

APPENDIX TABLE OF CONTENTS

United States Court of Appeals for the Eleventh Circuit Opinion Affirming the District's Final Judgment	1A-7A
United States District Court Opinion and Order	8A-33A
Text of United States Constitution Provisions	34A-36A
U.S. Const. amend. I	34A
U.S. Const. amend. IV	34A
U.S. Const. amend. V	34A
U.S. Const. amend. IX	35A
U.S. Const. amend. XI	35A
U.S. Const. amend. XIV, §1	35A
U.S. Const. amend. XIV, §3	35A-36A
U.S. Const. art. IV, §1.....	36A
U.S. Const. art. VI, cl. 2	36A
U.S. Const. art. VI, cl. 3	36A
Text of Federal Statutory Provisions & Regulations	37A-47A
18 U. S. C. §31(a)(6), (10)	37A
28 U. S. C. §453	37A
28 U. S. C. §455(a), (b)(1)	37A-38A
28 U. S. C. §1254(1)	38A
28 U. S. C. §1291	38A
28 U. S. C. §1331	38A
28 U. S. C. §1343(a)(1), (2),(4)	39A
28 U. S. C. §1652	39A
28 U. S. C. §2072(b)	40A
28 U. S. C. §2403(c)	40A
28 U. S. C. §3002(10)	40A- 41A
42 U. S. C. §1981	41A
42 U. S. C. §1982	41A
42 U. S. C. §1983	42A

42 U. S. C. §1985(3)	42A-43A
49 CFR §390.5T	43A
49 CFR §523.2	43A
49 CFR §523.3(a)	43A-44A
49 CFR §523.4	44A-45A
49 CFR §523.5	45A-46A
49 U.S.C. §20133	46A
49 U.S.C. §30101, SEC. 2502(a)(3)	47A
49 U.S.C. §32901(a)(3)	47A
49 U.S.C. §32908(a)(1)	47A
Text of Georgia Constitution Provisions	48A
Ga. Const., art. I., ¶ I	48A
Ga. Const., art. I., ¶ II	48A
Text of Georgia Statutory Provisions	48A-83A
O.C.G.A. §9-11-4	48A-66A
O.C.G.A. §40-1-1 (statutory definitions), p. 1 ..	66A-68A
O.C.G.A. §40-1-1(14)	68A
O.C.G.A. §40-1-1(33)	68A
O.C.G.A. §40-1-1(41)	68A
O.C.G.A. §40-2-8(a), (b)(1), (c)	69A-70A
O.C.G.A. §40-2-20(a)(1)(A), (c)	70A
O.C.G.A. §40-2-26(a), (d)(2)	70A-71A
O.C.G.A. §40-2-29(a), (d)	71A
O.C.G.A. §40-2-151	71A-77A
O.C.G.A. §40-5-20(a), (d)	77A-78A
O.C.G.A. §40-5-29(a)-(c)	78A-79A
O.C.G.A. §40-5-58(c)(1); (2)	79A-80A
O.C.G.A. §40-5-121(a), (d)	80A-81A
O.C.G.A. §40-5-122	82A
O.C.G.A. §40-6-10(4); (b)	82A
O.C.G.A. §40-6-12(a)	82A-83A
O.C.G.A. §40-6-15(a)-(c)	83A
Text of Federal Rules of Civil Procedure Provisions	
.....	83A-88A
Fed.R.Civ.P. Rule 4(c)(1)-(3)	

.....	3A-4A, 23A, 27A, 83A-84A
Fed. R. Civ. P. Rule 4(d)(l)(G)	4A, 84A-85A
Fed. R. Civ. P. Rule 4(e)	4A-5A, 24A, 85A
Fed. R. Civ. P. Rule 4(h)	24A, 86A
Fed.R.Civ.P. Rule 4(l)(1),(3)	86A
Fed.R.Civ.P. Rule 8(a)(2)	18A, 87A
Fed.R.Civ.P. Rule 10(b)	87A
Fed.R.Civ.P. Rule 12(b)	87A-88A
Fed.R.Civ.P. Rule 12(e)	88A

Other Essential Material

Other Collateral Conflicts, Reason (1)	88A-90A
Conflicts with State Court's Decisions	88A-89A
<i>Aldrich v. City of Syracuse</i> , 236 N.Y.S. 614, 617, 134	
Misc. 698	89A
<i>Decker v. City of Wichita</i> , 109 Kan. 796, 798 (1921)	
.....	89A
<i>Ex Parte Dickey</i> , 76 W. Va. 576, 579, 85 S.E. 781,	
L.R.A. 1915F, 840 (1904)	89A
<i>Los Angeles County v. Craig</i> , 38 Cal. App. 2d 58, 100 P.	
2d 818, 820	89A
<i>Saltus v. Everett</i> , 20 Wend., N.Y., 267, 275 ¶2, 32 Am.	
Dec. 541 (1838)	89A
<i>Seymour v. Canandaigua & N. FR. Co.</i> , 25 Barb., N.Y.,	
284, 301 (1857)	89A
<i>Shultz v. Cambridge</i> , 38 Ohio St. 659	88A
<i>State, ex rel. Schorr, v. Viner</i> , 119 Ohio St. 303, 164	
N.E. 119	88A
Conflicts with another Appeals Court's Decision	
.....	89A-90A
<i>A.M. ex rel JMK. v. Luzerne County Juvenile Detention</i>	
<i>Center</i> , 372 F.3d 572, 586 (3d Cir. 2004)	89A
<i>Andrews v. City of Philadelphia</i> , 895 F.2d 1469, 1481-	
1482 (3d Cir. 1990)	90A

<i>Brennan v. Norton</i> , 350 F.3d 399, 427-28 (3d Cir. 2003)	90A
<i>C.N. v. Ridgewood Bd. of Educ.</i> , 430 F.3d 159, 173 (3d Cir. 2005)	89A
<i>Flemming v. South Carolina Elec. Gas Co.</i> , 224 F.2d 752, 753 (C.A. 4th Cir. 1955)	89A
Conflicts with this Court's Decisions	90A
<i>Griffin v. Maryland</i> , 378 U.S. 130, 135-37 (1964) ..	90A
<i>Texas N. O. R. Co. v. Railway Clerks</i> , 281 U.S. 548, *570 (1930)	90A
<i>Texas Pacific R. Co. v. Rigsby</i> , 241 U.S. 33, (1916)	90A
<i>Hurtado v. California</i> , 110 U.S. 516, 557 (1884)	90A
<i>Marbury v. Madison</i> , 1 Cranch 137, 162, 163	90A
Text of Holy Bible References	
Exo. 20.15	90A
Gen. 1.26	91A
Gen. 1.27	91A
Gen. 2.7.....	91A
Jer. 34.8	91A
Lam. 3.35-36	91A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11350
Non-Argument Calendar

BYRON WENDELL PHILLIPS,
Plaintiff-Appellant,
versus
THE LIFE PROPERTY MANAGEMENT
SERVICES, LLC,
TONYA CARTER,
Agent, The Life Property Management Services,
LLC,
3321PEPPERTREE CIRCLE DECATUR LLC,
other Crystal Point Apartments,
REGISTERED AGENTS INC.,
NORTHWEST REGISTERED AGENT, LLC,
BILL HAVRE,
CEO, Northwest Registered Agent, LLC,
QUICK DROP IMPOUNDING, TOWING &
RECOVERY, INC.,
TENESHA THOMAS,
Registered Agent, Quick Drop Impounding,
Towing & Recovery, Inc.,
JOHN DOE,
Tow Truck Driver,
CURTIS MCMURRAY,
CEO, JEFFREY L. MANN, ESQ.,
DeKalb County Sheriff; (Individual Capacity),
JAMES W. CONROY,
DeKalb County Police Chief (Individual Capacity),

OFFICER MORGAN,
South Precinct (Individual Capacity),
OFFICER HARRIS,
Badge #3303, South Precinct, (Individual Capacity),
et al.,
DEKALB, COUNTY OF,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-00812-SDG

Before JILL PRYOR, BRANCH, and BLACK, Circuit
Judges.

PER CURIAM:

Byron Wendell Phillips, proceeding pro se, appeals the dismissal of his 42 U.S.C. § 1983 action for defective service and failure to state a claim upon which relief may be granted. Liberally construed, his allegations assert the appellees violated his Fourteenth Amendment due process rights when they towed his unregistered car pursuant to the terms of his apartment lease agreement, failed to secure its return, and failed to properly record the investigation into this allegedly wrongful towing. After review,¹ we affirm the district court.

I. DEFECTIVE SERVICE

Under Rule 4, a plaintiff must serve the summons and the complaint to each defendant within 90 days after the complaint is filed. Fed. R. Civ. P. 4(c), 4(m). If service is not effectuated within 90 days, “the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Service on an individual defendant must be made pursuant to state law for serving summons or in one of the following three ways:

¹ We review a district court’s dismissal for insufficient service of process for abuse of discretion. *Lepone-Dempsey v. Carroll Cty. Comm’rs*, 476 F.3d 1277, 1280 (11th Cir. 2007). We review a district court’s dismissal for failure to state a claim under Rule 12(b)(6) *de novo*. *South Fla. Water Mgmt. Dist. v. Montalvo*, 84 F.3d 402, 406 (11th Cir. 1996).

- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e); see O.C.G.A. § 9-11-4(e)(7) (providing for the same three methods of personal service of an individual defendant).

Likewise, Georgia law does not permit a plaintiff to serve only by mail. O.C.G.A. § 9-11-4(e); see also *KMM Indus., Inc. v. Prof'l Ass'n, Inc.*, 297 S.E.2d 512, 513 (Ga. 1982). A plaintiff properly serves a corporation by personally delivering to the corporation's officer or agent a summons and a copy of the complaint, and mailing a copy of each to the defendant, within the time allowed by Rule 4(m). Fed. R. Civ. P. 4(c)(1), (h)(1); see also O.C.G.A. § 9-11-4(e)(1)(A). If service cannot be effectuated that way, the plaintiff may serve the Secretary of State and affirm that copies have been mailed to the corporation's last registered address. O.C.G.A. § 9-11-4(e)(1)(A).

However, for either individuals or corporations, a plaintiff can request a defendant to waive service by notifying the defendant that an action has been commenced and requesting that the defendant waive service of a summons. Fed. R. Civ. P. 4(d).

