

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

<b>MONICA DANIEL HUTCHISON,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 09-3018-CV-S-RED</b>
	)	
<b>TEXAS COUNTY, MISSOURI, et al,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

Before the Court are Defendant Anderson's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 59), Defendant Anderson's Amended Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 61), and Texas County, Missouri's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 62). For the reasons stated herein, Defendant Anderson's Motion to Dismiss Plaintiff's Second Amended Complaint is **DENIED AS MOOT** (Doc. 59), and Defendant Anderson's Amended Motion to Dismiss Plaintiff's Second Amended Complaint and Texas County, Missouri's Motion to Dismiss Plaintiff's Second Amended Complaint are **GRANTED IN PART and DENIED IN PART** (Docs. 61, 62).

**BACKGROUND**

On January 21, 2009, Plaintiff Monica Hutchison (hereinafter "Plaintiff" or "Hutchison") filed a six count complaint against Defendant Michael Anderson (hereinafter "Anderson") in his individual capacity, in his capacity as Texas County Prosecuting Attorney, and also against Texas County, Missouri (hereinafter "Texas County"), for claims related to her termination from the Texas County Prosecuting Attorney's Office. Hutchison alleges she was employed as an administrative assistant for Anderson from January 2003 to December 23, 2005. During her employment,

Hutchison claims Anderson created a hostile work environment by engaging in non-consensual physical contact of a sexual nature, verbal abuse, sexual harassment, and intimidation.

In her Second Amended Complaint, Plaintiff alleges that on December 1, 2005, Anderson called her into his office and told her she could either resign or be fired because she had been “saying things about him” and was “putting [] evidence together to file a sexual harassment suit against him.” Plaintiff claims she told Anderson to fire her because she would not resign, and that Anderson terminated her employment the following day. On December 12, 2005, Plaintiff alleges she returned to work after Anderson apologized. However, on December 18, 2005, Plaintiff claims Anderson came to her home at approximately 1:20 a.m., and rang the door bell, banged on the front door, and wiggled the door handle while intermittently leaving messages on Plaintiff’s answering machine telling her he had feelings for her and loved her. During the following week, Plaintiff claims Anderson left several more messages, and “kept pestering [her] and attempting to get the answering machine tape from her.” Finally, on December 23, 2005, Plaintiff alleges Anderson went to Texas County Judge Bradford Elsworth and obtained an order for plaintiff to produce the tape to him, and she “resigned at that time as a result of her constructive discharge after handing a copy of the tape to the Judge.”

Plaintiff filed a Charge of Discrimination with both the Equal Employment Opportunity Commission (hereinafter “EEOC”) and the Missouri Commission on Human Rights (hereinafter “MCHR”) on or about February 15, 2006. Plaintiff perfected her Charge of Discrimination on May 17, 2006, and jointly filed a second Charge of Discrimination alleging retaliation on July 3, 2006.<sup>1</sup> Plaintiff alleges she received a Notice of Right to Sue from the United States Department of Justice,

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On May 31, 2006, Anderson filed a civil lawsuit against Hutchison claiming she libeled and slandered him.

but she does not allege she ever received a Notice of Right to Sue from the MCHR.

Defendants moved to dismiss Plaintiff's Complaint in March 2009. On June 15, 2009, the Court dismissed Plaintiff's claims in Counts I, II, and III against Defendant Anderson in his official capacity as redundant to the same claims asserted in those Counts against Texas County, dismissed Count III in its entirety, struck Plaintiff's requests for punitive damages in Counts I and II, and denied the motions to dismiss on all other Counts. On October 8, 2009, after receiving leave of Court, Plaintiff filed her Second Amended Complaint. In her Second Amended Complaint, Plaintiff reasserts the original six Counts (including the previously dismissed Count III and the stricken requests for punitive damages) and adds Count VII for False Light Invasion of Privacy, Count VIII for Intentional Infliction of Emotional Distress, and Count IX under 42 U.S.C. § 1983 for alleged Due Process violations.

### **ANALYSIS**

Both Anderson and Texas County have filed motions to dismiss each of Plaintiff's claims. The arguments presented in these motions are addressed individually below.

