APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF ALABAMA

[Seal]

[Filed February 19, 2021]

1180252

Burt W. Newsome and Newsome Law, LLC v. Clark A. Cooper et al. (Appeal from Jefferson Circuit Court: CV-15-900190).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on February 19, 2021:

Application Overruled. No Opinion. PER CURIAM - Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur. Sellers, J., recuses himself.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on December 18, 2020:

Affirmed. PER CURIAM - Parker, C.J., and Bolin, Shaw, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur. Sellers, J., recuses himself.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's

judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19th day of February, 2021.

s/ Julia Jordan Weller
Clerk, Supreme Court of Alabama

APPENDIX B

IN THE SUPREME COURT OF ALABAMA

[Seal]

[Filed February 19, 2021]

1180302

Burt W. Newsome and Newsome Law, LLC v. Balch & Bingham, LLP, et al. (Appeal from Jefferson Circuit Court: CV-15-900190).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on February 19, 2021:

Application Overruled. No Opinion. PER CURIAM - Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.
Sellers, J., recuses himself.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on December 18, 2020:

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Witness my hand this 19th day of February, 2021.

s/ Julia Jordan Weller
Clerk, Supreme Court of Alabama

APPENDIX C

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

[Filed December 18, 2020]

1180252

Burt W. Newsome and Newsome Law, LLC	)
	)
v.	)
	)
Clark A. Cooper et al.	)

1180302

Burt W. Newsome and Newsome Law, LLC	)
	)
v.	)
	)
Balch & Bingham, LLP, et al.	)

Appeals from Jefferson Circuit Court
(CV-15-900190)

PER CURIAM.

Attorney Burt W. Newsome and his law practice Newsome Law, LLC (hereinafter referred to collectively as "the Newsome plaintiffs"), sued attorney Clark A. Cooper; Cooper's former law firm Balch & Bingham, LLP ("Balch"); John W. Bullock; Claiborne Seier ("Seier"); and Don Gottier (hereinafter referred to collectively as "the defendants") in the Jefferson Circuit Court, alleging that the defendants combined to have Newsome arrested on a false charge with the intent of damaging his reputation and law practice. The trial court ultimately entered judgments in favor of the defendants, while reserving jurisdiction to make a later award of attorney fees and costs under the Alabama Litigation Accountability Act, § 12-19--270 et seq., Ala. Code 1975 ("the ALAA"). After the Newsome plaintiffs appealed the initial judgments against them, the trial court awarded Balch, Bullock, Seier, and Gottier attorney fees and costs under the ALAA. The Newsome plaintiffs then filed another appeal seeking the reversal of those awards. We now affirm the judgments challenged by the Newsome plaintiffs in both appeals.

Facts and Procedural History

On December 19, 2012, Bullock went to his dentist's office in Birmingham to have a crown reset. The dentist's office shared a parking lot with Newsome Law, and Bullock parked his vehicle in a parking space near Newsome's vehicle. As Bullock got out of his vehicle to go in for his appointment, Newsome was leaving his office and approaching his own vehicle.

Approximately 11 months earlier, Newsome had similarly been leaving his office when Alfred Seier ("Alfred") exited a vehicle parked near his and confronted Newsome about collection efforts Newsome was taking against Alfred's wife, who owed money to a bank that Newsome represented. During that confrontation, Alfred produced a handgun, but Newsome was able to escape to his office unharmed. Newsome later filed a criminal complaint against Alfred for menacing, a violation of § 13A-6--23, Ala. Code 1975.[1] Alfred's brother Seier, an attorney, later contacted Newsome and attempted to convince him to drop the menacing charge against Alfred, who had cancer and was in poor health, but Newsome declined to do so.

Newsome states that Bullock's parking and the manner in which Bullock exited his vehicle on December 19 was reminiscent of the incident with Alfred earlier that year. Feeling threatened, Newsome pulled out a handgun as he approached Bullock and their vehicles and ordered Bullock to return to his vehicle until Newsome entered his vehicle and left. Bullock did so. Bullock later contacted law enforcement and swore out a warrant against Newsome for menacing.

On May 2, 2013, Newsome was stopped by the police for speeding. After the police officer discovered

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[1] Section 13A-6-23(a) provides that "[a] person commits the crime of menacing if, by physical action, he intentionally places or attempts to place another person in fear of imminent serious physical injury."

that Newsome had an outstanding warrant for his arrest, Newsome was taken into custody and was transported to the Shelby County jail. Newsome was released later that day.

Two days later, Cooper learned about Newsome's arrest. Like Newsome, Cooper was an attorney who represented banks in creditors' rights actions. Cooper and Newsome, in fact, had several of the same banks as clients, representing them in different matters, depending on the nature and scope of the action. As part of his practice, Cooper periodically e-mailed his banking clients when he learned that another attorney had filed an action on their behalf to ask if there was anything he could do to get more business referred to Balch; Cooper had sent these e-mails to some of his clients after learning of actions that Newsome had filed. Upon learning of Newsome's arrest, Cooper forwarded Newsome's mug shot to a friend who was an executive at IberiaBank, which periodically referred legal matters to both Cooper and Newsome, with a note wondering how Newsome's arrest would affect his law license. That IberiaBank executive subsequently testified that he did not refer any cases to Newsome for the next three weeks until they met and Newsome assured him that the menacing charge would have no effect on his ability to practice law. IberiaBank thereafter resumed referring cases to Newsome.

Newsome's menacing charge was set for a November 12, 2013, trial in the Shelby District Court. During a pretrial conference that morning, the State, with Bullock's consent, offered to continue the trial until April 1, 2014, and to then dismiss the charge at

that time if Newsome had no further arrests and paid the required court costs. The "Dismissal and Release" order ("the D&R order") memorializing the terms of their agreement further provided:

> "[Newsome] does hereby grant a full, complete and absolute Release of all civil and criminal claims stemming directly or indirectly from this case to the State of Alabama ... [and] to any other complainants, witnesses, associations, corporations, groups, organizations or persons in any way related to this matter .... [Newsome] freely makes this release knowingly and voluntarily. In exchange for this release, this case will be either dismissed immediately, or pursuant to conditions noted above."

(Emphasis in original.) The D&R order was signed by Bullock, the assistant district attorney, Newsome, and Newsome's attorney. On April 4, 2014, the district court dismissed the case against Newsome.

On January 14, 2015, the Newsome plaintiffs sued Cooper, Balch, Bullock, and Seier, alleging, as later amended, malicious prosecution, abuse of process, false imprisonment, the tort of outrage, defamation, invasion of privacy, and multiple counts of conspiracy and intentional interference with a business relationship. The gist of their complaint was that Cooper and Seier conspired with Bullock to stage a confrontation and to set Newsome up to be arrested so that Cooper could then take Newsome's clients on behalf of Balch and

Seier could get revenge upon Newsome for filing a menacing charge against Alfred.[2]

On February 13, 2015, Seier moved the trial court to dismiss the Newsome plaintiffs' claims asserted against him, arguing that they had no factual basis and that, in any event, the claims were barred by the release clause in the D&R order because the claims were related to Newsome's menacing case. Six days later, Newsome petitioned the Shelby Circuit Court to expunge the records relating to his menacing charge under § 15-27-1, Ala. Code 1975. Both the State and Bullock filed objections, and, following a hearing, Newsome's petition was denied. Newsome moved the court to reconsider, however, and, on September 10, 2015, the court granted his motion and entered an order ("the expungement order") expunging the records relating to his menacing charge.

While Newsome was pursuing expungement in the Shelby Circuit Court, the Jefferson Circuit Court granted motions to dismiss filed by Seier and Bullock and a summary-judgment motion filed by Cooper and Balch. But after the expungement order was entered by the Shelby Circuit Court, the Newsome plaintiffs moved the Jefferson Circuit Court to reconsider, arguing, among other things, that because the records of Newsome's criminal case had been expunged, nothing from that case -- including the D&R order containing the release clause -- could be produced or relied upon in the Newsome plaintiffs' civil case.

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[2] The Newsome plaintiffs' complaint did not offer a reason for Bullock's participation in the alleged scheme.

See § 15-27--16(a), Ala. Code 1975 (explaining that the contents of an expunged file generally cannot be revealed, used, or disclosed by an individual who knows an expungement order has been issued). In December 2015, the Jefferson Circuit Court granted the Newsome plaintiffs' motion and vacated its judgments in favor of Cooper, Balch, Bullock, and Seier. The Newsome plaintiffs then continued to conduct discovery trying to uncover a link between Cooper, Bullock, and Seier, all of whom denied that a conspiracy existed or that they even knew each other.

Meanwhile, back in the Shelby Circuit Court, Bullock and Seier filed requests to have the expungement order reversed based on Newsome's breach of the release clause in the D&R order. On June 8, 2016, the Shelby Circuit Court granted their requests and reversed the expungement order under § 15-27-17, Ala. Code 1975, explaining that Newsome had obtained the expungement order under false pretenses because he had not, in fact, fulfilled all the terms of the D&R order at the time he sought expungement (this order is hereinafter referred to as "the expungement-reversal order").[3] The Shelby Circuit Court further explained:

> "The movants are further free to utilize all records related to [Newsome's] prosecution, plea and the case's disposition as they may find

[3] Section 15-27-17 provides that, "[u]pon determination by the court that a petition for expungement was filed under false pretenses and was granted, the order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges."

> appropriate and necessary. The expungement statute was enacted to provide a 'shield' to first-time and non-violent offenders. It was not intended to be a 'sword' for those engaged in civil litigation over the same transaction made the basis of their criminal offense, and the court will not construe the statute as such."

Newsome then petitioned the Court of Criminal Appeals to set aside the expungement-reversal order, but, in a four-page order, the Court of Criminal Appeals unanimously denied his request, stating: "We find no abuse of discretion in the trial court's finding that the petition for expungement was filed under false pretenses in contravention of the agreement signed between the parties." (No. CR-15-1223, September 20,2017.) Newsome followed that ruling by petitioning this Court for the same relief; that petition was also denied. (No. 1161155, April 27, 2018.)

The Newsome plaintiffs, meanwhile, continued with discovery in their civil case against the defendants, eventually obtaining the telephone records of Cooper, Bullock, and Seier. Those records indicated that Cooper, Bullock, and Seier had all received calls from telephone number 205-410-1494 on dates surrounding notable events in this case, including the date of Newsome and Bullock's confrontation in the parking lot, the date of Newsome's arrest, the date Cooper sent the e-mail with Newsome's mugshot to an IberiaBank executive, and the date the Newsome plaintiffs filed their complaint initiating the underlying action. Based on some Internet searches, Newsome concluded that the telephone number 205--410-1494 was assigned to

76-year-old Calera resident Don Gottier, and, on June 30, 2017, the Newsome plaintiffs filed an amended complaint naming Gottier as a defendant and asserting that he was the coordinator of the alleged conspiracy that had targeted Newsome. The Newsome plaintiffs also asked the trial court enter a judgment declaring the D&R order void and unenforceable.

Upon being served with the Newsome plaintiffs' complaint, Gottier contacted the Calera Police Department and filed a report indicating that he may be a victim of identity theft because he had been named a defendant in a lawsuit alleging that the telephone number 205-410-1494 was assigned to him, but, he stated, he had never been assigned or operated that telephone number. During the course of its ensuing investigation, the Calera Police Department subpoenaed records from Verizon Wireless, a cellular-telephone provider, and received information indicating that the telephone number 205-410-1494 was not, in fact, a working telephone number but was instead an internal routing number controlled by Verizon Wireless that was used to connect calls originating from outside the caller's home area. A custodian of records for Verizon Wireless subsequently confirmed that information in a deposition when he testified that the telephone number 205-410-1494 had been used as a routing number by Verizon Wireless

since 2007 and that it was not assigned to any individual customer.[4]

Cooper, Balch, Bullock, and Seier thereafter filed new summary-judgment motions with the trial court, and Gottier filed a motion to dismiss. The defendants supported their respective motions with evidence indicating that, other than Cooper and Balch, they did not know each other before the Newsome plaintiffs sued them and that there had been no conspiracy to stage an incident that would result in Newsome's arrest. The trial court held a hearing on those motions, during which it expressed skepticism about the merits of the Newsome plaintiffs' claims, but, before the trial court could issue a ruling, the Newsome plaintiffs moved the trial judge to recuse herself, alleging bias. Following another hearing, the trial court denied the motion to recuse. The Newsome plaintiffs then petitioned this Court for a writ of mandamus directing the trial judge to recuse herself. That petition was denied. (No. 1170844, August 8, 2018.)

On June 15, 2018, the trial court entered judgments in favor of the defendants on all of the Newsome plaintiffs' claims, expressly reserving the right to later enter an award of attorney fees and costs under the ALAA.[5] See SMM Gulf Coast, LLC v. Dade Capital

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[4] The defendants have noted that this also explains why 205-410-1494 is listed in telephone records only as the number originating a call; there is no evidence anybody ever placed a call to 205-410-1494.

[5] Although the judgment entered in favor of Gottier purported to grant his motion to dismiss, it noted that the trial court had

Corp., [Ms. 1170743, June 5, 2020] ___ So. 3d ___, ___ (Ala. 2020) (explaining that a trial court retains jurisdiction to enter a postjudgment award of attorney fees under the ALAA only if it has expressly reserved jurisdiction to do so). The parties then filed briefs and evidence regarding the defendants' motions for attorney fees and costs,which the trial court ultimately granted in the following amounts: $56,283 for Balch; $56,317 for Bullock; $78,341 for Seier; and $1,250 for Gottier. The Newsome plaintiffs appeal both the underlying judgments (case no. 1180252) and the awards entered against them under the ALAA (case no. 1180302).

Analysis

The Newsome plaintiffs make myriad arguments about how the trial court allegedly erred and why the judgments entered in favor of the defendants should be reversed. Ultimately ,however, it is unnecessary for this Court to address all of those arguments. For the reasons explained below, we hold (1) that the trial judge did not exceed her discretion in denying the Newsome plaintiffs' motion seeking her recusal; (2) that Newsome is bound by the release clause in the D&R order; (3) that summary judgment was proper on

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reviewed all the "evidence submitted." When a trial court reviewing a motion to dismiss considers evidence outside the pleadings, the motion is converted into a summary-judgment motion. Lifestar Response of Alabama, Inc. v. Admiral Ins. Co., 17 So. 3d 200, 212-13 (Ala. 2009). Accordingly, we treat the judgment of dismissal entered by the trial court in favor of Gottier, like the other judgments entered on June 15, 2018, as a summary judgment.

all claims asserted by Newsome Law, and (4) that the circumstances of this case support the trial court's award of attorney fees and costs under the ALAA. We pretermit discussion of all other issues raised by the parties.

A. The Newsome Plaintiffs' Seeking the Trial Judge's Recusal

We first consider the Newsome plaintiffs' argument that the trial judge should have recused herself and that her failure to do so requires the reversal of the judgments she has entered.

1. Standard of Review

"A trial judge's ruling on a motion to recuse is reviewed to determine whether the judge exceeded his or her discretion." Ex parte George, 962 So. 2d 789, 791 (Ala. 2006). This Court has further explained that the necessity for recusal will be evaluated in each case based on the totality of the circumstances, id., and that, when an allegation of bias has been made, recusal will be required only "where facts are shown which make it reasonable for members of the public, or a party, or counsel opposed to question the impartiality of the judge." Acromag-Viking v. Blalock, 420 So. 2d 60, 61 (Ala. 1982).

2. Merits of the Newsome Plaintiffs' Recusal Argument

The Newsome plaintiffs argue that the trial judge's impartiality can reasonably be questioned because (1) she and her husband, a state legislator, allegedly received $34,500 in campaign donations from "agents"

having some association with the defendants and (2) the trial judge has made various rulings throughout the course of this case that have gone against the Newsome plaintiffs. We are not convinced by the Newsome plaintiffs' arguments.

In their brief to this Court, the Newsome plaintiffs cite Ex parte Duncan, 638 So. 2d 1332, 1334 (Ala. 1994), and In re Sheffield, 465 So. 2d 350,357 (Ala.1985), for the well established general principle that recusal is appropriate when there is a reasonable basis for questioning a judge's impartiality. But they cite no authority to support their allegations that the trial judge in this case did anything that would reasonably cause one to question her impartiality and thus require her recusal. In contrast,the defendants have cited authority that supports the trial court's denial of the motion to recuse. With regard to the alleged campaign contributions, Cooper and Balch note that one appellate judge has explained how impractical it would be to require judges to recuse themselves in every case in which a party or attorney has supported the judge's campaign because, in Alabama, judges are required to run for reelection and, therefore,

> "situations will arise in which an attorney associated with a specific judge's campaign will have a case come before that judge. If we were to require recusal in such cases, we would be opening Pandora's box leading to untold problems for probate judges, district judges, circuit judges, and appellate judges, all of whom must run for election to their judgeships and all

> of whom have had numerous attorneys associated with their campaigns."

Smith v.Alfa Fin.Corp.,762 So.2d 843,849 (Ala. Civ. App. 1997) (opinion on application for rehearing) (Monroe, J., statement of nonrecusal), reversed on other grounds by Ex parte Alfa Fin. Corp., 762 So. 2d 850 (Ala. 1999). Cooper and Balch further note that in § 12-24-3, Ala. Code 1975, the Alabama Legislature specifically addressed the circumstances in which campaign contributions might require a judge's recusal, but the Newsome plaintiffs have failed to cite or make any argument invoking that statute.[6] And, with regard to the trial court's rulings against the Newsome plaintiffs on various issues raised during the pendency of this case, Bullock notes that this Court has previously held that "[a]dverse rulings during the course of proceedings are not by themselves sufficient to establish bias and prejudice on the part of a judge." Henderson v. G&G Corp., 582 So. 2d 529, 530-31 (Ala. 1991).