Defendants are not required to waive formal service, and if they do not, the plaintiff must effect personal service. *Lepone-Dempsey v. Carroll Cty. Comm'rs*, 476 F.3d 1277, 1281 (11th Cir. 2007).

Rather than argue on appeal that his service complied with the Federal Rules of Civil Procedure, Phillips contends that he should be allowed effect service by mail. Thus, Phillips abandons any claim that the district court improperly granted the appellees' motions to dismiss based on defective service. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (arguments not raised on appeal, even by pro se litigants, are deemed abandoned).

Even if this claim is not abandoned, the district court did not err in dismissing Phillips's complaint for defective service as to those defendants who were not personally served or did not return a waiver of service. Only DeKalb County, Officer Harris, and Curtis McMurray waived service, so Phillips was required to effect personal service for all other defendants.² See *Lepone-Dempsey*, 476 F.3d at 1281. Phillips instead attempted service only by mail, which is not permitted by federal or Georgia law. Fed. R. Civ. P. 4(e); O.C.G.A. § 9-11-4(e).

² This includes Bill Havre who Phillips attempted to serve by mailing a package to New York, since the record does not indicate Havre returned an acknowledgement of service to Phillips. See N.Y. C.P.L.R. § 312-a (McKinney 2009) (providing that New York law permits service by mail but requires a return of acknowledgment of service to perfect service).

II. FAILURE TO STATE A CLAIM

Section 1983 provides a cause of action by private citizens against government actors for violations of their constitutional rights and other federal laws. 42 U.S.C. § 1983. The conduct complained of must have: (1) deprived the plaintiff of a right secured by the Constitution or laws of the United States, and (2) been committed by a person acting under color of state law. See *Focus on the Family v. Pinellas Suncoast Transit Auth.* , 344 F.3d 1263, 1276-77

(11th Cir. 2003). To impose liability on a private party under Section 1983, the party's actions must be "fairly attributable" to the state. *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982). "Action by a private party pursuant to [a] statute, without something more, [is] not sufficient to justify a characterization of that party as a 'state actor.'" Id. at 939.

Additionally, even assuming the continued retention of personal property is wrongful, no due process violation has occurred when "some adequate post deprivation remedy is available." *Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991). "[Georgia] has provided an adequate post deprivation remedy when a plaintiff claims that the state has retained his property without due process of law[;]" a civil cause of action for the wrongful conversion of personal property. Id. (citing O.C.G.A.§ 51-10-1). And no substantive right to an investigation exists. *Vinyard v. Wilson*, 311 F.3d 1340, 1356 (11th Cir. 2002).

The district court did not err in dismissing Phillips's complaint for failure to state a claim under Section 1983, since the apartment owner and managers and Quick Drop were not acting under color of state law, and the county and Officer Harris did not deprive Phillips of any protected rights. Nothing in Phillips's amended complaint suggests any action that was "fairly attributable" to the state. See *Lugar*, 457 U.S. at 937. Rather, Phillips alleges that Quick Drop, a private company, towed Phillips's car from private property pursuant to the terms of Phillips's lease

agreement with the private property owner. That the relevant lease provision was meant to ensure compliance with Georgia law regarding vehicle registration, as Phillips argues, was not sufficient to transform the private actors into state actors. See *id.* at 939. And even if the towing and retention of Phillips's car was wrongful, and the private actors were state actors, Georgia's creation of a civil cause of action for the wrongful conversion of personal property precludes Phillips's § 1983 claim. *See Lindsey*, 936 F.2d at 561. Moreover, Phillips had no right to an investigation of the allegedly wrongful towing of his car. *See Vinyard*, 311 F.3d at 1356. Thus, he also lacked the lesser included right to have the police properly record such investigation.

III. CONCLUSION

Phillips abandons his challenge to the district court's finding of defective service, and the district court did not err in finding he failed to state a claim under § 1983. Accordingly, we affirm.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA
ATLANTA DIVISION

BYRON WENDELL PHILLIPS,
Plaintiff,
v.
Civil Action No. 1:20-cv-00812-SDG

THE LIFE PROPERTY MANAGEMENT
SERVICES, LLC, *et al.*,
Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiff Byron Wendell Phillips's "notice and good cause request for consideration" regarding his attempts to serve Defendants [ECF 28] and his motions for entry of default [ECF 56–67]; Defendant The Life Property Management Services, LLC's motion to dismiss [ECF 30]; Defendants DeKalb County and Officer Derrick Harris's motion to dismiss or, in the alternative, for a more definite statement [ECF 45]; Defendant 3321 Peppertree Circle Decatur LLC's motion to dismiss [ECF 68]; and Defendant Tonya Carter's motion to dismiss [ECF 69]. After careful consideration of the parties' briefing, the Court **DENIES** Plaintiff's motions for entry of default; **GRANTS** Defendants' motions to dismiss; and **DENIES as moot** Plaintiff's request for consideration.

I. BACKGROUND

Plaintiff Byron Wendell Phillips claims that Defendants, acting under the color of state law, deprived him of his constitutionally guaranteed right to possess an unregistered motor vehicle. According to Phillips, who is proceeding as a “sovereign principal,” it is unconstitutional for the State of Georgia to impose taxes on and require registration of a personal vehicle, that is a vehicle not operated for commercial purposes, and, therefore, Defendants violated Phillips’s rights by towing and refusing to return his vehicle based on the fact that the vehicle was unregistered.¹ Phillips also takes issue with the requirements for service of process under the Federal Rules of Civil Procedure, and steadfastly argues that he is permitted to serve his Amended Complaint by mail.² Phillips, who clearly intends to operate by his own rules and not those of the United States, the State of Georgia, or this Court, cannot proceed on his claims because he has failed (1) to properly serve all but three Defendants and (2) to allege a protected constitutional right of which he was deprived.

¹ ECF 18, ¶¶ 5.1–5.10, 15.

² See e.g., ECF 38, at 9–17 (“Service by mail is just as reliable as a natural ‘person’ making delivery.”).

a. Factual Allegations

As alleged by Phillips, on April 21, 2017, he voluntarily surrendered the Georgia license plate for his 1997 Ford Ranger.³ Phillips then registered his car and obtained plates from the “United States Of America Department of Travel.”⁴ Phillips kept his car at the Crystal Point Apartments, owned by Defendant 3321 Peppertree Circle Decatur LLC (Peppertree Circle) and managed by Defendant The Life Property Management Services, LLC (Life Property).⁵ Phillips’s lease agreement provided that the lessor could “remove unauthorized or illegally parked vehicles from the apartment community at [the lessee’s] expense under the terms of this Lease Contract or by appropriate statute. A vehicle is unauthorized or illegally parked in the apartment community if it . . . (3) has no current license

³ *Id.* at 109.

⁴ *Id.* ¶ 4.1.

Elsewhere in the pleading, Phillips alleges that “Based upon personal research findings, [he] sought an alternative to a state license or license plate and, on 6/20/2016, purchased a private plate (no expiration) online from the United States of America Department of Travel which included Title #031P9565 recorded at the location in Washington, D.C. The title also had/has the plate number on it, 3749265.” *Id.* at 24 ¶ 7.

⁵ *Id.* ¶¶ 3.c., 4.1.; ECF 26, at 12.
or no current inspection sticker.”⁶

On October 10, 2017, a “John Doe” tow truck driver for Defendant Quick Drop Impounding, Towing & Recovery (Quick Drop) placed a sticker on Phillips’s car indicating that the car would be towed on October 12.⁷ Phillips reported the incident to management, claiming that his “private plate obtained from the United States Of America Department of Travel” had been stolen.⁸ On October 12, Quick Drop arrived to tow the car.⁹ Phillips insisted that the private plate would not permit the tow truck driver to seize the car.¹⁰ It does not appear from the allegations in the Amended Complaint that the car was towed at that point.¹¹

In February 2018, a Quick Drop tow truck driver placed a sticker on the car indicating that it would be towed on February 26.¹² This was despite the placards Phillips had visibly placed in the car stating “PRIVATE AUTOMOBILE NOT FOR

⁶ ECF 18, ¶ 4.a & Ex. A. The Amended Complaint does not attach a complete copy of the lease. Rather, it contains only the page reflecting this language. *Id.* Ex. A. None of the parties dispute the authenticity of this excerpt.

⁷ *Id.* ¶ 4.1.

⁸ ECF 18, ¶ 4.1.

⁹ *Id.* ¶ 4.2.

¹⁰ *Id.*

¹¹ *Id.* ¶¶ 4.1., 4.2., 4.3.

¹² *Id.* ¶ 4.5.

“HIRE” and “NO TRESPASSING.”¹³ The car was not towed on the 26th.¹⁴ As a result of these events, Phillips sent a letter to Defendant Jeffrey L. Mann, Esq., who is alleged to have been the Sheriff of DeKalb County at the time.¹⁵ Mann did not respond.¹⁶

Eventually, on March 5, 2018, Quick Drop “seized/stole” Phillips’s car.¹⁷ Phillips reported the alleged theft to Defendant “Officer Harris.”¹⁸ On March 8, Phillips reported the car as having been stolen to Defendant Tonya Carter, who is alleged to be an agent of Life Property, and demanded her supervisor or the contact information for Life Property.¹⁹ Carter was allegedly less-than accommodating of Phillips’s demand.²⁰ Phillips disputed Quick Drop’s assertion that the car had been turned over to it.²¹ He provided Quick Drop with his own “Fee Schedule Invoice” of itemized charges for “violation(s) and restriction of his rights” and demanded the return of his vehicle.²² Phillips also sent this information to Sheriff Mann and Life Property.²³

¹³ *Id.* ¶¶ 4.4., 4.5.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 4.6.

¹⁶ *Id.*

¹⁷ *Id.* ¶ 4.7.

¹⁸ *Id.*

19 *Id.* ¶¶ 4.a., 4.8.

20 *Id.*

21 *Id.* ¶¶ 4.9., 4.10., 4.11.

Phillips attempted to contact Officer Harris and others at the South Precinct multiple times concerning information Phillips believed was missing from the incident report stemming from Phillips's report of theft.²⁴ After speaking with a sergeant on April 11, 2018, Phillips was still dissatisfied with the contents of the report.²⁵ He sent a written complaint to Defendant Police Chief Conroy, who did not respond.²⁶

On April 24, 2018, Phillips was provided with a declaration of abandonment by Quick Drop.²⁷ Phillips responded to Quick Drop in writing, indicating (among other things) that "no one has the right or authority to declare anything concerning his personal/private automobile because they don't own it, and he had/has not consented to Quick Drop's behavior, and he had/has not created and distributed a verified document giving anyone permission to grant, convey, transfer, or otherwise dispose of his property."²⁸

²² *Id.* ¶ 4.11.

