

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
FOURTH DIVISION**

**ROSEY PERKINS and RHONDA COPPAK,
Individually and as Co-Administratrixes
and Personal Representatives of the
Estate of Martha Bull, deceased**

PLAINTIFFS

v.

NO. 23CV-14-862

**MICHAEL MORTON;
GILBERT BAKER;
and JOHN DOES 1-5**

DEFENDANTS

**RESPONSE and SUPPORTING MATERIALS IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Rosey Perkins and Rhonda Coppak, Individually and as Co-Administratrixes and Personal Representatives of the Estate of Martha Bull, deceased hereby respond to Defendant Michael Morton's Motion for Summary Judgment, which has been adopted by Defendant Gilbert Baker, and in support of their opposition thereto state as follows:

I. INTRODUCTION

Michael Morton and Gilbert Baker, along with former judge Michael Maggio, have engaged and participated in a closed door tête-à-tête of electoral corruption, bribery and felonious abuses of public trust. In violation of the Arkansas Civil Rights Act, Morton and Baker corruptly conspired with Maggio, a sitting judge, to reduce the jury's damages award with intent to deprive Plaintiffs of their property in violation of their constitutionally protected rights. Morton, Baker and Maggio knowingly and willingly conspired with each other for an unlawful purpose, *i.e.* criminal abuse of public trust and violation of the Arkansas Civil Rights Act. Likewise, Morton and Baker acted in concert with each other and Maggio when each man consciously agreed to pursue a common plan designed to effectuate the bribery of a sitting circuit court judge. Morton, Baker and Maggio's conduct was motivated by financial greed and political gain. As a result of this intentional conduct, Plaintiffs sustained property damages when

Defendants conspired to take away a \$5.2 million dollars from them. Plaintiffs' damages are not limited to the loss of property; both Rhonda and Rosey have unnecessarily had to undergo additional pain, suffering, and mental anguish at the hands of Morton, Baker, and Maggio.

II. UNDISPUTED FACTS

A. Background: The *Bull* Case

By now, the Court is aware of the nursing home neglect lawsuit (the *Bull* case) brought by Plaintiffs against Greenbrier, a nursing home owned by Defendant Morton. That trial began on May 7, 2013, in Faulkner County, Arkansas. Former circuit judge Michael Maggio was the presiding judge over the *Bull* case. Following an eight-day jury trial and the denial of directed verdict motions, Plaintiffs' case was submitted to the jury on five sets of interrogatories related to ordinary negligence, medical negligence, Resident's Rights, and wrongful death. *See Amend. Compl. at Exh. C*. The jury found for the Plaintiffs as to the ordinary negligence claim, medical negligence claim, and the Resident's Rights claims. *See id.* The jury found in favor of the Defendant on the wrongful death claim. *See id.* The jury awarded \$5.2 million for pain and suffering and mental anguish damages related to the negligence, medical negligence and Resident's Rights claims. *See id.* On May 16, 2013, the *Bull* jury unanimously awarded \$5.2 million to the Estate. *See Amend. Compl. at Exh. C, ¶4*. The jury was issued as a general verdict:

On the claim for ordinary negligence, medical negligence, and/or deprivation or infringement of Martha Bull's statutory resident's rights, we the jury award damages to the Estate of Martha Bull, as follows:

- a. For any conscious pain and suffering experienced by Martha Bull;
and/or
- b. For any mental anguish suffered by Martha Bull:

\$ 5,200,000.⁰⁰

Id. It was evident from the jury's questions during their deliberations that they were following the Court's instructions and considering each claim, as well as the elements of damages, as

separate verdicts. *See Exhibit X.*

The Court entered a judgment on June 6, 2013, finding that Plaintiffs “have and recover judgment of and from Defendant Greenbrier Care Center, Inc. d/b/a Greenbrier Nursing and Rehabilitation Center the sum of \$5,200,000.00. Said sum shall accrue interest, thereon from this date until paid and satisfied in full ..., together with all costs herein expended, and for all of which execution may issue.” *Amend. Compl.*, at Exh. C, p. 3. Again, upon entry of this order, Plaintiffs could execute the judgment and the \$5.2 million became property of the Estate (and, consequently, property of the heirs). *See id.* On July 11, 2013, Maggio denied Greenbrier’s JNOV motion because it found that the jury was presented with substantial evidence to reach their verdict, but in a separate order, granted a remittitur of the verdict despite finding that was not any misconduct that warrants a new trial. *See Amend. Compl.*, at Exh. D.

B. The Conspiracy to Bribe a Judge

The undisputed facts demonstrate that Baker, Morton and Maggio each played a key role in the bribery scheme giving rise to this lawsuit. For instance, there is no dispute that former Faulkner County Circuit Judge Michael Maggio pled guilty to bribery for his role in the misconduct giving rise to this lawsuit. *See Exhibit A* at 47:20-24; *Exhibit B* at 124:4-11; *Exhibit N*; *Exhibit Y*. Maggio admitted, under oath, that his decision to remit the jury’s \$5.2 million-dollar verdict was due to his agreement with Morton and Baker. *Exhibit N*. It is undisputed that the act of bribing a public official, *i.e.*, making a campaign contribution with the goal or for the purpose of influencing a judge’s decision, is against the law. *See Exhibit A* at 133:9-12; *Exhibit N*.

It is undisputed that Baker solicited money for Maggio’s campaign and told Morton the amount of each donation and the name of each PAC to remit payment to. *See, e.g., Exhibit A* at 66:12-67:4; *Exhibit B* at 145:1-5; *see also Exhibit O* at p. 11; *Exhibit E* at pp. 35-37. Morton acknowledged that one of the reasons that Baker wanted the checks written to PACs was so that

the judicial window for solicitations could be avoided, *i.e.*, “if he had it in PACs, we could sit there and wait until the judicial window opened.” *Exhibit A* at 147:12-14. Regardless, it is undisputed that on July 8, 2013, Morton intended for his donations to go to Maggio. *See, e.g., Exhibit A* at pp. 147-148.

1. The Criminal Mastermind: Gilbert Baker

Gilbert Baker is the mastermind of this bribery scheme to place conservative jurists who favor tort reform on the appellate courts in this State. Baker recruited Maggio to run for a seat on the Arkansas Court of Appeals and made sure that he had the financial resources necessary to do so. *See Exhibit N; Exhibit E* at 56-59. The plan, of which Morton and Maggio were also aware, was to create a means for getting Morton’s money to Maggio’s campaign. *See, e.g., Exhibit A* at 74:6-10.

Step one was the creation of a “legitimate” business through which the money could be moved. In 2013, Baker spearheaded the creation of eight political action committees (“PACs”) to serve as shell corporations through which he could funnel illegally obtained campaign contributions to his hand-picked, conservative judicial candidate for the Arkansas Court of Appeals. *See Exhibit G* at pp. 12-13; *Exhibit C* at pp. 28-29, 50-57; *Exhibit D* at pp. 8-12; *Exhibit E* at pp. 35-37.