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[6] Section 12-24-3 explains that there is a rebuttable presumption that a judge should recuse himself or herself from a case when a party or a party's attorney has made a campaign contribution that represents a significant portion of the judge's fundraising. See Dupre v. Dupre, 233 So. 3d 357, 360 (Ala. Civ. App. 2016) ("By its plain language, § 12–24–3(b)(2) creates a rebuttable presumption that a circuit-court judge should recuse himself or herself when a party, or his or her attorney, contributes 15% or more of the total campaign contributions collected by the circuit-court judge during an election cycle while the party, or his or her attorney, has a case pending before the judge."). The Newsome plaintiffs' brief does not reveal or address the total campaign contributions received by the trial judge in this case.

Turning to the merits of the Newsome plaintiffs' recusal motion, we are not convinced that, under the totality of the circumstances, there is a reasonable basis to question the impartiality of the trial judge. George, 962 So. 2d at 791. Although the Newsome plaintiffs allege that agents of the defendants have given $34,500 to the campaigns of the trial judge and her state-legislator husband, the evidence does not support that allegation. First, the Newsome plaintiffs argue that $29,500 of campaign contributions made by political action committees should be attributed to Balch because Balch or its agents had made contributions to those committees. But Balch's general counsel provided unrefuted testimony that, "once a contribution is made to a political action committee, that political action committee has the authority and discretion as to which candidates it decides to support with any funds contributed."[7]

Next, the Newsome plaintiffs include in their $34,500 calculation a $3,000 donation made by the law firm that employs Alfred's wife as a paralegal. It is borderline absurd, however, to suggest that a campaign donation to the legislator spouse of a trial judge made by the employer of the wife of the brother of one of five defendants would be a basis upon which a person could

[7] We further note that in Startley General Contractors, Inc. v. Water Works Board of Birmingham, 294 So. 3d 742, 758 n.10 (Ala. 2019), this Court reviewed a ruling on a motion to recuse made under 12-24-3 and distinguished between donations to a campaign made by a political action committee and those made by an individual.

reasonably conclude that the trial judge was biased in favor of the defendants.

Finally, the Newsome plaintiffs note that the outside law firm that Balch ultimately retained to represent it and Cooper in this action has also donated $2,000 to the trial judge. Again, however, we do not conclude, and do not believe that any reasonable person would conclude, that this campaign donation is a reasonable basis upon which to question the impartiality of the trial judge. As explained by the special writing in Smith, 762 So. 2d at 849, judges in Alabama are required to campaign for their positions. As part of that process, attorneys will inevitably provide financial support for candidates. Indeed, Newsome acknowledged at the hearing on the motion to recuse that he too has made campaign contributions to judges before whom he practices. Section 12-24-3 provides that there is a rebuttable presumption that a judge should recuse himself or herself from a case when a party or a party's attorney has made a campaign contribution that represents a significant portion of the judge's fundraising, but the Newsome plaintiffs have not cited this statute or demonstrated that any of the campaign donations they have identified were of an amount sufficient to implicate § 12-24-3.

We also expressly reject the Newsome plaintiffs' argument that the fact that the trial judge has ruled against them on various issues throughout the course of this litigation demonstrates a bias against them. Although the trial judge has ruled against the Newsome plaintiffs on some issues, she has also issued rulings favorable to them. Notably, in December 2015,

she vacated judgments she had previously issued disposing of the Newsome plaintiffs' claims and allowed them to thereafter conduct extensive discovery. Considering the totality of the facts and circumstances, no reasonable person could consider the trial judge's rulings and conclude that they were the product of bias and prejudice. The trial judge did not exceed her discretion by denying the Newsome plaintiffs' motion to recuse.

B. The D&R Order

We next consider the Newsome plaintiffs' arguments concerning the D&R order. They argue, first, that it was reversible error for the trial court to consider the D&R order or any other materials related to Newsome's menacing case, because, they allege, the expungement-reversal order was "counterfeit" and the expungement order was therefore still in effect and barred consideration of the D&R order. They additionally argue that, even if the trial court could consider the D&R order, the release clause in that order is unenforceable and that the trial court therefore erred to the extent it concluded that the release clause barred the Newsome plaintiffs from pursuing civil claims against the defendants stemming from Newsome's menacing arrest. Neither of those arguments has merit.

1. Standard of Review

The Newsome plaintiffs are essentially arguing that the D&R order is inadmissible as evidence in the underlying action. This Court has explained that we will reverse a trial court's decision to consider evidence

submitted in conjunction with a summary-judgment motion only if it is established that the trial court exceeded its discretion in doing so. Swanstrom v. Teledyne Cont'l Motors, Inc., 43 So. 3d 564, 574 (Ala.2009). To the extent the Newsome plaintiffs argue that the trial court erred in holding that the release clause in the D&R order bars their claims, we review that issue de novo. See McDonald v. H&S Homes, L.L.C., 853 So. 2d 920, 923 (Ala. 2003) (explaining that the interpretation of an unambiguous provision is a question of law, which we review de novo).

2. The Validity of the Expungement-Reversal Order

As explained in the statement of facts above, after Seier moved the trial court to dismiss the Newsome plaintiffs' claims based on the release clause in the D&R order, Newsome petitioned the Shelby Circuit Court to expunge the records of his menacing charge. Once Newsome successfully obtained the expungement order, the Newsome plaintiffs argued to the trial court that § 15-27-16(a), Ala. Code 1975, barred the defendants from introducing the D&R order into evidence or from relying upon its release clause. But the Shelby Circuit Court later reversed the expungement order after concluding that Newsome had obtained the expungement order under false pretenses. That prompted the trial court to allow the defendants to submit evidence related to Newsome's menacing charge -- including the D&R order. And the trial court relied upon the D&R order when entering its

judgments in favor of the defendants.[8] Indeed, in granting Bullock's summary-judgment motion, the trial court expressly held that "Newsome executed a valid and binding release."

The Newsome plaintiffs nonetheless argue that it was reversible error for the trial court to consider the D&R order because, they allege, the expungement-reversal order was "counterfeit" and the expungement order -- and the concomitant prohibition on using any records related to Newsome's menacing charge -- was therefore still in effect. Although the Newsome plaintiffs repeatedly use the term "counterfeit" to describe the expungement-reversal order, they are not alleging that the judge's signature on that order was forged; rather, they dispute the conclusions set forth in the order, challenge the court's jurisdiction to enter the order, and argue that the order has no effect because it was not entered into the State Judicial Information System ("SJIS"). Newsome previously made these arguments when he filed petitions with the Court of Criminal Appeals and this Court.[9] Those petitions were

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[8] We note that, although Bullock was the only defendant who signed the D&R order, the language of its release clause is broad enough to encompass claims asserted against "organizations or persons in any way related to the matter." See discussion, infra.

[9] Section 15-27-5(c), Ala. Code 1975, provides that the ruling of a court on a request for expungement of a criminal record "shall be subject to certiorari review." In Bell v. State, 217 So. 3d 962, 963 (Ala. Crim. App. 2016), the Court of Criminal Appeals explained that, because Rule 39,Ala.R. App. P., only contemplates certiorari petitions filed with the Supreme Court seeking review of a decision made by one of the intermediate appellate courts, certiorari petitions seeking review of a ruling on a request for expungement

denied. The arguments presented in those petitions are no more persuasive this time around.

As the Court of Criminal Appeals explained in its order denying Newsome's petition, the Shelby Circuit Court had jurisdiction to consider whether Newsome filed his petition for expungement under false pretenses pursuant to § 15-27-17, which provides that an order of expungement "shall be reversed" if the court determines that the petition for expungement was filed under false pretenses. The Court of Criminal Appeals noted that, because § 15-27-17 provides no time frame in which a motion to set aside an expungement order must be filed or in which a ruling on such a motion must be made, the court had jurisdiction to reverse the expungement order notwithstanding the fact that it did so more than 30 days after that order was entered. In light of the evidence, the Court of Criminal Appeals further concluded that it could "find no abuse of discretion in the trial court's finding that the petition for expungement was filed under false pretenses in contravention of the agreement signed by the parties."

After failing to obtain relief from the Court of Criminal Appeals, Newsome petitioned this Court for a writ of certiorari or, in the alternative, a writ of mandamus, directing the Shelby Circuit Court to vacate its order reversing the expungement order. In an April 27, 2018, order, we denied Newsome's petition

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are governed by Rule 21(c), Ala. R. App. P., which applies to extraordinary writs other than writs of mandamus and prohibition.

but directed the Shelby Circuit Court to enter the expungement-reversal order into the SJIS. The Newsome plaintiffs state that, despite this Court's April 2018 order, the Shelby Circuit Court still has not entered the expungement-reversal order into the SJIS. Accordingly, they repeat their argument that the expungement -reversal order is invalid because it is not in the SJIS.

We reject that argument. When this Court directed the Shelby Circuit Court to enter the expungement-reversal order into the SJIS in April 2018, we implicitly held that that order was valid and that the evidence supported the court's exercising its discretion to reverse the expungement order. We expressly confirm that now. The Newsome plaintiffs' argument that the expungement-reversal order is "counterfeit" and that the trial court therefore erred by allowing the defendants to introduce the D&R order in this action is without merit.

3. The Validity of the Release Clause in the D&R Order

The Newsome plaintiffs argue that, even if the trial court could consider the D&R order, the release clause in that order is unenforceable because (1) the D&R order violates Alabama law against compounding; (2) any legal effect the D&R order might have had ended once Newsome's menacing case was officially dismissed five months later; (3) the release clause constitutes a punishment not permitted by law; (4) the release clause was obtained by fraud; and (5) the release clause is invalid under federal law. We consider these arguments in turn.

a. Whether the D&R order violates Alabama law prohibiting compounding

The Newsome plaintiffs first argue that, because the D&R order provided that Newsome's menacing case would be dismissed if, among other things, he released "all civil and criminal claims stemming directly or indirectly from this case," the D&R order violates § 13A-10-7(a), Ala. Code 1975, which provides that "[a] person commits the crime of compounding if he gives or offers to give, or accepts or agrees to accept, any pecuniary benefit or other thing of value in consideration for ... [re]efraining from seeking prosecution of a crime." The Newsome plaintiffs fail to acknowledge, however, that this Court expressly held that "[r]elease-dismissal agreements are not invalid per se" in Gorman v. Wood, 663 So.2d 921, 922 (Ala.1995), another case in which an individual sought to file a lawsuit after signing a release in exchange for having his criminal charges dismissed. The Gorman Court explained:

> "We have studied the general release in this case. The plaintiff admits that he signed the release and that [his criminal cases] ... were dismissed when the release was signed. When the plaintiff signed the release, he was represented by an attorney, who had drafted the release and who notarized the plaintiff's signature. The plaintiff does not allege that the release was obtained by fraud. The release is not

> ambiguous. Therefore, the plain and clear meaning of the terms of the release document must be given effect."

Id.

Although Gorman did not directly address § 13A-10-7, the United States District Court for the Middle District of Alabama addressed that statute in Penn v. City of Montgomery, 273 F. Supp. 2d 1229, 1237 (M.D. Ala. 2003), and concluded that a prosecutor's decision to dismiss pending criminal charges did not constitute "refraining from seeking prosecution of a crime" as that term is used in § 13A-10-7(a) and that release dismissal agreements simply did not constitute" the kind of conduct which the Alabama Code has said constitutes the crime of compounding." The Penn court further explained that this Court had effectively held as much in Gorman though it did not expressly state its holding in those terms. 273 F. Supp. 2d at 1238.[10] The Newsome plaintiffs' argument -- that the release clause in the D&R order has no effect because the order was void under § 13A-10-7 -- is without merit.

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[10] The United States Court of Appeals for the Eleventh Circuit affirmed the holding of Penn in Penn v. City of Montgomery, 381 F.3d 1059, 1062-63 (11th Cir. 2004), similarly concluding that § 13A-10-7 does not bar release-dismissal agreements and noting that this Court had implicitly recognized that fact in Gorman.

b. Whether the release clause was no longer binding after Newsome's menacing case was dismissed

The Newsome plaintiffs next argue that the D&R order was essentially an interlocutory order that became unenforceable after a final judgment was entered five months later dismissing Newsome's criminal case. In support of this argument, they cite multiple family-law cases for the proposition that a settlement agreement that is merged into a final judgment can no longer be enforced as a contract. See, e.g., Turenne v. Turenne, 884 So. 2d 844, 849 (Ala. 2003) (explaining that the appellant had "no claim that can be enforced on a contract theory ... because the settlement agreement was merged into the divorce judgment"). Thus, they argue, the defendants cannot now enforce the release clause in the D&R order because the D&R order was subsumed by the final judgment dismissing Newsome's case.

The Newsome plaintiffs misread Turenne and the other cases upon which they rely; to the extent those family-law cases apply, they do not support the conclusion that the D&R order ceased being valid when Newsome's case was dismissed. In Turenne, this Court quoted the following passage from Killen v. Akin, 519 So. 2d 926, 930 (Ala. 1988):

> " 'The question whether a separation agreement or a property settlement is merged in the decree or survives as an independent agreement depends upon the intention of the parties and the court ....' East v. East, 395 So. 2d 78 (Ala. Civ. App. 1980), cert. denied, 395 So. 2d

> 82 (Ala. 1981). If there is an agreement between the parties and it is not merged or superseded by the judgment of the court, it remains a contract between the parties and may be enforced as any other contract."

Thus, a settlement agreement is not always subsumed within the final judgment; rather, it depends upon "the intention of the parties and the court." 519 So. 2d at 930. It is clear here that the parties to the D&R order intended for it to survive as an independent agreement, most notably because of the broad release clause contained in the order. It would be irrational to include a release clause that would no longer have any effect once Newsome received the benefit of his bargain and the criminal charge was dismissed, and we will not read the D&R order in a manner that would be contrary to its terms and allow such a result. The Newsome plaintiffs are entitled to no relief on the basis of this argument.

c. Whether the release clause imposed a punishment not authorized by law

The Newsome plaintiffs next argue that the release clause should not be enforced because, they argue, it constitutes a punishment not permitted by Alabama law. In support of this argument, they cite § 15-18-1(a), Ala. Code 1975, which provides that "[t]he only legal punishments, besides removal from office and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary, which includes hard labor for the state, and death." Notably, the Newsome plaintiffs state, requiring a defendant to release legal

claims he or she may have is not a sentencing option under § 15-18-1(a).

As explained above in our discussion of § 13A-10-7 and Gorman, release-dismissal agreements are permitted by Alabama law. The Newsome plaintiffs fail to recognize that a party voluntarily releasing legal claims he or she may have in return for the dismissal of criminal charges is not receiving a sentence of punishment that must comply with § 15-18-1(a); rather, that party is making a decision to release those claims so as to avoid entirely the possibility of a sentence including any of the punishment contemplated by § 15-18-1(a). This argument therefore fails.

d. Whether the release clause is void because the D&R order was obtained through fraud

In Gorman, this Court noted that there was no allegation in that case that the release-dismissal agreement at issue had been obtained by fraud. 663 So.2d at 922. In contrast, the Newsome plaintiffs have alleged that the D&R order was the product of fraud, and they argue that "[a] release obtained by fraud is void." Taylor v. Dorough, 547 So. 2d 536, 540 (Ala.1989). They specifically point to their allegation that the defendants concealed the "fact" that Newsome's parking-lot confrontation with Bullock was planned and staged by them to set Newsome up for a false charge of menacing. They further represent that Newsome never would have signed the D&R order and agreed to release any potential claims if he had known of the defendants' alleged conspiracy.

Although it is true that a release obtained by fraud is void, the Newsome plaintiffs' argument fails because, despite the extensive discovery that has been conducted, they have not identified substantial evidence supporting their allegation that the D&R order was obtained through fraud. See, e.g., Anderson v. Amberson, 905 So. 2d 811, 816 (Ala. Civ. App. 2004) (affirming the summary judgment entered on one of the plaintiff's claims because the plaintiff "did not present substantial evidence supporting his claim of fraud in the inducement pertaining to the release"). The defendants have consistently maintained throughout this litigation that there was no conspiracy and that, apart from Cooper and Balch, they did not even know one another before the Newsome plaintiffs named them as defendants in this action; the evidence they submitted with their summary-judgment motions supports this position.[11] The Newsome plaintiffs' only counter has been to claim that the defendants are all linked by Gottier and the telephone number 205-410-1494. But the undisputed evidence has established that the telephone number 205-410-1494 is not a working telephone number and that it is not assigned to or operated by Gottier. Simply put, no fair-minded person in the exercise of impartial judgment could reasonably infer -- based on the

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[11] The Newsome plaintiffs assert that the defendants have "simply ignored [their] claim for fraudulent concealment and have done nothing to rebut [the Newsome plaintiffs'] prima facie case that the release is not valid." Newsome plaintiffs' brief, p. 78. This assertion is disingenuous. The record is replete with instances of the defendants claiming that there was no conspiracy that was fraudulently concealed from Newsome.

evidence before the trial court as opposed to mere speculation and conjecture -- that the defendants conspired to stage an altercation that would result in Newsome's arrest. See § 12-21-12, Ala. Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989) (defining substantial evidence). Because the Newsome plaintiffs have not adduced substantial evidence to support their allegation that the D&R order containing the release was the product of fraud, we will not conclude that the D&R order is unenforceable on that basis.

e. Whether the release clause is void under federal law

Finally, the Newsome plaintiffs argue that this Court should apply the decision of the Supreme Court of the United States in Town of Newton v. Rumery, 480 U.S. 386 (1987), and conclude on that authority that the release clause in the D&R order is invalid. In Rumery, the plaintiff, who had been arrested for tampering with a witness, executed a release-dismissal agreement in which he agreed to release any claims against the town employing the police officers who had arrested him, town officials, and his victim in exchange for the dismissal of the criminal charges he faced. In spite of that agreement, the plaintiff thereafter sued the town and certain town officials alleging civil-rights violations under 42 U.S.C. § 1983, but his case was dismissed after the federal district court concluded that his decision to execute the release had been voluntary, deliberate, and informed. The United States Court of Appeals for the First Circuit reversed the district court's judgment, however, adopting a per se rule

invalidating release-dismissal agreements. The case was then appealed to the United States Supreme Court, which reversed the Court of Appeals' judgment, explaining that, "although we agree that in some cases these agreements may infringe important interests of the criminal defendant and of society as a whole, we do not believe that the mere possibility of harm to these interests calls for a per se rule." 480 U.S. at 392. The Court then considered (1) whether the release-dismissal agreement was voluntary; (2) whether there was evidence of prosecutorial misconduct; and (3) whether enforcement of the agreement would adversely affect the relevant public interests. Concluding that all of those factors weighed in favor of enforcing the agreement, the Court ruled that the release-dismissal agreement was valid and that it required the dismissal of the plaintiff's § 1983 action.

It is not clear why the Newsome plaintiffs believe it would benefit their position if this Court adopts the holding in Rumery. Like the plaintiff in Rumery, Newsome, after receiving advice from counsel, executed an agreement releasing his claims against the local municipality, government officials, and the victim of his crime. The D&R order indicates on its face that Newsome voluntarily agreed to its terms. Moreover, there is no evidence, or even an allegation, of prosecutorial misconduct, and enforcing the D&R order according to its terms would not adversely affect any public interest. In sum, nothing in Rumery supports the Newsome plaintiffs' argument that the D&R order should not be enforced.

4. The Effect of the Release Clause in the D&R Order

Having established that the release clause in the D&R order is valid and enforceable, we must next determine its effect. By executing the D&R order in his menacing case, Newsome granted "a full, complete and absolute Release of all civil and criminal claims stemming directly or indirectly from this case ... to any other complainants, witnesses, associations, corporations, groups, organizations or persons in any way related to this matter." (Emphasis in original.) The theory of the Newsome plaintiffs' case is that the defendants combined to stage the parking-lot confrontation between Newsome and Bullock so that Newsome would be arrested on a false charge. All the claims asserted by Newsome against the defendants -- malicious prosecution, abuse of process, false imprisonment, the tort of outrage, defamation, invasion of privacy, conspiracy, and intentional interference with a business relationship -- stem at least indirectly from his menacing case and are accordingly within the scope of the release clause.

We further note that, although Bullock was the only one of the defendants to sign the D&R order, the language of its release clause is broad enough to encompass claims asserted against "organizations or persons in any way related to this matter." See also Conley v. Harry J. Whelchel Co., 410 So. 2d 14, 15 (Ala. 1982) (explaining that the broad and unambiguous terms of a release barred the plaintiffs from pursuing claims against defendants who were not parties to the agreement containing the release). Again, the entire

theory of the Newsome plaintiffs' case is that the defendants were all involved in the alleged conspiracy leading to his menacing arrest. The Newsome plaintiffs have not claimed that the defendants are not "related to" Newsome's menacing case. And they could not credibly do so -- their alleged combined involvement is the essence of this lawsuit. In its orders entering summary judgments for the defendants, the trial court cited the release clause only as a basis for the judgment entered in favor of Bullock. Nevertheless, "we will affirm a summary judgment if that judgment is proper for any reason supported by the record, even if the basis for our affirmance was not the basis of the decision below." DeFriece v. McCorquodale, 998 So. 2d 465, 470 (Ala. 2008). The release clause in the D&R order barred Newsome from pursuing any civil claims "stemming directly or indirectly" from his menacing case against any "complainants, ... organizations or persons in any way related to [that] matter." This includes all the claims Newsome has individually asserted against Cooper, Balch, Bullock, Seier, and Gottier, and the judgments entered in favor of the defendants on those claims were therefore proper.

C. The Claims Asserted by Newsome Law

The materials filed by the Newsome plaintiffs throughout this action generally treat the claims they have asserted as collective claims held by both Newsome and Newsome Law. Nevertheless, it is apparent that the majority of those claims are personally held only by Newsome individually. The Newsome plaintiffs have cited no authority to this Court, and the facts in the record would not support,

any claim by Newsome Law alleging malicious prosecution, abuse of process, false imprisonment, the tort of outrage, defamation, or invasion of privacy. But the Newsome plaintiffs' complaint, as amended, does allege colorable intentional-interference-with-a-business-relationship and conspiracy claims against Cooper and Balch that might be held by Newsome Law. We therefore review de novo the summary judgment entered on those claims. SE Prop. Holdings, LLC v. Bank of Franklin 280 So. 3d 1047, 1051 (Ala. 2019) ("This Court applies a de novo standard of review to a summary judgment.").

Newsome Law's intentional-interference claims are based on e-mails that Cooper sent to their shared banking clients seeking to obtain more legal work from those clients for Cooper and Balch. In White Sands Group, L.L.C. v. PRS II, LLC, 32 So. 3d 5, 14 (Ala. 2009), this Court clarified that the tort of intentional interference with a business relationship includes the following elements: "(1) the existence of a protectible business relationship; (2) of which the defendant knew; (3) to which the defendant was a stranger; (4) with which the defendant intentionally interfered; and (5) damage." But, even if these elements are met, a defendant can avoid liability by proving the affirmative defense of justification. 32 So. 3d at 13. In entering the summary judgment for Cooper and Balch, the trial court concluded that they had proven justification as a matter of law:

> "[The] claims for intentional interference against Cooper fail, first and foremost, because of the competitor's privilege -- the affirmative

> defense known as justification. Both Newsome and Cooper are banking lawyers and Cooper was justified in competing for the business of their ongoing clients, IberiaBank, Renasant Bank, and Bryant Bank. See Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc., 611 So. 2d 238, 247 (Ala. 1992) ('[B]ona fide business competition is a justification for intentional interference with a competitor's business.'); Bridgeway Communications, Inc. v. Trio Broadcasting, Inc., 562 So. 2d 222, 223 (Ala. 1990) (holding that legitimate economic motives and bona fide business competition qualify as justification for intentional interference with a competitor's business). Cooper was a competitor of Newsome's, represented the same banks as Newsome, and was, thus, allowed to contact those clients. Justification is a complete defense to an intentional interference claim."

The Newsome plaintiffs argue that the trial court erred because justification is a question for the jury and, in any event, does not apply when the defendant has acted improperly. See White Sands Grp., 32 So. 3d at 18-19 (explaining that "[j]ustification is generally a jury question" and that the nature of the defendant's conduct is paramount and noting that, although competitors are not necessarily expected to be gentlemen, there is no privilege when devious and improper means have been used). The Newsome plaintiffs state that Cooper's actions were outside the bounds of lawful competition; we disagree. First, as already explained, the Newsome plaintiffs have produced nothing more than speculation to support

their theory that Cooper was part of a conspiracy involving Bullock, Seier, and Gottier. Second, although the Newsome plaintiffs state that Cooper's e-mails to their shared banking clients cannot be considered lawful competition because, the Newsome plaintiffs allege, such solicitations are prohibited by the Alabama Rules of Professional Conduct, they are simply wrong in this regard. Solicitations made to current clients are not barred by Rule 7.3, Ala. R. Prof. Cond., which regulates the solicitation of "prospective clients" but by its terms exempts solicitations to parties with whom an attorney has a "current or prior professional relationship." See also Ala. State Bar Ethics Op. No. 2006-01, June 21, 2006 ("Current and former clients are ... excluded from the prohibition against direct solicitation. Due to their previous or ongoing interaction with the attorney, current or former clients will have a sufficient basis upon which to judge whether to continue or reactivate a professional relationship with a particular attorney."). Moreover, although Cooper forwarded news of Newsome's arrest and his mug shot to a friend who was an executive at one of their shared banking clients, he did not misrepresent any facts related to Newsome's arrest, and we do not consider this to be the sort of devious and improper act that would defeat a justification defense. See White Sands Grp., 32 So. 3d at 19-20 (describing acts of misrepresentation and concealment that have defeated justification defenses in other actions).

Finally, by indicating that justification is generally a jury question, White Sands Group implicitly recognized that a summary judgment may nonetheless

be appropriate in instances where the party asserting that affirmative defense carries its burden. 32 So. 3d at 20 (concluding that the defendant "failed to carry its burden of showing that it is entitled to a judgment as a matter of law on its affirmative defense of justification"). This is such a case. The Newsome plaintiffs have not put forth substantial evidence indicating that Cooper acted improperly, and the trial court therefore correctly held that the asserted intentional-interference-with-business-relations claims should not be submitted to the jury.[12] And because Cooper and Balch were entitled to a judgment as a matter of law on Newsome Law's intentional-interference claims, they were also entitled to a judgment as a matter of law on Newsome Law's conspiracy claims. See Alabama Psych. Servs., P.C. v. Center for Eating Disorders, L.L.C., 148 So. 3d 708, 715 (Ala. 2014) (explaining that conspiracy is not an independent cause of action and that, because "[the plaintiff] did not prove its underlying cause of action (intentional interference with business relations), [the defendants] also were entitled to a [judgment as a matter of law] as to [the plaintiff's] conspiracy claim").

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[12] To the extent Newsome may have personally asserted intentional-interference claims against Cooper and Balch based on e-mails Cooper sent to their shared clients that did not reference Newsome's menacing arrest, summary judgment was properly entered in favor of Cooper and Balch on the basis of justification even if those claims were not covered by the release clause in the D&R order.

D. The ALAA Awards

In accordance with the ALAA, the trial court awarded attorney fees and costs to the defendants in the following amounts: $56,283 for Balch; $56,317 for Bullock; $78,341 for Seier; and $1,250 for Gottier. The Newsome plaintiffs argue that those awards should be reversed because, they argue, "the trial court's erroneous reliance on the counterfeit [expungement-reversal] order infected its ALAA findings and [the Newsome plaintiffs'] legal arguments regarding the 'release' were made in good faith." Newsome plaintiffs' brief, p. 91. For the reasons that follow, the awards entered by the trial court are affirmed.

Section 12-19-272(a), Ala. Code 1975, provides that a trial court "shall" award reasonable attorney fees and costs when an attorney or party "has brought a civil action, or asserted a claim therein, ... that a court determines to be without substantial justification." "[W]ithout substantial justification" means that the action "is frivolous, groundless in fact or in law, or vexatious, or interposed for any improper purpose, including without limitation, to cause unnecessary delay or needless increase in the cost of litigation, as determined by the court." § 12-19-271(1), Ala. Code 1975. This Court has stated that "[t]he standard of review for an award of attorney fees under the ALAA depends upon the basis for the trial court's determination for the award." McDorman v. Moseley, [Ms. 1190819, September 18, 2020] ___ So. 3d ___, ___ (Ala. 2020). We further explained:

> "If a trial court finds that a claim or defense is without substantial justification because it is

> groundless in law, that determination will be reviewed de novo, without a presumption of correctness. Pacific Enters. Oil Co. (USA) v. Howell Petroleum Corp., 614 So. 2d 409 (Ala. 1993). If, however, a trial court finds that a claim or defense is without substantial justification using terms or phrases such as 'frivolous,' 'groundless in fact,' 'vexatious,' or 'interposed for any improper purpose,' that determination will not be disturbed on appeal unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. Id."

Moseley, ___ So. 3d at ___. The trial court expressly stated in its order awarding Balch, Bullock, Seier, and Gottier attorney fees and costs that the Newsome plaintiffs' "claims were without substantial justification because they were frivolous, groundless in fact, vexatious, or were interposed for an improper purpose of harassment, delay, or abusing discovery." Accordingly, we will reverse the awards made by the trial court only if the Newsome plaintiffs show that those awards were "clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence." Id.

The Newsome plaintiffs argue that the awards entered under the ALAA must be reversed because, they say, the trial court erred by giving effect to the expungement-reversal order and because, they say, their arguments that the release was invalid were made in good faith. We have already explained above that the trial court did not err by relying upon the

expungement-reversal order. Indeed, both the Court of Criminal Appeals and this Court denied the petitions that Newsome brought litigating this same point in September 2017 and April 2018, respectively, and the orders denying those petitions should have put the Newsome plaintiffs on notice that their position lacked merit. Nevertheless, the Newsome plaintiffs continue to ignore those orders and maintain that the expungement-reversal order was "counterfeit." It was not.

The Newsome plaintiffs also state that their arguments that the release clause in the D&R order was invalid were made in good faith and that the trial court's judgments should be reversed to the extent that court held otherwise. We disagree. Newsome is an attorney, and he executed the one-page D&R order containing the release clause after consulting with counsel. That release clause is unambiguous. Yet, instead of abiding by the clear terms of the release clause, Newsome sought to suppress the D&R order using the expungement statutes. As the trial court explained:

> "Newsome exhibited bad faith in attempting to have his Shelby County arrest (the very arrest that resulted in his mug shot being taken and began the debacle of this lawsuit) expunged with the stated intent of using that expungement as an offensive weapon against [the] defendants in this lawsuit. The court takes judicial notice of Newsome's misrepresentation to the Circuit Court of Shelby County, whereby he claimed to be in compliance with all terms of his deferred

> prosecution agreement, including the release of all related civil claims. The court takes further judicial notice of the Shelby County court's finding that Newsome made a 'false representation' regarding his claims in this lawsuit constituting 'false pretenses' under Alabama law. This finding was affirmed by the Alabama Court of [Criminal] Appeals, and the Alabama Supreme Court denied Newsome's petition for certiorari review. [The Newsome] plaintiffs' attempt to unlawfully use Alabama's expungement statute for the stated purposes of attacking [the] defendants in this lawsuit is further evidence of [the Newsome] plaintiffs' bad faith."

The Newsome plaintiffs cannot maintain that their arguments regarding the release clause were made in good faith.

Moreover, although the Newsome plaintiffs focus their arguments challenging the awards made under the ALAA on the expungement-reversal order and the release clause, the trial court explained that it was making those awards not just because of the Newsome plaintiffs' questionable actions attempting to suppress the D&R order, but because <u>their entire lawsuit was groundless in fact</u>:

> "Although the court first granted [the] defendants summary judgment early on in this case, [the Newsome] plaintiffs asked for further opportunity to prove their claims. The court granted them that opportunity[;] however, [the Newsome] plaintiffs have provided no further

credible evidence after conducting extensive discovery than they had in 2015 when they filed this action. Defendants continuously contended [the Newsome] plaintiffs' claims were fabricated, outrageous, and entirely unsupported.

"....

"Despite [the] defendants' repeated assertions, including sworn testimony, that they never knew each other before the filing of this lawsuit, [the Newsome] plaintiffs refused to voluntarily dismiss their conspiracy-related claims. Further, during the course of additional discovery, [the Newsome] plaintiffs produced no admissible evidence of any kind supporting their claims that these defendants knew each other and conspired to commit any underlying act. [The Newsome] plaintiffs could have dismissed the amended conspiracy claims alleged against Cooper, Balch, and Gottier once it learned from Verizon that the telephone number that [the Newsome] plaintiffs thought was their lynchpin was only a routing number. However, they did not.

"... Instead of reducing or dismissing invalid claims and dismissing some or all of [the] defendants, [the Newsome] plaintiffs ignored contrary evidence and made no effort at dismissal or reduction. Rather, [the Newsome] plaintiffs continued to add invalid claims and a new party, Gottier, in the face of clear evidence that their claims were frivolous."

Considering the facts of the case, we agree with the trial court that the ALAA awards are supported by the evidence and appropriate under the circumstances. Those awards are therefore affirmed.

Conclusion

The Newsome plaintiffs sued the defendants asserting various claims based on their allegation that the defendants combined together to have Newsome arrested on a false menacing charge to damage his reputation and law practice. But the Newsome plaintiffs failed to produce substantial evidence supporting their claims even after conducting extensive discovery; the trial court therefore entered summary judgments in favor of the defendants. The trial court further awarded attorney fees and costs because the Newsome plaintiffs had subjected the defendants to almost three and a half years of litigation even though the asserted claims were without substantial justification. For the reasons explained herein, the summary judgments entered by the trial court and its awards of attorney fees are affirmed.

1180252 -- AFFIRMED.

1180302 -- AFFIRMED.

Parker, C.J., and Bolin, Shaw, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., recuses himself.

APPENDIX D

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER ON MOTION TO DISMISS OF DON GOTTIER

The Court has reviewed and understands all motions, the law, briefs provided, evidence submitted and has heard oral arguments when all parties were present and argued their respective positions. The Court hereby finds as follows:

Defendant Don Gottier is entitled to a judgment. It is therefore ORDERED, ADJUDGED and DECREED that Defendant Don Gottier's Motion to Dismiss is hereby granted and all claims asserted against Don Gottier are dismissed with prejudice. Costs of court incurred are taxed to the Plaintiffs.

