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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Docket No. 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,..... Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids,
Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas,
Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward,
and Teach for America, Inc.....Respondents.

RECORD ON APPEAL- VOLUME I

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KIDS, THOMAS J. BELL, ANGELICA
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,)
)
 Plaintiff,)
)
 vs.)
)
 Thomas J. Bell, individually and as)
 Executive Director of Charleston Coalition)
 for Kids, Charleston Coalition for Kids, a)
 nonprofit Organization, Angelica M.)
 Colwell, Lee P. Deas, Godfrey A. Gibbison,)
 Eric P. Strickland, Loren R. Ziff, Courtney)
 S. Waters, Leeza D. Steward, and Teach for)
 America, Inc.)
)
 Defendants.)
)
 _____)

CONSENT ORDER TO
AMEND THE COMPLAINT

IT APPEARING TO THE COURT that Plaintiff, Kevin Dion Hollinshead, Senior, with the consent of the Defendants, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc., as evidenced by the signatures of their respective attorneys whose signatures are set forth hereinbelow, has moved pursuant to Rule 15(a), S.C.R.Civ.P, to amend his Complaint to add two causes of action in this matter – civil conspiracy and intentional infliction of emotional distress/outrage – as more fully set forth in the proposed Second Amended Complaint which is made an exhibit hereto as Exhibit A.

IT FURTHER APPEARING TO THE COURT that Defendants, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P.

Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc., have indicated their written agreement to Plaintiff, Kevin Dion Hollinshead, Senior, filing his proposed Second Amended Complaint (Exhibit A), and, by so doing, reserve and do not waive all other rights available to them, including but not limited to the right to seek dismissal of the Second Amended Complaint pursuant to Rule 12, S.C.R.Civ.P.

NOW, THEREFORE, based on the foregoing it is hereby ordered adjudged and decreed that Plaintiff, Kevin Dion Hollinshead, Senior, is hereby granted leave to amend the Complaint in this matter for a second time pursuant to Rule 15(a), S.C.R.Civ.P, to add two causes of action for civil conspiracy and intentional infliction of emotional distress/outrage as more fully set forth in the proposed Second Amended Complaint (Exhibit A).

AND IT IS SO ORDERED!

THE HONORABLE ROGER M. YOUNG SR.
CHIEF ADMINISTRATIVE JUDGE, NINTH
JUDICIAL CIRCUIT, CHARLESTON COUNTY
COURT OF COMMON PLEASE

WE SO MOVE:

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KEVIN DION HOLLINSHEAD, SENIOR

August 9, 2021
Charleston, South Carolina

WE CONSENT:

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COLWELL, LEE P. DEAS,
GODFREY A. GIBBISON, ERIC P.
STRICKLAND AND LOREN R. ZIFF**

August 9, 2021
Charleston, South Carolina

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August 9, 2021
Charleston, South Carolina

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LEEZA D. STEWARD**

August 9, 2021
Columbia, South Carolina

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August 9, 2021
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Kevin Dion Hollinshead Sr VS Thomas J Bell , defendant, et al

Case Number: 2021CP1000426

Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2021-08-09 12:38:07 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000426

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motions to Dismiss Plaintiff's Second Amended Complaint as to Defendant Charleston Coalition for Kids and Defendant Leeza Steward is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/05/2022 .

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS Thomas J Bell ,
defendant, et al

Case Number: 2021CP1000426

Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-04-05 13:21:53 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000426

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Amended Form 4:

Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint as to Defendants Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica Colwell, Lee Deas, Godfrey Gibbison, Eric Strickland, Loren R. Ziff, Courtney Waters, Leeza D. Steward, and Teach For America, Inc., is GRANTED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2022 .

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS Thomas J Bell ,
defendant, et al

Case Number: 2021CP1000426

Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-04-26 09:43:52 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-_____

Kevin Dion Hollinshead, Senior,)
Plaintiff,)

vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica Colwell,)
Lee Deas, Godfrey Gibbison, Eric)
Strickland, Loren Ziff, Courtney Waters,)
Lezza Steward, and Teach for America, Inc.)
Defendants.)

SUMMONS

TO: DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA COLWELL, LEE DEAS, GODFREY GIBBISON, ERIC STRICKLAND, LOREN ZIFF, COURTNEY WATERS, LEZZA STEWARD, AND TEACH FOR AMERICA, INC.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto, on the subscriber at his office located at 8 Cumberland Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

(THIS SPACE LEFT INTENTIONALLY BLANK)

(SIGNATURE PAGE TO FOLLOW)

PRITCHARD LAW GROUP, LLC

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-_____

Kevin Dion Hollinshead, Senior,)
Plaintiff,)

vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica Colwell,)
Lee Deas, Godfrey Gibbison, Eric)
Strickland, Loren Ziff, Courtney Waters,)
Lezza Steward, and Teach for America, Inc.,)
a nonprofit organization.)

Defendants.)

COMPLAINT

TO: DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA COLWELL, LEE DEAS, GODFREY GIBBISON, ERIC STRICKLAND, LOREN ZIFF, COURTNEY WATERS, LEZZA STEWARD, AND TEACH FOR AMERICA, INC., A NONPROFIT ORGANIZATION.

Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as “Hollinshead”) complaining of Defendants, Thomas J. Bell, individually and as executive director of Charleston Coalition for Kids (hereinafter referred to as “Bell”), Charleston Coalition for Kids, a nonprofit organization (hereinafter referred to as “CCFK”), Angelica Colwell (hereinafter referred to as “Colwell”), Lee Deas (hereinafter referred to as “Deas”), Godfrey Gibbison (hereinafter referred to as “Gibbison”), Eric Strickland (hereinafter referred to as “Strickland”), Loren Ziff (hereinafter referred to as “Ziff”), Courtney Waters (hereinafter referred to as “Waters”), Lezza Steward (hereinafter referred to as “Steward”), and Teach for America, Inc., a nonprofit organization (hereinafter referred to as “TFA”), would respectfully show unto this Honorable Court:

THE PARTIES

1. That Hollinshead is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
2. That Bell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
3. That Bell is, and at all times relevant hereto was, the Executive Director of CCFK.
4. That CCFK is a nonprofit organization organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.
5. That on information and belief, Colwell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
6. That on information and belief, Deas is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
7. That on information and belief, Gibbison is, and at all times relevant hereto was, a citizen and resident of Dorchester County, South Carolina.
8. That on information and belief, Strickland is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
9. That on information and belief, Ziff is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
10. That on information and belief, Waters is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
11. That on information and belief, Steward is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.

12. That TFA is a nonprofit organization organized and existing pursuant to the laws of the State of Connecticut, which transacts business in the State of South Carolina.

JURISDICTION

13. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
14. That, on information and belief, this Court has personal jurisdiction over the parties named in this action.

FACTUAL BACKGROUND

15. That Hollinshead restates, realleges, and reaffirms each and every relevant allegation set forth in Paragraph 1 through Paragraph 14 herein above as if fully restated herein verbatim.
16. That Bell, Colwell, Deas, Gibbison, Strickland, and Ziff are members of the board of directors for CCFK.
17. That Hollinshead was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
18. That Waters was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
19. That CCFK endorsed Waters as a candidate in the general election for Charleston County School District North Area.
20. That CCFK funded the creation of a political ad entitled “Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust, (hereinafter referred to as the “Ad”).
21. That the Ad was uploaded to the CCFK Youtube Channel.

22. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the funding of the Ad and the Ad's publication and dissemination on CCFK's Youtube channel and various television networks in the Greater Charleston County, South Carolina Area.
23. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authored the content of the Ad.
24. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the content of the Ad.
25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were agents of CCFK.
26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting within the scope of their agency with CCFK.
27. That at all times relevant hereto Waters was employed by TFA.
28. That at all times relevant hereto Waters was acting as an agent of TFA.
29. That at all times relevant hereto Waters was acting within the scope of her agency with TFA.
30. That at all times relevant hereto Steward was employed by TFA.
31. That at all times relevant hereto Steward was acting as agent of TFA.
32. That at all times relevant hereto Steward was acting within the scope of her agency with TFA.
33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.
34. That Waters directed and/or requested Steward appear in the Ad.

35. That Steward appears in the Ad.
36. That Steward narrates portions of the Ad.
37. That at all times relevant hereto, Steward was acting at the direction of Waters.
38. That an anonymous voiceover in the Ad states “but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up.”
39. That the Ad states “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College.”
40. That, following the anonymous voiceover in the AD, Steward states “We can’t have someone like that managing the tax dollars for our schools.”
41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the “Lawsuit”) brought against them by Student Assurance Services, Inc., (hereinafter referred to as “SAS”).
42. That Benedict College was not a party to the Lawsuit.
43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted \$144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.
44. That the Lawsuit refers to these insurance premiums as “SAS’s funds.”
45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of \$144,677.75 of insurance premiums.
47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.

48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.
50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.
52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.
53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
54. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC committed deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act.
55. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

56. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC were unjustly enriched at the expense of SAS by misappropriating \$144,677.75 of insurance premiums due to SAS.
57. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
58. That the Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College.
59. That on May 24, 2007, pursuant to Section 15-35-350 and 360, CODE OF LAWS, SOUTH CAROLINA, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS for a total amount of \$144,677.75 (hereinafter referred to as the "Confession of Judgment".)
60. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC admit to being liable to SAS in the amount of \$144,677.75.
61. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC confess and authorize the entry of judgment in favor of SAS.
62. That Benedict College is not mentioned or referred to in the Confession of Judgment.
63. That Benedict College is not a party to the Confession of Judgment.
64. That on May 24, 2007, Hollinshead and Hollinshead Group Insurance, LLC executed a promissory note to the order of SAS (hereinafter referred to as the "Note").
65. That Hollinshead and Hollinshead Group Insurance, LLC acknowledge and agree that is indebted to SAS in the amount of \$144,677.75.
66. That the Note is secured by the Confession of Judgment.
67. That Benedict College is not mentioned or referred to in the Note.

68. That Benedict College is not a party to the Note.
69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths (\$144,677.75) is not one hundred fifty thousand and zero one hundredth dollars (\$150,000.00.)

FOR A FIRST CAUSE OF ACTION
(Defamation)

70. That Hollinshead restates each and every allegation of Paragraph 1 through Paragraph 69 as if fully restated herein verbatim.
71. That as of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's Youtube Channel.
72. That CCFK aired the Ad on various television networks in the Greater Charleston County, South Carolina Area.
73. That the statements made in the Ad tend to impeach the honesty, integrity, virtue, and reputation of Hollinshead.
74. That the statements degrade Hollinshead as they accuse Hollinshead of stealing money.
75. That the statements degrade Hollinshead as they suggest unfitness as a public servant.
76. That the statements made in the Ad are false and defamatory to Hollinshead.
77. That CCFK is responsible for the acts committed by its agents within the scope of their employment with CCFK.
78. That TFA is responsible for the acts committed by its agents within the scope of their employment with TFA.
79. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are actionable per se.

80. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with constitutional malice.
81. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are false.
82. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements concern Hollinshead.
83. That as a direct and proximate result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead had suffered damages, including, but not limited to, loss of reputation and mental anguish.
84. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead is entitled to recover actual and/or special damages.
85. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with intentional or reckless disregard of the Hollinshead's rights.
86. That Hollinshead is entitled to recover punitive damages as a result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements.

WHEREFORE, Plaintiff, Kevin Dion Hollinshead, prays that this Court enter judgment as follows:

- A. That this Court enter judgment against Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's, in favor of Hollinshead and an award of actual, special, consequential, and punitive damages as determined by this Court.
- B. For costs and attorney fees incurred by Hollinshead in bringing, prosecuting, and maintaining this action.
- C. And for such other relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC

/s/ Edward K. Pritchard, III

Edward K. Pritchard, III, Esq.

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
Senior*

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-_____

Kevin Dion Hollinshead, Senior,)
Plaintiff,)

vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica M.)
Colwell, Lee P. Deas, Godfrey A. Gibbison,)
Eric P. Strickland, Loren R. Ziff, Courtney)
S. Waters, Leeza D. Steward, and Teach for)
America, Inc.)

Defendants.)

AMENDED SUMMONS

TO: DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, LOREN R. ZIFF, COURTNEY S. WATERS, LEEZA D. STEWARD, AND TEACH FOR AMERICA, INC.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto, on the subscriber at his office located at 8 Cumberland Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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(SIGNATURE PAGE TO FOLLOW)

PRITCHARD LAW GROUP, LLC

/s/ Edward K. Pritchard, III

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
Senior*

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-_____

Kevin Dion Hollinshead, Senior,)
Plaintiff,)

vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica M.)
Colwell, Lee P. Deas, Godfrey A. Gibbison,)
Eric P. Strickland, Loren R. Ziff, Courtney)
S. Waters, Leeza D. Steward, and Teach for)
America, Inc.)

Defendants.)

AMENDED COMPLAINT

TO: DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, LOREN R. ZIFF, COURTNEY S. WATERS, LEEZA D. STEWARD, AND TEACH FOR AMERICA, INC.

Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as “Hollinshead”) complaining of Defendants, Thomas J. Bell, individually and as executive director of Charleston Coalition for Kids (hereinafter referred to as “Bell”), Charleston Coalition for Kids, a nonprofit organization (hereinafter referred to as “CCFK”), Angelica M. Colwell (hereinafter referred to as “Colwell”), Lee P. Deas (hereinafter referred to as “Deas”), Godfrey A. Gibbison (hereinafter referred to as “Gibbison”), Eric P. Strickland (hereinafter referred to as “Strickland”), Loren R. Ziff (hereinafter referred to as “Ziff”), Courtney S. Waters (hereinafter referred to as “Waters”), Leeza D. Steward (hereinafter referred to as “Steward”), and Teach for America, Inc., a nonprofit

organization (hereinafter referred to as “TFA”), would respectfully show unto this Honorable Court:

THE PARTIES

1. That Hollinshead is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
2. That Bell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
3. That Bell is, and at all times relevant hereto was, the Executive Director of CCFK.
4. That CCFK is a nonprofit organization organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.
5. That on information and belief, Colwell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
6. That on information and belief, Deas is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
7. That on information and belief, Gibbison is, and at all times relevant hereto was, a citizen and resident of Dorchester County, South Carolina.
8. That on information and belief, Strickland is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
9. That on information and belief, Ziff is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
10. That on information and belief, Waters is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.

11. That on information and belief, Steward is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
12. That TFA is a nonprofit organization organized and existing pursuant to the laws of the State of Connecticut, which transacts business in the State of South Carolina.

JURISDICTION

13. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
14. That, on information and belief, this Court has personal jurisdiction over the parties named in this action.

FACTUAL BACKGROUND

15. That Hollinshead restates, realleges, and reaffirms each and every relevant allegation set forth in Paragraph 1 through Paragraph 14 herein above as if fully restated herein verbatim.
16. That Bell, Colwell, Deas, Gibbison, Strickland, and Ziff are members of the board of directors for CCFK.
17. That Hollinshead was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
18. That Waters was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
19. That CCFK endorsed Waters as a candidate in the general election for Charleston County School District North Area.
20. That CCFK funded the creation of a political ad entitled “Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust, (hereinafter referred to as the “Ad”).

21. That the Ad was uploaded to the CCFK Youtube Channel.
22. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the funding of the Ad and the Ad's publication and dissemination on CCFK's Youtube channel and various television networks in the Greater Charleston County, South Carolina Area.
23. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authored the content of the Ad.
24. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the content of the Ad.
25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were agents of CCFK.
26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting within the scope of their agency with CCFK.
27. That at all times relevant hereto Waters was employed by TFA.
28. That at all times relevant hereto Waters was acting as an agent of TFA.
29. That at all times relevant hereto Waters was acting within the scope of her agency with TFA.
30. That at all times relevant hereto Steward was employed by TFA.
31. That at all times relevant hereto Steward was acting as agent of TFA.
32. That at all times relevant hereto Steward was acting within the scope of her agency with TFA.
33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.

34. That Waters directed and/or requested Steward appear in the Ad.
35. That Steward appears in the Ad.
36. That Steward narrates portions of the Ad.
37. That at all times relevant hereto, Steward was acting at the direction of Waters.
38. That an anonymous voiceover in the Ad states “but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up.”
39. That the Ad states “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College.”
40. That, following the anonymous voiceover in the AD, Steward states “We can’t have someone like that managing the tax dollars for our schools.”
41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the “Lawsuit”) brought against them by Student Assurance Services, Inc., (hereinafter referred to as “SAS”).
42. That Benedict College was not a party to the Lawsuit.
43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted \$144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.
44. That the Lawsuit refers to these insurance premiums as “SAS’s funds.”
45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of \$144,677.75 of insurance premiums.

47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.
48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.
50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.
52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.
53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
54. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC committed deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act.
55. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

56. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC were unjustly enriched at the expense of SAS by misappropriating \$144,677.75 of insurance premiums due to SAS.
57. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
58. That the Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College.
59. That on May 24, 2007, pursuant to Section 15-35-350 and 360, CODE OF LAWS, SOUTH CAROLINA, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS for a total amount of \$144,677.75 (hereinafter referred to as the “Confession of Judgment”).)
60. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC admit to being liable to SAS in the amount of \$144,677.75.
61. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC confess and authorize the entry of judgment in favor of SAS.
62. That Benedict College is not mentioned or referred to in the Confession of Judgment.
63. That Benedict College is not a party to the Confession of Judgment.
64. That on May 24, 2007, Hollinshead and Hollinshead Group Insurance, LLC executed a promissory note to the order of SAS (hereinafter referred to as the “Note”).
65. That Hollinshead and Hollinshead Group Insurance, LLC acknowledge and agree that is indebted to SAS in the amount of \$144,677.75.
66. That the Note is secured by the Confession of Judgment.
67. That Benedict College is not mentioned or referred to in the Note.

68. That Benedict College is not a party to the Note.
69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths (\$144,677.75) is not one hundred fifty thousand and zero one hundredth dollars (\$150,000.00.)

FOR A FIRST CAUSE OF ACTION
(Defamation)

70. That Hollinshead restates each and every allegation of Paragraph 1 through Paragraph 69 as if fully restated herein verbatim.
71. That as of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's Youtube Channel.
72. That CCFK aired the Ad on various television networks in the Greater Charleston County, South Carolina Area.
73. That the statements made in the Ad tend to impeach the honesty, integrity, virtue, and reputation of Hollinshead.
74. That the statements degrade Hollinshead as they accuse Hollinshead of stealing money.
75. That the statements degrade Hollinshead as they suggest unfitness as a public servant.
76. That the statements made in the Ad are false and defamatory to Hollinshead.
77. That CCFK is responsible for the acts committed by its agents within the scope of their employment with CCFK.
78. That TFA is responsible for the acts committed by its agents within the scope of their employment with TFA.
79. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are actionable per se.

80. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with constitutional malice.
81. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are false.
82. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements concern Hollinshead.
83. That as a direct and proximate result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead had suffered damages, including, but not limited to, loss of reputation and mental anguish.
84. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead is entitled to recover actual and/or special damages.
85. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with intentional or reckless disregard of the Hollinshead's rights.
86. That Hollinshead is entitled to recover punitive damages as a result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements.

WHEREFORE, Plaintiff, Kevin Dion Hollinshead, prays that this Court enter judgment as follows:

- A. That this Court enter judgment against Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's, in favor of Hollinshead and an award of actual, special, consequential, and punitive damages as determined by this Court.
- B. For costs and attorney fees incurred by Hollinshead in bringing, prosecuting, and maintaining this action.
- C. And for such other relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC

/s/ Edward K. Pritchard, III

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
Senior*

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,)
Plaintiff,)

vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica M.)
Colwell, Lee P. Deas, Godfrey A. Gibbison,)
Eric P. Strickland, Loren R. Ziff, Courtney)
S. Waters, Leeza D. Steward, and Teach for)
America, Inc.)

Defendants.)

