eighth Cause of Action 'Negligent Hiring/Supervision'" related to actions during execution of Writ of Assistance).

⁹ Although Plaintiff's proposed Third Cause of Action—see TAC ¶¶ 116-20 ("Violation of 42 USC § 1983 Third Cause of Action 'Battery'")—references the use of excessive force in handcuffing, it is duplicative of the first cause of action discussed above.

¹⁰ Although Plaintiff's Seventh Cause of Action also references the use of excessive force during his arrest, that claim is duplicative of the First Cause of Action.

c. Plaintiff's other federal claims—Ninth and Tenth Causes of Action

Plaintiff's final federal claims—the ninth and tenth causes of action for violation of 42 U.S.C. § 1985 (“Conspiracy to Interfere with Civil Rights” and § 1986 “Neglect to Prevent Conspiracy”)—should not be permitted to proceed. These claims would also be barred by *Rooker-Feldman* as to all claims other than any specifically related to the alleged excessive force in handcuffing Plaintiff on November 2, 2015. Plaintiff simply has not pleaded a plausible claim showing a conspiracy to interfere (or neglect to prevent such a conspiracy) with his rights to be free from the use of excessive force during arrest. Furthermore, in considering Plaintiff's request to amend his Complaint yet again, he should not be permitted to raise completely new theories of recovery based on nothing more than bald allegations of “understandings” or “implicit agreements.”

d. Plaintiff's pendant causes of action

Plaintiff's “Pendant Causes of Action,” although including some additional detail, are the same claims that were included in the SAC and dismissed in the court's March 27, 2018 Order. Compare SAC ¶¶ 70-80 with TAC ¶¶ 178-88. For the same reasons discussed in that Order, those state claims are barred by *Rooker-Feldman* because “all these claims would call into question the validity of the state foreclosure judgment and writ of assistance[.]” ECF No. 114 at 10.¹¹

¹¹ The undersigned notes that in paragraph 183 of the TAC Plaintiff alleges violation of “Art I § 15 (cruel and unusual punishment) of the Constitution of South Carolina[.]” and includes several particulars. Most of those particulars, such as the claim of false arrest, unlawful imprisonment, and destruction of property should not be permitted for reasons discussed above. Plaintiff also includes reference to the “excessive force in the course of handcuffing Plaintiff, the calling of Plaintiff and Plaintiff[s] family ‘mudpuppies.’” As explained in the earlier R&R, *see* ECF No. 95 at 15 n.5, the excessive force claim brought by Plaintiff would not be one considered under the “cruel and unusual” prohibition found in the Eighth Amendment to the U.S. Constitution

In sum, the only portion of Plaintiff's proposed TAC that should be permitted to go forward are those claims in his First Cause of Action related to his claim of excessive force related to his arrest, as indicated in paragraphs 100 and the portion of paragraph 103 concerning alleged violation of his right to be "free from the unreasonable use of excessive force" through his handcuffing during arrest.

Plaintiff's TAC indicates the first cause of action is brought against "All Defendants." The handcuffing-related excessive-force claim is brought against "Defendant MCSO, Defendant DEU Officers, and Defendant Richardson[.]" TAC ¶ 103. However, it is recommended that the excessive-force claim go forward only as to the Defendant DEU Officers [Defendant Miles and the newly named John Doe Officers].

The only Defendants against whom it may proceed are Defendant Miles and the newly named DEU Officers—Supervisor Judy Barker, Officer Jack McCaskill, Officer Mitchell McCaskill, Officer Charlie Watson, Officer Dewayne Rogers, Officer Jeff Gause, Officer Samantha Jackson, Officer Johnathan Edwards, Officer Robert Page, Officer Michael Latu, Officer Dale Sylvester, Officer Tracey Causey, and Officer Greg Pike—formerly the "John Doe" and "Jane Doe" Defendants). Because he has failed to state a plausible claim against MCSO or Sheriff Richardson, amendment to add them as Defendants would be futile.

[and analogous state constitutional provisions]. Plaintiff can make no plausible claim that the alleged excessive force in his handcuffing (or the calling of derogatory names) amounted to cruel and unusual punishment. In other words, these additional allegations do not salvage Plaintiff's claim for violation of the state constitution's prohibition against cruel and unusual punishment. *See Perez v. S.C. Dep't of Labor, Licensing & Regulation*, No. CV 3:17-3187-JFA, 2018 WL 2455093, at *5 (D.S.C. June 1, 2018) (noting Eighth Amendment's prohibition on cruel and unusual punishment applies only to convicted persons; finding it would be futile to permit plaintiff, not a convicted person, to amend to include a claim for cruel and unusual punishment).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Proposed defendant MCSO is not a “person” within the meaning of § 1983 and cannot be sued under § 1983. *See, e.g., Workman v. Perry*, No. 6:17-cv-00765-RBH, 2017 WL 4791150, at *2 (D.S.C. Oct. 23, 2017) (summarily dismissing defendants who were not “persons” within the meaning of § 1983); *Shadoan v. Florence Cnty. Det. Ctr. Med. Dep’t*, 2013 WL 6408347, at *2 (D.S.C. Dec. 6, 2013) (“[U]se of the term ‘staff,’ ‘department,’ or the equivalent as a name for alleged defendants, is not adequate to state a claim against a ‘person’ as required in § 1983 actions [G]roups of people are not amenable to suit under § 1983[.]”). Further, as argued by Remaining Defendants, this court “lacks jurisdiction to hear a cause of action against a South Carolina Sheriff’s Department, as such a suit is barred by state immunity.” *Stewart v. Beaufort Cnty.*, 481 F. Supp. 2d 483, 492 (D.S.C. 2007). Plaintiff’s claims against the MCSO are tantamount to a suit against the State of South Carolina, and “[a]s such, an action against South Carolina will not lie in this court without South Carolina’s express waiver of Eleventh Amendment immunity.” *Id.*; *see, e.g., Workman v. Cooper*, No. 6:08-cv-03429-HFF, 2009 WL 690664, at *3 (D.S.C. Mar. 16, 2009) (“As an agency of the state, the Greenville County Sheriff’s Office is immune from suit under the Eleventh Amendment to the United States Constitution which divests this court of jurisdiction to entertain a suit brought against the State of South Carolina or its integral parts.”).

As to proposed Defendant Richardson, Plaintiff notes at the outset of his proposed TAC that Defendant Richardson was “employed by [MCSO] and was the Marion County Sheriff in charge of policy, control and administration of [MCSO] and its employees, agents, and/or

officers.” TAC ¶ 7. He further avers Richardson “had full knowledge of Plaintiff exercising his constitutional protected rights on November 2, 2015, when in retaliation he sent 14 DEU Officers (armed with assault and sniper rifle) to arrest Plaintiff.” *Id.* Richardson is sued in in his “official and individually in his personal capacity.” TAC ¶ 7.

There is no indication that Sheriff Richardson himself was involved in use of alleged excessive force in the handcuffing of Plaintiff on November 2, 2015. *Cf.* TAC ¶¶ 37-38 (indicating Plaintiff observed “Multiple men and women (hereinafter Defendant DEU Officers)” after hearing knocks on the door on November 2, 2015). “Each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (rejecting an argument that government officials can be held liable because they merely had knowledge of or acquiesced in a subordinate’s misconduct).

Further, to the extent Plaintiff alleges that Sheriff Richardson is liable under a theory of respondeat superior for the actions of other employees, that doctrine is generally inapplicable to Section 1983 claims. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) (“Section 1983 will not support a claim based on a *respondeat superior* theory of liability.”) (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978)); *Vinnedge v. Gibbs*, 550 F.2d 926, 928–29 (4th Cir. 1977) (doctrine of respondeat superior has no application under § 1983). In order to proceed on a supervisory liability theory, the plaintiff must show: (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. 1994). In *Randall v.*

Prince George's County, the Fourth Circuit concluded that, "[u]nder the first prong of *Shaw*, the conduct engaged in by the supervisor's subordinates must be 'pervasive,' meaning that the 'conduct is widespread, or at least has been used on several different occasions.'" 302 F.3d 188, 206 (4th Cir. 2002) (quoting *Shaw*, 13 F.3d at 799). Furthermore, in establishing deliberate indifference under *Shaw*'s second prong, a plaintiff "[o]rdinarily . . . cannot satisfy his burden of proof by pointing to a single incident or isolated incidents . . . for a supervisor cannot be expected . . . to guard against the deliberate criminal acts of his properly trained employees when he has no basis upon which to anticipate the misconduct." *Id.* (quoting *Slakan v. Porter*, 737 F.2d 368, 373 (4th Cir. 1984)). Here, Plaintiff has not alleged any widespread conduct concerning the use of force in handcuffing arrestees, nor has he provided any specific allegations of any incidents occurring that would alert Defendant Richardson to such potential misconduct. Plaintiff has not made the required showing, so he cannot proceed in federal court under a theory of supervisor liability as to Defendant Richardson.

Based on the foregoing, and with reference back to the discussion in the previous Report and Recommendation and Order, the Fourth Amendment claim related to excessive force in the handcuffing of Plaintiff on November 2, 2015 is the only claim that should proceed. If approved by Judge Harwell, Defendant Darren Miles and newly named Defendants Supervisor Judy Barker, Officer Jack McCaskill, Officer Mitchell McCaskill, Officer Charlie Watson, Officer Dewayne Rogers, Officer Jeff Gause, Officer Samantha Jackson, Officer Johnathan Edwards, Officer Robert Page, Officer Michael Latu, Officer Dale Sylvester, Officer Tracey Causey, and

Officer Greg Pike¹² should be served with the TAC but only required to respond to those portions of the TAC.¹³

C. Opposition of Herring and ABB to Plaintiff's Motion to Amend, ECF No. 132.

Counsel for former (and would-be-again) Defendant Danny Lee Herring as well as would-be Defendant Anderson Brothers Bank (ABB) oppose the motion to amend. ECF No. 132. Plaintiff filed a reply. ECF No. 136. As neither Defendant Herring nor ABB is referenced as a proposed Defendant in the only surviving portion of Plaintiff's TAC, further discussion of the opposition by these proposed Defendants is not needed. The undersigned notes and concurs with the arguments that the principal factual allegations in the SAC as to Defendant Herring are essentially the same as those in the proposed TAC. *See* ECF No. 132 ("Just like his original [Second Amended] Complaint, it is clear that Plaintiff's sole allegation against Mr. Herring is that Mr. Herring wrongfully removed his personal property from inside the dwelling to the front yard during a rain storm."). Plaintiff's proposed TAC offers no additional information that would cause the court to reconsider its dismissal of Plaintiff's claims against Herring. As noted in the prior Report and Recommendation, Plaintiff has made no allegation that Defendant Herring took part in his arrest, used excessive force on him, or put handcuffs on him. ECF No. 95 at 16-17. Based on Plaintiff's failure to allege specific facts concerning Defendant Herring's actions during the course of his arrest, the undersigned finds there is no "reasonable inference" that

¹² It is implausible that all of the DEU Officers were directly involved in the handcuffing of Plaintiff. Nonetheless, at this time it cannot be determined who was involved. These newly named Defendants should take the place of Defendants "John Doe 1-18 and Jane Doe 1-2."

¹³ Based on this recommended ruling, the undersigned need not consider Remaining Defendants' other arguments in detail. For the same reasons the court is not revisiting Plaintiff's prior arguments and claims ruled on in the prior Order, the court declines these Defendants' request that the court revisit its ruling that the excessive-force portion of Plaintiff's Fourth Amendment claim may proceed.

Defendant Herring can be liable for this alleged misconduct. *Ashcroft*, 556 U.S. at 678. While Herring is referenced several more times in the TAC than he was in the SAC, those additions do not relate to the only potentially viable claim remaining in the TAC. Rather, they continue to focus on Herring's involvement in removing Plaintiff's belongings from his residence on November 2, 2015. *E.g.*, TAC ¶¶ 65, 67 (indicating Plaintiff's belonging were destroyed by Herring's actions during flood/state of emergency and that Herring knew/should have known throwing property in rain would destroy it); *id.* ¶ 75 (indicating DEU Officers turned Plaintiff's property over to Herring).

As to Plaintiff's proposed claims against ABB, the undersigned agrees with ABB that no plausible claims have been raised as to it. *See* ECF No. 132 at 5-7. Stated succinctly, ABB obtained the foreclosure judgment and the Writ of Assistance. ABB was in no way involved in the handcuffing of Plaintiff. All of Plaintiff's claims against ABB would, by definition, challenge the validity of the Foreclosure Order and the Writ of Assistance. Accordingly, any such claims are barred by the *Rooker-Feldman* doctrine. Further, as a private corporation, no § 1983 (or § 1985 or 1986) claim could lie against ABB. To maintain a claim under § 1983, a plaintiff must allege two essential elements: (1) that he was deprived of a right secured by the Constitution or the laws of the United States; and (2) that the alleged deprivation was committed by a person acting under color of state law. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999); *Rivera v. Burton*, No. 6:16-3563-HMH-KFM, 2017 WL 1380650, at *3 (D.S.C. Mar. 28, 2017). ABB is a financial institution that does not act under color of state law, nor does Plaintiff allege that it does. "Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)

(quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)). While there are situations in which private conduct may be attributable to the state, see *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001),¹⁴ no such situations are pleaded by Plaintiff herein. See *Sheard v. Bank of Am., N.A.*, No. PJM 10-2963, 2011 WL 3158035, at *2-3 (D. Md. July 25, 2011) (holding that a former homeowner could not assert a § 1983 claim against a bank in a foreclosure action because the bank was not acting under color of state law, but rather was seeking to enforce a private contract between the parties). Again, only the actions of those involved in handcuffing Plaintiff may be considered in the context of Plaintiff's claims. No plausible claims have been stated against ABB.

III. Conclusion and Recommendation

Based on the foregoing, it is recommended that

1) Plaintiff's Motion to Amend, ECF No. 124, be denied in part and granted in part (as discussed above, it is recommended that only the handcuffing-related portion of Plaintiff's Fourth Amendment excessive-force claim proceed and only as to Defendant Darren Miles and proposed Defendants Supervisor Judy Barker, Officer Jack McCaskill, Officer Mitchell McCaskill, Officer Charlie Watson, Officer Dewayne Rogers, Officer Jeff Gause, Officer

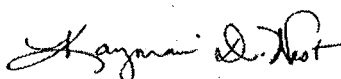
¹⁴ As noted in *Rivera*, private conduct may be attributable to the state only when (1) when the state exercised coercive power or provided such significant encouragement that the choice is deemed that of the state; (2) when a private entity exercised powers that are traditionally the exclusive prerogative of the state; (3) when a private actor operates as a willful participant in joint activity with the state or its agents; and (4) when the government is entwined in the management or control of a private entity. 2017 WL 1380650, at *3 (citing *Mentavlos*, 249 F.3d at 310).

Samantha Jackson, Officer Johnathan Edwards, Officer Robert Page, Officer Michael Latu, Officer Dale Sylvester, Officer Tracey Causey, and Officer Greg Pike);¹⁵ and

2) the Motion for Summary Judgment filed by Defendant Miles and the Doe Defendants, ECF No. 133, which was addressed to the SAC, should be dismissed as moot and without prejudice. Miles and any additional Defendants should refrain from filing further dispositive motions until after the district judge rules on this Report and Recommendation and a schedule for completing discovery and filing further motions is established.

IT IS SO RECOMMENDED.

August 21, 2018
Florence, South Carolina


Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

¹⁵ After Judge Harwell issues an order concerning the Motion to Amend the parties will receive further instruction regarding service of and response to any approved amended pleading.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Arnold Parson, Jr.,

Plaintiff,

v.

