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Arkansas
State Claims Commission
OCT 10 2013
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BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☒ Mr. DR.
☐ Mrs.
☐ Ms.
☐ Miss

JOHN L. DAUGHERTY, M.D. Claimant

vs.

State of Arkansas, Respondent
State of Arkansas
Comm. on Law Enforcement Standards

Do Not Write in These Spaces	
Claim No.	14-0300-CC
Date Filed (Month) (Day) (Year)	October 10, 2013
Amount of Claim $	1,000,000.00
Fund	SOA, CLEST

Mental Anguish, Pain & Sufferin
Refund of Expenses, Loss of Wages

COMPLAINT

JOHN L. DAUGHERTY, MD (Name) the above named Claimant, of [illegible] FOXWOOD DRIVE (Street or R.F.D. & No.) JACKSONVILLE (City)
AR (State) 72076 (Zip Code) 501 350 5629 (Daytime Phone No.) County of PULASKI represented by — PRO SE (Legal Counsel, if any, for Claim)
of N/A (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: STATE/PROSECUTORS/CLEST Amount sought: $15,000.— / $1,000,000

Month, day, year and place of incident or service: JUNE 24, 2010 TO JULY 16, 2013.

Explanation: YOUR PROSECUTORS & CLEST CAUSED MY WIFE TO BE MALICIOUSLY PROSECUTED AND WRONGFULLY CONVICTED. SHE WAS CUFFED AND TAKEN TO JAIL AS I WATCHED IN HORROR. THE JUDGE DENIED HER AN APPEAL BOND. SHE WAS SENTENCED TO 30 DAYS IN JAIL, WHICH WAS OVER TURNED AND MANDATE ISSUED 10-10-2012. I SUFFERED LOSS OF CONSORTIUM. I SUFFERED MENTALLY, EMOTIONALLY, PSYCHOLOGICALLY & ECONOMICALLY AS A RESULT OF THEIR CONDUCT. I ADOPT MY WIFE, PATTIE KESLING-DAUGHERTY'S COMPLAINT IN WHOLE, EXCEPT, I AM ONLY ASKING FOR $15,000.00 IF THIS IS SETTLED WITHOUT A HEARING. OTHERWISE, I AM DEMANDING $1,000,000.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? NO (Yes or No); when? (Month) (Day) (Year); to whom? (Department); and that the following action was taken thereon:

and that $ was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: NO ; and was acquired on , in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

JOHN L. DAUGHERTY, M.D. (Print Claimant/Representative Name)

[signature] (Signature of Claimant/Representative)

SWORN TO and subscribed before me at JACKSONVILLE (City) AR (State)

(SEAL) ANTHONY L. JOHNSON
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires June 24, 2019
Commission # 12371852

on this 10th (Date) day of OCTOBER (Month) 2013 (Year)

[signature] (Notary Public)

My Commission Expires: June (Month) 24 (Day) 2019 (Year)

SF1- R7/99

Defendant's Full Name: KIESLING-DAUGHERTY, PARTNE

JUDGMENT AND DISPOSITION ORDER
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH JUDICIAL DISTRICT, SEVENTH DIVISION

On 8/3/2011 the defendant appeared before the Court, was advised of the nature of the charges(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

Defendant's Full Name.............................: KIESLING-DAUGHERTY, PARTNE
Date Of Birth...: 12/12/1970
Race...: WHITE
Sex..: FEMALE
SID #...:
Defendant's Attorney...............................: DAN HANCOCK
Prosecuting Attorney or Deputy...............: KATHLEEN MCDONALD

FILED 08/11/11 10:13:59
Larry Crane Pulaski Circuit Clerk
CLP

Defendant was represented by ....: _X_ private counsel ___ appointed counsel ___ public defender ___ himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
___Yes _X_No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Punishment rules and regulations.

TOTAL NUMBER OF COUNTS: 1

Offense #: 1

Docket #: CR 2010-3498
Arrest Tracking # :

A.C.A.# of Offense: 27-51-201
Name Of Offense: SPEEDING IN EXCESS OF 15 MPH OVER SPEED LIMIT
Seriousness Level Of Offense: NA
Criminal History Score: NA
Presumptive Sentence: NA
Sentence is a departure from the sentencing grid: _NA_Yes _NA_No
Offense is a Misdemeanor
Classification of Offense: C
Period of Confinement: 30 days.
Suspended Imposition of Sentence..: ___NA__ months.
Period of Probation: __NA__ months.
Defendant is assigned to County Jail
Special conditions of confinement are attached. No
Defendant _NA__ attempted _NA__ solicited _NA__ conspired to commit the offense.
Offense Date: 6/24/2010
Number of Counts: 1
Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. ___Yes _X_No
Age of the victim of the offense if he or she was under 18 years of age at the time the offense occurred NA
Defendant voluntarily, intelligently, and knowingly entered a
_NA__ negotiated plea of guilty or nolo contendere.
_NA__ plea directly to the court of guilty or nolo contendere.
Defendant
___ entered a plea as shown above and was sentenced by a jury.
___ was found guilty of said charge(s) by the court, and sentenced by
_X_ was found guilty at a jury trial, and sentenced by ___ the court _X_ a jury.
___ Defendant committed a target offense and was sentenced under the Community Punishment Act. Upon successful completion of the conditions of probation/S.I.S. Defendant shall be eligible to have his/her records sealed. NO
Defendant was sentenced pursuant to the First Offender Act(Ark. Code 16-93-301 et seq.) No.