SECOND AMENDED SUMMONS

TO: JOSH DIXON, ESQ., AND VICTORIA T. KEPES, ESQ., ATTORNEYS FOR DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANT, COURTNEY S. WATERS, DEFENDANT, COURTNEY S. WATERS, JOSEPH M. MCCULLOCH, JR., ESQ., AND KATHY R. SCHILLACI, ESQ., ATTORNEYS FOR DEFENDANT, LEEZA D. STEWARD, DEFENDANT, LEEZA D. STEWARD, DAVID S. COBB, ESQ., NICKISHA M. WOODWARD, ESQ., ATTORNEYS FOR DEFENDANT, TEACH FOR AMERICA, INC., AND DEFENDANT, TEACH FOR AMERICA, INC.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto, on the subscriber at his office located at 8 Cumberland Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to answer the

Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PRITCHARD LAW GROUP, LLC

/s/ Edward K. Pritchard, III

Edward K. Pritchard, III, Esq.

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
Senior*

August 12, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,)
Plaintiff,)
vs.)

Thomas J. Bell, individually and as)
Executive Director of Charleston Coalition)
for Kids, Charleston Coalition for Kids, a)
nonprofit Organization, Angelica M.)
Colwell, Lee P. Deas, Godfrey A. Gibbison,)
Eric P. Strickland, Loren R. Ziff, Courtney)
S. Waters, Leeza D. Steward, and Teach for)
America, Inc.)
Defendants.)

SECOND AMENDED COMPLAINT

TO: JOSH DIXON, ESQ., AND VICTORIA T. KEPES, ESQ., ATTORNEYS FOR DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANT, COURTNEY S. WATERS, DEFENDANT, COURTNEY S. WATERS, JOSEPH M. MCCULLOCH, JR., ESQ., AND KATHY R. SCHILLACI, ESQ., ATTORNEYS FOR DEFENDANT, LEEZA D. STEWARD, DEFENDANT, LEEZA D. STEWARD, DAVID S. COBB, ESQ., NICKISHA M. WOODWARD, ESQ., ATTORNEYS FOR DEFENDANT, TEACH FOR AMERICA, INC., AND DEFENDANT, TEACH FOR AMERICA, INC.

Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as “Hollinshead”) complaining of Defendants, Thomas J. Bell, individually and as executive director of Charleston Coalition for Kids (hereinafter referred to as “Bell”), Charleston Coalition for Kids, a nonprofit organization (hereinafter referred to as “CCFK”), Angelica M. Colwell (hereinafter referred to as

“Colwell”), Lee P. Deas (hereinafter referred to as “Deas”), Godfrey A. Gibbison (hereinafter referred to as “Gibbison”), Eric P. Strickland (hereinafter referred to as “Strickland”), Loren R. Ziff (hereinafter referred to as “Ziff”), Courtney S. Waters (hereinafter referred to as “Waters”), Leeza D. Steward (hereinafter referred to as “Steward”), and Teach for America, Inc., a nonprofit organization (hereinafter referred to as “TFA”), would respectfully show unto this Honorable Court:

THE PARTIES

1. That Hollinshead is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
2. That Bell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
3. That Bell is, and at all times relevant hereto was, the Executive Director of CCFK.
4. That CCFK is a nonprofit organization organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.
5. That on information and belief, Colwell is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
6. That on information and belief, Deas is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
7. That on information and belief, Gibbison is, and at all times relevant hereto was, a citizen and resident of Dorchester County, South Carolina.
8. That on information and belief, Strickland is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.

9. That on information and belief, Ziff is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
10. That on information and belief, Waters is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
11. That on information and belief, Steward is, and at all times relevant hereto was, a citizen and resident of Charleston County, South Carolina.
12. That TFA is a nonprofit organization organized and existing pursuant to the laws of the State of Connecticut, which transacts business in the State of South Carolina.

JURISDICTION

13. That, on information and belief, this Court has jurisdiction over the subject matter of this action.
14. That, on information and belief, this Court has personal jurisdiction over the parties named in this action.

FACTUAL BACKGROUND

15. That Hollinshead restates, realleges, and reaffirms each and every relevant allegation set forth in Paragraph 1 through Paragraph 14 herein above as if fully restated herein verbatim.
16. That Bell, Colwell, Deas, Gibbison, Strickland, and Ziff are members of the board of directors for CCFK.
17. That Hollinshead was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
18. That Waters was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.

19. That CCFK endorsed Waters as a candidate in the general election for Charleston County School District North Area.
20. That CCFK funded the creation of a political ad entitled “Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust (hereinafter referred to as the “Ad”).
21. That the Ad was uploaded to the CCFK Youtube Channel.
22. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, individually and as members of the board of directors for CCFK, authorized the funding of the Ad and the Ad’s publication and dissemination on CCFK’s Youtube channel and various television networks in the Greater Charleston County, South Carolina Area.
23. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, individually and as members of the board of directors for CCFK, authored the content of the Ad.
24. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, individually and as members of the board of directors for CCFK, authorized the content of the Ad.
25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting individually and in their capacity as agents of CCFK.
26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting individually and within the scope of their agency with CCFK.
27. That at all times relevant hereto Waters was employed by TFA.
28. That at all times relevant hereto Waters was acting individually and within her capacity as an agent of TFA.

29. That at all times relevant hereto Waters was acting individually and within the scope of her agency with TFA.
30. That at all times relevant hereto Steward was employed by TFA.
31. That at all times relevant hereto Steward was acting individually and as an agent of TFA.
32. That at all times relevant hereto Steward was acting individually and within the scope of her agency with TFA.
33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.
34. That Waters directed and/or requested Steward to appear in the Ad.
35. That Steward appears in the Ad.
36. That Steward narrates portions of the Ad.
37. That at all times relevant hereto, Steward was acting at the direction of Waters.
38. That an anonymous voiceover in the Ad states "but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up."
39. That the Ad states "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College."
40. That, following the anonymous voiceover in the AD, Steward states "We can't have someone like that managing the tax dollars for our schools."
41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the "Lawsuit") brought against them by Student Assurance Services, Inc., (hereinafter referred to as "SAS").
42. That Benedict College was not a party to the Lawsuit.

43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted \$144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.
44. That the Lawsuit refers to these insurance premiums as “SAS’s funds.”
45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of \$144,677.75 of insurance premiums.
47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.
48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.
50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.
52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC’s breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.

53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
54. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC committed deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act.
55. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
56. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC were unjustly enriched at the expense of SAS by misappropriating \$144,677.75 of insurance premiums due to SAS.
57. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
58. That the Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College.
59. That on May 24, 2007, pursuant to Section 15-35-350 and 360, CODE OF LAWS, SOUTH CAROLINA, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS for a total amount of \$144,677.75 (hereinafter referred to as the “Confession of Judgment”).)
60. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC admit to being liable to SAS in the amount of \$144,677.75.
61. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC confess and authorize the entry of judgment in favor of SAS.
62. That Benedict College is not mentioned or referred to in the Confession of Judgment.

- 63. That Benedict College is not a party to the Confession of Judgment.
- 64. That on May 24, 2007, Hollinshead and Hollinshead Group Insurance, LLC executed a promissory note to the order of SAS (hereinafter referred to as the "Note").
- 65. That Hollinshead and Hollinshead Group Insurance, LLC acknowledge and agree that is indebted to SAS in the amount of \$144,677.75.
- 66. That the Note is secured by the Confession of Judgment.
- 67. That Benedict College is not mentioned or referred to in the Note.
- 68. That Benedict College is not a party to the Note.
- 69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths (\$144,677.75) is not one hundred fifty thousand and zero one hundredth dollars (\$150,000.00.)

FOR A FIRST CAUSE OF ACTION
(Defamation)

- 70. That Hollinshead restates each and every allegation of Paragraph 1 through Paragraph 69 as if fully restated herein verbatim.
- 71. That as of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's Youtube Channel.
- 72. That CCFK aired the Ad on various television networks in the Greater Charleston County, South Carolina Area.
- 73. That the statements made in the Ad tend to impeach the honesty, integrity, virtue, and reputation of Hollinshead.
- 74. That the statements degrade Hollinshead as they accuse Hollinshead of stealing money.
- 75. That the statements degrade Hollinshead as they suggest unfitness as a public servant.
- 76. That the statements made in the Ad are false and defamatory to Hollinshead.

77. That CCFK is responsible for the acts committed by its agents within the scope of their employment with CCFK.
78. That TFA is responsible for the acts committed by its agents within the scope of their employment with TFA.
79. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements are actionable per se.
80. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements were made with actual and constitutional malice.
81. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements are false.
82. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements concern Hollinshead.
83. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements, Hollinshead has suffered damages, including, but not limited to, loss of reputation, mental anguish, damage to business reputation and sever emotional distress.
84. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements, Hollinshead is entitled to recover actual and/or special damages.
85. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements were made with intentional or reckless disregard of the Hollinshead's rights.

86. That Hollinshead is entitled to recover punitive damages as a result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's defamatory statements.
87. That as a direct and proximate consequence of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's defamatory statements Hollinshead is entitled to entry of judgment against Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward and TFA for actual, special consequential and punitive damages in an appropriate amount.

FOR A SECOND CAUSE OF ACTION
(Civil Conspiracy)

88. That each and every relevant and consistent allegation of Paragraph 1 through Paragraph 86 set forth hereinabove is incorporated herein as if fully set forth herein verbatim.
89. That the actions of the Defendants complained of hereinabove constitute a civil conspiracy in that:
- a. Their actions complained of hereinabove constitutes the combination or agreement of two or more persons, to-wit: one or more of the Defendants;
 - b. To commit an unlawful act or a lawful act by unlawful means, to-wit: to make false representations concerning Hollinshead through distortion of the truth;
 - c. Together with the commission of an overt act in furtherance of the agreement, to-wit: the publication of the aforementioned representations through the Ad; and,
 - d. Damages proximately resulting to Hollinshead.
90. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's civil conspiracy, Hollinshead had suffered damages, including, but not limited to, loss of reputation and mental anguish.

91. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's civil conspiracy, Hollinshead is entitled to recover actual and/or special damages.
92. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's civil conspiracy committed with intentional or reckless disregard of the Hollinshead's rights.
93. That Hollinshead is entitled to recover punitive damages as a result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's civil conspiracy.
94. That as a direct and proximate consequence of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's civil conspiracy Hollinshead is entitled to entry of judgment against Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward and TFA for actual, special consequential and punitive damages in an appropriate amount.

FOR A THIRD CAUSE OF ACTION
(Outrage)

95. That each and every relevant and consistent allegation of Paragraph 1 through Paragraph 92 set forth hereinabove is incorporated herein as if fully set forth herein verbatim.
96. That the conduct of Defendants complained of hereinabove constitutes intentional infliction of emotional distress and/or outrage in that:
 - a. The Defendants intentionally or recklessly inflicted severe emotional distress on Hollinshead or was certain or substantially certain that such distress would result from their conduct.

- b. The conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious, and utterly intolerable in a civilized community.
 - c. The actions of the Defendants caused Hollinshead emotional distress.
 - d. The emotional distress suffered by Hollinshead was severe so that no reasonable man could be expected to endure it.
97. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's intentional infliction of emotional distress/outrageous conduct, Hollinshead had suffered severe emotional distress.
98. That as a direct and proximate result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's intentional infliction of emotional distress/outrageous conduct, Hollinshead is entitled to recover actual and/or special damages.
99. That Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's intentional infliction of emotional distress/outrageous conduct was intentional or in reckless disregard of the Hollinshead's rights.
100. That Hollinshead is entitled to recover punitive damages as a result of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's, and TFA's intentional infliction of emotional distress/outrageous conduct.
101. That as a direct and proximate consequence of Bell's, CCFK's, Colwell's, Deas', Gibbison's, Strickland's, Ziff's, Waters', Steward's intentional infliction of emotional distress/outrageous conduct Hollinshead is entitled to entry of judgment against Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward and TFA for actual, special consequential and punitive damages in an appropriate amount.

WHEREFORE, Plaintiff, Kevin Dion Hollinshead, prays that this Court enter judgment as follows:

- A. That this Court enter judgment against Defendants, Thomas J. Bell, Charleston Coalition for Kids, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc., in favor of Plaintiff, Kevin Dion Hollinshead, and an award of actual, special, consequential, and punitive damages as determined by this Court.
- B. For costs and attorney fees incurred by Plaintiff, Kevin Dion Hollinshead, in bringing, prosecuting, and maintaining this action.
- C. And for such other relief as this Court deems just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC

/s/ Edward K. Pritchard, III

Edward K. Pritchard, III, Esq.

(South Carolina Bar No. 9710)

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
Senior*

August 12, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Kevin Dion Hollinshead, Senior,	)	Civil Action No.: 2021-CP-10-00426
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Thomas J. Bell, individually and as	)	
Executive Director of Charleston	)	ANSWER TO SECOND AMENDED
Coalition for Kids, Charleston Coalition	)	COMPLAINT
For Kids, a Nonprofit Organization,	)	
Angelica M. Colwell, Lee P. Deas, Geoffrey	)	
A. Gibbison, Eric P. Strickland, Loren R.	)	
Ziff, Courtney S. Waters, Leeza D.	)	
Steward, and Teach for America, Inc.,	)	
	)	
Defendants.	)	

Defendant, Leeza D. Steward ("Defendant Steward"), hereby files her Answer to the Second Amended Complaint and answers and alleges the following:

**FOR A FIRST DEFENSE AND BY WAY
OF MOTION TO DISMISS**

1. Pursuant to South Carolina Rule of Civil Procedure Rule 12(b)(6), Plaintiff has failed to set forth facts sufficient to constitute a cause of action and as such, the Second Amended Complaint as it relates to Defendant Steward should be dismissed. Defendant Steward incorporates herein by reference her Motion to Dismiss.

**FOR A SECOND DEFENSE
AND BY WAY OF ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

2. Except as specifically admitted herein, each and every allegation in the Second Amended Complaint is expressly denied.

3. Defendant Steward admits the jurisdictional allegations of paragraphs one (1) and two (2) of the Second Amended Complaint.

4. Upon information and belief, Defendant Steward admits the allegations contained in paragraphs three (3) and four (4) of the Second Amended Complaint.

5. Defendant Steward is without sufficient knowledge to admit or deny the truth or falsity of the allegations set forth in paragraphs five (5), six (6), seven (7), eight (8), and nine (9) of the Second Amended Complaint. As such, those allegations are denied.

6. Defendant Steward admits the jurisdictional allegations of paragraphs ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14) of the Second Amended Complaint.

7. Defendant Steward has responded to the allegations referenced in paragraph fifteen (15) of the Second Amended Complaint. Any remaining allegations are denied.

8. Defendant Steward is without sufficient knowledge to admit or deny the truth or falsity of the allegations set forth in paragraph sixteen (16) of the Second Amended Complaint. As such, she denies same and demands strict proof thereof.

9. Upon information and belief, Defendant Steward admits the allegations of paragraphs seventeen (17) and eighteen (18) of the Second Amended Complaint.

10. Answering paragraph nineteen (19) of the Second Amended Complaint, Defendant Steward admits that CCFK was one of the candidates endorsed by CCFK in the general election for Charleston County School District North Area. Any remaining allegations are denied.

11. Although Defendant Steward is aware that Defendant CCFK ran the political ad, she is without sufficient knowledge to admit or deny the truth or falsity of the allegations set forth in paragraphs twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24) of the Second Amended Complaint and therefore denies the allegations and demands strict proof thereof.

12. Answering paragraphs twenty-five (25) and twenty-six (26) of the Second Amended Complaint, Defendant Steward admits that she appeared in the political ad in her individual capacity. Any remaining allegations are denied.

13. The allegations in paragraphs twenty-seven (27), twenty-eight (28), and twenty-nine (29) of the Second Amended Complaint are not directed to Defendant Steward and therefore no response is required. All remaining allegations are denied.

14. Answering paragraph thirty (30) of the Second Amended Complaint, Defendant Steward admits she was employed by TFA. Any remaining allegations are denied.

15. Answering paragraphs thirty-one (31) and thirty-two (32) of the Second Amended Complaint, Defendant Steward admits only that she appeared in the political ad in her individual capacity. Any remaining allegations are denied.

16. Defendant Steward denies the allegations of paragraphs thirty-three (33) and thirty-four (34) of the Second Amended Complaint.

17. Defendant Steward admits the allegations of paragraph thirty-five (35) of the Second Amended Complaint.

18. Answering paragraph thirty-six (36) of the Second Amended Complaint, Defendant Steward admits only that she appeared in the ad and offered her opinion on a

matter of public concern which speech is protected by the Free Speech Clause of the First Amendment to the United States Constitution. Any remaining allegations are denied.

19. Defendant Steward denies the allegations of paragraph thirty-seven (37) of the Second Amended Complaint.

20. Answering paragraphs thirty-eight (38) and thirty-nine (39) of the Second Amended Complaint, Defendant Steward denies the allegations in that Plaintiff has failed to include the word “nearly” before the words “one-hundred fifty” and craves reference to the political ad at issue as to the exact language.

21. Defendant Steward admits paragraphs forty (40), forty-one (41), and forty-two (42) of the Second Amended Complaint.

22. Answering paragraph forty-three (43) and forty-four (44) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied. Answering affirmatively, the monies at issue in the SAS Lawsuit appear to have been monies that Benedict College entrusted to Plaintiff for the benefit of SAS and which, the SAS complaint alleges, Plaintiff misappropriated.

23. Defendant denies the allegations in paragraph forty-five (45) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff as to the allegations in the SAS Lawsuit.

24. Answering paragraphs forty-six (46) and forty-seven (47) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the

allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

25. Defendant denies the allegations in paragraph forty-eight (48) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff as to the allegations in the SAS Lawsuit.

26. Answering paragraph forty-nine (49) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

27. Defendant denies the allegations in paragraph fifty (50) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff as to the allegations in the SAS Lawsuit.

28. Answering paragraph fifty-one (51) and fifty-two (52) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

29. Defendant denies the allegations in paragraph fifty-three (53) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff as to the allegations in the SAS Lawsuit.

30. Answering paragraph fifty-four (54) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

31. Defendant denies the allegations in paragraph fifty-five (55) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff as to the allegations in the SAS Lawsuit.

32. Answering paragraph fifty-six (56) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

33. Defendant denies the allegations in paragraph fifty-seven (57) of the Second Amended Complaint as Defendant Steward has been unable to locate any answer or denial by Plaintiff in the SAS Lawsuit.

34. Defendant Steward denies the allegations set forth in paragraph fifty-eight (58) of the Second Amended Complaint in that the monies alleged to have been

converted in the SAS Lawsuit were those belonging to Benedict that were entrusted to Plaintiff to give to SAS.

35. Answering paragraphs fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), sixty-seven (67), and sixty-eight (68) of the Second Amended Complaint, Defendant Steward admits these allegations generally but as the allegations are not complete and only partially represent the factual and legal assertions in the SAS Lawsuit, Defendant Steward craves reference to the pleadings and other documents on file in the stated lawsuit and denies any allegations inconsistent therewith. Any remaining allegations are denied.

36. Defendant Steward admits generally the allegations in paragraph sixty-nine (69) of the Second Amended Complaint. Answering affirmatively, to the extent Plaintiff is referring to language of the political ad, Defendant Steward craves reference to the actual political ad at issue.

FOR A THIRD DEFENSE
AND BY WAY OF ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT
(Defamation)

37. Defendant Steward has responded to the allegations referenced in paragraph seventy (70) of the Second Amended Complaint. Any remaining allegations are denied.

38. Defendant Steward is without sufficient knowledge to admit or deny the truth or falsity of the allegations set forth in paragraphs seventy-one (71) and seventy-two (72) of the Second Amended Complaint and therefore denies the allegations.

39. Defendant Steward denies the allegations set forth in paragraphs seventy-three (73), seventy-four (74), and seventy-five (75) of the Second Amended Complaint.

Answering affirmatively, Steward craves reference to the SAS Lawsuit which accuses Plaintiff of stealing money and to which Defendant Steward has been unable to locate an answer or denial by Plaintiff as to the allegations.