Darren Miles, John Doe 1-18,
and Jane Doe 1-2,

Defendants.

Civil Action No.: 4:17-cv-00708-RBH-KDW

ORDER

Plaintiff Arnold Parson, Jr., proceeding pro se, has filed this action pursuant to 42 U.S.C. § 1983. The matter is before the Court for consideration of the parties' objections to the Report and Recommendation ("R & R") of United States Magistrate Judge Kaymani D. West, who recommends (1) granting in part and denying in part Plaintiff's motion to amend his complaint and (2) dismissing Defendants' motion for summary judgment without prejudice as moot. *See* ECF Nos. 148, 152, & 153.

Legal Standard

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge's recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

The Court must engage in a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the [C]ourt to a specific error

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in the [M]agistrate [Judge]'s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge’s recommendation. *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983).

Discussion¹

As explained in the Court’s prior order ruling on Defendants’ motions to dismiss, Plaintiff filed this § 1983 action in this federal Court effectively seeking to challenge a state foreclosure judgment and the manner in which it was executed by Marion County law enforcement. *See* ECF No. 114. The Court determined the *Rooker-Feldman*² doctrine barred all of Plaintiff’s claims except his § 1983 excessive force claim (relating to his handcuffing during his arrest) alleged in his Second Amended Complaint. *See id.* Thereafter, the Magistrate Judge entered a scheduling order, and Plaintiff filed a timely motion to amend his complaint and a proposed Third Amended Complaint. *See* ECF Nos. 119 & 124.

¹ The R & R thoroughly summarizes the factual and procedural background of this case, as well as the applicable legal standards. The underlying facts of this litigation are fully set forth in the Court’s prior orders and the Magistrate Judge’s R & Rs.

² *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). “The *Rooker-Feldman* doctrine followed from Congress’ careful assignment of federal subject matter jurisdiction, allocating *original* jurisdiction to the district courts in, for example, 28 U.S.C. § 1330(a) (actions against foreign states), § 1331 (federal question jurisdiction), and § 1332(a) (diversity jurisdiction), while allocating *appellate* jurisdiction over final state court judgments to the Supreme Court in § 1257(a).” *Thana v. Bd. of License Comm’rs for Charles Cty., Md.*, 827 F.3d 314, 318–19 (4th Cir. 2016).

The *Rooker-Feldman* doctrine is “jurisdictional,” *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003), and it precludes “lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments.” *Thana*, 827 F.3d at 319 (quoting *Lance v. Dennis*, 546 U.S. 459, 463 (2006)). The doctrine is “narrow and focused,” *id.*, and “confined to ‘cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.’” *Lance*, 546 U.S. at 464 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). “Thus, if a plaintiff in federal court does not seek review of the state court judgment itself but instead ‘presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court.’” *Thana*, 827 F.3d at 320 (internal quotation marks omitted).

Defendants filed responses in opposition to Plaintiff's motion to amend, as well as a motion for summary judgment. *See* ECF Nos. 127, 132, & 133. The Magistrate Judge has entered a thorough R & R that summarizes the allegations in Plaintiff's proposed Third Amended Complaint and recommends granting in part and denying in part Plaintiff's motion to amend (and dismissing the pending motion for summary judgment without prejudice as moot). *See* R & R [ECF No. 148]. Plaintiff and Defendants have filed objections to the R & R. *See* ECF Nos. 152 & 153. Plaintiff has filed a reply to Defendants' objections. *See* ECF No. 156.

I. Plaintiff's Objections

Plaintiff objects to the Magistrate Judge's proposed finding that amendment is futile as to all claims except his § 1983 excessive force claim relating to his alleged handcuffing. *See* ECF No. 153 at pp. 1–5. However, the Court agrees with the Magistrate Judge's thorough analysis and conclusion that the *Rooker-Feldman* doctrine bars Plaintiff's proposed additional claims alleged in his Third Amended Complaint.³ *See* R & R at pp. 8–16. Yet again, Plaintiff effectively asks the Court to nullify the state court foreclosure judgment by allowing him to proceed on various constitutional claims attacking the manner in which law enforcement executed the writ of assistance on his residence in Mullins, South Carolina. The *Rooker-Feldman* doctrine prohibits such federal action, and subject matter jurisdiction is lacking for all of Plaintiff's claims except his § 1983 excessive force claim (an independent claim that does not call into question the validity of the state court foreclosure judgment or writ of assistance, *see Thana*, 827 F.3d at 320–22). Amendment as to all other claims besides

³ Plaintiff appears to confuse the *Rooker-Feldman* doctrine with the principles of *res judicata* and the Supreme Court's ruling in *Heck v. Humphrey*, 512 U.S. 477 (1994). *See, e.g.*, ECF Nos. 153 at pp. 1, 4. Neither *res judicata* nor *Heck* is at issue at this time.

Plaintiff's § 1983 excessive force claim is futile.⁴ See *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 293 (4th Cir. 2018) (“[A] district court may deny leave to amend when . . . the amendment would be futile.” (internal quotation marks omitted)).

Plaintiff also objects to the Magistrate Judge's recommendation concerning two additional proposed defendants—namely, Sheriff Mark Richardson and the Marion County Sheriff's Office (“MCSO”). However, as correctly explained in the R & R, the MCSO is not amenable to suit because (1) it is not a “person” within the meaning of 42 U.S.C. § 1983 and (2) the Eleventh Amendment bars claims against the MCSO (a state agency). See R & R at p. 17; see, e.g., *Workman v. Metro PCS*, No. 6:17-cv-01208-RBH-KFM, 2018 WL 3434305, at *2 (D.S.C. July 17, 2018) (summarily dismissing the Greenville County Sheriff's Office for similar reasons). Similarly, the Eleventh Amendment bars suit against Sheriff Richardson in his official capacity. See *Lawson v. Union Cty. Clerk of Court*, 828 F.3d 239, 278 (4th Cir. 2016) (“The Eleventh Amendment bars suit against state officials in their official capacity for damages under 42 U.S.C. § 1983.”); *Cromer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996) (recognizing South Carolina sheriffs are arms of the state and entitled to Eleventh Amendment immunity). Regarding any individual capacity claim, Plaintiff has not alleged Sheriff Richardson was personally involved in the alleged excessive force, and he has not sufficiently alleged a § 1983 supervisory liability claim. See R & R at pp. 17–19. Accordingly, the Magistrate Judge properly recommended denying leave to amend as to these two proposed defendants.

II. Defendants' Objections

⁴ The Court also agrees with the Magistrate Judge that, pursuant to the law-of-the-case doctrine, the Court is not reconsidering the applicability of the *Rooker-Feldman* doctrine. See R & R at pp. 8–10; see generally *Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017) (“The law-of-the-case doctrine provides that in the interest of finality, when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” (internal quotation marks omitted)).

The arguments in Defendants' objections primarily relate to qualified immunity.⁵ See ECF No. 152. However, the issue of qualified immunity is not yet ripe for consideration. Rather, at this time, the Court is merely granting Plaintiff leave to amend his complaint, and Defendants will have the opportunity to raise the affirmative defense of qualified immunity in their answer to Plaintiff's Third Amended Complaint and in any motion to dismiss or for summary judgment. At this stage in the litigation, the Court has simply determined that Plaintiff's § 1983 excessive force claim (based on the manner of his handcuffing) is not barred by the *Rooker-Feldman* doctrine. Defendants ultimately may be entitled to qualified immunity on this claim, but that matter is premature at the amendment stage.⁶ In sum, the Court is not reaching the issue of qualified immunity at this time.

Conclusion

For the foregoing reasons, the Court **OVERRULES** the parties' objections, **ADOPTS** the R & R [ECF No. 148], **GRANTS IN PART AND DENIES IN PART** Plaintiff's motion to amend his complaint [ECF No. 124], and **DISMISSES AS MOOT AND WITHOUT PREJUDICE** Defendants' motion for summary judgment [ECF No. 133]. The Court **DIRECTS** the Clerk to docket Plaintiff's Third Amended Complaint [ECF No. 124-1] as the operative pleading.

To clarify, only the handcuffing-related portion of Plaintiff's § 1983 excessive force claim is proceeding, and only as to Defendant Darren Miles and proposed/new Defendants Supervisor Judy Barker, Officer Jack McCaskill, Officer Mitchell McCaskill, Officer Charlie Watson, Officer Dewayne

⁵ Defendants also assert "the Fourth Circuit does not recognize an excessive force claim based on the manner of handcuffing." ECF No. 152 at p. 1. In support of this assertion, Defendants cite *Deavers v. Vasquez*, 57 F. Supp. 3d 599, 607 (E.D. Va. 2014), and *Cunningham v. Ruffin*, 2016 WL 6396015, at *1 (E.D. Va. Oct. 26, 2016)). However, these cases deal with the affirmative defense of qualified immunity defense at the summary judgment stage.

⁶ Technically, Defendants have not yet even pleaded qualified immunity because they have not answered Plaintiff's Third Amended Complaint (which is being docketed in conjunction with this Order).

Rogers, Officer Jeff Gause, Officer Samantha Jackson, Officer Johnathan Edwards, Officer Robert Page, Officer Michael Latu, Officer Dale Sylvester, Officer Tracey Causey, and Officer Greg Pike.⁷

IT IS SO ORDERED.

Florence, South Carolina
October 17, 2018

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

⁷ As noted in the R & R, the Magistrate Judge will provide further instruction regarding service of and response to Plaintiff's proposed Third Amended Complaint. See R & R at p. 23.

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Anderson Brothers Bank,
Plaintiff,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., South Carolina Department
of Revenue and South Carolina Department of
Motor Vehicles,

Defendants.

IN THE CIRCUIT COURT

Case No. 2013-CP-33-306

**SPECIAL REFEREE'S ORDER
AND JUDGMENT OF FORECLOSURE
AND SALE**

2013 JUL 16 P 2 30

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the Special Referee for Marion County to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause. Any appeal from this Order is to the South Carolina Court of Appeals.

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Pursuant to the Order of Reference granted in the above-entitled case, a hearing was held before the Honorable Haigh Porter, Special Referee for Marion County on the 29th day of July 2013. Suzanne Taylor Graham Grigg, Esquire appeared as attorney for the Plaintiff. Defendant Dazarhea Monique Parson a/k/a Dazarhea D. Parson a/k/a Dazarhea Monique Daniels Parson ("Defendant D. Parson") and Defendant A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson, Jr. ("Defendant A. Parson") (collectively, the "Parson Defendants") attended the hearing. Rivers Anderson testified on behalf of the Plaintiff.



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ORIGINAL FILED IN THIS OFFICE
BOOK _____ PAGE _____
Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

FINDINGS OF FACT

1. The Lis Pendens, Summons, Complaint and Notice of Mortgagors' Foreclosure Intervention Rights were filed by Anderson Brothers Bank ("ABB" or "Plaintiff") in the Office of the Clerk of Court for Marion County on April 26, 2013.
2. Service was made upon the Parson Defendants on May 1, 2013, as is shown by the Affidavits of Service filed in the Office of the Clerk of Court for Marion County on June 4, 2013.
3. Service was made upon Defendant South Carolina Department of Motor Vehicles ("Defendant SCDMV") on or about May 2, 2013, as is shown by the Affidavit of Service filed in the Office of the Clerk of Court for Marion County on June 4, 2013, and by the Acceptance of Service, Answer to Complaint, Consent to Order of Reference and Certificate of Service filed by Defendant SCDMV in the Office of the Clerk of Court for Marion County on June 4, 2013.
4. Service was made upon Defendant South Carolina Department of Revenue ("Defendant SCDOR") on or about June 7, 2013, as is shown by the Affidavit of Service filed in the Office of the Clerk of Court for Marion County on July 18, 2013, and by SCDOR's Answer, Request for Notice of Surplus Funds, Consent to Reference and Certificate of Service filed in the Office of the Clerk of Court for Marion County on June 12, 2013.
5. The Affidavit of Default and Non-Military Service as to Dazarhea Monique Parson and A. Tyrone Parson, Jr. was filed in the Office of the Clerk of Court for Marion County on June 10, 2013.
6. The Certification Regarding Mortgagor's Non-Participation in Foreclosure Intervention was filed in the Office of the Clerk of Court for Marion County on June 10, 2013.

Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description.

Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property .

DERIVATION: This is the same property conveyed to Dazarhea Daniels Parson and A. Tyrone Parson, Jr. by deed from FBSA 1, LLC dated March 28, 2012, recorded April 4, 2012 , in Book 195 at Page 239.

TMS: 034-00-00-255-000

ADDRESS: 3546 Quail Roost Road, Mullins, South Carolina 29574

12. The Mortgage was filed on April 4, 2012, in Book 195 at Page 244, in the Office of the Clerk of Court for Marion County.

13. The Mortgage constitutes a valid purchase-money first mortgage lien upon the Mortgaged Premises.

#14
14. In order to further secure the indebtedness due and owing to ABB, the Parson Defendants executed that certain Consumer Security Agreement dated April 3, 2012 (the "Security Agreement"), wherein the Parson Defendants also granted ABB a lien on the 2000 Dynasty Mobile Home, VIN- H801260GLR (the "Mobile Home") located on the Mortgaged Premises. ABB perfected its security interest in the Mobile Home by recording its lien on the face of the Certificate of Title (the "Title") for the Mobile Home.

15. ABB's perfected security interest in the Mobile Home constitutes a valid first lien upon the Mobile Home.

16. The obligations under the terms and conditions of the Note are in default for, among other reasons, the failure of the Parson Defendants to repay the indebtedness in accordance with the terms thereof.

17. The Note and Mortgage provide that in the event of default in any of the terms

thereof, the whole amount of the debt secured by the Mortgage will become immediately due and payable. By reason of the failure of the Parson Defendants to comply with the terms and conditions of the Note and Mortgage, ABB has declared the entire indebtedness immediately due and payable, and, as a further result of the said default, ABB is entitled to foreclosure of its Mortgage on the Mortgaged Premises and foreclosure of its security interest in the Mobile Home.

18. It is further provided in the Note and Mortgage that if the loan evidenced thereby is not paid when due, the maker will pay all reasonable costs and expenses of suit, including but not limited to reasonable attorneys' fees incurred by the lender.

19. ABB has sent written notice to the Parson Defendants of the default as required by and conforming to applicable law.

20. The amount of the debt due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including reasonable attorneys' fees, is as follows:

Principal as of July 25, 2013 \$19,889.43
Interest as of July 25, 2013 \$ 967.90
Per Diem: \$4.77; Interest Rate: 8.75% \$ 78.60
Other: Late Fees
Attorneys' Fees and Costs (allowed by the Court) \$ 6,657.00
TOTAL DEBT ON THE NOTE AS OF JULY 25, 2013 \$27,592.93

21. ABB is entitled to foreclose its Mortgage securing the indebtedness owed to it by the Parson Defendants, and ABB is entitled to foreclose its security interest in the Mobile Home.

22. Defendant SCDOR may claim an interest in the Mortgaged Premises by virtue of that certain Tax Lien No. 3-51542813-0 in the amount of \$449.71, filed March 5, 2013, in the

Marion County Clerk of Court's Office against Dazarhea Parson d/b/a Best 4 Less; however, the Tax Lien was recorded after ABB's mortgage lien and any such interest claimed by Defendant SCDOR is junior in priority to ABB's purchase-money first mortgage lien.