²³ *Id.*

²⁴ *Id.* ¶¶ 4.12–4.16.

²⁵ *Id.* ¶ 4.17.

²⁶ *Id.* ¶ 4.18.

²⁷ *Id.* ¶ 4.19.

On June 4, 2018, Phillips again wrote to Chief Conroy, accusing DeKalb County and the officers involved of participating in the violation of his rights, and included a “Fee Schedule Invoice” detailing the amount of damages owed to him plus the interest accruing on that amount.²⁹

b. Procedural History

On February 21, 2020, Phillips (who is appearing *pro se*) filed a 115-page Complaint against three groups of Defendants.³⁰ “Group I” includes Life Property, Tonya Carter, Peppertree Circle, Registered Agents Inc., Northwest Registered Agent, LLC, and Bill Havre (CEO of Northwest Registered Agent);³¹ “Group II” includes Quick Drop, its agent Tenesha Thomas, the “John Doe” Tow Truck Driver, and Quick Drop’s CEO Curtis McMurray;³² “Group III” includes Jeffrey L. Mann, James W. Conroy, Officer Harris, “Officer Morgan” (who was also assigned to the South Precinct and who responded to Phillips’s concerns about the incident report)³³ and DeKalb County.³⁴

²⁸ *Id.* ¶ 4.20.

²⁹ *Id.* ¶ 4.21.

³⁰ See generally ECF 1.

³¹ ECF 18, ¶ 4.a.

³² Id. ¶ 4.b.

Prior to service of process on Defendants, on May 18, 2020, Phillips filed an Amended Complaint.³⁵ Phillips alleges violations of 42 U.S.C. § 1983, for “(1) interfering with/violating and (2) restricting the Constitutional right to choose; right to be secure in effects from unreasonable seizure; right to due process; right to equal protection of the law; right to life; right to liberty; right to property.”³⁶

Phillips accuses the Groups of conspiring together to deprive him of his rights,³⁷ and alleges that DeKalb County inadequately supervises its police officers “by not implementing an oversight policy to ensure officers are abiding by their oaths, recognizing and considering the federal Constitution and laws.”³⁸ Phillips seeks compensatory and punitive damages, the return of his car, litigation fees and expenses.³⁹ Based on his own fees schedules, Phillips calculates his compensatory damages at \$138,947,989.74 and asks for \$7,180,000 in punitive damages from each member of Groups I and II and slightly different amounts from the Group III Defendants.⁴⁰

³³ Id. ¶ 4.e.1.

³⁴ Id. ¶ 4.c.

³⁵ See generally ECF 18. Phillips later filed a 172-page notice of constitutional questions pursuant to Fed. R. Civ. P. 5.1 that appears to repeat many of the allegations in his Amended Complaint. ECF 53.

³⁶ ECF 18, ¶ 2.

³⁷ *Id.*

³⁸ *Id.* at 26, ¶ 12.

³⁹ *Id.* at 79–80.

On June 22, 2020, the Court directed Phillips to properly serve all Defendants with the Amended Complaint no later than July 24, and to file proofs of service within seven days.⁴¹ Phillips was cautioned that failure to do so might result in dismissal of this action.⁴² Phillips then attempted to serve Defendants by mail with requests for waiver of service.⁴³ He later asked the Court not to dismiss the action because of delays in mail delivery and to accept, *nunc pro tunc*, his belated proofs of service.⁴⁴ What Phillips filed, however, were not proofs of service but evidence of having mailed the requests for waiver of service.⁴⁵

On August 12, 2020, Life Property filed a motion to dismiss pursuant to Rule 12(b)(2), (5), and (6), for lack of service, lack of personal jurisdiction, and failure to state a claim.⁴⁶ Phillips opposed the motion on August 24.⁴⁷ Life Property filed its reply on September 8.⁴⁸ On September 14, DeKalb County and Officer Derrick Harris filed a motion to dismiss or for a more definite statement pursuant to Rule 12(b)(6) and 12(e).⁴⁹ Phillips opposed on September 21.⁵⁰ DeKalb County and Harris filed their reply on October 5.⁵¹

⁴⁰ *Id.* at 81–85, 86–87.

⁴¹ ECF 22, at 2.

⁴² *Id.*

43 ECF 26.

44 ECF 28, at 2; ECF 44, at 2.

45 *See generally* ECF 44. *See also* ECF 26.

On December 11, 2020, Phillips filed motions for clerk's entry of default against all Defendants, save for DeKalb County, Officer Harris, Bill Havre (Northwest Registered Agent's CEO), and the "John Doe" tow truck driver.⁵² On December 16, Peppertree Circle and Tonya Carter filed separate motions to dismiss.⁵³ They also opposed Phillips's motions for clerk's entry of default.⁵⁴ On December 30, Phillips responded to Peppertree Circle's motion to dismiss and filed a reply in support of the default motion.⁵⁵ Peppertree Circle filed a reply in support of the motion to dismiss on January 6, 2021.⁵⁶ Carter filed a reply in support of her motion to dismiss on January 13.⁵⁷ On December 28, 2020, James Conroy and Jeffrey Mann opposed the default motions.⁵⁸ Phillips filed a consolidated reply on January 6, 2021.⁵⁹

⁴⁶ ECF 30.

⁴⁷ ECF 37; ECF 38.

⁴⁸ ECF 43.

⁴⁹ ECF 45.

⁵⁰ ECF 48.

⁵¹ ECF 50.

⁵² ECF 56–67.

⁵³ ECF 68; ECF 69.

⁵⁴ ECF 70; ECF 71.

II. Legal Standard

a. Motion to Dismiss

Federal Rule of Civil Procedure 8(a)(2) requires a pleading to contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” While this standard does not require “detailed factual allegations,” the Supreme Court has held that “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To withstand a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), “a complaint must now contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). A complaint fails to state a claim when it does not “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555–56 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)) (noting that “[f]actual allegations must be enough to raise a right to relief above the speculative level,” and the complaint “must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”) (alteration in original) (footnote omitted) (quoting 5 Charles A. Wright, *et*

al., FEDERAL PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004)). *See also Iqbal*, 556 U.S. at 680–85; *Oxford Asset Mgmt. v. Jaharis*, 297 F.3d 1182, 1187–88 (11th Cir. 2002) (stating that “conclusory allegations, unwarranted deductions of facts[,] or legal conclusions masquerading as facts will not prevent dismissal”). A complaint is plausible on its face when a plaintiff pleads sufficient factual content for the court to draw the reasonable inference that the defendant is liable for the conduct alleged. *Am. Dental Ass’n*, 605 F.3d at 1289 (citing *Twombly*, 550 U.S. at 556). “A complaint does not state a facially plausible claim for relief if it shows only a sheer possibility that the defendant acted unlawfully.” *Waters Edge Living, LLC v. RSUI Indem. Co.*, 355 F. App’x 318, 322 (11th Cir. 2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. A complaint must also present sufficient facts to “raise a reasonable expectation that discovery will reveal evidence’ of the claim.” *Am. Dental Ass’n*, 605 F.3d at 1289 (quoting *Twombly*, 550 U.S. at 556). At the motion to dismiss stage, “all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff.” *Find What Inv’r Grp. v. FindWhat.com*, 658 F.3d 1282, 1296 (11th Cir. 2011) (quoting *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006)). The Court will not, however, accept legal conclusions as true or construe

⁵⁵ ECF 73; ECF 74.

⁵⁶ ECF 75.

⁵⁷ ECF 78.

⁵⁸ ECF 72.

⁵⁹ ECF 76.

them favorably to the plaintiff. *Iqbal*, 556 U.S. at 678.

b. Default Judgments

Rule 55 governs default judgments. When a defendant “has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Default judgments are generally entered by the court. Fed. R. Civ. P. 55(b)(2). The Court may set aside a default or a default judgment for good cause. Fed. R. Civ. P. 55(c).

There is a strong policy in this circuit to decide cases on their merits, rather than through default. *Worldstar Commc’ns Corp. v. Feltman (In re Worldwide Web Sys., Inc.)*, 328 F.3d 1291, 1295 (11th Cir. 2003) (indicating circuit has “a strong policy of determining cases on their merits and we therefore view defaults with disfavor”); *Fortson v. Best Rate Funding, Corp.*, 602 F. App’x 479, 481 (11th Cir. 2015) (“Entry of judgment by default is a drastic remedy which should be used only in extreme situations.”) (quoting *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985)). When a defendant has entirely failed to appear or defend against a well-pleaded complaint, however, entry of a default judgment is appropriate. *Nishimatsu Constr.*

Co., Ltd., v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975) (entry of default judgment in favor of plaintiff warranted only if there exists “a sufficient basis in the pleadings for the judgment entered”).⁶⁰

III. Discussion

The Court recognizes that Phillips is appearing *pro se*. Thus, it must construe the Amended Complaint leniently and hold it “to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted) (quotation marks omitted). See also *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

⁶⁰ *Bonner v. City of Pritchard, Ala.*, 661 F.2d 1206, (11th Cir. 1981) (adopting as binding precedent all decisions handed down by former Fifth Circuit prior to October 1, 1981).

But even a *pro se* plaintiff must comply with the threshold requirements of the Federal Rules of Civil Procedure. *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1998) (holding that “once a *pro se* [*in forma pauperis*] litigant is in court, he is subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure”). The leniency the Court must apply does not permit it “to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action.” *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled on other grounds as recognized in Randall v. Scott*, 610 F.3d 701 (11th Cir.

2010). Nor may the Court overlook the substantial defects in Phillips's efforts to serve the Amended Complaint. Phillips has failed to state a claim for relief under 42 U.S.C. § 1983 and has repeatedly failed to properly serve his Amended Complaint. These are not minor defects, and dismissal with prejudice is appropriate.

a. Service of Process

Phillips has failed to serve or obtain waivers of service from all but three of the Defendants.⁶¹ On this basis, Defendants Life Property, Peppertree Circle, and Tonya Carter have moved to dismiss.⁶²

⁶¹ Defendants DeKalb County and Officer Harris waived service (ECF 32; ECF 33), and Defendant McMurray apparently waived service on August 19, 2020, but has yet to enter the case (ECF 40, at 1). The Court is skeptical about the authenticity of the McMurray waiver.