40. Defendant Steward denies the allegations in paragraph seventy-six (76) of the Second Amended Complaint.

41. Answering paragraphs seventy-seven (77) and seventy-eight (78) of the Second Amended Complaint, those are legal conclusions to which no response is required. To the extent a response is required, a non-profit corporation's liability for acts of its agents is fact dependent and subject to limitations and exclusions. Any remaining allegations are denied.

42. Defendant Steward denies the allegations in paragraphs seventy-nine (79), eighty (80), eighty-one (81), and eighty-two (82) of the Second Amended Complaint.

43. Defendant Steward denies the allegations in paragraphs eighty-three (83), eighty-four (84), eighty-five (85), eighty-six (86), and eighty-seven (87) of the Second Amended Complaint.

FOR A FOURTH DEFENSE
AND BY WAY OF ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT
(Civil Conspiracy)

44. Defendant Steward has responded to the allegations referenced in paragraph eighty-eight (88) of the Second Amended Complaint. Any remaining allegations are denied.

45. Defendant Steward denies the allegations set forth in paragraphs eighty-nine (89), including all subparts, ninety (90), ninety-one (91), ninety-two (92), ninety-three (93), and ninety-four (94) of the Second Amended Complaint.

FOR A FIFTH DEFENSE
AND BY WAY OF ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT
(Outrage)

46. Defendant Steward has responded to the allegations referenced in paragraph ninety-five (95) of the Second Amended Complaint. Any remaining allegations are denied.

47. Defendant Steward denies the allegations set forth in paragraphs ninety-six (96), including all subparts, ninety-seven (97), ninety-eight (98), ninety-nine (99), one hundred (100), and one hundred-one (101) of the Second Amended Complaint.

FOR A SIXTH DEFENSE
AND BY WAY OF ANSWER TO PLAINTIFF'S SECOND AMENDED
COMPLAINT
(Prayer for Relief)

48. Plaintiff's prayer for relief should be denied.

FOR A SEVENTH DEFENSE
(Failure to State a Claim)

49. Plaintiff's Second Amended Complaint fails to state facts sufficient to constitute a cause of action for which relief can be granted. Therefore, the Second Amended Complaint against Defendant Steward should be dismissed.

FOR AN EIGHTH DEFENSE
(Punitive Damages)

50. Should discovery so show, Defendant Steward pleads S.C. Code Ann. §33-56-180 as a bar or limitation to Plaintiff's claims and alleged damages.

FOR A NINTH DEFENSE

51. Defendant Steward **pleads truth and substantial truth** as complete and total defenses to the Plaintiff's claims.

FOR A TENTH DEFENSE

52. Defendant Steward pleads privilege, absolute and qualified, and conditional privilege as defenses to Plaintiff's claims.

FOR AN ELEVENTH DEFENSE

53. Defendant Steward pleads good faith and reasonableness as defenses to Plaintiff's claims.

FOR A TWELFTH DEFENSE

54. Defendant Steward pleads waiver and justification as defenses to Plaintiff's claims.

FOR A THIRTEENTH DEFENSE

55. Defendant Steward pleads the Free Speech Clause of the First Amendment to the United States Constitution and the Fourteenth Amendment as a complete bar to Plaintiff's claims against her.

FOR A FOURTEENTH DEFENSE

56. Defendant Steward pleads the defenses of opinion, fair comment, and fair reporting as bars and defenses to Plaintiff's claims.

FOR A FIFTEENTH DEFENSE

57. Defendant Steward would show that, to the extent they are alleged, Plaintiff is not entitled to an award for punitive damages because an award of punitive damages violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution. With respect to Plaintiff's demands for punitive damages, Defendant Steward specifically incorporates herein by reference any and all standards of limitations regarding the determination

and/or enforceability of punitive damage awards that arose in the decisions of *BMW of No. America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mut. Auto Ins. Co. v. Campbell*, No. 01-1289, 2003 WL 1791206 (U.S. Sup. Ct. Apr. 7, 2003).

FOR A SIXTEENTH DEFENSE

58. Should discovery so show, Plaintiff's claim for punitive damages is barred by S.C. Code Ann. §33-56-180.

FOR A SEVENTEENTH DEFENSE

59. Defendant Steward pleads public policy, public duty, and immunity as defenses to Plaintiff's claims as Plaintiff was a public figure and public official running for public office.

FOR AN EIGHTEENTH DEFENSE

60. To the extent Plaintiff has been damaged, which is denied, such damage arose from his own conduct and as such, Plaintiff's claims should be dismissed.

FOR AN NINETEENTH DEFENSE

61. Since Plaintiff's claim for defamation is for injury to reputation, and since by his own admission he has been sued for stealing money (see ¶43 of the Second Amended Complaint) and has confessed judgment, any statement by Defendant, even if false, which is denied, would have only a *de minimus* effect, if any, on Plaintiff's reputation for which no recovery should be allowed under the doctrine of libel-proof.

WHEREFORE, Defendant Steward prays for judgment against Plaintiff for the claims to be dismissed, for an award for her attorney's fees and costs, and for all other relief to which she may be entitled.

By: /s/ Joseph M. McCulloch, Jr. (#3760)
Joseph M. McCulloch, Jr.
Kathy R. Schillaci
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Attorneys for the Defendant, Leeza D. Steward

Columbia, South Carolina

August 27, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,)
)
 Plaintiff,)
)
 vs.)
)
 Thomas J. Bell, individually and as)
 Executive Director of Charleston Coalition)
 for Kids, Charleston Coalition for Kids, a)
 nonprofit Organization, Angelica M.)
 Colwell, Lee P. Deas, Godfrey A. Gibbison,)
 Eric P. Strickland, Loren R. Ziff, Courtney)
 S. Waters, Leeza D. Steward, and Teach for)
 America, Inc.)
)
 Defendants.)
)

**MEMORANDUM OF PLAINTIFF,
 KEVIN DION HOLLINSHEAD
 SENIOR, IN OPPOSITION TO THE
 MOTIONS TO DISMISS PURSUANT
 TO RULE 12(B)(6), S.C.R.CIV.P., OF
 DEFENDANTS, THOMAS J. BELL,
 CHARLESTON COALITION FOR
 KIDS, ANGELICA M. COLWELL,
 LEE P. DEAS, GODFREY A. GIBBISON,
 ERIC P. STRICKLAND, LOREN R.
 ZIFF, COURTNEY S. WATERS,
 LEEZA D. STEWARD, AND TEACH
 FOR AMERICA, INC.**

**TO: JOSH DIXON, ESQ., AND VICTORIA T. KEPES, ESQ., ATTORNEYS FOR
 DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE
 DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON
 COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M.
 COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND,
 AND LOREN R. ZIFF, DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND
 AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS,
 CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION,
 ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P.
 STRICKLAND, AND LOREN R. ZIFF, DWAYNE M. GREEN, ESQ., ATTORNEY
 FOR DEFENDANT, COURTNEY S. WATERS, DEFENDANT, COURTNEY S.
 WATERS, JOSEPH M. MCCULLOCH, JR., ESQ., AND KATHY R. SCHILLACI,
 ESQ., ATTORNEYS FOR DEFENDANT, LEEZA D. STEWARD, DEFENDANT,
 LEEZA D. STEWARD, DAVID S. COBB, ESQ., NICKISHA M. WOODWARD,
 ESQ., ATTORNEYS FOR DEFENDANT, TEACH FOR AMERICA, INC., AND
 DEFENDANT, TEACH FOR AMERICA, INC.**

BACKGROUND

This is a defamation action. Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as "Hollinshead") initiated this action on January 29, 2021, by filing a summons and complaint with the Charleston County Court of Common Pleas. Which was subsequently amended

on February 2, 2021¹. In this action Hollinshead seeks to recover actual and punitive damages for defamatory statements published by Defendants, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids (hereinafter referred to as “Bell”), Charleston Coalition for Kids, a nonprofit Organization (hereinafter referred to as “Coalition”), Angelica M. Colwell (hereinafter referred to as “Colwell”), Lee P. Deas (hereinafter referred to as “Deas”), Godfrey A. Gibbison (hereinafter referred to as “Gibbison”), Eric P. Strickland (hereinafter referred to as “Strickland”), Loren R. Ziff (hereinafter referred to as “Ziff”), Courtney S. Waters (hereinafter referred to as “Waters”), Leeza D. Steward (hereinafter referred to as “Steward”), and Teach for America, Inc. (hereinafter referred to as “TFA”). Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward and TFA have each moved to dismiss this action pursuant to Rule 12(b)(6), S.C.R.CIV.P., for failure to state facts sufficient to constitute a cause of action. Additionally, Steward has moved for summary judgment pursuant to Rule 56(b), S.C.R.CIV.P. Defendants’ motions are now before this Court for consideration. For the reasons herein stated all of the motions to dismiss must be denied.

STANDARD OF REVIEW

"Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 83, 655 S.E.2d 736, 737 (Ct. App. 2007). "Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). "A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the

¹ All defined terms in the Amended Complaint shall have the same meanings throughout this Memorandum.

merits of a claim, or the applicability of defenses.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cty.*, *supra* at 180, 826 S.E.2d at 587).

“In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCPP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint.” *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011); *accord Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (“... solely upon the allegations set forth on the face of the complaint”).

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. In deciding whether . . . [to grant a] motion to dismiss, the . . . court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. . . . [A] complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

Spence v. Spence, 368 S.C. 106, ___, 628 S.E.2d 869, 874 (2006) (citations omitted). “[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929, 940-41 (2007) (internal quotations omitted) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588). “At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim. . . . [A] plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588. “[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial

justice is done between the parties.” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).

ANALYSIS

A party asserting a claim of defamation must prove the following elements: ‘(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm.’ . . . ‘The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.’

Harris v. Tietex Int'l Ltd., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016) (citations omitted) (quoting *Williams v. Lancaster Cty. Sch. Dist.*, 369 S.C. 293, 302–03, 631 S.E.2d 286, 292 (Ct. App. 2006) and *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

A communication is defamatory if it tends “‘to impeach the honesty or integrity or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.’” *Smith v. "Bradstreet Co*, 41 S.E. 763, 764, 63 S.C. 525, ____ (1902) (quoting "18 AM. & ENG. ENC. LAW, at page 861).

The defamatory character of the words complained of is for the jury if the language is susceptible of two meanings, one defamatory and the other innocent; but if the language is unambiguous the question is for the court. The court determines whether the language is capable of the meaning ascribed to it, and the jury determines whether the language had the meaning ascribed to it.

The South Carolina rule goes further and holds that a demurrer to a complaint (and inferentially a motion for summary judgment) ‘will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.’ Our courts also hold that any words which raise a strong suspicion of the plaintiff’s guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. And even stronger, our courts hold that if the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies.

Adams v. Daily Tel. Printing Co., 356 S.E.2d 118, 122, 292 S.C. 273, 279 (Ct. App. 1986), *aff'd as modified*, 367 S.E.2d 702, 295 S.C. 218 (1988) (*quoting* 53 C.J.S. *Libel and Slander* § 223(a) (1983) and *citing* *Flowers v. Price*, 192 S.C. 373, 6 S.E.2d 750 (1940)).

The allegations of the Amended Complaint material to the motions to dismiss under are as follows:

17. That Hollinshead was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
18. That Waters was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.
19. That CCFK endorsed Waters as a candidate in the general election for Charleston County School District North Area.
20. That CCFK funded the creation of a political ad entitled 'Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust, (hereinafter referred to as the 'Ad').
21. That the Ad was uploaded to the CCFK Youtube Channel.
22. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the funding of the Ad and the Ad's publication and dissemination on CCFK's Youtube channel and various television networks in the Greater Charleston County, South Carolina Area.
23. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authored the content of the Ad.
24. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the content of the Ad.
25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were agents of CCFK.
26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting within the scope of their agency with CCFK.

27. That at all times relevant hereto Waters was employed by TFA.
28. That at all times relevant hereto Waters was acting as an agent of TFA.
29. That at all times relevant hereto Waters was acting within the scope of her agency with TFA.
30. That at all times relevant hereto Steward was employed by TFA.
31. That at all times relevant hereto Steward was acting as agent of TFA.
32. That at all times relevant hereto Steward was acting within the scope of her agency with TFA.
33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.
34. That Waters directed and/or requested Steward appear in the Ad.
35. That Steward appears in the Ad.
36. That Steward narrates portions of the Ad.
37. That at all times relevant hereto, Steward was acting at the direction of Waters.
38. That an anonymous voiceover in the Ad states 'but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up.'
39. That the Ad states 'Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College.'
40. That, following the anonymous voiceover in the AD, Steward states 'We can't have someone like that managing the tax dollars for our schools.'
41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the 'Lawsuit') brought against them by Student Assurance Services, Inc., (hereinafter referred to as 'SAS').
42. That Benedict College was not a party to the Lawsuit.
43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted \$144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.

44. That the Lawsuit refers to these insurance premiums as 'SAS's funds.'
45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of \$144,677.75 of insurance premiums.
47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.
48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.
50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.
52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.
53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
54. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC committed deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act.
55. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
56. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC were unjustly enriched at the expense of SAS by misappropriating \$144,677.75 of insurance premiums due to SAS.

57. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
58. That the Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College.
59. That on May 24, 2007, pursuant to Section 15-35-350 and 360, CODE OF LAWS, SOUTH CAROLINA, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS for a total amount of \$144,677.75 (hereinafter referred to as the 'Confession of Judgment').
60. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC admit to being liable to SAS in the amount of \$144,677.75.
61. That in the Confession of Judgment, Hollinshead and Hollinshead Group Insurance LLC confess and authorize the entry of judgment in favor of SAS.
62. That Benedict College is not mentioned or referred to in the Confession of Judgment.
63. That Benedict College is not a party to the Confession of Judgment.
64. That on May 24, 2007, Hollinshead and Hollinshead Group Insurance, LLC executed a promissory note to the order of SAS (hereinafter referred to as the 'Note').
65. That Hollinshead and Hollinshead Group Insurance, LLC acknowledge and agree that is indebted to SAS in the amount of \$144,677.75.
66. That the Note is secured by the Confession of Judgment.
67. That Benedict College is not mentioned or referred to in the Note.
68. That Benedict College is not a party to the Note.
69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths (\$144,677.75) is not one hundred fifty thousand and zero one hundredth dollars (\$150,000.00.).

FOR A FIRST CAUSE OF ACTION
(Defamation)

70. That Hollinshead restates each and every allegation of Paragraph 1 through Paragraph 69 as if fully restated herein verbatim.

71. That as of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's Youtube Channel.
72. That CCFK aired the Ad on various television networks in the Greater Charleston County, South Carolina Area.
73. That the statements made in the Ad tend to impeach the honesty, integrity, virtue, and reputation of Hollinshead.
74. That the statements degrade Hollinshead as they accuse Hollinshead of stealing money.
75. That the statements degrade Hollinshead as they suggest unfitness as a public servant.
76. That the statements made in the Ad are false and defamatory to Hollinshead.
77. That CCFK is responsible for the acts committed by its agents within the scope of their employment with CCFK.
78. That TFA is responsible for the acts committed by its agents within the scope of their employment with TFA.
79. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are actionable per se.
80. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with constitutional malice.
81. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are false.
82. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements concern Hollinshead.
83. That as a direct and proximate result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead had suffered damages, including, but not limited to, loss of reputation and mental anguish.
84. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead is entitled to recover actual and/or special damages.

85. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with intentional or reckless disregard of the Hollinshead's rights.
86. That Hollinshead is entitled to recover punitive damages as a result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements.

Accepting the above allegations as true, as this Court must, and construing the allegations in a light most favorable to Hollinshead, as this Court also must, Defendants' actions as alleged above, constitute a textbook liable.

The crux of the libelous statements are that: (1) "Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up." (2) "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College." (3) "We can't have someone like that managing the tax dollars for our schools." As alleged in the Amended Complaint, Hollinshead, of course, did not such thing. As explained in the Amended Complaint, Hollinshead was involved in a commission dispute with SAS relating to commissions earned as a result of sales of health insurance to students enrolled in Benedict College. Benedict College itself was in no way involved in the commission dispute, was not an insured under any of the policies and was in no way involved in any of the transactions out of which the commission dispute lawsuit arose. None of the students' policies involved in the suit between Hollinshead and SAS were cancelled for nonpayment of premiums. The statements in question are irrefutably a lie fabricated by the defendants which tends "'to impeach the honesty or integrity or reputation'" of Hollinshead which "'expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.'" That was obviously the Defendants intent. On this, reasonable minds cannot differ.

Further, the claim that Hollinshead is “using our² money to help himself” implies that Hollinshead is misappropriating and/or stealing taxpayer money. This is brought further into focus when put into context with the later statement that “We can’t have someone like that managing the tax dollars for our schools.”

[D]efamation need not be accomplished in a direct manner.

To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain.

Tyler v. Macks Stores of S.C., Inc., 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

The clear and unequivocal insinuation is that Hollinshead is misappropriating taxpayer money to his own use; in other words stealing. Yet, there is no suggestion or evidence of any kind, in the Lawsuit or otherwise – or even a rumor - that Hollinshead has ever stolen or misappropriated taxpayer dollars or funds designated for or allocated to a school district, any school or any governmental entity or agency. This representation is pure and simply a lie created by the Defendants out of whole cloth.

It is clear that the Defendants acted with actual malice or, as it is sometimes referred to, constitutional malice. Given that the Lawsuit involved a commission dispute between SAS and Hollinshead which in no way involved Benedict Collage or anyone affiliated with Benedict Collage and that the statement that Hollinshead is “using our money to help himself” despite there being no allegation of this in the Lawsuit or any evidence to support this or even a rumor that he was doing so, when construed in a light most favorable to Hollinshead, there is no escaping the

² The word “our” means “belonging to or associated with the speaker and one or more other people previously mentioned or easily identified” or alternatively, “ used by a writer, editor, or monarch to refer to something belonging to or associated with himself or herself.” Online Dictionary. There is literally no way to construe, reasonably or otherwise to construe the term “our” in this context to include SAS or Benedict College. Clearly the term “our” as meaning the taxpayers whose taxes support the Charleston County School District.

conclusion that Defendants knew the statements were false or acted in reckless disregard for their falsity. This is quintessential actual malice. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, (1964); *see also Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978)(public officials liable complaint alleging that liable was willful and malicious cured by amendment to add that publication was made “with wanton and reckless disregard for the truth”).

The statements were made in a television ad which was widely broadcast on various television networks in the eastern half of South Carolina and were published on the internet. The statements refer to Hollinshead by name. The statements in question state Hollinshead committed a crime - “stealing” money from Benedict College and misappropriating and/or stealing tax dollars and/or school board funds – and is unfit for business, trade profession or office and specifically claims he is unfit for office: “We can’t have someone like that managing the tax dollars for our schools.” *See Davis v. Niederhof*, 143 S.E.2d 367, 246 S.C. 192 (1965)(claim that plaintiff committed a crime -stealing – slander per se); *Flowers v. Price, supra* (charge of larceny when placed in context of circumstances slander per se); *Imerritt v. Great Atl. & Pac. Tea Co*, 179 S.C. 474, 184 S.E. 145 (1936) (charge of larceny slander per se); *Moshtaghi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) (statements that infer impropriety or inadequacy in performing one’s job, statements that conduct had been dishonorable, and statement that conduct was illegal are all actionable per se).

Clearly, when taken in a light most favorable to Hollinshead, the allegations of the Amended Complaint state facts which constitute a cause of action for defamation.

Defendants make several arguments in support of their respective motions to dismiss, all of which are misplaced and ignore the standard by which this Court must consider their respective motions to dismiss under Rule 12(b)(6).

To begin with, all of the Defendants have inappropriately submitted documents in support of their respective positions. Their reliance on these documents is misplaced.

It is well settled that this Court is not permitted to consider matters outside of the four corners of the Amended Complaint when passing on the Defendants' Rule 12(b)(6) motion³. *See, e.g., Charleston Cty. Sch. Dist. v. Harrell, supra* (reversing the trial court's order granting the defendants motion to dismiss because the trial court considered matters outside of the four corners of the complaint when deciding the motion). Rather, when considering the Defendants' motions, this Court may only consider the allegations contained in the Amended Complaint, which it must

³ Citing *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014), Defendants contend that "[a] trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment." This argument is, of course, specious.