In July of 2013, Baker’s attorney, Chris Stewart, created the following seven PACs: The Thomas Group PAC, the Citizens for Information Technology PAC, Conservative Persons In PAC, Judicial Reform PAC, Taxpayers for Change PAC, Red Arkansas PAC, and Go Good Government PAC. *Exhibit B* at 174:10-12; *generally, Exhibit C; Exhibit D; Exhibit U; Exhibit Q.* On August 6, 2013, Stewart registered the D. Bruce Hawkins 2 PAC. *See id.* These PACs were registered by Stewart at Baker’s direction. Baker identified the officers of each PAC. Prior to doing this, Baker did not obtain permission each person listed as officers on a PAC. *See Exhibit G* at pp. 15-18; *Exhibit F* at pp. 10 & 21; *Exhibit H* at pp. 10-13, 19; *Exhibit I* at pp. 19, 30, 37;

Exhibit R; Exhibit S; Exhibit O. In fact, one of these officers, Ancil Lea III, testified that if he had been asked no money would have ever been given to Maggio because there was bad blood between the two of them. *Exhibit G* at p. 25. Baker also acknowledged wrongdoing to another of these unsuspecting pawns in his PAC scheme. *Exhibit H* at p. 13.

Baker controlled where the money was to go when the PACs started making contributions. *See Exhibit C* at pp. 38-42; *Exhibit E* at 35-37. Baker secured the contributions from Morton on the date of the remittitur hearing. *See, e.g., Exhibit C* at pp. 42-43, 55-56; *Exhibit U, Exhibit V.* Most all of the contributions to Maggio's campaign from these PACs; those monies can be traced back to Defendant Morton's July 8, 2013 checks. *See id.* It is undisputed a majority of Maggio's campaign contributions came from the checks Morton sent to these PACs. *See id.* Baker solicited and then personally delivered the PAC contributions to Maggio's campaign. *See Exhibit C* at pp. 38-42.

Step two was securing the money needed to maintain Maggio's campaign from Morton. To do this, Baker served as the middle man between Maggio, the candidate, and Morton, the money. Baker had multiple meetings and conversations with both Morton and Maggio to effectuate their plan. *See, e.g., Exhibit A* at pp. 53-57, 64-66, 101, 139; *Exhibit P* at Response 10. For instance, in May of 2013, while the *Bull* trial was pending, Baker met with Morton to secure his support of Maggio's campaign. *See, e.g., Exhibit A* at pp. 57, 64 & 94; *Exhibit O; Exhibit P* at Response 10; *Exhibit Y.*

Baker was helping Maggio raise money during summer of 2013. *Exhibit B* at 28:11-12. He solicited money from Morton for Maggio's benefit during the *Bull* trial and after the verdict was handed down. *See Exhibit A* at pp. 38-39. Baker asked Morton to meet in Russellville to discuss getting money to (1) Judge Maggio; (2) Judge Rhonda Wood; (3) Arkansans for Tort Reform; and (4) UCA. *Exhibit B* at 35:17-23; *see also Exhibit B* at 43:19-20 ("I asked for support from Judge Maggio and Judge Wood" on multiple occasions). Baker solicited money from

Morton to insure that Maggio's campaign was funded. *See Exhibit A* at 56:12-57:23, 74:6-10, 95:17-97:18; *Exhibit N*. Baker requested that Morton's donations to Maggio be put in PACs, rather than sent directly to the judicial candidate like he normally did. *Exhibit A* at 66:16-67:12, 75:1-9, 76:19-25, 81:1-13, 134:24-135:18. To effectuate this plan, Baker sent a fax to Morton with the PAC names and donation amounts specified. *See, e.g., Exhibit A* at 66:16-25; *Exhibit B* at 39:1-2. When Baker received the FedEx package containing these checks, Baker contacted both Morton and Maggio. *Exhibit A* at 115:19-118:15; *Exhibit V*; *Exhibit N*. In his conversation with Maggio, Baker told him that the first 50k is on the way; Maggio understood this to mean the money from Morton. *See Exhibit A* at pp. 101-103.

2. The Greedy Moneyman: Michael Morton

Michael Morton testified that on the night of the jury verdict, Morton called Baker to discuss the needs of tort reform because the judgment was worth more than the nursing home. *See Exhibit A* at p. 33. Although Baker and Morton had previously discussed starting up an organization for lawsuit reform, the topic became more pressing after the jury verdict. *See, e.g., Exhibit A* at 46. In fact, after his discussions with Morton, Baker informed Maggio that the contributions were secured. *See Exhibit N*.

Morton admits that he sent ten checks to Gilbert Baker, with the intention that the money be funneled or directed to Maggio's campaign. *Exhibit A* at 108:7-9 ("I just know that I had written checks to PACs, and I knew what I intended for them to do"). On July 8, 2013, the day of the remittitur hearing, Defendant Morton wrote out ten checks as campaign contributions totaling \$30,000 to the PACs identified by Baker. *Exhibit A* at 84:12-13, 119:8-121:18; *Exhibit U*. Morton also made a contribution to University of Central Arkansas, where Baker was employed as an executive assistant and fundraiser, as a gesture of good-will to Baker for his part in getting Morton's money to Maggio. *Exhibit A* at 119:23-120:4; *Exhibit T*. At the time he made the donations, Morton knew that the PAC donations were intended for Maggio's campaign -- even

though they were funneled through Baker and his PACs. *See, e.g., Exhibit A* at 106:23-25, 108:6-9, 135:2-18. These checks were then sent via FedEx to Baker. *See Exhibit A* at 117:7-15; *Exhibit V*. Again, after receiving these checks Baker called Morton and Maggio. *See Exhibit A* at p. 117; *Exhibit N; Exhibit O*.

3. The Corrupt Judge: Michael Maggio

Michael Maggio is a former circuit judge in the 20th Judicial Circuit, Second Division.¹ *See April 10, 2015 Order* at ¶5. During May of 2013, Maggio and Baker moved forward with the plan to get Maggio on the Arkansas Court of Appeals. On May 17, 2013, Maggio met with Baker and Clint Reed, a political consultant, to discuss, among other things, the amount of money Maggio would need to win an appeals court race. *See Exhibit N; Exhibit O*. They determined that Maggio would need between \$100,000 and \$150,000. *Id.* On June 27, 2013, Maggio announced his candidacy for a position on the Arkansas Court of Appeals. *See id.* Before this announcement, Baker had already secured Morton's money for Maggio. *See Exhibit A* at p. 57; *Exhibit Y; Exhibit O*.

Maggio willingly participated in the solicitation of these campaign contributions from Morton. *Exhibit N*. Maggio used Baker to solicit campaign contributions from Morton in furtherance of his desire to collect money from the nursing home industry and obtain Morton's financial backing in Defendant Maggio's run for the Arkansas Court of Appeals. *See id.* He also accepted the contributions prior to the time period in which he could legally do so. *See id.*

Maggio pled guilty to bribery for his role in the misconduct giving rise to this lawsuit. *See Exhibit A* at 47:20-24; *Exhibit N; Exhibit Y*. In conjunction with his plea agreement, Maggio admitted, under oath, that his decision to remit the jury's \$5.2 million verdict was the result of his agreement with Morton and Baker. *Exhibit N*.

