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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Judge

Case No. 2020-CP-26-05790

Appellate Case No. 2023-001602

Major Jason J. MacDonald

Appellant,

v.

Horry County School District, Dr. Rick Maxey, in his individual and official capacities, Michael McCracken, in his individual and official capacities, Brandon Todd, in his individual and official capacities, and Mary Anderson, in her individual and official capacities.

Respondents.

RECORD ON APPEAL VOLUME I OF III

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Major Jason J. MacDonald,	)	
	)	Civil Action No. 2020-cp-26-_____
Plaintiff,	)	
	)	
v.	)	
	)	
Horry County School District, Dr. Rick	)	SUMMONS
Maxey, in his individual and official	)	
capacities, Michael McCracken, in his	)	
individual and official capacities, Brandon	)	
Todd, in his individual and official	)	
capacities, and Mary Anderson, in her	)	
individual and official capacities,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon Burnette Shutt & McDaniel, PA, at 912 Lady Street, Second Floor, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/ Janet E. Rhodes
 Janet E. Rhodes, Esquire, SC Bar #77214
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 P.O. Box 1929
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October 8, 2020

Attorney for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
	)	
Major Jason J. MacDonald,	)	
	)	Civil Action No. 2020-cp-26-_____
Plaintiff,	)	
	)	COMPLAINT
v.	)	(Jury Trial Demanded)
	)	
Horry County School District, Dr. Rick	)	
Maxey, in his individual and official	)	
capacities, Michael McCracken, in his	)	
individual and official capacities, Brandon	)	
Todd, in his individual and official	)	
capacities, and Mary Anderson, in her	)	
individual and official capacities,	)	
	)	
Defendants.	)	
_____	)	

Major Jason J. MacDonald, Plaintiff, complaining of Defendants, Horry County School District, Dr. Rick Maxey, in his individual and official capacities, Michael McCracken, in his individual and official capacities, Brandon Todd, in his individual and official capacities, and Mary Anderson in her individual and official capacities, herein alleges that:

NATURE OF ACTION

1. This is an action for tortious interference with contractual relations, tortious interference with prospective contractual relations, defamation, and intentional infliction of emotional distress, all in violation of the common law of the State of South Carolina.

2. These actions arise out of the District's poor handling of false allegations made against Plaintiff by a few female students of Defendant Horry County School District ("District"), the District's refusal to timely grant Plaintiff the opportunity to be heard before the District's Board, and the District's and individual Defendants' refusal to respond to employment reference

requests causing Plaintiff to lose employment opportunities and the expiration of his certification to teach JROTC.

PARTIES AND JURISDICTION

3. Plaintiff, Major Jason J. MacDonald (hereinafter referred to as “Plaintiff”), is a citizen of the State of South Carolina and resides in the County of Horry.

4. Plaintiff was formerly employed by Defendant Horry County School District (“District”), as the Senior JROTC Instructor at Aynor High School located in Aynor, South Carolina in Horry County.

5. Dr. Rick Maxey (hereinafter referred to as “Defendant Maxey”) was at all relevant times the Superintendent for the District. He is believed to reside in Horry County. All relevant actions or inactions of Defendant Maxey are believed to have occurred in Horry County.

6. Michael McCracken (hereinafter referred to as “Defendant McCracken”) was at all relevant times the Principal of Aynor High School. He is believed to reside in Horry County. All relevant actions or inactions of Defendant McCracken are believed to have occurred in Horry County.

7. Brandon Todd (hereinafter referred to as “Defendant Todd”) was at all relevant times the Assistant Principal of Aynor High School. He is believed to reside in Horry County. All relevant actions or inactions of Defendant Todd are believed to have occurred in Horry County.

8. Mary Anderson (hereinafter referred to as “Defendant Anderson”) was at all relevant times the Chief Human Resources Officer for the District. She is believed to reside in Horry County. All relevant actions or inactions of Defendant Anderson are believed to have occurred in Horry County.

9. At all relevant times hereto, Plaintiff's work performance met the reasonable expectations of Defendants.

10. This Court has jurisdiction and venue is proper in the County of Horry, where most or all of the allegations and facts contained herein took place.

FACTUAL ALLEGATIONS

11. All prior allegations not inconsistent herewith are hereby re-alleged as fully and effectually as is set forth herein verbatim.