Doe v. Bishop of Charleston, supra, stands for the proposition that consideration of prior unchallenged orders does not convert a Rule 12(b)(6) motion to dismiss to a Rule 56, S.C.R.CIV.P., motion for summary judgment. As the Court explained, "interpretation of a judgment is a question of law for the court." *Id.* Because the order under consideration in *Doe v. Bishop of Charleston, supra*, was a judgment, its interpretation was a matter of law, and, therefore, its consideration in the context of a Rule 12(b)(6) motion permissible. Considering and interpreting a final judgment is no different than considering a statute or opinion of the South Carolina Supreme Court when passing on a Rule 12(b)(6) motion. Thus, the trial court in *Doe v. Bishop of Charleston, supra*, did not, as the Defendants contend, take judicial notice of anything, but rather interpreted the prior entered judgment as a matter of law to determine whether the facts as alleged in the complaint state a cause of action.

In contrast, consideration of matters outside of the complaint to supply or supplement facts not contained within the complaint when passing on a Rule 12(b)(6) motion to dismiss is impermissible. *Charleston Cty. Sch. Dist. v. Harrell, supra* ("In using the federal district court case to supply facts from outside the complaint, the circuit court impermissibly went beyond the proper parameters of a motion to dismiss."). In other words when passing on a Rule 12(b)(6) motion, the trial court is not permitted to take judicial notice of matters outside the complaint. Consequently, using factual allegations contained in the SAS Complaint, as the Defendants seek to do here, is improper.

Read together, *Doe v. Bishop of Charleston, supra*, and *Charleston Cty. Sch. Dist. v. Harrell, supra*, stand for the well settled proposition that the resolution of questions of law is for the court, whereas the resolution of questions of fact is for the trier of fact.

accept as true and all inferences drawn from the facts alleged in the Amended Complaint must be viewed in the light most favorable to Hollinshead. *See, e.g., Id.; Spence v. Spence, supra.* If the factual allegations entitle Hollinshead to relief on any theory – which is the case here - Defendants’ motions must be denied. *Id.* Because the facts alleged and inferences reasonably deducible therefrom as alleged in the Amended Complaint entitle Hollinshead to relief, Defendants’ motion must be denied. *Id.*

Furthermore, even if the factual allegations contained in the SAS Complaint are considered – which they are not permitted to be – the motions to dismiss must be denied⁴. Because the arguments made by Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA are identical and will, therefore, be addressed together.

Though they basically admit that the Lawsuit arose out of a commission dispute between SAS and Hollinshead⁵, Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA - impermissibly relying heavily on matters outside of the Amended Complaint - take the position that because SAS accused Hollinshead of stealing from Benedict College, the claim that Hollinshead “stole” from Benedict College is, therefore, true as a matter of law. Even if it were permissible to rely on the matters outside the Amended Complaint submitted by Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA in support of their motions, a reading of the SAS Complaint belies their position in this regard.

⁴ The “facts” set forth in the factual recitation section of Defendants’ respective motions contains numerous factual assertions not contained in either the Amended Complaint or any of the attachments submitted there with, including inclusion of hyperlinks to websites. It goes without saying that none of this can be considered in passing on the Defendants’ motions to dismiss, even if they are true, which many of them are not.

⁵ This admission in their respective motions to dismiss constitute a judicial admission and is binding on Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA. *See, e.g., Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261 (4th Cir. 2004).

Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA acknowledge that the Ad accuses Hollinshead of stealing \$150,000.00 from Benedict College⁶. However, a close reading of the in the SAS suit against Hollinshead clearly demonstrates that nowhere does SAS allege that Hollinshead stole from Benedict College. Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA simply made that up. A reading of the SAS Complaint demonstrates that SAS is alleging that Hollinshead withheld money which belongs to it.

A close reading of the SAS Complaint demonstrates that SAS does no claim that Hollinshead stole from Benedict College. Instead, the Complaint lays out an alleged scheme whereby SAS claims Hollinshead was allegedly diverting funds paid to SAS by Benedict College, and then goes on to allege in material part:

Paragraph 37 - "Hollinshead owes SAS the following amounts. . . \$144,677.75."

Paragraph 38 - "Hollinshead owes SAS. . . \$144,677.75."

Paragraph 40 - "By stealing the premiums paid to him for the benefit of SAS by Benedict . . . Hollinshead exercised unauthorized dominion and control over approximately \$144,677.75 of SAS funds which were paid for SAS procuring the . . . policies. . . ."

Paragraph 41 - "Hollinshead converted SAS's funds for his own use. . . ."

Paragraph 42 - "[T]he premiums owed for the . . . policies were to be paid to SAS and Hollinshead was only entitled to receive his stated commissions. . . ."

Paragraph 43 - "As a direct and proximate result of the wrongful conversion, SAS is entitled to recover the sum of \$144,677.75. . . ."

Paragraph 45 - "Defendants employed a scheme to defraud SAS which were billed to and paid by Benedict for the . . . policies."

⁶ This is yet another binding judicial admission. See footnote 1, *supra*.

Paragraph 51 - "As a direct and proximate result of the fraud, SAS has been damaged in the amount of \$144,677.75. . . ."

Paragraph 51 - "As a direct and proximate result of the breach of contract set forth above, SAS is entitled to receive its actual damages in the amount of \$144,677.75. . . ."

Paragraph 63 - "As a direct and proximate result of the breach of contract accompanied by a fraudulent acts by Hollinshead, SAS is entitled to recover actual damages in the amount of \$144,677.75. . . ."

Paragraph 71 - "As a direct and proximate result, SAS is entitled to recover \$144,677.75. . . ."

Paragraph 76 - "SAS permitted Hollinshead to collect the annual premiums for the policies and remit the premiums to SAS for division and distribution."

Paragraph 78 - "As a direct and proximate result, SAS is entitled to recover \$144,677.75. . . ."

"When the language alleged to be libelous, or slanderous, is plain and unambiguous, and admits of but one reasonable construction, it becomes a matter of law for the action and determination of the court. If said language be ambiguous, or doubtful of meaning, it should be left to the jury to determine in what sense it was used, and what its meaning is." *Drakeford v. Dixie Home Stores*, 105 S.E.2d 711,714, 233 S.C. 519, 524 (1958). Dismissal of a complaint "'will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.' . . . [A]ny words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. . . . [I]f the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies." *Adams v. Daily Tel. Printing Co.*, *supra*.

There is simply no way to construe the SAS Complaint as maintaining that Hollinshead stole \$150,000.00 from Benedict College, which Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA admit they said Hollinshead did in the Ad. This is textbook defamation. The language used by Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA is plain and unambiguous and clearly false. Even if the language used by Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA can somehow be construed as ambiguous it becomes a question for the jury to decide if it is defamatory. Either way, the motions for summary judgment must be denied. *See Id.*

Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA take the position that:

The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money from Benedict College. Accordingly, Plaintiff cannot demonstrate the falsity of the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College.

The cognitive dissonance needed to support this position is bewildering and belies the actual allegations of the SAS Complaint.

There is nothing in the SAS Complaint or the law to support this position. Throughout the SAS Complaint SAS clearly and unequivocally takes the position that the funds in issue belonged to it. Nowhere is it contend that the funds in any way belonged to Benedict College if they ever belong to it in the first place, as the funds initially belonged to its students.

Additionally, there is nothing in the law or public policy to support this unsupported conclusory assertion. The funds were paid by Benedict – or more aptly its students – as

premiums for insurance and once paid, they were covered. Thus, once the premiums were paid, the premium dollars belonged to Hollinshead and/or SAS. If Benedicts' position is accepted it will lead to the untenable situation whereby every customer who pays for and receives a good or service will be deemed the owner of the funds if a dispute subsequently develops between the owners of the business or an agent and principal. Such a result is preposterous.

Furthermore, this is only one interpretation of the situation involved in the Lawsuit albeit a strained one. It is for the trier of fact to interpret these allegations. *See Id.* Thus, Defendants motions must be denied on this ground too. *See Id.*

That Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA are now having to engage in such post hoc mental gymnastics to legitimize their statements as not defamatory is proof positive that they acted with knowledge of the falsity of these statements, or, at the very least acted with reckless disregard for their falsity.

It should not go unnoticed that Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA have failed to claim that their representation that Hollinshead has stolen and/or misappropriated taxpayer money to his own use is not defamatory. They have not bothered to take the position that this representation is not defamatory for the obvious reason that they have no basis upon which to argue that this representation is not defamatory. Clearly it is. This failure is in and of itself a reason why this Court must deny the Rule 12(b)(6) motions to dismiss.

As though it were not already abundantly clear that Defendants' Rule 12(b)(6) motion to dismiss do not adhere to the standard required when considering a Rule 12(b)(6) motion to dismiss, Defendants remove all doubt with the following argument:

[I]n most cases, a defamatory statement is presumed to be false and truth is an affirmative defense. When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and ‘the plaintiff must prove the statement was false.’

. . . [U]nder *Parker*[v. *Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994)], Plaintiff bears the burden of showing that the statements in the political ad were false.

Plaintiff cannot satisfy that burden.

The burden of proof is an evidentiary standard. *See Jones v. Leagan*, 681 S.E.2d 6, 384 S.C. 1 (Ct. App. 2009). Defendants’ position would, therefore, necessarily require this Court to consider the evidence in this case to reach such a conclusion. It is well settled that the Court is to consider only the allegations of the complaint under consideration when passing on a motion to dismiss under Rule 12(b)(6). Factual considerations are not permitted.

In footnote five of their motion, Bell, Coalition, Colwell, Deas, Gibbison, Strickland and Ziff mention in passing in conclusory fashion without elaboration that “the ad at issue here is protected speech under the fair comment doctrine . . . and is subject to a qualified privilege.” This position is without merit.

“In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege.” *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, ____ (1999) (emphasis added). As a consequence, the burden of establishing the defense of qualified privilege is on the party asserting it. *Duckworth v. First Nat. Bank*, 176 S.E.2d 297, 254 S.C. 563 (1970)

One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. “The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.”

An abuse of the privilege occurs in one of two situations: (1) a statement made in good faith that goes beyond the scope of what is reasonable under the duties and interests involved or (2) a statement made in reckless disregard of the victim's rights.

Fountain v. First Reliance Bank, 730 S.E.2d 305, 310, 398 S.C. 434, 444 (2012) (quoting *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987) quoting *Conwell v. Spur Oil Co. of W.S.C.*, 240 S.C. 170, 178, 125 S.E.2d 270, 274–75 (1962)). “Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded.” *Swinton Creek Nursery v. EFC*, *supra* at 485, 514 S.E.2d at ____.

As the parties asserting the affirmative defense of conditional privilege, Bell, Coalition, Colwell, Deas, Gibbison, Strickland and Ziff have the burden of proving it. That, of course, would necessitate the consideration of evidence outside of the Amended Complaint, which is not permitted. Further, in paragraph 80 of the Amended Complaint it is specifically alleged that “[t]hat Bell, CCFK, Colwell, Deas, Gibbison, Strickland, [and] Ziff[‘s] . . . statements were made with constitutional malice.” For purposes of a 12(b)(6) motion, this allegation must be accepted as true. Thus, at the Rule 12(b)(6) stage Hollinshead has established actual malice. *See, e.g., New York Times Co. v. Sullivan, supra; see also Scott v. McCain, supra*. Accordingly, at this stage, Bell’s, Coalition’s, Colwell’s, Deas’, Gibbison’s, Strickland’s and Ziff’s reliance on the affirmative defense of conditional privilege is misplaced.

Bell, Coalition, Colwell, Deas, Gibbison, Strickland, Ziff, Waters and TFA request that this Court dismiss the Amended Complaint “with prejudice.” Though the Amended Complaint obviously should not be dismissed at all pursuant to Rule 12(b)(6),

[a] circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), **the circuit**

court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.”

Skydive Myrtle Beach, Inc. v. Horry Cnty., *supra* at 189, 826 S.E.2d at 592. Accordingly, this court cannot grant the relief requested without first allowing Hollinshead an opportunity to amend the Amended Complaint.

Stewart argues that she should be dismissed from this action because she was acting in her individual capacity and not within the course and scope of her employment with TFA as alleged. Stewart’s reliance on this position is misplaced.

If Stewart committed the tort of defamation, it matters not whether she was acting in an individual capacity, within the scope and course of her employment with TFA or otherwise. *See Flexi v. Chritophedes*, Opinion No. 97-MO-097 (filed October 9, 1997). Stewart is responsible for her own actions irrespective of what capacity she is acting in. *Id.* The key thing here is that it is alleged that Stewart committed defamation. *Id.* Accordingly, Stewart’s claim that she was acting in an individual capacity is not a basis for granting her Rule 12(b)(6) motion to dismiss or her Rule 56(b) motion for summary judgment. Furthermore, if this were a legitimate argument, the remedy is to permit Hollinshead the opportunity to amend the Amended Complaint. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra*.

Stewart argues that her statements are subject to a “qualified privilege” based on the fair reporting and substantial truth doctrines. However, for the same reasons set forth above as to the other Defendants, Stewarts reliance on qualified privilege is misplaced. Moreover, as explained above, the claims made by Stewart are not, in fact substantially true. Furthermore, like the other Defendants, Stewart fails to offer any explanation as to why her representation that Hollinshead

has stolen and/or misappropriated taxpayer money for his own use is not defamatory or subject to any privilege, qualified or otherwise. This statement is obviously defamatory and not privileged.

Stewart contends that statements “relating to matters of public concern that does not contain a provably false connotation” is not actionable.” In so maintaining Stewart argues the “statement, ‘[w]e cannot have someone like that managing the tax dollars meant for our schools,’ can only be construed as the personal opinion of a concerned citizen relating to a public candidate running for official, public office.” The flaw in this argument is that the tells only part of the story.

Stewart completely neglects to address the statement that Hollinshead is “using our money to help himself” which implies that Hollinshead is misappropriating and/or stealing taxpayer money. The statement made by Stewart that “We can’t have someone like that managing the tax dollars for our schools” when coupled with and put in context with the statement that Hollinshead is “using our money to help himself” is far more than an opinion: it is a statement to the effect that Hollinshead is misappropriating and/or stealing taxpayer money. This is unquestionably defamatory. This is clearly a jury issue. Consequently, Stewart’s claim that she was simply rendering an opinion on matters “relating to matters of public concern that does not contain a provably false connotation” in no way provides a basis for dismissal of the Amended Complaint.

CONCLUSION

For the reasons above given, Defendants motions must be dismissed. In the alternative, Hollinshead must be given an opportunity to amend the Amended Complaint.

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*Attorneys for Plaintiff, Kevin Dion Hollinshead,
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July 23, 2021

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Flexi-Van Leasing, Inc., Appellant,

v.

Orestes G. Christophides,
NCI Equipment Co., Inc.,
and Trident Shipping
Agency, Inc.,

Of whom Orestes G.
Christophides, is Respondent.

Appeal From Charleston County
Louis E. Condon, Master-In-Equity

Memorandum Opinion No. 97-MO-097
Heard January 7, 1997 - Filed October 9, 1997

REVERSED, IN PART; AND REMANDED

Edward K. Pritchard, III, of Sinkler & Boyd, P.A., of
Charleston; and Keith L. Flicker, of Flicker, Garelick &
Associates, of New York, N.Y., both for Appellant.

M. Dawes Cook, Jr., of Barnwell, Whaley, Patterson &
Helms, of Charleston, for Respondent.

PER CURIAM: In this action involving claims for conversion and unfair trade practices, Flexi-Van Leasing, Inc. appeals the master's order in favor of Orestes G. Christophides. We reverse, in part, and remand.

FACTS

Flexi-Van brought this action against Christophides, NCI Equipment Company, and Trident Shipping Agency, Inc. Pharos Lines had contracted to lease from Flexi-Van some 700 units of equipment, consisting of chassis, marine containers, and flatbed trailers. Trident was a general agent for Constellation Navigation, which was a general agent for Pharos Lines. Christophides had a one-third interest in Constellation's stock and a one-half interest in Trident's, with Constellation owning the other one-half interest in Trident. Christophides owned 100% of the stock of NCI. He was a director of Constellation, Trident, and NCI.

Pharos Lines defaulted on the lease agreement with Flexi-Van, and Flexi-Van sought possession of its equipment. It brought an action in federal court against Pharos Lines and Constellation for damages arising out of the equipment lease. The federal court found in favor of Flexi-Van. Flexi-Van Leasing, Inc. v. Pharos Lines, S.A., 808 F. Supp. 237 (S.D.N.Y. 1992).

Flexi-Van brought this state court action seeking damages for 55 of the 700 pieces of equipment under the lease with Pharos. Flexi-Van alleged in its complaint that Constellation and Trident had operational control over the equipment leased to Pharos. It further contended that Christophides, in his status as director and owner of Constellation and Trident, personally controlled and converted the equipment and sold some of it. In addition to a cause of action for conversion, Flexi-Van also alleged violations of the South Carolina Unfair Trade Practices Act ("UTPA"). Moreover, the complaint alleged causes of action for an accounting and for piercing the corporate veil.

Defendants NCI and Trident entered confessions of judgment. Christophides filed an answer, and the case was referred to a master-in-equity. After a bench trial, the master issued an order holding that the circumstances did not warrant disregarding the corporate entities of Constellation, Trident, or NCI to find Christophides personally liable for debts owed to Flexi-Van. Moreover, the master held Christophides did not participate in actionable conversion of Flexi-Van's property, nor did he violate the UTPA. Flexi-Van has appealed this order, contesting the master's findings on the conversion and UTPA issues.

DISCUSSION

1. Conversion

Flexi-Van argues the master erred in ruling that Christophides did not convert four Flexi-Van flatbeds. We agree.

In January 1992, Anthony Rhodes, an employee of Southeastern Container Service, visited Trident's shipyard at Flexi-Van's behest in an attempt to recover some of Flexi-Van's equipment that had originally been on lease to Pharos Lines. Rhodes met Christophides and expressed interest in purchasing four flatbeds that belonged to Flexi-Van. Rhodes asked Christophides if the pieces of equipment, which had on them Flexi-Van's marks of ownership, were his. Christophides responded that he had had a long-term lease with an option to purchase and that he had purchased the equipment. When asked if he had titles to the units, Christophides searched his office, after which he said that the titles must be in the New York office. He assured Rhodes that the equipment was his and that he would send the titles to him at a later date. After negotiations, Rhodes purchased the four units, along with other items, and paid Christophides \$15,000. Rhodes never received titles to the units. Christophides testified that he personally kept one-half of the \$15,000 from the sale, and the other half went to his personal attorney.

In selling the units to Rhodes, Christophides used an NCI bill of sale. Rhodes testified that Christophides told him that the reason why the bill of sale was coming from NCI was because NCI had purchased the equipment, and he was the president and sole owner of NCI. To the contrary, Christophides stated, in his testimony, that the four units of equipment "were not NCI's. Under no circumstance could they be NCI's" When asked why they were sold under an NCI bill of sale, and why Christophides personally kept the proceeds, he responded, "Well, I never had a chance to think about it or do anything about it, to be frank with you. I mean, I knew they weren't NCI's; no question about that. I would have preferred that Trident sell them and get rid of them."

We find there is ample evidence that Christophides converted the four Flexi-Van units. Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. Crane v. CitiCorp Nat. Servs., Inc., 313 S.C. 70, 437 S.E.2d 50 (1993). To demonstrate the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property. Id. Disposition of property clearly amounts to a conversion for which the defendant is liable in damages. See Royal-Liverpool Ins. Group v. McCarthy, Jr., 229 S.C. 72, 91 S.E.2d 881 (1956). As evidenced by the facts above, Christophides exercised the right of ownership over the goods when he was aware that they were not his goods. Flexi-Van clearly established title to and right to the possession of the property.

In his brief, Christophides argues that it was NCI, not Christophides, who sold the four units. We decline to accept this argument because firstly, Christophides admitted in his own testimony that he knew the equipment was not NCI's. Secondly, he, not NCI, pocketed the proceeds of \$15,000, half of it going to himself, half of it going to his

attorney. Moreover, Christophides contends that based on Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (Ct. App. 1987), Flexi-Van should be estopped from asserting its claim because it acquiesced to the sale.

Pelzer is inapplicable to the present case. Pelzer was not a case concerning conversion; it involved an action by an association to collect unpaid annual assessments under a contract from a landowner. The case held that the landowner had constructive knowledge that certain maintenance charges were not being assessed in accordance with restrictive covenants and bylaws. Nevertheless, the landowner acquiesced in the method of the assessment and paid the charges. The Association expended the moneys for purposes authorized by the bylaws, and the landowner received the benefit of those expenditures. Finding that the landowner could not return the benefits or restore the Association to its former position, the opinion declared, "If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence and it estops him from later seeking relief." Pelzer, 292 S.C. at 348, 356 S.E.2d at 414. In the present case, Flexi-Van's silence did not cause Christophides to detrimentally change his position. Rather, Christophides was engaging in an illegal act, and Flexi-Van wanted to establish that Christophides was carrying out such an act. Therefore, Flexi-Van is not estopped from asserting a conversion claim against Christophides.

Christophides finally argues that Flexi-Van did not present evidence of damages as to the four pieces of equipment converted. We conclude that the master erred in finding that no evidence of damages was presented. Proof, with mathematical certainty, of the amount of loss or damage is not required; in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971). Flexi-Van presented evidence of the casualty value and loss rental value for similar equipment. The offered evidence allows us to conclude that equipment such as that converted by Christophides had an approximate casualty value of \$5000 per unit.¹ Accordingly, we conclude that sufficient evidence was presented from which Flexi-Van's damages could have been determined.

Flexi-Van argues that Christophides converted 51 other units, in addition to the four units discussed above. There is not evidence in the record to establish a clear enough connection between Christophides and these pieces of equipment. Thus, we affirm the

¹ Our conclusion is confirmed by the findings of the federal court in the prior action involving Flexi-Van and Pharos Lines. There, the court determined that the value of these four units was \$20,000. Flexi-Van Leasing, Inc. v. Pharos Lines, S.A., 808 F. Supp. 255, 257 (1992).

master's findings on this issue.

2. Unfair Trade Practices Act

Flexi-Van argues the master erred when it ruled that Christophides did not violate the UTPA. We agree.

S.C. Code Ann. § 39-5-20 (1985) provides that "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." To be actionable under the UTPA, the unfair or deceptive practice must have an impact upon the public interest. See Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996). Unfair or deceptive acts or practices have an impact upon the public interest if the acts or practices have the potential for repetition. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989). Plaintiffs in prior cases generally have shown potential for repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. Daisy Outdoor Advertising Co., 322 S.C. 489, 473 S.E.2d 47. We have held that in private actions under the UTPA, directors and officers are not liable for the corporation's unfair trade practices unless they personally commit, participate in, direct, or authorize the commission of a violation of the UTPA. Plowman v. Bagnal, 316 S.C. 283, 450 S.E.2d 36 (1994).

There is no evidence reasonably supporting the master's finding that Christophides did not violate the UTPA. The UTPA was violated because Christophides's conversion of Flexi-Van's equipment constituted unfair and deceptive practices that impact upon the public interest. His actions have an impact upon the public interest because of their potential for repetition. There is evidence that the same kind of actions have occurred in the past, thus making it likely that they will continue to occur absent deterrence. In addition to Christophides's conversion of the four Flexi-Van units, he testified that he personally sold other units in another transaction. Moreover, in October 1991, his company, Trident, tried to sell (in violation of Flexi-Van's lease agreement) certain Flexi-Van units to Container Salvage Company. It further offered to sell equipment owned by other companies. As these incidents reveal, Christophides and his companies have engaged in the same kind of actions in the past. As such, the requirement of an impact upon the public interest has been satisfied.

S.C. Code Ann. § 39-5-140 (1985) provides, in part:

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an

unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually . . . to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of § 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

Because Flexi-Van has suffered an ascertainable loss of property as a result of the unfair and deceptive methods of Christophides, it is entitled to recover its actual damages. Its damages are the value of the four converted units, which, as discussed above, was \$5,000 per unit, or \$20,000 for the four units. In addition to recovering actual damages, Flexi-Van may also be awarded treble damages if Christophides's actions were a "willful or knowing violation of § 39-5-20."

Section 39-5-140(d) states that "a willful violation occurs when the party committing the violation knew or should have know that his conduct was a violation of § 39-5-20." In State v. Nest Egg Society Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986), the Court of Appeals addressed the meaning of "willful" for purposes of section 39-5-110.² Nest Egg concluded that the "standard is not one of actual knowledge, but of constructive knowledge. If, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is 'willful' within the meaning of the statute." Nest Egg, 290 S.C. at 128, 348 S.E.2d at 384. We agree with this analysis and adopt it for purposes of section 39-5-140. Christophides's conduct was "willful" within the meaning of the statute because in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that Christophides's conduct would violate the Act. Therefore, the court "shall award three times the actual damages" of \$20,000 sustained.

We direct the master to enter judgment against Christophides for Flexi-Van's actual damages, plus three times these damages. Flexi-Van should also be awarded reasonable attorneys' fees and costs. See S.C. Code Ann. § 39-5-140(a).

CONCLUSION

This matter is reversed, in part, and remanded for entry of an order consistent with this opinion. We direct the master to take such additional evidence as is necessary to ascertain

² Section 39-5-110 includes a definition of "willful" that is identical to that set forth in 39-5-140.

Flexi-Van's attorneys' fees and costs.

REVERSED, IN PART; AND REMANDED.

Ernest W. Linnery, Jr. C.J.
Gord R. Coe A.J.
James E. Moore A.J.
John H. Wallace Jr. A.J.
Edy B. Moore A.J.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) CASE NO.: 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,

)

Plaintiff,

)

v.

)

**NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT
UNDER RULE 12(B)(6)**

Thomas J. Bell, individually and as Executive
Director of Charleston Coalition for Kids,
Charleston Coalition for Kids, a nonprofit
Organization, Angelica M. Colwell, Lee P. Deas,
Godfrey A. Gibbison, Eric P. Strickland, Loren R.
Ziff, Courtney S. Waters, Leeza D. Steward, and
Teach for America, Inc.,

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Defendants.

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Defendants Charleston Coalition for Kids, Thomas J. Bell, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland and Loren R. Ziff (collectively, the “Coalition Defendants”) respectfully submit this motion to dismiss Plaintiff’s Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The grounds for the motion are set forth below.

INTRODUCTION

Plaintiff asserts claims for defamation, civil conspiracy, and outrage, but the public record clearly establishes that the allegedly defamatory statement that is the basis of all three causes of action and was contained in a political ad was substantially true as a matter of law. Accordingly, all of Plaintiff’s claims fail as a matter of law. Specifically, the statement in the political ad was nothing more than a summary of the circumstances surrounding a lawsuit in which Plaintiff was sued for misappropriation of funds, resulting in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he agreed to pay back those funds. The

information in that statement is available in the public record, and the public record establishes the substantial truth of the political ad as a matter of law. For this reason, the Second Amended Complaint fails to state a claim upon which relief can be granted, and the Court should dismiss it.

FACTS

A. Plaintiff's Allegations

The Second Amended Complaint alleges the following facts:

Plaintiff, a then-current member of the Charleston County School Board, was running for re-election on November 3, 2020. (Second Am. Compl. ¶ 17 [hereinafter, “SAC”].) Defendant Courtney Waters was also a candidate in the election. (*Id.* ¶ 18)

Defendant Charleston Coalition for Kids (the “Coalition”) is a non-profit 501(c)(4) that is committed to the mission of “improving our schools and bringing more opportunities to our students.” See <https://www.chskids.org/about-our-coalition>, last visited on March 22, 2021. Defendant Bell is the executive director of the Coalition, and Defendants Bell, Colwell, Deas Gibbison, Strickland, and Ziff are members of the board of directors for the Coalition (collectively, the “Board Members”). (SAC ¶¶ 3, 16.) Due to its work in support of children’s education, the Coalition had a vested interest in the outcome of the election. Because the Coalition believed that Waters’ vision for children’s education in the region was more in line with its mission than Plaintiff’s views, it endorsed Waters in the election. (*Id.* ¶ 19.)

As part of its support for Waters’s candidacy, the Coalition funded the creation of a political ad that was critical of Plaintiff. The ad aired on various television networks and was uploaded to the Coalition’s Youtube channel. (SAC ¶ 20- 22.)¹ As relevant here, the ad opened with Defendant Leeza Steward speaking about the election. Then the ad stated, in an anonymous voiceover:

¹ The ad is no longer available on Youtube.

[B]ut Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars (\$150,000) from a local HBCU² and lied to cover it up.

(SAC ¶ 38.) During the voiceover, the ad displayed the following text:

Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars (\$150,000) from Benedict College.

(SAC ¶ 39.)³ At the bottom of the text, the ad referenced the case number of the lawsuit in question (“Case 2006-CP-10-3980, Charleston County 10/9/06”). The ad then went back to Defendant Steward, who says “We can’t have someone like that managing the tax dollars for our schools.”

(SAC ¶ 40.)

B. The SAS Lawsuit

The lawsuit referenced in the ad is captioned *Student Assurance Services, Inc. v. Kevin Hollinshead, Sr., et al.* (hereinafter, “SAS Lawsuit”). A copy of the Complaint in the SAS Lawsuit is attached hereto as **Exhibit A**. The docket for this case is available on the Court’s public index website.⁴

The SAS Lawsuit pertains to Plaintiff’s dealings with a company called Student Assurance Services (“SAS”) and Benedict College in the early 2000’s. In its Complaint, SAS alleged it procured health and accident insurance coverage for Benedict College and its students. (SAS Compl. ¶¶ 3-7.) The insurance carrier appointed Plaintiff as the insurance agent. (*Id.* ¶ 7.) Under the business arrangement, Benedict would write premium checks to the order of SAS, send them

² HBCU is an acronym for “Historically Black Colleges and Universities.”

³ In the Amended Complaint, Plaintiff omits the word “nearly” before the \$150,000 figure from the text of the ad, but the ad clearly contains the word “nearly.” The Coalition will bring an electronic copy of the ad to play for the Court at the hearing on this motion.

⁴ A trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014)

to Plaintiff to distribute to SAS, and SAS would submit a commission to Plaintiff after receiving full payment. (*Id.* ¶¶ 8, 13-14.)

At some point in time, Plaintiff began cashing Benedict College's checks directly to his own accounts and then cutting smaller checks to SAS. (*Id.* ¶ 25-26; *see also* SAC ¶¶ 49, 51.) In other words, he was taking Benedict College's money—which was meant for SAS—and using it for his own purposes. All told, SAS alleged that Plaintiff had failed to remit \$144,677.75 in premiums paid by Benedict College to SAS. (SAS Compl. ¶ 37, *see also* SAC ¶ 56.) SAS also alleged that Plaintiff told it that the reason the premiums had not been paid was because Benedict College was having “severe cash problems,” despite the fact Benedict College submitted all owed premiums to him. (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.)

In response to the SAS Complaint, Plaintiff executed (1) a Promissory Note, a copy of which is attached hereto as **Exhibit B**, and (2) an Agreement and Confession of Judgment, a copy of which is attached hereto as **Exhibit C**. In the Promissory Note and Agreement and Confession of Judgment, Plaintiff admitted that he owed SAS \$144,677.75, agreed to pay it back, and authorized the entry of judgment in favor of SAS. (*See* Promissory Note ¶ 1.1, 2.1; Agreement and Confession of Judgment ¶ 2-3, 5; *see also* SAC ¶¶ 59-60.) Further, in neither the Promissory Note nor the Agreement and Confession of Judgment did Plaintiff dispute the facts alleged in the SAS Complaint.

In sum, according to the public record, it is demonstrably true that: (1) Plaintiff was sued in the amount of nearly \$150,000 for stealing money from Benedict College, an HBCU; (2) the lawsuit alleged that Plaintiff lied to cover up the fact that he had stolen the money; and (3) the lawsuit was successful in that it resulted in a confession of judgment for the entire amount alleged in the Complaint.

ANALYSIS

In his Amended Complaint, Plaintiff alleges three causes of action for (1) defamation, (2) civil conspiracy, and (3) outrage. Each fails as a matter of law.

I. PLAINTIFF HAS NOT ASSERTED A CLAIM FOR DEFAMATION.

The elements of a defamation claim are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001). As for the first element, in most cases, a defamatory statement is presumed to be false and truth is an affirmative defense. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012); *accord Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and “the *plaintiff* must prove the statement was false.” *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)). Further, the South Carolina Supreme Court has explained that, in evaluation of defamation claims in the context of a political election, “free speech is particularly important.” *George v. Fabri*, 345 S.C. 440, 455, 548 S.E.2d 868, 876 (2001). The Supreme Court touted “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720 (1964).

Here, Plaintiff is undoubtedly a public figure and a public official. Indeed, he was a member of the Charleston County School Board running for re-election. Thus, he is a public figure and a public official. *See George*, 345 S.C. 440, 548 S.E.2d 868 (defamation claim by candidate for city council analyzed as a public official); *Anderson v. The Augusta Chronicle*, 364 S.C. 589, 619 S.E.2d 428 (2005) (analyzing defamation claim by a candidate for public office as a public figure). Accordingly, under *Parker*, Plaintiff bears the burden of showing that the statements in the political ad were false.

Plaintiff cannot satisfy that burden. In sum and substance, the facts stated in the political are that Plaintiff (1) was successfully sued, (2) for stealing nearly \$150,000 (3) from Benedict College, a HBCU, and (4) lying to cover it up. Each of these statements is true, or at the very least substantially true.

First, Plaintiff was undoubtedly “successfully sued.” Indeed, the SAS Lawsuit resulted in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he admitted that he was liable in the amount of \$144,677.75, the exact amount alleged in the SAS Lawsuit. Because the SAS Lawsuit resulted in a judgment in SAS’s favor, the SAS Lawsuit was successful, and Plaintiff cannot establish that the statement in the political ad that he was “successfully sued” was false.

Second, the SAS Lawsuit alleged that Plaintiff had stolen \$144,677.75, the Promissory Note was for that amount, and the Agreement and Confession of Judgment was for that amount. That amount of money is—as the political ad says—“nearly \$150,000.” The difference in \$144,677.75 and \$150,000 is a difference of only approximately 3.59%, thus making the statement that the amount in question was “nearly \$150,000” substantially true. *See* 20 S.C. Jur. *Libel and Slander* § 34 (2021) (“Under the standard of substantial truth, ‘[i]t is not necessary to establish the

literal truth of the precise statement made. Slight inaccuracies . . . are immaterial provided that the defamatory charge is true in substance.” (quoting Restatement Second, Torts § 581A Comment f (1977)); see also *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth). Thus, Plaintiff cannot establish that the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had stolen nearly \$150,000 was false.

Third, the SAS Lawsuit alleged that Plaintiff had stolen the money from Benedict College, an HBCU. As an initial matter, it is unquestionably true that Benedict College is an HBCU. See <https://www.benedict.edu/about-benedict/>, last visited on March 22, 2021. Moreover, it is also true that the SAS Lawsuit alleged the Plaintiff had stolen Benedict College’s money. “Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner’s rights. . . Conversion may arise by some illegal use or misuse, or by illegal detention of another’s chattel.” *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975). Thus, the SAS Lawsuit alleges that he committed conversion, *i.e.* he stole from Benedict College and/or its students.

As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. (SAS Comp. ¶ 7.) In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. (*Id.* ¶ 8.) SAS alleged that Plaintiff received those payments from Benedict College but, rather than forward the money to SAS, Plaintiff stole that money and used it for his own purposes. (*Id.* ¶ 34.) In other words, Plaintiff improperly assumed control over funds belonging to Benedict College and its students,

since he had no right to use the money or do anything more than submit it to SAS. Accordingly, the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In the Second Amended Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money *from Benedict College*, but, rather, that he stole the money from *SAS*. This argument, however, is demonstrably false. The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money *from Benedict College*. Even more, the SAS Complaint alleges that Plaintiff “over-billed Benedict,” *i.e.* took money from Benedict College above and beyond what was owed to SAS. (SAS Compl. ¶ 36.) There is no reasonable way to read the SAS Lawsuit such that it did not allege that Plaintiff stole from Benedict College and/or its students. Accordingly, Plaintiff cannot, as a matter of law, demonstrate the falsity of the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College.

Fourth, the SAS Lawsuit alleged that Plaintiff lied about stealing the money. Specifically, SAS alleged that Plaintiff falsely told SAS that the reason the premiums had not been paid was because Benedict was having “severe cash problems.” (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.) Thus, Plaintiff cannot demonstrate that the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had lied to cover up his theft was false.

For these reasons, the allegedly defamatory statements at issue here are true or substantially true as a matter of law and Plaintiff cannot satisfy his burden of establishing that they were false. Accordingly, Plaintiff cannot state a claim for defamation.⁵

II. PLAINTIFF HAS NOT STATED A CLAIM FOR CIVIL CONSPIRACY.

Plaintiff cannot state a claim for civil conspiracy because the unlawful act upon which it relies, the political ad, was not unlawful or committed by unlawful means. The elements of a claim for civil conspiracy are: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston County School District*, Case No. 2018-002025, __ S.E.2d __, 2021 WL 3668152, at *7 (S.C. Aug. 18, 2021). Further, while “[t]here are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, [] political expression is not one of them.” *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkely, Cal.*, 454 U.S. 290, 296, 102 S.Ct. 434, 437 (1981).

⁵ Further, even if the statements at issue here were false (and they were not), Plaintiff also fails to state a claim upon which relief can be granted because the ad at issue here is protected speech under the fair comment doctrine, *Oswalt v. State-Rec. Co.*, 250 S.C. 429, 435, 158 S.E.2d 204, 207 (1967), and *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and is subject to a qualified privilege, see *Fountain v. First Reliance Bank*, 398 S.C. 434, 444, 730 S.E.2d 305, 310 (2012) (statement is not defamatory if subject to qualified privilege). “When a citizen holds a public office he becomes subject to criticism; any citizen [] is privileged to criticize his acts, fitness and qualifications for the office he holds. . .” *Oswalt*, 250 S.C. at 435, 158 S.E.2d at 207. A privilege defense can properly be decided on a motion to dismiss, especially where the text / video / audio of the actual allegedly defamatory statements and the underlying public records are available for review, as they are here. See *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546 (granting a motion to dismiss defamation claim based on the fair report privilege after review of the news reports and public records attached to the motions).

Defendants further agree with and adopt all of the arguments set forth in Defendant Steward’s motion to dismiss, including but not limited to the argument that the various statements in the ad were non-actionable statements of opinion under the First Amendment.

Here, the only action about which Plaintiff complains is the act of publishing the political ad. The ad, however, is not unlawful (as described above) and is in fact protected by the First Amendment to the United States Constitution and Article 1 § 2 of the Constitution of the State of South Carolina. As the Supreme Court stated in *Citizens Against Rent Control / Coalition for Fair Housing*, the political ad, which is undoubtedly political expression, is not an act that can become illegal by virtue of being performed with others. The political ad, therefore, cannot stand as the basis for a civil conspiracy claim and this cause of action also fails as a matter of law.

III. PLAINTIFF HAS NOT STATED A CLAIM FOR OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

The elements of a claim of outrage / intentional infliction of emotional distress are:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (S.C. 2004).

Supreme Court has held that “public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication [] without showing in addition that the publication contains a false statement of *fact* which was made with “actual malice. . .”

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988) (emphasis added).

Plaintiff's claim for outrage / intentional infliction of emotional distress fails because Plaintiff failed to allege facts to support the elements of his claim. Instead, he merely recited the elements of the claim in a conclusory fashion. (SAC ¶ 96.) Moreover, as demonstrated above, Plaintiff cannot establish that the political ad contained any false statement of fact. Accordingly,

Plaintiff's claim for outrage / intentional infliction of emotional distress must also fail as a matter of law.⁶

Plaintiff has failed to state a claim for any of the three causes of action in the Second Amended Complaint and the Court must therefore dismiss this action.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court GRANT this motion to dismiss and DISMISS Plaintiff's Second Amended Complaint, *with prejudice*, pursuant to Rule 12(b)(6).

Dated: August 27, 2021

GORDON & REES LLP

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⁶ In addition, the facts as alleged here clearly do not meet the high threshold to establish that anyone inflicted severe emotional distress, that any conduct was so extreme and outrageous (especially in the form of a political ad), nor that the emotional distress allegedly suffered was so severe and pervasive that no reasonable person could be expected to endure it.

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
STUDENT ASSURANCE SERVICES, INC.,	)	<i>cc CP 103980</i>
	)	
Plaintiff,	)	COMPLAINT
	)	
vs.	)	
HOLLINSHEAD GROUP INSURANCE, LLC and KEVIN HOLLINSHEAD, SR.	)	(JURY TRIAL DEMAND)
	)	
Defendants.	)	

2006 OCT -9 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Student Assurance Services, Inc. ("SAS") hereby asserts the following Complaint against Defendants Hollinshead Group Insurance, LLC ("HGI") and Kevin Hollinshead, Sr. ("Hollinshead") and in support thereof avers as follows:

I. PARTIES

1. Plaintiff Student Assurance Services, Inc. is a duly authorized and existing corporation pursuant to the laws of the State of Minnesota.

2. Upon information and belief, Defendant Hollinshead Group Insurance, LLC is not duly registered with South Carolina's Secretary of State's office and is a sole proprietorship with its principal place of business located at 3783 Meeting Street, North Charleston, South Carolina 29405. Defendant Kevin Hollinshead, Sr. is a citizen and resident of Charleston County, South Carolina and the controlling person of Hollinshead Group Insurance, LLC.

II. BACKGROUND FACTS

3. SAS is in the business of procuring health and accident and related insurance coverage for various universities, their students and state school systems throughout the United States.

4. SAS has procured and procures its insurance through a multitude of insurance companies including, but not limited to, ReliaStar Life Insurance Company ("ReliaStar") and Columbia Life Insurance Company ("Columbia Life").

5. Beginning with the 1999-2000 school year, SAS began procuring health and accident insurance coverage from ReliaStar for Benedict College in Columbia, South Carolina ("Benedict").

6. The health and accident insurance procured by SAS for Benedict provided coverage to eligible insureds who qualified as:

- (a) Registered students taking credit hours who were physically and actively attending classes for at least thirty-one (31) days after their effective date of coverage under this policy; and
- (b) Dependents of a student who is an insured person.

7. Defendant Hollinshead was appointed agent by SAS's insurance carrier ReliaStar in 1999 for the respective health and accident insurance policy issued to Benedict.

8. At that time, it was agreed that all premium checks were to be paid to the order of SAS and sent to Hollinshead.

9. At all times hereto, SAS acted as the administering general agent for Benedict's health and accident insurance plan (the "Plan").

10. In 2003, SAS changed the underwriting insurance company from Reliastar to Columbia Life for Benedict's Plan.

11. While the insurer of the Plan changed, Benedict continued to procure its insurance for its students through SAS and utilize Hollinshead as SAS's and Benedict's agent.

12. At the time, Hollinshead was requested to and completed a new agent's agreement with Columbia Life (a copy of which is attached hereto as **Exhibit "A"**).

13. As previously done, SAS continued to invoice Benedict for the premium for the Plan and Benedict remitted the annual premiums to SAS through Hollinshead.

14. As was the custom and course of dealing, SAS would then issue the commission check to Hollinshead from the premium that was paid by Benedict.

15. During the 2005-2006 school year and the renewal of the Plan, SAS was requested by Benedict and did provide additional coverage for inter-collegiate sports injuries for Benedict's student athletes.

16. Benedict was billed an initial Fifty-Thousand & no/100 (\$50,000.00) Dollar deposit for the inter-collegiate sports policy on July 20, 2005. (A copy of the July 20, 2005 billing attached hereto as **Exhibit "B"**.)

17. Despite being paid \$50,000.00, Hollinshead sent a check to SAS dated August 8, 2005 in the amount of Ten Thousand & no/100 (\$10,000.00) Dollars. (A copy of the enclosed check stub in the amount of \$10,000.00 is attached hereto as **Exhibit "C"**.)

18. On October 26, 2005, Hollinshead sent SAS an additional check for Seventy Thousand & no/100 (\$70,000.00) Dollars as payment for the additional premiums for the inter-collegiate sports policy.

19. On September 23, 2005, SAS billed Benedict for the fall semester's premium for the health and accident Plan for the students.

20. The invoices were sent by SAS to Hollinshead to be forwarded on to Benedict as was the custom and course of dealing for the previous years since 1999.

21. The total premium for the Plan was One Hundred Fifty-nine Thousand Six Hundred Thirty-nine & no/100 (\$159,639.00) Dollars. (A copy of the invoice is attached hereto as **Exhibit "D"**.)

22. On November 22, 2005, SAS received a third check from Hollinshead in the amount of One Hundred Thousand & no/100 (\$100,000.00) Dollars.

23. Beginning in October 2005, SAS began making inquiries to Hollinshead regarding only partial payments having been made of the premiums for both the inter-collegiate sports policy and the Plan that Benedict had purchased.

24. When communication was finally made with Hollinshead after several attempts, he indicated that Benedict was having a difficult time collecting the money but that he expected that SAS would be paid in full for the premiums shortly thereafter.

25. SAS inquired as to the reasons for Hollinshead having cashed the premium checks received from Benedict and, for the first time, sending SAS cashier's checks that were drawn in Hollinshead's name. Previously, Hollinshead would forward to SAS the entire Benedict check and SAS would then remit to Hollinshead his commission.

26. Hollinshead falsely responded to SAS that the "college was directed to make payment to him" and he was making personal trips from Charleston to Columbia to obtain the money.

27. In December 2005 after a few months of receiving what SAS perceived as deceptive and/or contradictory explanations from Hollinshead, SAS contacted the business office at Benedict directly regarding payment of the premium balances due for both the inter-collegiate sports policy and the Plan.

28. Upon learning that SAS contacted Benedict directly, Hollinshead immediately telephoned SAS and once again falsely told them that Benedict was having "severe cash problems" and that he was in the process of getting the additional money that was allegedly owed for the premiums.

29. On February 8, 2006, SAS billed Benedict for the second semester health insurance premium for the Plan. (A copy of the second semester invoice is attached hereto as **Exhibit "E"**.)

30. At the time, the 2005-2006 first semester insurance coverage on the Plan had expired on December 31, 2005 and SAS was not processing any further claims under the Plan until it received a list of insured names and the required premium.

31. On March 1, 2006, SAS received a premium check from Hollinshead in the amount of One Hundred Thirty-five Thousand & no/100 (\$135,000.00) Dollars and received the list of names from the school of all the insureds. Upon receipt, SAS resumed processing various claims made by the insureds.

32. By this time, SAS was frustrated by the lack of candor that was being shown by Hollinshead and SAS contacted Brenda Walker, Finance Director of Benedict.

33. On March 27, 2006, SAS received an e-mail from Ms. Walker which indicated that Benedict had paid Hollinshead One Hundred Ninety Thousand & no/100 (\$190,000.00) Dollars for the inter-collegiate sports policy and Three Hundred Fifty-one Thousand Eight Hundred Eighty & no/100 (\$351,880.00) Dollars for the health insurance policy premium for both semesters for the Plan. (A copy of the e-mail with attached dates and check numbers to Hollinshead is attached hereto as **Exhibit "F"**).

34. Upon receipt, SAS immediately contacted Hollinshead and confronted him with the obvious in that he was receiving premiums from Benedict and not remitting the required and full amount to SAS but was converting the same for his own individual benefit.

35. SAS thereafter received copies of the statements that Benedict had received from Hollinshead which set forth the amounts that Hollinshead had billed Benedict for both the inter-collegiate sports plan and the Plan.

36. Upon receipt SAS immediately noticed that Hollinshead had over-billed Benedict for the health insurance premium for the Plan in the amount of Sixteen Thousand Three Hundred Forty-one & no/100 (\$16,341.00) Dollars for the first semester and Fifteen Thousand Four Hundred Five & no/100 (15,405.00) Dollars for the second semester.

37. After a full reconciliation of the premiums paid and the lesser amounts remitted by Hollinshead to SAS from August 2005 through the present, Hollinshead owes SAS the following amounts.

<u>POLICY</u>	<u>BENEDICT'S STATED PREMIUM FOR EACH POLICY</u>	<u>HOLLINSHEAD'S COMMISSIONS</u>	<u>NET AMOUNT TO SAS</u>	<u>AMOUNT SAS HAS BEEN PAID BY HOLLINSHEAD AFTER HE RECEIVED PREMIUMS FROM BENEDICT</u>	<u>AMOUNT STILL OWED TO SAS FOR PREMIUMS RECEIVED BY HOLLINSHEAD</u>
Intercollegiate Sports	\$190,000.00	\$9,500.00	\$180,500.00	\$80,000.00	\$100,500.00
Fall Semester Health	\$159,639.00	\$15,963.90	\$143,675.10	\$100,000.00	\$43,675.10
Spring Semester Health	\$150,558.50	\$15,055.85	\$135,502.65	\$135,000.00	\$502.65
TOTALS	\$500,197.50	\$40,519.75	\$459,677.75	\$315,000.00	\$144,677.75

Balance due SAS - \$144,677.75

38. As a direct and proximate result of the foregoing, Hollinshead owes SAS approximately One Hundred Forty-four Thousand Six Hundred Seventy-seven & 75/100 (\$144,677.75) Dollars, exclusive of interest, attorney's fees, punitive damages and trebled damages pursuant to S.C. Code Ann. § 39-5-140.

III. FOR A FIRST CAUSE OF ACTION
(Plaintiff v. Defendants)
CONVERSION

39. The allegations of paragraphs 1 through 38 are incorporated by reference as if set forth herein *verbatim*.

40. By stealing the insurance premiums that were paid to him for the benefit SAS by Benedict during the 2005-2006 school year, Hollinshead exercised unauthorized dominion and control over approximately \$144,677.75 of SAS's funds, which were paid for SAS procuring the inter-collegiate sports and health insurance policies for Benedict's students for the 2005-2006 school year.

41. Hollinshead converted SAS's funds for his own use without the express consent given by SAS, the owner of said funds.

42. It is without argument that the premiums owed for the two (2) Benedict insurance policies were to be paid to SAS and that Hollinshead was only entitled to receive his stated commissions as the agent for both policies.

43. As a direct and proximate result of the wrongful conversion, SAS is entitled to recover the sum of \$144,677.75, plus punitive damages for the willful conversion.

IV. FOR A SECOND CAUSE OF ACTION
(Plaintiff v. Defendants)
FRAUD

44. The allegations of paragraphs 1 through 43 are incorporated by reference as if set forth herein *verbatim*.

45. The Defendants employed a scheme to defraud SAS of the required premiums which were billed to and paid by Benedict for the two insurance policies for the 2005-2006 school year.

46. Unlike previous years where Hollinshead would collect the premiums and remit the full amount to SAS, for the 2005-2006 school year, Hollinshead devised a scheme wherein he falsely stated that Benedict was having cash flow problems and that he was only allegedly receiving the premiums in a piece-meal fashion from Benedict.

47. Hollinshead communicated these false representations to SAS so that SAS would rely on them and so SAS would not press him or Benedict for the entire premiums due, even though they were paid timely and in full by Benedict to Hollinshead for the two policies.

48. Hollinshead made these false statements regarding the partial payment of premiums to SAS so that he could misappropriate and convert some of the premiums for his own use and benefit.

49. Defendants intended that SAS would rely on these false statements and such reliance by SAS was foreseeable as being reasonable. SAS did, in fact, rely on these statements and for many months did not pursue inquiry from Benedict regarding whether it had only made partial payments of the premiums rather than the full payment required as it believed Hollinshead when he told SAS only partial payments had been made.

50. SAS was damaged by the fraudulent statements made by the Defendants as they were intended to deceive SAS so that Hollinshead would have the time to misappropriate the premiums for his own use and benefit.

51. As a direct and proximate result of the fraud, SAS has been damaged in the amount of \$144,677.75, exclusive of interest, costs, punitive damages and attorney's fees.

52. As a direct and proximate result of the willful fraud committed by the Defendants, SAS is entitled to receive its actual and punitive damages.

V. FOR A THIRD CAUSE OF ACTION
(Plaintiff v. Defendants)
Breach of Contract

53. The allegations of paragraphs 1 through 52 are incorporated by reference as if set forth herein *verbatim*.

54. Through a repeated course of dealing, agreements and performance from 1999 through 2005, Hollinshead as the agent for the health and accident insurance policies paid for by Benedict and administered by SAS, would remit the full premiums paid to SAS for the division of said premiums for the payment to the insurance carrier of its respective amount, the payment to SAS for its administrative fees due and the payment to Hollinshead for the agreed upon commission.

55. During the 2005-2006 school year, Hollinshead breached the aforementioned contract by cashing the premium checks paid by Benedict for the student health and accident insurance plan and the inter-collegiate sports plan for the 2005-2006 fall and spring semesters and remitted a lesser amounts to SAS.

56. Hollinshead made false statements to SAS regarding the amount of premiums billed and those which were paid by Benedict during this time period.

57. As a direct and proximate result of the breach of contract set forth above, SAS is entitled to receive its actual damages in the amount of \$144,677.75, plus pre-judgment interest in the amount of 8 ¾% pursuant to S.C. Code Ann. § 34-31-20(A).

VI. FOR A FOURTH CAUSE OF ACTION
(Plaintiff v. Defendants)
BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT

58. The allegations of paragraphs 1 through 57 are incorporated by reference as if set forth herein *verbatim*.

59. Pursuant to the agency administration agreement between SAS and Hollinshead, Hollinshead, through the parties' course of dealings and agreements since 1999, was required to remit directly to SAS the premiums paid by Benedict for the student health and accident insurance policies for each school year. Thereafter, SAS would divide the premium check paid by Benedict by paying the insurance carrier its required amount, keeping a portion for its own administration fee and paying the remaining agreed upon commission to Hollinshead.

60. Up until the 2005-2006 school year, Hollinshead performed his obligations under the contracted that existed between SAS and the Defendants.

61. During the 2005-2006 school year as stated above, Defendants breached the contract by misappropriating the insurance premium checks paid by Benedict, cashed those checks and remitted lesser amounts to SAS.

62. The fraudulent act in connection with breaching the contract was that the Defendants falsely represented to SAS that Benedict was only partially paying its premiums for the inter-collegiate sports policy and the health and accident insurance Plan for the 2005-2006 school year and that cash flow problems were prohibiting Benedict from paying the full premiums. Hollinshead intended for his false statements to be relied upon by SAS so that he would have the opportunity and time to convert premiums paid and funds which belonged to SAS and the insurance carrier for his own use and benefit.

63. As a direct and proximate result of the foregoing breach of contract accompanied by the fraudulent acts by Hollinshead, SAS is entitled to recover its actual damages in the amount of \$144,677.75, interest, costs, attorney's fees and punitive damages for the willful and fraudulent statements made by Hollinshead and the fraudulent acts committed by him during the 2005-2006 Benedict school year.

VII. FOR A FIFTH CAUSE OF ACTION
(Plaintiff v. Defendants)
Unfair Trade Practices

64. The allegations of paragraphs 1 through 63 are incorporated by reference as if set forth herein *verbatim*.

65. Hollinshead is a registered and duly licensed insurance agent with the South Carolina Department of Insurance.

66. As a result of Defendants' business endeavors, their insurance agency business constitutes commerce within the meaning of the South Carolina Unfair Trade Practices Act set forth at S.C. Code Ann. § 39-5-10.

67. The deceptive acts of Hollinshead as set forth above in the false statements made to both Benedict and SAS on multiple occasions from 2005-2006 and the actions in converting funds not belonging to him were done in the stream of commerce and affected the students of Benedict in that insurance claims made under the two respective policies were delayed in being processed and/or denied even though Benedict timely paid the premiums in full for the two policies.

68. The acts of Defendants as set forth above were repeated on numerous occasions by Hollinshead in that on more than one occasion he converted premiums that were paid by Benedict and owed directly to SAS for his own use and benefit and/or told false statements to Benedict and SAS on several occasions regarding the premiums which were owed and whether they had in fact been paid.

69. Hollinshead also falsely over-billed Benedict for insurance premiums for the student health and accident insurance Plan in both the fall and spring semesters and had converted insurance premiums due SAS in both those semesters.

70. As such, the public interest has been directly affected by the unfair and deceptive acts which were willfully committed by Defendants.

71. As a direct and proximate result, SAS is entitled to recover \$144,677.75, plus interest, costs and attorney's fees and is entitled to have its damages trebled pursuant to S.C. Code Ann. § 39-5-140 for the willful acts.

VIII. FOR A SIXTH CAUSE OF ACTION
(Plaintiff v. Defendants)
UNJUST ENRICHMENT

72. The allegations of paragraphs 1 through 71 are incorporated by reference as if set forth herein *verbatim*.

73. As an agent of SAS's disclosed carrier Columbia Life Insurance Company and because SAS is the administrator of the two insurance policies procured by Benedict in 2005-2006, the Defendants had a duty to pay the entire amount of the premiums over to SAS for SAS to pay Hollinshead his commission for the policies.

74. As a result of the wrongful misappropriation of the premiums which were to be paid and were due to SAS, Hollinshead has been unjustly enriched at the expense of SAS.

75. The benefit conferred upon Hollinshead for which he wrongfully was enriched is that he has taken approximately \$144,677.75 of premiums above his stated and agreed upon commission for the two insurance policies Benedict purchased for the 2005-2006 school year.

76. SAS permitted Hollinshead to collect the annual premiums for the policies and remit the premiums to SAS for division and distribution.

77. The benefit for which SAS conferred upon Hollinshead was the right to bill and collect for those premiums but not to divide those premiums and take any amounts, as the commission was to be paid directly by SAS to Hollinshead for the policies.

78. As a direct and proximate result, SAS is entitled to receive 144,677.75, plus statutory interest pursuant to S.C. Code Ann. § 34-31-20(A) as the value of the benefit conferred.

WHEREFORE, Plaintiff Student Assurance Services, Inc. respectfully requests that judgment be entered against Defendant Kevin Hollinshead, Sr., Individually and as controlling person of Hollinshead Group Insurance, LLC for Plaintiff's actual damages, punitive damages, trebled damages pursuant to S.C. Code Ann. § 39-5-140; its costs, interest and attorney's fees; and any other and further relief this Court deems just and proper.

BLAND RICHTER, LLP



Eric S. Bland
 Ronald L. Richter, Jr.
 1500 Calhoun Street
 Post Office Box 72
 Columbia, South Carolina 29202
 803.256.9664 (telephone)
 803.256.3056 (facsimile)
ericbland@blandrichter.com (e-mail)
ronnie@blandrichter.com (e-mail)

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
 September ____, 2006

EXHIBIT "A"



July 18, 2003

Ms. Dale Evanchof
Director of Licensing
Columbian Financial Group
P.O. Box 1381
Binghamton, NY 13902-1381

RE: Agent Application for Appointment Forms

Dear Dale:

I have enclosed agent application for appointment forms for Kevin Hollinshead for your processing. These forms were previously faxed to you.

Please contact me if you require any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana Miller", is written over a horizontal line.

Diana Miller
Compliance and Contracts Administrator

Diana Miller, Compliance & Contract Administrator

TRANSMITTAL

TO: Dale Evanchof
Director of Licensing
Columbian Mutual Life Insurance Co.