¹ On April 10, 2015, Michael Maggio was dismissed as a party to this lawsuit due to the Court's finding that he was entitled to judicial immunity from civil liability for his improper and illegal conduct giving rise to this action, which includes but is not limited to reducing the jury verdict against Defendant Morton's nursing home, Greenbrier Nursing and Rehabilitation Center, in exchange for campaign contributions. *See April 10, 2015 Order*.

C. The Aftermath: Plaintiffs' Damages

Rhonda Coppak and Rosey Perkins have experienced emotional anguish, pain and suffered a great deal as a result of Michael Morton and Gilbert Baker's involvement in the bribery of former judge Michael Maggio. *See Exhibit L; Exhibit M.* As Rhonda stated in her affidavit:

I explained to Judge Miller at the sentencing hearing for Michael Maggio, when it was discovered that Mr. Maggio had reduced our jury verdict because he had received a bribe, it caused our entire family mental distress and suffering all over again. We have had to attend many depositions, and have endured much heartache recounting what happened during the trial, and after the bribe. My sister and I have traveled and sat through many hours of depositions. We have lost numerous hours of sleep. I have lost wages and have incurred expenses traveling to these court hearings that have involved Judge Maggio. This has taken away much time that I could have spent with my grandchildren and taking care of my husband who is disabled.

Exhibit M. Rosey has had a similar experience, explaining in her affidavit:

when it was discovered that Mr. Maggio had reduced our jury verdict because he had received a bribe, it caused our entire family mental distress and suffering all over again. We have had to attend many depositions, and have endured much heartache recounting what happened during the trial, and after the bribe. My sister and I have traveled and sat through many hours of depositions. We have lost numerous hours of sleep. I have incurred expenses traveling to these court hearings that have involved Judge Maggio. We have filed this lawsuit because a criminal act by Mr. Maggio and others caused us to lose a \$5,200,000.00 verdict, upon which a judgment was entered. We have suffered expenses in filing this civil lawsuit, including filing fees, mileage to and from the courthouses, depositions and attorneys' offices. We have experienced mental distress and anguish over what we now know to be a conspiracy against us and our verdict against the nursing home.

Exhibit L.

The Estate also sustained damages when it had its primary asset, the \$5.2-million-dollar judgment, illegally and unlawfully stolen from them. *See Exhibit L; Exhibit M; Exhibit J* at 102:16-103:7. Judge Moody acknowledge that if they verdict had not been set aside, Plaintiffs would not have been damaged. *Exhibit J* at 102:16-103:7.

III. SUMMARY JUDGMENT STANDARD

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *See* ARK. R. CIV. P. 56; *Wagner v. Gen. Motors Corp.*, 370 Ark. 268, 258 S.W.3d 749 (2007). The standard is whether the evidence is sufficient to raise a fact issue, not whether the evidence is sufficient to compel a conclusion. *Id.* The court must view the evidence in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* The purpose of summary judgment is not to try the issues, but to determine whether there are any issues to be tried. *Id.* A fact issue exists, even if the facts are not in dispute, if the facts may result in differing conclusions as to whether the moving party is entitled to judgment as a matter of law. *Id.* In such an instance, summary judgment is inappropriate. *Id.*

**IV. APPLICABLE LAW
AND
ARGUMENT IN OPPOSITION TO SUMMARY JUDGMENT**

Plaintiffs have brought this separate lawsuit against Morton and Baker. In this case, each of Plaintiffs' claims for damages against Morton and Baker stem from each defendant's role in the bribery of Maggio, a then-sitting circuit judge. This lawsuit seeks compensation for the damages sustained when Morton and Baker each committed felonious abuse of public trust. Plaintiffs seek not only to obtain the property Morton he took from them when he bought a reduction of the \$5.2-million-dollar verdict they had in their possession, but also seek damages for the mental anguish, pain and suffering they have had to and continue to endure as a result of Morton and Baker's criminal conduct. Plaintiffs also seek damages from these Defendants for the deprivation of their constitutionally protected rights. *See Amend. Compl.*

Arkansas law and the evidence here support each of Plaintiffs' claims. Nevertheless, Morton and Baker have moved this Court, pursuant to Rule 56, for summary judgment and dismissal of all claims against them. For the reasons below, Defendants motion should be denied

in its entirety and this case should proceed to trial on each claim.

A. There is sufficient evidence from which the jury could reasonable conclude that both Morton and Baker committed the offense of abuse of public trust.

Arkansas law provides civil damages to persons, like Plaintiffs, who have been wronged and damaged by the felonious conduct of people, like Defendants. *See* ARK. CODE ANN. § 16-118-107. Under Arkansas law, a person commits the offense of abuse of public trust, a Class D felony, if the person engages in any of the following conduct:

- a. Solicits, accepts, or agrees to accept on behalf of any person, political party, or other organization any benefit from another person upon an agreement or understanding that the other person will or may be appointed a public servant or designated or nominated as a candidate for public office;
- b. Offers, confers, or agrees to confer any benefit and the receipt of the benefit is prohibited by this section;
- c. Solicits, accepts, or agrees to accept any benefit as compensation or consideration for having as a public servant given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised his or her discretion in favor of another; or
- d. Offers, confers or agrees to confer any benefit upon a public servant and the receipt of the benefit is prohibited by this section.

ARK. CODE ANN. § 5-52-101(a). For purposes of this offense, a “public servant” is “[a]ny officer or employee of this State or any political subdivision thereof; or any person exercising the functions of any such officer.” In this case, Morton and Baker have committed the offense of abuse of public trust, a Class D felony in the State of Arkansas. *See* ARK. CODE ANN. § 5-52-101(c).

The undisputed and material facts in this case demonstrate that Morton has engaged in conduct which constitutes the offense of abuse of public trust. *See Section II, supra; see also Exhibit A; Exhibit B; Exhibit N; Exhibit O; Exhibit Y; Exhibit P.* This unlawful conduct occurred when Morton agreed to confer a benefit, *i.e.*, \$30,000 in campaign contributions, upon Maggio, a public servant and candidate for judicial office, the receipt of which was compensation or

consideration for Maggio's decision, opinion, recommendation, vote, or exercise of discretion as a judge, including inducing Maggio to reduce the *Bull* verdict. *Id.* Morton did confer a benefit to Maggio when he sent the campaign contributions, the receipt of which was compensation or consideration for Maggio's decision, opinion, recommendation, vote or exercise of discretion as a judge to reduce the *Bull* verdict. *Id.* Morton agreed to confer campaign contributions for Maggio to Baker, through the PAC system, so that the money would get into Maggio's campaign with the understanding or agreement that Maggio would issue a decision, opinion, or recommendation favorable to Greenbrier, Maggio's nursing home. *Id.* Morton sent the campaign contributions directly to Baker for the purpose of effectuating their plan of money into Maggio's campaign, through the shell PACs and with the understanding or agreement that Maggio, as a judge and public servant, would give a decision, opinion, or recommendation reducing the judgment owed by Greenbrier, and thus Maggio, to the Estate. *Id.* Morton also agreed to make a donation to the University of Central Arkansas as a benefit to Baker for putting the plan in motion, distributing the money to Maggio in furtherance of their agreement that Maggio, as a judge and public servant, would give a decision, opinion, or recommendation favorable to Greenbrier, Maggio's nursing home. *Id.* Morton sent an "anonymous" donation to the University of Central Arkansas, where Baker worked, as a payoff to Baker for funneling the money and influence Maggio's campaign with the understanding or agreement that Maggio, as a judge and public servant, would give a decision, opinion, or recommendation favorable to Morton's pocketbook by remitting Plaintiffs' judgment in the *Bull* case. *Id.* Morton gave the donation to the University of Central Arkansas, where Baker worked, as a payoff to Defendant Baker for funneling the money and influence Maggio's campaign upon an agreement or understanding that Maggio, as a judge and public servant, would exercise his discretion in favor of Maggio's nursing home. *See, e.g., Exhibit A* at p. 77. Morton agrees that a jury could reasonably conclude from the facts of this case that the money was sent for the purpose of influencing Maggio's

decision. *Exhibit A* at 132:13-24, 133:9-12, 134:21-23.