Phillips argues in response that he is permitted to serve the Amended Complaint and the summons through U.S. Mail because the postal service is a corporate “person,” who is permitted to serve process under Rule 4 of the Federal Rules of Civil Procedure and because the federal rules contemplate service of other papers by mail.⁶³ True to this position, Phillips has filed an “affidavit” purporting to show proofs of service that reference certified mail receipts.⁶⁴

Based on these receipts, Phillips has moved for entry of default judgment against almost all the Defendants.⁶⁵ Peppertree Circle, Tonya Carter,

Jeffery Mann, and James Conroy oppose entry of default, claiming they have not been properly served.⁶⁶ The motions to dismiss for failure to serve filed by Life Property, Peppertree Circle, and Tonya Carter, as well as Phillips's request for entry of default, turn on whether Phillips can properly serve Defendants by mail.

⁶² ECF 30; ECF 68; ECF 69.

⁶³ ECF 38, at 9–14.

⁶⁴ ECF 26.

⁶⁵ ECF 56–67. Phillips did not request entry of default against Bill Havre, the “John Doe” tow truck driver, DeKalb County, or Officer Harris.

⁶⁶ ECF 70; ECF 71; ECF 72.

Pursuant to Rule 4, a plaintiff is “responsible for having the summons and complaint served” in a timely manner by “[a]ny person who is at least 18 years old and not a party” or a by United States marshal or deputy marshal. Fed. R. Civ. P. 4(c). An individual may be served by “following state law for serving a summons” in “the state where the district court is located or where service is made” or

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). A plaintiff may serve a corporation pursuant to the laws of the state where the district court sits or where service is made or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized . . . to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.” Fed. R. Civ. P. 4(h)(1)(B). The Eleventh Circuit has interpreted “delivery” to mean “personal service.” “If the defendant agrees to waive service, however, the plaintiff need only mail a copy of the complaint to the defendant.” *Dyer v. Wal-Mart Stores, Inc.*, 318 F. App’x 843, 844 (11th Cir. 2009).

Georgia law does not permit service of process by mail to either individuals or corporations unless the party waives service. O.C.G.A. § 9-11-4. Phillips also attempted to serve process on one of the Defendants in New York, which allows service by mail, but requires a return of acknowledgment of service before a Court can exercise personal jurisdiction. *Shenko Elec., Inc. v. Hartnett*, 558 N.Y.S.2d 859 (N.Y. App. Div. 1990) (“The mailing of process pursuant to CPLR 312-a does not effect personal service. Service is complete only when the acknowledgment of receipt in the form prescribed by CPLR 312-a(d) is mailed or returned to the

sender. If the acknowledgment of receipt is not mailed or returned to the sender, the sender is required to effect personal service in another manner.”) (internal citations omitted).

It appears that Phillips has attempted service by mailing a copy of the complaint, the summons, and a waiver of service form to the Defendants through the United States Postal Service.⁶⁷ Phillips, therefore, failed to perfect service in a manner provided by the Federal Rules of Civil Procedure. Further, “[a] defendant’s actual notice is not sufficient to cure defectively executed service.”

⁶⁷ ECF 26; ECF 44. Curiously, it does appear that Phillips attempted to personally serve Bill Havre in Wyoming using a process server. ECF 40, at 2–3. It seems that Phillips, when he wants to, knows how to serve a summons and a complaint consistent with the federal rules.

Albra v. Advan, Inc., 490 F.3d 826, 829 (11th Cir. 2007). Given Phillips’s repeated failures to serve the Defendants, and his obstinance regarding the propriety of service by mail, dismissal is warranted. *Dyer*, 318 F. App’x at 844 (affirming dismissal of complaint under Rule 4 where the plaintiff failed to personally serve or acquire waiver of service from the defendant); *T-12 Ent., LLC v. Young Kings Enters., Inc.*, 36 F. Supp. 3d 1380, 1392 (N.D. Ga. 2014) (noting the Court’s “broad discretion” to dismiss a case due to defective service). For the same reason, entry of default against the Defendants who have not been personally served or returned

a waiver of service is improper.⁶⁸ *Owens v. Benton*, 190 F. App'x 762, 763 (11th Cir. 2006) (affirming denial of motion for default judgment because the plaintiff failed to file adequate proofs of service and "the court was unable to determine if, or when, appellees were served").

⁶⁸ This includes Defendants Peppertree Circle, Tonya Carter, Registered Agents Inc., Northwest Registered Agent, LLC, Quick Drop, Tenesha Thomas, James W. Conroy, and Officer Morgan, against whom Phillips seeks entry of default. As noted, the only Defendant who returned a waiver and who has not appeared in this case is Curtis McMurray. ECF 40. Although entry of default may be proper against McMurray, the Court finds that the Amended Complaint fails to state a claim upon which relief can be granted so it will not enter a default judgment against him.

b. Failure to State a Claim

Phillips brings his claims pursuant to 42 U.S.C. § 1983, alleging that the Defendants, acting together and separately, deprived him of his life, liberty, and property interests by interfering with his right to govern himself as a "sovereign principal."⁶⁹ As best as the Court can interpret, Phillips believes that he is not required to register his vehicle in the State of Georgia because he "cannot be forced to pay a license fee or tax to exercise the right(s), secured or protected by the Constitution, to use his own

property as he sees fit so long as he does not interfere

with the rights of others.”⁷⁰ By having his vehicle towed because it was unregistered, the Group I and Group II Defendants allegedly acted under the color of state law by enforcing the unconstitutional vehicle registration laws.⁷¹ The Group III Defendants, as state actors, allegedly violated Phillips’s rights by failing to properly record the investigation into the allegedly illegal tow.⁷²

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the

⁶⁹ ECF 18, ¶¶ 15(i)–(xvii).

⁷⁰ *Id.* ¶ 6.

⁷¹ *Id.* ¶¶ 4(a)–(b).

⁷² *Id.* ¶¶ 4(c)–(e).

United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 itself creates no substantive rights. *Baker v. McCollan*, 443 U.S. 137, 140,144 n.3 (1979). Rather, it provides a “method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that

it describes." *Id.* Thus, as a threshold matter, a plaintiff "must allege a violation of constitutionally guaranteed rights." *Gresham v. Dell*, 630 F. Supp. 1135, 1136 (N.D. Ga. 1986).

The alleged deprivations of Phillips's rights fall into three categories: (1) the acts related to the towing of Phillips's vehicle, (2) the post-deprivation acts that prevented Phillips from retrieving the vehicle, and (3) law enforcement's failure to adequately respond to Phillips's requests about the incident report created after the tow. Each claim is tinged by Phillips's assertion that he is a "sovereign principal," and therefore is not subject to laws and regulations that impose upon his liberty.

i. Pre-Deprivation

As for the actions leading up to the towing of Phillips's vehicle, his claims fail because none of the Group I or Group II Defendants were acting under the color of state law in having the vehicle towed. To impose liability on a private party under Section 1983, a plaintiff must establish that the party is a state actor by showing:

- (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test");
- (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or

(3) the State had so far insinuated itself into a position of interdependence with the private parties that it was a joint participant in the enterprise (“nexus/joint action test”).

Stevens v. Plumbers & Pipefitters Loc. 219, 812 F. App’x 815, 819 (11th Cir. 2020). In other words, the party’s actions must be “fairly attributable” to the state. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 923 (1982). Having a car towed from private property pursuant to the terms of a lease agreement, or “towing a car at the request of a private landowner—falls far short of this standard.” *Beyer v. Vill. of Ashwaubenon*, 444 F. App’x 99, 101 (7th Cir. 2011). “[T]he Constitution as a rule protects people from the state, not from each other.” *Id.* The Court is not persuaded that the Group I or Group II Defendants became state actors through determining that Phillips’s vehicle was unregistered and, therefore, towable based on the lease contract into which Phillips had entered. Thus, Phillips has not alleged a constitutional deprivation related to the pre-towing acts.

ii. Post-Deprivation

The allegations regarding the post-towing acts attributable to the Group I and Group II Defendants similarly fail because these Defendants did not act as the state in failing to secure the return of Phillips’s vehicle. Moreover, Phillips’s postdeprivation

Section 1983 claim is improper because Georgia law provides an adequate alternative remedy. “[A]s long as *some* adequate post deprivation remedy is available, no due process violation has occurred. The state of Georgia has created a civil cause of action for the wrongful conversion of personal property. *See O.C.G.A. § 51–10–1 (1982)*,” which applies to seizures by state actors and, “[t]herefore, the state has provided an adequate postdeprivation remedy when a plaintiff claims that the state has retained his property without due process of law.” *Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991) (holding no procedural due process violation occurred where defendants failed to inform the plaintiff of forfeiture proceeding on her seized automobile).

iii. The Incident Report

Finally, Phillips has no constitutionally guaranteed right to an investigation of the allegedly wrongful tow, *Vinyard v. Wilson*, 311 F.3d 1340, 1356 (11th Cir. 2002) (holding that the plaintiff had no protected liberty or property interest in a police investigation and no substantive right to an investigation, “much less one created by the Constitution”); *McGinley v. Jetton*, No. 8:11-CV-322-T-17MAP, 2011 WL 600443, at *6 (M.D. Fla. June 29, 2011) (finding “[t]here is no substantive due process right to an investigation, guaranteed by the Constitution or otherwise”), let alone to have an investigative report completed according to his personal standards. Thus, Phillips’s Section 1983 claims against the Group III Defendants fail.

iv. Sovereign Citizen Claims

Phillips claims certain constitutional rights based on his status as a “sovereign principal.” So-called sovereign citizens believe that they are not subject to government authority and employ various tactics in an attempt to, among other things, avoid paying taxes, extinguish debts, and derail criminal proceedings.” *Gravatt v. United States*, 100 Fed. Cl. 279, 282 (2011). Courts, however, routinely, summarily, and firmly reject sovereign citizen legal theories as “frivolous.” *United States v. Sterling*, 738 F.3d 228, 233 (11th Cir. 2013) (citing *United States v. Benabe*, 654 F.3d 753, 761 (7th Cir. 2011) (“[Sovereign citizen] theories should be rejected summarily, however they are presented.”)). The Court has closely reviewed Phillips’s allegations in the Amended Complaint and concludes that they fail to state a cognizable claim. Though not all of the Defendants moved to dismiss this action, “[a] District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related.” *Loman Dev. Co. v. Daytona Hotel & Motel Suppliers, Inc.*, 817 F.2d 1533, 1537 (11th Cir. 1987). The Court finds that dismissal as to all the Defendants is appropriate.