23. Defendant SCDMV is named as a party in this foreclosure action because the Certificate of Title for the Mobile Home has not been permanently retired in the SCDMV records. ABB seeks entry of this Court's Order directing the SCDMV to issue a new Certificate of Title, free and clear of liens, to the successful purchaser at the foreclosure sale.

24. ABB is entitled to a judgment barring the Defendants and all persons claiming by or through the Defendants from all right, title and interest in or to the Mortgaged Premises and the Mobile Home, and each and every part thereof.

25. ABB does not waive, but specifically demands a judgment of foreclosure against the Parson Defendants for the full amount of the indebtedness found to be due and owing to ABB under the Note and Mortgage, with the right to enter personal judgment against the Parson Defendants for any deficiency remaining after the sale of the Mortgaged Premises and the Mobile Home.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. Plaintiff should have judgment of foreclosure of its Mortgage and foreclosure of its security interest in the Mobile Home, and the Mortgaged Premises, together with the Mobile Home, should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of sale. After making the required deposit, the successful bidder at the sale should be required to pay interest at the judgment rate until the date of compliance.

2. Plaintiff is entitled to Judgment against the Parson Defendants for the total amount of the indebtedness due and owing to Plaintiff, as set forth hereinabove, with the right to enter personal judgment against the Parson Defendants for any deficiency remaining after the sale of the Mortgaged Premises and the Mobile Home.

3. Plaintiff is entitled to an Order directing Defendant SCDMV to issue a new Certificate of Title to the successful purchaser of the Mobile Home at the foreclosure sale.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This foreclosure action is not against "property arising out of a loan owned or guaranteed by FNMA or FreddieMac or held by a servicer who has signed an agreement to participate in HMP."

2. The loan, under which the indebtedness arises, is not subject to modification under the HMP.

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3. The real property, which is the subject of this foreclosure action, is an "owner-occupied dwelling" as defined by Administrative Order No. 2011-05-02-01, and it is, therefore, subject to the provision of Administrative Order No. 2011-05-02-01.

4. The Parson Defendants received proper notice of their rights regarding foreclosure intervention, pursuant to Administrative Order No. 2011-05-02-01 entered by the Supreme Court of South Carolina, and by their failure to respond to the notice within the prescribed time period, the Parson Defendants have elected not to participate in the foreclosure intervention process with Plaintiff.

5. The Court hereby directs and orders that Defendant SCDMV issue a new Certificate of Title to the successful purchaser of the Mobile Home at the foreclosure sale.

6. There is due to Plaintiff on the Note and Mortgage set forth in the Complaint, as amended herein, the sum of Twenty-Seven Thousand Five Hundred Ninety Two and 93/100

Dollars (\$27,592.93), representing the "Total Debt" due to Plaintiff on the Note, together with interest on the principal balance from July 26, 2013, to the date of judgment.

7. The Total Debt amount due in the preceding paragraph (supra, and later accrued interest on the principal to the date of judgment) shall constitute the total judgment debt due to Plaintiff and shall bear interest after the date of judgment at the rate of 8.75% per annum.

8. The Parson Defendants shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and expenses of this action.

9. On default of payment at or before the time herein indicated, the Mortgaged Premises and the Mobile Home described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee for Marion County or his agent at public auction, at Marion, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next Tuesday succeeding such holiday), on the following terms, that is to say:

#18
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(a) FOR CASH: The Special Referee or his agent will require a deposit of 5% on the amount bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and any surplus pending further order of the Court.

(b) Interest on the balance of the bid shall be paid through the day of compliance at the judgment rate.

(c) The sale shall be subject to the taxes and assessments due on the day of such sale, and existing easements and restrictions of record.

(d) Purchaser shall pay for the preparation of the deed, bill of sale and costs of recording the deed.

10. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee for Marion County only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

11. Personal or deficiency judgment having not been waived, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720, (1976).

12. The Special Referee for Marion County, will by advertisement according to law, give notice of the time and place of sale, and the terms thereof and will execute to the purchaser, or purchasers, a deed to the realty sold and a bill of sale to the Mobile Home. Plaintiff, or any other party to this action, may become a Purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Special Referee for Marion County may advertise the said property for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

13. The Special Referee for Marion County shall apply the proceeds of the sale as follows:

First: To payment of the costs and disbursements of this action;

Next: To the payment to Plaintiff or its attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same.

Next: Any surplus will be held pending further Order of this Court.

14. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Parson Defendants and if a Writ of Assistance is presented, the Sheriff of Marion County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the

successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009:

15. And it is further ORDERED, ADJUDGED AND DECREED that Defendants and all persons whosoever claiming under Defendants be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said Mortgaged Premises so sold, or any part thereof.

16. IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to said sale shall be indexed in the grantor index by the Registrar of Deeds in the name of the owner of record of the Mortgaged Premises immediately prior to execution of the deed, as well as in the name of the Special Referee for Marion County, who executes such deed as grantor.

17. The Special Referee will retain jurisdiction to do all the necessary acts incidental to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71 (c), SCRCP.

18. The Mortgaged Premises ordered to be sold is described as follows:

All that certain piece, parcel or lot of land lying and being situate on the southeast side of Quail Roost Drive near the City of Mullins, Marion County, South Carolina. Said lot being shown and designated as Lot No. 34 on a map of Quail Roost Subdivision, Phase I, by Pittman-Lesson Survey Company dated January 24, 1999, and recorded in Plat Book 282, Page 7, Office of Clerk of Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description.

Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property .

DERIVATION: This is the same property conveyed to Dazarhea Daniels Parson and A. Tyrone Parson, Jr. by deed from FBSA 1, LLC dated March 28, 2012, recorded April 4, 2012 , in Book 195 at Page 239.

TMS: 034-00-00-255-000

ADDRESS: 3546 Quail Roost Road, Mullins, South Carolina
29574

19. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sales will be rescheduled for the next available sales day.

AND IT IS SO ORDERED.

Hil

The Honorable Haigh Porter
Special Referee for Marion County

Aug 5, 2013

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

JUDGMENT IN A CIVIL CASE

CASE NO.: 2013-CP-33-306

Anderson Brothers Bank

Dazarhea Monique Parson a/k/a Dazarhea D.
Parson a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., South Carolina
Department of Revenue and South Carolina
Department of Motor Vehicles

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Suzanne Taylor Graham Grigg, Esq.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803-540-2114
Facsimile: 803-727-1440

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This is a foreclosure action.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ n/a
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: All that certain piece, parcel or lot of land lying and being situate on the southeast side of Quail Roost Drive near the City of Mullins, Marion County, South Carolina. Said lot being shown and		

designated as Lot No. 34 on map of Quail Roost Subdivision, Phase I, by Pittman-Lesson Survey Company dated January 24, 1999, and recorded in Plat Book 282, Page 7, Office of Clerk of Court for Marion County. Reference is hereby made to said plat for a more detailed metes and bounds description. Also, that 2000 Dynasty Mobile Home, VIN #H801260GL&R located on subject property. DERIVATION: This is the same property conveyed to Dazarhea Daniels Parson and A. Tyrone Parson, Jr. by deed from FBSA 1, LLC dated March 28, 2012, recorded April 4, 2012, in Book 195 at Page 239. TMS: 034-00-00-255-000 ADDRESS: 3546 Quail Roost Road, Mullins, South Carolina 29574

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

David Porter
Circuit Court Judge

Judge Code

04/15/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

RECEIVED

APR 13 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Plea

Haigh Porter, Special Referee for Marion County

Appeal number 2013-001824
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

V.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

PETITION FOR A WRIT OF CERTIORARI

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]
(843)-409-9086

April 8, 2015

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CERTIFICATE OF COUNSEL

Appellants certifies pursuant to SCACR 242 (d) (1) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 12, 2015.

QUESTIONS PRESENTED

1. Is any judgment, order, decision or the like granted by one who is coram non iudice mandatory grounds for retrial?

STATEMENT OF THE CASE

On May 1, 2013 Appellants were served with mortgage foreclosure documents. The Appellants filed a response in the Lower Court and mailed a certified copy of the same by certified mail on May 2, 2013 and received on May 6, 2013 by Respondents Attorney. (See App 49) On July 29, 2013 a hearing was held and presided over by Special Referee Haigh Porter which was objected to in accord with SCRCF 38 (See App. 46). At this hearing Special Referee did not have the file present to determine all issues between the parties. With no regards to Appellants un rebutted affidavits (See App 55) Special Referee ruled in favor of Anderson Brothers Banks Plaintiff. Appellants appealed what appeared to be a miscarriage in justice. During the course of the Appeal Respondents made several attempts to deny Appellants due process of law. Most troubling was the Show Cause why a Writ of Assistance should be not be granted. Where at this hearing it was admitted and un rebutted that Anderson Brothers Bank was a fictitious plaintiff and not the Real Party

in Interest to the Foreclosure Hearing held on July 29, 2013. Even more concerning is the fact that Special Referee Haigh Porter admitted on and for the record he has not sworn an Oath of Office (See App 136 Line 22-App 140 Line 11). These issues were raised with Court of Appeals and on December 18, 2014 it was dismissed for failure to comply.

ARGUMENT

I. CERTIORARI IS NECESSARY TO DETERMINE WHETHER A RETRIAL SHOULD BE GRANTED

- a) The question presented by this petition is whether an order, judgment, decree, or the like signed by one who is coram non iudice, mandatory grounds for a retrial? It appears that the Court of Appeals erred by dismissing the appeal for form (failure to comply). Substance has precedence over form in accords with SCRCP 8(f) where all pleadings shall be construed as to do substantial justice to all parties; Haines v. Kerner, 404 U.S. 519 1972, wherein the court has directed those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of pleadings rather than form; "And be it further enacted, that no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer as the cause thereof. And the said courts respectively shall and

may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.” Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. I, ch. 20, 1789; Due Process provides that the rights of pro se (sui juris) litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements” *Spencer v Doe*, (1998); *Green v. Branson* (1997); *Boag v. McDougall*, (1998).

- b) Where the issue raised is one that appears to be a violation of South Carolina State and Federal Constitution. The Court of Appeals had a duty to void the judgment and order for sale, and remand the case to the lower court for a retrial after being provided with evidentiary facts in support of the ultimate facts that Special Referee Haigh Porter has admitted on and for the record that he has not sworn an Oath of Office which is required. (See App. 89-91) “Office is vacant by reason of failure to file a required oath.” Boisvert v. County Ontario, 395 NYS2d 617; “[an] Act Declaring office vacant and to be filled as provided by law for failure to qualify within 60 days after beginning of term is unconstitutional and applies to all officers enumerated and similarly situated”. State Ex Rel. Stain v. Christensen, 84 U. 185, 25 P.2d 775; “Judges of the Supreme Court

subscribe to this oath when entering upon their duties as justices thereof". Critchlow v. Monson, 102 U.378, 131 P.2d 794; "Filing an oath of office after the time prescribes by law is not a compliance with the law, confers no power to act as a public officer or in a public office and any person who fails to file his oath of office within time limits required by law creates an ipso facto vacancy and such person's acts are void and vitiate any subsequent proceedings". Parker v. Overman, 59 U.S. 137, 15 L. Ed 316; "Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason". U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L. Ed. 2d 392, 400 (1900), Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5L. Ed. 257 (1821); " In such case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for damages resulting from his unauthorized acts". Dykes v. Hosemann, 743 F.2d 1488(1984); "Not every action by any judge is in exercise of his judicial function. It is not a judicial function for a Judge to commit an intentional tort even though the tort occurs in the Courthouse. When a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction and The Judge's orders are void, of no legal force or effect". The Court in Yates v. Village of Hoffman Estates, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962); "An unconstitutional act is not law; it confers no rights; imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as it had never been passed." Norton v. Shelby County." 118 U.S. 425; "State courts, like federal courts, have a "constitutional obligation" to safeguard personal liberties and to uphold federal law." Stone v. Powell 428 US 465, 96 S. Ct. 3037, 49 L. Ed. 2d 1067; "The obligation of

state courts to give full effect to federal law is the same as that of federal courts." New York v. Eno. 155 US 89, 15 S. Ct. 30, 39 L. Ed. 80.

Therefore in light of the above stated facts this court should review the decision, void the judgment, and remand back to the lower court for retrial before one who is a judge who is a sworn officer of the court.

CONCLUSION

For the foregoing reasons the Appellants urges this court to grant a Writ of Certiorari to resolve the question whether a retrial should be granted to allow a fair impartial proceeding before a judge who has sworn their Oath of Office..

Respectfully submitted,

ucc 1-308/1-103.6
By: Arnold Parson Jr. Dazarhea Parson
Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Plea

Haigh Porter, Special Referee for Marion County

Appeal number 2013-001824
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

V.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

AFFIDAVIT

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]
(843)-409-9086

April 8, 2015

AFFIDAVIT

The undersigned Affiant(s) Arnold Jr. and Dazarhea Parson, hereinafter "Affiant," does

solemnly affirm, declare and state as follows:

1. Affiant is competent to state the matters set forth herein.
2. Affiant has personal knowledge of the facts stated herein.
3. All facts herein are true correct and not misleading

Plain Statement of Facts:

1. On April 30, 2014 Suzanne Grigg attorney for plaintiff Anderson Brothers Bank was present at the Show Cause why a Writ of Assistance should not be granted when Special Referee Haigh Porter admitted on and for the record that he has not sworn an Oath of Office. If it's not rebutted it is affirmed.

ucc 1-308 / 1-103.6

By: Arnold Parson Jr. Dazarhea Parson

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]
(843)-409-9086

JURAT

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

ss.

Notary

On this date 9 April 2015, a natural man and woman appeared in their true characters, who identified themselves as Arnold Parson Jr & Dazarhea Parson., appeared before me

Wm. Pearl Troy, a notary public residing in Mullins County, Marion, S.C., state and attested to the veracity of this Affidavit with their oath and autograph.

Wm. Pearl Troy
Notary Public

Commission Expires 12-31-2020

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee for Marion County

Appeal number 2013-001824
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

Vs.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., are the.....Appellants

PROOF OF SERVICE

We certify that we served the Petition for Writ of Certiorari, Appendix, and Affidavit on Respondents, represented by Suzanne Taylor Graham Grigg of Nexsen Pruet, LLC, by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondent's Attorney as follows: Suzanne Taylor Graham Grigg 1230 Main St. Suite 700 Columbia, SC 29202

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]

April 9, 2015

April 8, 2015

Arnold Jr. & Dazarhea Parson
P.O Box 776
Mullins, South Carolina [29574]
843-409-9086

PM 4-9-15
RECEIVED

APR 13 2015

S.C. Supreme Court

The Honorable Daniel Shearhouse
Clerk of Court, South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29211

Re: Anderson Brothers Bank v. Dazarhea M. Parson & Arnold Parson Jr.
Appellate Case No. 2013-001824

Dear Mr. Shearhouse:

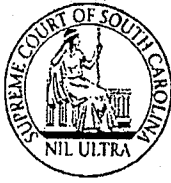
Enclosed for filing please find an original and six (6) copies of the Petition for Writ of Certiorari and two copies of the Appendix to same. Also enclosed is our \$100 money order for filing fee as required.

By copy of this letter I am serving a copy of the Petition on counsel of record.