The undisputed facts in this case demonstrate that Baker also engaged in conduct which constitutes the offense of abuse of public trust. *See Section II, supra; see also Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E; Exhibit N; Exhibit O.* Baker solicited campaign contributions from Morton upon an agreement or understanding that Maggio, as a judge and public servant, would give a decision, opinion, or recommendation that would benefit Greenbrier, Maggio's nursing home, in the *Bull* case. *Id.* Baker solicited campaign contributions from in furtherance of their agreement to effectuate tort reform through the use of Maggio's position as a judge and public servant, would exercise his discretion in favor of Greenbrier, Maggio's nursing home, in the *Bull* case. *Id.* Baker offered a benefit to Morton for his contribution by persuading Maggio to reduce the *Bull* verdict in exchange for campaign contributions *See id.* Baker agreed to give Morton's campaign contributions to Maggio, a public servant and candidate for judicial office, in exchange for Maggio's decision, opinion, recommendation, vote, or exercise of discretion as a judge to remit Plaintiffs' \$5.2 million-dollar-verdict. *Id.* Baker secured campaign contributions for Maggio, the receipt of which was compensation or consideration for Maggio's decision, opinion, recommendation, vote, or exercise of discretion as a judge. *Id.* Baker accepted campaign contributions from Morton upon an agreement or understanding that Maggio, as a judge and public servant, would exercise his discretion in favor of Greenbrier, Morton's nursing home, in the *Bull* case. *Id.* Baker accepted, on Maggio's behalf, campaign contributions from Morton upon an agreement or understanding that Maggio, as a judge and public servant, would exercise his discretion in Morton's nursing home's favor on the remittitur issue. *See Exhibit N.* Baker and Morton had an agreement that Baker would give that money to Maggio in exchange for a favorable decision, opinion, or recommendation. *Id.* Baker agreed to accept, on Maggio's behalf, campaign contributions from Morton pursuant to their agreement that Maggio, as a judge and public servant, would take away Plaintiffs' judgment. *See Section II, supra.* Baker solicited a

donation for the University of Central Arkansas, where he worked, from Morton as Baker's payoff for funneling the money to Maggio and with the intent that it influences Maggio's decision in Morton's favor when the judge was ruling on the post-trial motions in the *Bull* case. *Id.* Baker solicited a donation to the University of Central Arkansas, where he worked, from Morton as a payoff to Baker for putting the plan in action to finance Maggio's campaign and perpetuate the agreement between Morton, Baker and Maggio to rig the outcome of the remittitur motion. *Id.* At the very least, a jury could reasonable infer this from all of the facts in this case.

To summarize, it is undisputed that Maggio was a public servant under Arkansas law. *See* AMCI 2d 5202. Maggio admits that he made the decision to take away the jury verdict because Baker had secured payment of \$30,000 for Maggio's judicial campaign. Morton admits that he intended for the funds to be disbursed to Maggio from the PACs. Baker set up the PACs as a place to launder Morton's money before directing that it be passed along to Maggio's campaign. Moreover, Morton acknowledged during his deposition that the jury did not have to believe him; a person could reasonably conclude from the facts in this case that his checks for the Maggio campaign were intended to influence Maggio's decision on whether to remit the \$5.2 million verdict and the check to UCA was Baker's payoff for being the middleman between Maggio and Morton. *Exhibit A* at 119:8-120:4; *see also id.* at 132:12-24 (acknowledging a problem with the appearance of these transactions). Christ Stewart, Baker's former attorney, testified that his gut reaction was that the timing and facts indicated bribery; "it just didn't – did not look right and didn't smell right, just as an attorney looking at it." *Exhibit C* at 63:7-64:3; *see also id.* at 68:11-17/ All of this evidence, when viewed together, is sufficient to support a jury verdict finding that Morton and Baker committed the offense of abuse of public trust.

Second, Plaintiffs claim can be submitted to the jury because they have been damaged by Morton and Baker's felonious conduct. Rhonda has experienced emotional anguish, pain and has suffered a great deal as a result of Morton and Baker's involvement in the bribery of former

Judge Maggio. *See Exhibit M.* Rosey has likewise experienced emotional pain, suffering and mental anguish as a direct result of Morton and Baker's criminal conduct and commission of the offense of abuse of public trust. *See Exhibit L.* The Estate, and consequently Rhonda and Rosey, also was damaged when the Estate's primary asset – the \$5.2 million dollar judgment – was stolen from them as a result of Morton and Baker's crime. *See Exhibit O; Exhibit N; Exhibit J* at 102

Moreover, Plaintiffs were damaged because they would not have agreed to a remittitur *if* they had known that Maggio had taken a bribe in exchange for reducing the verdict. *Exhibit L; Exhibit M.* A jury could reasonably conclude that Plaintiffs' damages are the result of Morton and Baker's participation in the scheme to funnel money into Maggio's campaign in exchange for his reduction of the verdict. At the very least, particularly when the facts are viewed in a light most favorable to Plaintiffs, this is a question for the jury.

Finally, as previously discussed, there is sufficient evidence from which the jury could conclude that Plaintiffs were damaged when Morton and Baker committed the offense of abuse of public trust. Nevertheless, Defendants attempt to persuade the Court that Plaintiffs cannot maintain an action because any impartial judge would have remitted the *Bull* judgment. This argument fails for a number of reasons.

First, as previously established, an executable \$5.2-million-dollar jury verdict was taken away by Morton, Baker and Maggio's illegal conduct and abuse of public trust, *e.g.*, they were injured as a result of the Defendants' felonious misconduct. The amount of that injury is a question for the jury.

Second, Defendants reliance upon the opinions of former federal District Judge James Moody does not negate this jury question. Here, Moody opines is that there is no evidence to support a verdict over \$1 million given that the act of negligence occurred not more than two (2) days prior to the death of Bull. *See generally Exhibit J; Exhibit W.* The appropriateness of

remittitur is not the issue on this case. This is not a legal or judicial malpractice case. This case does not involve claims of negligence against the Defendants. This is a case where Plaintiffs seek civil damages for the injuries and damages they sustained as a result of the felonious conduct of these Defendants. There is no dispute that Maggio accepted a bribe from Morton, in the form of campaign contributions that Baker had procured from Morton, all with full knowledge that the money was to for the purpose of influencing Maggio in his decision on the remittitur issue. *See Exhibit N; Exhibit Y*. Maggio abused the public's trust, accepted a bribe and reduced a verdict. He is guilty of the crime. Whether or not an impartial judge would have done the same thing is inconsequential.