IV. Conclusion

Phillips's motions for entry of default [ECF 56–67] are **DENIED**. Defendant The Life Property Management Services, LLC's motion to dismiss [ECF 30]; Defendants Dekalb County and Officer Derrick Harris's motion to dismiss [ECF 45]; Defendant 3321 Peppertree Circle Decatur LLC's motion to dismiss [ECF 68]; and Defendant Tonya Carter's motion to dismiss [ECF 69] are **GRANTED**. Phillips's “notice and good cause request for consideration” [ECF 28] is **DENIED as moot**. The Clerk is **DIRECTED** to close this case.

SO ORDERED this the 23rd day of March 2021.

s/ Steven D. Grimberg
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA ATLANTA DIVISION

BYRON WENDELL PHILLIPS,
Plaintiff,

Civil Action No. 1:20-cv-00812-SDG

v.

THE LIFE PROPERTY MANAGEMENT
SERVICES, LLC, *et al.*,
Defendants.

JUDGMENT

This action having come before the court,
Honorable Steven D. Grimberg, United States
District Judge, for consideration of defendants The
Life Property Management Services, LLC, Tonya
Carter, 3321 Peppertree Circle Decatur LLC, Officer
Harris and DeKalb County's motions to dismiss, and
the court having granted said motions, it is

Ordered and Adjudged that the action be, and
the same hereby is, dismissed.

Dated at Atlanta, Georgia, this 24th day of
March, 2021.

JAMES N. HATTEN

CLERK OF COURT
By: s/Barbara D. Boyle
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
March 24, 2021
James N. Hatten
Clerk of Court
By: B. D. Boyle
Deputy Clerk
Text of United States Constitution Provisions

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia,

when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const. amend. XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XIV, §1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, §3

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. art. IV, §1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art. VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 3

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the

United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Text of Federal Statutory Provisions and Regulations

18 U. S. C. §31(a)(6), (10)

(a) DEFINITIONS.—In this chapter, the following definitions apply:

(6) MOTOR VEHICLE.—The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

(10) USED FOR COMMERCIAL PURPOSES.—The term "used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

28 U. S. C. §453

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____ XXX, do solemnly swear (or affirm) that I will

administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

28 U. S. C. §455 (a), (b)(1)

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

28 U. S. C. §1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by . . . :

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U. S. C. §1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the

District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U. S. C. §1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U. S. C. §1343(a)(1), (2), (4)

- (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
 - (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
 - (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
 - (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U. S. C. §1652

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U. S. C. §2072

- (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
- (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
- (c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U. S. C. §2403(b)

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the

State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U. S. C. §3002(10)

(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

42 U. S. C. §1981

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship..

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U. S. C. §1982

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U. S. C. §1983

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

42 U. S. C. §1985(3)

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

49 CFR § 390.5T

Driver means any person who operates any commercial motor vehicle.

49 CFR §523.2

Light truck means a non-passenger automobile meeting the criteria in §523.5.

Pickup truck means a non-passenger automobile which has a passenger compartment and an open cargo area (bed).

49 CFR §523.3(a)

(a) An automobile is any 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight, except:

- (1)** A vehicle operated only on a rail line;
- (2)** A vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or
- (3)** A work truck.

(b) The following vehicles rated at more than 6,000 pounds and less than 10,000 pounds gross vehicle weight are determined to be automobiles:

- (1)** Vehicles which would satisfy the criteria in § 523.4 (relating to passenger automobiles) but for their gross vehicle weight rating.
- (2)** Vehicles which would satisfy the criteria in § 523.5 (relating to light trucks) but for their gross vehicle weight rating, and which
 - (i)** Have a basic vehicle frontal area of 45 square feet or less,
 - (ii)** Have a curb weight of 6,000 pounds or less,

- (iii) Have a gross vehicle weight rating of 8,500 pounds or less, and
- (iv) Are manufactured during the 1980 model year or thereafter.

(3) Vehicles that are defined as medium duty passenger vehicles, and which are manufactured during the 2011 model year or thereafter.

49 CFR §523.4

A passenger automobile is any automobile (other than an automobile capable of off-highway operation) manufactured primarily for use in the transportation of not more than 10 individuals.

49 CFR §523.5

Non-passenger automobile means an automobile that is not a passenger automobile or a work truck and includes vehicles described in paragraphs (a) and (b) of this section:

- (a) An automobile designed to perform at least one of the following functions:
 - (1) Transport more than 10 persons;
 - (2) Provide temporary living quarters;
 - (3) Transport property on an open bed;
 - (4) Provide, as sold to the first retail purchaser, greater cargo-carrying than passenger-carrying volume, such as in a cargo van; if a vehicle is sold with a second-row seat, its cargo-carrying volume is determined with that seat installed, regardless of whether the manufacturer has described that seat as optional; or

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through:

- (i) For non-passenger automobiles manufactured prior to model year 2012, the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level, surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior; or
- (ii) For non-passenger automobiles manufactured in model year 2008 and beyond, for vehicles equipped with at least 3 rows of designated seating positions as standard equipment, permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal or stowing of foldable or pivoting seats so as to create a flat, leveled cargo surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of offhighway operation, as indicated by the fact that it:

- (1)(i) Has 4-wheel drive; or
- (ii) Is rated at more than 6,000 pounds gross vehicle weight; and
- (2) Has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure—
 - (i) Approach angle of not less than 28 degrees.
 - (ii) Breakover angle of not less than 14 degrees.

- (iii) Departure angle of not less than 20 degrees.
- (iv) Running clearance of not less than 20 centimeters.
- (v) Front and rear axle clearances of not less than 18 centimeters each.

49 U.S.C. §20133(a)

Passenger cars

- (a) **MINIMUM STANDARDS.**—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers.

49 U.S.C. §30101, SEC. 2502(a)(3)

Passenger car means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer), designed for carrying 10 persons or fewer.

49 U.S.C. §32901 (a)(3)

(a) GENERAL.

- (3) except as provided in section 32908 of this title, "automobile" means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight, except—
 - (A) a vehicle operated only on a rail line;
 - (B) a vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or

(C) a work truck.

49 U.S.C. §32908 (a)(1)

(a) DEFINITIONS.

(1) "automobile" includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether the Secretary of Transportation has applied this chapter to the automobile under section 32901(a)(3)(B) of this title.

Text of Georgia Constitutional Provisions

Ga. Const., art. I., §II., ¶ I

All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.

Ga. Const., art. I., §II., ¶ II

The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it.

Text of Georgia Statutory Provisions

O.C.G.A. § 9-11-4

(a) Summons – Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) Summons – Form. The summons shall be signed by the clerk; contain the name of the court and county and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address; and state the time within which this chapter requires the defendant to appear and file appropriate defensive pleadings with the clerk of the court, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against him or her for the relief demanded in the complaint.

(c) Summons – By whom served. Process shall be served by:

- (1) The sheriff of the county where the action is brought or where the defendant is found or by such sheriff's deputy;
- (2) The marshal or sheriff of the court or by such official's deputy;
- (3) Any citizen of the United States specially appointed by the court for that purpose;
- (4) A person who is not a party, not younger than 18 years of age, and has been appointed by the court to serve process or as a permanent process server; or
- (5) A certified process server as provided in Code Section 9-11-4.1.

Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or

province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service.

(d) Waiver of service.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) Upon receipt of notice of an action in the manner provided in this subsection, the following defendants have a duty to avoid unnecessary costs of serving the summons:

(A) A corporation or association that:

(i) Is subject to service under paragraph (1) or (2) of subsection (e) of this Code section; and

(ii) Receives notice of such action by an agent other than the Secretary of State; and

(B) A natural person who:

(i) Is not a minor; and

(ii) Has not been judicially declared to be of unsound mind or incapable of conducting his or her own affairs.

(3) To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:

(A) Be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent or other agent authorized by appointment to receive service of process for a

defendant subject to service under paragraph (1) or (2) of subsection (e) of this Code section;

(B) Be dispatched through first-class mail or other reliable means;

(C) Be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) Make reference to this Code section and shall inform the defendant, by means of the text prescribed in subsection (l) of this Code section, of the consequences of compliance and of failure to comply with the request;

(E) Set forth the date on which the request is sent;

(F) Allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) Provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

(4) If a defendant located within the United States that is subject to service inside or outside the state under this Code section fails to comply with a request for a waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(5) A defendant that, before being served with process, returns a waiver so requested in a timely manner is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(6) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (5) of this subsection, as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(7) The costs to be imposed on a defendant under paragraph (4) of this subsection for failure to comply with a request to waive service of summons shall include the costs subsequently incurred in effecting service, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Summons – Personal service. Except for cases in which the defendant has waived service, the summons and complaint shall be served together. The plaintiff shall furnish the clerk of the court with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) (A) If the action is against a corporation incorporated or domesticated under the laws of this state or a foreign corporation authorized to transact business in this state, to the president or other officer of such corporation or foreign corporation, a managing agent thereof, or a registered agent thereof, provided that when for any reason service cannot be had in such manner, the Secretary of State shall be an agent of such corporation or foreign corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him or her or with any other person or persons designated by the Secretary of State to receive such service a copy of

such process, notice, or demand, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. The plaintiff or the plaintiff's attorney shall certify in writing to the Secretary of State that he or she has forwarded by registered mail or statutory overnight delivery such process, service, or demand to the last registered office or registered agent listed on the records of the Secretary of State, that service cannot be effected at such office, and that it therefore appears that such corporation or foreign corporation has failed either to maintain a registered office or to appoint a registered agent in this state. Further, if it appears from such certification that there is a last known address of a known officer of such corporation or foreign corporation outside this state, the plaintiff shall, in addition to and after such service upon the Secretary of State, mail or cause to be mailed to the known officer at the address by registered or certified mail or statutory overnight delivery a copy of the summons and a copy of the complaint. Any such service by certification to the Secretary of State shall be answerable not more than 30 days from the date the Secretary of State receives such certification.

(B) As used in this paragraph, the term "managing agent" means a person employed by a corporation or a foreign corporation who is at an office or facility in this state and who has managerial or supervisory authority for such corporation or foreign corporation; **(2)** **(A)** If the action is against a foreign corporation doing business in this state without authorization to transact business in this state that has a managing agent or against a nonresident individual, partnership, joint-stock company, or association doing business in this state that has a managing

agent, to such agent, or to a registered agent designated for service of process.