The Court will accept a motion pursuant to the Alabama Litigation Accountability Act from Defendant Gottier within fourteen days from the date of the entry of this Order. Plaintiff will have seven days thereafter to file any response. Upon a review of these filings, the Court will determine if a hearing and oral argument is appropriate.

DONE this 15th day of June, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX D

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER ON MOTION FOR SUMMARY JUDGMENT BY JOHN F. BULLOCK

This matter came before the Court on Defendant John F. Bullock's Motion for Summary Judgment. The parties were afforded an opportunity to file responses and replies as appropriate and Defendant Bullock joined in the various motions, responses, and replies of the co-defendants. The parties and their attorneys

appeared for hearing on the motions, responses, and replies pending before the Court. Upon due consideration of the filings, the arguments, and the evidence, the Court hereby finds as follows:

FACTUAL BACKGROUND

1. The material facts of this case are not in dispute and Defendant Bullock is entitled to judgment on Plaintiffs' claims as a matter of law.

2. Defendant Bullock was present in a parking area shared by his Dentist and Plaintiffs' law firm on the morning of December 19, 2012.

3. Defendant Bullock exited his vehicle and Plaintiff Newsome approached Defendant Bullock while holding a firearm in his hand.

4. Plaintiff Newsome, while holding a firearm in his hand, told Defendant Bullock to return to his vehicle and Defendant Bullock complied.

5. Defendant Bullock filed a police report and complaint for menacing based on this incident.

6. A warrant was issued by a Shelby County Magistrate for Plaintiff Newsome's arrest and that warrant was executed on Plaintiff Newsome during a traffic stop on May 4, 2013.

7. On the date of the trial of the menacing case an agreement was reached in which the Plaintiff Newsome agreed to have no further contact with Mr. Bullock, to have no further arrests, to pay court costs, and to release various individuals and entities from civil liability stemming

directly or indirectly from that case, including the complainant and any witness.

8. Plaintiff Newsome, his attorney in the criminal matter, an attorney for the Shelby County District Attorney's office, and Defendant Bullock, the complaining witness in the criminal case, signed the agreement.

9. At the time of signing the release agreement, Plaintiff Newsome had knowledge of a prior incident in which he was menaced by a non-party, Albert Seier, and had knowledge that Defendant Cooper had sent an email mugshot of Plaintiff Newsome's arrest to one of Plaintiffs' clients.

10. Mr. Newsome's criminal case was later dismissed pursuant to the terms of the agreement.

11. The record reflects that no Defendant in this action knew or had spoken to one another prior to being sued by the Plaintiffs in this matter and, of relevance, during the time periods of the alleged conspiracy.

12. Plaintiffs have not submitted substantial evidence from which a reasonable juror could conclude that the Defendants knew or spoke to one another prior to the filing of this action and during the relevant time periods as alleged by the Plaintiffs.

Based on the undisputed, material evidence:

a. Probable cause existed for Defendant Bullocks' filing of a charge of menacing in the Shelby County District Court.

b. Plaintiff Newsome executed a valid and binding release.

c. Plaintiffs have not presented a prima facie case on their claims for malicious prosecution, abuse of process, false imprisonment, Outrage or Intentional Infliction of Emotional Distress, Conspiracy, Fraud, Misrepresentation, and Invasion of Privacy.

d. Plaintiffs have not submitted substantial evidence to dispute this evidence and cannot rely on mere allegations and conjecture to create a material dispute.

Pursuant to the requirements of the Alabama Litigation Accountability Act the Court finds that this action was filed by Plaintiffs and prosecuted by their attorneys without substantial justification. This finding is based on the following statutory and non-statutory factors:

a. Plaintiff Newsome is a licensed and practicing attorney in the State of Alabama.

b. Plaintiff Newsome knew or should have known that the filing of this action was in direct violation of a valid release he signed in favor of Defendant John Bullock.

c. Further, Plaintiff Newsome and his attorneys by virtue of their position as legal professionals knew or should have known that this case was filed without substantial justification in that there has not been a dispute of fact from which a reasonable person could infer that Defendant Bullock was liable for the charges asserted against him.

d. It is also apparent from the record that Plaintiffs and their attorneys continued to prosecute this action, through the filing of superfluous and voluminous motions, the taking of numerous lengthy depositions, and the issuing of substantial numbers of subpoenas despite clear, uncontroverted evidence of the failures of Plaintiffs' claims against Defendant Bullock. The cumbersome nature of the Plaintiffs' discovery in this case, the fact that it failed to yield evidence supporting their claims, and the fact that it was undertaken despite knowledge of the failings in Plaintiffs' case weighs heavily on the Court's decision.

e. The Court agrees with the recitation of the statutory factors as outlined in Defendant's Motion and adopts the same.

The Court expressly reserves jurisdiction over this matter to decide any issues related to Alabama Litigation Accountability Act. The Court will consider any further equitable relief to which John Bullock may be entitled.

Finally, the Court takes note of the Order of the Circuit Court of Shelby County regarding the expungement proceedings in which that Court overturned Plaintiff Newsome's expungement for filing the same fraudulently and under false pretenses and finding the release to be valid. The Court further notes that the Court of Criminal Appeals denied Plaintiff Newsome's appeal of that order.

It is hereby ORDERED as follows:

Defendant, John F. Bullock's Motion for Summary Judgment is hereby granted. Plaintiffs' claims against Defendant Bullock and request for declaratory judgment are dismissed with prejudice.

The Court will accept a motion pursuant to the Alabama Litigation Accountability Act from Defendant John F. Bullock within fourteen days of the date of the entry of this Order. Plaintiff will have seven days to file any response. Upon a review of these filings, the Court will determine if a hearing and oral argument is appropriate.

DONE this 15th day of June, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX F

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER ON DEFENDANT CLAIBORNE SEIER'S MOTION FOR SUMMARY JUDGMENT

The Court has reviewed and understands all motions, the law, briefs provided, evidence submitted, and has heard oral arguments when all parties were present and argued their respective positions. Accordingly, the Court hereby finds as follows:

This matter came before the Court on Defendant Claiborne Seier's Motion for Summary Judgment. At the time that the Motion for Summary Judgment was filed, Plaintiff asserted claims against Defendant Seier for Malicious Prosecution (Count I), Abuse of Process (Count II), False Imprisonment (Count III), Outrage (Count IV), and Conspiracy (Count V). Claims for Invasion of Privacy, Fraud and Intentional Interference with a Business Relationship were also alleged by the Plaintiff in previously-filed Amendments. Plaintiff also asserted claims related to the Release/Dismissal agreement signed by the Plaintiff to bring about the conclusion of his underlying criminal claims.

In briefing, Plaintiff did not oppose the Motion for Summary Judgment as to his Outrage claim, one portion of his Invasion of Privacy claim (specifically, the false light, portion of that claim), and the Intentional Interference claim asserted against Defendant Seier. The Court finds the Defendant's Motion to be well-taken as to those claims, and summary judgment is GRANTED in favor of Defendant Seier as to Plaintiff's claims for Outrage, Invasion of Privacy (false light) and Intentional Interference.

The Court will address the remaining claims asserted by the Plaintiff in turn:

I. Malicious Prosecution

As to Plaintiff's malicious prosecution claim, Defendant asserts that the dismissal of the underlying criminal case was not a "favorable termination" of those proceedings. Defendant challenged Plaintiff's

ability to state a prima facie case for malicious prosecution.

The plaintiff in a malicious prosecution case must prove each of the following elements: 1) that a prior judicial proceeding was instigated by the defendant 2) without probable cause and 3) with malice; 4) that the prior proceeding was terminated in the plaintiff's favor; and 5) that the plaintiff suffered damage as a result of that prior proceeding." *Whitlow v. Bruno's, Inc.*, 567 So.2d 1235, 1237 (Ala.1990). The parties' briefing appears to agree that the Alabama Supreme Court's decision in *Chatman v. Pizitz, Inc.*, 429 So.2d 969 (Ala. 1983), is the applicable binding precedent under which Plaintiff's malicious prosecution claim should be adjudicated.

Under *Chatman*, Plaintiff's prima facie case of malicious prosecution may be overcome by a showing that dismissal of criminal charge was a component element of a settlement or compromise agreement between the parties. Where the defendant fails to come forward with evidence of compromise, plaintiff's proof of *nolle prosequi* or order of dismissal of the criminal charge meets "favorable disposition" requisite of the claim as a matter of law. On the other hand, where defendant's proof of compromise is unchallenged by plaintiff, notwithstanding plaintiffs proof of dismissal of the criminal charge, defendant is entitled to judgment as a matter of law.

In the case at bar, the dismissal of the underlying criminal charges were the result of a settlement or compromise agreement between the parties. The testimony presented by the Plaintiff at summary

judgment establishes the District Judge ordered the parties to meet and confer regarding the potential for settlement. Upon conclusion, the Release and Dismissal Order was signed by the Plaintiff and entered by the Court. The Final Order of Dismissal in the District Court criminal case explicitly stated the dismissal came as the result of an "earlier written agreement."

The Plaintiff accordingly cannot present evidence of a "favorable termination" as would be necessary to sustain a claim for malicious prosecution. Summary judgment is accordingly granted as to this claim.

II. Abuse of Process

Under Alabama law, "[t]he elements of the tort of abuse of process are 1) the existence of an ulterior purpose, 2) a wrongful use of process, and 3) malice." *C.C. & J., Inc. v. Hagood*, 711 So.2d 947, 950 (Ala.1998). "The tort of abuse of process differs from the tort of malicious prosecution; the tort of abuse of process is concerned with 'the wrongful use of process after it has been issued,' while the tort of malicious prosecution is concerned with 'the wrongful issuance of process.'" *Shoney's, Inc. v. Barnett,* 773 So.2d 1015, 1024 (Ala.Civ.App.1999) (quoting *Hagood,* 711 So.2d at 950). A defendant cannot be held liable for abuse of process unless he or she "somehow acted outside the boundaries of legitimate procedure after [the initiation of the proceeding]." *Hagood,* 711 So.2d at 951.

Here, Plaintiff's claims all arise out of his arrest and prosecution for the crime of menacing. There is no substantial evidence of any actions "outside the

boundaries of legitimate procedure" after those charges were brought. While Plaintiff argues that the Release and Dismissal Order entered could support such a claim, there is no evidence that said Release and Dismissal Order was demanded by any party to this litigation, or that the entry of such an order goes "outside the boundaries of legitimate procedure." The Court therefore finds that summary judgment is due to be GRANTED as to Plaintiff's abuse of process claim.

III. False Imprisonment

Under Alabama law, however, an arrest and imprisonment pursuant to a valid warrant cannot form the basis for a false imprisonment claim. *See, Blake v. Barton Williams, Inc.,* 361 So. 2d 376 (Ala. Civ. App. 1978) ("If an arrest is made pursuant to a warrant issued by a lawfully authorized person, neither the arrest nor the subsequent imprisonment is 'false,' and, as a consequence, the complaining party's action must be one for malicious prosecution."). In the present case, it is undisputed that Plaintiff was arrested pursuant to a valid warrant issued by the Chief Magistrate of Shelby County. Summary Judgment must accordingly be granted with respect to Plaintiff's false imprisonment claims.

IV. Invasion of Privacy (Intrusion)

Under Alabama law, a defendant is liable for invasion of privacy when he "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns ... if the intrusion would be highly offensive to a reasonable person." *Phillips v. Smalley Maintenance Services, Inc.*,

435 So. 2d 705, 707 (Ala. 1983) A court, in determining whether a reasonable person would consider the conduct "highly offensive," will consider: (1) whether the subject of the intrusion is information that is private or entitled to be private; see *Hogin v. Cottingham*, 533 So. 2d 525, 531 (Ala. 1988). (2) the means of intrusion; *Alabama Elec. Co-op., Inc. v. Partridge,* 284 Ala. 442, 445, 225 So. 2d 848, 850 (1969); *Hogin, supra;* and (3) the purpose for which the information was obtained. *See Hogin, supra.* The intrusion may be upon a physical place, or a person's "emotional sanctum."

The wrongful intrusion prong of the tort of invasion of privacy protects against intentional interference with another's interest in solitude or seclusion, either as to his person or to his private affairs or concerns; for an action to lie, there must be something in the nature of prying or intrusion, with the intrusion something which would be offensive or objectionable to a reasonable person, and the thing into which there is intrusion or prying must be, and be entitled to be, private. 2 Ala. Pers. Inj. & Torts § 12:28 (2016 ed.)

The present case is not about private information being inquired into or obtained by the Defendants – it is about the Plaintiff's prosecution for the crime of menacing. A claim for invasion of privacy through wrongful intrusion does not appear to be stated on those facts, and the Plaintiff has directed the Court to no precedent supporting that contention. Further, there does not appear to be any direct intrusion by any party into this case into the Plaintiff's physical or emotional solitude. Rather, these claims seem to

merely be an attempted restatement of Plaintiff's malicious prosecution claim. Summary judgment is accordingly due to be granted as to this claim.

V. Conspiracy

Under Alabama law "[a civil] conspiracy cannot exist in the absence of an underlying tort." *Willis v. Parker*, 814 So.2d 857, 867 (Ala.2001). "'[L]iability for civil conspiracy rests upon the existence of an underlying wrong and if the underlying wrong provides no cause of action, then neither does the conspiracy.'" *Id.* (quoting *Jones v. BP Oil Co.,* 632 So.2d 435, 439 (Ala.1993)). In the present case, as set forth hereinabove, the Plaintiff cannot state a claim against this Defendant for any independent tort claim. He likewise cannot state a tort claim against any alleged co-conspirator on any of those common causes of action.

Moreover, premise of Plaintiffs' conspiracy – the alleged common telephone number, (205) 410-1494 – is suspect. The phone number's owner, Verizon Wireless, has testified under oath that it was a routing number for wireless calls places in the Birmingham area that cannot be traced back to or attributed to any one telephone number. Verizon further testified that it had been such a routing number since 2007, and that it had not been ported, transferred or assigned to any other person or entity, or used for any purpose other than a routing number during that time period. This was confirmed by an affidavit filed by the Plaintiff from John Manning, the Director of the North American Numbering Plan, that the (205) 410- prefix belongs to Verizon and has at all time relevant to this case.

Moreover, evidence was presented at the hearing showing the (205) 410-1494 routing number being utilized during calls from the Defendant's Verizon cell phone to his home phone, with the 205-410-1494 number appearing alongside the Verizon cell phone number as the ATT Corporate Representative testified would occur. See Doc. 1688, Deposition of Darko Gospavic at pp. 13-14; Doc. 1664, Phone Records for Defendant Claiborne P. Seier's Home Phone Number, 205-823-7990 at p. 4 (showing Defendant Seier's personal Verizon cell phone number, 205-915-2020, being routing through the 205-410-1494 number during calls placed to his home).

In response to this evidence, Plaintiff makes a number of arguments, First, Plaintiff attempts to argue that the Deposition of Verizon's representative should be stricken on evidentiary grounds. These can be generally summarized as stating that the witness did not have a sufficient foundation to provide the testimony given regarding the subject phone number. Generally speaking, however, the witness merely testified to the company's ownership of the asset – something that Alabama law allows without further predicate. Plaintiff's Motion to Strike and related arguments is accordingly denied.

Plaintiff additionally presents an affidavit from a previously-undisclosed witness, Robert Serrett, to advance the proposition that the number belonged to some sort of prepaid calling card or phone from Mr. Serrett's former employer, Ciera Network Systems. According to public records provided, Ciera ceased operations in 2003, after filing for Chapter 7

bankruptcy. Mr. Serrett's affidavit demonstrates no basis for any personal knowledge after 2003. Further, his testimony appears to amount to an expert opinion based on his interpretation of documents provided to him by the Plaintiff. Coming long after the applicable disclosure deadlines have passed, tho Court will not construe this affidavit as creating a genuine issue of material fact.

Last, Plaintiff makes the argument that the number could have been "spoofed" to show a different number. There is simply no evidence before the Court to support such a claim. A Court cannot rely on what could have happened as such is speculation without proof to establish the matter before the Court.

Defendant Seier's Motion for Summary Judgment is accordingly due to be granted as to Plaintiff's civil conspiracy claim.

VI. Remaining Claims and Issues

Plaintiff additionally makes a number of claims and motions related to the execution of the Release/ Dismissal Agreement. Because the Court does not rely on the general release of claims contained in that agreement to dispose of any of claims asserted against Defendant Seier, those claims and motions are moot and therefore dismissed and/or denied.

Plaintiff's Motion for Partial Summary Judgment on the issue of Probable Cause is similarly denied.

The claims of Newsome Law fail in their entirety because there has been no evidence that Newsome Law, as a separate legal entity, either has standing to

pursue, or was damaged by the torts pursued against this Defendant, Summary judgment is accordingly granted as to all claims asserted by Newsome Law LLC.

VII. Defendant's Motion Under the Alabama Litigation Accountability Act

Defendant Seier filed a Motion for Attorneys' Fees under the Alabama Litigation Accountability Act on July 2, 2015. That motion was granted by this Court with leave to prove damages before it then vacated its previously-entered Orders to allow the Plaintiff additional time to conduct discovery. As set forth above, however, the Plaintiffs' claims fail in their entirety for legal reasons that remain unchanged since Plaintiffs' original filing in 2015. The Court further stated that it would withhold ruling on this and other issues brought to the Court's attention during the pendency of the case at the conclusion of discovery. The Court will accept a renewed motion pursuant to the Alabama Litigation Accountability Act from Defendant Seier within fourteen days of the date of the entry of this Order. Plaintiff will have seven days to file any response. Upon a review of these filings, the Court will determine if a hearing and oral argument is appropriate.

