

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

SARAH SHARPER)

☐ Plaintiff)

v.)

The State Of South Carolina, City Of North
Charleston, County Of Charleston, Department Of
Health And Environmental Control, Department Of
Transportation And John Doe (Engineering
Firm/Engineer)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-4820

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Jarrel L. Wigger, Bar No. 011824

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Defendant's Attorney:

Curt B. Martin, Bar No. 78063

Address:

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e-mail: cmartin@arslawsc.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: DHEC's Motion to Strike and Motion to Dismiss

Estimated Time Needed: 10 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: \$0.00

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☒ Other: filed within Answer

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

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CLERK OF COURT

CLERK OF COURT

(Statute of Limitations)

1. DHEC moves for a dismissal of the claim pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, as Plaintiff has failed to properly file and serve DHEC within the applicable statute of limitations. DHEC thus moves to dismiss Plaintiff's Second Amended Summons and Complaint pursuant to S.C. Code § 15-78-100(a).

FOR A SECOND DEFENSE

AND MOTION TO DISMISS

(Rule 12(b)(6))

2. Plaintiff's Second Amended Summons and Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, as Plaintiff's Second Amended Complaint fails to state facts sufficient to constitute a cause of action against DHEC.

FOR A THIRD DEFENSE

(General Denial)

3. Each and every allegation of Plaintiff's Second Amended Complaint which is not hereinafter specifically admitted, qualified or explained is denied and strict proof is demanded thereof.
4. Paragraphs 1 through 3 of Plaintiff's Second Amended Complaint are not directed towards the conduct and/or alleged wrongdoing of DHEC, and therefore no response is required from DHEC. To the extent a response is required from DHEC, the allegations are denied and strict proof is demanded thereof.
5. In response to paragraph 4 of Plaintiff's Second Amended Complaint, DHEC affirmatively asserts that it is a governmental entity as defined in S.C. Code Ann. § 15-78-30, and any and all actions alleged against DHEC are controlled by the South Carolina Tort Claims Act, including but not limited to any and all limitations to liability contained therein. The rest and remaining allegations are denied, and strict proof is demanded thereof.

6. Paragraphs 5 through 9 of Plaintiff's Second Amended Complaint are not directed towards the conduct and/or alleged wrongdoing of DHEC, and therefore no response is required from DHEC. To the extent a response is required from DHEC, the allegations are denied and strict proof is demanded thereof.
7. DHEC denies the allegations contained in paragraph 10 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
8. Paragraph 11 of Plaintiff's Second Amended Complaint contains legal conclusions to which no response is required from DHEC. To the extent a response is required, the allegations are denied and strict proof is demanded thereof.
9. Paragraph 12 of Plaintiff's Second Amended Complaint is not directed towards the conduct and/or alleged wrongdoing of DHEC, and therefore no response is required from Defendant. To the extent a response is required from Defendant, the allegations are denied and strict proof is demanded thereof.
10. DHEC lacks sufficient information to admit or deny the allegations contained in paragraph 13 of Plaintiff's Second Amended Complaint, and therefore denies same and demands strict proof thereof.
11. DHEC denies the allegations contained in paragraph 14 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
12. DHEC lacks sufficient information to admit or deny the allegations contained in paragraph 15 of Plaintiff's Second Amended Complaint, and therefore denies same and demands strict proof thereof.

13. To the extent that the allegations contained in paragraphs 16 through 26 of Plaintiff's Second Amended Complaint are directed at DHEC, DHEC denies the allegations and demands strict proof thereof.
14. Paragraph 27 of Plaintiff's Second Amended Complaint is not directed towards the conduct and/or alleged wrongdoing of DHEC, and therefore no response is required from Defendant. To the extent a response is required from Defendant, the allegations are denied and strict proof is demanded thereof.
15. DHEC denies the allegations contained in paragraphs 28 through 32 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
16. Paragraph 33 of Plaintiff's Second Amended Complaint is not directed towards the conduct and/or alleged wrongdoing of DHEC, and therefore no response is required from Defendant. To the extent a response is required from Defendant, the allegations are denied and strict proof is demanded thereof.
17. DHEC denies the allegations contained in paragraphs 34 through 37 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
18. In response to paragraph 38 of Plaintiff's Second Amended Complaint, DHEC restates each preceding paragraph as if set forth herein verbatim.
19. DHEC denies the allegations contained in paragraphs 39 and 40 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.