(B) As used in this paragraph, the term "managing agent" means a person employed by a foreign corporation doing business in this state without authorization to transact business in this state or a nonresident individual, partnership, joint-stock company, or association doing business in this state who is at an office or facility in this state and who has managerial or supervisory authority for such foreign corporation, nonresident individual, partnership, joint-stock company, or association;

(3) If against a minor, to the minor, personally, and also to such minor's father, mother, guardian, or duly appointed guardian *ad litem* unless the minor is married, in which case service shall not be made on the minor's father, mother, or guardian;

(4) If against a person residing within this state who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs and for whom a guardian has been appointed, to the person and also to such person's guardian and, if there is no guardian appointed, then to his or her duly appointed guardian *ad litem*;

(5) If against a county, municipality, city, or town, to the chairman of the board of commissioners, president of the council of trustees, mayor or city manager of the city, or to an agent authorized by appointment to receive service of process. If against any other public body or organization subject to an action, to the chief executive officer or clerk thereof;

(6) If the principal sum involved is less than \$200.00 and if reasonable efforts have been made to obtain personal service by attempting to find some person residing at the most notorious place of abode of the

defendant, then by securely attaching the service copy of the complaint in a conspicuously marked and waterproof packet to the upper part of the door of the abode and on the same day mailing by certified or registered mail or statutory overnight delivery an additional copy to the defendant at his or her last known address, if any, and making an entry of this action on the return of service; or

(7) In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(f) Summons – Other service.

(1) Service by publication.

(A) General. When the person on whom service is to be made resides outside the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of the summons, and the fact shall appear, by affidavit, to the satisfaction of the judge or clerk of the court, and it shall appear, either by affidavit or by a verified complaint on file, that a claim exists against the defendant in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the judge or clerk may grant an order that the service be made by the publication of summons, provided that when the affidavit is based on the fact that the party on whom service is to be made resides outside the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in the affidavit that at a

previous time such person resided outside this state in a certain place (naming the place and stating the latest date known to affiant when the party so resided there); that such place is the last place in which the party resided to the knowledge of affiant; that the party no longer resides at the place; that affiant does not know the present place of residence of the party or where the party can be found; and that affiant does not know and has never been informed and has no reason to believe that the party now resides in this state; and, in such case, it shall be presumed that the party still resides and remains outside the state, and the affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This Code section shall apply to all manner of civil actions, including those for divorce.

(B) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which any defendant, corporate or otherwise, has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part of excluding such defendant from any interest therein, where the defendant resides outside the state or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons. The service by publication shall be made in the same manner as provided in all cases of service by publication.

(C) Publication. When the court orders service by publication, the clerk shall cause the publication to be made in the paper in which sheriff's advertisements are printed, four times within the

ensuing 60 days, publications to be at least seven days apart. The party obtaining the order shall, at the time of filing, deposit the cost of publication. The published notice shall contain the name of the parties plaintiff and defendant, with a caption setting forth the court, the character of the action, the date the action was filed, the date of the order for service by publication, and a notice directed and addressed to the party to be thus served, commanding him or her to file with the clerk and serve upon the plaintiff's attorney an answer within 60 days of the date of the order for service by publication and shall bear teste in the name of the judge and shall be signed by the clerk of the court. Where the residence or abiding place of the absent or nonresident party is known, the party obtaining the order shall advise the clerk thereof; and it shall be the duty of the clerk, within 15 days after filing of the order for service by publication, to enclose, direct, stamp, and mail a copy of the notice, together with a copy of the order for service by publication and complaint, if any, to the party named in the order at his or her last known address, if any, and make an entry of this action on the complaint or other pleadings filed in the case. The copy of the notice to be mailed to the nonresident shall be a duplicate of the one published in the newspaper but need not necessarily be a copy of the newspaper itself. When service by publication is ordered, personal service of a copy of the summons, complaint, and order of publication outside the state in lieu of publication shall be equivalent to serving notice by publication and to mailing when proved to the satisfaction of the judge or otherwise. The defendant shall have 30 days

from the date of such personal service outside the state in which to file defensive pleadings.

(2) Personal service outside the state. Personal service outside the state upon a natural person may be made: (A) in any action where the person served is a resident of this state, and (B) in any action affecting specific real property or status, or in any other proceeding in rem without regard to the residence of the person served. When such facts shall appear, by affidavit, to the satisfaction of the court and it shall appear, either by affidavit or by a verified complaint on file, that a claim is asserted against the person in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the court may grant an order that the service be made by personal service outside the state. Such service shall be made by delivering a copy of the process together with a copy of the complaint in person to the persons served.

(3) Service upon persons in a foreign country. Unless otherwise provided by law, service upon a person from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

- (A)** By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
- (B)** If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

- (i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;
- (ii) As directed by the foreign authority in response to a letter rogatory or letter of request; or
- (iii) Unless prohibited by the law of the foreign country, by:
 - (I) Delivery to the person of a copy of the summons and the complaint; or
 - (II) Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or
 - (C) By other means not prohibited by international agreement as may be directed by the court.

(4) Service upon persons residing in gated and secured communities.

- (A) As used in this paragraph, the term "gated and secured communities" means multiple residential or commercial properties, such as houses, condominiums, offices, or apartments, where access to the multiple residential or commercial properties is restricted by a gate, security device, or security attendant that restricts public entrance onto the property; provided, however, that a single residence, farm, or commercial property with its own fence or gate shall not be included in this definition.
- (B) Any person authorized to serve process shall be granted access to gated and secured communities for a reasonable period of time during reasonable hours for the purpose of performing lawful service of process upon:
 - (i) Identifying to the guard or managing agent the person, persons, entity, or entities to be served;

- (ii) Displaying a current driver's license or other government issued identification which contains a photograph; and
- (iii) Displaying evidence of current appointment as a process server pursuant to this Code section.

(C) Any person authorized to serve process shall promptly leave gated and secured communities upon perfecting service of process or upon a determination that process cannot be effected at that time.

(g) **Territorial limits of effective service.** All process may be served anywhere within the territorial limits of the state and, when a statute so provides, beyond the territorial limits of the state.

(h) **Return.** The person serving the process shall make proof of such service with the court in the county in which the action is pending within five business days of the service date. If the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed. Proof of service shall be as follows:

- (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate of the sheriff, marshal, or deputy;
- (2) If by any other proper person, such person's affidavit;
- (3) In case of publication, the certificate of the clerk of court certifying to the publication and mailing; or
- (4) The written admission or acknowledgment of service by the defendant.

In the case of service otherwise than by publication, the certificate or affidavit shall state the date, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative service. The methods of service provided in this Code section are cumulative and may be utilized with, after, or independently of other methods of service. Whenever a statute provides for another method of service, service may be made under the circumstances and in the manner prescribed by the statute or under any other methods prescribed in this Code section. The provisions for service by publication provided in this Code section shall apply in any action or proceeding in which service by publication may be authorized by law; and, where by law special provision is made for service by publication, the procedure for such service by publication provided in this Code section may be utilized in lieu thereof. In all cases or special proceedings where the requirements or procedure for service, or both, are not prescribed by law and in any situation where the provisions therefor are not clear or certain, the court may prescribe service according to the exigencies of each case, consistent with the Constitution.

(k) Service in probate courts and special statutory proceedings. The methods of service provided in this Code section may be used as alternative methods of service in proceedings in the probate courts and in any other special statutory proceedings and may be used with, after, or independently of the method of service specifically provided for in any such proceeding; and, in any such

proceeding, service shall be sufficient when made in accordance with the statutes relating particularly to the proceeding or in accordance with this Code section.

(I) §
B Forms. \$
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NOTICE OF LAWSUIT AND REQUEST FOR
WAIVER OF SERVICE OF SUMMONS

TO: (Name of individual defendant or name of officer or agent of corporate defendant) as (title, or other relationship of individual to corporate defendant) of (name of corporate defendant to be served, if any)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. The complaint has been filed in the (court named on the complaint) for the State of Georgia in and for the County of (county) and has been assigned (case number of action).

This is not a formal summons or notification from the court, but rather my request pursuant to Code Section 9-11-4 of the Official Code of Georgia Annotated that you sign and return the enclosed Waiver of Service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days (or 60 days if located

outside any judicial district of the United States) after the date designated below as the date on which this Notice of Lawsuit and Request for Waiver of Service of Summons is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the Waiver of Service is also attached for your records. **YOU ARE ENTITLED TO CONSULT WITH YOUR ATTORNEY REGARDING THIS MATTER.**

If you comply with this request and return the signed Waiver of Service, the waiver will be filed with the court and no summons will be served on you.

The action will then proceed as if you had been served on the date the waiver is filed except that you will not be obligated to answer or otherwise respond to the complaint within 60 days from the date designated below as the date on which this notice is sent (or within 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Georgia Rules of Civil Procedure and then, to the extent authorized by those rules, I will ask the court to require you (or the party on whose behalf you are addressed) to pay the full cost of such service. In that connection,

please read the statement concerning the duty of parties to avoid unnecessary costs of service of summons, which is set forth on the Notice of Duty to Avoid Unnecessary Costs of Service of Summons enclosed herein.

I affirm that this Notice of Lawsuit and Request for Waiver of Service of Summons is being sent to you on behalf of the Plaintiff on this day of

Signature of plaintiff's attorney
or

Unrepresented plaintiff
WAIVER OF SERVICE OF SUMMONS

To: (Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of (caption of action), which is case number (docket number) in the

(name of court) of the State of Georgia in and for the County of (county). I

have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me. I understand that I am entitled to consult with my own attorney regarding the consequences of my signing this waiver.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose

behalf I am acting) be served with judicial process in the manner provided by the Georgia Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer is not served upon you within 60 days after the date this waiver was sent, or within 90 days after that date if the request for the waiver was sent outside the United States.

This day of, .

(Signed)

(Printed or typed name of defendant)

as (title)

of (name of corporate defendant, if any)

NOTICE OF DUTY TO AVOID UNNECESSARY

COSTS OF SERVICE OF SUMMONS

Subsection (d) of Code Section 9-11-4 of the Official Code of Georgia Annotated requires certain parties to cooperate in saving unnecessary costs of service of the summons and the pleading. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for such defendant's failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and also must file a signed copy of the response with the court. If the answer is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

O.C.G.A. §40-1-1, p. 1

Note: Alphabetical listing. "Automobile" excluded.

§ 40-1-1. Definitions

As used in this title, the term:

(1) "Alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of

through vehicular traffic.

(3) "All-terrain vehicle" means any motorized vehicle designed for off-road use which is equipped with four low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering.

(4) "Arterial street" means any U.S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(5) "Authorized emergency vehicle" means a motor vehicle belonging to a public utility corporation or operated by the Department of Transportation and designated as an emergency vehicle by the Department of Public Safety; a motor vehicle belonging to a fire department or a certified private vehicle belonging to a volunteer firefighter or a fire-fighting association, partnership, or corporation; an ambulance; or a motor vehicle belonging to a federal, state, or local law enforcement agency, provided such vehicle is in use as an emergency vehicle by one authorized to use it for that purpose.

(5.1) "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

(6) "Bicycle" means every device propelled by

human power upon which any person may ride, having only two wheels which are in tandem and either of which is more than 13 inches in diameter.

(6.1) "Bicycle lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating bicycles. Bicycle lanes shall at a minimum, unless impracticable, be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials.

(6.2) "Bicycle path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by bicycle riders.

(6.3) "Bicycle trailer" means every device pulled by a bicycle and designed by the manufacturer of such device to carry human passengers.

(7) "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(8) "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings,

railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet.

O.C.G.A. §40-1-1(14)

Driver means every person who drives or is in actual physical control of a vehicle.

O.C.G.A. §40-1-1(33)

Motor vehicle means every vehicle which is self-propelled other than an electric personal assistive mobility device (EPAMD).

O.C.G.A. §40-1-1(41)

Passenger car means every motor vehicle, except all-terrain vehicles, motorcycles, motor driven cycles, multipurpose off-highway vehicles, personal transportation vehicles, and low-speed vehicles, designed for carrying ten passengers or less and used for the transportation of persons.

40-2-8(a); (b)(1); (c)

(a) Any person owning or operating any vehicle described in Code Section 40-2-20 on any public highway or street without complying with that Code section shall be guilty of a misdemeanor, provided that a person shall register his or her **motor vehicle** within 30 days after becoming a resident of this state. Any person renting, leasing, or loaning any vehicle described in Code Section 40-2-20 which is being used on any public highway or street without complying with that Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of \$100.00 for each violation; and each day that such vehicle is operated in violation of

Code Section 40-2-20 shall be deemed to be a separate and distinct offense.

(b) (1) Any vehicle operated in the State of Georgia which is required to be registered and which does not have attached to the rear thereof a numbered license plate and current revalidation decal affixed to a corner or corners of the license plate as designated by the commissioner, if required, shall be stored at the owner's risk and expense by any law enforcement officer of the State of Georgia, unless such operation is otherwise permitted by this chapter.

(c) It shall be unlawful and punishable as for a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid county decal designating the county where the vehicle was last registered, unless such operation is otherwise permitted under this chapter. Any person convicted of such offense shall be punished by a fine of \$25.00 for a first offense and \$100.00 for a second or subsequent such offense. However, a county name decal shall not be required if there is no space provided for a county name decal on the current license plate.

O.C.G.A. §40-2-20(a)(1)(A), (c)

(a)(1)(A) Except as provided in subsections (b) and (d) of this Code section and subsection (a) of Code Section 40-2-47, every owner of a motor vehicle, including a tractor or motorcycle, and every owner of a trailer shall, during the owner's registration period in each year, register such vehicle as provided in this chapter and obtain a license to operate it for the 12 month period until such person's next registration period.

(c) Any person who fails to register a new or used motor vehicle as required in subsection (a) of this

Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$100.00.

O.C.G.A. 40-2-26(a), (d)(2)

(a) All applicants to register a vehicle shall apply to the tag agent of the county wherein such vehicle is required to be returned for ad valorem taxation.

(d)(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle unless the tag agent receives satisfactory proof that the motor vehicle is subject to a policy of insurance that provides the minimum motor vehicle insurance coverage required by Chapter 34 of Title 33 or an approved self-insurance plan and, in the case of a private passenger vehicle, that such coverage was initially issued for a minimum term of six months; provided, however, that the owner's inability to register or renew the registration of any motor vehicle due to lack of proof of insurance shall not excuse or defer the timely payment of ad valorem taxes due and payable upon said vehicle.

O.C.G.A. §40-2-29(a), (d)

(a) Except as otherwise provided in this chapter, any person purchasing or acquiring a vehicle shall register and obtain, or transfer, a license plate to operate such vehicle from the county tag agent in their county of residence no later than seven business days after the date of purchase or acquisition of the vehicle by presenting to the county tag agent the following:

(1) A motor vehicle certificate of title as provided in

Chapter 3 of this title;

(2) Satisfactory proof of owner's insurance coverage as provided for in subsection (d) of Code Section 40-2-26;

(3) If applicable, satisfactory proof of compliance with the Article 2 of Chapter 9 of Title 12, the "Georgia Motor Vehicle Emission Inspection and Maintenance Act"; and

(4) Satisfactory proof that all fees, permits, and taxes have been paid

(d) A conviction for displaying a license plate or temporary license plate not provided for in this chapter shall be punished as a misdemeanor.

O.C.G.A. §40-2-151

Annual License Fee Schedule

(a) The annual fees for the licensing of the operation of vehicles shall be as follows for each vehicle registered:

(1) For each passenger motor vehicle not operated as a common or contract carrier for hire.....\$
20.00
(2) For each motorcycle..... 20.00
(3) (A) For each private commercial motor vehicle in accordance with the owner declared gross vehicle weight rating, as follows:
(i) Less than 18,001 lbs.....25.00
(ii) 18,001 to 26,000 lbs.....38.00
(iii) 26,001 to 30,000 lbs.....45.00
(iv) 30,001 to 36,000 lbs.....70.00
(v) 36,001 to 44,000 lbs.....115.00
(vi) 44,001 to 54,999 lbs.....190.00
(vii) 55,000 to 63,280 lbs.....300.00
(viii) 63,281 lbs. to maximum permitted.....400.00

(B) Subparagraph (A) of this paragraph notwithstanding:

(i) A straight truck which is not a truck-tractor shall not be classified higher than \$75.00;

(ii) A straight truck hauling fertilizer or agricultural products shall not be classified higher than \$31.00; and

(iii) A truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall not be classified higher than \$220.00;

(4) For each farm truck.....20.00

(5) Except as otherwise specifically provided in this Code section, for each private trailer.....20.00

(6) (A) For each farm trailer including, but not limited to, horse and cattle trailers, the maximum fee shall be \$12.00.

(B) There shall be no fee for trailers:

(i) Used exclusively to haul agricultural products from one place on the farm to another or from one farm or field to another;

(ii) With no springs which are being employed in hauling unprocessed farm products to their market destination; and

(iii) With no springs which are pulled from a tongue and used primarily to transport fertilizer to the farm;

(7) For house trailers, auto trailers, and boat trailers, whether pulled by a private automobile or a private truck, and not used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire.....12.00

(8) For trailers used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire.....12.00

(9) For each motor bus or van-type vehicle used as a common or contract carrier for hire in public transportation transporting passengers, the following:

- (A)** Weighing 10,000 pounds or less, \$1.90 per 100 pounds factory weight or fractional part of 100 pounds factory weight;
- (B)** Weighing more than 10,000 pounds and not over 15,000 pounds factory weight, \$2.75 for each 100 pounds or fractional part of 100 pounds factory weight;
- (C)** Weighing more than 15,000 pounds and not more than 20,000 pounds factory weight, \$3.45 for each 100 pounds or fractional part of 100 pounds factory weight; and
- (D)** Weighing more than 20,000 pounds factory weight, \$3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee shall exceed \$875.00;

(10) (A) For each commercial motor vehicle operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight rating, as follows:

- (i) Less than 18,001 lbs.....25.00
- (ii) 18,001 to 26,000 lbs.....38.00
- (iii) 26,001 to 30,000 lbs.....85.00
- (iv) 30,001 to 36,000 lbs.....130.00
- (v) 36,001 to 44,000 lbs.....215.00
- (vi) 44,001 to 54,999 lbs.....365.00
- (vii) 55,000 to 63,280 lbs.....575.00
- (viii) 63,281 lbs. to maximum permitted....725.00

(B) Subparagraph (A) of this paragraph notwithstanding, a straight truck which is not a

truck-tractor shall not be classified higher than \$150.00;

(11) For each commercial motor vehicle leased to a common or contract carrier without regard to the duration of the lease and in accordance with the gross vehicle weight rating, the same license fees as required under paragraph (10) of this subsection;

(12) For each motor driven hearse or ambulance.....20.00

(13) For each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and the members of his immediate family, the sum of \$20.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be licensed for the sum of \$20.00 in the same manner as school buses when the bus complies with the laws applicable to school buses;

(14) For each motor vehicle owned by the state or by a political subdivision or municipality of the state and used exclusively for governmental functions.....1.00

(15) For each motor vehicle used by carriers and operated under special franchise granted by the United States Department of Defense over a route of not more than 20 miles in length which is solely between a point in this state and a point within a United States military reservation in this state.....20.00

(16) Heavy earth-moving machinery, fertilizer application equipment, and crop protection chemical application equipment, not including trucks, which are used primarily off the highway shall not be required to be licensed under this article;

(17) (A) Trucks transporting logs, pulpwood, or other forest products shall be licensed in accordance with the following annual fees:

(i) Straight trucks and truck-tractors pulling a single pole trailer hauling logs from the woods to the sawmill.....38.00

(ii) Other truck-tractors.....220.00

(B) Skidders, tractors, and loaders used only in the woods shall not be required to be licensed. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall be licensed in accordance with this paragraph even though the trucks or truck-tractors are also used to transport skidders, tractors, loaders, and other logging equipment. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall not be required to pay additional fees or obtain additional license plates in order to transport logging equipment owned by the owner of the trucks or truck-tractors; (18) For each agricultural field use vehicle.....31.00

(19) (A) (i) Upon registration of an alternative fueled vehicle not operated for commercial purposes.....200.00

(ii) Upon registration of an alternative fueled vehicle operated for commercial purposes.....300.00

(B)

(i) As used in this paragraph, the term "alternative fueled vehicle" shall have the same meaning as in division (1)(7)(B)(ii) of Code Section 40-2-86.1;

provided, however, that the fees in this paragraph shall not be assessed on vehicles which operate primarily on compressed natural gas, liquefied natural gas, or liquefied petroleum gas.

(ii) The fees in this paragraph shall be in addition to any other fee imposed on the vehicle by this Code section.

(iii) The fees in this paragraph shall be automatically adjusted on an annual basis by multiplying the percentage of increase or decrease in fuel efficiency from the previous year as measured by using the average of combined miles per gallon published in the United States Department of Energy Fuel Economy Guide against the current fee, and the resulting increase or decrease shall be added or subtracted from the fee. This preliminary fee adjustment shall then be multiplied by the increase or decrease in the Consumer Price Index percentage for the applicable year, and the result will be added or subtracted from the preliminary fee to produce the fee for the year. The first adjustment shall be calculated and implemented on July 1, 2016. The Consumer Price Index shall no longer be used after July 1, 2018.

(b) In lieu of the annual fee provided in paragraphs (6), (7) or (8) of subsection (a) of this Code section, the optional one-time fee for a permanent registration and license plate for:

(1) Any trailer used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire, a private carrier, or a motor carrier of property; or

(2) Any boat trailer, utility trailer, or noncommercial cattle and livestock trailer

authorized to obtain a permanent registration and license plate under the provisions of Code Section 40-2-47 shall be \$48.00.

(c) The fee for a new passenger car for which the purchaser has paid state and local title ad valorem taxes and that is being registered as provided in subsection (d) of Code Section 40-2-20 shall be \$40.00 for the two-year registration period.

O.C.G.A. §40-5-20(a), (d)

(a) No person, except those expressly exempted in this chapter or in Chapter 6 of this title, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being driven. Any person who is a resident of this state for 30 days shall obtain a Georgia driver's license before operating a motor vehicle in this state. Any court having jurisdiction over traffic offenses in this state shall report to the department the name and other identifying information of any individual convicted of driving without a license. This Code section shall not apply to a person driving with a suspended license or license that has been revoked. Any person convicted of violating this Code section shall be punished as provided in subsection (a) of Code Section 40-5-121; provided, however, that if:

(1) Such person is driving with a driver's license issued by this state that has been expired for less than 31 days at the time of the offense and he or she produces in court a driver's license that would have been valid at the time of the offense, he or she shall not be guilty of such offense; and

(2) Such person is driving without a valid driver's license or receipt issued by the department reflecting issuance, renewal, replacement, or reinstatement in his or her possession but he or she has a valid driver's license, Code Section 40-5-29 shall apply to such offense.

(d) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipality, or local board or body having authority to adopt local police regulations.

O.C.G.A. §40-5-29(a) - (c)

(a) Every licensee shall have his or her driver's license in his or her immediate possession at all times when operating a motor vehicle.

(b) Every licensee shall display his or her license upon the demand of a law enforcement officer. A refusal to comply with such demand not only shall constitute a violation of this subsection but shall also give rise to a presumption of a violation of subsection (a) of this Code section and of Code Section 40-5-20.

(c) A person convicted of a violation of subsection (a) of this Code section shall be fined no more than \$10.00 if he or she produces in court a license theretofore issued to him or her and valid at the time of his or her arrest.

O.C.G.A. §40-5-58(c)(1); (2)

(c)(1) Except as provided in paragraph (2) of this subsection or in subsection (e) of this Code section, it shall be unlawful for any person to operate any

motor vehicle in this state after such person has received notice that his or her driver's license has been revoked as provided in subsection (b) of this Code section, if such person has not thereafter obtained a valid driver's license. Any person declared to be a habitual violator and whose driver's license has been revoked under this Code section and who is thereafter convicted of operating a motor vehicle before the department has issued such person a driver's license or before the expiration of five years from such revocation, whichever occurs first, shall be punished by a fine of not less than \$750.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both. Any person declared to be a habitual violator and whose driver's license has been revoked and who is convicted of operating a motor vehicle after the expiration of five years from such revocation but before the department has issued such person a driver's license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions of violations of Code Section 40-6-391 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, and who is thereafter convicted of operating a motor vehicle during such period of revocation, prior to the issuance of a probationary license under subsection (e) of this Code section or before the expiration of five years, shall be guilty of the felony of habitual impaired driving and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

O.C.G.A. §40-5-121(a), (d)

(a) Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00. Such fingerprints, taken upon conviction, shall be forwarded to the Georgia Crime Information Center where an identification number shall be assigned to the individual for the purpose of tracking any future violations by the same offender. For the second and third conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00. For the fourth or

subsequent conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, and there may be imposed in addition thereto a fine of not less than \$2,500.00 nor more than \$5,000.00.

(d) Notwithstanding the limits set forth in Code Section 40-5-124 and in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishment for a misdemeanor or misdemeanor of a high and aggravated nature as applicable and provided for in this Code section upon a conviction of a non felony charge of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

O.C.G.A. §40-5-122

No person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter or who is not licensed for the type or class of vehicles to be driven or in violation of any of the provisions of this chapter.

O.C.G.A. §40-6-10(4); (b)

(4) Except as otherwise provided in paragraph (7) of this subsection, any person who fails to comply with the requirements of this subsection shall be guilty of

a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(b) An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle without effective insurance on such vehicle or without an approved plan of self-insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

O.C.G.A. §40-6-12(a)

(a) Any person convicted of a second or subsequent violation of Code Section 40-6-10 within a five-year period, as measured from date of arrest to date of arrest, shall be required to file with the Department of Driver Services and maintain for a period of three years from the date of conviction proof of financial responsibility, as such term is defined in paragraph (5) of Code Section 40-9-2, in addition to any other punishment.

O.C.G.A. §40-6-15(a)-(c)

(a) Any person who knowingly drives a motor vehicle on any public road or highway of this state at a time when the vehicle registration of such vehicle is suspended, canceled, or revoked shall be guilty of a misdemeanor.

(b) Upon a first conviction thereof or a plea of nolo contendere, such person shall be punished by imprisonment for not more than 12 months and there may be imposed in addition thereto a fine of

not less than \$500.00 nor more than \$1,000.00, at the discretion of the court.

(c) For a second or subsequent conviction within five years as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00.

Text of Federal Rules of Civil Procedure Provisions

Fed.R.Civ.P. Rule 4(c)(1)

(c) SERVICE.

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. Rule 4(d)(1)(G)**(d) WAIVING SERVICE.**

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons.

The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or
(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to

this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

Fed. R. Civ. P. Rule 4(e)

SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. Rule 4(h)

SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

- (1) in a judicial district of the United States:
 - (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

Fed.R.Civ.P. Rule 4(l)(1),(3)

(l) PROVING SERVICE.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

Fed.R.Civ.P. Rule 8(a)

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed.R.Civ.P. Rule 10(b)

(b) PARAGRAPHS; SEPARATE STATEMENTS. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

Fed.R.Civ.P. Rule 12(b)

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by

joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Fed.R.Civ.P. Rule 12(e)

(e) MOTION FOR A MORE DEFINITE STATEMENT. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

Other Essential Material

Other Collateral Conflicts Reason (1)

(i) Collateral conflicts with state court decisions: *Shultz v. Cambridge*, 38 Ohio St. 659; *State, ex rel. Schorr, v. Viner*, 119 Ohio St. 303, 164 N.E. 119 (Strict construction must be given to statutes that are taxation measures which create quasi-criminal offenses and impose penalties); *Aldrich v. City of Syracuse*, 236 N.Y.S. 614, 617, 134 Misc. 698 (To license means to give permission); *Los Angeles County v. Craig*, 38 Cal. App. 2d 58, 100 P. 2d 818, 820 (To register means to enroll or place on a list); *Decker v. City of Wichita*, 109 Kan. 796, 798 (1921), quoting *Ex Parte Dickey*, 76 W. Va. 576, 579, 85 S.E. 781, L.R.A. 1915F, 840 (1904) (The right of a citizen to travel upon the highway and transport his

property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual and extraordinary); *Saltus v. Everett*, 20 Wend., N.Y., 267, 275 ¶2, 32 Am. Dec. 541 (1838) (No man can be divested of his property without his own consent); *Seymour v. Canandaigua & N. FR. Co.*, 25 Barb., N.Y., 284, 301 (1857) (No man [corporation] can grant or convey what he does not own).

(ii) Collateral conflicts with another appeals court's decisions:

Flemming v. South Carolina Elec. Gas Co., 224 F.2d 752, 753 (C.A. 4th Cir. 1955) (A private party acting in accordance with state law, depriving an individual of Amendment XIV protection, is liable); *A.M ex rel JMK. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 586 (3d Cir. 2004); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005) (A supervisor may be personally liable if he or she participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in his subordinates' violations); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1481-1482 (3d Cir. 1990) (A municipality can be held liable if a policymaker's agreeing after the fact to a subordinate's decision to engage in the violation, or if he acquiesced); *Brennan v. Norton*, 350 F.3d 399, 427-28 (3d Cir. 2003) (If the authorized policymakers approve a subordinate's decision and the basis for it,

their ratification would be chargeable to the municipality because their decision is final).

(iii) Collateral conflicts with this court's decisions: *Griffin v. Maryland*, 378 U.S. 130, 135-37 (1964) (Violating Amendment XIV while using State authority is state action); *Texas Pacific R. Co. v. Rigsby*, 241 U.S. 33, at 39 ¶1 (1916) (A disregard of the command of the [a] statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover damages from the party in default is implied); *Texas N. O. R. Co. v. Railway Clerks*, 281 U.S. 548, *570 (1930) citing *Marbury v. Madison*, 1 Cranch 137, 162, 163 (The right is created and the remedy exists); *Hurtado v. California*, 110 U.S. 516, 557 (1884) (The rights of life, liberty and property cannot be impaired or destroyed by the legislative department).

Text of Holy Bible References

Exo. 20.15

Thou shalt not steal.

Gen. 1.26

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.

Gen. 1.27

So God created man in his *own* image ,in the image of God created he him; male and female created he them.

Gen. 2.7

And the LORD God formed man *of* the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul.

Jer. 34.8

This is the word that came unto Jeremiah from the LORD, after that the king Zedekiah had made a covenant with all the people which *were* at Jerusalem, to proclaim liberty unto them . . .

Lam. 3.35-36

To turn aside the right of a man before the face of the most High,
To subvert a man in his cause, the Lord approveth not.