DONE this 15th day of June, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX G

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER ON MOTION FOR SUMMARY JUDGMENT OF CLARK ANDREW COOPER AND BALCH & BINGHAM, LLP

The Court has reviewed and understands all motions, the law, briefs provided, evidence submitted, and has heard oral arguments when all parties were present and argued their respective positions. Accordingly, the Court hereby finds as follows:

Factual Background

Burt Newsome is a practicing lawyer whose office is located in a strip mall two doors down from Dr. Lora Gaxiola, a dentist, and they share the same parking lot. On the morning of December 19, 2012, Defendant John Bullock was getting out of his car in the parking lot to go to Dr. Gaxiola to have a crown reset. As Bullock was exiting his car, Newsome pulled out a loaded handgun and ordered him to get back into his car until Newsome left. Bullock did so.

After Newsome drove off, Bullock got out of his car and went into his dentist's office, told them someone had pulled a gun on him, and then proceeded to have his crown reset. After his dental procedure was over, Bullock called the police and filed a police report regarding the incident with the Shelby County Sheriff's office. Bullock also filed a criminal complaint for menacing against Burt Newsome and a warrant was issued for Newsome's arrest.

On May 2, 2013, Newsome was arrested on the menacing charge and warrant after he was stopped for speeding. Newsome's mug shot was taken during his arrest and published online on the Shelby County Sheriff's website. After being arraigned in the District Court of Shelby County, Alabama, Newsome entered into a deferred prosecution agreement by signing a "Dismissal and Release Order," which was also signed by John Bullock, the District Attorney, Newsome's attorney, and the District Judge of Shelby County on November 12, 2013. The agreement contained general release language stating Newsome released "all civil and criminal claims stemming directly or indirectly

from this case...to any other complainants...or persons in any way related to this matter." Under the agreement, the matter was dismissed with prejudice on April 4, 2014, since Newsome had no

Cooper testified that he sent emails such as these as his personal marketing strategy and a way to stay in touch with his clients and did not intend to take the cases away from Newsome. None of the cases referenced were ever taken from Newsome and reassigned to Cooper. Brian Hamilton from Iberiabank, the recipient of 2 of the 3 marketing emails, testified that he did not consider any of Cooper's emails or any conversations he had with Cooper to be an attempt by Cooper to have him replace Newsome on any of Newsome's cases at Iberiabank.

In Plaintiffs' Fourth Amended Complaint, Plaintiffs allege a conspiracy between Clark Cooper, John Bullock, Claiborne Seier, and Don Gottier to have Newsome arrested for the charge of menacing, Newsome alleged Defendant Claiborne Seier was connected to this lawsuit as follows: In 2010, Newsome sued Alfred Seier's wife, Sharon Lawson, on behalf of a bank to obtain a judgment against her. In January 2012, Alfred Seier apparently went to Newsome's office and pulled a gun on Newsome and told him to leave his wife alone. Subsequently, Newsome filed a criminal complaint against Alfred Seier for menacing and Alfred was later arrested and ultimately convicted of that crime. Alfred Seier has since passed away. Alfred's brother is Claiborne Seier, an attorney. Claibome contacted Newsome during these events and asked him

to drop the criminal charges against his dying brother Alfred. Newsome refused.

Newsome alleged that Gottier was a member of a conspiracy against him because Newsome's research allegedly showed that Gottier had owned a phone number – (205) 410-1494. From this number Cooper, Bullock, and Seier had purportedly received calls in the 2012-2015 time frame. The evidence shows the calls were **only incoming** and none were outgoing, so Newsome does not and cannot allege Seier, Cooper, or Bullock ever called Gottier or each other. No evidence has been presented to this Court of the content of any of the discussions during any of these alleged calls. The testimony from Verizon Wireless is that it has owned the number 205-410-1494 since 2007 and that it has been a routing number in their system since that time. This means no subscriber or customer has been assigned the number since 2007, including Don Gottier. Gottier testified that the number was not his phone number and never had been. An AT&T representative testified that a routing number "is a number used to route a call or to carry a call" and that "[i]t's not an actual number assigned to a customer."

Moreover, the evidence before the Court also shows that none of the defendants knew each other before this lawsuit. John Bullook, Claiborne Seier, Clark Cooper and Don Gottier all testified that they did not know each other and never had any communications with each other prior to this lawsuit.

Pending Claims

Plaintiffs' Fourth Amended Complaint and various previous amendments set forth the following claims at issue:

1. Malicious prosecution against John Bullock, Claiborne Seier, Don Gottier, and Clark Cooper.

2. Abuse of process against John Bullock, Claiborne Seier, Don Gottier, and Clark Cooper.

3. False imprisonment against John Bullock, Claiborne Sier, Don Gottier, and Clark Cooper.

4. Outage/intentional infliction of emotional distress against John Bullock, Claiborne Seier, Don Gottier, and Clark Cooper.

5. Intentional interference with Newsome's contractual and business relations with Iberiabank Corp., Renasant Bank, and Bryant Bank against Clark Cooper.

6. Defamation against Clark Cooper.

7. Conspiracy against Clark Cooper and unidentified fictitious defendants.

8. Conspiracy against John Bullock, Claiborne Seier, Don Gottier, and Clark Cooper.

9. Invasion of Privacy (intrusion upon seclusion and false light) against Clark Cooper.

10. Vicarious liability/respondeat superior against Balch & Bingham.

11. Cooper and Balch filed an answer alleging a counterclaim for abuse of process and have filed a claim under the Alabama Litigation Accountability Act and Alabama Rule of Civil Procedure 11.

12. On September 1, 2017, Defendants Balch and Cooper simultaneously filed a motion to dismiss or strike Plaintiffs' Fourth Amended Complaint and moved for summary judgment on all of the additional claims asserted in the Fourth Amended Complaint.

Analysis of Claims

The defamation claim against Cooper fails as a matter of law first because the truth is a complete defense to defamation. Federal Credit, Inc. v. Fuller, 72 So. 3d 5, 9-10 (Ala. 2011) ("[T]ruth is a complete and absolute defense to defamation. . . . Truthful statements cannot, as a matter of law, have defamatory meaning."); S.B. v. Saint James Sch., 959 So. 2d 72, 100 (Ala. 2006). It is undisputed that Newsome pulled a gun on Bullock, was subsequently arrested for menacing, and had his mug shot taken. Thus, Copper forwarding Newsome's mug shot for menacing was not a false statement, rather it was a true statement, and the defamation count fails. Additionally, any claim related to an allegedly implied defamatory statement also fails. Alabama does not allow the Court to infer implied defamatory meanings from writings, as stated by the Alabama Supreme Court in *S.B. v. Saint James Sch.*, 959 So. 2d 72, 100 (Ala. 2006) (affirming summary judgment on the defamation claim and holding that courts may not infer or assume any

certain meaning from an allegedly defamatory statement or article).

Thus, the Court will not infer any implied meaning from Cooper's mug shot email questioning the effect of Newsome's menacing arrest on his law licence. Based on the undisputed evidence, including Hamilton's testimony and Cooper's testimony, the Court finds that the mug shot email does not contain a false statement. Thus, the "false statement" element of defamation is not satisfied and Plaintiffs' defamation claim fails as a matter of law for this additional reason.

Newsome's claims for intentional interference against Cooper fail, first and foremost, because of the competitor's privilege – the affirmative defense known as justification. Both Newsome and Cooper are banking lawyers and Cooper was justified in competing for the business of their ongoing clients, Iberiabank, Renasant Bank, and Bryant Bank. See *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 247 (Ala. 1992) ("[B]ona fide business competition is a justification for intentional interference with a competitor's business;" *Bridgeway Commun., Inc. (WMML Radio Station-1410 AM) v. Trio Broad, Inc. (WBLX Radio Station-93 FM)*, 562 So. 2d 222, 223 (Ala. 1990) (holding that legitimate economic motives and bona fide business competition qualify as justification for intentional interference with a competitor's business.

Cooper was a competitor of Newsome's, represented the same banks as Newsome, and was, thus, allowed to contact those clients. Justification is a complete defense to an intentional interference claim. Second,

the intentional interference claims fail as a matter of law because Plaintiffs have presented no credible evidence to support a finding of the third element of intentional interference – that Cooper intentionally interfered with Newsome's employment relationship with the financial institutions complained of – Iberiabank Corp., Renasant Bank,[4] or Bryant Bank. *See, Hurst v. Alabama Power Co.*, 675 So. 2d 397, 399 (Ala. 1996). Rather, Plaintiffs have **only** provided speculation, which does not withstand summary judgment. See id. at 400 ("mere conclusory allegations or speculation that fact issues exist will not defeat a properly supported summary judgment motion, and bare argument or conjecture does not satisfy the non-moving party's burden to offer **facts** to defeat the motion"). Third, Plaintiffs' intentional interference claim also fails because the evidence shows Plaintiffs have not been damaged monetarily as a result of any alleged interference of Cooper. Evidence established Newsome's legal fee revenues with Iberiabank increased after Cooper forwarded the mug shot to Iberiabank. For all of these reasons, Plaintiffs claims for intentional interference fail as a matter of law.

Newsome's conspiracy count related to defamation and intentional interference fails as a matter of law because 1) there is no viable underlying cause of action for defamation or intentional interference, *Alabama Psych. Servs. v. Ctr. for Eating Dis.,* 148 So. 3d 708, 715 (Ala. 2014), and 2) there is no agreement between two or more persons since Newsome has failed to identify the alleged fictitious party that Cooper allegedly conspired with. *Eidson v. Olin Corp.*, 527 So. 2d 1283, 1285. (Ala. 1988).

On the record during the summary judgment hearing, Plaintiffs waived their claim for invasion or privacy for intrusion into the plaintiff's physical solitude or seclusion.

Newsome's false light invasion of privacy count fails because there is no publicity; no falsity, and no private information. That Newsome was arrested for menacing and had his mug shot taken by law enforcement authorities is not false. Those facts are undisputed. Nor is it private as his arrest and mug shot were public information published online by the Shelby County Sheriff's office. *See Regions Bank v. Plott,* 897 So. 2d 239, 244 (Ala. 2004); *S.B. v. Saint James Sch.*, 959 So. 2d 72, 93 (Ala. 2006) ("A false-light claim does not require that the information made public be private,' but it does require that 'the information ... be false."); *see also ,I.C.U. Investigations, Inc. v. Jones,* 780 So. 2d 685, 692 (Ala. 2000) (there is no invasion of privacy liability for the examination of a public record). Further, Cooper only sent Newsome's mug shot to one person at Iberiabank, that does not constitute publicity, which requires making a matter public by communicating it to the pubic at large or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. *See Ex parte Birmingham News, Inc.,* 778 So. 2d at 818. That is not the case here. Accordingly, Plaintiffs' invasion of privacy claim fails as a matter of law.

Plaintiffs' Malicious Prosecution count fails because there is no competent evidence Cooper had anything to do with the menacing prosecution, the State of

Alabama v. Burton Wheeler Newsome criminal case in the Circuit Court of Shelby County, Alabama, Case No. 58-CV-2013-001434 ("Newsome Menacing Case" or "prior judicial proceeding") in which Plaintiff Burt Newsome was charged and arrested for the crime of menacing. Specifically, 1) Clark Cooper did not instigate the prior judicial proceeding, John Bullock did; see Alabama Power Co. v. Neighbors, 402 So. 2d 958, 962 (Ala. 1981), 2) John Bullock had probable cause to do so since Newsome pulled a gun on him, *see Alabama Power Co. v. Neighbors,* 402 So. 2d 958, 966-67 (Ala. 1981) ("the mere fact the plaintiff was acquitted of the charge does not prove that there was no probable cause to believe him or her guilty at the time the warrant was issued."), 3) Bullock bringing a criminal action against Newsome for pulling a gun on him is without malice, see *Ennis v. Beason,* 537 So. 2d 17, 20 (Ala 1988), and 4) the prior proceeding was not terminated in Newsome's favor, rather he agreed with the prosecutor to defer prosecution. *See Wesson v. Wal-Mart. Stores E., L.P.,* 38 So. 3d 746, 752 (Ala. Civ. App. 2009) (citing *Chatman v. Pizitz, Inc.,* 429 So. 2d 969, 970 (Ala. 1983)). Accordingly, Plaintiffs' malicious prosecution claim fails as a matter of law.

Plaintiffs' Abuse of Process claim also fails as a matter of law because there is no competent evidence Cooper had anything to do with the prior judicial proceeding concerning menacing, thus there is no wrongful use of process. *See Haynes v. Coleman,* 30 So. 3d 420, 425 (Ala. Civ. App. 2009) (quoting *C.C. & J., Inc. v. Hagood,* 711 So. 2d 947, 950 (Ala. 1998)).

Plaintiffs' False Imprisonment claim also fails as a matter of law because there is no competent evidence Cooper had anything to do with Bullock instigating an arrest warrant against Newsome for menacing. Moreover, "[t]he law in Alabama is clear that a plaintiff is not entitled to recover for false arrest or imprisonment where he or she is arrested pursuant to a valid warrant issued by a lawfully authorized person." *Ennis v. Beason*, 537 So. 2d. 17, 19 (Ala. 1981) (citing *Blake v. Barton Williams, Inc.,* 361 So. 2d 376 (Ala. Civ. App. 1978)). "Under such circumstances, neither the arrest nor the subsequent imprisonment is false." *Id.* Since Newsome was arrested pursuant to a valid arrest warrant issued by the Circuit Court of Shelby County, Plaintiffs also cannot make out a claim for false imprisonment. As such, Plaintiffs' false imprisonment claim fails as a matter of law.

Plaintiffs' Outrage/Intentional Infliction of Emotional Distress fails because Plaintiffs only allege a recitation of the elements of the tort-of-outrage claim and has not provided any facts or evidence to support that claim. "The tort of outrage is an extremely limited cause of action. It is so limited that this Court has recognized it in regard to only three kinds of conduct: (1) wrongful conduct in the family-burial context, *Whitt v. Hulsey*, 519 So. 2d 901 (Ala. 1987); (2) barbaric methods employed to coerce an insurance settlement, *National Sec. Fire & Cas. Co. v. Bowen.,* 447 So. 2d 133 (Ala. 1983); and (3) egregious sexual harassment *Busby v. Truswal Sys. Corp.*, 551 So. 2d 322 (Ala 1989)."). Plaintiffs have failed to establish the actions by Cooper could in any way amount to conduct that caused any emotional distress to Plaintiffs. *Thomas v. Williams*, 21

So. 3d 1234, 1237-38 (Ala. Civ. App. 2008) ("The conduct must be "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.") This Court finds sending an accurate mug shot of someone who has been arrested is not outrageous. As such, Plaintiffs' tort-of-outrage/intentional infliction of emotional distress claim fails as a matter of law.

Plaintiffs also allege a conspiracy between Clairborne Seier, Clark Cooper, John Bullock, and Don Gottier to have Newsome arrested for the charge of menacing. A conspiracy requires an agreement to commit a civil wrong. *See Bayles v. Marriott*, 816 So. 2d 38, 43 (Ala. Civ. App. 2001). Moreover, "Alabama law is clear that a conspiracy is not an independent cause of action; therefore, when alleging conspiracy, a plaintiff must have a viable underlying cause of action." *Alabama Psych. Servs. v. Ctr. for Eating Dis.*, 148 So. 3d 708, 715 (Ala. 2014) (citing *Drill Parts & Servs. Co. v. Joy Mfg. Co.*, 619 So. 2d 1280, 1290 (Ala. 1993). Here, Plaintiffs conspiracy claim related to malicious prosecution, abuse of process, and false imprisonment fails because Plaintiffs have failed to produce substantial evidence of an agreement between the parties and because Plaintiffs have failed to prove the underlying torts of malicious prosecution, abuse of process, and false imprisonment. Thus, this conspiracy claim fails as a matter of law.

Finally, Plaintiffs' vicarious liability/respondeat superior count fails as a matter of law against Balch because Newsome has provided absolutely no evidence

that Cooper is liable for any wrongdoing whatsoever. *See ,Stephens v. City of Butler, Ala.,* 509 F. Supp. 2d 1098, 1116 (S.D. Ala. 2007) (concluding that for an employer to be **liable** under respondeat superior for an employee's action, the employee must first be found liable for a tort).

While Balch and Cooper moved for summary judgment on their abuse of process counterclaim, they subsequently waived that claim.

In sum, the Court finds that there are no genuine issues of material fact on any of the Plaintiffs' claims against the Defendants Balch and Cooper, and that Balch and Cooper, therefore, are entitled to a judgment as a matter of law.

It is therefore, ORDERED, ADJUDGED AND DECREED that all claims asserted against Clark Andrew Cooper and Balch & Bingham LLP by Plaintiffs are hereby dismissed with prejudice, costs taxed against the Plaintiffs. Based upon Balch and Cooper's waiver of their counterclaim for abuse of process, this counterclaim is dismissed with prejudice. The Court expressly reserves jurisdiction over this matter to decide the issues related to Alabama Litigation Accountability Act sanctions, as the Court has been informed that a Rule 11 letter warning of Alabama Litigation Accountability Act sanctions was sent to the Plaintiffs by Blach earlier in this lawsuit.

The Court will accept a renewed motion pursuant to the Alabama Litigation Accountability Act from Defendants Clark Andrew Cooper and Balch & Bingham, LLP, within fourteen days of the date of the

entry of this Order. Plaintiff will have seven days to file any response. Upon a review of these filings, the Court will determine if a hearing and oral argument is appropriate.

