

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Paul Tarashuk, Personal Representative of
the Estate of Paul David Tarashuk,
Deceased,
Plaintiff,

CIVIL ACTION NO. 5:19-cv-02495-JMC

vs.

[Formerly CIVIL ACTION NO. 2019-CP-38-01037]
[Orangeburg County Court of Common Pleas]

Orangeburg County; Orangeburg County
Emergency Medical Services; Danny
Rivers, Individually and in his Official
Capacity as the Director of Orangeburg
County Emergency Medical Services; The
Orangeburg County Sheriff's Office; Leroy
Ravenell, Individually and in his Official
Capacity as the Sheriff of the Orangeburg
County Sheriff's Office; The South Carolina
Department of Public Safety; Leroy Smith,
Individually and in his Official Capacity as
the Agency Director of the South Carolina
Department of Public Safety; The Town of
Santee; The Santee Police Department;
Joseph Serrano, Individually and in his
Official Capacity as the Chief of Police of
the Town of Santee; Jamie D. Givens;
Alison K. B. Harmon; Clifford A. Doroski;
Fred D. Rice; Buist M. Smith; and Keith A.
Cline,
Defendants.

MOTION BY THE DEFENDANT
THE TOWN OF SANTEE TO DISMISS
PLAINTIFF'S CLAIM AGAINST "THE
SANTEE POLICE DEPARTMENT"
PURSUANT TO FED.R.CIV.P. 12(b)(6)

TO: RUSSELL T. BURKE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the Defendant Town of Santee, on behalf of
its Police Department, named as a separate Defendant in this lawsuit as "The Santee Police
Department," moves for an Order dismissing the Plaintiff's Complaint against the Defendant
Town's Police Department on the grounds that the Complaint fails to state facts sufficient to
constitute a cause of action against the Police Department to constitute a cause of action upon

which relief can be granted in that it fails to allege that the Police Department is a legal entity separate and distinct from the Defendant Town of Santee.

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a Defendant to assert failure to state a claim upon which relief can be granted as a defense by motion. Fed.R.Civ.P. 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint. *See, e.g., Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive a motion to dismiss, the Federal Rules of Civil Procedure require that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2). Although the pleading standard that Rule 8 announces does not require detailed factual allegations, it never-the-less demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A pleading that offers labels and conclusions, or a formulaic recitation of the elements of a cause of action will not do. *Id.* Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement. *Id.*

The caption of the Plaintiff's Summons and Complaint names the "Santee Police Department" as a Defendant separate and distinct from the Town of Santee. *See, e.g.,* Summons and Complaint (ECF Entry No. 1-5), p. 1 of 72. In identifying the parties Defendant, the Plaintiff identifies the Town of Santee as "a political subdivision of the State of South Carolina." *Id.*, p. 8 of 72 (p. 6 of the Complaint), ¶22. However, the Plaintiff never identifies the Police Department as a separate entity, but alleges that "Santee operates the Santee Police Department." *Id.* Within the four corners of the Complaint, the Plaintiff has failed to allege facts sufficient to establish that an entity known as the "Santee Police Department" exists separate and apart from the Defendant Town of Santee, as opposed to being simply a subsidiary department of the Town

of Santee.<sup>1</sup> Accordingly, the Plaintiff's Complaint should be dismissed insofar as it purports to make a claim against and seek relief from an entity identified as the "Santee Police Department" separate and distinct from the Defendant Town of Santee.

Notwithstanding that this is a motion to dismiss an entity named as a party Defendant, Counsel for Defendant Town of Santee conferred with Plaintiff's Counsel prior to filing this motion in an attempt to resolve the matter contained in this motion, but Plaintiff's Counsel was unable to consent. Since the time for responsive pleading for the Santee Defendants was expiring, Counsel for the Town of Santee has filed this motion on behalf of the Town's Police Department.

DAVIS FRAWLEY, LLC

*s/Patrick J. Frawley*

Patrick J. Frawley, Fed. ID No. 890

*s/Evan M. Gessner*

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ATTORNEYS FOR THE TOWN OF  
SANTEE

Lexington, South Carolina  
September 11, 2019

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<sup>1</sup> The Defendant Town of Santee, making this Motion on behalf of its subsidiary Police Department, is cognizant of the fact that the Court will limit its review of a 12(b)(6) motion to the Complaint itself; but the Town never-the-less points out its own Answer and 26.01 Disclosures as asserting that the Police Department is a subsidiary department of the Town, is not a separate legal entity, and should be dismissed from the suit. *See*, Answer of Defendant Town of Santee (ECF Entry No. 4), p. 3, ¶8, Defendant Town of Santee's Amended Answers to Rule 26.01 Interrogatories (ECF Entry No. 11), p. 3, Response to "F."