Third, even if the appropriateness of remittitur was an issue (it is not), summary judgment is not appropriate. Here, Moody's ultimate opinion is that there is no evidence to support a verdict over \$1 million given that the act of negligence occurred not more than two (2) days prior to the death of Bull. *See, e.g., Exhibit J* at pp. 46-48, *Exhibit W* at p. 6. Judge Moody's opinion is based on his assessment of Plaintiffs' counsel's closing argument and an opinion that such argument confused the jury. *See, e.g., Exhibit J* at pp. 86-87; *Exhibit W*. This is not evidence which the jury could consider in making its verdict. *See Exhibit X*. In fact, the jury was instructed not to consider closing arguments. *See id.*

Fourth, Judge Moody's conclusion is also flawed because it ignores the actual instructions to the jury as to the legal theories in the case and *how* damages could be awarded. Again, the jury was attentive, asked questions, considered the instructions before them, and returned a general damages verdict of \$5.2 million dollars. This general verdict form was given at Greenbrier's request. The jury is presumed to follow the instructions. *See Ford Motor Co. v. Washington*, 2013 Ark. 510, 431 S.W.3d 210; *Carr v. Nance*, 2010 Ark. 497, *19, 370 S.W.3d 826, 838. There would be no legitimate basis to overturn the verdict for the reasons suggested by Judge Moody.

Fifth, in formulating this opinion, Moody steps into the shoes of the jury and says damages were \$1 million, max. He concludes that the jury had to be confused for it to award \$5.2 million. He decides that every unbribed judge would reach the same conclusion and remit the compensatory damages award. But then he says, other reasonable judges might think differently. *Exhibit J* at 57:16-58:8; *see also id.* at pp. 53-55, 58-59. In fact, they do. *See Exhibit K.* At the very least, this is a question for the jury.

In sum, Defendants' motion with respect to Plaintiffs' abuse of public trust claim must be denied.

B. There is sufficient evidence from which the jury could reasonable conclude that both Morton and Baker conspired with Maggio to deprive Plaintiffs of their constitutionally protected rights in violation of the Arkansas Civil Rights Act.

The Arkansas Civil Rights Act provides that “[e]very person, who under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.” ARK. CODE ANN. § 16-123-105(a). To sustain a claim under the Act, the plaintiff must show two things: (1) that defendant(s) acted under color of state law, and (2) the wrongful conduct deprived the plaintiff of a constitutionally protected right. *See Shepherd v. Washington Cnty.*, 331 Ark. 480, 491, 952 S.W.2d 779, 783 (1998).

The “crucial” aspect of any claim brought under this Act is a deprivation of a right, privilege, or immunity secured by the Arkansas Constitution. *Walters v. Dobbins*, 2010 Ark. 260, at 5. Liability exists under the Act when there is state action has resulted in the deprivation of an individual’s civil rights without due process of the law. *See Shepherd*, 331 Ark. at 491-492, 952 S.W.2d at 783. As the Arkansas Supreme Court explained in *Shepherd*,

This guarantee of due process has been applied to *deliberate decisions of*

government officials to deprive a person of life, liberty, or property. ... [because] the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta, ... was intended to secure the individual from arbitrary exercise of the powers of government. ... By requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty, or property, the Due Process Clause promotes fairness in such decisions.

Id. at 502, 952 S.W.2d at 789 (emphasis added). Indeed, “a fair trial by a fair tribunal is a basic requirement of due process.” *C.C.B. v. Ark. Dept. of Health and Human Servs.*, 68 Ark. 540, 545, 247 S.W.3d 870, 873 (2007); *see also Pickens v. Tucker*, 316 Ark. 811, 812, 875 S.W.2d 835, 836 (1994) (“[A] right to a fair and impartial tribunal, and equally as important the perception of such, is engrained in the Due Process clauses of our state and federal constitutions”); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009) (“Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has a direct, personal, substantial, pecuniary interest in a case”).

Finally, to act under color of state law for purposes of liability under the Act, the defendant does **not** have to be an officer of the State. *See Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980); *Crawford v. Van Buren Cnty.*, 678 F.3d 666, 670 (8th Cir. 2012); *see also Ivy v. Avey*, 2013 WL 4591313, *2 (E.D. Ark. Aug. 27, 2013). Thus, when the defendants are private citizens, the plaintiff “must establish not only that a private actor caused a deprivation of constitutional rights, but that the private actor willfully participated with state officials and reached a mutual understanding concerning the unlawful objective of a conspiracy.” *Crawford*, 678 F.3d at 670. Private parties who corruptly conspire with a judge in connection with conduct performed under color of law and causing the deprivation of constitutional rights are thus acting under color of state law. *Dennis*, 449 U.S. at 28-29.

In this case, the Court has ruled that the remittitur was an official act of former judge Maggio. *See* April 11, 2015 Order. It is undisputed that this official act was the product of a corrupt conspiracy involving the bribery of the judge. *See Dennis, supra*. The law clearly allows

private actors, like Morton and Baker, to incur liability for violations of this Act when they are willing participants in a joint action with public servants acting under color of state law.

Like with the abuse of public trust claim, the undisputed facts in this case demonstrate that Morton and Baker deprived Plaintiffs of their constitutionally protected rights, privileges and immunities secured by the Arkansas Constitution, and engaged in conduct aimed at fulfilling this purpose. *See Section II, supra*. Here, the evidence supports a finding that Morton and Baker conspired with Maggio to exercise the powers granted by the Amendment 80 of the Arkansas Constitution, the Arkansas Rules of Judicial Conduct, and the common law grant of the judicial authority of remittitur for the purpose of depriving Plaintiffs of their property rights. *See id.; generally, Exhibit A; Exhibit N; Exhibit O*. Defendants conspired to unlawfully reduce a unanimous jury verdict in Plaintiffs' favor. *See id*. They held meetings and discussions to effectuate a plan which would unlawfully deprive Plaintiffs of a \$5.2 million judgment. *See, e.g., Exhibit A* at pp. 64 & 101; *Exhibit N; Exhibit O; Exhibit E*. Defendants knowingly utilized Maggio's position as a judge to violate Plaintiffs' due process rights. A jury could reasonably conclude from this evidence that Morton and Baker conspired with each other and Maggio to engage in unlawful and/or willful conduct which infringed upon and deprived Plaintiffs of their right to a fair and impartial tribunal. *See, e.g., Exhibit C* at 63:7-64:3. The jury likewise could conclude that Morton, Baker, and Maggio engaged in unlawful and/or willful conduct in violation of Plaintiffs' right to a jury trial. *See, e.g., Exhibit A* at 119:8-120:4; *Exhibit N*. In so acting, Defendants deprived Plaintiffs of a number of their constitutionally protected rights, including their right to due process, the right to a fair and impartial tribunal, the right to a jury trial, and a right to obtain redress for wrongs. *See, e.g., ARK. CONST., Art. 2 §2; ARK. CONST., Art. 2, §7; ARK. CONST. Art. 2, § 13*.