With kindest regards, I remain,

Yours very truly,
ucc 1-308/1-103.6
By: Arnold Parson Jr. - Dazarhea Parson
Arnold Jr. & Dazarhea Parson Sui Juris

Cc w/encl:
The Honorable Jenny Abbott Kitchings SC Court of Appeals
&
Suzanne Griggs & Kirsten Smalls
Nexsen Pruet LLC
P O Box 2426
Columbia, South Carolina 29202-2426



The Supreme Court of South Carolina

Arnold Jr. Dazarhea Parson

04/13/2015

RECEIPT #75663

Case No: 2015-000761
Case Short Title: Anderson Brothers Bank v. Dazarhea Monique Parson
Event: Petition for Writ of Certiorari and Responses - Petition and Appendix
Fee Type: Case Initiation Fee
Amount: \$100.00
Payment Type: Money Order
Reference No: 22774928501
Check/Money Order Date: 04/09/2015
Comments:

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Plea

Haigh Porter, Special Referee for Marion County

Appeal number 2015-002230
Marion County Case number 2013-CP-33-306

RECEIVED

JUL 12 2016

SC SUPREME COURT

Anderson Brothers Bank
Respondent,

V.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

PETITION FOR A WRIT OF CERTIORARI

Arnold Jr. Dazarhea Parson Sui Juris
311 N Congdon St
Georgetown, South Carolina, 29440
(843)-409-9086/843-251-0360

July 8, 2016

Other Counsel of Record:
Suzanne Taylor Graham Grigg
1230 Main Street Suite 700
Columbia, South Carolina 29202

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2. The Court of Appeals erred in its order by stating "Appellants no longer reside at subject property.....this appeal is moot."	
3. An order that deprives Appellants provisions of the Constitution cannot be withstanding, for it is void.	
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CERTIFICATE OF COUNSEL

Petitioners certifies pursuant to SCACR 242 (d) (1) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 10, 2016.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by overlooking the fact Special Referee actions was an abuse of discretion?
2. Did the Court of Appeals err in its order by stating "Appellants no longer reside at subject property.....this appeal is moot?"
3. Can an order/that deprives Appellants provisions of the Constitution be withstanding?

STATEMENT OF THE CASE

On or around September 21, 2015 Special Referee signed off on a Writ of Assistance order without having a hearing and notifying all parties. Appellants received this order on October 1, 2015. On October 16, 2015 Appellants filed and satisfied necessary fees a Petition for Mandatory Injunction, Relief from Judgment 60(b)(1)(3)(4), Challenge of Jurisdiction. On October 28, 2015 Appellants filed an Objection to Writ of Assistance order, and noticed all parties by way of email that an Appeal was being filed. On October 29, 2015 Appellants noticed the circuit court that an appeal had been filed. On October 30, 2015 Appellants filed and satisfied necessary fees a Petition for Emergency Stay of Writ of Assistance. There was never a hearing held by the Special Referee that shows the amount the bond needed to be in order to stay the proceedings. Special Referee never

lifted the stay and just preceded denying Appellants due process of law. Special Referee mislead the Marion County Sheriff's office to believe that there was no appeal pending as of November 2, 2015 and that the proper paperwork wasn't filed. As a result this gross negligence has caused Appellants irreparable harm.

The Court of Appeals denied Appellants Petition for Rehearing and Petitioners seek a Writ of Certiorari to review that decision.

ARGUMENT

1. The Court of Appeals erred by overlooking the fact Special Referee's actions was an abuse of discretion.
 - i. Special Referee improperly entered an order for Writ of Assistance on September 21, 2015 in blatant disregard for procedure. Special Referee's order dated September 21, 2015 does not contain the date this purported hearing took place. (Maxims of Law "not only what is permitted, but what is proper, is to be considered because what is improper is illegal"; "No one shall take advantage of his own wrong"; *Dacaus v. Johnston* (S.C. 1936) 180 S.C. 329, 185 S.E. 491 where it states, " Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of the law permit and sanction, under such safeguards for the protection of individual rights as those maxims prescribe for the class of case to which the one in question belongs."

- ii. Special Referee was well aware of the issues raised to the Disciplinary Counsel involving the fact his spouse appeared representing the plaintiff's interest in the matter by entering bid at the sale as well as a witness, and notary of conveyance documents. (App pg. 54 & 55 Deed by Judicial Order of Special Referee) See South Carolina Rules of Judicial Disciplinary Enforcement Rule 501 Canon 3(E)(d)(i) SCACR; Canon 2(B); Canon 3B (1),(5); Commentary under Canon 2 (A). See *Bridges v. California*, 314 U.S. 252, 289-290, wherein Justice Frankfurter stated, "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions . . . Judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt". *State v. Brown* (S.C. 1935) 178 S.C. 294, 182 S.E. 838. *Constitutional Law* 3880 where it states, "Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property."; *Bracey v. Warden*, US Supreme Court No.96-6133 (June 9, 1997) where it states, "Where the judge does not act impartially.
- iii. Being that there was no hearing in September 2015 (see unrebutted affidavit in support of reply App pg. 86) there was no bond amount set to stay execution of Writ of Assistance. Depriving Appellants their right to procedural due process. *Sandal v. State* (S.C. 1920) 115 S.C. 168, 104 S.E.

567, 13 A.L.R. 1268 where it states, "The word "deprived" connotes want of consent"; See Ogburn-Matthews v. Loblolly Partners(Ricefields Subdivision)(S.C. App.1998) 332 S.C. 551, 505 S.E.2d 598.

Constitutional Law 3888; Constitutional Law 3879 where it states,

"Requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."

2. The Court of Appeals erred in its order by stating "Appellants no longer reside at subject property.....this appeal is moot."

i. At the time the appeal was filed Appellants had been in peaceful possession of said property in dispute for a little over 7 years.

(Maxims of Law, "Things that belong to a person ought not be separated from the person"); "What belongs to us cannot be transferred to another without consent." ; See Dacaus v. Johnston (S.C. 1936) 180 S.C. 329, 185 S.E. 491;

ii. Appellants only lost possession of said property by way of Special Referee misleading the Marion County Sheriffs Office to believe that the proper paperwork had not been filed. Where ultimate facts supported by evidentiary facts show not only was the proper paperwork filed the Appellants was unjustly removed from their property.(See Order of Dismissal App pg. 22) ; See Abelleira v District Court of Appeals, Third District., 17 Cal. 2d 942, 948

where it states, "Acts which exceeded defined power of court in any instance."

- iii. Appellant (Arnold Parson Jr.) was arrested the morning of November 2, 2015 for trespassing and breach of the peace. (See App pg. 20) ; The Supreme Court of South Carolina, in the case of State v. Byrd, 72 S.C. 104, 51 S.E. 542, 544(1905), affirmed a prior decision of the Court holding that: At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony....3 Cyc. 880; State v, Simms, 16 S.C. 486; An individual is "seized" within the meaning of the Fourth Amendment when an officer restrains his freedom, even if the detention is brief and falls short of arrest. Sikes v State (S.C. 1994) 323 S.C. 28, 448 S.E. 2d 560.
- iv. The Marion County Sheriff Office used excessive force nearly 18 officers armed with machine guns, hand guns and sniper rifles to remove Appellant from the property during a State of Emergency. (See S.C. Code 16-7-10)
- v. On the morning of November 2, 2015 it was pouring down raining while all belongings, intangible, tangible, including keepsakes were thrown out in the rain. (See App pg. 85 flashdrive) This very same day Court of Appeals sent out correspondence changing the caption and giving new case number.

- vi. On February 29, 2016 all charges was dismissed, expunged, and Appellants regained possession of the property in dispute (see App pg. 21 & 22.)
3. An order that deprives Appellants provisions of the Constitution can't be withstanding for it is void.
- i. Respondents filed a return to Appellants Petition for Rehearing with Exhibits A-K attached, within these exhibits, there is no Petition for Writ of Assistance with certificate of service attached, evidencing the petition was served upon Appellants. Janove v. Bacon 6 Ill 2d 245, 249, 218 N.E. 2d. 706, 708 (1953) where it states, "Where service of process was not made pursuant to statue and Supreme Court."; Brown v. Vankeuren 340 Ill. 118, 122(1930) where it states, "No petition in the record of the case."
- ii. Respondents states in their Return to the Petition for Rehearing that, "In September 2015 after all appellate proceedings related to the foreclosure had been completed—ABB filed a Petition for Writ of assistance with Judge Porter in the Circuit Court(there's no record of this filing). Following a hearing, (there's no record of this hearing) the Circuit Court issued a Writ of Assistance on September 21, 2015." There is no date associated with the Petition for Writ of Assistance, nor is there any evidence that the movant gave notice to all parties. See Wilson v. Moore;

13Ill. App. 3d 632, 301 N.E. 2d 39 (1st Dist.(1973) where it states, "When proper notice is not given to all parties by the movant."; Moore v. Moore (S.C. 2008 376 S.C. 467, 657 S.E. 2d 743. Constitutional Law 3879 where it states, " Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses; Wuest v. Wuest, 53 Cal. App. 2d 339, 127 P. 2d 934,937 where it states, " A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an "excess of jurisdiction."; State v. Earle (S.C. 1903) 66 S.C. 194, 44 S.E.781 where it states, "By "due process of law" is meant a process which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observances of those general rules established in our system of jurisprudence for the security of private rights."

- iii. According to the court's index it shows that Appellants had a stay until December 11, 2015. Special Referee had the duty to hold a hearing lifting

the stay, and set bond amount instead of falsifying information to the Marion County Sheriffs Office that an appeal had not been filed in retaliation of complaint. See Duran v. City of Douglas, 904 F.2d 1372, 1378 (9th Cir. 1990) "the First Amendment right to criticize public officials is well-established and supported by ample case law. Furthermore, it is well-established that a public official's retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983."

REASONS TO GRANT CERTIORARI

1. Respondents failing to notice Appellant of the Petition for Writ of Assistance, deprived Appellants of their right to due process. Johnson v. Zerbst 304 U.S. 458. 58 S. Ct. 1019; Janove v. Bacon 6 Ill 2d 245, 249, 218 N.E. 2d. 706,708 (1953); Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision)(S.C. App.1998) 332 S.C. 551, 505 S.E.2d 598. Constitutional Law 3870; South Carolina Constitution Article 1 Section 3
2. An ordered entered in favor of the movant who has failed to properly notice opposing party Petitioners, and without hearing is void for lack of personam Juris. (See South Carolina Rules of Civil Procedure 12(b)(2) Lack of Jurisdiction over the person); (See Overby v. Overby, 457 S.W.2d 851 (Tenn. 1970) where it states, "A judgment obtained without jurisdiction over the defendant is void."; South Carolina Rules of Civil Procedure 12(b)(5)

Insufficiency of service of process; See *Rosenstiel v. Rosenstiel*, 278 F.Supp. 794 (S.D.N.Y. 1967) where it states, "If the court exceeded its statutory authority.

3. Special Referee should have known, knew, or had the duty of knowing entering an order without an hearing is an abuse of discretion and insufficiency of process. See South Carolina Rules of Civil Procedures 12(b)(4) insufficiency of process.
4. After reaching out to the Secretary of State's Office it was discovered that a notary cannot notarize a document they receive a benefit from. Therefor the Special Referee Deed by Judicial Order is void abinitio meaning the original deed to Arnold and Dazarhea Parson is still in full force and effect.
5. This action took place in total disregard of the state of Emergency entered by the President of the United States, and the Governor for the state of South Carolina. See South Carolina Code of Laws Title 16 Crimes and Offenses Chapter 7 Offenses Against the Peace Article 1 Offenses During State of Emergency Section 16-7-10 Illegal act During State of Emergency where it states in part, A. "In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to:

(2)(a) Enter into the property of another, without lawful authority and with criminal intent.

Damage the property of another; or

Take possession or otherwise disturb the property of another in any manner.

6. Respondents and Special Referee actions was a denial of South Carolina Constitutional Provisions Article 1 Section 3(Due Process); Article 1 Section 22(Right to be heard); Article 1 Section 23 (Provisions of the Constitution is mandatory)

CONCLUSION

For the reasons stated Petitioners move this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

All Rights Reserved.

By: Arnold Jr. Dazarhea Parson

Arnold Jr. Dazarhea Parson Sui Juris

311 N Congdon St

Georgetown, South Carolina 29440

July 8, 2016

JUL 12 2016

STATE OF SOUTH CAROLINA
In the Supreme Court

SC SUPREME COURT

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee for Marion County

Appeal number 2015-002230
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,
Vs.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone)Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., are the.....Appellants

PROOF OF SERVICE

We certify that we served the Petition for a Writ of Certiorari and Appendix on Respondents, represented by Suzanne Taylor Graham Grigg of Nexsen Pruet, LLC, by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondent's Attorney as follows: Suzanne Taylor Graham Grigg 1230 Main St. Suite 700 Columbia, SC 29202

Arnold Jr. Dazarhea Parson Sui Juris
311 N Congdon Street
Georgetown, South Carolina 29440

July 8, 2016

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED

AUG 27 2013

S.C. SUPREME COURT

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Haigh Porter, Master in Equity Special Referee Judge

Case No. 2013-CP-33-306

Suzanne Grigg, as
Attorney of Anderson
Brothers Bank

Respondent,

v.

Arnold Jr., Dazarhea
Parson

Appellant.

NOTICE OF APPEAL

Arnold Jr., Dazarhea Parson appeals the order [judgment] of the Honorable Haigh Porter dated July 29, 2013. Appellant received written notice of entry of this order [judgment] on July 29, 2013. Judgment was determined without observing the facts that were submitted by appellants. Respondent with held impertinent evidence that would have satisfied the requirements of discovery and full disclosure. A third party interloper who admitted on and for the record that he had no first hand knowledge of the matter was allowed to give testimony for and on the record. There were violations of the Fair Debt Collection Practice Act that were deliberately not addressed, and affidavits that were un rebutted and deliberately not addressed as well. The judgment impeded on new contracts that were agreed to by both parties that superseded the old contract.

August 26, 2013

SCC 36-1-207 All rights reserved.

Arnold Parson Jr. Dazarhea Parson
Arnold Jr., Dazarhea Parson

Post Office Box 776

Mullins, South Carolina 29574

(843) 409-9086

Attorney in Fact

Other Counsel of Record:

Suzanne Grigg

1230 Main Street

Suite 700 (29201)

PO Drawer 2426

Columbia, SC 29202

Attorney for Respondent

(803) 253- 8277

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED

AUG 27 2013

APPEAL FROM MARION COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Haigh Porter, Master in Equity Special Referee Judge

Case No. 2013-CP-33-306

Suzanne Grigg, as
Attorney of Anderson
Brothers Bank,

Respondent,

v.

Arnold Jr., Dazarhea
Parson

Appellant.

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on Anderson Brothers Bank by depositing a copy of it in the United States Mail, postage prepaid, on August 26, 2013, addressed to Anderson Brothers Bank attorney of record, Suzanne Grigg, 1230 Main Street, Suite 700 (29201) Post Office Drawer 2426 Columbia, South Carolina 29202.

August 26, 2013

SCC 36-1-207 All rights Reserved

Arnold Parson Jr. / Dazarhea Parson
Arnold Jr., Dazarhea Parson
Post Office Box 776

Mullins, South Carolina 29574
(843) 409-9086
Attorney in Fact

NOTICE OF APPEAL IN A CIVIL CASE

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

NOV 02 2015

SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

SPECIAL REFEREE HAIGH PORTER

Case No. 2013-CP-33-306

Anderson Brothers Bank,

Respondent,

v.

Arnold Jr., Dazarhea Parson

Appellants.