#### **I. Counts I - VI of the Second Amended Complaint**

In Counts I - VI of her Second Amended Complaint, Plaintiff asserts claims for Employment Discrimination under Title VII (Count I), Retaliation (Count II), Employment Discrimination under the Missouri Human Rights Act (Count III), Malicious Prosecution (Count IV), Abuse of Process (Count V), and Defamation (Count VI). Plaintiff asserted these same Counts in her previous Complaint, and Defendants previously moved to dismiss these Counts. As noted above, the Court dismissed Plaintiff's claims in Counts I, II, and III against Defendant Anderson in his official capacity as redundant to the same claims asserted in those Counts against Texas County, dismissed

Count III in its entirety, struck Plaintiff's requests for punitive damages in Counts I and II, and denied Defendants' motions to dismiss on all other Counts. Therefore, for the reasons stated in the Court's rulings on June 15, 2009, the Court again DISMISSES Plaintiff's claims in Counts I, II, and III against Defendant Anderson in his official capacity as redundant to the same claims asserted against Texas County, DISMISSES Count III in its entirety, and STRIKES Plaintiff's requests for punitive damages in Counts I and II. Also for the reasons stated in the Court's rulings on June 15, 2009, the Court DENIES the present motions to dismiss to the extent they seek to reassert the same arguments in favor of dismissing the remainder of Counts I-VI.

## **II. Tort Claims Against Texas County**

Plaintiff asserts her state law tort claims in Counts IV (malicious prosecution), V (abuse of process), VI (defamation), VII (false light invasion of privacy), and VIII (intentional infliction of emotional distress) against Anderson in both his individual and official capacities. Texas County has moved to dismiss these claims against Anderson in his official capacity as barred by sovereign immunity. In response, Plaintiff argues that Texas County purchased general liability insurance for tort claims which covered Michael Anderson "as prosecuting attorney of Texas County, Missouri," and that "[b]y purchasing insurance covering th[e] claims brought in this complaint, Defendants Texas County, Missouri, and Michael R. Anderson, as Texas County Prosecuting Attorney have, pursuant to the provisions of § 537.610 [], waived any claim of sovereign immunity they might otherwise have asserted."

In Missouri, tort claims asserted against a public employee in his official capacity are barred by sovereign immunity. *See Shell v. Ebker*, No. 4:04-CV-1817 CAS, 2006 WL 1026982, at \*9 (E.D. Mo. Apr. 14, 2006). Under MO. REV. STAT. § 537.610, sovereign immunity can be waived by

purchasing insurance covering tort claims. *See* MO. REV. STAT. § 537.610.1. However, the Missouri courts have held that an insurance policy endorsement disclaiming coverage of any claim barred by the doctrine of sovereign immunity avoids any waiver of that immunity. *See, e.g., State ex rel. Bd. of Tr. of City of N. Kansas City Mem'l Hosp. v. Russell*, 843 S.W.2d 353 (Mo. 1993); *Casey v. Chung*, 989 S.W.2d 592, 594 (Mo. Ct. App. 1998).

Texas County concedes it maintained a general liability insurance policy, but notes the policy contains an endorsement that completely disclaims coverage for any and all causes of action barred by sovereign immunity. The relevant endorsement explicitly states that Texas County and the insurer intended to "fully invoke and take advantage of all immunities that [Texas County] ... has been granted against liabilities, including, without implied limitation, immunities which would be waived by the purchase of insurance." Plaintiff does not challenge that the endorsement excludes any claims asserted directly against Texas County, but instead argues that the endorsement in question does not apply to Michael Anderson in his official capacity. As support for this assertion, Plaintiff points to separate provisions in the relevant endorsement which state that the endorsement "do[es] not apply to any person who is an insured under this policy," and "[t]he word 'person' when used in this endorsement means an individual human being." Plaintiff then argues that the policy ultimately provides coverage for tort claims against Anderson, and since in his official capacity he is the "prosecuting attorney of Texas County," she argues Texas County ultimately waived sovereign immunity by purchasing insurance which covered Anderson in his individual and official capacities. However, Plaintiff's argument ignores the fact that while Anderson individually may be an insured "person" under the policy, a claim against Michael Anderson in his official capacity "is *not* a suit against [him] personally, for the real party in interest is the entity." *Bender v. Williamsport Area*