DONE this 15th day of June, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX H

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: November 27, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER

The Court has reviewed the Plaintiffs' Motion to Alter, Amend, or Vacate the Orders granting Summary Judgment in favor of the defendants and the Motion to Dismiss Don Gottier filed pursuant to Ala. R. Civ. P. 59(e), doc. 2154, the Plaintiffs' Rule 60(b)(2) Motion for Relief from Orders Granting Summary Judgment in favor of Defendants on Grounds on Newly Discovered

Evidence, doc. 2180, and the Plaintiffs' Objection to Motion to Quash Discovery Requests Related to Defendants' Motions for Attorney Fees, Motion to Compel Discovery of all Documents Related to the Reasonableness of the Attorney Fees Sought, Motion to Deny Attorney Fees or Any Redacted Time Entries, and Motion to Deny Defendants Request for Attorney Fees under Ala. Code § 12-19-272, doc. 2177, as well as all related responses and replies and heard oral arguments on September 5, 2018, when all parties were present.

Upon due consideration, the Court hereby denies Plaintiffs' Motion to Alter, Amend, or Vacate pursuant to Ala. R. Civ. P. 59(e), denies Plaintiffs' Rule 60(b)(2) Motion for Relief, and denies Plaintiffs' Objection to Motion to Quash Discovery Requests Related to Defendants' Motions for Attorney Fees, Motion to Compel Discovery of all Documents Related to the Reasonableness of the Attorney Fees Sought, Motion to Deny Attorney Fees on Any Redacted Time Entries, and Motion to Deny Defendants Request for Attorney Fees under Ala. Code § 12-19-272.

Plaintiffs have not introduced legitimate newly discovered evidence previously unavailable nor shown any manifest errors of law or fact to warrant setting aside this Court's judgment. Bradley v. Town of Argo, 2 So. 3d 819, 823 (Ala. 2008), Further, Plaintiffs have failed to present newly discovered evidence which invokes the provisions of Ala. R. Civ. P., Rule 60(b).

DONE this 27th day of November, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX I

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: December 7, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

Order

In the Orders of this Court dated June 15, 2018 granting Defendant John Bullock, Claiborne Seier, Balch & Bingham, LLP and Clark Cooper's Motions for Summary Judgment, docs. 2027, 2032, 2015, and in the Order granting Defendant Don Gottier's Motion to Dismiss, doc. 2038, the Court expressly retained

jurisdiction over this matter to decide any issues related to the Alabama Litigation Accountability Act.

TheAlabama Litigation Accountability Act ("ALAA") recognizes that the costs oflitigation can encourage litigants to abuse the judicial system by filingfrivolous lawsuits. To deter this behavior and allow innocent parties besiegedby litigation to be made whole, the Act allows a litigant to recover reasonableattorneys' fees and costs from an adversary when the court determines that thesuit lacked "substantial justification." Alabama Code § 12-19-272(a). The ALAAdefines the phrase "without substantial justification" to include an "action, claim,defense or appeal (including any motion) [that] is frivolous, groundless in factor in law, or vexatious, or interposed for any improper purpose, including withoutlimitation, to cause unnecessary delay or needless increase in the cost of litigation,as determined by the court." Shealy v.Golden, 959 So. 2d 1098, 1104-05 (Ala. 2006) (quoting 12-19-27(1))(emphasis added).

Indeciding whether to assess attorneys' fees and costs and, if so, in whatamount, courts must look to a non-exclusive list of 12 factors:

1. The effort made, ifany, to determine the validity of the claim before asserting it;

2. The effort made, ifany, to reduce or dismiss invalid claims after the action commenced;

3. The availability offacts in determining the action's validity;

4. The parties' relativefinancial position;

5. Whether the action wasprosecuted in bad faith or for an improper purpose, either in whole or in part;

6. Whether fact issueswere reasonably in conflict;

7. If there were multipleclaims, the number of claims that the prevailing party succeeded on;

8. The effort made, if any, to assert a claim in a good faith attempt to establish a new theory oflaw;

9. The amount or conditions of any settlement offer compared to the amount or conditionersultimately granted by the court;

10. The effort made beforefiling the action to determine that all parties sued or joined were properparties owing a legally defined duty to the defendant;

11. The effort made, ifany, to reduce the number of parties to the action; and

l2. The time period available to an attorney for a party before asserting a defense.

Ala. Code § 12-19-273(1)-(12).

As interpreted by the Alabama Supreme Court, the ALAA provides for the trial courtto consider the outcome of the proceedings in determining whether a party'saction was without substantial justification– here, summary judgment on all of Plaintiffs' claims in

favor of Defendants. See Baker v. Williams Bros., Inc.,601 So. 2d 110, 112 (Ala. Civ. App. 1992) (citing Meek v. Diversified Prods. Corp., 575 So. 2d 1100 (Ala. 1991)). "[I]f a trial court determines that a party'saction, claim, or defense is 'without substantial justification,' based on thcapplicability of any one of [the aforementioned terms or phrases in §12-19-271(1)], that determination will not be disturbed on appeal 'unless it isclearly erroneous, without supporting evidence, manifestly unjust, or againstthe great weight of the evidence.'" Shealy, 959 So. 2d at 1105.

The parties have been afforded an opportunity to filesupplements, responses and replies as appropriate and a hearing was held onthis and other various motions on September 5, 2018. The parties and theirattomeys appeared for hearing on the motions, responses, and replies pendingbefore the Court and upon due consideration of the filings, the arguments, andthe evidence, the Court finds as follows:

The Court made findings in its Orders dated June 15, 2018and incorporates those findings and legal conclusions in this Order. Inaddition, the Court makes the following factual and legal findings:

Although the Court first granted Defendants summaryjudgment early on in this case, Plaintiffs asked for further opportunity toprove their claims. The Court granted them that opportunity, but, however, Plaintiftshave provided no further credible evidence after conducting extensive discoverythan they had in 2015 when they filed this action. Defendants continuously contended Plaintiffs' claims were fabricated, outrageous, and entirely unsupported.

Inapplying the twelve statutory factors used to decide if the Court should awardattorneys' fees and costs, the weight of the factors favor doing so here. See Ala. Code § 12-19-273.

Plaintiffs have never had any credible, material evidenceto connect Defendants to Newsome's arrest for menacing or to each other in anyconspiracy. Newsome specifically statedthat his Fourth Amended Complaint, which added Don Gottier as a Defendant andadded Cooper to the Newsome menacing incident, "is based on telephone rccordsthe plaintiffs first received from AT&T by email on Friday, June 23, 2017." SeeFourth Am. Compl, p. 1, fn. 1. Newsomeappeared to allege that Gottier, a 78-year-old man with a heart condition, hada prepaid phone with the phone number 205-410-1494 and called the Defendants usingthis phone, including Cooper, at or near the time of events related to theNewsome menacing incident in 2012-2013, on through 2015. SeeFourth Am. Compl., at ¶ 63.1. Significantly,Newsome did not allege that any of the Defendants ever called Gottier. See, generally, id. The addition of Cooperto these counts was solely based on a conspiracy theory involving this isolatedphone number. However, the alleged number upon which Plaintiffs relied totry to connect each of the Defendants in the conspiracy allegation wasdisproven before Plaintiffs amended their Complaint a third and fourth time. Plaintiffs' investigator heard from thealleged orchestrator himself, Gottier. Theinvestigator learned that this was not Gottier's number, that it had never beenhis number, that the Calera Police had confirned it was not his number, andthat he did not know any of the other Defendants. Further, after Plaintiffs brought

this actionagainst Gottier, the investigator sent Gottier several messages apologizingthat he was being pulled into this frivolous lawsuit.

Moreover, on July 28, 2017, Cooper and Balch sent an Alabama Litigation Accountability Act letter to Newsome and Plaintiffs' counselCharles Brooks. The letter sets forth why there was a "lack of good ground tosupport the claims" filed in the Third Amended Complaint under Alabama Rule ofCivil Procedure 11(a) and the ALAA. Cooper and Balch demanded dismissal of Plaintiffs' claims in the Third Amended Complaint. Plaintiffs, however, ignoredDefendants' demand.

Therefore, of the twelve statutory factors used to decide if the Court should award attorneys' fees and costs, the four factors relatedto the plaintiff's pre-suit knowledge–the effort made to determine the validityof the claim before filing suit, the availability of facts in determining theaction's validity, whether the action was prosecuted in bad faith, and theeffort made before filing to determine that the proper parties were sued–all favor awarding fees and costs. See Ala.Code § 12-19-273(1)

Here, Plaintiffs knew their claims against Defendants lacked validity before filingsuit and were meritless from the inception of this action. Plaintiffs knew this because thepublicly-available court records revealed Newsome's underlying criminal actiondid not terminate in his favor, a necessary prerequisite to Plaintiffs'claims. Moreover, Plaintiffs had aspecific opportunity to dismiss these frivolous claims when Balch and Coopersent the ALAA letter. However, they chose to continue pushing a baseless casein bad faith.

The factors involving Plaintiffs' efforts made to investigate their claims, the availability of facts, and proper parties, therefore, all favor awarding fees and costs. Additionally, Plaintiffs roped Cooper and Balch into expensive litigation with no means or intent to substantiate his claims. These facts also prove Newsome's bad faith, adding yet another factor weighing in favor of awarding attorneys' fees and costs to Defendants. Plaintiffs blindly disregarded evidence that their claims were not valid that they received prior to filing their amended Complaints, yet persisted haphazardly anyway.

Plaintiffs' bad faith, however, did not end with their ignoring definitive evidence contrary to their claims. Newsome also exhibited bad faith in attempting to have his Shelby County arrest (the very arrest that resulted in his mug shot being taken and began the debacle of this lawsuit) expunged with the stated intent of using that expungement as an offensive weapon against Defendants in this lawsuit. The Court takes judicial notice of Newsome's misrepresentation to the Circuit Court of Shelby County, whereby he claimed to be in compliance with all terms of his deferred prosecution agreement, including the release of all related civil claims. The Court takes further judicial notice ofthe Shelby County court's finding that Newsome made a "false representation"regarding his claims in this lawsuit constituting "false pretenses" under Alabama law. This finding was affirmed by the Alabama Court of Civil Appeals, and the Alabama Supreme Court denied Newsome's petition for certiorari review. Plaintiffs' attempt to unlawfully use Alabama's expungement statute for the purposes of

attacking Defendants in this lawsuit is further evidence of Plaintiffs' bad faith.

Further, during additional discovery after the Plaintiffs' amended their Complaint to add the frivolous telephone conspiracy claims, Verizon Wireless's witness testified under oath that the telephone number at issue has been its routing number since 2007 and has not belonged to any individual during that time. See doc. 2015 at 5. The time period in which Plaintiffs allege that Gottier orchestrated calls among Defendants via this number only began in 2012. Fourth Am. Compl., at ¶ 63.1. Therefore, Plaintiffs' allegations related to the use of this number were completely illogical and baseless, rendering Plaintiffs' conspiracy claims unsubstantiated.

Despite Defendants' repeated assertions, including sworn testimony, that they never knew each other before the filing of this lawsuit, Plaintiffs refused to voluntarily dismiss their conspiracy-related claims. Further, during the course of additional discovery, Plaintiffs produced no admissible evidence of any kind supporting their claims that these Defendants knew each other and conspired to commit any underlying act. Plaintiffs could have dismissed the amended conspiracy claims alleged against Cooper, Balch, and Gottier once it learned from Verizon that the telephone number that Plaintiffs thought was their lynchpin was only a routing number. However, they did not.

The two factors related to Plaintiffs' knowledge and behavior during the action–the effort to reduce or dismiss invalid claims and the effort made to reduce the patties to the action–also favor awarding fees and

costs. See Ala. Code.12- 19-271(2) & (11). Instead of reducing or dismissing invalid claims and dismissing some or all Defendants, Plaintiffs ignored contrary evidence and made no effort at dismissal or reduction. Rather, Plaintiffs continued to add invalid claims and a new party, Gottier, in the face of clear evidence that their claims were frivolous. Thus, the two factors related to behavior during litigation weigh in favor of awarding attorneys' fees and costs.

Finally, the factors considering whether the facts were ever reasonably in conflict and the availability of the facts in determining the action's validity also favor an award of attorneys' fees and costs. See Ala. Code. 12-19-271(3) and (6). In particular, Newsome knew that he signed a deferred prosecution agreement in which he had agreed to release "all civil and criminal claims stemming directly or indirectly from this case ... to any other complainants ... or persons in any way related to this matter." This clearly included all of the claims related to the menacing incident, the related alleged conspiracy, and the related forwarding of Newsome's mug shot to Iberia bank. Moreover, Newsome has yet to identity any communication of any kind made by Cooper or Balch about Newsome that was either untrue or that amounts to intentional interference. Thus, the factors related to reasonable conflict and availability of the facts, also weigh in favor of Defendants' requests for attorneys' fees and costs.

Significantly, Plaintiffs' claims for intentional interference and defamation against Cooper and Balch were also frivolous because Cooper was a competitor for the banks' business, Newsome's mug shot was a true

fact, (as outlined in Balch and Cooper's Motion for Summary Judgment andthe Court's order granting summary judgment), and Plaintiffs could not prove theywere damaged as a result of any action by Cooper. In particular, Plaintiffs have not proven anyloss of revenue or other damage from Cooper's emails of Newsome's mug shot. In fact, Brian Hamilton of Iberiabank, Cooperand Newsome's client contact, testified that Plaintiffs made more money inlegal fees from the bank after the mug shot, than before. Seedoc. 2015 at 8-9.

Moreover, the Court looks to the affidavit testimony of theexpert witnesses submitted by the Defendants in support of the reasonableness of Defendants' attorneys' fees and costs based on the ALAA statutoryfactors. After reviewing this affidavittestimony and reviewing the history of this case, the Court finds that the feesand costs incurred were both necessary and reasonable. This is particularlytrue due to the voluminous filings in this case, as well as the subpoenas and depositionstaken in thls lengthy litigation.

The Court, therefore, finds Plaintiffs' claims were withoutsubstantial justification because they were frivolous, groundless in fact, vexatious,or were interposed for an improper purpose of harassment, delay, or abusingdiscovery. Specifically, pursuant to theALAA, "in any civil action commenced or appealed in any court of record in[Alabama], the court shall award, as part of its judgmentand in addition to any other costs otherwise assessed, reasonable attorneys'fees and costs against any attorney or party,

or both, who has brought a civilaction, or asserted a claim therein, or interposed a defense that a courtdetermines to be without substantial justification, either in whole or part." Ala. Code. § 12-19-722 (emphasis added). As a result of these factual and legalfindings, the Court Orders as follows:

13. Defendant John F.Bullock's Motion regarding the Alabama Litigation Accountability Act isgranted. Defendant Bullock is awarded the sum of $56,316.83 in reasonableattorney fees and costs incurred in his defonse of this matter.

14. Defendant ClaiborneSeier's Motion regarding the Alabama Litigation Accountability Act is granted.Defendant Seier is awarded the sum of $75,000.00 in reasonable attorney feesand $3,341.43 as costs incurred in his defense of this matter.

15. Defendant Balch &Bingham, LLP's Motion regarding the Alabama Litigation Accountability Act is granted.Defendant Balch & Bingham is awarded the sum of $32,880.91 in reasonableattorneys' fees payable to Campbell Guin, plus $23,402.49 in expenses.

16. Defendant Don Gottier's Motion regarding theAlabama Litigation Accountability Act is granted. Gottier is awarded the sum of $1,250.00 inreasonable attorney's fees.

DONE this 7th day of December, 2018.

/s/ **CAROLE C. SMITHERMAN**
CIRCUIT JUDGE

APPENDIX J

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: December 18, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER

Plaintiff's Rule 59 Motion to Alter, Amend or Vacate the Court's Order of December 7, 2018, granting Defendants' Motions for Attorney's Fees under the Alabama Litigation Accountability Act is hereby denied.

DONE this 18th day of December, 2018.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX K

IN THE DISTRICT COURT OF SHELBY COUNTY, ALABAMA

Case No.: DC 2013-1434

[Filed: November 12, 2013]

[Seal]
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11/12/2013 2:50 PM
CIRCUIT COURT OF SHELBY, ALABAMA
MARY HARRIS, CLERK

STATE OF ALABAMA V. Burton Wheeler Newsome

CASE NO. DC 2013-1434

This matter comes before the Court by the specific AGREEMENT of the parties. The Defendant is ✓ present, is ✓ represented by counsel and has not knowingly and voluntarily waived the right to the same. After due consideration and pursuant to said agreement, all of the following as specifically noted below is hereby ORDERED, ADJUDGED and DECREED.

( ) This matter is **Dismissed** with _____ prejudice.

(X) This matter is **Continued** until 4/01/14 9:00 then to be **Dismissed** with ✓ prejudice,

provided that the defendant have no further incidents/arrests.

( ) This matter is placed on the Administrative Docket until _____, then to be Dismissed with ____ prejudice, provided that _____.