NOTICE OF APPEAL

I :arnold: and I :dazarhea: herein after Appellants, appeals the Order for Writ of Assistance entered by Special Referee Haigh Porter, received on October 1, 2015. There was no new hearing held for this order. The original order for this hearing held April 30, 2014 was signed off on and entered on January 7, 2015. It is believed that there should have never been a hearing held, nor an order entered. At the time the hearing was held the lower court lacked personam and subject jurisdiction to hear the Rule to Show Cause, and Petition for Writ of Assistance being that this was an open dispute within the exclusive jurisdiction of the Court of Appeals. A fact, in which Respondent and Special Referee were made fully aware of on January 5, 2015. On or around January 12, 2015 a notice of motion publication roster was sent to Respondents for hearing to be held on February 9, 2015. At that hearing Judge Haynes would not allow either party to speak because this dispute was still in the Court of Appeals dismissing the case stating three times in his order "JUDGE HAS NO JURISDICTION." It is believed that the same should have been done on April 30, 2014 hearing. The actions of the Respondent and Special Referee appear to be a blatant denial of Petitioners inalienable, unalienable rights to due process guaranteed by the Constitution for the united states of America (major).

October 27, 2015

500 36-1-207

By: : arnold: dazarhea:

Arnold Jr., Dazarhea:Parson

c/o Post Office Box 776

Mullins, South Carolina 29574

(843-409-9086/843-536-2320)

Attorney in Fact

Other Counsel of Record:

Suzanne Griggs

1230 Main Street

Suite 700(29201)

PO Drawer 2426

Columbia, South Carolina 29202

Attorney for Respondent

(803-253-8277)

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM MARION COUNTY
Court of Common Pleas

SPECIAL REFEREE HAIGH PORTER

Case No. 2013-CP-33-306

ANDERSON BROTHERS
BANK,

Respondent,

v.

ARNOLD JR., DAZARHEA
PARSON

Appellant.

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on Anderson Brothers Bank by depositing a copy of it in the United States Mail, postage prepaid, on October 28, 2015 addressed to Anderson Brothers Bank attorney of record, Suzanne Griggs, 1230 Main Street, Suite 700 (29201) Post Office Drawer 2426 Columbia, South Carolina 29202.

October 28, 2015

By: SC 36-1-207
arnold jr. dazarhea:
Arnold Jr., Dazarhea:Parson
c/o Post Office Box 776
Mullins, South Carolina 29574
(843-409-9086/843-536-2320)
Attorney in Fact

RECEIVED
NOV 02 2015
SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FOR TWELVE JUDICIAL CIRCUIT
CASE NO.: 2017-CP-33-776

 $V_S.$

Defendants.

BOOK _____ PAGE _____
Christy M. Gray
 CLERK OF COURT, MARION COUNTY
 SOUTH CAROLINA

PLAINTIFF, Arnold Tyron Parson, ("Plaintiff") by and through his undersigned counsel, alleges as follows:

NATURE OF THE CASE

1. Plaintiff Arnold Tyron Parson brings this action for damages against Defendants, Marion County Sheriff Department and Anderson Brothers Bank ("Defendants") for violation of appeal process filed in appellate court and the unlawful arrest for trespassing following the willful and malicious eviction of Plaintiff's son during appeal process affecting the right of possession.

2. Plaintiff requests monetary damages from Defendant for Defendants' negligent, reckless, and unlawful acts, including but not limited to, false imprisonment and false arrest, defamation, and negligent hiring/supervision, all in violation of South Carolina statutory and common law.

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JURISDICTION AND VENUE

3. At all times relevant to this complaint, Plaintiff was a resident of Georgetown County, State of South Carolina.

4. Upon information and belief, at all times relevant to this complaint, Defendant, Marion County Sheriff Department, was and is a county agency, governmental entity or political subdivision of the State of South Carolina who conducts and transacts business within the County of Marion, State of South Carolina, and maintains employees, agents and servants in the County of Marion, State of South Carolina. Defendant, Anderson Brothers Bank, is a private agency who conducts and transacts business within the County of Marion and throughout the State of South Carolina.

5. The incident that is the subject matter of this complaint occurred in Mullins, South Carolina in Marion County.

6. Jurisdiction and venue are therefore proper before this court.

FACTUAL BACKGROUND

7. In a Special Referee's Order and Judgment of Foreclosure and Sale, signed August 5, 2013, Docket 2013-CP33-306, the mortgaged premises designated as Lot No. 34 in the Quail Roost Subdivision along with a 2000 Dynasty Mobile Home located on the property were to be sold at a scheduled public sale by Anderson Brothers Bank, the Plaintiff in the equity action of foreclosure.

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

8. A Notice of Appeal and Proof of Service in Case No. 2013-CP33-306 was filed in the SC Court of Appeals on October 30, 2015 by the Plaintiff's son, Arnold Parson, Jr., Defendant in the foreclosure action. Notice was given to the special referee as well as the Marion County Sheriff's Office of the filing of the appeal.

9. Notwithstanding the filing and service of the appeal of the order of foreclosure on the Defendants, the Defendant, Anderson Brothers Bank, requested and received a writ of assistance from the Summary Court in Marion County, requesting assistance in having Plaintiff's son and his family removed from the property.

11. That Plaintiff's son informed his father of this and the Plaintiff proceeded to Marion County from Georgetown County to discuss this matter further with his son.

12. That when Plaintiff arrived at the home of his son, he observed several officials from Marion County Sheriff Department removing items of personalty from the home of his son and placing said items outside in the rain.

13. That the Plaintiff attempted to inquire from the Defendants' officials the whereabouts of his son and the reason for throwing all of his son's and family personal items into the yard in the rain, destroying them all.

14. That the officials of the Defendants refused to respond to the Plaintiff and requested that he leave the premises, even after the Plaintiff identified himself and informed them that the premises belonged to him.

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BOOK 148 PAGE 3
Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

15. That the Plaintiff complied with the request of Defendants' officials and began exiting the property, still inquiring about the whereabouts of his son.

16. That while Plaintiff was exiting the premises on or about November 2, 2015, Lt. Darren Miles of Marion County Sheriff Office arrested the Plaintiff, charging Plaintiff with the offense of trespassing after notice. Plaintiff was thereafter handcuffed and jailed until the following day, November 3, 2015.

17. That the Plaintiff requested a trial by jury to contest the offense alleged against him and was informed on or about February 29, 2016 that the charge against him was dismissed.

18. That the acts instituted against the Plaintiff, resulting in his arrest and jailing, was instituted against Plaintiff by Defendants with malice, or in the alternative, in a grossly negligent and careless manner.

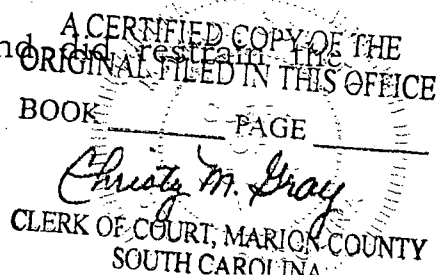
19. As a direct and proximate result of the Defendants negligent, grossly negligent, and reckless conduct described above, Plaintiff suffered emotionally, causing him to have sleepless nights and other traumatic occurrences.

FOR A FIRST CAUSE OF ACTION

(FALSE ARREST AND IMPRISONMENT)

20. Plaintiff realleges the preceding paragraphs as though set forth verbatim herein.

21. Defendants, by and through their agents, employees and/or servants, arrested Plaintiff or had Plaintiff arrested and



Plaintiff without means of escape and restrained him by charging the Plaintiff with trespassing after notice and by having him imprisoned for a crime he did not commit.

22. The restraint of the Plaintiff by Defendants was unlawful and without probable cause or legal authority, and Defendants knew or should have known such, and such restraint against the Plaintiffs will was done without the Plaintiffs consent.

23. As a direct and proximate result of the Defendants actions, the Plaintiff sustained actual damages and is entitled to Judgment against the Defendants, both severally and jointly, for damages as to be determined by the triers of fact in this case.

FOR A SECOND CAUSE OF ACTION

(DEFAMATION)

24. Plaintiff realleges the preceding paragraphs as though set forth verbatim.

25. Defendants, by and through the acts and conduct of their agents, employees, and/or servants with requisite malice published a falsity concerning Plaintiff, such falsity having a defamatory per se meaning and causing Plaintiff legally presumed damage and harm and special damage and harm.

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BOOK _____ PAGE _____
Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

26. Plaintiff is informed and believes he is entitled to judgment against Defendants for a sum of damages as to be determined by the triers of fact in this case.

FOR A THIRD CAUSE OF ACTION

(NEGLIGENCE/GROSS NEGLIGENCE)

27. Plaintiff realleges the preceding paragraphs as though set forth verbatim.

28. Defendants owed a duty to Plaintiff that Defendants breached.

29. Defendants acted negligently, grossly negligent, carelessly, recklessly, willfully and wantonly in the following particulars, to wit:

a. By Defendant, Anderson Brothers Bank, improperly authorizing the Defendant, Marion County Sheriff's Department to evict the son of the Plaintiff and seize his premises, thereby leading Marion County Sheriff Department to falsely arrest the Plaintiff;

b. By Anderson Brothers Bank improperly obtaining a writ of assistance when it knew it was unlawful to do so, resulting in indices of ownership and unlawful arrest of the Plaintiff;

c. In Marion County Sheriff Department failing to properly administer an eviction;

d. In Marion County Sheriff Department abdicating their responsibility to follow the law, knowing that an appeal of such action was

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BOOK PAGE

Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

e. In arresting and detaining Plaintiff without legal authority or just cause;

f. By Marion County Sheriff Department failure to properly investigate invalid and false claims before arresting and detaining Plaintiff;

g. In failing to remedy the improper conduct and actions of its employees; and

h. In such other ways as may be shown at trial.

30. As a direct and proximate result, Plaintiff suffered damage and harm and is informed and believes he is entitled to judgment against Defendants, jointly and severally, for a sum of damages as to be determined by the triers of facts in this case.

FOR A FOURTH CAUSE OF ACTION

(NEGLIGENT HIRING/SUPERVISION)

(AS TO MARION COUNTY SHERIFFS DEPARTMENT)

31. Plaintiff realleges the preceding paragraphs as though set forth verbatim.

32. At all times relevant to this complaint, Lieutenant Darren Miles was under the control and supervision of Marion County Sheriff's Department.

33. At all relevant times herein-referenced, Defendant Marion County Sheriffs Department knew of or had reason to know of its employees and had

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

the ability and means to control and supervise the conduct and actions of them.

34. Defendant Marion County Sheriff's Department negligently, grossly negligently, carelessly, recklessly, willfully and wantonly failed to properly hire, control and supervise the actions and conduct of Lieutenant Darren Miles in the following particulars, to wit:

a. In failing to train and instruct Lt. Darren Miles and its employees how to properly conduct themselves during an eviction procedure;

b. In failing to properly train and instruct Lieutenant Miles and its employees in regards to the proper investigation and prosecution of such matters;

c. In failing to supervise and obtain the proper conduct of its employees in regards to investigation and prosecution of such matters;

d. In failing to remedy the improper conduct and actions of its employees without violating the laws and rights of the citizens of this State; and

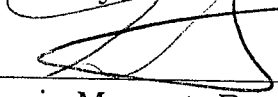
e. In such others manner as may be shown at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court issue an order in favor of Plaintiff and against the Defendants, jointly and severally, awarding to the Plaintiff actual, special, and/or consequential damages and for such other relief in law or equity as this court deems just and proper.

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Morant and Morant, LLC
Attorneys for Plaintiff

By: 

Louis Morant, Bar# 4075
1022 Prince Street
P.O. Drawer 437
Georgetown, SC 29442
(843) 527-2448

October 17, 2017

Arnold Tyron Parson vs. Marion County Sheriff Department and Anderson Brothers Bank

FILED

2017 OCT 20 AM 9:57

MARION COUNTY, SC
CHRISTY M. GRAY
CLERK OF COURT

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CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

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

Arnold Parson Jr,
c/o 311 N Congdon St
Georgetown, South Carolina 29440

Plaintiff

-vs-

Supervisor Darren Miles
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant

And

Sheriff Mark Richardson,
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant

And

Anderson Brothers Bank
101 N Main St
Mullins, South Carolina 29574

Civil Action No. **4:17-cv-00708-RBH-KDW**

**COMPLAINT FOR DAMAGES
CIVIL RIGHTS VIOLATIONS**

**Trial by Jury Demanded
on all issues of fact and law**

Defendant)

And)

Supervisor Judy Barker)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

**Trial by Jury Demanded
on all issues of fact and law**

Defendant)

And)

Officer Jack McCaskill)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Mitchie McCaskill)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Charlie Watson)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Dewayne Rogers)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

**Trial by Jury Demanded
on all issues of fact and law**

Officer Jeff Gause)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Samantha Jackson)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Jonathan Edwards
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant

And

Officer Robert Page
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant

And

**Trial by Jury Demanded
on all issues of fact and law**

Officer Michael Latu
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant

And

Officer Dale Sylvester
c/o 2715 East Highway 76, Suite C
Mullins, South Carolina 29574

Defendant)

And)

Officer Tracey Causey)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

Officer Greg Pike)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574))

**Trial by Jury Demanded
on all issues of fact and law**

Defendant)

And)

Marion County Sheriff Office)

c/o 2715 East Highway 76, Suite C)

Mullins, South Carolina 29574)

Defendant)

And)

County of Marion)
 c/o 2523 US-76)
 Marion, South Carolina 29571)
)
 Defendant)
 And)
)
 Marion County Animal Control)
 c/o 2523 East Highway 76,)
 Marion, South Carolina 29571)
)
)
 Defendant)
 And)
)
 Danny Lee Herring,)
 c/o 2218 Old Corner Ct.)
 Marion, South Carolina 29571)
)

**Trial by Jury Demanded
 on all issues of fact and law**

Comes now the Plaintiff, Arnold Parson Jr., files this Amended 42 USC 1983 Complaint
 for damages against the Defendants named above, and allege as follows:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C § 1983, 1985, 1986, and 1988
 and the first, fourth, fifth, eighth, and fourteenth Amendments as well as Article I

Section 10 purview section 5 of the 14th Amendment of the Constitution of the United States.

2. Plaintiff invokes the jurisdiction of the court pursuant to Title 28 U.S.C. Section 1331, 1332, Title 28 U.S.C Section 1343(A)(3)(4), Section 1391, and the Civil Rights Acts of 1870, 1871, 1872 purview section 5 of the 14th amendment. At all times relevant, all causes of actions were committed within the judicial boundaries of this court.

3. This is an action for damages sustained by a private natural individual that is an inhabitant of South Carolina against:

- Against 14 Special Operations Officers/ Drug Enforcement Unit (DEU) of Marion County, South Carolina, who unlawfully entered upon private property in possession of Plaintiff, searched, arrested, and imprisoned Plaintiff all without a lawful fourth amendment warrant or consent, and having full knowledge of Plaintiff exercising his constitutionally protected rights, that unlawfully turned over Plaintiff's private property, house, and private belongings to third parties (who then threw all Plaintiff and Plaintiff's family belongings out in the rain during a state of Emergency destroying them) , and ;
- Anderson Brothers Bank for violation of Plaintiff properly filed Mandatory Injunction 60(b)(3)(4 relief from void judgment); and a Challenge of Jurisdiction(subject matter and personam), and for violation of an appeal process affecting the right of possession of real property and;

- Against the Marion County Sheriff's Office and Sheriff Mark Richardson as the employers, masters, and supervisors of Marion County Special Operations/Drug Enforcement Unit(DEU) personnel for failure to supervise, to ensure proper hiring and training of personnel, or to implement meaningful procedures to discourage lawless official conduct, or to take corrective action with respect to special operations/drug enforcement unit personnel whose vicious propensities were notorious violent acts, and ;
- Against Marion County Animal Control for unlawfully/seizing Plaintiff and Plaintiffs family pet (2 Blue Bull Dogs) and the County of Marion as employers, masters, and supervisors of Marion County Animal Control personnel for failure to supervise and ensure proper hiring and training of personnel or to implement meaningful procedure to discourage lawless official conduct or to take corrective action with respect to animal control personnel which are sued as a person under 42 U.S.C § 1983.