In this case, the jury will have sufficient evidence from which to conclude that Plaintiffs' constitutional rights were violated. The solicitation of the campaign contributions, the payment

and funneling of the contributions through the PACs, and Maggio's reduction of the jury's verdict are a textbook example of a conspiracy to deprive Plaintiffs' not only of their due process rights, but also the rights afford them under Article 2, sections 7 and 13 of the Arkansas Constitution. The undisputed facts show that Morton, Baker and Maggio were part of a conspiracy entered into with the express purpose of impeding, hindering, obstructing, and defeating the due course of justice in the State of Arkansas, with intent to deny Plaintiffs, as citizens of the United States and Arkansas, due process and their constitutionally protected right to a jury trial and a fair, impartial tribunal. *See Section II, supra; see also Exhibit N.* These violations are sufficient to support submitting Plaintiffs' claim under the Arkansas Civil Rights Act to the jury.

In sum, Maggio's remittitur of the \$5.2-million-dollar verdict was the result of a bribe procured by Baker and paid by Morton. There is no doubt that the act of remittitur violated Plaintiffs' due process rights and deprived them of their property – the \$5.2-million-dollar verdict. Under these facts, *i.e.*, in conspiring with Maggio to reduce to verdict, Morton and Baker were acting under color of state law. *See Dennis, supra.* Accordingly, Defendants' summary judgment motion should be denied and Plaintiffs' claims against Morton and Baker for violation of the Arkansas Civil Rights Act should be submitted to the jury.²

C. There is sufficient evidence from which the jury could find that Morton and Baker committed the tort of civil conspiracy.

Under Arkansas law, “[a] ‘conspiracy’ is an agreement to accomplish a purpose that is unlawful or oppressive or to accomplish, by unlawful or oppressive means, a purpose that is not in itself unlawful or oppressive.” AMI 714. In order to recover damages for civil conspiracy, Plaintiffs must satisfy five requirements:

First, that Maggio, Baker and Morton knowingly entered into a conspiracy;

Second, that Plaintiffs have proved all of the essential elements necessary to

² Plaintiffs note that Defendants do not contest damages as they relate to this claim.

obtain a verdict against Defendants on the underlying claim of abuse of public trust and violation of the Arkansas Civil Rights Act;

Third, that one or more of the co-conspirators committed one or more overt acts in furtherance of the alleged conspiracy;

Fourth, that Morton and Baker, in entering in the conspiracy, had the specific intent to harm the Estate, Rhonda and Rosey;

And fifth, that the conspiracy proximately caused damages to Plaintiffs.

See id. “[A] prima facie case of civil conspiracy is established when there is shown a concert of action for the accomplishment of an unlawful act.” *Williams v. Henry*, 254 Ark. 685, 687, 495 S.W.2d 875, 877 (1973).

A conspiracy may be shown by direct evidence of an actual agreement or understanding between conspirators. *Chambers v. Stern*, 347 Ark. 395, 64 S.W.3d 737 (2002); *Mason v. Funderburk*, 247 Ark. 521, 446 S.W.2d 543 (1969). It may also be shown by circumstantial action. *See id.* Thus, in determining whether a conspiracy exists, the nature of the act encouraged, the amount of assistance given by the defendant, his presence or absence at the time of the tort, his relation to the other and his state of mind are all considered. *Colonia Ins. Co. v. City Nat. Bank*, 13 F.Supp.2d 891, 896 (W.D. Ark. 1998). A conspiracy also may be inferred from the actions of alleged conspirators if it is shown that they pursued the same unlawful object, each doing a part, so that their acts, although apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and concurrence of sentiment. *Chambers*, 347 Ark. 395, 64 S.W.3d 737; *Mason*, 247 Ark. 521, 446 S.W.2d 543. Further, any act done or declaration made by one of the conspirators in furtherance, aid or perpetration of the alleged conspiracy may be shown as evidence against his fellow conspirators. *Id.*

In this case, as previously established, the evidence here supports Plaintiffs’ damages claim from Morton and Baker for conspiracy. There is ample evidence that Morton and Baker conspired with each other, and Maggio, to violate Plaintiffs constitutionally protected rights and

deprive them of their property. *See Section IV(B), supra*. There is also sufficient evidence to show that Morton and Baker’s commission of the offense of abuse of public trust was in furtherance of a conspiracy to bribe Maggio and obtain a favorable outcome in a lawsuit. *See Section IV(A), supra*.

D. There is sufficient evidence from which the jury could find that Morton and Baker were acting in concert.

Under Arkansas law, “a party is responsible for the fault of another person or entity or for payment of the proportionate share of another person or entity if both the party and the other person or entity were acting in concert or if the other person or entity was acting as an agent or servant of the party.” ARK. CODE ANN. § 16-55-205(a). The statute defines “acting in concert” as “entering into a conscious agreement to pursue a common plan or design to commit an intentional tort and actively taking part in that intentional tort.” ARK. CODE ANN. § 16-55-205(b)(1). Thus, Plaintiffs may recover damages from Morton and Baker on the basis that each man acted in concert with the other and/or Maggio only if they can prove all the essential propositions necessary for a verdict on the claim for abuse of public trust and/or violation of the Arkansas Civil Rights Act. *See AMI 713*. They can; therefore, Defendants’ summary judgment motion with respect to the “acting in concert” claim must be denied.

Here, as demonstrated above, Morton and Baker entered into a conscious agreement with each other, and Maggio, to pursue a common plan to commit a crime, the abuse of public trust, and to intentionally violate Plaintiffs’ constitutionally protected rights. Accordingly, Plaintiffs’ acting in concert claim survives summary judgment.

E. This lawsuit is not a direct or collateral attack on the *Bull* judgment; therefore, summary judgment must be denied as a matter of law.

Morton and Baker’s final argument to support summary judgment is simply a renewal of the “collateral attack” argument raised in their Motion for Judgment on the Pleadings. This Court previously rejected this argument. *See July 15, 2015 Order*. Neither the law nor the facts have

changed since the Court entered this Order. Nevertheless, Defendants have renewed the collateral attack argument raised in their Motion and Renewed Motion for Judgment on the Pleadings. There is no reason for a different outcome now.

1. This case does not involve a direct or collateral attack on the Bull judgment.

Arkansas courts have long recognized that any proceeding provided by law for the purpose of avoiding or correcting a judgment is a direct attack, which will be successful upon showing the error; while an attempt to do the same thing in any other proceeding is a collateral attack, which will be successful only upon showing a want of power. *See Nationwide Ins. Enterprise v. Ibanez*, 368 Ark. 432, 246 S.W.3d 883 (2007); *Cassady v. Norris*, 118 Ark. 449, 177 S.W. 10 (1915). The courts also have recognized that an action is a collateral attack on a judgment, even when an action or proceeding has an independent purpose and contemplates some other relief or result, if the overturning of the judgment may be important or even necessary to its success. *Id.* Neither of these circumstances is present here because this case does not involve any attack upon the *Bull* judgment.

a. Plaintiffs' case against Morton and Baker is not a collateral attack on the Bull judgment.

Plaintiffs' case against Morton and Baker is not a collateral attack on the *Bull* judgment. Plaintiffs do not seek to avoid, correct, or overturn the *Bull* judgment; therefore, the suit is not a direct attack. It is also clear from the face of the Amended Complaint and the undisputed evidence that the instant suit is not a collateral attack upon the *Bull* judgment. *See Mack Financial Corp. v. Chrestman*, 270 Ark. 396, 403, 605 S.W.2d 749, 753 (1980) (holding that the vendor's replevin suit was not a collateral attack on judgment extinguishing a materialman's lien); *Story*, 217 Ark. at 197, 229 S.W.2d at 123 (holding that it does not appear "from the face of the pleadings that the instant suit is a collateral attack upon the foreclosure proceedings insofar as the appellees are concerned").

The Court's analysis in *Story* provides guidance in this case. There, the plaintiffs, as sole heirs of the decedent, brought suit to cancel certain conveyances between the decedent's widow and two other individuals covering a 175-acre tract of land and for an accounting of rents and other receipts from certain oil and gas leases on that land. *Story*, 217 Ark. at 193, 229 S.W.2d 121. The gist of the complaint was that the widow held the bare legal title to the tract in controversy as trustee for the heirs and that the transactions/conveyances made by the widow, at the direction of the two individuals, while the foreclosure sale was awaiting confirmation, amounted to a redemption of the lands from the foreclosure sale for the benefit of the heirs as owners on the equitable title. *Id.* at 194-196, 229 S.W.2d at 122-123. After answering the complaint, Defendants moved for judgment on the pleadings and dismissal of the complaint on the grounds that the plaintiffs' alleged cause constituted a collateral attack upon a decree of sale entered in foreclosure proceedings. *Id.* at 195, 229 S.W.2d at 122. In rejecting this argument, the Court explained that the heirs "assert the validity of the foreclosure proceedings and say they are relying thereon to sustain their cause of action which did not arise until such proceedings had terminated. Nor do the pleadings on their face show that the foreclosure suit involved the same parties and controversy as involved here so as to constitute a bar to the instant suit under the doctrine of res judicata." *Id.* at 197, 229 S.W.2d at 123-124.

Again, the instant suit is not a collateral attack upon the *Bull* proceedings. As in *Story*, Plaintiffs do not attack the remittitur order as invalid or seek to overturn it; rather, Plaintiffs rely upon the remittitur order as proof of Defendants' involvement in the conspiracy and bribery scheme, criminal abuse of trust, and deprivation of Plaintiffs' constitutional rights. Likewise, the amount the judgment was reduced is evidence of the loss Plaintiffs suffered and provide a tangible means from which the jury could calculate Plaintiffs' damages. In sum, the *Bull* proceedings provide a backdrop to the causes of action against Baker and Morton. *See Story, supra*;

Finally, it is undisputed that Baker and Morton were not parties in the *Bull* case, which was a wrongful death, nursing home neglect lawsuit against Greenbrier Nursing and Rehabilitation Center. Here, like in *Story*, the *Bull* case did not involve the same parties and controversy as involved here so as to constitute a bar to Plaintiffs' suit. In sum, the instant suit is not a collateral attack on the *Bull* judgment.

b. Plaintiffs' case against Morton and Baker is not a direct attack on the *Bull* judgment.

For the following reasons, Plaintiffs' case against Morton and Baker is not a direct attack on the *Bull* judgment. First, Plaintiffs do not seek to have the Bull judgment set aside, declared void, or vacated for fraud or any other basis from by ARK. R. CIV. P.60(c).

The Arkansas Rules of Civil Procedure provide, in part, that “[t]he court in which a judgment ... has been rendered or order made shall have the power ... to vacate or modify such judgment or order: ... [f]or misrepresentation or fraud (whether heretofore denominated intrinsic or extrinsic) by an adverse party.” ARK. R. CIV. P. 60(c)(4). As the Supreme Court has recognized, “adverse parties are those who, by the pleadings, are arrayed on opposite sides.” *Mabry v. Ross*, 237 Ark. 514, 520, 374 S.W.2d 361, 364-365 (1964) (citation omitted). Likewise, Black’s Law defines an “adverse party” as “[a] party whose interests in a transaction, dispute, or lawsuit are opposed to another party’s interests.” BLACK’S LAW DICTIONARY (10th ed. 2014), *party*. Thus, by its plain meaning, in order for Rule 60(c)(4) to apply, the alleged fraud must have been committed by a **party** to the lawsuit in which the judgment was entered. *See Johnson v. Cincinnati Ins. Co.*, 375 Ark. 164, 168-169, 289 S.W.3d 407, 411 (2008); *Barnett v. Howard*, 363 Ark. 140, 148, 211 S.W.3d 494, 500 (2005).

Here, in filing this suit, Plaintiffs do not seek to set aside the *Bull* judgment. Likewise, the Amended Complaint is devoid of any allegations of fraud or fraudulent conduct by Baker, Morton, or anyone else involved in the events giving rise to this suit. Plaintiffs have not brought

a fraud claim against these Defendants.³ Plaintiffs' causes of action against Morton and Baker arise from, amongst other things, Defendants' involvement in the conspiracy and bribery scheme.

Furthermore, it is indisputable that fraud and bribery are two very different beasts. Fraud involves intentional misrepresentations of a material fact, which results in damage to a plaintiff who justifiably relied on that misrepresentation. *See Wagster v. Wagster*, 2013 Ark. App. 616, *4-5; *see also* BLACK'S LAW DICTIONARY (10th ed. 2014), *fraud* ("A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment"). Bribery, unlike fraud, does not involve misrepresentations or concealment of facts. Instead, "[b]ribery is an offense against public justice[; t]he essence of it is the prostitution of a public trust, the betrayal of public interests, the debauchment of the public conscience." *State v. Bunch*, 119 Ark. 219, 177 S.W. 932, 935 (1915); *see also* BLACK'S LAW DICTIONARY (10th ed. 2014), *bribery* (Bribery is "[t]he corrupt payment, receipt, or solicitation of a private favor for official action"). It is clear from the face of the Amended Complaint that it is the latter wrong -- bribery -- at play in this case.

Finally, neither Baker nor Morton was a party in the *Bull* case.⁴ Therefore, even if Plaintiffs' Amended Complaint sought to set aside or modify the *Bull* judgment based on allegations of fraudulent actions by Baker and Morton (it does not), any such fraud was committed by "non-parties" and not "adverse parties" as contemplated by Rule 60(c)(4). In other words, Rule 60(c)(4) is inapplicable.

Second, since this suit is not an independent action to set aside a judgment for fraud on the court, Rule 60(k) of the Arkansas Rules of Civil Procedure is not applicable. Rule 60(k)

³ To establish a claim for fraud, a plaintiff must prove that (1) the defendant made a false representation of material fact; (2) the defendant intended to induce action or inaction by the plaintiff in reliance upon the representation; (3) the defendant intended to induce action or inaction by the plaintiff in reliance upon the representation; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered damage as a result of the false representation. *See Grand Valley Ridge, LLC v. Metropolitan Nat. Bank*, 2012 Ark. 121, *15, 388 S.W.3d 24, 33. Clearly, no such cause of action has been brought against any defendant in this case. *See* AMEND. COMPL., §V.

⁴ Plaintiffs acknowledge that Michael Morton was one of the originally named defendants in the *Bull* case; however, he was dismissed from the case prior to trial and entry of the judgment. *See* AMEND COMPL. ¶55(b) and (c). Thus, upon this dismissal, Morton was no longer a party (adverse or otherwise) in the *Bull* case.

provides that relief from a judgment or decree can be sought by filing a motion prescribed under the procedural rules, *e.g.*, Rule 60(c), or by filing “an independent action to relieve a party from a judgment who was not actually personally served with process or to set aside a judgment or decree for fraud upon the court.” ARK. R. CIV. P. 60(k); *see also Chapman v. Ford Motor Co.*, 2011 WL2912740 (W.D. Ark. July 19, 2011) (holding that the action, which sought to set aside a judgment entered in state court (and affirmed by the Arkansas Supreme Court) due to the defendant’s commission of fraud upon by court was an independent action under Rule 60(k)); With respect to the ability to maintain an independent action, Arkansas courts have “recognized the equitable power to set aside or modify a law court judgment (when there is no adequate remedy at law) where the judgment resulted from extrinsic fraud, mistake or accident.” *Pryor v. Raper*, 46 Ark. App. 150, 156-157, 877 S.W.2d 952, 956 (1994) (citing *Cotten v. Hamblin*, 233 Ark. 65, 342 S.W.2d 478 (1961) and *Taggart v. Moore*, 8 Ark. App. 160, 650 S.W.2d 590 (1983)); *see also* ARK. R. CIV. P. 60, Reporter’s Notes to Rule 60, ¶5. The essential elements of an independent action to obtain relief from a judgment are:

- (1) a judgment which ought not, in equity and good conscience, to be enforced;
- (2) a good defense to the alleged cause of action on which the judgment is founded;
- (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense;
- (4) the absence of fault or negligence on the part of the defendant; and
- (5) the absence of any adequate remedy at law.

Bankers Mortg. Co. v. U.S., 423 F.2d 73, 79 (1970).⁵

In this case, it is clear from the face of the Amended Complaint that Plaintiffs have not filed a Rule 60(k) independent action seeking to set aside the *Bull* judgment for fraud upon the court. Again, at no point in the Amended Complaint have Plaintiffs asked this Court to set aside the *Bull* judgment. Likewise, none of the essential elements of an independent action to set aside a judgment are present in this case. Indeed, the allegations supporting Plaintiffs’ causes of action involve criminal, tortious, conspiratorial, and unlawful conduct committed by Morton, Baker,

⁵ The Reporter’s Notes to Rule 60, ¶5, cite *Bankers* as a basis for Rule 60(k).

Maggio and various John Does -- none of whom were parties to the *Bull* proceeding. Consequently, even if the Amended Complaint included allegations that the *Bull* judgment should be set aside due to fraud on the court (it does not), Plaintiffs could not bring a Rule 60(k) action because the fraudulent conduct complained of would have been committed by individuals who were not party to the lawsuit.

Finally, even if Defendants' involvement in the conspiracy and bribery scheme constituted fraud on the court, a Rule 60(k) action would not be the proper procedural avenue for relief because Plaintiffs could not raise their abuse of public trust, violation of the Arkansas Civil Rights Act, civil conspiracy or acting in concert claims in a Rule 60(k) petition. *Cf. Ingram*, 355 Ark. 129, 133 S.W.3d 382 (reversing judgment on the pleadings because plaintiffs could not have raised fraud and breach of contract claims against the individual defendants in their personal capacities before the city council planning commission). In other words, Plaintiffs have an adequate remedy at law to pursue the causes of action against Morton, Baker and the John Does under the Arkansas crime victims civil liability statute as individuals who were injured by Defendants' felonious conduct in committing the crime of abuse of public trust and under the Arkansas Civil Rights Act as a result of Defendants' conduct which resulted in a deprivation of Plaintiffs' constitutional rights, as well as claims for civil conspiracy and acting in concert. *See* ARK. CODE ANN. § 16-118-107 (providing a cause of action to any person injured or damaged by reason of conduct of another person that would constitute a felony under public law) and ARK. CODE ANN. § 5-52-101 (providing that abuse of public trust is a Class D felony); *Dennis v. Sparks*, 449 U.S. 24 (1980) (holding that allegations that an official act of a state court judge was the product of a corrupt conspiracy involving bribery of the judge were sufficient to assert action under color of state law on the part of the private parties); *William v. Hency*, 254 Ark. 685, 495 S.W.2d 875 (1973) (explaining that a prima facie case of civil conspiracy is established when there is shown a concert of action for the accomplishment of an unlawful act"); ARK. CODE ANN.

§16-55-205 (providing for shared liability amongst defendants for acting in concert).

F. Alternatively, the Court should delay ruling on the merits of Defendants' summary judgment motion because it is premature.

Alternatively, should the Court be persuaded by any argument raised by Morton and Baker, Plaintiffs submit that Defendants motion is premature as discovery is ongoing. Plaintiffs submit that they have met proof with proof and shown that the evidence does not support summary judgment in this case. Nevertheless, and out of an abundance of caution, Plaintiffs respectfully request that the Court delay ruling on the matter and allow for supplementation of this response upon the completion of discovery. *See* ARK. R. CIV. P. 56(e).

IV. CONCLUSION

Plaintiffs have brought valid causes of action against Morton and Baker for abuse of public trust, deprivation and violation of Plaintiffs' constitutionally protected rights, civil conspiracy, and acting in concert. The undisputed evidence in this case supports each of these claims. Plaintiffs have met proof with proof and shown that genuine issues exist for trial. There is no basis upon which summary judgment can be granted; therefore, Defendants' motion should be denied.

Respectfully submitted,

ROSEY PERKINS and RHONDA COPPAK,
Individually and as Co-Administratrixes and Personal Representatives of the Estate of Martha Bull, deceased

By:



Thomas G. Buchanan (AR # 2003037)
LAW OFFICE OF THOMAS G. BUCHANAN
217 West Second Street, Suite 115
Little Rock, AR 72201
Telephone: (501) 296-9820
Facsimile: (501) 296-9823

-and-

R. Brannon Sloan, Jr. (AR# 91203)

DODDS, KIDD & RYAN

313 West Second Street

Little Rock, AR 72201

Telephone: (501) 375-9901

Facsimile: (501) 376-0387

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

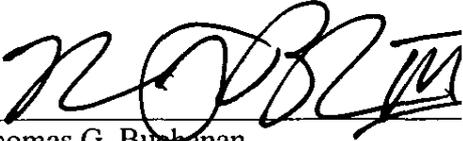
I hereby certify that a copy of the above and foregoing document was served via U.S. Mail on all attorneys of record on this 27th day of June, 2016:

Richard N. Watts
Staci Carson
Watts, Donovan & Tilley, P.A.
200 River Market Avenue, Suite 200
Little Rock, AR 72201

Kirkman Dougherty
Hardin, Jesson & Terry, PLLC
5000 Rogers Ave, Ste 500
Ft. Smith, AR 72917

John Everett
Everett, Wales & Comstock
PO Box 8370
Fayetteville, AR 72703

Special Judge David N. Laser
801 Locust Street
Conway, AR 72034


Thomas G. Buchanan