( ) **DEFENDANT MUST APPEAR IN COURT ON THE ABOVE DATE.**

(X) **COURT COSTS ARE TAXED AS FOLLOWS:**

$_____ in further Recoupment to the Fair Trial Tax Fund _____

$368.00 in Court Costs including $100 Bail Bond Fee

$20.00 as Jail Housing Costs and all Jail Medical Expenses _____

$25.00 to the Crime Victims' Compensation Fund_____

$____ to the Forensic Science Trust Fund (Act. No. 93-733 does ___ apply)_____

$____ in Restitution to _____

$____ as Worthless Check Cost (TWC #____) _____

X $413.00 TOTAL to be deducted from Cash Bond

PAYMENT MAY BE MADE BY CERTIFIED CHECK, MONEY ORDER, OR IF IN PERSON BY CASH TO COURT CLERK, P.O. BOX 1810, COLUMBIANA, AL

35051. THE ABOVE CASE NUMBER SHOULD APPEAR ON ALL PAYMENTS NOTE: IF THE DEFENDANT FAILS TO MAKE SUCH PAYMENTS AND FAILS TO APPEAR IN COURT ON THE ABOVE DATES SHOWN, THIS MATTER WILL NOT BE DISMISSED AND AN ARREST WARRANT AND BOND FORFEITURE CAN BE ISSUED FOR THE DEFENDANT.

The Defendant does hereby grant a full, complete and absolute Release of all civil and criminal claims stemming directly or indirectly from this case to the State of Alabama, its agents and employees, including, but not limited to the District Attorney for Shelby County, Alabama, his agents and employees; to Shelby County, Alabama, its agents and employees, including, but not limited to the Sheriff of said County, his agents and employees, to any other law enforcement or investigative agencies, public or private, their agents and employees; to any other complainants, witnesses, associations, corporations, groups, organizations or persons in any way related to this matter, to also include the Office of the Public Defender of Shelby County, Alabama, its agents and employees, from any and all actions arising from the instigation, investigation, prosecution, defense, or any other aspect of this matter. The Defendant freely makes this release knowingly and voluntarily. In exchange for this release, this case will be either dismissed immediately or pursuant to conditions noted above.

ANY FEES OR COSTS NOT SPECIFICALLY TAXED ABOVE ARE HEREBY REMITTED.

The foregoing duly reflects the Agreement of the parties as entered above and attested by the signatures below

/s/ Complaining Witness	/s/ District Attorney
/s/ Defendant	/s/ Defendant's Attorney

Done and ordered: 11-12-13

/s/
DISTRICT JUDGE (SHELBY COUNTY)

APPENDIX L

THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT SHELBY COUNTY, ALABAMA

Case No. CC-15-121

STATE OF ALABAMA,	)
	)
Plaintiff	)
	)
V	)
	)
BURTON WHEELER NEWSOME,	)
	)
Defendant.	)
	)

TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE H. L. CONWILL

Shelby County Courthouse

Columbiana, Alabama

June 3, 2016

Jill B. Sanders, CSR, RPR

Official Court Reporter

FOR THE STATE OF ALABAMA:

Roger Hepburn

SHELBY COUNTY DISTRICT ATTORNEY'S OFFICE

112 North Main Street

Columbiana, Alabama 35051

FOB BURTON WHEELER NEWSOME:

William R. Justice

ELLIS, HEAD, OWENS & JUSTICE

P.O. Box 587

Columbiana, Alabama 35051

FOR JOHN BULLOCK:

James E. Hill

HILL, WEISSKOPF & HILL

2603 Moody Parkway, Suite 200

Moody, Alabarna 35004

FOR CLAIBORNE PORTER SEIER, ESQ.:

Robert Ronnlund

SCOTT, SULLIVAN, STREETMAN & FOX

2450 Valleydale Road

Birmingham, Alabama 35244

PROCEEDINGS

MR. RONNLUND: Robert Ronnlund, Scott Sullivan, here for Claiborne Seier.

MR. HILL: Jim Hill for John Bullock.

MR. JUSTICE: William Justice. I represent Burt Newsome.

MR. HEPBURN: Roger Hepburn representing the State of Alabama, if we are a party to this at all.

THE COURT: Does anybody disagree that all that has been filed is under CC-2015-121?

MR. JUSTICE: Well, when we attempted to file in the clerk's office under that case, number, they wouldn't let us.

THE COURT: Well, they don't because it has been expunged.

MR. JUSTICE: Correct. That was the case number of the expunged case, so I assume that would be the right number.

THE COURT: Well, what I'm asking, is there another case number that any of this has been filed?

MR. JUSTICE: Not that I know.

THE COURT: A lot of it hasn't been filed, it's been handed to me.

MR. JUSTICE: Correct, because it couldn't be filed in the clerk's office.

How did you manage to get yours filed and they wouldn't let us file?

MR. RONNLUND: I sent someone who is very persuasive.

THE COURT: Okay. The first thing, what all do we have here motion wise?

MR. HILL: I think mine is the first motion. Mine is the first motion.

THE COURT: Okay. Well, some of them is entitled different things. You actually filed requesting the use of the contents of the expunged file, correct?

MR. HILL: Yes, sir.

MR. RONNLUND: Judge, I filed the second motion joining in with Judge Hill's motion, and beyond that I said that the expungement should be set aside under the statutory provision that this court has the jurisdiction to do so under the false pretense exception to the expungement statute.

THE COURT: Anything else? I know there is a response.

MR. JUSTICE: I filed a response to each one and then we filed a further motion to make sure that, depending on how things end up here, if the expungement stays in effect all of these subsequent things are also -- would also fall under an expungement order.

THE COURT: From what I read --

MR. RONNLUND: Is this what you are talking about (indicating)? I had two things hand delivered to my office and this was one.

MR. HILL: Okay, Judge. Here is the deal or here is my theory on this. I'll just give you a brief history.

THE COURT: I know the history, but you give it to me also just for the record.

MR. HILL: Very briefly. I think in October or November of 2012 --

MR. BULLOCK: 2012.

MR. HILL: He was going to -- Mr. Bullock was going to the dentist. It was about 8:00 o'clock in the morning. He gets out of his automobile, and Mr. Newsome pulls a gun on him.

Mr. Bullock gets a warrant for Mr. Newsome. They come down here via the district attorney's office and Mr. Bullock. A deferred prosecution **is** entered into, a release is signed that releases Bullock, the DA' s office, the Shelby County sheriff's office, and everybody else in the whole wide world from civil liability.

Two years later -- I think it's January of 2014 -- Mr. Newsome files a lawsuit. His lawsuit sounds in conspiracy, fraud. Basically what happened, Judge, I think is that after Mr. Newsome gets arrested and his mug shot gets up and all this kind of stuff happens -- it always happens when someone gets arrested apparently someone from Balch Bingham got ahold of that and serit it out to some people. Mr. Newsome files

a lawsuit not only against Balch Bingham, but he files a lawsuit against John Bullock and Claiborne Seier.

Claiborne Seier is in this because apparently some time in the past his brother, Albert, pulled a gun on Mr. Newsome. Apparently the whole theory of their lawsuit is there is a conspiracy between John Bullock, Claiborne Seier, and Balch Bingham, t o interfere with Burt Newsome's business relationships.

So, that's fine. He files a lawsuit. We file a motion to dismiss in front of Judge Smitherman who has this case.

In a nutshell, here is what we say: Here is a release. It's plain on its face. It releases Mr. Bullock. It released us from this lawsuit.

He then -- after all -- by the way, Judge, at the time we did that, we filed the release, we filed the warrant, we fil ed the documents that we obtained from the District Court of this county, the clerk's office of this county, prior to any expungement. We obtained those records, we filed them in the Circuit Court of Jefferson County. We ask that this case be dismissed based on really based on the release. A month or two after that, Mr . Bullock files an amendment --

THE COURT: Mr. Bullock?

MR. HILL: I'm sorry, Newsome -- files an amendment. His amendment now drags in something called -- he now drags in fraud. It's the same allegation, he just makes another count of fraud. Judge Smitherman dismisses us. Sometime later Judge Smitherman reinstates all of this.

In about August of 2015, Mr. Newsome files a . motion to expunge. There's a hearing before Judge Reeves. The district attorney's office objected to the expungement. The district attorney office filed a written objection to the expungement --

THE COURT: Which was late?

MR . HILL: It was . We filed one, too, Judge, but nobody sent us anything until the DA sent us a notice to appear. So we filed a motion to object to the expungement.

We appeared. The expungement record doesn't say you have to file -- it says -- what the statute says is that a judge, if nothing is done, can expunge those records just based on the pleadings .

We stand in front of Judge Reeves. ,Mr. Bullock asked him not to expunge these records. Originally he does not, and then he comes back later and does. I can't tell you why. We didn't have a second hearing, I can tell you that.

The first hearing when we all stood before Judge Reeves and said don't expunge these records, the victim was standing in front of him and he denied the expungement. And then, for some reason, he comes back later and grants the expungement. I can't answer why. Like I said, we didn't have a second hearing, didn't have a second opportunity to be heard in that case.

Mr. Newsome then files motions in the court saying you can't use the release, you can't use any of this because it's expunged. In the civil case, the very basis

of which is the actions that he took pulling a gun on somebody that he doesn't even know, alleging a conspiracy between two men -- by the way, Judge, who met this morning for the first time in their lives -- and now he says you can't use those expunged records.

Well, those expunged records, Judge, say -- the statute that deals with this, which is, 15-27-16, says you can't use them absent a court order. That's in 15-27 -16(a), absent a court order -- expunged without a court order.

So, Judge, we want a court order from the Circuit Court that granted the expungement that we can use the records in a defensive posture against the civil lawsuit brought against Mr. Bullock by the person who pulled a gun on him and entered into a deferred prosecution with the district attorney's office of this county and signed a civil release, and now he says we cannot use the release, we cannot do any of this, all of that's expunged, all of it's gone it is held for naught.

You know, if he wants to talk about fraud on the court, there is a fraud on the court. There is a fraud on the court.

I'm not going to argue Mr. Ronnlund's theory because he will do a much better job than I will, but I join in his request that you just set the expungement aside. That's the fraud that's been perpetrated, Judge.

And there are a plethora of cases -- not from this state, but from other states, again, that Robby has cited to you, that talk about using expungement in a defensive position and they have always been upheld in every other state. We ought to be able to use it.

That will work for right now, Judge, that sums up my thoughts.

THE COURT: Go ahead.

MR. RONNLUND: I just think that the expungement in this case can be set aside. There's a provision in the statute 15-27-17 that says that the court may set aside an expungement at any time if it were granted under false pretenses.

One of the foundational prerequisites of any court in the State of Alabama granting an expungement is that the terms and conditions of the underlying agreement, sentence, whatever it may be, must be fulfilled and completed. There must be a representation under oath by the petitioner that all underlying requirements of the underlying case be fulfilled.

One of those in this case particularly with respect to Mr. Newsome was that he released all civil and criminal liability related to that underlying offense where he pulled a gun, and it's over with. The whole point of that was to bring finality to this incident.

He made that representation which was -- to Judge Reeves, which was blatantly false. There was a pending case. The terms of the deferred prosecution agreement -- which, by the way, I think in Shelby County it's titled deferred prosecution and release agreement -- had not been fulfilled. There was a pending civil lawsuit in violation of the agreement pending in the Circuit Court of Jefferson County. It's still pending to this day. If he wants to dismiss it with prejudice here or sign something, maybe there's an argument it shouldn't be set aside. But the bottom line is that the foundational

prerequisite to an expungement was not met and it's still not met today.

So we can argue about using the records and how they should be used and anything else, but I don't think there should have even been an expungement in the first place. In fact, now in the pleadings that have been filed that I got a copy of yesterday, there is something about that the deferred prosecution and release agreement is void. Well, if it's void, then we need to put this case back on the active docket of the District Criminal Court of Shelby County and go have a trial.

MR . HILL: Your Honor, we will go along with that. If you want to set the whole thing aside, let's have a menacing trial and let's see -- let's have a trial. Let's let the DA prosecute.

THE COURT: What about the argument that the court lost jurisdiction after thirty days?

MR. RONNLUND: The statute is absolutely clear that the court may do it at any time. 15--27-17 does not say the Court may do it within thirty days, the Court may do it within forty-two days, the Court may do it within ninety days. There is no time period.

And the point and reason to that is clear, because false pretenses don't always show up overnight. We said from the beginning that we never got a notice from the district attorney or Mr. Newsome or the Circuit Court of Shelby County or anybody else there was going to be a hearing that we needed to come down here and appear on. Thankfully Judge Hill did and showed up and vicariously represented our interest.

MR . HILL: May I throw in one more thing about the thirty days if you don't mind?

THE COURT : Sure.

MR. HILL: Let's assume for a moment that Mr. Newsome had filed his motion to expunge prior to the time that he filed his lawsuit and it was granted. The truth is, Mr. Bullock wouldn't have come down and cared if he hadn't filed a lawsuit. You know, if he had cared, he would have insisted that it go to trial then. He didn't.

I think the statute says that the reason that a court order can be granted to allow those is just this kind of a situation, because he wants to use it offensively. We just say, hey, he brought a lawsuit against us based on the facts that occurred when he pulled the gun, we ought to be able to use the facts when he pulled the gun.

THE COURT: Okay .

MR. JUSTICE: First of all to address Mr. Bullock's motion. That is filed too late, past the thirty days. What that is is wanting a second bite at the apple. If there was a dissatisfaction with the expungement order, the statute provides a review by certiori. Mr. Bullock participated in the expungement proceedings.

The reason Judge Reeves withdrew the first order denying the expungement was in response to a motion on Mr. Newsome's behalf that the grounds for that denial was incorrect under the law. The judge said, hey, this isn't the kind of charge t hat can be expunged. Well, that was shown not to be so.

As far as filing Mr. Bullock's motion, if there was a disagreement or a dissatisfaction with not being able to use these documents in the civil case, then there should have been some action taken within thirty days of that second order granting the expungement.

The court order that's being referred to in section 15-27-16 refers to criminal liability under a Class B misdemeanor. Anybody that uses these expunged orders without a court order is guilty of a Class B misdemeanor. It doesn't create -- that statute doesn't create any rights to this kind of relief that's being asked. It's only limited to that situation of avoiding a criminal liability. Any of these claims by Mr. Bullock should have been raised at -- in front of Judge Reeves at the time of the proceeding that resulted in the expungement order.

As far as Mr. Seier's motion. First of all, Mr. Seier is not a party to the expungement proceeding. He has complained that he didn't get notice, but the statute doesn't provide for him to have any notice of it. In fact, if you read the statute closely, the statute does not require -- didn't even require notice Mr. Newsome to Mr. Bullock, the victim. The DA is the one that is supposed t o contact the victim. Under the statute, it's only under a limited situation that the DA -- it says "may contact the victim." So that notice argument is really a red herring in this case.

The thrust of Mr. Seier's petition or motion is that Mr. Newsome's original petition for expungement was made under false pretenses because there was a release in the dismissal and release order. It's not a deferred prosecution, it's a dismissal and release order,

and that release has been violated by him filing suit. Therefore, when he filed his expungement petition, he was in violation of the conditions of his criminal dismissal.

First of all, the order of dismissal itself does not have any conditions to it, but the relief -- filing a suit is not a violation of the release. It's not -- there wasn't a covenant not to sue in the release. It was -- you can see for yourself the wording. The release is attached as an exhibit to many of the things.

Of course, we would contend that the release -- in attempting also to release criminal liability is void as a matter of law. It's not enforceable.

The civil suit, the amended -- and I'm not a part of that civil suit, it's just what I have read. There was an amendment alleging that this release was obtained through fraudulent representations and a conspiracy. Mr. Newsome is entitled to pursue that in his civil case, but really it does not -- it doesn't affect what you can and cannot do here with this expungement.

Judge Reeves knew of the civil case at the time of the expungement proceeding because Mr. Bullock had filed his own objection, however late, raising this civil action that was in Jefferson County, and Judge Reeves was fully aware of it.

Basically our argument is you don't have jurisdiction over either one of these to grant them. It's too late for Mr. Bullock's. He should have sought review under certiori. Mr. Seier doesn't have any standing or ability or rights under the statute to bring this up.

MR. HILL: Interestingly it was after the expungement that he raised we couldn't use the release. You know, Judge, he wants it both ways. Whether it's expunged or not, I don't really care, not that bad . I want to be able to use evidence in a civil trial of what has gone on in the totality of the circumstances of this case. To keep it out through some kind of expungement-type order when that is not allowed in any other state that we have been able to find cases to, is just simply -- it's just simply wrong.

MR. RONNLUND: And briefly addressing this timeliness and jurisdictional issue. I would like to see a citation to any statute, any case, any rule, anything at all, a newspaper article would be fine, that says that this motion to use the records can't be filed within -- it has to be filed wi thin thirty days, that it can't be filed outside of thirty days.

The statute doesn't say that. The plain language of the statute says that the court can enter an order. It doesn't say the court can enter an order in thirty days or forty-two days or any period of time, it says this court can enter an order -- it says any court can enter an order. Mr. Bullock, and now my client Mr. Seier, are asking this court for an order.

Additionally, with respect to setting it aside under false pretenses, it's the same thing. There's no time limit. There's no thirty days. We keep hearing thirty days, thirty days, thirty days. It's say it aloud five times and hope it becomes the truth.

It can be aside at any time by this court for false pretenses. The fact of the matter is that there was a

specific representation sworn under oath that the conditions of the prosecution agreement were fulfilled, and they were not. We shouldn't give anybody the benefit of the doubt for -- I mean, this is to give somebody a fresh start, to let bygones be bygones.

That is the whole purpose of the expungement statute. They bought up the legislative history of it. There is a lot of statements to that effect. And if we are going to keep dragging this stuff into court, let's let it all be public. Let's let it all be out there. There shouldn't be some freebie given just because somebody is a. local lawyer here in Shelby County to just get away with it, basically. There should be some accountability.

MR. HILL: Can I read the release just one second?

THE COURT: I have it right here. I've read it.

MR. HILL: "Full, complete and absolute release of all civil and criminal claims."