*Sch. Dist.*, 475 U.S. 534, 544 (1986) (emphasis in original). By pleading claims against Anderson in his capacity as Prosecuting Attorney of Texas County, Plaintiff was pleading a claim against (and seeking recovery directly from) Texas County, not Anderson. *Id.* (explaining that "while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself."); *Shell*, 2006 WL 1026982, at \*10. Since Texas County is not "an individual human being" as defined by this endorsement, the Court finds Plaintiff's argument unpersuasive. The endorsement explicitly manifests an intent to assert all available immunities, and it excludes from coverage any claims which would be barred by the doctrine of sovereign immunity under Missouri law. The Court finds Texas County did not waive its sovereign immunity by purchasing the insurance in question, and since the tort claims asserted against Texas County are generally barred by the doctrine of sovereign immunity absent any waiver, Plaintiff's state law tort claims against Texas County are barred and must be DISMISSED.<sup>2</sup> See *Shell*, 2006 WL 1026982, at \*9-10.

### III. False Light Invasion of Privacy<sup>3</sup>

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While courts are typically limited to considering the allegations contained in the complaint when ruling on a motion to dismiss, a reviewing court may also consider documents that are specifically referenced in the complaint as part of the basis for asserting the claim. See *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1063 n.3 (8th Cir. 2005). In this instance, Plaintiff specifically references the insurance policy in her Second Amended Complaint as support for her assertion that Texas County waived any sovereign immunity when it purchased the policy. Since Plaintiff specifically mentioned the insurance policy and relies on its existence in order to assert her claim, the Court may consider the policy, which was ultimately attached to Texas County's motion to dismiss, without converting the motion to dismiss into a motion for summary judgment. See *id.*; *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993) ("Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claim").

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In her response to Anderson's motion to dismiss, Plaintiff "agree[d] that where recovery is available through a claim based upon the tort of defamation, Missouri courts might not allow [P]laintiff to also recover based upon a claim for false light invasion of privacy." As such, Plaintiff stated that she "intend[ed] to file a voluntary motion to dismiss Count VII of her Second Amended Complaint." However, Plaintiff never filed said motion, so the Court will address

Plaintiff asserts a claim for false light invasion of privacy in Count VII of her Second Amended Complaint. As support for her claim, Plaintiff incorporates by reference the same factual basis she pled to support her other claims, namely her defamation claim in Count VI. In Count VI, Plaintiff alleges Anderson made "false and defamatory statements" that Plaintiff "used her position in the Texas County Prosecutor's Office to 'do favors' for friends, and 'to coordinate and orchestrate a 'swinger' style sex ring out of the Texas County Prosecuting Attorney's Office."

As multiple Missouri courts have noted, "an action alleging damages based upon untrue statements sounds in defamation, not invasion of privacy," and plaintiffs "should not be allowed to plead a separate tort essentially duplicative of [a] defamation claim." *Wooten v. Pleasant Hope R-VI Sch. Dist.*, 139 F. Supp. 2d 835, 845 (W.D. Mo. 2000) (citing *Sullivan v. Pulitzer Broad. Co.*, 709 S.W.2d 475, 481 (Mo. 1986)); *Nazeri v. Missouri Valley Coll.*, 860 S.W.2d 303, 317 (Mo. 1993) (upholding dismissal of false light invasion of privacy claim based upon allegedly untrue statements to reporters because "[r]ecovery for untrue statements that cause injury to reputation should be in defamation."). With Plaintiff seeking recovery for allegedly untrue statements, her claim for recovery lies in defamation, not false light invasion of privacy. Accordingly, Count VII of Plaintiff's Second Amended Complaint is DISMISSED.<sup>4</sup>

#### **IV. Intentional Infliction of Emotional Distress**

In Count VIII of her Second Amended Complaint, Plaintiff asserts a claim for intentional

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Defendants' motions to dismiss Count VII on the merits.