FAX NUMBER: (607) 724-1599

FROM: Diana Miller
ext 203

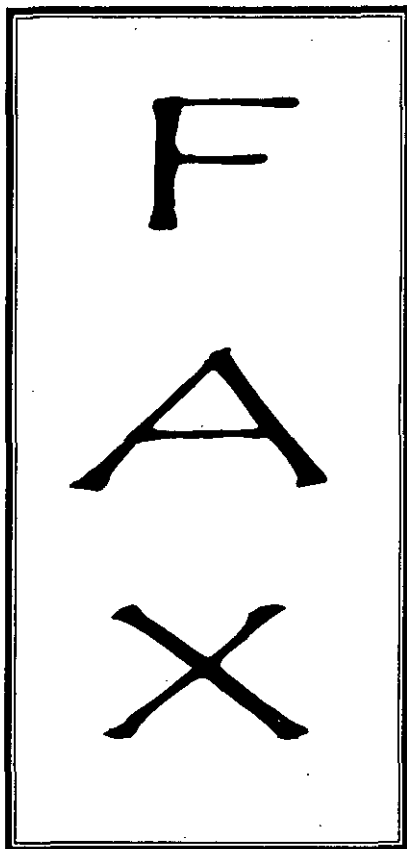
DATE: July 18 2003

PAGES TO FOLLOW: 9(including this page)

RE: Agent Appointment

Dale, Attached are application for appointment forms for Kevin Hollinshead.

If you have any additional questions let me know. Thanks
Diana



P.O. Box 196
Stillwater, MN 55082-0196

FAX
(651) 439-0200

Phone Toll Free
1-800-328-2739

Minnesota Metro
(651) 439-7098

The information contained in this message is confidential and intended for the use of the individual named above. If the receiver of this message is not the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error please notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank You.

COLUMBIAN FINANCIAL GROUP

Binghamton, New York 13902

APPLICATION FOR APPOINTMENT AS LICENSED REPRESENTATIVE

with the Student Assurance Services, Inc.

(Name & Number of General Agency)

CML

CLIC

PLEASE PRINT

CONFIDENTIAL

Personal Information

Mr. ☒ Mrs. ☐ Ms. ☐

Name Hollinshead Kevin Dion
Last First Middle

Business Address c/o Same

Residence Address 3783 Meeting St.
No. Street Address

N. Charleston Charleston S.C. 29405
City County State Zip Code

No. Street Address
City County State Zip Code

Residence Phone No. 843-744-6376
Area Code Phone No.

Business Phone No. 843-747-4113
Area Code Phone No.

Social Security No. [REDACTED]

FAX No. 843-747-4143

Business Tax ID. No. [REDACTED]

Spouse's Name _____
(Conference Information, not required)

Date of Birth [REDACTED]

Do you have access to an IBM Compatible Computer? ☒ Yes ☐ No

No Month Date Year

PLEASE INDICATE WHICH ADDRESS IS TO BE USED FOR MAIL (Check only one)

☒ Home

☐ Business

I am interested in representing the Company as an

☒

Individual

☐

Corporation

☐

Partnership

Licensed or qualified to sell Life Insurance?

☒

Yes

☐

No

If "Yes", give name(s) of Company(ies), if any, and

Licensed or qualified to sell Accident and Health?

☒

Yes

☐

No

If "Yes", give name of Company(ies), if any, and

Engaged in the General Insurance Business?

☐

Yes

☒

No

If "yes", give name(s) of Company(ies), if any, and

If engaged in any other occupation, give particulars _____

Will our Company be the Representative's primary Company?

☒

Yes

☐

No

If not, which Company? _____

May name be published in Agency Magazine, Honor Rolls, Etc.?

☒

Yes

☐

No

Are Company Publications to be sent?

☒

Yes

☐

No

If any relative(s) of representative work(s) for Columbian Financial Group, please name: NO

Have you ever been convicted of any criminal felony involving dishonesty or a breach of trust or any offense under the Federal Crime Act (18USCA 1033)? Yes ☐ No ☒ If "yes", give date, penal code section of conviction and disposition.

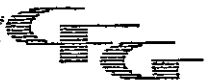
I hereby acknowledge the answers I have provided on this application are true and accurate statements to the best of my knowledge:

(Witness)

(Full Signature of Applicant)

Dated at _____ this _____ day of _____, 2003

COLUMBIAN FINANCIAL GROUP
Binghamton, New York 13902



CML _____ CLIC 1

We are in receipt of your application and note that you wish to be contracted as a corporation. Would you please furnish us with the following information for our records:

Telephone Number _____

FAX Number _____

Name of applicant <u>Kevin Dion Hollingshead SR</u>	
(Corporate name in full)	(Fed Employer ID Nb)
Principal Business Address <u>3783 Meeting St.</u>	
(Street name & number)	
<u>N. Charleston</u>	<u>Charleston SC 29405</u>
(City)	(County) (State) (Zip Code)

List all officers and directors and give information requested below:

Name _____ A&H	Social Security No. _____	Title _____	Check here if Sub-Lic ☐ L		
Residence number & street _____	City or PO _____	State _____	Zip Code _____	Date of Birth _____	Sex M ☐ F ☐
Name _____ A&H	Social Security No. _____	Title _____	Check here if Sub-Lic ☐ L		
Residence number & street _____	City or PO _____	State _____	Zip Code _____	Date of Birth _____	Sex M ☐ F ☐
Name _____ A&H	Social Security No. _____	Title _____	Check here if Sub-Lic ☐ L		
Residence number & street _____	City or PO _____	State _____	Zip Code _____	Date of Birth _____	Sex M ☐ F ☐
Name _____ A&H	Social Security No. _____	Title _____	Check here if Sub-Lic ☐ L		
Residence number & street _____	City or PO _____	State _____	Zip Code _____	Date of Birth _____	Sex M ☐ F ☐

If more space is required use the back of this form.

Person to contact relative to this Corporation: _____

Mrs. Dale Evanchof
Director of Licensing
Sales & Marketing

COLUMBIAN MUTUAL LIFE INSURANCE COMPANY.
BINGHAMTON, NY 13902-1381
Columbian Life Insurance Company is not licensed
nor are its products available in every state.

COLUMBIAN LIFE INSURANCE COMPANY
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NY 13902-1381

COLUMBIAN FINANCIAL GROUP

Binghamton, NY 13902

AUTHORIZATION**Disclosure**

(As required by the 1997 FCRA section 606(a))

As a routine part of our due diligence effort, Columbian Life Insurance Company intends to
(company name)

obtain an investigative consumer report on you. To insure full compliance with the 1997 Fair Credit Reporting Act and to facilitate easy access to all information necessary, please read and sign the form.

I, Kevin D. Hollinshead, authorize all persons and entities (including but not limited to
(Applicant's Name)

businesses, corporations, former supervisors, credit agencies, governmental agencies, law enforcement authorities, educational institutions, state insurance departments, the NASD, and all military services) to release all written and verbal information about me to IPC / Limra International, Inc. I release and agree to hold each harmless from all liability and responsibility for doing so.

I specifically understand and authorize the procurement of an investigative consumer credit report and understand that in all likelihood it will contain information about my background, credit worthiness, credit standing, credit capacity, mode of living, character, general reputation, and personal characteristics from public record sources or through interviews with your neighbors, friends or associates.

I further understand that upon written request I will be given a list of the areas which will be researched and included in the investigative report into my background.

I have read and understand the attached summary of my rights under the 1997 Fair Credit Reporting Act.

This release, in original or copy form, is valid now or any time in the future. I agree with all the provisions shown in this disclosure form and have been provided a copy of this document.

Kevin D. Hollinshead SR

Signature of Applicant

Date

Kevin D. Hollinshead

Name Printed

COLUMBIAN MUTUAL LIFE INSURANCE COMPANY
BINGHAMTON, NY 13902-1381
Columbian Life Insurance Company is not
licensed nor are its products available in every state.

COLUMBIAN LIFE INSURANCE COMPANY
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE:
BINGHAMTON, NY 13902-1381

You should not:

Call life insurance or annuities "plans", "programs", or in any way disguise that they are life insurance policies or contracts.

Provide services such as legal or tax advice, or products such as securities for which you are not duly licensed and trained.

Show materials to the public which are identified as "For Agent Use Only" or "For Internal Use Only."

Sell products which do not meet the client's financial and personal needs.

Exaggerate, inflate or misrepresent your products, services or company.

Make any statement, written or oral, which is untrue and derogatory regarding the financial condition of any insurance company

Minimize, ignore and avoid discussing aspects of your products and services because they are complicated or potentially unfavorable.

Develop "home grown" illustrations, advertising or present tabular numerical data which has not been approved at the Home Office.

Use the terms "vanishing premium" or "vanish" when discussing the mechanics of using accumulated values to pay future premiums.

Give direct monetary or indirect "in kind" rebates.

Please sign below to indicate that you have read the Agent Code of Ethics and agree to comply with these principles, correct violations where possible and report violations as directed in the Code.

X-D. Hollinshead sr
signature

date

Kevin D. Hollinshead sr
name - print

CONFIDENTIALITY AND NONDISCLOSURE ADDENDUM

WHEREAS, the undersigned has previously entered into an agreement (the Agreement) to market insurance products or provide other services on behalf of one or more members of the Columbian Financial Group ("CFG"), including but not limited to Columbian Mutual Life Insurance Company, Columbian Life Insurance Company, Columbian Family Life Insurance Company, Columbian Financial Services Corporation, and Golden Eagle Sales Corporation (hereinafter referred to as the "Contracting CFG Company"); and

WHEREAS, in the course of performing the Agreement, the undersigned may receive from the Contracting CFG Company or otherwise obtain access to certain nonpublic personal information concerning the Contracting CFG Company's customers (including but not limited to the Contracting CFG Company's policyholders, insureds, annuitants, claimants, beneficiaries, and applicants), which information may include names, addresses, telephone numbers, birth dates, Social Security numbers, insurance policy or annuity information, health information, financial information or any other personally identifiable information (such information to be referred to herein as "CFG Customer Information"); and

WHEREAS, certain federal and state laws mandate that the Contracting CFG Company obtain contractual commitments from third parties with whom it shares or provides access to CFG Customer Information to safeguard and limit the use and disclosure of CFG Customer Information.

NOW THEREFORE, in consideration of the foregoing and, more particularly, in consideration of the Contracting CFG Company's continuation of its contractual relationship with the undersigned under the Agreement, the undersigned agrees as follows:

1. Neither the undersigned, nor any agent or employee of the undersigned, shall disclose or use any CFG Customer Information for any purpose other than to carry out the duties and functions of the undersigned as set forth in the Agreement, or as otherwise permitted under federal or state law.
2. The undersigned shall establish appropriate safeguards to protect against the inadvertent disclosure of CFG Customer Information to any other person or entity.
3. In the event of any improper or unauthorized disclosure of CFG Customer Information while in the custody or control of the undersigned, the undersigned shall immediately notify the Contracting CFG Company so that the Contracting CFG Company and the undersigned may take appropriate remedial action.
4. From the date set forth below, this Addendum shall be deemed part of, and incorporated into, the Agreement as if expressly set forth therein.

Agreed to this _____ day of _____, 2001

Name: Kevin D. Hollingshead Title: Owner
(Signature)

Name: Kevin D. Hollingshead Company: _____
(Printed Name)



POLICY REGARDING REPLACEMENTS

Neither Columbian Mutual Life Insurance Company nor Columbian Life Insurance Company encourages the replacement of existing insurance coverage of policyholders with other companies. The agent should only do so when it is clear that the new coverage is in the policyholder's best interest.

The agent should recommend a replacement only if, after a careful, thorough and fully documented analysis, it can be shown to provide both short and long term benefits to the client that outweighs the costs:

The agent should accurately complete all forms related to a replacement and submit them on a timely basis to the client, company and state insurance administration.

The agent shall provide copies of all state mandated forms and guides to clients at the appropriate time during the sales process.

I have read the policy above. I understand and agree to follow this policy.

Kevin D. Hollishead SR
Agent's Signature

Date

Kevin D. Hollishead
Agent's Name - Print



**COLUMBIAN MUTUAL
LIFE INSURANCE COMPANY**
VESTAL PARKWAY EAST
BINGHAMTON, NEW YORK 13902-1381



**COLUMBIAN LIFE
INSURANCE COMPANY**
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NY

COLUMBIAN LIFE INSURANCE COMPANY

HOME OFFICE: CHICAGO, ILLINOIS
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NEW YORK

AGENT CONTRACT

In consideration of the Agent Contract Application of Kevin D. Hollinshead sr.
the terms of which are expressly incorporated by reference hereto, COLUMBIAN LIFE INSURANCE COMPANY
(the "Company") of Chicago Illinois, on the effective date, appoints Agent and Agent accepts the appointment, to
solicit Company's Student Accident and Health Policy (hereafter referred to as Policy or Product) subject to the
terms stated in these pages.

You are assigned to the Company's General Agent ("GA"), Student Assurance Services, Inc. Stillwater, Minnesota.

The Effective Date of this Contract shall be _____

AGENT

K. D. Hollinshead
(Authorized Signature)

(Date)

GENERAL AGENT

Mark L. Deuch
(Authorized Signature)

7-15-2003
(Date)



**COLUMBIAN LIFE
INSURANCE COMPANY**
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NY

CONSENT OF THE COMPANY

COLUMBIAN LIFE INSURANCE COMPANY

By _____

1. DEFINITIONS

In this Contract,

- a) The words "you," "your," and "yours" refer to you as an individual.
- b) The words "we," "us," "our," "ours," and "Company" mean Columbian Life Insurance Company.
- c) "Contracts Issued" means those policies issued on applications submitted to us which were procured by you and on which a premium has been paid to the Company.

2. AUTHORITIES AND DUTIES OF AGENT

- a) Your authority extends no further than is stated in this Contract. You cannot make, alter, or discharge any contract (except as provided in this Contract) or waive forfeitures or contract debts in our name. You cannot issue or cause to be issued or circulated, any written or printed matter bearing our name without first obtaining our written approval on a copy of the proposed matter. All printed matter and supplies which we furnish to you and records on our forms are our property, subject at all times to our control, and must be returned immediately if we request them.
- b) Subject to the direction and control of the General Agent (GA) you agree to:
 - 1) Solicit and procure applications for the Company's product.
 - 2) Transmit such applications promptly to the GA, as directed.
 - 3) If requested, promptly deliver, or cause to be promptly delivered, to the purchaser all Contracts Issued.
 - 4) Provide service in regard to Contracts Issued.
 - 5) Maintain proficiency in insurance knowledge and sales techniques.
 - 6) Assure that at all times, you are properly licensed with applicable state insurance or other regulatory bodies. Columbian Life Insurance Company only agrees to pay appointment fees (initial and renewal) imposed by a Department of Insurance in respect of Agents appointed hereunder. Columbian Life Insurance Company shall not be responsible for any other fees, taxes or licensing requirements imposed by any other unit of state or local government arising out of Columbian Life Insurance Company's appointment of Agents, including by way of example and without limitation, county and municipal license taxes, business, occupational, franchise and professional service fees, income taxes and licenses. The Company is not responsible for the cost of any pre-license education requirements imposed by the states, agent license examination fees, license fees (initial and renewal), and the costs of detailed credit and character reports required by the states for persons who are qualifying for the first time for a license. The Company is not responsible for the costs of compliance with an agent's continuing education requirements.
 - 7) Assure that you are in compliance with applicable state laws and rulings of insurance departments in any state in which you operate.
 - 8) Comply with our Company policies, guidelines and directives as issued from time to time in the form of manuals, bulletins and other announcements.

3. COMPENSATION

You acknowledge and agree to look to the GA as the sole source of compensation to be paid to you for the performance of services under this Contract, including without limitation the sale of coverage of the Company's Policy. You agree to indemnify and hold the Company harmless from all claims for compensation for services provided hereunder. The commission will be set forth in an agreement with GA to be agreed upon for each policy.

4. AGENT OR BROKER OF RECORD

The compensation payable and all your rights under this Agreement are subject to you being designated in writing by the policyholder as their broker or agent of record and entitled to commissions. In the event we receive a designation to the contrary from the policyholder, we have the right in our sole discretion to cease your rights to commission and to any other of the rights under this Agreement.

The termination is immediately effective even if during the term of a policy.

5. COLLECTION OF MONIES

You are not to collect or receive our monies, but to the extent you receive such monies, you agree to see that all premium payments you receive or collect for us are received or collected in trust, in a fiduciary capacity. Such premiums will not be used for personal or other purposes, but will be promptly paid to us. In addition, you agree to comply with any applicable state law or regulation governing the handling of insurance premiums by agents or brokers. You will keep a regular and accurate account of all collections made and all policies delivered, and this account will be open to us for inspection at all reasonable times.

6. COSTS

All overhead costs connected with operating your insurance business will be the responsibility of Agent. Such costs include, but are not limited to rent, utilities, phone, taxes, insurance, salaries of all personnel employed or retained by you, office furniture, supplies and equipment, travel by your personnel, media advertising, legal and accounting fees, and postage.

7. ADVERTISING

Any marketing or other materials developed by or used by Agent which refer in any fashion to the Policy, the Company or its practices and procedures must be approved in writing by the Company prior to use.

8. LICENSING AND APPOINTMENT OF AGENTS

You must be appointed by the Company in writing. The GA is not authorized to pay commissions to you nor will Policies be issued until the contracting and appointment process has been completed.

9. ADMINISTRATION

- (a) You will provide all reports to the Company as are requested in writing by the Company.
- (b) The Company shall have the right to inspect and copy your books and records relating to the subject matter of this Agreement during normal business hours.

10. TERM AND TERMINATION

- a) We may terminate this Agreement at any time by giving you 30 days prior written notice. Termination shall be effective 30 days following transmittal of the notice. The agreement terminates automatically upon your death or retirement.
- b) We may terminate this Agreement for cause at any time without notice in the case of fraud, embezzlement, misrepresentation, misuse of funds, violation of insurance laws, gross negligence or other serious misconduct on your part, and it shall be effective upon transmittal of written communication to you advising of the termination. We may also terminate this Agreement for cause if you breach any provision of this Agreement and said breach is not cured by 30 days after receiving notice of the breach by the Company. Termination is effective at the end of the 30-day notice period.
- c) If this Agreement is terminated for any reason, the GA will be notified. As set forth in Section 3 of this Agreement, all compensation is solely a matter between you and the GA, and you will hold the Company harmless from any claim of compensation arising from termination of the Agreement.
- d) You agree, promptly upon termination of this Agreement for any reason, to return to us all material we have furnished to you including manuals, forms, promotional material, supplies, equipment, customer records and accounts.
- e) The terms of this Contract shall survive termination for the purposes of administering amounts payable, if any, to each party under this Contract.

11. GENERAL PROVISIONS

- a) Additions, Amendments, Modifications and Waivers.

This contract shall not be effective until approved by us at our Home Office. No additions, amendments or modifications of this Contract or any waiver of any provision will be valid unless approved, in writing, by the party to be charged. In addition, no approved waiver of any default or failure of performance, by one party will affect the other party's rights with respect to any later default or failure of performance.

b) Independent Contractor Relationship.

This Contract does not create the relationship of employer and employee between the parties to this Contract, but rather the relationship is that of principal and independent contractor with respect to both parties. You agree that you will be responsible for all taxes as an independent contractor and that you will not, in any claim against us or in the determination of your eligibility, or our responsibility, for any benefit provided by any public law, assert that you were an employee of ours because of your engagement as our Agent. Without limiting the generality of the foregoing, you specifically agree that you are not treated as an employee of ours for federal tax purposes and that you are responsible for paying all taxes.

c) Assignments.

You will not assign or transfer, either wholly or partially, this Contract or any of the benefits accrued or to accrue under it, without the written prior consent of a duly authorized officer of the Company and in any event we are not bound by any such assignment or transfer unless and until such assignment complies with all applicable state laws and regulations. Any assignment will be subject to the provisions of this Contract. We assume no responsibility for the validity of any assignment and you agree to hold us harmless with regard to any amount paid by us pursuant to any such assignment.

d) Bond or Insurance

You agree, if required by state law and if we request it, to give and maintain a bond or insurance in an amount and with such sureties as we may require.

e) Service of Process

If you receive or are served with any notice or other paper concerning any legal action against us, you agree to notify us immediately (in any event not later than the first business day after you receive or are served with such notice) by telephone and transmit any papers that are served or received, by registered mail, to us at our Home Office.

f) Severability

If it understood and agreed by the parties to this Contract that if any part, term or provision of this Contract is held to be invalid or in conflict with any law or regulation, the validity of the remaining parts, terms and provisions will not be affected, and the parties rights and obligations will be construed and enforced as if this Contract did not contain the particular part, term or provision held to be invalid or in conflict with such law or regulation.

g) Governing Law

The laws of Illinois shall govern all matters concerning the validity, performance and interpretation of this Contract. Any proceedings or actions brought by the General Agent hereunder, with respect to any and all matters arising under this Contract, shall be brought and tried only in the courts of Cook County, State of Illinois

h) Notice

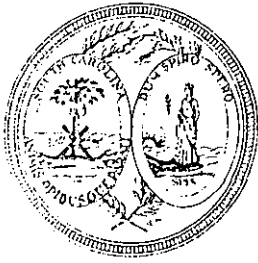
Any notice required or permitted by this Agreement shall be deemed to have been delivered when mailed by registered mail or certified mail, return receipt requested, in any branch of general post office maintained by the United States Postal Service, addressed to the respective parties at their addresses as set forth below; provided, however, that notice of change of address shall be effective only upon receipt of written notice thereof.

i) Use of Name, Trademark, Symbol or Trade Style.

Neither party will use the other's name nor any other name, trademark symbol or trade style that is now or may hereafter be owned by the other party, except in the manner and the extent that the other party may specifically authorize in writing. Upon termination of this Agreement, each party will immediately discontinue the use of such name, trademark, symbol or trade style belonging to the other party, which has been specifically authorized in writing.

12. CONFIDENTIALITY OF INFORMATION

- a) The undersigned shall not disclose or use any nonpublic personal information concerning the Company's customers (including but not limited to the Company's policy holders, insureds, annuitants, claimants, beneficiaries, and applicants), which information may include names, addresses, telephone numbers, birth dates, Social Security numbers, insurance policy or annuity information, health information, financial information or any other personally identifiable information



**South Carolina
Department of Insurance**

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

*** Producer License ***

Individual #: 168405

Date Issued: 09/09/1997

Type of License: RES - Producer

KEVIN D HOLLINSHEAD

is authorized by this department to sell, solicit, or negotiate insurance for the
lines(s) of authority shown

19 - Life

21 - Accident/Health

Subject to Cancellation, Suspension, or
Revocation per Statutes.

By order of the
Director of Insurance

(Cut Along This Line)

Remarks:

Address changes must be reported in writing to the Department within 30 days.

Reminder - CE Compliance period is May 1st of even numbered years.



**South Carolina Department of Insurance
Producer License**

Name: KEVIN D HOLLINSHEAD

Individual #: 168405

Date Issued: 09/09/1997

Line(s) of Authority: 19-Life 21-Accident/Health

Subject to Cancellation, Suspension, or Revocation per Statutes. By order of the
Director of Insurance

KEVIN D HOLLINSHEAD
3783-A MEETING ST.
N. CHARLESTON, SC 29405-0000

KEVIN D HOLLINSHEAD
3783-A MEETING ST.
N. CHARLESTON, SC 29405-0000



South Carolina
Department of Insurance

Interim Producer License

Name: KEVIN D HOLLINSHEAD
Individual Number: 168405

Please send a self addressed stamped envelope along with the \$35 administrative fee and this information data sheet, to receive the permanent Producer License

EXHIBIT "B"



STUDENT ASSURANCE SERVICES, INC.

P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098

INVOICE

July 20, 2005

- Benedict College
- 1600 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-74-0210-031-608-5, Intercollegiate Sports Insurance

Coverage for Period 08-01-2005 to 07-31-2006 Advance Premium Payment,
Credited toward Annual Premium of \$190,000

\$50,000.00

AMOUNT DUE

\$50,000.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

ELECTRONICALLY FILED - 2021 Aug 27 8:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI1000426

EXHIBIT "C"

08-08-05 16:18:37

25962

KEVIN D HOLLINSHEAD

1003

Kevin Hollinshead

CHECK NUMBER: 000309420

CHECK AMOUNT:

10000.00

CHECK NO: 000309420

Student Insurance Service



INVEST LIFE WISELY
HERITAGE TRUST
FEDERAL CREDIT UNION

P.O. BOX 118000
Charleston, SC 29423-8000
(843) 832-2600

DETACH AND RETAIN THIS PORTION

EXHIBIT "D"

Mike Montour

From: Mike Montour
Sent: Friday, September 23, 2005 11:36 AM
To: Kevin Hollinshead
Subject: Benedict College Fall Semester 05-06 Invoice

Kevin:

Here is the invoice you requested. The Fall Semester per student rate is \$63.50. This is one half of the 0506 renewal annual premium of \$127

Let me know if you need any additional assistance.

Thanks.

Mike Montour
College Health Underwriter
(651) 439-7098
(800) 328-2739
(FAX) (612) 439-0200

CONFIDENTIALITY NOTICE

This electronic message may contain information that is confidential and/or legally privileged. It is intended only for the use of the individual(s) or entity to which it is addressed. If you have received this message in error, please notify the sender immediately and delete the message from any computer. Do not deliver, distribute, or copy this message, and do not disclose its contents or take action in reliance on the information it contains. Thank you.

03-06-06

Mark: These two invoices were
emailed to Kevin today



STUDENT ASSURANCE SERVICES, INC.
P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098
INVOICE

September 23, 2005

- Benedict College
- 1600 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-64-0151-031-608-5, Student Accident and Sickness Insurance

Coverage for Fall Semester period, 08-01-2005 to 01-05-2006
Premium for Fall Semester, \$63.50 per student X 2,514 Students

\$159,639.00

AMOUNT DUE

\$159,639.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

ELECTRONICALLY FILED - 2021 Aug 27 8:12 PM - CHARLESTON - COMBON PLEAS - CASE#2021CPI000426

EXHIBIT "E"



STUDENT ASSURANCE SERVICES, INC.
P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098
INVOICE

February 8, 2006

- Benedict College
- 1600 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-64-0151-031-608-5, Student Accident and Sickness Insurance

Coverage for Spring Semester period, 01-05-2006 to 07-31-2006
Premium for Spring Semester, \$63.50 per student X 2,370 Students

\$150,495.00

AMOUNT DUE

\$150,495.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

ELECTRONICALLY FILED - 2021 Aug 27 8:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPT1000426

EXHIBIT "F"

Mark Desch

From: Brenda Walker [Walkerb@benedict.edu]
Sent: Monday, March 27, 2006 9:41 AM
To: Mark Desch
Cc: Elaine Funderburk
Subject: Hollinshed Group Insurance Payments (05-06)



Hollinshed Group
Insurance Pay...

Mr. Desch:

I'm forwarding detail of the payments Benedict made to Hollinshed Group Insurance for its fiscal year 2005-2006 student health and intercollegiate sports insurances. Please keep me and Mrs. Funderburk informed of the situation. Thank you.

Brenda

Benedict College
 Student Health and Intercollegiate Sports Insurance
 Premiums Paid Directly to Hollinshead Group Insurance

	Premiums Due	Premiums Paid By Benedict	Premiums Received Student Assurance
(1) Athletic Insurance FY 05-06	190,000.00	190,000.00	80,000.00
(2) Student Insurance Fall 2005	159,639.00	175,980.00	100,000.00
(3) Student Insurance Spring 2006	150,495.00	165,900.00	135,000.00
	<u>500,134.00</u>	<u>531,880.00</u>	<u>315,000.00</u>

(1)	140709	8/1/2005	25,000.00
	140956	8/18/2005	25,000.00
	142034	10/6/2005	70,000.00
	142678	10/26/2005	70,000.00
			<u>190,000.00</u>

(2)	141081	8/25/2005	20,000.00
	142183	10/7/2005	50,000.00
	142972	11/3/2005	105,980.00
			<u>175,980.00</u>

(3)	146456	2/16/2006	25,000.00
	146584	2/17/2006	140,900.00
			<u>165,900.00</u>

Differences
Between
Benedict
Payments
and Student
Assurance
Receipts
110,000.00
75,980.00
30,900.00
216,880.00

EXHIBIT B

STATE OF SOUTH CAROLINA 50

COUNTY OF CHARLESTON

PROMISSORY NOTE

2007 OCT 12 AM 9:14

JULIE J. ARMSTRONG
CLERK OF COURT

05/24/07, 2007

\$ 144,677.75

BY _____

THIS PROMISSORY NOTE ("Promissory Note") is dated as of the date stated hereinabove by **Hollinshead Group Insurance, LLC and Kevin Hollinshead, Sr.** (collectively hereinafter referred to as "Payor") to the order of **Student Assurance Services, Inc.** (hereinafter "Student Assurances") or its assigns.

I RECITALS

1.1 Payor acknowledges and agrees that it is indebted to Student Assurances in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars ("Balance Due"). In the event of a payment default by Payor, under the terms of this Promissory Note, Student Assurances will proceed in accordance with the agreed upon terms and conditions.

1.2 The Promissory Note relates to Student Assurance's right to receive the repayment of the entire Balance Due, and release Payor of any further obligation, if Payor timely pays the Balance Due to ABC in accordance with the agreed upon terms and conditions.

1.3 All capitalized terms utilized in this Promissory Note and not otherwise expressly defined herein shall have the respective meanings subscribed to them in the Agreement.

II PAYMENT

FOR VALUE RECEIVED, the sufficiency of which is acknowledged, Payor hereby promises to pay to the order of Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars.

2.1 **Payments.** Payor agrees to repay the Balance Due payable in monthly payments in an amount not less than Five Hundred (\$500.00) Dollars commencing on the 1st day of August, 2007 and continuing on the first day of each month thereafter for a period of five (5) years. At the end of the five (5) years period, any remaining balance outstanding shall become immediately due and payable. All payments must be in the form of a **cashier's check(s)** or **certified funds** payable to "ABC Supply Co., Inc.", until the Balance Due is paid in full. In the event any payment is not made within a five (5) day grace period of its due date ("Grace Period"), there shall be a \$35.00 late fee assessed per each day after the Grace Period until the payment is received. Notwithstanding any language contained herein to the contrary, during the first thirty-six (36) months of this obligation, if Payor is current on all payments and not otherwise in default, Payor may pay a sum equal to the difference between One Hundred Thousand (\$100,000.00) Dollars and the total of all payments made in full and final satisfaction of this Note.

2.2 **Maturity.** Unless sooner due and payable pursuant to or in accordance with the

terms and provisions of this Promissory Note, the Balance Due and all other amounts payable to Student Assurance by the Payor hereunder, shall be due and payable, at Student Assurance's option, on the next business day following a default as defined hereunder (the "Maturity Date").

2.4 Prepayments. Payor may prepay all or any portion of the Balance Due at any time without penalty or premium.

2.5 Security. This Note is secured by the Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars attached hereto as **Exhibit "A"**.

III DEFAULTS AND REMEDIES

3.1 Events of Default. It shall be a default ("Default") by Payor under this Promissory Note if any of the installments of the Balance Due are not paid as agreed in Paragraph 2.1 above.

3.2 Acceleration of Maturity. At any time that a default exists, at the sole and exclusive option of Student Assurance, the entire unpaid Balance Due outstanding under this Promissory Note shall become immediately due and payable simultaneously without the giving by Student Assurance to Payor of written or oral notice of Student Assurance's election to declare all such sums due and payable. Further, Student Assurance shall therefore be entitled to all remedies available to it at law or equity.

3.3 Delays of Student Assurance. Failure of Student Assurance, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date or exercise any other right or remedy available to it shall not constitute a waiver of the right to exercise the same at any time during the continued existence of any existing Default or in the event of a subsequent Default. Student Assurance shall not by any other act or omission be deemed to waive any of its rights or remedies hereunder unless such waiver is in a writing signed by a duly authorized officer of Student Assurance.

3.4 Waiver of Presentment, Demand, Notice of Dishonor, etc. Payor hereby waives presentment, demand for payment, notice of dishonor and protest and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Promissory Note.

3.5 Confession of Judgment. The obligations of the Payor in the event of a default shall be secured by an Agreement and Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars made pursuant to S.C. Code Ann. §§ 15-35-350 and 360. This Agreement and Confession of Judgment shall be executed on this date by Payor and will be held in escrow by Student Assurance, and will not be filed unless or until an Event of Default has occurred within the meaning of Section 3.1 above. Student Assurance can exercise its rights to collect all amounts owed under the attached Agreement and Confession of Judgment.

3.6 Bankruptcy. In the event that Payor files for any type of Federal Bankruptcy or state court asset protection proceeding, Payor agrees that this Promissory Note, related Confession of Judgment and the Balance Due shall not be dischargeable under any circumstances under the terms of the Bankruptcy, any Plan of Reorganization or any plan

submitted by debtor and approved by the Court.

3.7 Once Student Assurance receives complete payment of the Entire Indebtedness and all related costs, Student Assurance shall return the Promissory Note marked "Paid in Full" in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, and Student Assurance shall return the Agreement and Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars marked "cancelled".

IV GENERAL PROVISIONS

4.1 Notices. Any notice or other communications required or permitted hereunder shall be in writing and shall be delivered personally, sent by facsimile transmission (with a copy also sent by another means herein provided for), sent by certified, registered or express mail, postage prepaid or sent by reputable overnight express air courier. Any such notice shall be deemed given when so delivered personally or sent by facsimile transmission (with issuance by the transmitting machine of a confirmation of successful transmission) or, if mailed, five days after the date of deposit in the United States mail or, if sent by courier, two days after the date of deposit with such courier, addressed as follows:

(a) If to Student Assurance:

Mark Desch, President
Student Assurances Services, Inc.
333 North Main Street
P.O. Box 196
Stillwater, MN 55082-0196

With a copy to:

Eric S. Bland, Esquire
Bland Richter, LLP
Post Office Box 72
Columbia, South Carolina 29202

(b) If to Payor:

Kevin Hollinshead
3783 Meeting Street
N. Charleston, SC 29405

4.2 Governing Law, Venue, and Miscellaneous. All rights and obligations hereunder shall be governed, construed and enforced in accordance with the substantive and procedural laws of the State of South Carolina, without regard to conflict and choice of law principles. Venue regarding any dispute concerning this Promissory Note shall only be commenced and heard in the state court in Charleston County, South Carolina, to the exclusion of all other legally appropriate venues. This Promissory Note and attached Confession of Judgment shall be binding upon the undersigned and insure to the benefit of Student Assurance and its respective permitted assigns and successors. Any and all payments under this Promissory Note shall be made without set-off, demand or notice. All payments hereunder shall be applied first to any costs of collection, then to payment of interest, and finally to the payment of

principal, balance, to the extent of such payment.

4.3 Headings. The headings in this Promissory Note are inserted for convenience only and are not to be considered in the interpretation or construction of the provisions hereof.

4.4 Attorney's Fees, Costs and Expenses. Anything to the contrary herein notwithstanding, in any action, proceeding or dispute resolution process arising from, out of or in connection with this Promissory Note, Payor shall pay all costs and expenses that may hereafter be incurred by Student Assurance, its successors or assigns, incurred with respect to the collection of any of the obligations and the exercise and enforcement of any of its rights hereunder, including but not limited to, accrued interest (if any), actual attorneys' fees and litigation costs.

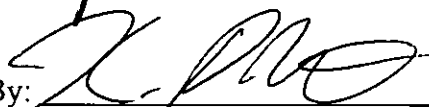
4.5 Time is of the essence with the payment obligations under this Note.

4.6 This Note represents the entire understandings of the parties and supersedes all prior and contemporaneous understandings, either oral and/or written, and can only be modified by a written agreement executed by all parties.

IN WITNESS WHEREOF, the undersigned has hereunto set its hands and seal and executed this Promissory Note as of this 29th day of May, 2007.

ATTEST:

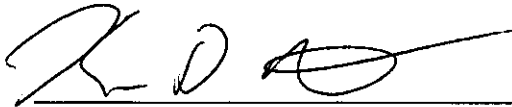
Hollinshead Group Insurance, LLC

By: 

Kevin Hollinshead, Member

Title: Owner

WITNESS:



Kevin Hollinshead

EXHIBIT "A"

EXHIBIT C

FILED

2006-CP-10-3980

26

STATE OF SOUTH CAROLINA)

2007 OCT 12

AM AGREEMENT AND CONFESSION

COUNTY OF CHARLESTON)

OF JUDGMENT

JULIE J. ARMSTRONG
CLERK OF COURTHollinshead Group Insurance, LLC and Kevin Hollinshead (sometimes collectively
BY _____

referred to as "Debtor" or "Debtors") hereby confess judgment to Student Assurance Services, Inc. ("Student Assurance") or its affiliates, successors or assigns in accordance with Section 3.5 of the Promissory Note dated 5/24/07, 2007 ("Note") for a total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, executed on the date even herewith and in accordance with S.C. Code Ann. §§ 15-35-350 and 360 as follows:

1. Debtor Hollinshead Group Insurance, LLC is a licensed and duly authorized limited liability company with the office of the South Carolina Secretary of State with its principal place of business in the county of Charleston, State of South Carolina. Debtor Kevin Hollinshead is a citizen and resident of Charleston County, South Carolina.

2. Debtors are liable to Student Assurance in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, which amount is justly due to Student Assurance because Debtors have, as a part of the Note, agreed and acknowledged that it currently owes Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, inclusive of attorney's fees and interest.

3. As such, Debtors hereby confess and authorizes the entry of judgment in favor of Student Assurance in the sum of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, minus credits for any amounts that have previously been paid, which shall be identified with an affidavit itemizing payments or credits to be filed

along with this Agreement and Confession of Judgment.

4. Debtors consent and agree that this Agreement and Confession of Judgment ("Judgment") may be entered against Debtors in the Clerk of Court for any County in South Carolina or in any appropriate jurisdiction where the Debtors own real or personal property and further consent and agree that Student Assurance may bring any action, in a court of competent jurisdiction, that may be necessary for the enforcement of this Judgment in accordance with Section 3.5 of the Promissory Note.

5. Debtors further agree and affirm that the aforesaid amount of this Judgment is justly due One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars) in accordance with the terms of the Promissory Note and this Judgment.

6. Debtors affirm that they have the necessary and appropriate authority and capacity to execute this Judgment and to make this Judgment fully binding upon and enforceable against them and their property.

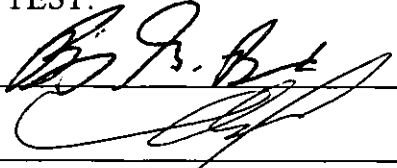
7. The undersigned agrees and affirms that they will not challenge or contest in any way the capacity or authority of any party hereto to enter into and execute this Judgment.

8. The undersigned agrees and affirms that the related Promissory Note, this Confession of Judgment and the Judgment amount cannot be dischargeable in the event Debtors files for any type of Federal Bankruptcy protection or State Court receivership action or reorganization.

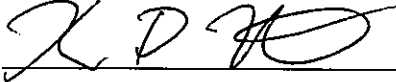
9. Debtors have read and understand this Judgment and freely and voluntarily enter into this Judgment.

WHEREFORE, the Debtors, having duly been sworn set their hands and seals this ____
day of 5/24, 2007 in the presence of the below named witnesses:

ATTEST:

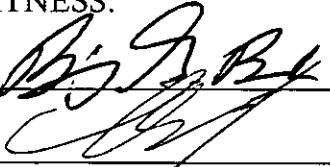


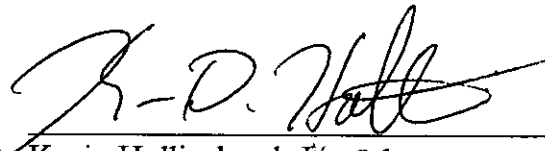
Hollinshead Group Assurance, LLC

By: 

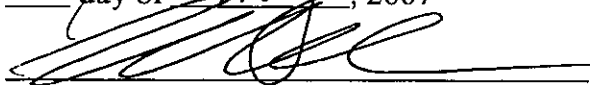
Title: owner

WITNESS:




Kevin Hollinshead, Jr. SR

SWORN TO BEFORE ME this
24th day of May, 2007



Notary Public for South Carolina

My Commission Expires: 3/3/2013