20. In response to paragraph 41 of Plaintiff's Second Amended Complaint, DHEC admits only so much a duty as is required by law. The rest and remaining allegations are denied, and strict proof is demanded thereof.
21. DHEC denies the allegations contained in paragraphs 42 through 44 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
22. In response to paragraph 45 of Plaintiff's Second Amended Complaint, DHEC restates each preceding paragraph as if set forth herein verbatim.
23. In response to paragraph 46 of Plaintiff's Second Amended Complaint, DHEC admits only so much a duty as is required by law. The rest and remaining allegations are denied, and strict proof is demanded thereof.
24. DHEC denies the allegations contained in paragraphs 47 and 48 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
25. In response to paragraph 49 of Plaintiff's Second Amended Complaint, DHEC restates each preceding paragraph as if set forth herein verbatim.
26. DHEC denies the allegations contained in paragraph 50 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.
27. In response to paragraph 51 of Plaintiff's Second Amended Complaint, DHEC restates each preceding paragraph as if set forth herein verbatim.
28. DHEC denies the allegations contained in paragraphs 52 through 56 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.

29. In response to paragraph 57 of Plaintiff's Second Amended Complaint, DHEC restates each preceding paragraph as if set forth herein verbatim.
30. The second paragraph numbered as paragraph 57 of Plaintiff's Second Amended Complaint contains legal conclusions to which no response is required from DHEC. To the extent a response is required, the allegations are denied and strict proof is demanded thereof.
31. DHEC denies the allegations contained in paragraphs 58 through 62 of Plaintiff's Second Amended Complaint, and demands strict proof thereof.

FOR A FOURTH DEFENSE

(Sovereign Immunity - Tort Claims Act)

32. Defendant alleges that the Plaintiff's claims are barred or otherwise limited by the provisions of the South Carolina Tort Claims Act, more specifically but not limited to, Section 15-78-60, *et. seq.* of the Act.

FOR A FIFTH DEFENSE

(Sole Negligence of Plaintiff)

33. Any injuries or damages alleged in Plaintiff's Second Amended Complaint to have been suffered by Plaintiff are due to and caused by the sole acts of negligence, recklessness and wantonness on the part of the Plaintiff herself, such as to bar any recovery by Plaintiff.

FOR A SIXTH DEFENSE

(Comparative/Contributory Negligence)

34. Plaintiff's damages, if any, were due to, caused solely or partly by, and were the direct and proximate result of the negligence of Plaintiff herself, and therefore her recovery, if any, should be barred, or reduced, in proportion to the amount of her own negligence.

FOR A SEVENTH DEFENSE

(Sole, Intervening and Superseding Negligence of Others)

35. Plaintiff's damages, if any, were due to and caused by the sole intervening and superseding negligence, willfulness, wantonness, and recklessness of other parties over whom Defendant had no control, such as to bar the claims against Defendant.

FOR AN EIGHTH DEFENSE

(Limitation of Remedies)

36. Any recovery by Plaintiff must be limited to the remedies allowed under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. § 15-78-120(a)(1) and S.C. Code Ann. § 15-78-120(b).

FOR A NINTH DEFENSE

(Public Duty Rule)

37. This cause of action fails to state a claim against Defendant in that as a matter of law, Defendant violated no duty which it owed to the Plaintiff for which the Plaintiff is entitled to relief in the form of damages.

FOR A TENTH DEFENSE

(Notice)

38. Defendant had no actual or constructive notice of the condition so as to bar Plaintiff's claim as to Defendant.

FOR AN ELEVENTH DEFENSE AND MOTION TO STRIKE

39. Defendant moves to strike Plaintiff's claims for punitive damages on the grounds that punitive damages cannot be maintained and are not recoverable in this action in accordance with the South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE

(Common Enemy Doctrine)

40. Plaintiff's claims are barred by the common enemy doctrine.

FOR A THIRTEENTH DEFENSE

(Reservation of Additional and Further Defenses)

41. Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

[signature to follow]

ANDERSON REYNOLDS &
STEPHENS, LLC



J.J. Anderson, Esq.

Curt Martin, Esq.

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*Counsel for Department of Health
and Environmental Control*

November , 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

CONSOLIDATED CASE # 2017-CP-10-4820

This is to certify that a copy of the foregoing has been served upon the following parties by placing a copy of same in the United States mail, first class postage prepaid, and/or via email addressed to the following as shown below, this 13 day of NOVEMBER, 2018.

Plaintiff's Attorneys:

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And

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JULIE L. ARMSTRONG
CLERK OF COURT


ANDERSON REYNOLDS & STEPHENS, LLC

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November 13, 2018

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston SC 29401

Re: Pepperhill Subdivision
IRF Claim#: B3977
AR & S #: 20170.45

2017-CP-10-4931	Darryl Beech v. SC DHEC
2017-CP-10-5108	Henry and Anjenette Bennett v. SC DHEC.
2017-CP-10-4924	Diane Blazer as Guardian of Charles Eichmann v. SC DHEC
2017 -CP- 0-4897	Elizabeth Bright v. SC DHEC
2017-CP-10-4835	Kaye Brown v. SC DHEC
2017-CP-10-4930	Kevin Drayton v. SC DHEC.
2017-CP-10-4892	Tanya Driggers v. SC DHEC.
2017-CP-10-4929	Renotia Fludd v. SC DHEC.
2017-CP-10-4907	Roberta Frasier v. SC DHEC.
2017-CP-10-4841	Bob Frederking v. SC DHEC.
2017-CP-10-4827	Latosha Gadsden v. SC DHEC.
2017-CP-10-4839	Clair Gallagher v. SC DHEC
2017-CP-10-4823	Jason Gardner v. SC DHEC.
2017-CP-10-4903	Oglivia Gibson v. SC DHEC
2017-CP-10-4842	Milton and Myrtle Green v. SC DHEC.
2017-CP-10-4901	Otis and Angela Green v. SC DHEC
2017-CP-10-4893	Franklin and Delores Griffin v. SC DHEC
2017-CP-10-4826	Jesse and Patricia Frazier, •. SC DHEC.
2017-CP-10-4925	Leigh Hemingway v. SC DHEC.
2017-CP-10-4837	Ismael and Anjenette Hernandez v. SC DHEC.
2017-CP-10-4822	Gail Holmes v. SC DHEC
2017-CP-10-4847	Virginia and Lonnie Ivery v. SC DHEC.
2017-CP-10-4899	Kelvin Jackson v. SC DHEC.
2017-CP-10-4891	Alex and Virginia James v. SC DHEC


2017-CP-10-4825	Maezell Jefferson v. SC DHEC
2017-CP-10-4824	Theresa Jenkins v. SC DHEC
2017-CP-10-4927	Rebecca Kapperman-Brown v. SC DHEC
2017-CP-10-4906	Tuan Le v. SC DHEC
2017-CP-10-4845	Mabel Livingston v. SC DHEC
2017-CP-10-4905	Tammy McCall v. SC DHEC
2017-CP-10-4838	James and Katie Miller v. SC DHEC
2017-CP-10-4900	Robert Mixon & Mixon Rental Properties, LLC v. SC DHEC
2017-CP-10-4840	Willie Moore v. SC DHEC
2017-CP-10-4928	Valerie Pearson v. SC DHEC
2017-CP-10-4898	Geneva Ravenel v. SC DHEC
2017-CP-10-4923	Mellany Robinson v. SC DHEC
2017-CP-10-4836	Sullay Sesay v. SC DHEC
2017-CP-10-4820	Sarah Sharper v. SC DHEC
2017-CP-10-4904	Darlene Taylor-William v. SC DHEC
2017-CP-10-4894	Kevin Thompson v. SC DHEC
2017-CP-10-4895	Constance Verge v. SC DHEC
2017-CP-10-4821	Melissa Washington v. SC DHEC
2017-CP-10-4926	Allison Wells v. SC DHEC
2017-CP-10-4896	Brenda Wrighton v. SC DHEC

Dear Ms. Armstrong:

Our firm represents the Defendant South Carolina Department of Health & Environmental Control ("SC DHEC") in the above-referenced matters. It's my understanding that these matters have been consolidated under Civil Action No.: 2017-CP-10-4820. In that regard, please find attached, the originals and two (2) copies each of SC DHEC's Answers to Plaintiffs' Second Amended Complaints.

Please file the originals and return the clocked copies via the enclosed self-addressed, stamped envelope. Your assistance in this matter is greatly appreciated.

Sincerely,


for Curt Martin

CBM/kll
Enclosures

cc: Jarrel L. Wigger, Esquire (via U. S. mail)
I. Keith McCarty, Esquire (via electronic correspondence)
Roy P. Maybank, Esquire/Amanda R. Maybank, Esquire (via electronic correspondence)
Phillip Ferderiger, Esquire (via electronic correspondence)