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The Court also notes that it appears Plaintiff's false light invasion of privacy claim is barred by Missouri's two year statute of limitations, since it appears the damaging acts occurred in 2006 when Anderson published the allegedly false statements about Plaintiff in a state court petition and subsequent press releases, and Plaintiff did not assert her false light claim until she filed her Second Amended Complaint on October 8, 2009. *See Sullivan*, 709 S.W.2d at 480 (recognizing two year statute of limitations for false light invasion of privacy claims).

infliction of emotional distress. "To state a claim for intentional infliction of emotional distress, a plaintiff must plead extreme and outrageous conduct by a defendant who intentionally or recklessly causes severe emotional distress that results in bodily harm." *Gibson v. Brewer*, 952 S.W.2d 239, 249 (Mo. 1997). "The conduct must have been '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 community.'" *Id.* "The conduct must be 'intended only to cause extreme emotional distress to the victim.'" *Id.*

Both Texas County and Anderson argue Plaintiff failed to state a claim in Count VIII. Specifically, Defendants argue Plaintiff made only a conclusory recital of the elements of the action without any factual support, failed to assert any bodily harm, failed to plead emotional distress that is medically diagnosable and medically significant, and failed to allege that the "only" purpose of Anderson's action was to inflict or cause extreme emotional distress. After review, the Court finds Plaintiff sufficiently pleaded her claim.

While Defendants are correct that Count VIII itself is largely a thin recitation of the elements of an intentional infliction of emotional distress claim, Count VIII incorporates by reference certain factual allegations stated elsewhere in the Second Amended Complaint. Among the incorporated factual allegations is Plaintiff's allegation that Anderson showed up at her house at approximately 1:20 a.m. on December 18, 2005, and proceeded to repeatedly call Plaintiff's telephone and demand she come out so he could talk to her. When she chose not to answer the phone, Plaintiff alleges Anderson began banging on multiple doors and wiggling the door handles to try to open them, and eventually yelled obscenities at Plaintiff as she continued to ignore him. Plaintiff alleges Anderson left the premises after she called the police and an officer drove by the house, but "[a]fter this

incident, defendant Anderson left several more phone messages and kept pestering [P]laintiff and attempting to get the answering machine tape from her." In Count VIII, Plaintiff states that Anderson's actions "were intended solely to cause extreme emotional distress" and that she "suffered extreme emotional distress which resulted in bodily harm, and has been caused to seek medical attention and medication and counseling."

Defendants are correct that an intentional infliction of emotional distress claim requires Plaintiff to plead a medically diagnosable and medically significant emotional distress. *Kansas City Laser, Inc. v. MCI Telecomm. Corp.*, 252 F. App'x 100, 103-04 (8th Cir. 2007). Defendants are also correct that Plaintiff did not specifically plead that she suffered medically diagnosable or medically significant distress. However, by pleading bodily harm as a result of Anderson's actions, it may be inferred at the motion to dismiss stage that such harm resulted in medically diagnosable and significant emotional distress. *See Lingo v. Burle*, No. 4:06-CV-1392 CAS, 2007 WL 2768385, at \*2 (E.D. Mo. Sept. 20, 2007). The Court finds Plaintiff's allegations are sufficient to survive a motion to dismiss. However, the Court notes the Eighth Circuit's caution that "'Missouri case law reveals very few factual scenarios sufficient to support a claim for 'intentional infliction of emotional distress,' since a defendant's conduct is rarely sufficiently extreme and outrageous to warrant recovery. *Kansas City Laser, Inc.*, 252 F. App'x at 104 (citing *Gibson v. Hummel*, 688 S.W.2d 4, 7-8 (Mo. Ct. App. 1985)). As such, Plaintiff's claim may be vulnerable to summary judgment, particularly if the evidence does not support that Plaintiff suffered any bodily harm or any medically diagnosable or significant emotional distress. For now, however, Defendant Anderson's motion to dismiss this Count is DENIED.

**V. 42 U.S.C. § 1983**

In Count IX, Plaintiff states that Anderson acted under color of state law as Texas County Prosecuting Attorney to "deprive [Plaintiff] of rights and privileges secured by the Constitution," including her right to be free from sex discrimination, her right to speak and associate freely, and her right to be free from unreasonable search and seizure. Plaintiff asserts her § 1983 claim against Anderson in his individual and official capacities.