II PARTIES

4. Arnold Parson Jr., a private natural individual; (herein after Plaintiff), is an inhabitant of South Carolina and at all times relevant to the facts in this complaint was living with his family in the County of Marion at 3546 Quail Roost Road Mullins, South Carolina for over 7 years.(since May 23, 2008).

5. Defendant Darren Miles (herein after Defendant Miles or "Collectively Defendant DEU Officers"), at all times relevant to this complaint was and is a supervising officer with a rank of a Lieutenant for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Miles was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other named Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Miles is a resident of Marion County, South Carolina and is being sued in his official and individually in his personal capacity.

6. Defendant Anderson Brothers Bank (herein after ABB) is a private agency who conducts and transacts business within the County of Marion and throughout the state of South Carolina.

7. Defendant Mark Richardson (hereinafter Defendant Richardson), at all times relevant to this complaint was employed by Marion County Sheriff's Office and was the Marion County Sheriff in charge of policy, control and administration of the Defendant Marion County Sheriff's Office and its employees, agents, and/or officers. At the time the acts complained of in this complaint Defendant

Richardson was a resident of Marion County, South Carolina and had full knowledge of Plaintiff exercising his constitutionally protected rights on November 2, 2015, when in retaliation he sent 14 DEU Officers(armed with assault and sniper rifle) to arrest Plaintiff. Defendant Richardson is being sued in his official and individually in his personal capacity.

8. Defendant Marion County Sheriff Office (hereinafter M.C.S.O) is a political subdivision of Marion County and is a county entity organized and created pursuant to the laws of the state of South Carolina. The M.C.S.O is responsible for the policies, practices, and customs of the M.C.S.O as well as the hiring, training, supervising, controlling, and disciplining of its officers and other employees and is being sued as a person.

9. Defendant Supervisor Judy Barker (hereinafter Defendant Barker or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is a Supervisor for Marion County Drug Enforcement. At all times relevant she was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Barker was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the

Constitution. Defendant Barker is a resident of Marion County, South Carolina and is being sued in her official capacity and individually in her personal capacity.

10. Defendant Officer Jack McCaskill (hereinafter Defendant J McCaskill or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit (DEU). At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant J McCaskill was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant J McCaskill is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

11. Defendant Officer Mitchie McCaskill (hereinafter Defendant M McCaskill or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant J McCaskill was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in

entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant M McCaskill is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

12. Defendant Officer Charlie Watson (hereinafter Defendant Watson or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Watson was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Watson is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.
13. Defendant Officer Dewayne Rogers (hereinafter Defendant J Rogers or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of

Defendant Marion County Sheriff Office. Defendant Rogers was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Rogers is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

14. Defendant Officer Jeff Gause (hereinafter Defendant Gause or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Gause was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Gause is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

15. Defendant Officer Samantha Jackson (hereinafter Defendant Jackson or "Collectively Defendant DEU Officers") at all times relevant to this complaint

was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant she was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Jackson was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Jackson is a resident of Marion County, South Carolina and is being sued in her official capacity and individually in her personal capacity.

16. Defendant Officer Jonathan Edwards (hereinafter Defendant Edwards or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Special Operation Division. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Edwards was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Edwards is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

17. Defendant Officer Robert Page (hereinafter Defendant Page or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Page was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Page is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.
18. Defendant Officer Michael Latu (hereinafter Defendant Latu or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Latu was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the

Constitution. Defendant Latu is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

19. Defendant Officer Dale Sylvester (hereinafter Defendant Sylvester or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Sylvester was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Sylvester is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

20. Defendant Officer Tracey Causey (hereinafter Defendant Causey or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Causey was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants

from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Causey is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

21. Defendant Officer Greg Pike (hereinafter Defendant Pike or "Collectively Defendant DEU Officers") at all times relevant to this complaint was and is an Officer for Marion County Drug Enforcement Unit. At all times relevant he was acting in such capacity as the agent, servant, and employee of Defendant Marion County Sheriff Office. Defendant Pike was a person who assisted in the arrest of Plaintiff and/or entered the Plaintiff's house without warrant or consent on November 2, 2015 and allowed other Defendants in entering the property, who did nothing to aid against, or stop other defendants from causing Plaintiff irreparable harm, all while having full knowledge of Plaintiff exercising his fundamental rights guaranteed to be secured to him by the Constitution. Defendant Pike is a resident of Marion County, South Carolina and is being sued in his official capacity and individually in his personal capacity.

22. Defendant Marion County Animal Control (hereinafter M.C.A.C) is a political subdivision of Marion County and is a county entity organized and created pursuant to the laws of the state of South Carolina/ County of Marion. At all-time relevant upon information and belief Defendant M.C.A.C seized Plaintiff and Plaintiffs family pets without warrant or consent on November 2, 2015 and is being sued as a person.

23. Defendant The County of Marion (hereinafter County) is a municipality of the State of South Carolina. At all times relevant to this complaint either directly or indirectly trained, controlled, made policy for, employed, supervised, compensated, ratified, enriched, or rewarded Marion County animal control. Further, the constitutional violation Plaintiff complains of in the instant case occurred in The County of Marion. Defendant County is being sued as a person.
24. Defendant Danny Lee Herring, at all times relevant to this complaint is the owner of Danny Lee Herring Construction (hereinafter Defendant Herring or Intruders). The Intruders were Defendant Herring and unknown employees of Danny Lee Herring Construction who without consent entered Plaintiffs house, who wantonly, recklessly, maliciously, willfully threw Plaintiff and Plaintiffs family private belongings from within the house outside on the front yard during a State of Emergency (heavy rains that caused disastrous flooding during the month of October and November 2015) destroying all Plaintiff and Plaintiffs family private belongings on November 2, 2015. Defendant Herring is a resident of Marion County, South Carolina and is being sued as Respondent Superior for Intruders.
25. At all times relevant hereto Defendant Richardson, and "Defendant DEU Officers" were acting under the color of the state of South Carolina law and pursuant to their authority as Sheriff, and DEU Officers personnel or public officials during the commission of the acts, conduct, and omissions complained of herein.

III. Ultimate Facts

26. Plaintiff hereby alleges, complains and claims the following:
27. All events depicted herein occurred on the morning of November 2, 2015, unless otherwise stated.
28. On **October 16, 2015** Plaintiff filed with the Clerk of Court for the County of Marion a Mandatory Injunction, 60(b)(3)(4 Relief from Void judgment) and Challenged the Jurisdiction. Plaintiff was challenging the jurisdiction of the court to enforce the void foreclosure judgment and order for sale heard on July 29, 2013, and entered on August 5, 2013. Plaintiff also noticed Defendant Anderson Brothers Bank by and through their attorney of record Suzanne Griggs and noticed the Special Referee of the above filings and that all fee's pursuant thereto were satisfied.
29. On **October 19, 2015** Plaintiff by way of certified mail sent Defendant Richardson correspondences of his October 16, 2015 filings (Mandatory Injunction 60(b)(3)(4 Relief from Void judgment) filed in the Clerk of Court for the County of Marion on October 16, 2015.
30. On **October 24, 2015** Defendant Richardson mailed correspondence to Plaintiff stating, "if Plaintiff didn't vacate premises within 30 days he would be subject to trespassing charges."
31. On **October 26, 2015** Plaintiff by way of certified mail sent Defendant Richardson a second notice informing him of the previous filings and that he

would be causing Plaintiff irreparable harm by not allowing him his right to be heard in court prior to carrying out any action against Plaintiff.

32. On **October 28, 2015** Plaintiff filed with the Clerk of Court for the County of Marion an Objection to the Order for Writ of Assistance, along with a Memorandum of Law.
33. On **October 28, 2015** by way of email, and certified mail received 10/30/15 gave notice to Anderson Brothers Bank by and through attorney (Suzanne Griggs), and to the Special Referee that an Appeal has been filed in the South Carolina Court of Appeals appealing the Writ of Assistance Order.
34. On **October 29, 2015** Plaintiff filed with the Clerk of Court for the County of Marion a Notice of Appeal and;
35. On **October 29, 2015** Plaintiff physically went to the Marion County Sheriff Office where Defendant Richardson and/or Defendant Miles refused to see Plaintiff.
36. On **October 30, 2015** Plaintiff filed with the Clerk of Court for the County of Marion a Petition for Emergency Stay. Upon information and belief the Marion County Circuit Court Public Index showed the Petition for Emergency Stay was completed on December 11, 2015. At all times relevant and material to this complaint, Plaintiff was present at a hearing at the Marion County Summary Court on December 11, 2015, evidenced by the dismissal and order for expungement for Breach of Peace S.C. Code § 22-5-140.

37. On November 2, 2015, Plaintiff was awakened by loud knocks on the front door of his house.
38. Plaintiff observed multiple men and women (hereinafter Defendant DEU Officers) heavily armed with military styled weapons (i.e. machine guns and sniper rifle) dressed in tactical gear, and multiple vehicles (cars and trucks) with flashing lights.
39. At all times relevant to the fact in this complaint, upon information and belief The Special Operation Division/Drug Enforcement Unit of Marion County Sheriff Office is equivalent to a city's Swat Team.
40. Plaintiff in fear of his life called 911. With 911 on the phone Plaintiff opened his front door and stepped out of his house on the front porch with both hands in the air stating, "what's going on, an appeal has been filed."
41. Plaintiff was met at the step of his front door by several of the heavily armed Defendant DEU Officers.
42. At all times relevant and material to this complaint Plaintiff filed his Notice of Appeal on October 28, 2015 and the South Carolina Court of Appeals didn't rule on Plaintiffs appeal until January 2016. Pursuant to South Carolina Appellate Court Rule 205 "Effect on Appeal" where it states in part, "Upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal....."

43. Upon information and belief Defendant ABB acted in total disregard of this rule 205 S.C.A.C.R and as a proximate result violated Plaintiffs appeal process.
44. At all times relevant and material to the facts of this case, the actions complained of herein occurred more than 60 days prior to the ruling from the South Carolina Court of Appeals and more than a year before the remittitur was sent to Marion County Circuit Court.
45. At all times relevant and material to this complaint Plaintiff had established a right to be on his private property on the morning of November 2, 2015 through the numerous of filings filed with the Clerk of Court for the County of Marion prior to November 2, 2015. As a proximate result Defendant ABB, Defendant Richardson, Defendant Marion County, Defendant Herring, and "Defendant DEU Officers" violated plaintiff appeal process, and right to be heard.
46. At all times relevant and material to this complaint Defendant ABB, Defendant MCSO, and Defendant Richardson all received a timely and proper notice of the October 16, 2015 filing (Mandatory Injunction Relief ,60(b)(3)(4 Relief from void Judgment) Challenge of Jurisdiction(subject matter & personam), and/or the October 29, 2015 filing(Notice of Appeal) that were properly filed with the Marion County Circuit Court, and South Carolina Court of Appeals.

47. At all times relevant, "Defendant DEU Officers" searched, and arrested the Plaintiff without producing a lawful fourth amendment warrant or having consent, to either search or arrest Plaintiff.
48. At all times relevant, upon information and belief Defendant Miles stated several times that, "they were on Plaintiff property for Defendant Anderson Brothers Bank and that the proper paperwork was not filed and there was no appeal."
49. At all times relevant, "Defendant DEU Officers" never presented Plaintiff with any affidavit nor verified criminal complaint from an injured party.
50. At all times relevant Plaintiff yelled for help and none of "Defendant DEU Officers" attempted to aid Plaintiff.
51. Plaintiff asked one of "Defendant DEU Officers", "Where's the warrant for his arrest" Defendant DEU Officers replied, "We don't need one" slamming car door in Plaintiffs face.
52. Plaintiff told several of the "Defendant DEU Officers" including but not limited to Defendant Miles that "You are going to be violating my rights if you go in to my house."
53. Defendant DEU Officers against Plaintiff will, over his objections without his consent and having full knowledge of Plaintiff exercising his constitutionally protected rights (Circuit Court and South Carolina Appellate Court filings)

entered Plaintiff house with military styled weapons drawn and began to search Plaintiffs house.

54. At all times relevant and materials to the facts contained herein one of the "Defendant DEU Officers" stated to several other Defendant DEU Officers, "We're going to have some issues behind this."

55. Plaintiff was taken to Marion County Jail.

56. The majority of the ride to Marion County Jail Plaintiff stated, "He is a diabetic, he has high blood pressure, C.O.P.D, and that the cuffs were extremely tight."

57. Plaintiff cuffs were so tight sharp pains ran from his hand to his shoulder causing him to shake.

58. Once arriving at Marion County Jail, Plaintiff demanded "Defendant DEU Officers" to take him directly before a magistrate.

59. Instead of being taken directly before a neutral Magistrate a hold was placed on Plaintiff, then Plaintiff was taken for booking procedures (i.e. Mugshots, fingerprints, etc....) and placed in a holding cell until a cell became open.

60. At all times relevant to this complaint Defendant Miles stated to Plaintiff, "that it was Plaintiff fault that Plaintiffs father was arrested" on November 2, 2015.

61. At all times relevant, plaintiff was arrested at approximately 10:15am.

62. Plaintiff was released after being held against his will, without consent and over his objections for more than 24 hours on November 3, 2015.
63. At all times relevant to the facts herein Plaintiff was never read his Miranda rights.
64. After being freed, Plaintiff discovered his two dogs were seized by Marion County Animal Control; and
65. That all private belongings of Plaintiff and Plaintiffs family were destroyed by Defendant Herring is wantonly, recklessly, maliciously tossing them from the front porch to the middle of the front yard in the heavy rains that caused the second state of emergency for Marion County in November 2015.
66. Defendants should of known, could of known or knew that their acts, conducts, or omissions committed on November 2, 2015 was in direct violation of the State of Emergency issued by the Governor for the state of South Carolina, and the President of the United States.
67. At all times relevant and material to this complaint Defendant Herring should of known or knew that the intentionally, recklessly, maliciously, and deliberately throwing of the Plaintiff private property into the rain would destroy them. In particular causing severe water damage, mold, mildew, leaving oven in two pieces, refrigerator in 3 pieces, couches, chairs, beds, electronics & appliances drenched from the heavy rain (i.e. tvs, laptop computers, desktop computer, printers, washing machine, dryer, Plaintiff children K12 online school books, Medical Office Assistant Books destroyed, Business Management Books

destroyed, Rasmussen College Honor Roll Certificates destroyed, Rasmussen College Deans Lists Certificate Destroyed, Marriage License destroyed, all family photos destroyed.... due to the heavy rain that took place in Marion County South Carolina on November 2, 2015).

68. At all times relevant to this complaint, Plaintiff and Plaintiff family possessed ownership interest in all their private belongings that were destroyed by Defendant Herring/Intruders acts, conducts, and omissions complained of herein

69. On November 6, 2015 Plaintiff went to Georgetown Memorial Hospital because he was still in pain and could barely move his right index finger. X-rays was taken of Plaintiff right wrist (that still bares the scar of the handcuffs).

70. Plaintiff was told by doctors his hand was swollen from his index finger to his wrist, there was possible nerve damage, a MRI was needed for more detail, and doctors prescribed pain medication.

71. At all times relevant to the facts in this complaint there was no riot, insurrection, invasion, or breach of peace occurring at Plaintiff house or on Plaintiff property prior to the arrival of "Defendant DEU Officers."

72. At all times relevant Plaintiff had reasonable expectations of fundamental rights to privacy in his house, his effects (private belongings), his person, and his papers.

73. At all times relevant Plaintiff had reasonable expectations to be free from unwarranted, and unreasonable, search, and seizure of Plaintiff person, and unreasonable excessive use of force against Plaintiff.

74. At all times relevant herein mentioned, Defendant DEU Officers were not engaged in serving or carrying out any lawful criminal process, Defendant DEU Officers had full knowledge of Plaintiff exercising his constitutionally protected rights (Circuit Court and Appellate filings) and had no lawful or legal reason to be on Plaintiff private property.
75. At all times relevant upon information and belief Defendant DEU Officers either directly turned over possession of Plaintiffs private property, house, and/or private belongings to Defendant Herring, or indirectly allowed the Intruders to take possession of Plaintiffs private property, house, and private belongings when "Defendant DEU Officers failed to properly secure the private property, house, and Plaintiff private belongings upon leaving.
76. All Defendants could have known, should have known that their actions on November 2, 2015 was a trespass against Plaintiffs fundamental civil rights guaranteed to be secured to Plaintiff. In particular, Plaintiff right to appeal a circuit court order in the South Carolina Court of Appeal; right to Relief from a Void Judgment, and a Right to Challenge the Jurisdiction (subject matter and personam) of the Marion County Circuit Court to enforce void orders against Plaintiff.
77. Defendant could have known, should have known that without Plaintiffs consent or probable cause or lawful or legal reason to be on Plaintiff private property, in fact they would be trespassers.

78. As a proximate result of the Defendants entry on November 2, 2015 Plaintiff and Plaintiffs family were without medicine, warm clothing, food, money, keepsakes, or ways to make a living or to protect themselves from the elements and left to fend for themselves during a State of Emergency (Before (2) major holidays Thanksgiving and Christmas) issued both by Governor of South Carolina and The President of the United States.
79. Plaintiff was unjustly deprived of his pets for about (4) days and his private property for about (4) months.
80. Plaintiff has regained and maintains possession of his two dogs on November 5, 2015, and regained his private property and house located at 3546 Quail Roost Road Mullins, South Carolina state on March 7, 2016.
81. At all times relevant the Chief Magistrate of the Summary Court of Marion County, South Carolina Judicially Dismissed, expunged, and invalidated the sham criminal charges brought against Plaintiff by Defendant MCSO, Defendant Richardson, and Defendant Miles.
82. At all times relevant Plaintiff has been deprived of his private belongings (effects) from within his house indefinitely (i.e. destroyed by severe water damage, mold, mildew).
83. At all times relevant Defendant officers should have known, could have known that their actions on November 2, 2015 were outside the scope of their authority and/or employment and in violation of their sworn oath.

84. Upon information and belief Defendant Richardson, and Defendant DEU Officers swear an oath to uphold, protect, and defend the Constitution for the state of South Carolina, and the United States. Defendant Richardson and Defendant DEU Officers further swear an oath to show due consideration to all people who live in the County of which they serve.
85. Defendant DEU Officers at all time relevant herein acted in bad faith, showed a racially motivated deliberate indifference to Plaintiffs rights acted wantonly, recklessly, maliciously, and willfully; with the intent of causing irreparable harm and oppressing the plaintiff by reason of which Plaintiff is entitled to punitive damages.
86. Defendants Marion County Sheriff's Office and/or Defendant Richardson as a policy or custom failed to properly hire, train, supervise, control, correct the abuse of authority, or discourage the unlawful use of authority of their officers. The failure to properly train Defendant DEU Officers included but not limited to instruct them in applicable provisions of the United States Constitution on seizing, arresting, searching, use of excessive force, imprisoning a person without warrant or bona fide criminal process, and converting the exercise of Constitutionally protected rights into a crime.
87. At all times relevant to the facts in this case upon information and belief Defendant DEU Officers were acting on the written policy of Defendant Richardson in their arrest of Plaintiff.

88. Defendant DEU Officers actions complained of herein were committed in concert with the intention to seize Plaintiff, his private property, his house, dogs, convert his exercise of constitutionally protected rights into a crime without consent or legal authority to do so.
89. Defendant M.C.S.O and Defendant Richardson should have known, could have known, or knew that Defendant DEU Officers intended to go to Plaintiff private property on the morning of November 2, 2015, with the intent to arrest Plaintiff and enter Plaintiff house without warrant or bona fide criminal process with the use of force, a sniper, and military type tactics.
90. Defendant DEU Officers at all times relevant herein were organized as, equipped as and acted in accordance with the organization, mode, and conduct of a standing army in times of peace.
91. "Defendant DEU Officers" at all times relevant had no legal or lawful authority to turn over possession of Plaintiff private property, house, or private belongings to Defendant Herring.
92. Defendant MCSO by and through Defendant Richardson as a policy or custom neglected to properly hire, investigate, supervise, control, correct the abuse of authority, or discourage the unlawful reckless, wanton use of authority and the unlawful conversion of the exercise of Constitutionally protected rights into a crime, of Defendant DEU Officers. The failure to properly hire and train Defendant DEU Officers included failure to instruct them in applicable provisions of the United States Constitution and applicable South Carolina Statutes and law

dealing in use of standing army in times of peace, seizure of private persons and private property, entry of houses without warrant, consent, or probable cause, the use of Drug Enforcement Unit(DEU) on a civil process and how to properly determine whether or not a dog is dangerous.

93. At all times relevant all constitutional violations complained of occurred within the county of Marion state of South Carolina on November 2, 2015.
94. Defendant Marion County as a policy or custom neglected to properly hire, train, supervise, control, correct the abuse of authority, or discourage the unlawful use of authority, of the Defendant MCAC The failure to train Defendant MCAC included but not limited to failure to properly instruct them on how to determine if a pet is dangerous, and the unlawful seizure and impounding pets not considered dangerous.
95. Defendant County, Defendant MCSO has created a policy to promote a policy or custom to act and conspire with Defendant DEU Officers, Defendant Herring, Defendant MCAC, and Defendant ABB herein to deprive and/or violate Plaintiff inalienable, unalienable fundamental rights guaranteed to be secured to him by the state and federal constitution.
96. Defendant MCSO has created, maintained, and have used said standing army in violation of Article 1 Section 10 of the United States Constitution against Plaintiff illegally and under the color of the State of South Carolina Law. In particular, the use of 14 DEU Officers (including assault and sniper rifle) on a civil process.

97. At all times relevant Plaintiff had reasonable expectation that Defendant MCSO, Defendant Richardson, and Defendant DEU Officer would not show a deliberate racially motivated indifference to Plaintiff exercise of Constitutionally protected rights, arrest, or allow to be arrested, seize, search, nor imprison his person absent valid warrant, exigent circumstances, probable cause hearing, or verified criminal complaint because that would violate clearly established law.

IV. Causes of Actions

FOR A FIRST CAUSE OF ACTION

"CONSTITUTIONAL VIOLATIONS"

(Violation of 42 USC § 1983)

AS TO ALL DEFENDANTS

98. Plaintiff re-alleges all paragraphs 1-97 as if restated herein verbatim.
99. 42 USC § 1983 provides in relevant part: " Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any States... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured 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."
100. "Defendant DEU Officers used excessive force and conducted an unlawful arrest of Plaintiff, both actions in violation of 42 U.S.C. § 1983.

101. "Defendant DEU Officers engaged in an improper and unlawful arrest of the Plaintiff and the use of brutal and excessive force (sniper) in the detention and arrest of Plaintiff.
102. Plaintiff first amendment right to freedom of expression and redress of grievances was denied by Defendant DEU Officers when they unlawfully entered upon Plaintiff private property, and divested Plaintiff and his family of their actual possession and control of their private property, house, and private belongings without due process of law.
103. Plaintiff fourth amendment right to be secure in his person, house, papers, and effects from unreasonable or unprovoked attacks as unreasonable searches, and seizures, and free from the unreasonable use of excessive force was denied by Defendant MCSO, Defendant DEU Officers, and Defendant Richardson, in particular when they arrested (handcuffing) and imprisoned Plaintiff unlawfully, entered upon Plaintiff private property, and divested Plaintiff and his family of their actual possession and control of their private property, house, and private belongings (within house) without due process of law.
104. Plaintiff suffered both physical and emotional cruel and unusual punishment in violation of eighth amendment by the unlawful actions of "Defendant DEU Officers, Defendant Richardson, Defendant Herring on November 2, 2015. In particular by Defendants depriving Plaintiff and his family of food, clothing, shelter, and a means to make a living, as well as causing medical cost and expense.

105. Plaintiff fifth and fourteenth amendment rights to equal protection, and due process (substantive & procedural) were violated by "Defendant MCSO, Defendant DEU Officers, Defendant Herring, and Defendant Richardson when they entered upon private property and house without a warrant, and took possession of the private property and house, and allowed Defendant Herring to take possession of Plaintiffs private property, house, and private belongings without due process of law (substantive & procedural). In, particular Defendant MCSO, Defendant Richardson, Defendant ABB had full knowledge of or in the alternative could have known, should have known of Plaintiff timely and properly filed appeal and lower court filings, In light of these facts said defendants still commenced an improper action against Plaintiff knowing the properly and timely filed Appeal, Mandatory Injunction Relief, 60(b)(3)(4) Relief from void judgment, and Challenge of Jurisdiction (subject matter and Personam) was still awaiting to be heard.

106. Plaintiff substantive rights to life, liberty, and pursuit of happiness were denied by "Defendant DEU Officers when they organized and were allowed to organize as a standing army in times of peace. In particular Defendant DEU Officers invaded Plaintiffs private property, and house by troops which were kept up, trained and controlled by Defendant MCSO as used without the exception of riot, insurrection, or invasion in violation of Article 1 Section 10 Subsection 3 of the United States Constitution.

107. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

108. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

109. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1983)

SECOND CAUSE OF ACTION "ASSAULT"

**Defendant Richardson; Defendant Marion County Sheriff
Office; Defendant Drug Enforcement Unit (DEU) Officers**

110. Plaintiff re-alleges all paragraphs (1-109) above as if restated herein verbatim.

111. By and through Defendant Richardson written policy and Defendant DEU Officers oral threat to arrest Plaintiff. Defendant Drug Enforcement Unit (DEU) officer threat to use excessive force against Plaintiff (Defendant DEU Officers

said, " knock one more time if he doesn't open the door force it"). Plaintiff was placed in reasonable fear of bodily harm.

112. Defendant Marion County Sheriff Office and Defendant Richardson is vicariously liable pursuant to the doctrine of respondent superior for the conduct of its employees or agents, Defendant Richardson, and Defendant DEU Officers, as these Defendants conduct was committed during and in the course and scope of their employment and official duties (as Sheriff and DEU Officers) with Defendant Marion County Sheriff Office on November 2, 2015.

113. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

114. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

115. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1983)

THIRD CAUSE OF ACTION "BATTERY"

As to Defendant Marion County Sheriff Office;

Defendant Richardson; Defendant Miles

116. Plaintiff re-alleges all paragraph (1-115) above as if restated herein verbatim.
117. By and through the Defendant DEU Officers unreasonable, unlawful, unauthorized, and excessive force (hand cuffing) on the person of the Plaintiff, Plaintiff has been battered.
118. Defendant Marion County Sheriff Office and Defendant Richardson is vicariously liable pursuant to the doctrine of respondent Superior for the conduct of its employees or agents, and Defendant DEU Officers, as Defendant DEU Officers conduct was committed during and in the course and scope of their employment and official duties with Defendant Marion County Sheriff Office.
119. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.
120. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

121. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1983)

FOURTH CAUSE OF ACTION

"Intentional Infliction of Emotional Distress/Outraged"

**"As to Defendant Marion County Sheriff Office; Defendant Richardson;
Defendant Anderson Brothers Bank"**

122. Plaintiff re-alleges all paragraph (1-121) above as if restated herein verbatim.

123. By and through the conduct alleged above Defendant MCSO and Defendant Richardson, and Defendant ABB intentional and/or recklessly inflicted severe emotional distress on the Plaintiff or was certain or substantially certain that such distress would result from their conduct.

124. Defendant DEU Officers, and Defendant Herring conduct was so extreme and outrageous that it exceeds all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

125. The actions of these Defendants was so severe that no reasonable person could be expected to endure it. In particular, Defendant Miles maliciously charging Plaintiff with sham charges Breach of Peace S.C Code 22-5-140, and telling Plaintiff that it was his fault hi father was arrested and imprisoned, and

Trespassing S.C. Code 16-11-620, and the use of 14 Defendant DEU Officers on a civil process armed with machine and sniper rifles, and Defendant Herring (Intruders) recklessly, willfully, and wantonly destroying Plaintiff private property by throwing them in the heavy rains on November 2, 2015.

126. Defendant Marion County Sheriff Office, Defendant Richardson, and Defendant Anderson Brothers Bank are vicariously liable pursuant to the Doctrine of Respondent Superior, for the conduct of their employees or agents, Defendant DEU Officers and Defendant Intruders as these defendants conduct was committed during and in the course and scope of their employment and/or official duties with Defendant Marion County Sheriff Office, Defendant Richardson, and Defendant Anderson Brothers Bank.

127. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

128. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

129. As a direct result of Defendants acts and omissions Plaintiff has suffered, damages including without limitation pain and suffering, embarrassment,

humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1983)

FIFTH CAUSE OF ACTION

"False Arrest/Unlawful Imprisonment"

"As to Defendant Marion County Sheriff Office; Defendant DEU Officers"

130. Plaintiff re-alleges all paragraph (1-128) as if restated herein verbatim.
131. Defendants by and through their agents arrested Plaintiff or had Plaintiff arrested and did restrain the Plaintiff without means of escape and restrained him by charging the Plaintiff with Breach of the Peace (S.C. Code 22-5-140) and having him imprisoned without order or warrant from a Marion County Summary Court Magistrate or any judge with proper jurisdiction.
132. Defendants by and through their agents arrested Plaintiff or had Plaintiff arrested and did restrain the Plaintiff without means of escape and restrained him by charging the Plaintiff with Trespassing (S.C. Code § 16-11-620) and having him imprisoned without order or warrant from a Marion County Summary Court Magistrate or any judge with proper jurisdiction.
133. The restraint of the Plaintiff, by Defendants was unlawful, without probable cause or legal authority, and Defendants knew or should have known such, and that such restraints against Plaintiff will and over his objections was done without Plaintiff consent. Furthermore, the criminal actions brought by

Defendant MCSO, Defendant Richardson, and Defendant Miles was terminated in favor of Plaintiff. In particular, Breach of Peace S.C. Code §22-5-140 was judicially dismissed and expunged on December 11, 2015, and Trespassing charge was judicially dismissed and expunged on February 29, 2016.

Furthermore, on a Post Trial Motion heard on March 18, 2016 the Chief Magistrate of Summary Court for the County of Marion the service of writ and criminal actions were invalidated.

134. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

135. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

136. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1983)

SIXTH CAUSE OF ACTION

"Malicious Prosecution"

(As to Defendant Marion County Sheriff Office; Defendant Miles)

137. Plaintiff re-alleges all paragraph (1-136) as if restated herein verbatim.
138. The criminal actions was initiated in the Marion County Summary Court in Marion, South Carolina against Plaintiff by and through Defendant Miles (as arrestor and prosecutor) at the direction of Defehdant MCSO and Defendant Richardson.
139. The criminal action was continued by or at the direction of the defendants to a legal termination on the merits in favor of Plaintiff. On February 29, 2016 Plaintiff charges was Judicially Dismissed, invalidated, and expunged.
140. Defendants did not have probable cause to file claims against Plaintiff. Defendants knew or reasonably should have known that the criminal actions brought was without merits. Defendants continued the criminal actions after they knew, or should have known the charges in the criminal action had no legal merit. Defendants acted to conceal the charges. In particular, offering Plaintiff (one day time served on January 29, 2016) before allowing Plaintiff to see any of the evidence (Defendant Miles mailed discovery to Plaintiff on February 16, 2016).
141. In continuing the criminal actions, Defendants acted primarily for a purpose other than succeeding on the merits of the charges in the criminal actions. That purpose included but is not limited to retailiation against Plaintiff by

Defendant Richardson sending 14 DEU Officers (heavily armed, machine guns, sniper rifle) dressed in tactical gear to execute a civil process; and

142. In initiating and continuing the criminal actions, and filing post trial motion (Heard on March 18, 2016). Defendants acted with oppression, malice, recklessness, willfulness, included but not limited to the intent to threaten and use excessive force and other despicable misconduct with a willful, wanton, conscience, racially motivated deliberate indifference to the rights of Plaintiff.

143. Further, at all times relevant the Marion County Summary Court Judicially Dismissed, invalidated, and expunged criminal charges and the service of the Writ of Assistance, in particular Chief Magistrate stated, "Plaintiff did not violate any laws of The State of South Carolina, and when he asked the state was the appeal filed properly?" the state said, "yes."

144. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

145. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

146. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment,

humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

SEVENTH CAUSE OF ACTION

"Negligence/Gross Negligence/Recklessness"

(Violation of 42 USC § 1983)

As to "All Defendants"

147. Plaintiff re-alleges paragraphs (1- 146) as if restated herein verbatim.
148. At all times relevant to this complaint "all defendants" owed a duty of reasonable care to Plaintiff and Plaintiff property, and was negligent, grossly negligent, reckless, malicious, willful, and wanton in their conduct herein referenced and these Defendant breached their duty of care owed to Plaintiff by their unlawful arrest and use of excessive force during the course of an arrest against Plaintiff.
149. Defendants further breached their duty of care by either assisting in the total destruction of Plaintiff private belongings, or sitting back watching and doing nothing to aid Plaintiff, to stop the total destruction of Plaintiff private belongings.
150. Defendant MCSO, Defendant Richardson, and Defendant County of Marion is vicariously liable pursuant to the doctrine of Respondent Superior for the conduct of their employees or agents. Defendant Richardson and Defendant Miles, Defendant MCAC, Defendant DEU officers, as these defendants

misconduct was committed during and in the course and scope of their employment and/or official duties with Defendants MCSO, Defendant ABB, and Defendant County of Marion.

151. Defendant ABB is vicariously liable pursuant to the doctrine of Respondent Superior for the conduct of their employees or agents (Defendant Intruders). Defendant intruders conduct committed during the course of their employment with Defendant ABB.
152. Defendant ABB is further liable for failure to inform Defendant Herring, and Defendant MCSO of Plaintiff properly and timely filed appeal with South Carolina Court of Appeals; and
153. Defendant ABB failed to inform Defendant MCSO, and Defendant Herring of the timely and properly filed Mandatory Injunction/Relief from void Judgment 60(b)(3)(4) S.C.R.C.P and Challenge the Jurisdiction of the Marion County Circuit Court (subject matter and personam) all filed with the Clerk of Court in Marion, South Carolina.
154. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.
155. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were

done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

156. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

EIGHTH CAUSE OF ACTION

(Violation of 42 USC § 1983)

Negligent/Hiring/Supervision

As to Defendant MCSO; Defendant Marion County; Defendant Richardson

157. Plaintiff re-alleges paragraphs (1- 156) as if restated herein verbatim.
158. At all times relevant to this complaint, Defendant DEU officers was under the control and supervision of the Defendant MCSO.
159. At all times relevant herein Defendant MCSO knew or had reason to know of its employees and had the ability and means to control and supervise the conduct and actions of these Defendants.
160. Defendant MCSO negligently, grossly negligently, carelessly, recklessly, willfully, and wantonly failed to properly hire, control, and supervise the actions and conduct of Defendant DEU officers. In particular:
- In failing to train and instruct Defendant DEU Officers on the use of the Drug Enforcement Unit in a civil process and;

- In failing to properly train and instruct Defendant DEU Officers in regards to the unlawful conversion of the exercise of Plaintiff Constitutionally protected rights into a crime and;
- In failing to properly train and instruct Defendant DEU Officers in regards to the proper investigation and prosecution of such matters and;
- In failing to remedy the improper conduct and actions of its employees violating the laws and rights of the citizen of this State.

161. At all times relevant to this complaint Defendant MCAC was under the control and supervision of Defendant Marion County. Defendant Marion County failed to properly train and instruct Defendant MCAC on identifying and the unlawful seizing of non vicious dogs.

162. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

163. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

164. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment,

humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

NINETH CAUSE OF ACTION

(Violation of 42 USC § 1985)

"CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS"

AS TO ALL DEFENDANTS

165. Plaintiff re-alleges paragraphs (1-164) as if restated herein verbatim.
166. 42 U.S.C. § 1985(3) provides in relevant part that: If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.
167. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, Defendant County, Defendant MCAC, Defendant ABB, and Defendant Herring conspired, combined, and agreed with each other and other individuals, for the purpose of impeding, hindering, obstructing, or defeating the due course of justice with attempt to deny Plaintiff equal protection, privileges,

immunities under the laws. In furtherance of that combination or agreement all defendants and its agents acted with a specific intent to deprive Plaintiff of such rights.

168. Defendant DEU Officers employed by Defendant MCSO have an understanding and implicit agreement that Defendant MCSO and Defendant Richardson will not aggressively enforce policies which purport to prohibit the violations of constitutional rights of people with whom they interact, and that any deception on the part of individual officers (Defendant DEU Officers) in attempting to cover up unconstitutional conduct will not be disciplined. This agreement between Defendant MCSO, Defendant Richardson, and its individual law enforcement officers (Defendant DEU Officers) to allow such unconstitutional behavior on the part of its law enforcement officers despite explicit policies, regulations, and laws prohibiting such conduct.

169. As a result of their conduct, Defendants are liable for Plaintiffs injuries, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent these violations.

170. Plaintiff is informed and believes and thereon alleges that the individual Defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of Plaintiff rights, and safety, thereby justifying the award of punitive damages.

171. As a direct result of Defendants acts and omissions Plaintiff has suffered damages including without limitation pain and suffering, embarrassment, humiliation, extreme mental and emotional distress, physical injuries, cost of suit, loss of earnings, and other pecuniary losses not yet ascertained.

(Violation of 42 USC § 1986)

FOR A TENTH CAUSE OF ACTION

"NEGLECT TO PREVENT CONSPIRACY"

As to Defendant MCSO, Defendant Richardson,

and Defendant DEU Officers

172. Plaintiff re-alleges paragraphs (1-171) as if restated herein verbatim.
173. 42 U.S.C. § 1986 provided in relevant part that: Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of person guilty of such wrongful neglect or refusal may be joined as defendants in the action.

174. Defendant MCSO, Defendant Richardson, and Defendant DEU Officers had specific knowledge that the wrongs conspired to be done, (irreparable harm) as described in this complaint were about to be committed, had the power to prevent or aid in preventing the commission of those wrongs, neglected or refused to prevent the commission of those wrongs and could have by reasonable diligence prevented those wrongs.

175. Defendant MCSO, Defendant Richardson, and Defendant DEU Officers knew that conspiring to cover up there unconstitutional actions is illegal, but did so anyways, causing injuries, damages, and losses to the Plaintiff.

176. The custom, policy, and the practice of Defendant MCSO, and Defendant Richardson, encourages, condones, tolerates, and ratifies the unlawful conducts by the Defendant DEU Officers by neglecting or refusing to prevent such unlawful conduct as described herein.

177. This custom, policy, and practice of neglect on the part of the Defendant MCSO and Defendant Richardson was the moving force behind and proximate cause of the violation to Plaintiffs rights.

PENDANT CAUSES OF ACTION

178. Plaintiff re-alleges paragraphs (1-177) as if restated herein verbatim.

179. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, and Defendant ABB actions violated Art 1 §2 (Freedom of Speech and Redress of Grievances) of the Constitution of South Carolina on November 2,

2015. In particular, Plaintiff lower court filings on October 16, 2015, and Plaintiff Appeal to the South Carolina Court of Appeal on October 28, 2015.

180. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, and Defendant ABB actions violated Art 1 § 3(Due Process) of the Constitution of South Carolina. Including but not limited to, depriving Plaintiff of his right to be heard on his lower court filings prior to these Defendants actions on November 2, 2015 complained of herein.

181. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, Defendant MCAC, and Defendant Herring actions violated Art 1 §10 (Invasion of Privacy) of the Constitution of South Carolina. In particular, these Defendants committing the acts, conducts, and omissions complained of herein, while having specific knowledge of Plaintiffs lower court filings on October 16, 2015, and October 28, 2015.

182. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, Defendant MCAC, Defendant ABB, and Defendant Herring actions violated Art 1 §13(Taking of private property) of the Constitution of South Carolina. Including but not limited to, seizure of Plaintiff person, seizure of Plaintiff pets, house, and private property.

183. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, Defendant ABB, and Defendant Herring actions violated Art 1 § 15(cruel and unusual punishment) of the Constitution of South Carolina. In particular, Defendant DEU Officers false arrest and unlawful imprisonment of the Plaintiff. The total destruction of Plaintiff private property, the pouring of cook food (chicken lasagna) all over uncooked frozen food and can goods, all stuffed inside one deep freezer. The excessive force in the course of handcuffing Plaintiff, the calling of Plaintiff and Plaintiffs family "mudpuppies."

184. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, and Defendant ABB, actions violated Art 1 §22 (Right to be heard) of the Constitution of South Carolina including but not limited to Plaintiffs right to be heard on matters pertaining to life, liberty, and property prior to the commission of the acts, conducts, and omissions complained of herein.

185. Defendant DEU Officers, Defendant MCSO, Defendant Richardson, and Defendant ABB action violated Art 1 §23 (Constitutional Provisions Mandatory) of the Constitution of South Carolina. In particular, these Defendants had specific knowledge of Plaintiff exercising his Constitutionally protected rights. However, Defendants showed a deliberate racially motivated indifference to Plaintiff Constitutionally protected rights by and through the acts, conducts, and omissions complained of herein in blantant disregard for the Mandatory Provisions of the Constitution.

186. Defendant DEU Officers arrest Plaintiff pursuant to S.C. Code §22-5-140 (Breach of the Peace) without order or warrant issued by a Marion County Summary Court Magistrate was in violation of S.C. Code §22-5-140 amounting to a False Arrest & Unlawfully Imprisoned. In particular, criminal actions brought against Plaintiff complained of herein was invalidated, judicially dismissed, and expunged by the Chief Magistrate for the Summary Court in the County of Marion, South Carolina.

187. The acts, conducts, and omissions of Defendant DEU Officers, and Defendant Herring on November 2, 2015 were illegal pursuant to S.C. Code § 16-7-10 (Illegal acts during State of Emergency). In particular, the Governor for South Carolina and the President of the United States issued a State of Emergency for 29 counties in South Carolina included but not limited to Marion County being one of those counties. In light of the massive flooding and other damage caused by Hurricane Joaquin. However, Defendants still chose to wantonly, recklessness, willfully, and maliciously arrest Plaintiff and executed an unlawful writ.

188. As, a direct result of the above Pendant causes of action(179-188) Plaintiff and Plaintiff's family has suffered and continues to suffer tremendous and irreparable emotional and mental harm and is entitled to nominal, compensatory, and punitive damages.

This complaint is supported by applicable South Carolina, United States, Supreme Court case law, dash cam footages from the officers service vehicles on November 2, 2015, Judicial Dismissal, expungement, and invalidation of the criminal actions brought against Plaintiff.

**TRIAL BY JURY IS HEREBY DEMANDED ON ALL ABOVE FEDERAL
AND PENDANT CAUSES OF ACTION (1-188)**

WHEREFORE, the Plaintiff demands judgment, in his favor, against defendants jointly and severally as follows:

- a. A declaratory judgment that All Defendants are liable for Plaintiff injuries jointly and severally.
- b. A declaratory Judgment that the actions of the 14 Defendant DEU Officers, Defendant Richardson, and Defendant Herring , on November 2, 2015, constituted an unlawful entry, search and seizure of Plaintiff's person, his private property, house, and private belongings in violation of the United States Constitution fourth, fifth, and fourteenth Amendments.
- c. A declaratory judgment that the use of excessive force by the 14 Defendant DEU Officers heavily armed with military styled weapons, dressed in tactical gear to unlawfully enter, search and seize Plaintiffs person, private property and house was the use of a standing army in times of peace as prohibited by Article 1 Section 10, of the United States Constitution.

- d. A declaratory judgment that the 14 defendants DEU Officers; and Defendant Herring were trespassers on Plaintiff property on the morning of November 2, 2015.
- e. A declaratory judgment that to deny the Plaintiff and his family the use of their food, medicine, clothing, money and other private belonging on the morning of November 2, 2015, and during a State of Emergency, amounted to cruel and unusual punishment in violation of the eighth Amendment to the United States Constitution.
- f. A declaratory judgment under this courts pendant jurisdiction that the actions of all Defendants including 14 Defendant DEU Officers on the morning of November 2, 2015 were illegal pursuant to S.C. Code Ann. § 16-7-10(2)(a)(b)(c).
- g. A declaratory judgment that the Defendant County is jointly liable for damages sustained by Plaintiff for Defendant County compensation, ratification, and rewarding its personnel Defendant MCAC for violating clearly established law.
- h. A declaratory judgment that Defendant County is further liable for Plaintiff damages being that the constitutional violations complained of herein occurred in the County of Marion.
- i. A declaratory judgment that the acts and omission described herein violated Plaintiffs rights under the Constitution and laws of the state of South Carolina and the United States pursuant to USC §1983, USC §1985, and USC §1986.
- j. A declaratory Judgment that the arrest and imprisonment of Plaintiff on November 2, 2015 was a False Arrest and Unlawful Imprisonment Pursuant to S.C. Code Ann. § 22-5-140 Breach of Peace.
- k. As compensatory and nominal damages, in the sum of \$20,000,000.00;

- l. As punitive damages, in the sum of \$100,000,000;
- m. The cost and disbursements of this action;
- n. All attorney's fees incurred in prosecuting this action pursuant to 42 U.S.C. Section 1988;
- o. The right to amend this complaint as needed;
- p. Such other and further relief as the court deems proper.

TRIAL BY JURY DEMANDED

Respectfully Submitted,

By: Arnold Parson Jr.

Arnold Parson Jr. Pro Se
c/o 311 N Congdon Street
Georgetown, South Carolina 29440
843-409-9086

VERIFICATION

STATE OF SOUTH CAROLINA)

SS.

COUNTY OF GEORGETOWN)

I, Arnold Parson Jr., Plaintiff in the attached "Third Amended Complaint" for damages, do affirm the facts and allegations within the third amended complaint attached hereto to be true, and correct to the best of my knowledge and belief.

By: Arnold Parson Jr.

Arnold Parson Jr. Plaintiff

Sworn to before me, a Notary Public, in my presence this 30 day of April, 2018.

Rita Powers

Notary

My Commission Expires 12/29/2020

