



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

**BURT W. NEWSOME; and NEWSOME  
LAW, LLC** )

**Plaintiffs,** )

**v.** )

**CLARK ANDREW COOPER; BALCH &  
BINGHAM, LLP; JOHN W. BULLOCK,  
JR.; CLAIBORNE PORTER SEIER;** )

Fictitious Defendants 1-4 being the true and  
correct names of the named Defendants; )

Fictitious Defendants 5-15 being those  
individuals and/or entities who conspired with )

any of the named Defendants in the commission )

of the wrongs alleged herein and whose true and )

correct identities are currently unknown but will )

be substituted upon discovery; Fictitious )

Defendants 16- 26 being those individuals )

and/or entities who participated in or otherwise )

committed any of the wrongs alleged herein and )

whose true and correct identities are currently )

unknown but will be substituted upon )

discovery) )

**Defendants.** )

**CASE NO.: 01-CV-2015-900190.00**

**HEARING: AUGUST 31, 2017 AT 11AM**

**DEFENDANT BALCH & BINGHAM, LLP'S AND CLARK ANDREW COOPER'S  
MOTION TO STRIKE AMENDED COMPLAINT OR  
MOTION TO DISMISS AMENDED COMPLAINT**

Defendants Balch and Bingham ("Balch") and Clark A. Cooper respectfully move this Court to strike the amended claims brought against Cooper and Balch in the Amended Complaint (doc. 1042) pursuant to Alabama Rule of Civil Procedure 12(f) or, alternatively, to dismiss the amended claims pursuant to Alabama Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted and in support thereof states as follows:



1. Plaintiffs, Burt W. Newsome and Newsome Law, LLC, filed the original Complaint in this action on January 14, 2015.

2. Over two years later, Plaintiffs, Burt W. Newsome and Newsome Law, LLC, filed an Amended Complaint in this action on June 30, 2017 substituting Cooper for fictitious defendants 1, 5, and 16 named in the original Complaint, adding Cooper to claims alleged for Malicious Prosecution, Abuse of Process, False Imprisonment, Outrage/Intentional Infliction of Emotional Distress, and Conspiracy, Counts I-V. Court doc. 1042.

3. Plaintiffs specifically allege “[t]his amendment is based on telephone records the plaintiffs first received from AT&T by email on Friday, June 23, 2017.” *See* Amended Complaint, p. 1, fn. 1. In the Amended Complaint, Plaintiffs allege that Defendants John Bullock, Claiborne Seier, Clark Cooper, and Don Gottier, a newly named defendant, conspired “to achieve an unlawful purpose or a lawful purpose by unlawful means to engage in malicious prosecution and/or abuse or [sic] process and/or false imprisonment and/or outrage and/or intentional infliction of emotional distress” and that “[t]his conspiracy is evidence by – among other things – numerous telephone calls to Claiborne Seier, Clark Cooper, John Bullock, and non-party Sharon Lawson (the widow of Alfred Seier) or her son from Don Gottier (205-410-1494).” Amended Complaint, p. 11.

4. Plaintiffs further allege that Gottier called the defendants, including Clark Cooper, numerous times. *See* Amended Complaint, pgs. 11-12. Plaintiffs do not allege that any of the defendants ever called Gottier.

5. Therefore, the addition of Cooper to these counts is solely based on a Conspiracy theory involving this isolated phone number and nothing more. However, the Conspiracy count fails to state a claim on which relief can be granted because all facts known by the parties,

including plaintiff, establish that these defendants did not know each other and do not know this phone number. Also, the facts and evidence discovered in this case to date run contrary to Plaintiffs' assertions in the Amended Complaint, and establish that this phone number is a Verizon routing number, not assigned to any particular subscriber in the relevant time period.<sup>1</sup>

6. Mr. Gottier moved to dismiss this Amended Complaint against him on July 20, 2017 and stated that the phone number at issue, 205-410-1494, "is an invalid number and it does not belong to [him]" as was confirmed by the Calera Police Department. *See* Exhibit A – Don Gottier's Motion to Dismiss and Calera Police Department Letter, court doc. 1176.

7. Specifically, the Calera Police Department stated that after subpoenaing "Verizon to acquire more information pertaining to this phone number" the Department "received information from the subpoena coordinator with the Verizon Security Assistance Team" advising "that 205-410-1494 was actually a routing number." *See* Ex. A - Calera Police Department Letter. Detective Gilmore with the Calera Police Department went on to explain that "Routing numbers are used internally in Verizon's network when a caller is outside of their home area. There was no subscriber information associated with that number as it's not a phone number." *See id.* Further he noted, "A location routing number uses the format of a telephone number but actually represents an entire phone switch which routes multiple telephone numbers." *See id.* Detective Gilmore concluded that "Verizon confirmed that Donald Gottier is not associated with 205-410-1494 as it's not an actual phone number with Verizon." *See id.*

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<sup>1</sup> Verizon Wireless' 30(b)(6) for the number 205-410-1494 was conducted on July 31, 2017. The transcript for this deposition is not yet available on the date of this motion, but the witness testified that this number is a Local Routing Number "LRN" used by Verizon and was not assigned to any particular person, including Don Gottier, or any other subscriber from 2007 through the present. The parties reserve the right to supplement this motion upon the receipt of the deposition transcript.

The use of a Local Routing Number is explained in the October 26, 2015 article attached at Ex. C.

8. Moreover, Don Gottier also executed an affidavit stating that he does not know Clark Cooper, Claiborne Seier, or John Bullock, and has had no connection with them in the past. *See Exhibit B – Affidavit of Don Gottier which was attached to Defendant Claiborne Seier’s Response to Plaintiffs’ Motion to Reopen Depositions.*

9. Gottier further stated that he “was also visited by an investigator who I later learned was hired by Burt Newsome [plaintiff], Mike Callahan, prior to being sued” and Gottier “relayed all of the above information to Mr. Callahan before the Amended Complaint was filed.” *See Ex. B, ¶¶ 9-10.* The “above information” included that Gottier had never used or had the number at issue and did not know the defendants.

10. After the lawsuit was filed against Gottier, the investigator texted Gottier apologizing stating “I am sorry you became entangled in this case. I did not see the suit against you coming. I am at the end of the dog’s tail. Burt is paying me but he does not own me. I am always looking for the truth. If you think there is any way I can help you give me a call. I wish you and your family all the best. Sincerely, Mike Callahan.” *See Ex. B – text messages attached to Gottier Affidavit.*

11. It is clear that the number at issue, 205-410-1494, does not and has never belonged to Don Gottier, nor does the number belong to anyone else. Rather, it is a routing number used internally within Verizon as a switch to route multiple telephone numbers. *See Ex. A - Calera Police Department Letter.*

12. Moreover, it is clear Plaintiffs had this information prior to filing this Amended Complaint, and therefore this information does not relate back to the original complaint. Cooper is now being added to claims that originally had nothing to do with him, and was never on notice

as to these additional claims. Plaintiff has further acknowledged that prior to this amendment he was not alleging Cooper had any involvement in Plaintiff's arrest.

13. The entire Amended Complaint is based on a falsity-- a phone number that does not belong to **an particular person or entity, other than Verizon.** A Verizon representative has reported to officers in the course of an investigation that this phone number is a routing number used when **any Verizon number calls from outside of a particular service area.** In short, this number at issue is not owned by Don Gottier and does not connect any of the parties in this action.

14. Alabama Rule of Civil Procedure 12(f) provides: “[u]pon motion made by a party before responding to a pleading . . . , the court may order stricken from any pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Ala. R. Civ. P. 12(f). All references in the Amended Complaint to this phone number at issue are due to be stricken as immaterial, impertinent and scandalous since this number is not owned by Don Gottier. As such, all of the amended claims against Clark Cooper and Balch & Bingham likewise are due to be stricken since they solely rely on the phone number for support.

15. Alternatively, pursuant to Alabama Rule of Civil Procedure 12(b)(6), Plaintiff has failed to state a claim against Cooper and/or Balch on the basis that this routing number appears in phone records. That alone is meaningless and does not give rise to a cause of action. As Plaintiffs indicated in the Amended Complaint, the phone number is the entire basis for the Amended Complaint. Since the phone number is not owned by Don Gottier, but rather is a routing number, the amended claims alleged against Clark Cooper and Balch fail in their entirety.

16. In sum, the Amended Complaint is due to be dismissed or stricken against Clark Cooper and Balch.

Respectfully submitted this 31st day of July, 2017.

/s/ Kimberly L. Bell

One of the Attorneys for Clark Cooper and Balch & Bingham LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2017 I filed a copy of the foregoing with the Clerk of the Court using the Alafile/E-File System which will automatically generate service on all parties to this action.

*/s/ Kimberly L. Bell* \_\_\_\_\_  
Of Counsel