60CR-10-3498 601-60100030217-031
STATE V PARTNE DAUGHERTY 2 Pages
PULASKI CO 08/11/2011 10:13 AM
CIRCUIT COURT JJ20

Defendant's full name : Kiesling-daugherty, Partne

Jail Time Credit: 0 days.
Conditions of the disposition or probation are attached. No
A copy of the pre-sentence investigation on sentencing information, including but not limited to criminal history elements is attached.
___Yes _X__ No.

Fines $ 500.00 Court Costs YES DNA Sample Fee (A.C.A. 12-12-1118) NO
Drug Crime Special Assessment (A.C.A. 12-17-106) NO Booking and Admin. Fee (A.C.A. 12-41-505) NO
Public Defender User Fee (A.C.A. 16-87-213) NO

A judgment of restitution is hereby entered against the Defendant in the amount and terms as show below:
Amount: NA Due immediately: NA Installments of: NA
Payment to be made to:
If multiple beneficiaries, give names and show payment priority:

Defendant was convicted of, or has entered a plea of guilty or *nolo contendere* to, a "drug crime," as defined by A.C.A. 12-17-101 *et seq.* ___Yes _X_No

Defendant has been adjudicated guilty of an offense requiring registration as a sex offender, and is ordered to complete the Sex Offender Registration Form: ___Yes _X_No
Defendant adjudicated guilty of an offense requiring registration as a sex offender has been adjudicated guilty of a prior sex offense under a separate case number: ___Yes _X_No
Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: ___Yes _X_No

Defendant has committed an aggravated sex offense, as defined in A.C.A. 12-12-903. ___Yes _X_No
Defendant was adjudicated guilty of a felony offense, a misdemeanor sexual offense, or a repeat offense (as Defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at: ___Yes _X_No

Defendant was adjudicated guilty of a domestic-violence offense. ___Yes _X_ No
If yes, identify the relationship of the victim to the Defendant. _____NA_______________
If no, was Defendant originally charged with a domestic-violence related offense? ___Yes _X_ No
If yes, state the name of the offense _____NA_______________.

Other Conditions: ______________________

Defendant was informed of the right to appeal: _X__Yes __No
Appeal Bond: $ N/A
The County Sheriff is hereby ordered to transport the Defendant to the County Jail.
Defendant shall report to the probation officer for assignment of a reporting date to a Regional Correctional Facility.

DPA Initials: KMM

Date: Circuit Judge: BARRY SIMS Signature: ______

I certify this is a true and correct record of this Court.

Date: Circuit Clerk/Deputy: ______

(Seal)

SEAL OF THE CIRCUIT COURT PULASKI COUNTY, ARKANSAS

Form Revised 5/2010

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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-1137

PARTNE KIESLING DAUGHERTY APPELLANT	Opinion Delivered SEPTEMBER 19, 2012
V.	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION [NO. CR-10-3498]
STATE OF ARKANSAS APPELLEE	HONORABLE BARRY SIMS, JUDGE
	REVERSED AND DISMISSED

CLIFF HOOFMAN, Judge

Appellant Partne Kiesling Daugherty appeals her conviction for speeding in excess of fifteen miles per hour (mph) over the speed limit. On appeal, she argues that there is insufficient evidence to support her conviction. We agree; thus, we reverse and dismiss.

Appellant was cited for driving 16 mph over the speed limit—51 mph in a 35 mph zone. After being fined in district court, appellant appealed to Pulaski County Circuit Court, and a jury trial was held. Officer Paul Huddleston of the Jacksonville Police Department testified that he was performing radar enforcement on June 24, 2010, when he first visually estimated appellant's speed at 50 mph and then verified her speed as 51 mph with a radar device. Huddleston testified that he was trained to visually estimate speed within plus or minus two mph. A certificate, dated October 1, 2009, qualifying Huddleston as a "Certified Police Traffic Radar Operator" was admitted into evidence.

Huddleston testified that the radar gun he used was certified and calibrated. A

certificate certifying that the radar device "has been checked for accuracy and correctness of operation" was admitted into evidence. It was dated December 30, 2005, and certified that the device was "accurate within +/- 1 mph." Huddleston testified that on the day of appellant's citation, he had performed a tuning fork test and an internal circuit test on the radar gun. Certificates of accuracy for two tuning forks were admitted into evidence over appellant's objection. Huddleston testified that he had no knowledge about when the radar gun needed to be recalibrated. After being shown the manufacturer's user manual for the radar device, he acknowledged that there was a recommendation that the device be tested for measurement accuracy every three years and whenever the device undergoes repair. Huddleston testified that the radar gun had a power cord repaired around June 9, 2010. Noting that the radar gun had a plus or minus one mph differential, Huddleston acknowledged that appellant may have been going faster or slower than 51 mph.

At the close of the State's case, appellant moved for a directed verdict. She argued that the officer visually estimated her speed at 50 mph, that the radar gun had a one mph plus or minus differential, and that the radar gun was not properly certified. The motion was denied.

Appellant called several Jacksonville police officers to testify on her behalf. Lieutenant Arthur Kaufman testified that he was in charge of having radar devices sent in for repair when they malfunctioned, but that the repair center decided when to have the devices recertified. Chief Gary Sipes testified that he would want to follow the manufacturer's recommendations on recalibration and recertification. Captain Kenny Boyd, the captain over the patrol division, testified that the police department did not have a specific policy for recertifying

radar devices in a specific time frame, but that it would be reasonable to follow a manufacturer's recommendation of every three years.

Alvin Berndt, a standards specialist from the Commission on Law Enforcement Standards and Training (CLEST), testified next. Berndt testified that he did not believe the procedure by which Huddleston was certified as a radar operator was contrary to CLEST's rules. Berndt stated that, although Huddleston completed the radar training course prior to completing basic law-enforcement training, he was not certified as a radar operator until February 2010, after completion of both courses.

At the conclusion of all of the evidence, appellant renewed her motion for a directed verdict. The motion was denied, and the jury found appellant guilty of driving more than 15 mph over the speed limit. Appellant filed a timely notice of appeal.

Appellant challenges the sufficiency of the evidence to support her conviction, arguing that weight should be given to Huddleston's visual estimation of her speed at only 50 mph; that the radar gun and tuning forks were not properly certified in compliance with specifications; that Huddleston was not properly certified as a radar operator; and that even if the radar gun was properly calibrated, she may have been driving 50 mph instead of 51 mph. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *White v. State*, 73 Ark. App. 264, 42 S.W.3d 584 (2001). The test for such motions is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* On appeal, we review the evidence in

the light most favorable to the appellee and consider only the evidence that supports the verdict. *Id.* Arkansas Code Annotated section 27-51-201(c) (Repl. 2010) provides in part that "the limits specified in this section or established as authorized shall be maximum lawful speeds." Section 27-50-302(a)(7) (Repl. 2010) provides that speeding in excess of fifteen miles per hour over the posted speed limit is a Class C misdemeanor.

Appellant argues that Officer Huddleston conceded that even a properly calibrated radar device is only accurate within plus or minus one mph, and the manufacturer's certification confirmed this. Appellant argues that to obtain a conviction, the State asked the jury to assume that the radar measured her exact speed or that it measured her speed one mph too slow. The State cites *Everight v. City of Little Rock*, 230 Ark. 695, 326 S.W.2d 796 (1959), in arguing that radar-detected speed is substantial evidence of speeding provided there is proof of the accuracy of the equipment used to verify the speed. The State argues that Huddleston's testimony provided substantial proof that the radar equipment was properly operated and accurately calibrated. *Everight* involved the admissibility of evidence of speed as indicated by radar equipment. Our supreme court held that for evidence of radar-detected speed to be admissible, it is "necessary to prove the accuracy of the particular equipment used in testing the speed." *Everight, supra.*

We hold that even if the radar device was properly certified as to its accuracy and operated by a properly certified radar operator, there was insufficient evidence to compel a conclusion beyond speculation and conjecture that appellant was driving 51 mph instead of 50 mph. Whether evidence is direct or circumstantial, it must meet the requirement of

substantiality; that is, it must force the fact-finder to reach a conclusion one way or the other without resorting to speculation or conjecture. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003). Two equally reasonable conclusions as to what occurred raise only a suspicion of guilt, and on appeal, we may consider whether the record, viewed in the light most favorable to the State, presented this situation and required the fact-finder to speculate to convict the defendant. *Turner v. State*, 103 Ark. App. 248, 288 S.W.3d 669 (2008). Here, the radar gun measured appellant's speed at 51 mph, but the evidence showed that even a properly calibrated radar gun could measure speed only within plus or minus one mph. The jury was presented with equally reasonable conclusions that appellant was driving 50 mph, 51 mph, or 52 mph. Thus, the jury was forced to speculate that appellant was driving in excess of 15 mph over the speed limit. As there was insufficient evidence to support her conviction, we reverse and dismiss.

Reversed and dismissed.

PITTMAN and GRUBER, JJ., agree.

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BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

JOHN DAUGHERTY **CLAIMANT**

V. **NO. 14-0300-CC**

STATE OF ARKANSAS & AR CLEST **RESPONDENTS**

MOTION TO DISMISS CLAIMANT'S COMPLAINT

Respondents, State of Arkansas and The Arkansas Commission on Law Enforcement Standards and Training (collectively "State"), by and through their attorneys, Attorney General Dustin McDaniel and Assistant Attorney General Jonathan Q. Warren, respectfully state:

1. The State respectfully asserts that it is entitled to judgment as a matter of law and Claimant's Complaint is subject to dismissal for the reasons that follow.
2. Claimant, John Daugherty, filed his Complaint on October 10, 2013, alleging that "[y]our prosecutors & CLEST caused my wife to be maliciously prosecuted and wrongfully convicted." Claimant adopts his wife's Complaint "in whole."
3. Partne Kiesling-Daugherty, Claimant's wife, filed her Complaint (Claim No. 14-0299-CC) on October 10, 2013, alleging that she (1) was illegally cited for speeding on June 24, 2010, and as a result, (2) was maliciously prosecuted and wrongfully convicted because the Arkansas Court of Appeals reversed and dismissed her conviction, finding that there was insufficient evidence to support her conviction.
4. Partne Kiesling-Daugherty also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is somehow responsible because it "issued

[the citing officer] an invalid radar certification without ensuring that [he] met the statutory qualifications…for radar operation certification[.]"

5. There are no facts that would entitle Partne Kiesling-Daugherty to recover from the State in this matter, and therefore, her Complaint should be dismissed. Because Partne Kiesling-Daugherty is not entitled to recover from the State, her husband, John, is also not entitled to recover from the State. Accordingly, his Complaint should also be dismissed.
6. First, Partne Kiesling-Daugherty's malicious-prosecution claim fails as a matter of law because Arkansas cases have long and consistently held that a judgment of conviction by a court of competent jurisdiction is <u>conclusive evidence</u> of the existence of probable cause, even though the judgment is later reversed. *Sundeen v. Kroger*, 355 Ark. 138 (2003)(emphasis added).
7. Second, Partne Kiesling-Daugherty's false-arrest claim is barred by the applicable statute of limitations, which ended on June 24, 2013. *See Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001)(holding that Ark. Code Ann. § 16-56-105(3) and its three-year limitations period for personal injury applicable to § 1983 cases filed in Arkansas).
8. Third, in addition to the false-arrest claim being barred by the statute of limitations, such claim fails as a matter of law because probable cause for an arrest defeats a civil action for false arrest in connection with a misdemeanor. *Mendenhall v. Skaggs Companies, Inc.*, 285 Ark. 236, 685 S.W.2d 805 (1985).
9. Fourth, Partne-Kiesling Daugherty's claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion) because she is attempting to relitigate the same issue that she presented before the Arkansas Court of Appeals.

10. Fifth, Partne Kiesling-Daugherty has failed to state a claim against CLEST upon which any relief can be granted, and therefore such claim should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

11. Sixth, because the prosecuting attorney was acting at all times in his role as a prosecutor, Larry Jegley, the elected prosecutor for the Sixth Judicial District (Pulaski and Perry Counties), is entitled to prosecutorial immunity, which is an absolute bar to any claim against him.

12. In support of its Motion to Dismiss, the State relies upon the Brief in Support being filed contemporaneously herewith.

WHEREFORE, Respondents request that the Claims Commission dismiss Claimant's Complaint in its entirety, judgment be entered in favor of Respondents, and for all other just and appropriate relief.

Respectfully submitted,

DUSTIN McDANIEL,
Attorney General

By: ______________________ AAG
Jonathan Q. Warren
Arkansas Bar No. 2006043
Assistant Attorney General
Attorney for State of Arkansas
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Little Rock, Arkansas 72201
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Fax: (501) 682.2591
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CERTIFICATE OF SERVICE

I, Jonathan Q. Warren, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been served by placing a copy of same in the U.S. Mail, on November 12, 2013, addressed to the following:

Dr. John Daugherty
805 Foxwood
Jacksonville, AR 72076

AAG

Jonathan Q. Warren
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**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

JOHN DAUGHERTY **CLAIMANT**

V. **NO. 14-0300-CC**

STATE OF ARKANSAS & AR CLEST **RESPONDENTS**

BRIEF IN SUPPORT OF STATE'S MOTION TO DISMISS

Respondents, State of Arkansas and The Arkansas Commission on Law Enforcement Standards and Training (collectively "State"), respectfully offer the following Brief in Support of their Motion to Dismiss the Complaint filed by Claimant John Daugherty.

INTRODUCTION

Claimant, John Daugherty, filed his Complaint on October 10, 2013, alleging that "[y]our prosecutors & CLEST caused my wife to be maliciously prosecuted and wrongfully convicted." Claimant adopts his wife's Complaint "in whole." Claimant's wife, Partne Kiesling-Daugherty, filed her Complaint on October 10, 2013, alleging that she (1) was illegally cited for speeding on June 24, 2010, and as a result, (2) was maliciously prosecuted and wrongfully convicted because the Arkansas Court of Appeals reversed and dismissed her conviction, finding that there was insufficient evidence to support her conviction. She also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is somehow responsible because it issued the citing officer an invalid radar certification without ensuring that the citing officer met the statutory qualification for radar operation certification.

For the reasons that follow, Partne Kiesling-Daugherty's claims fail as a matter of law because (1) in a malicious-prosecution claim, Arkansas cases have long-held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed, (2) her false-arrest claim is barred by the applicable statute of limitations, which ended on June 24, 2013, (3) her false-arrest claim fails because probable cause for an arrest defeats an action for false arrest, (4) her claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion), (5) she has failed to state a claim against CLEST upon which any relief can be granted, and (6) Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which is an absolute bar to any claim against him. There are no facts that would entitle Partne-Kiesling-Daugherty to recover from the State in this matter, and therefore her Complaint should be dismissed. Because she is not entitled to recover from the State, her husband, John, is also not entitled to recover from the State. Accordingly, his Complaint should also be dismissed.

DISMISSAL STANDARD

On a motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(6), the courts treat the facts alleged in the complaint as if they were true and view them in the light most favorable to the plaintiffs. *Dockery v. Morgan*, 2011 Ark. 94, 6-7, 380 S.W.3d 377 (citing *McNeil v. Weiss*, 2011 Ark. 46, 378 S.W.3d 133). "However, our rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* (Citing Ark. R. Civ. P. 8(a)(1); *Born v. Hosto & Buchan*, PLLC, 2010 Ark 292, 372 S.W.3d 324). The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.* (Citing *Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

ARGUMENT

a. Partne Kiesling-Daugherty's malicious-prosecution claim fails as a matter of law because there is conclusive evidence of the existence of probable cause.

Partne Kiesling-Daugherty alleges that the State, via its prosecutors, maliciously prosecuted her for speeding in excess of 15 miles per hour over the speed limit. Her claim fails as a matter of law because there is conclusive evidence of the existence of probable cause.

In order to establish a claim for malicious prosecution, Partne Kiesling-Daugherty must prove the following five elements: (1) a proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of Partne Kiesling-Daugherty; (3) absence of probable cause for the proceeding; (4) malice on the part of the defendant; and (5) damages. *Sundeen v. Kroger*, 355 Ark. 138 (2003)(quoting *South Arkansas Petroleum Co. v. Schiesser*, 343 Ark. 492, S.W.3d 317 (2001); *McLaughlin v. Cox*, 324 Ark. 361, 922 S.W.2d 327 (1996)). In this case, she cannot establish the third element, nor can she establish the fourth element. Thus, her claim fails as a matter of law.

Arkansas courts have long and consistently held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955)(emphasis added).

Here, it is undisputed that Partne Kiesling-Daugherty was convicted of speeding in excess of 15 miles per hour over the speed limit. In fact, she submitted a copy of her Judgment and Disposition Order filed in the Pulaski County Circuit Clerk's Office as an exhibit to her Complaint (*See* Claim No. 14-0299-CC). The Judgment and Disposition Order confirms that (1) the offense date was June 24, 2010; (2) she was found guilty at a jury trial; and (3) she was sentenced by a jury. These facts are also undisputed by the State. As detailed in the Arkansas

Court of Appeals opinion, also submitted as an exhibit to her Complaint, she was fined in district court, and appealed to Pulaski County Circuit Court, where a jury trial was held.

It is true that one convicted in district court is entitled to have that conviction reviewed de novo in circuit court. *Sundeen*, 355 Ark. at 145. In this case, it is undisputed that Partne Kiesling-Daugherty received that de novo review in circuit court, when she appealed her district-court conviction to circuit court. She exercised her constitutional right to have her misdemeanor-speeding case heard in front of a jury, and a jury found her guilty and imposed her sentence. The fact that her case was later reversed does not negate well-established Arkansas law establishing that her conviction at trial serves as conclusive evidence of the existence of probable cause for the initiation of a criminal proceeding against her. Stated again, a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955). There is no question that the Pulaski County Circuit Court has the jurisdiction to hear an appeal from Jacksonville district court. *See* Rule 36(a) of the Arkansas Rules of Criminal Procedure[1]. There is also no question that Partne Kiesling-Daugherty was convicted at a trial by jury, and documentation submitted as an exhibit to her Complaint leaves no doubt as to this fact (as well as the Arkansas Court of Appeals opinion, also submitted as an exhibit to her Complaint). Without the lack of probable cause, she is unable to establish all of the elements necessary to establish a malicious-prosecution claim. Thus, her claim fails as a matter of law.

Taken a step further, in addition to Partne Kiesling-Daugherty being unable to establish the third element of her malicious-prosecution claim, she also cannot establish the fourth

---

[1] A person convicted of a criminal offense in a district court, including a person convicted upon a plea of guilty, may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred.

element, which is malice on the part of the State. Malice has been defined as "any improper or sinister motive for instituting the suit." *Cordes v. Outdoor Living Center*, 301 Ark. 26, 32, 781 S.W.2d 31, 31 (1989)(citing *Foster v. Pitts*, 63 Ark. 387, 38 S.W. 1114 (1897). However, when probable cause exists and there is no strong evidence of malice, a charge of malicious prosecution cannot succeed. *Id.* Here, as stated above, there was probable cause for the initiation of proceedings against her as evidenced by her conviction in Pulaski County Circuit Court at a trial by jury. Thus, she cannot establish malice and her claim fails as a matter of law. As a result, her malicious-prosecution claim should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

b. Partne Kiesling-Daugherty's false-arrest claim is barred by the applicable statute of limitations which ran on June 24, 2013.

Partne Kiesling-Daugherty alleges that on June 24, 2010, she was illegally cited for speeding in excess of 15 miles per hour over the speed limit. Her claim is barred by the applicable statute of limitations, which ended on June 24, 2013.

In constitutional claims filed under 42 U.S.C. § 1983 for false-arrest in Arkansas, such claims are subject to a three-year statute of limitations. *See Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001)(holding that Ark. Code Ann. § 16-56-105(3) and its three-year limitations period for personal injury applicable to § 1983 cases filed in Arkansas). Likewise, Arkansas's three-year statute of limitations for personal injury applies in this case.

Partne Kiesling-Daugherty filed her Complaint at the Commission on October 10, 2013, which is more than three years after she received her citation for speeding on June 24, 2010. There is no dispute that June 24, 2010 is the applicable date in which the limitations period

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began to run. She listed June 24, 2010 in her Complaint, June 24, 2010 is listed in the Judgment and Disposition Order as the date of offense, and June 24, 2010 is listed in the Arkansas Court of Appeals opinion where her conviction was reversed and dismissed.

Because she failed to file her false-arrest claim on or before June 24, 2013, her claim is barred by the applicable statute of limitations. She filed her Complaint well-over three months after the applicable period of limitations expired. Accordingly, her false-arrest claim should be dismissed as a matter of law. *See* Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

c. In addition to Partne Kiesling-Daugherty's false-arrest claim being barred by the statute of limitations, such claim fails as a matter of law.

Partne Kiesling-Daugherty alleges that on June 24, 2010, she was illegally cited for speeding in excess of 15 miles per hour over the speed limit. For the reasons stated above, her claim is barred by the applicable statute of limitations, which expired on June 24, 2013. Although her false-arrest claim is barred by the statute of limitations, such claim also fails because as a matter of law, probable cause for an arrest defeats an action for false arrest.

False arrest, or false imprisonment, has been defined by the Arkansas Supreme Court as "the unlawful violation of the personal liberty of another, consisting of detention without sufficient legal authority." *Grandjean v. Grandjean*, 315 Ark. 620, 869 S.W.2d 709 (1994)(citing *Headrick v. Wal-Mart Stores, Inc.*, 293 Ark. 433, 738 S.W.2d 418 (1987); *Moon v. The Sperry & Hutchinson Co.*, 250 Ark. 453, 465 S.W.2d 330 (1971)). Probable cause is a defense to a civil action for false arrest or false imprisonment in connection with a misdemeanor. *Mendenhall v. Skaggs Companies, Inc.*, 285 Ark. 236, 685 S.W.2d 805 (1985).

In this case, for all of the reasons explained above regarding her malicious-prosecution claim, Arkansas law has long-established that her conviction at trial serves as conclusive evidence of the existence of probable cause for the initiation of a criminal proceeding against her (emphasis added). A judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955). Accordingly, as a matter of Arkansas law there clearly was probable cause for the arrest and prosecution of Ms. Daugherty. Additionally, she is thus unable to establish one of the essential elements of a claim of false arrest. Having failed to make out a false-arrest claim as a matter of law, her Complaint should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

d. Partne Kiesling-Daugherty's claim against CLEST barred by the doctrine of collateral estoppel (issue preclusion).

In addition to allegations of false-arrest and malicious-prosecution, Partne Kiesling-Daugherty also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is in some way responsible because it issued the citing officer an invalid radar certification without ensuring that the citing officer met the statutory qualification for radar operation certification. Specifically, she argues that the citing officer lacked the necessary hours of CLEST training for officer certification to be eligible to enroll in the radar operator course.

Collateral estoppel, or issue preclusion, bars relitigation of issues of law or fact previously litigated, provided that the party against whom the earlier decision is being asserted had full and fair opportunity to litigate the issue in question and that the issue was essential to the

judgment. *Deer/Mt. Judea School District v. Kimbrell*, 2013 Ark. 393, 2013 WL 5571202 (Oct. 10, 2013)(citing *Morgan v. Turner*, 2010 Ark. 245, 368 S.W.3d 888)). To apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the judgment. *Id.*

In this case, it is not disputed that Partne Kiesling-Daugherty's conviction was reversed and dismissed by the Arkansas Court of Appeals. Because her case was appealed to the Arkansas Court of Appeals and an opinion was issued, there is no question that she had a full and fair opportunity to litigate this issue. In her appeal, she challenged the sufficiency of the evidence to support her conviction, including the argument that the citing officer was not properly certified as a radar operator. *See Daugherty v. State*, 2012 Ark. App. 512 (Sept. 19, 2012)(unpublished opinion – submitted as an exhibit to Claimant's Complaint). In the Court of Appeals case, it was noted that:

> Alvin Berndt, a standards specialist from the Commission on Law Enforcement Standards and Training (CLEST), testified next. Berndt testified that he did not believe the procedure by which [the citing officer] was certified as a radar operator was contrary to CLEST's rules. Berndt stated that, although [the citing officer] completed the radar training course prior to completing basic-law enforcement training, he was not certified as a radar operator until February 2010, after completion of both courses.

Id. at 3.

The Arkansas Court of Appeals held that "even if the radar device was properly certified as to its accuracy and operated by a properly certified radar operator, there was insufficient evidence to [support her conviction]. *Id.* at 4. The Court of Appeals did not state that (1) there was an invalid radar certification, (2) that the citing officer lacked the necessary hours of CLEST

training for officer certification to be eligible to enroll in the radar operator course, or (3) that CLEST engaged or engages in any misconduct or patter of misconduct. There is also nothing in the opinion to indicate that her rights were violated in any way or that she should be compensated in any way. Taking into account the record before it, including the testimony from Berndt as detailed-above, the Court of Appeals merely found that there was not sufficient evidence to support her conviction because "the jury was forced to speculate that appellant was driving in excess of 15 mph over the speed limit." *Id.* at 5. As a result, her case was properly reversed and dismissed. It is clear that Partne Kiesling-Daugherty is attempting to relitigate the same issue that she presented before the Arkansas Court of Appeals. It is also clear that the same issue was considered by the Court of Appeals in its opinion, as evidenced by the above-quoted language. As such, collateral estoppel bars her from relitigating this issue. Again, to apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the judgment. *Deer/Mt. Judea School District v. Kimbrell*, 2013 Ark. 393, 2013 WL 5571202 (Oct. 10, 2013)

Applying the elements in this case, it is clear that (1) as explained above, the issue sought to be precluded is the same as in the prior litigation, which is the issue of whether the citing officer was properly certified as a radar operator, (2) the issue was actually litigated, as she prevailed in the appeal and her conviction was reversed and dismissed, (3) the issue was determined by a valid and final judgment, as she prevailed in her appeal and her conviction was reversed and dismissed (mandate filed October 12, 2012 - submitted as an exhibit to Partne Kiesling-Daugherty's Complaint, Claim No. 14-0299-CC), and (4) the determination was

essential to the judgment, as demonstrated by the above-quoted language from the Court of Appeals opinion.

In this case, Partne Kiesling-Daugherty is attempting to relitigate the issue of whether the citing officer was properly certified as a radar operator. She is now seeking to hold CLEST responsible for (1) her allegations against the citing officer, (2) her speeding citation, (3) her district court conviction (which was appealed and received a de novo review), and (4) her conviction in a trial by jury, which was ultimately reversed and dismissed. She is barred from relitigating the same issue that was presented and considered by the Court of Appeals.

Accordingly, her claim against CLEST should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

e. Partne Kiesling-Daugherty has failed to state a claim against CLEST upon which any relief can be granted.

Partne Kiesling-Daugherty's claim against CLEST is subject to dismissal because she has also failed to state a claim against CLEST upon which any relief can be granted.

For all of the reasons previously explained in the preceding subsection, she has failed to state a claim against CLEST upon which any relief can be granted. Her claim is no more than a conclusion based upon pure speculation regarding an issue previously considered by the Arkansas Court of Appeals, which is whether the citing officer was properly certified as a radar operator. She also alleges, in conclusory fashion, that "CLEST has compounded this problem by illegally sanctioning this practice and appointing unqualified persons as police radar operators before the minimum standards for training requirements have been completed[.]" Even treating the facts alleged in the complaint that CLEST is engaging in an illegal practice as true, the proper

remedy, as she even cites in her Complaint, is that "[a] police traffic radar operator who does not meet the standards and qualifications [required] shall not take any official action as a police traffic radar operator <u>and any action taken shall be held as invalid</u> (emphasis added). *See* Ark. Code Ann. § 12-9-404. Politely, the proper remedy is not to allow Partne Kiesling-Daugherty (much less her husband) to recover at the Arkansas Claims Commission based upon guesswork regarding an issue that has already been litigated and considered by an appellate court.

As explained above in the dismissal-standard section on Page 2 of this brief, Arkansas courts require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. She has not plead any facts to entitle her to any relief. Thus, her claim against CLEST fails and should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

f. <u>Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which bars any claim against him.</u>

Partne Kiesling-Daugherty alleges that "[a]s a result of prosecutorial misconduct by the State's Prosecutors under elected-Prosecutor Larry Jegley, I was wrongfully convicted of [speeding in excess of 15 miles per hour over the speed limit.]" As stated above, her malicious-prosecution claim fails as a matter of law because a judgment of conviction by a court of competent jurisdiction is <u>conclusive evidence</u> of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955)(emphasis added). Taken a step further, any claim against Larry Jegley, the elected prosecutor for the Sixth Judicial District, is barred because he is entitled to prosecutorial immunity.

Because the Prosecuting Attorney was acting at all times in his role as a prosecutor, he is afforded prosecutorial immunity under well-established law. Absolute prosecutorial immunity is separate and distinct from the sovereign immunity granted to the State of Arkansas. Prosecutorial immunity is an ancient common-law doctrine designed to permit the prosecuting authorities to carry out their official duties, without being deterred by lawsuits and threats of lawsuits. Sovereign immunity, on the other hand, protects the fiscal resources of the State from being attacked without the permission of the State itself. In Arkansas, the General Assembly, on behalf of the State, has established the Claims Commission as an alternative forum for cases that are barred from court by sovereign immunity – allowing the State's fiscal resources to be tapped to pay appropriate claims as determined by the Commission and approved by the General Assembly.

The General Assembly has made clear, in plain statutory language, that the Claims Commission will not consider claims or make awards where the claim would be barred in a court for reasons other than sovereign immunity, e.g. the statute of limitations has passed, the claimant has no standing to assert the claim, or the claim is barred by some other rule of law, such as the absolute immunity afforded to prosecutors and judges for actions they take within the scope of their official duties. *See* Ark. Code Ann. § 19-10-204(b)(3)(B) ("if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction [for any reason other than sovereign immunity], then the commission shall make no award on the claim.").

The law is quite clear that when a prosecuting attorney is acting within the scope of his quasi-judicial duties, he is absolutely immune from suit. In *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984 (1976), the United States Supreme Court held that a prosecuting attorney is entitled

to absolute immunity for activities which are "intimately associated with the judicial phase of the criminal process . . . functions to which the reasons for absolute immunity apply with full force." *Id.* at 430, 96 S.Ct. at 994. Additionally, the Court has opined that

> §1983 was not meant to "abolish all common law immunities". . . [this] section is to be read "in harmony with the general principles of tort immunities and defenses rather than derogation of them". . . [i]t is "better to leave unredressed the wrongs done by dishonest officers than subject those who try to do their duty to the constant dread of retaliation."

Burns v. Reed, 500 U.S. 478, 484, 111 S.Ct. 193 (1991) (quoting *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213 (1967) and *Imbler v. Pachtman, supra*).

The Arkansas Supreme Court has established and ruled that, by its own precedents, as well as those of the United States Supreme Court, prosecutorial immunity is absolute. In *Culpepper v. Smith*, 302 Ark. 558 (1990), the Arkansas Supreme Court stated that

> It has long been held that public policy demands such immunity for the prosecutors and has permitted no diminution or erosion of this defense when the acts complained of are committed <u>within the scope of the duties of the prosecuting attorney's office</u>. Decisions to this effect are myriad.

Id. at 571 (emphasis added).

The most basic application of prosecutorial immunity is for a prosecutor's actions taken in the preparation and filing of criminal charges against a defendant. *See Kalina v. Fletcher*, 522 U.S. 118, 129 (1997). With regard to Partne Kiesling-Daugherty's Complaint, Larry Jegley is entitled to prosecutorial immunity. There is absolutely no question that the prosecution of her case falls within the scope of Mr. Jegley's duties. There is absolutely no evidence of any conduct that falls outside of the traditional prosecutorial functions and, indeed, no allegations of any actions outside of Mr. Jegley's jurisdiction as a prosecutor. Once more, the Arkansas Court of Appeals reversed and dismissed her case on the basis of insufficient evidence to support her conviction. In reviewing the record before it, there is <u>nothing</u> in the Court of Appeals opinion to

indicate any wrongdoing of any kind on behalf of Mr. Jegley or the deputy prosecutors who were involved in the jury trial, as she alleged in her Complaint (that exculpatory evidence was withheld and perjury elicited from Alvin Berndt)(emphasis added).[2] There is absolutely no question that prosecuting any crime at a trial by jury is a role that falls within the traditional prosecutorial function. Because Mr. Jegley was engaged in conduct connected to his role as a prosecutor in the judicial process, absolute immunity attaches under well-established law.

Accordingly, her claim against the State via Larry Jegley should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

CONCLUSION

Partne Kiesling-Daugherty is not entitled to compensation from the State of Arkansas for her procedural victory on appeal in this case. There is no Arkansas law providing for a monetary award to a criminal defendant simply because a criminal proceeding is reversed and dismissed on appeal. The implications of such an award would extend far beyond this case.

In sum, her claims fail as a matter of law because (1) in a malicious-prosecution claim, Arkansas cases have long-held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed, (2) her false-arrest claim is barred by the applicable statute of limitations, which ended on June 24, 2013, (3) her false-arrest claim fails because probable cause for an arrest defeats an action for false arrest, (4) her claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion), (5) she has failed to state a claim against CLEST upon which any

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[2] Deputy prosecuting attorneys are clothed with the power of the Prosecuting Attorney and act in the name of the Prosecuting Attorney. *See Owen v. State*, 263 Ark. 493, 565 S.W.2d 607 (1978)

relief can be granted, and (6) Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which is an absolute bar to any claim against him.

Because there are no facts that would entitle Partne Kiesling-Daugherty to recover from the State in this matter, her Complaint should be dismissed. Likewise, her husband's Complaint should also be dismissed.

WHEREFORE, Respondents request that the Claims Commission dismiss Claimant's Complaint in its entirety, judgment be entered in favor of Respondents, and for all other just and appropriate relief.

Respectfully submitted,

DUSTIN McDANIEL,
Attorney General

By: ______________________ AAG

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CERTIFICATE OF SERVICE

I, Jonathan Q. Warren, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been served by placing a copy of same in the U.S. Mail, on November 12, addressed to the following:

Dr. John Daugherty
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Jacksonville, AR 72076

AAG

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STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 1,000,000.00

Claim No. 14-0300-CC

Attorneys

Dr. John L. Daugherty **Claimant** — Pro se **Claimant**

vs.

SOA/Comm. On Law Enforcement Standards **Respondent** — Jonathan Warren, Assistant Attorney General **Respondent**

State of Arkansas

Date Filed October 10, 2013

Type of Claim Mental Anguish, Pain & Suffering, Refund of Expenses & Loss Wages

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-9, 11 and 12 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-9, 11 and 12 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing December 13, 2013

Date of Disposition December 13, 2013

Chairman

Commissioner

Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 1,000,000.00

Claim No. 14-0300-CC

Attorneys

John L. Daugherty, M.D. Claimant

vs.

Pro se Claimant

SOA/Comm. On Law Enforcement Standards Respondent

State of Arkansas

Jonathan Warren, Assistant Attorney General Respondent

Date Filed October 10, 2013

Type of Claim Mental Anguish, Pain & Suffering, Refund of Expenses & Loss Wages

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's December 13, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's December 13, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

Date of Hearing February 13, 2014

Date of Disposition February 13, 2014

Chairman

Commissioner

Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

Arkansas
State Claims Commission
JAN 21 2014
RECEIVED

BEFORE THE CLAIM COMMISSION
OF THE STATE OF ARKANSAS

JOHN DAUGHERTY	§	**NO. 14-0300-CC**
PETITIONER	§	
	§	
V.	§	
	§	
STATE OF ARKANSAS & AR CLEST	§	**RESPONDENTS**

NOTICE OF APPEAL

Comes now, Petitioner John Daugherty, M.D., and he gives his Notice of Appeal to the Commission's Order dated on or about December 13, 2013, and all other Orders, Decisions, and Actions of the Commission, in this Case and for Oral Representation at ALL proceedings.

Respectfully submitted,

Petitioner John Daugherty, M.D.

Certificate of Service

I certify that a copy of the foregoing was mailed and emailed on this date of **January 17, 2013,** to Respondents counsel: Jonathan Q. Warren, at 323 Center Street, Suite 200, Little Rock, AR 72201.

____

Petitioner John Daugherty, M.D.