**A. Official Capacity Claim**

Plaintiff first asserts a § 1983 claim against Anderson "as Texas County Prosecuting Attorney," which is the functional equivalent of pleading a claim against Texas County. *Acierno v. Cloutier*, 40 F.3d 597, 608 (3d Cir. 1994) ("[A] suit against elected officials in their official capacity is functionally a suit against the government entity."). However, a local government cannot be held liable under § 1983 for an injury inflicted solely by its employees or agents on a theory of respondeat superior. *Springdale Educ. Ass'n v. Springdale Sch. Dist.*, 133 F.3d 649, 651 (8th Cir. 1998). "[A] plaintiff seeking to impose such liability is required to identify an official municipal policy or a widespread custom or practice that caused the plaintiff's injury." *Id.*

Texas County argues Plaintiff failed to identify any policy, custom, or practice that caused her injury, and therefore she failed to state a claim under § 1983. Plaintiff did not respond to this argument in her briefing.<sup>5</sup> After review of the Second Amended Complaint, the Court agrees with Texas County. Plaintiff's claims against Anderson center around alleged unwanted sexual advances in the workplace, inappropriate comments, and harassing tactics. Plaintiff has not alleged Texas

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By failing to respond to this argument, Plaintiff's official capacity claim is subject to dismissal as having been waived. *See Campbell v. Bodycote Lindberg Corp.*, No. Civ. 024300(RHK/AJB), 2004 WL 358721, at \*8 (D. Minn. Feb. 25, 2004) ("Because [plaintiff] failed to respond to [defendant's] motion with respect to his pattern and practice claim, the Court will dismiss it as waived."); *see also Humphrey v. U.S. Attorney Gen.'s Office*, 279 F. App'x 328, 331 (6th Cir. 2008) (failure to oppose motions to dismiss allows district court to deem plaintiff to have waived opposition to motion).

County had any official municipal policy or widespread custom or practice endorsing such harassment, nor that any such policy or custom caused her injury. As such, Plaintiff failed to state a claim against Anderson in his official capacity. *See Artis v. Francis Howell N. Band Booster Ass'n, Inc.*, 161 F.3d 1178, 1181-82 (8th Cir. 1998) (upholding dismissal of § 1983 claim against school district where plaintiff did not allege school district had official policy endorsing racial harassment, did not provide evidence that school district delegated policymaking authority to individuals accused of harassment, and provided no evidence that school district allowed or ignored other racial harassment). Texas County's motion to dismiss Plaintiff's § 1983 official capacity claims is GRANTED, and these claims are DISMISSED.

**B. Individual Capacity Claims**

Plaintiff also asserts her § 1983 claims against Anderson in his individual capacity. As previously noted, Plaintiff argues that Anderson violated her right to be free from sex discrimination, her right to speak and associate freely, and her right to be free from unreasonable search and seizure. Anderson challenges each of these assertions. For the reasons stated, the Court finds Plaintiff has sufficiently pleaded claims for violations of her right to be free from sex discrimination and her First Amendment rights, but failed to assert a cognizable violation of her Fourth Amendment rights.

"Sexual harassment by state actors violates the Fourteenth Amendment and establishes a section 1983 action." *Tuggle v. Mangan*, 348 F.3d 714, 720 (8th Cir. 2003). To establish a cause of action under § 1983 for hostile work environment sexual harassment, a plaintiff must allege and prove: (1) that she belongs to a protected group, (2) that she has been sexually harassed by the defendant, (3) that the defendant's conduct was based on the plaintiff's gender, (4) that the defendant's conduct was unwelcome, and (5) that the harassment affected a term, condition, or

privilege of employment. *Moring v. Ark. Dep't of Corr.*, 243 F.3d 452, 455 (8th Cir. 2001). "To be actionable, harassment must be both objectively and subjectively offensive, such that a reasonable person would consider it to be hostile or abusive." *Id.* "Harassment affects a term, condition, or privilege of employment if it is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Id.* at 455-56. "Relevant factors for determining whether conduct rises to the level of abusiveness include 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Id.* at 456.