12. Plaintiff grew up in single parent household in Horry County. He worked hard to overcome the many obstacles in his young life. He received a JROTC scholarship while attending The Citadel, Military College of South Carolina.

13. After a successful and highly decorated career with the United States Army, Plaintiff retired honorably and began his new career in education becoming a JROTC instructor. To teach JROTC, Plaintiff became certified through the Army, which he did on or about May 12, 2015. The certification to teach JROTC lasts three (3) years. To be eligible for an extension or renew the certification, a JROTC instructor needs to be employed in a JROTC instructor position. In such a position, the employer or District within which an instructor teaches becomes the sole cost sharing sponsor of the instructor's certification. Upon receipt of completion of the Childcare National Agencies Checks and Inquiries certification (CNACI) the JROTC command then becomes the cost sharing sponsor of instructor as long as employment continues in the instructor position for which said individual was hired.

14. JROTC was an important part of Plaintiff's life because it provided him with the opportunity to attend college, an opportunity that would not have otherwise existed. It was

important to Plaintiff to give back to his home community, which provided him many opportunities for success. That is why Plaintiff returned home to Horry County.

15. Plaintiff accepted the Senior Instructor for JROTC position at Aynor High School for the 2018-2019 school year. He signed new hire paperwork on or about August 8, 2018 with Horry County Schools.

16. At the time of his hire, Plaintiff's certification to teach was extended as the final background check and CNACI paperwork could be completed Plaintiff was placed on administrative leave before this process was concluded.

17. When he began teaching, he became aware through direct communication that Junior JROTC instructor, Sgt. First Class David Jones ("Sgt. Jones"), planned (at that time) to leave the District in December 2018. The students were fond of Sgt. Jones, presumably because Sgt. Jones had been in the position longer and formed closer relationships with the students. Plaintiff attempted to bond with the students but had little time to do so due to the school closure for fifteen (15) school calendar days, as result of Hurricane Florence. Shortly after the school's reopening, Plaintiff was placed on administrative leave.

18. Upon information and belief, the students did not favor Plaintiff as much as Sgt. Jones because Plaintiff adhered more strictly to the uniform policy, gave students graded assignments, and required student participation in the physical training and drill/ceremony exercises as outlined in the JROTC program guidelines. Upon information and belief, some of the students in the JROTC program at Aynor High School are involuntarily placed in the course by administration, believing the students, some with disciplinary issues, could benefit from the structure of the JROTC program. These factors are believed to be motivating factors for the below mentioned complaints.

19. Upon information and belief, between the dates of November 29, 2018 and December 3, 2018, several of Plaintiff's female students made complaints that Plaintiff made inappropriate comments or gestures to them.

20. The accusations are summarized as follows:

- When a female cadet was bending over, Plaintiff allegedly made a reference to the brand of her underwear,
- After observing a female cadet drawing a picture of a female cartoon, Plaintiff allegedly commented "oh, you're drawing yourself in a low-cut top",
- Plaintiff allegedly catcalled or whistled after a female cadet walked past him into another classroom, and
- When he heard a female cadet state "f-me" while doing push-ups, Plaintiff allegedly questioned "when?".

Plaintiff categorically denies every allegation.

21. Plaintiff has never been accused of making any inappropriate comment to any female. As the father of four daughters, Plaintiff was shocked that any complaint was made against him for sexual inappropriateness. Plaintiff holds himself to the highest of moral and ethical standards.

22. Plaintiff was brought in to meet with Defendant McCracken (Principal) and Defendant Todd (Assistant Principal) on or about November 29, 2018. Plaintiff was shown the anonymous written statements of several students related to the alleged inappropriate comments and gestures. Plaintiff vehemently denied making any inappropriate comments or gestures to any female student. Plaintiff was allowed to provide a written response to the allegations made.

23. Upon information and belief, the female students made the initial complaints to Sgt. Jones who then turned the complaints over to the administration. Upon information and belief, Sgt. Jones was asked to submit a written account of the complaints made to him and state what he may or may not have witnessed. Sgt. Jones sent an email December 3, 2018 accounting what complaints were made to him and what he did to turn them over to the administration. Notably, Sgt. Jones' email does not contain any account that he ever personally observed Plaintiff making any type of inappropriate comment to female cadets. This is notable because Sgt. Jones and Plaintiff would co-instruct for a significant portion of the program.

24. Upon information and belief, