

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Ross Abbott, College Libertarians at the University of South Carolina, and Young Americans for Liberty at the University of South Carolina,

Plaintiffs,

v.

Harris Pastides, Dennis Pruitt, Bobby Gist, and Carl Wells,

Defendants.

Civil Action No.: 3:16-cv-538-MBS

ORDER AND OPINION

Plaintiffs Ross Abbott (“Abbott”), College Libertarians at the University of South Carolina (“Libertarians”), and Young Americans for Liberty at the University of South Carolina (“YAL”)(together “Plaintiffs”) bring this civil rights action pursuant 42 U.S.C. § 1983 against Defendants Harris Pastides, Dennis Pruitt, Bobby Gist (“Gist”), and Carl Wells (“Wells”) (together “Defendants”), alleging that Defendants violated their rights under the First Amendment. This matter comes before the court on Defendants’ two motions for summary judgment and Plaintiffs’ cross-motion for partial summary judgment.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs planned a Free Speech Event at the University of South Carolina (“USC”) to draw attention to threats to free expression on college campuses. ECF No. 1 at 5. Plaintiffs planned “to create visual displays and handouts depicting censorship controversies that have occurred at USC and other universities throughout the country.” *Id.* Prior to the event, Abbott met with Director of Campus Life and the Russell House University Union, Kim McMahon. *Id.* Abbott provided Ms. McMahon a synopsis of the planned event, including details describing the types of visuals that Plaintiffs intended to display. *Id.* at 6. Abbott subsequently obtained the proper space and facilities

Complaint procedures.” ECF No. 57-1 at 5.

On December 8, 2015, Wells met with Abbott, who was joined by Michael Kriete (“Kriete”), the President of YAL. ECF No. 1 at 13. The meeting lasted forty-five minutes and was recorded by Abbott. *Id.* At the beginning of the meeting, Abbott provided Wells with a letter setting forth his defense to the Free Speech Event. ECF No. 27-5 at 7. The letter also listed actions USC “would need to take to prevent its policies from chilling the exercise of constitutionally protected speech.” ECF No. 1 at 14. Abbott explained the purpose of the free speech event and expressed his concerns with the meeting. ECF No. 27-5. Wells confirmed that the meeting was a pre-complaint/pre-investigation remedy to obtain more information concerning the details of the event in response to the student complaints. ECF No. 27-5 at 3.

On December 23, 2015, Wells sent a letter to Abbott notifying Abbott that the EOP Office “will not move any further in regard to this matter. The Office of Equal Opportunity Programs has found no cause for investigating this matter.” ECF No. 27-6 at 2. On February 23, 2016, Plaintiffs brought the underlying action. ECF No. 1. First, Plaintiffs raise an “as-applied” challenge, asserting that when Defendants required Abbott to attend a meeting to address student complaints, Defendants unconstitutionally applied USC policies to Plaintiffs in a way that chilled Plaintiffs’ speech. Next, Plaintiffs allege USC’s “policies and actions create a hostile atmosphere for free expression on campus, chilling the speech of other registered student organizations, as well as students, who are not before the court.” ECF No. 1 at 17.

Plaintiffs challenge USC’s Student Non-Discrimination and Non-Harassment Policy, STAF 6.24; and the *Carolinian Creed* as unconstitutional, claiming that the terms of both are broad and undefined and “vest University officials he8(o)-10(-,')]8(ta)9(s)-6teassmen tutionallyybrt S22406Progrr2()-85(2

6.24– “‘unwelcome’ and ‘inappropriate’ speech, including ‘objectionable epithets, demeaning depictions,’ ‘unwelcome and inappropriate letters, telephone calls, electronic mail, or other communication,’ ‘repeated inappropriate personal comments,’ speech that employs ‘sexual innuendos and other sexually suggestive or provocative behavior,’ and even ‘suggestive or insulting gestures or sounds’”– is unconstitutionally vague. *Id.*

STAF 6.24’s definitions of “harassment” and “sexual harassment” state, in pertinent part:

Harassment is a specific type of illegal discrimination. It includes conduct (oral, written, graphic, or physical) which is directed against any student or group of students because of or based upon one or more of the characteristics articulated in Section II above, that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual or group to participate in or benefit from the programs, services, and activities provided by the University.

Such harmful conduct may include, but is not limited to, objectionable epithets, demeaning depictions or treatment, and threatened or actual abuse or harm. Harassment does not include the use of materials by students or discussions involving students related to any characteristic articulated in Section II for academic purposes appropriate to the academic context.

ECF No. 1-16 at 3.

Sexual harassment is a specific type of discrimination which is defined as unwelcome conduct of a sexual nature that is sufficiently severe or pervasive that it adversely affects a student’s or student group’s ability to participate in or benefit from the programs and services provided by the University. Examples of conduct that may constitute sexual harassment in violation of this policy include, but are not limited to, the following types of unwelcome and harmful behavior:

- a. Physical Conduct
 - i. Unnecessary or unwanted touching, patting, massaging, etc.
 - ii. Impeding or blocking movements
 - iii. Acts of sexual violence
 - iv. Other unwanted conduct of a physical nature
- b. Non-Verbal Conduct
 - i. Suggestive or insulting gestures or sounds
- c. Verbal conduct
 - i. Direct propositions of a sexual nature

- ii. Sexual innuendos and other sexually suggestive or provocative behavior
- iii. Repeated, unwanted requests for dates
- iv. Repeated inappropriate personal comments
- v. Unwelcome and inappropriate letters, telephone calls, electronic mail, or other communication or gifts
- vi. Requests for sexual favors

Sexual harassment may occur between members of the same or opposite sex. Sexual harassment directed at any student or other member of the University community, regardless of his or her sexual orientation, is a violation of this policy.

Sexual harassment does not refer to occasional, nonsexual compliments, nonsexual touching, or other nonsexual conduct.

Id. at 3-4.

The *Carolinian Creed*, which encourages students to adhere to the following ideals, provides:

- A. I will practice personal and academic integrity.

A commitment to this ideal is inconsistent with cheating in classes, in games, or in sports. It should eliminate the practice of plagiarism or borrowing another student's homework, lying, deceit, excuse making, and infidelity or disloyalty in personal relationships.

- B. I will respect the dignity of all persons.

A commitment to this ideal is inconsistent with behaviors which compromise or demean the dignity of individuals or groups, including hazing, most forms of intimidating, taunting, teasing, baiting, ridiculing, insulting, harassing, and discrimination.

- C. I will respect the rights and property of others.

A commitment to this ideal is inconsistent with all forms of theft, vandalism, arson, misappropriation, malicious damage to, and desecration or destruction of property. Respect for other's personal rights is inconsistent with any behavior which violates their right to move about freely, express themselves in a civil manner, and to enjoy privacy.

- D. I will discourage bigotry, striving to learn from differences in people, ideas, and opinions.

A commitment to this ideal pledges affirmative support for equal rights and

opportunities for all students regardless of their age, sex, race, religion, disability, ethnic heritage, socioeconomic status, political, social or other affiliation or disaffiliation, or affectional preference.

E. I will demonstrate concern for others, their feelings, and their need for conditions which support their work and development.

A commitment to this ideal is a pledge to be compassionate, civil, and considerate,

5. Providing educational information sessions (exclusive of formal University of South Carolina academic classes).

ECF No. 1-19 at 2.

Section II.H.1 further details that organizations or students seeking to use space for events “must complete a USC Facility Reservation and Event Registration Form to the Russell House University Union event services coordinator.” ECF No. 1-19 at 4. Plaintiffs challenge both STAF 3.17’s advance registration and fee requirement. *Id.* Finally, Plaintiffs challenge STAF 3.25, as it “imposes a two-week registration requirement for any outdoor event held on campus.” ECF No. 1 at 17.

Plaintiffs seek:

- A. A declaratory judgment stating that Defendants’ Student Non-Discrimination and Non-Harassment Policy, facially and as-applied to Plaintiffs, is unconstitutional facially and as-applied, and that they violated Plaintiffs’ rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;
- B. A permanent injunction restraining enforcement of Defendants’ unconstitutional Student Non-Discrimination and Non-Harassment Policy and its underlying enforcement practices;
- C. An injunction requiring the Defendants to remove any notation of the complaints against Plaintiffs’ Free Speech Event from University records;
- D. A declaratory judgment that Defendants’ review of Plaintiffs’ expressive activity violated their First and Fourteenth Amendment rights;
- E. Monetary damages in an amount to be determined by the Court to compensate Plaintiffs for the impact of a deprivation of fundamental rights;
- F. Plaintiffs’ reasonable costs and expenses of this action, including attorney’s fees, in accordance with 42 U.S.C. § 1988, and other applicable law; and
- G. All other further relief to which Plaintiffs may be entitled.

ECF No. 1 at 26-27.

On October 3, 2016, Gist and Wells moved for summary judgment based on qualified immunity as well as the absence of any claim for damages against them. ECF No. 27 at 1. On October 25, 2016, all Defendants filed a second motion for summary judgment on the remaining issues. ECF No. 36. In that motion, Defendants assert that they “are entitled to dismissal because some of the University policies challenged by Plaintiffs in this action have been amended to eliminate any conceivable issue about the policies’ constitutionally, and because any remaining policies, i.e., those which have not been amended, are not unconstitutional.” ECF No. 36-1 at 1.

On November 14, 2016, Plaintiffs filed a response in opposition to Defendants’ motions for summary judgment and a cross-motion for partial summary judgment. ECF No. 48 and 49.³ First, Plaintiffs contend that there remain factual disputes concerning Gist’s involvement in the matter, making summary judgment as to Gist premature. ECF No. 49 at 1. Plaintiffs contend, however, that summary judgment should be granted in their favor as it relates to Wells. Plaintiffs assert that Wells’ investigation burdened Plaintiffs’ First Amendment rights in five specific ways: (1) “Wells’ letter initiated an investigative process under USC policies that favored the complainant and placed the burden firmly on the speaker”; (2) “initiating an investigation under USC’s policies threatened to impose significant penalties on Plaintiffs for their speech, as the complainants demanded”; (3)

and (5) “Defendants’ claim that there can be no chilling effect here because USC terminated the investigation is false.” ECF No. 49-1 at 33-42.

Defendants responded in opposition to Plaintiffs’ motion for partial summary judgment by arguing that (1) Plaintiffs lack standing to assert facial challenges to USC policies; (2) STAF 6.24 is constitutional; (3) the *Carolinian Creed* has always been a non-enforceable, aspirational document, and does not affect Plaintiffs’ rights in any way; and (4) Plaintiffs’ challenge to STAF 3.17 and STAF 3.25 is moot because Defendants have revised both policies. ECF No. 55.

On December 21, 2016, Plaintiffs filed a reply to Defendants’ opposition. In summation, Plaintiffs argue the court should grant Plaintiffs’ motion for partial summary judgment on their as-applied challenge because: (1) the First Amendment bars intrusive investigations and threats of sanction; and (2) USC’s investigation violated Plaintiffs’ First Amendment rights. Plaintiffs assert the court should grant Plaintiffs’ cross-motion for partial summary judgment on their facial challenge to STAF 6.24 because: (1) Plaintiffs’ standing to challenge a policy applied to them is obvious; (2) Defendants have no substantive response to STAF 6.24’s constitutional deficiencies; and (3) Plaintiffs’ challenge to STAF 3.17 and STAF 3.25 has not been mooted by amendments to the policies. ECF No. 57. Additionally, Plaintiffs attached the affidavits of Abbott and Kriete describing how their speech was chilled by Defendants’ actions. ECF No. 57-1, 57-2.

On January 19, 2017, the court held a hearing on Defendants’ motions for summary judgment and Plaintiffs’ cross-motion for partial summary judgment. ECF No. 58.

II. LEGAL STANDARD

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the case under the applicable law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248–49 (1986). A genuine question of material fact exists where, after reviewing the record as a whole, the court finds that a reasonable jury could return a verdict for the nonmoving party. *Newport News Holdings Corp. v. Virtual City Vision*, 650 F.3d 423, 434 (4th Cir. 2011).

III. ANALYSIS

Plaintiffs who allege violations pursuant to § 1983 must establish: “(1) the deprivation of a right secured by the Constitution or a federal statute; (2) by a person; (3) acting under color of state law.” *Jenkins v. Medford*, 119 F.3d 1156, 1159-60 (4th Cir. 1997). State officials sued in their individual capacities are “persons” within the meaning of § 1983. *Hafer v. Melo*, 502 U.S. 21, 31 (1991).

A. Plaintiffs’ As-Applied Challenge (Count One)

Count One of Plaintiffs’ complaint alleges that “by investigating Plaintiff Ross Abbott’s involvement in Plaintiffs’ Free Speech Event, Defendants have explicitly and implicitly chilled Plaintiffs’ free expression as well as that of all USC students.” ECF No. 1 at 19. Gist and Wells seek summary judgment and dismissal as to Count One pursuant to qualified immunity. ECF No. 27.

Government officials are protected under the doctrine of qualified immunity from “liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)(citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In such cases, the court is faced with determining the “‘objective legal reasonableness’ of the action, assessed in the light of the legal rules that were ‘clearly established’ at the time it was taken.” *Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

1. *Clearly established right*

Pure speech is protected under the First Amendment of the Constitution, and such protection extends to school campuses. *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969). Further, “entertainment as well as political and ideological speech, is protected . . . within the First Amendment guarantee.” *Iota XI Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 389 (4th Cir. 1993)(internal citations omitted).

Universities are not immune from “the sweep of the First Amendment.” *Healy v. James*, 408 U.S. 169, 180 (1972). Indeed, “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506. While courts have recognized the need for affirming the authority of school officials to proscribe and control conduct, courts have not determined that First Amendment protections “should apply with less force on college campuses than in the community at large.” *Healy*, 408 U.S. at 181. “In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Tinker*, 393 U.S. at 511.

Here, Plaintiffs’ rights to freedom of expression and speech are clearly established. Therefore, the court must decide if Plaintiffs’ rights were violated when Defendants held a meeting with Plaintiffs to further discuss student complaints regarding Plaintiffs’ Free Speech Event.

2. *Violation of clearly established right*

While all students on University campuses have First Amendment rights to free speech, such rights are not absolute. Indeed, the Supreme Court has “held repeatedly that a content-based regulation of protected expression survives judicial scrutiny if it is necessary to serve a compelling state interest and is narrowly drawn to achieve that end.” *Sigma Chi Fraternity*, 993 F.2d at 394 (Murnaghan, J., concurring) (quoting *Simon & Schuster, Inc. v. New York Crime Victims Bd.*, 602

U.S. 105, 118, 1991)). The Supreme Court has “recognized that regulation of speech based on its content is not only permissible but, in limited circumstances, justified.” *Id.* Such areas of justification would occur if speech was determined to infringe upon other students’ rights to be free from discrimination, as universities have “a substantial interest in maintaining an educational environment free of discrimination and racism. . . .” *Id.* at 393. “Under certain circumstances racial and ethnic epithets, slurs, and insults might fall within this description and could constitutionally be prohibited by the University.” *Doe v. University of Michigan*, 721 F. Supp. 852, 862 (1989).

In cases where it is alleged that government ac c0e7

action on February 23, 2016, the College Libertarians “avoided putting on any public events at USC.” ECF No. 57-1 at 6. Abbott states that, “as College Libertarians events often focus on

from Wells on the status of the official student complaints.⁴ The question becomes, then, whether USC's investigation of the student complaints was necessary to serve a compelling state interest and is narrowly drawn to achieve that end.

USC was required under Title VI of the Civil Rights Act of 1964 and mandates from the United States Department of Education to ensure that no students had been unlawfully discriminated against as a result of the Free Speech Event.⁵ To do so, USC had an obligation to employ a method of balancing both students' rights to freedom of speech and rights to be free from discrimination.

In *Sigma Chi Fraternity*, the plaintiff fraternity held an event called the "ugly woman contest" where members dressed up as caricatures of different women. *Id.* at 387. One such member was painted black attempting to imitate an African-American. *Id.*

directly related to gender discrimination and cultural diversity.” *Id.*

B. Facial Challenges to USC Policies (Counts Two, Three, and Four)

1. STAF 6.24

Plaintiffs argue that the court should enjoin USC's Non-Discrimination and Non-Harassment Policy (STAF 6.24) as unconstitutional because it is vague, overly broad, restricts speech using "amorphous and undefined terms," and fails to implement the required constitutional standard. ECF No. 49-1 at 36-45. Defendants counter Plaintiffs' assertion, claiming that Plaintiffs lack standing to bring a claim against the policy, and even if they do have standing, the policy is constitutional. ECF No. 26.

a. Standing.

A plaintiff seeking injunctive relief may not rely on prior harm. "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974). Standing to seek injunctive relief does not exist absent a "showing of any real or immediate threat that the plaintiff will be wronged again," or, in other words, a "likelihood of substantial and immediate irreparable injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). A "speculative . . . claim of future injury" does not establish standing to seek equitable relief. *Id.*

Herring, 212 F. Supp. 3d 584, 601 (E.D. Va. 2016). Further, some courts have found that plaintiffs have standing to facially challenge University policies based on pre-enforcement claims. For example, the plaintiff in *Doe v. University of Michigan* was a psychology graduate student who brought a suit against the University of Michigan, alleging that its harassment policy chilled his speech and that he could potentially be sanctioned under its overbroad terms. 721 F. Supp. 852, 858 (E.D. Mich. 1989). The policy at issue stated that students could be subject to discipline for “any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status. . . .” *Id.* at 856. The student brought the suit because he believed his studies, which focused on biological bases of individual difference in personality traits and mental abilities, could be deemed “sexist” or “racist.” *Id.* at 858.

The *Doe* court noted that, “[W]ere the court to look only at the plain language of the Policy, it might have to agree with the University that Doe could not have realistically alleged a genuine and credible threat of enforcement.” *Id.* at 859. The court in *Doe* took an additional step and looked at the intent of the policy through reference to the policy’s “legislative history, the Guide, and experiences gleaned from enforcement.” *Id.* at 859. The record indicated that “the drafters of the policy intended that speech need only be offensive to be sanctionable.” *Id.* Further, the record provided evidence of several instances where the administration used the policy to regulate academic speech. *Id.* at 861. Taking the complete record into account, the *Doe* court determined there was a realistic and credible threat that Doe’s speech could be sanctioned. *Id.* at 860. The court in *Doe* invalidated the policy because it “was simply impossible to discern any limitation on its scope or any conceptual distinction between protected and unprotected conduct.” *Id.* at 867.

The within litigation is distinguishable from *Doe* and similar cases. In the court’s view, the

present case is more analogous to *Rock for Life*, where the plaintiffs sought to facially challenge the University of Maryland, Baltimore County's ("UMBC") sexual harassment policy as chilling their speech when they were not allowed to host an event on the campus space of their choice. The Fourth Circuit found that the UMBC officials never threatened to punish the plaintiffs' speech as sexual harassment, and that UMBC "never undertook a 'concrete act' to investigate or sanction the plaintiffs for violation of the code of conduct." 411 F. App'x at 549. The Fourth Circuit concluded that the plaintiffs were unable to demonstrate a credible threat of enforcement, and, as a result, the plaintiffs did not have standing to assert their claim. *Id.*

In this case, Abbott states in his affidavit, "Mr. Wells' December 23 letter did not clarify for me whether the University's policies on harassment and discrimination as set forth in STAF 6.24 and other rules could be used—as they were in response to the Free Speech Event—to impose enforcement and possible disciplinary measure on students like myself or members of College Libertarians and YAL who engaged in otherwise constitutionally-protected expression." ECF No. 57-1 at 6. However, Plaintiffs did not present any evidence that there has been frequent actual or threatened use of STAF 6.24 to silence the types of speech in which Plaintiffs were engaging.

STAF 6.24 defines harassment as it pertains to sexual harassment, clarifies that the policy does not regulate academic speech, sets forth clear examples of how the policy is violated, and the proper procedures for enforcement. The language of STAF 6.24 makes it clear that the policy would not be applied to the speech in which Plaintiffs or similarly situated students intend to participate. There is no support in the record to establish that there is a credible threat of enforcement of STAF 6.24 against Plaintiffs or similarly situated students. The court concludes that Plaintiffs lack standing to challenge STAF 6.24 as facially unconstitutional.

2. *STAF 3.17 and 3.25 and the Carolinian Creed*

Plaintiffs raise facial challenges to USC policies STAF 3.17 and 3.25. ECF No. 49-1. Unlike STAF 6.24, the Facilities and Solicitation policies, STAF 3.17 and STAF 3.25, were applied to Plaintiffs, as both policies regulated campus events. The *Carolinian Creed* applied to all students. Plaintiffs have standing to contest the constitutionality of these policies.

Following the commencement of this case, Defendants revised STAF 3.17 and STAF 3.25 to cure any deficiencies raised by Plaintiffs' complaint. ECF No. 36-8, 36-10. Plaintiffs do not claim that the policies are unconstitutional in their amended state. Instead, Plaintiffs assert that "Defendants face a 'heavy burden' of establishing the challenged policies will not be reinstated (or continued to be enforced despite 'official' amendment)." *Id.* at 57.

As a general rule, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot." But jurisdiction, properly acquired, may abate if the case becomes moot because (1) it can be said with assurance that "there is no reasonable expectation. . ." that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. When both conditions are satisfied it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying question of fact and law.

Los Angeles County v. Davis, 440 U.S. 625, 631 (1979)(internal citations omitted).

A challenge to a facilities policy indicating that the University has too much control over student-planned events is a challenge premised on overbreadth. *Rock for Life-UMBC*, 411 F. App'x at 550 (4th Cir. 2010). "When a facially overbroad regulation is subsequently narrowed within constitutional boundaries, the inherent threat of content-based discrimination becomes null." *Id.* Further, "statutory changes that discontinue a challenged practice are 'usually enough to render a case moot, even if the legislature possesses the power to reenact the statute after the lawsuit is dismissed.'" *Valero v. Terrestrial Corp. v. Paige*, 211 F.3d 112, 116 (4th Cir. 2000)(internal citation

omitted).

In its original form, STAF 3.17 made no distinction between what types of speech required a solicitation fee. ECF No. 36-7 at 5. After revisions, STAF 3.17 states that non-commercial solicitation activities, like those participated in by Plaintiffs, are not subject to a fee. ECF No. 36-8 at 5. “Non-commercial solicitation” was not defined in the original policy, making it unclear what types of speech required fees. The revised policy eliminates any vagueness and defines such non-commercial solicitation as “any distribution by students individually or as members of student

nothing about them that would cause USC to have any interest in reinstating them once the present lawsuit is over.” ECF No. 55-1 at 3-4.

The court concludes that USC voluntarily ceased the allegedly illegal conduct and the allegations have become moot. The court declines to issue injunctive relief against any future revision to the policies.

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion for summary judgment (ECF No. 27) and Defendants’ second motion for summary judgment (ECF No. 36) are hereby **GRANTED**. Plaintiffs’ cross-motion for summary judgment (ECF No. 49) is **DENIED**, and the case is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

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

Columbia, South Carolina

July 11, 2017