Plaintiff's allegations satisfy these factors. Plaintiff, a woman, alleges that Anderson, a man, harassed her and created a hostile work environment by: (1) engaging in unwelcome physical contact of a sexual nature, (2) using offensive and abusive language toward Plaintiff, (3) repeatedly asking Plaintiff out for drinks, inviting her to come to his house and get in his hot tub, and inviting her to ride on his motorcycle, (4) inappropriately commenting on her body parts, (5) staring at Plaintiff's body in a lewd manner while at work, (6) commenting on men Plaintiff was dating, (7) throwing a drink against a wall when Plaintiff told Anderson he was not her boyfriend, (8) forcing Plaintiff to choose between resigning or being fired for allegedly "saying things about" Anderson and because she was "putting together evidence [] to file a sexual harassment suit against" him, (9) coming to Plaintiff's house in the middle of the night and leaving phone messages, banging on doors, wiggling door handles to try to get in, and yelling obscenities at Plaintiff, and (10) obtaining a court order for Plaintiff to produce the answering machine tapes containing Anderson's messages. Plaintiff repeatedly states throughout her Complaint that Anderson's conduct was unwelcome, and

there is no indication that any of Anderson's alleged conduct was ever directed at any male employees. The Court finds Plaintiff's allegations sufficiently assert a claim for unwelcome harassment based upon Plaintiff's gender that ultimately affected the terms and conditions of her employment. *See Moring*, 243 F.3d at 456 (allegations that defendant engaged in conversation of a sexual nature, appeared barely clothed at plaintiff's home, sat on plaintiff's bed, touched plaintiff's thigh and attempted to kiss plaintiff was sufficient to satisfy § 1983 sexual harassment factors).

Likewise, in alleging that Anderson forced her to choose between resigning or being fired for allegedly "putting together evidence [] to file a sexual harassment suit against" him, and also in alleging that Anderson initiated a civil lawsuit "for the unlawful and collateral purpose of quieting [P]laintiff ..., intimidating [P]laintiff, and retaliating for plaintiff's exercise of her rights to seek redress for unlawful employment discrimination on the basis of sex," Plaintiff has also sufficiently pleaded a claim under § 1983 for retaliation against the exercise of First Amendment rights. *See Pendleton v. St. Louis County*, 178 F.3d 1007, 1011 (8th Cir. 1999) (recognizing "that retaliation against the exercise of First Amendment rights is a basis for section 1983 liability."); *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422, 1428 (8th Cir. 1986) (noting that officials "may not take retaliatory action against an individual designed either to punish him for having exercised his constitutional right to seek judicial relief or to intimidate or chill his exercise of that right in the future."); *see also Sauers v. Salt Lake County*, 1 F.3d 1122, 1128 (10th Cir. 1993) ("Action taken against an individual in anticipation of that person engaging in protected opposition to discrimination is no less retaliatory than action taken after the fact.").

Plaintiff has not, however, sufficiently stated a § 1983 claim for violation of her Fourth Amendment rights. The only allegations in the Second Amended Complaint that are even remotely

related to Fourth Amendment concerns are Plaintiff's allegation that Anderson obtained a subpoena for Plaintiff to produce the answering machine tape with Anderson's messages on it, and her allegation that Anderson instigated an investigation by the Missouri Attorney General's office. Plaintiff does not clarify how obtaining the subpoena or instigating the investigation constituted an improper search or seizure. While the allegations as stated in the Second Amended Complaint are not cognizable as Fourth Amendment violations, the factual allegations may nonetheless be addressed through Plaintiff's abuse of process, malicious prosecution, and § 1983 retaliation/First Amendment claims.

### **C. Statute of Limitations**

Finally, Defendants argue Plaintiff's § 1983 claims are barred by the statute of limitations. This argument is without merit. Plaintiff brought her claims within the five year statute of limitations for § 1983 actions. *See Sulik v. Taney County, Mo.*, 393 F.3d 765, 767 (8th Cir. 2005) (noting Missouri's five-year statute of limitations for personal injury action, MO. REV. STAT. § 516.120(4), applies to § 1983 claims).

### **CONCLUSION**

For the reasons stated herein, Defendant Anderson's Motion to Dismiss Plaintiff's Second Amended Complaint is **DENIED AS MOOT** (Doc. 59), and Defendant Anderson's Amended Motion to Dismiss Plaintiff's Second Amended Complaint and Texas County, Missouri's Motion to Dismiss Plaintiff's Second Amended Complaint are **GRANTED IN PART and DENIED IN PART** (Docs. 61, 62) as follows:

1. Plaintiff's claims in Counts I and II against Defendant Anderson in his official capacity as Prosecuting Attorney of Texas County are **DISMISSED** as redundant to