THE COURT: No, believe me, I've read it, but I've read it many, many times in the past.

So, it's Burt's position that this release is in effect, as far as a criminal case, means nothing because it is illegal?

MR. JUSTICE: Yes, sir, among other things.

MR. HILL: Set aside his plea. Let's have a trial.

THE COURT: I mean, I read what was filed regarding that. Now on the -- under 15-27-17, okay, it says: "Upon determination by the court that a petition

for expungement was filed under false pretenses and was granted." In other words, the petition had been granted, obviously, for expungement.

MR. JUSTICE: Yes.

THE COURT: The order -- and we have that. "The order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges."

Now, normally you are not going to find that out in thirty days necessarily.

MR. JUSTICE: Right. I didn't make the thirty-day argument, as far as under that section. I attacked the false pretenses basis for that argument.

THE COURT: Now, I do agree that Seier, I don't believe, has standing in this case, because he wasn't in it.

MR. RONNLUND: As an officer of the court, we have now brought it to the court's attention. I would say that, if nothing else.

THE COURT: I understand what you're pleading and everything.

MR. HILL: Judge, then Bullock has standing. He is the victim.

THE COURT: He don't have to be. No, I will tell you, I almost look upon this as a joke frankly, just to be --

MR. RONNLUND: It would be a joke if my client didn't have forty or fifty thousand dollars worth of legal fees.

THE COURT: The idea that you signed this release and then totally disregard, you know, what you have signed. And then -- well, I don't know exactly how my order will read, but it's going to read some way or another to where -- I guess I could reinstate the criminal charge.

MR. HILL: That suits us.

THE COURT: But I think just fair play in the sense of what's right and wrong -- you know, this would seem like something that, you know, somebody would show on TV and people would, you know curl their head up or something and say, well, you know, that can't be. Well, I don't think it can be.

MR. JUSTICE: Judge, a procedural matter, because of the weird posture of this case with it being expunged and having to file with you --

THE COURT: I understand.

MR. JUSTICE: If you can note in handwriting or something on all of the filing, you know, filed with the court or filed with the judge, or some notation other than these things just floating out there.

THE COURT: I'll do that. I understand your argument which is a great argument. But, again, as far as just what is right or wrong -- and, you know it may be reversed. I've sent a couple down there -- and you are the one that reversed me. I knew they were going

to be reversed when I sent them down there, too, but I still thought it was the right thing to do .

MR . JUSTICE: At least you didn't put in your order like --

THE COURT: No, but I mean -- you know, this thing about filing tax -- where you've got to make sure you actually hand it to the people over there. You can file it in court, but still -- you know, they said, no, you don't have jurisdiction. You didn't send it to them, even though it was filed in court five days before.

It's just my sense of what's right and wrong. Like I say, I think under 15-27-17, just the way that reads, I would think there is not a limitation . I think when the court has determined it was filed under false pretenses -- and from the pleadings it was filed under false pretenses because apparently if you signed this release and dismissal and then you're planning on disregarding it or already has, I think that's false pretenses. Okay.

MR. HILL Yes, sir

THE COURT: Thank you.

MR. HILL: Good to see you.

THE COURT: Put your heads together and send me some type of order that I might change.

(End of Proceedings.)

APPENDIX M

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

CASE NO. CC 2015-000121

[June 8, 2016]

STATE OF ALABAMA	)
	)
Plaintiff	)
	)
v.	)
	)
BURTON WHEELER NEWSOME	)
	)
Defendant.	)
	)

ORDER

This matter came before the Court on various Motions filed by the victim, John Bullock, and Claiborne Porter Seier Esq. – a non-party named as a defendant in civil litigation filed by Defendant Newsome arising out of the same operative facts as the instant criminal matter. Mr. Bullock has filed a Motion to Use Contents of Expunged File, while Attorney Seier has filed a Petition to Set Aside as

expungement previously granted by this Court (through another, now-retired judge) pursuant to Ala. Code § 15-27-15. Both movants have joined (orally, in writing, or both) in the others' respective motions. Having received written briefs and oral argument from the various parties and considered same, the Court hereby sets aside the expungement pursuant to Ala. Code 1975 § 15-27-15, and further gives the movants leave to use the contents of Defendant Newsome's charge, plea and disposition as they may deem necessary and appropriate.

RELEVANT BACKGROUND AND FACTS

1. On or about December 19, 2012, Defendant Newsome alleges that he was scheduled to appear in court in Pell City, Alabama.

2. On the same date, Victim John Bullock had a scheduled appointment with a dentist whose office is next door to Newsome's law practice. Bullock apparently parked next to Newsome's vehicle in the parking lot shared by and between the two businesses.

3. As Newsome exited his office heading towards his vehicle, Bullock exited his vehicle and began walking towards dentist's office. Newsome, who alleged that he felt threatened by Bullock, produced and brandished a pistol. Newsome then entered his car and left for Pell City.

4. Bullock subsequently filed a criminal complaint against Newsome for the crime of menacing.

5. On May 2, 2013, Newsome was stopped for speeding and arrested on the menacing warrant.

6. On November 12, 2013, the District Court of Shelby County accepted a deferred prosecution agreement reached between the State and Defendant Newsome and entered a "Dismissal & Release Order." Defendant Newsome and Victim Bullock both signed the order. The order continued the case until April 1, 2014, and provided that the case would be dismissed with prejudice at that time "if the defendant had no further incidents/arrests." The order also contained a general release of all civil claims of any nature related to the underlying incident and all parties related thereto.

7. On April 4, 2014, the criminal prosecution against Newsome was dismissed with prejudice pursuant the deferred prosecution and the terms of the Dismissal & Release Order.

8. On January 14, 2015, Newsome filed a civil suit in the Circuit Court of Jefferson County against John Bullock, Claiborne Seier, Clark Cooper and the law firm of Balch and Bingham, LLP. Newsome alleged that Seier and Bullock had staged the event that led to his arrest for the purpose of fabricating a false charge of menacing. He asserted claims against them for malicious prosecution, abuse of protection, false arrest, and outrage. He additionally asserted claims against Cooper and Balch & Bingham related to Cooper's sending an email containing Newsome's mugshot and other information related to the criminal case to a mutual banking client or clients.

9. On February 13, 2015, Seier filed a motion to dismiss the civil suit based on the dismissal-release order.

10. On February 24, 2015, Bullock filed a motion to dismiss the civil suit based on the dismissal-release order.

11. On February 19, 2015, Newsome filed the instant action to expunge the records of his prosecution for menacing.

12. On July 10, 2015, the state filed an objection to Newsome's Petition for Expungement pursuant to Ala. Code 1975 § 15-27-5.

13. On August 24, 2015, Bullock filed a separate objection to the expungement petition through his attorney, James E. Hill, Jr.

14. Newsome's Petition for Expungement was set for hearing on August 31, 2015.

15. The State filed a second objection to the petition on the date of the hearing. In this second objection, the State argued that menacing was a "violent crime" and that a charge of menacing was not subject to expungement.

16. Following the August 31, 2015 hearing, this Court entered an order denying Newsome's petition.

17. On September 2, 2015, Newsome filed a post-trial motion in this Court related to the denial of his expungement petition. He argued that (a) the misdemeanor of menacing is not excluded by the expungement statute, (b) that neither the State nor the victim had filed a timely objection to the petition for expungement.

18. On September 10, 2015, a now-retired judge of this Court granted Newsome's post-trial motion and entered an order of expungement.

19. On September 28, 2015, Newsome filed a post-trial motion in his civil case, and he attached a copy of the expungement order to the motion. He argued that the expunged release was "not a lawful basis" for dismissing his civil action. He also argued that any defensive use of the expunged release or other documents from the criminal court file by the Victim/Civil Defendant or any other party to that action was "now a criminal offense."

20. The civil case remains pending against both Bullock and Seier at this time.

21. Alabama's expungement statute state in relevant part:

> Section 15-27-3 (Submission of sworn statement and records; service).
>
> (A) A petition filed under this chapter shall include a sworn statement made by the person seeking expungement under the penalty of perjury stating that the person has satisfied the requirements set out in this chapter and whether he or she has previously applied for an expungement in any jurisdiction and whether an expungement has been previously granted.
>
> Section 15-27-12 (Prerequisites to expungement).

> No order of expungement shall be granted unless all terms and conditions, including court ordered restitution, are satisfied and paid in full, including interest, to any victim, or the Alabama Crime Victim's Compensation Commission, as well as court costs, fines, or statutory fees ordered by the sentencing court to have been paid, absent a finding of indigency by the court.
>
> Section 15-27-17 (Filing under false pretenses).
>
> Upon determination by the court that a petition for expungement shall be reversed and the criminal history record shall be restored to reflect the original charges.

22. On the facts before the Court, it is clear that Defendant Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as all terms and conditions of the underlying deferred prosecution agreement were not satisfied in full at the time that the Petition for Expungement was filed. To the extent that the Defendant represented otherwise to this Court, said representations were necessarily false by virtue of his pending civil action against, among other persons, the Victim of the underlying offense.

23. The Court hereby determines that the Defendant's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order of the District Court of Shelby County constitutes "false pretenses" within the meaning of Ala. Code 1975 § 15-27-17. This

conclusion is further supported and confirmed in the Court's mind by the subsequent motions filed by the Defendant alleging that the Victim's defensive use of the deferred prosecution agreement in the civil action filed against him by the Defendant as supposedly criminal.

24. Addressing the arguments of Defendant Newsome in opposition to the Petition to Set Aside the Expungement, the Court agrees with the Defendant that Attorney Seier has questionable standing to bring such a Petition in this Court. However, Attorney Seier's Petition has been joined by the Victim. Further, the matter having been brought to the Court's attention by an officer of the Court, the Court is obligated to investigate and act as may be necessary and appropriate. This is particularly true given that the Defendant is himself a member of the local Bar.

25. Defendant Newsome additionally alleges that the Release and Dismissal Agreement itself should be declared void. In making this assertion, however, Defendant Newsome does not volunteer to have this case placed back on the active criminal docket. Furthermore, even assuming the validity of Defendant Newsome's argument that one clause of the Agreement (which purports to contain a release of criminal claims) is unenforceable, that clause is not at issue here. The Court finds that the general civil release of claims contained in the Agreement is valid under Alabama law.

26. Defendant Newsome also alleges that the various motions filed in this case are untimely, or are barred by the doctrine of res judicata and/or collateral

estoppel. Ala. Code 1975 § 15-27-17, upon which the Court bases its ruling herein, does not contain any specific time period during which the Court must act, and there has been no authority presented that this Court's jurisdiction to act pursuant to Ala. Code 1975§ 15-27-17 is limited to a proscribed time period. Likwise, Defendant Newsome has presented no evidence or authority that the Court must enter an order allowing for a party to use previously-expunged records within some definite time period under Ala. Code 1975 § 15-27-16. In fact, such an argument flies in the face of common sense, which dictates that such requests for orders to use expunged records would often necessarily be filed well after an order of expungement was entered. Regardless, due to the lack of any supporting legal authority, the Court finds that any such timeliness or waiver argument has been waived.

27. Finally, Defendant Newsome alleges that his Petition for Expungement was not filed under false pretenses because the existence of a pending civil action was raised by the victim in prior proceedings. The undersigned was not present for any of the prior proceedings in this matter and has not been provided with a transcript of those proceedings to study. Regardless, it is abundantly clear that the statutory prerequisites for expungement were not met in this case. A valid expungement required an affimance under oath by the Petitioner that all requirements of the underlying sentence have been met. The prosecution of a civil lawsuit against a victim who was released from liability in conjunction the Defendant's execution of a deferred prosecution agreement or Dismissal and Release Order clearly indicates to the

Court that the terms of that agreement and Order have not been followed and fulfilled. Further, the Defendant's continued prosecution of the civil action against the Victim (and thus, by extension, his continuing violation of the Dismissal and Release Order) shows that the Defendant is still not in compliance with terms of the agreement and Order.

28. As such, the Court finds that the requirement of Ala. Code 1975 §15-27-17 have been shown, and that the Defendant's expungement was filed and obtained upon false pretenses. The Clerk of Court is accordingly ordered to vacate the previously entered order expunging this file, and take all other necessary steps to restore the Court record related to the subject charge.

29. The movants are futher free to utilize all records related to the Defendant's prosecution, plea and the case's disposition as they may find appropriate and necessary. The expungement statute was enacted to provide a "shield" to first time and non-violent offenders. It was not intended to be a "sword" for those engaged in civil litigation over the same transaction made the basis of their criminal offense, and the Court will not construe the statute as such.

DONE AND ORDERED this the 8th day of June, 2016.

/s/
CIRCUIT COURT JUDGE

APPENDIX N

IN THE SUPREME COURT OF ALABAMA

[seal]

No. 116155

[Filed: April 27, 2018]

Ex parte Burton Wheeler Newsome. PETITION FOR WRIT OF MANDAMUS: CRIMINAL (In re: State of Alabama v. Burton Wheeler Newsome) (Shelby Circuit Court: CC-15-121; Criminal Appeals:CR-15-1223).

ORDER

The "Petition of Burton Wheeler Newsome for the Writ of Certiorari, or in the Alternative, for the Writ of Mandamus" filed by Burton Wheeler Newsome on September 29, 2017, directed to the Honorable Hewitt Lawrence Conwill, Judge of the Circuit Court of Shelby County, having been submitted to the Court,

IT IS ORDERED that the Circuit Court of Shelby County shall, pursuant to Rule 58(c), Ala. R. Civ. P., enter into the State Judicial Information System (SJIS) its June 8, 2016, order in which it vacated the previously-entered order expunging records relating to the district court criminal charge against Burton Wheeler Newsome.

IT IS ORDERED that otherwise the Petition for Writ of Mandamus is DENIED.

Witness my hand this 27th day of April, 2018.

/s/ Julia Jordan Weller

Clerk, Supreme Court of Alabama

FILED
April 27, 2018
8:29 am

Clerk
Supreme Court of Alabama

[seal] IN THE SUPREME COURT OF ALABAMA

April 27, 2018

cc:

D. Scott Mitchell
Hewitt Lawrence Conwill
Shelby County Circuit Clerk's Office
James E. Hill, Jr.
Robert M. Ronnlund
Nathan P Wilson
G. Houston Howard II
Steven Marshall
Ferris Stephens
Jill Hall Lee
A. Gregg Lowrey

SHAW, Justice (concurring in part and dissenting in part).

I agree that this petition for the writ of mandamus is due to be denied. As to that portion of this Court's order instructing the trial court to enter its June 8, 2016, order in accordance with Rule 58(c), Ala. R. Civ. P., I respectfully dissent.

BRYAN, Justice (concurring in part and dissenting in part).

I concur in the Court's order to the extent it dismisses Burton Wheeler Newsome's petition for a writ of mandamus. However, I cannot concur in the Court's order to the extent it directs the Shelby Circuit Court ("the trial court") to enter its June 8, 2016, order into the State Judicial Information System ("the SJIS").

Until the trial court decides to instruct the clerk of the trial court to enter its June 8, 2016, order into the SJIS, that order "'remains within the control of the signer and that signer, the judge, is free to alter it, postpone its entry, or decide not to cause it to be entered at all.'" Jakeman v. Lawrence Grp. Mgmt. Co., 82 So. 3d 655, 658 (Ala. 2011) (quoting Rollins v. Rollins, 903 So. 2d 828, 833 (Ala. Civ. App. 2004)). Thus, by instructing the trial court to enter its June 8, 2016, order into the SJIS, this Court invades the province of the trial court to determine whether -- and, if so, when -- that order should be made effective. Further demonstrating the impropriety of the Court's instruction is the fact that the Court has not been asked to direct the trial court to enter its June 8, 2016, order into the SJIS. Because it is the trial court, not this Court, that should determine when, and if, that order is to be made effective, i.e., entered into the SJIS, I respectfully dissent from the Court's order insofar as it directs the trial court to enter the June 8, 2016, order into the SJIS.

APPENDIX O

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER ON JUDICIAL RECUSAL

Before the Court is Plaintiffs Motion for Judicial Recusal of the undersigned under Alabama Judicial Cannons of Ethics 3(b)(1), 3(c)(1), and 5(c)(4). Having reviewed the pleadings, law and presentations of all counsel, the Court finds said Motion is due to be and is hereby denied.

The Court finds itself to be equitable, unbiased, impartial and fair to all parties, witnesses, entities and individuals involved in this litigation.

DONE this 15th day of June, 2018

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE

APPENDIX P

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BIRMINGHAM DIVISION

Case No.: CV-2015-900190.00

[Filed: June 15, 2018]

NEWSOME BURT W,	)
NEWSOME LAW LLC,	)
Plaintiffs,	)
	)
V.	)
	)
COOPER CLARK ANDREW,	)
BALCH & BINGHAM LLP,	)
SEIER CLAIBORNE P,	)
BULLOCK JOHN FRANKLIN JR.	)
ET AL,	)
Defendants.	)
	)

ORDER

Balch and Cooper filed an Objection and Motion to Strike the Affidavits of Robert Serrett and John Manning. Based on the briefs submitted and the oral arguments heard, the Court hereby grants the Motion to Strike, and striked the affidavits of Robert Serrett and John Manning because they wree submitted after the deadline for discovery set forth in the Court's

Scheduling Order and under Alabama Rules of Civil Procedure 26(d) for supplementation of discovery responses, and the evidence shows that Serrett is not competent to testify to the current status of the 205-410-1494 phone number which is undisputedly owned by Verizon Wireless.

DONE this 15th day of June, 2018

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE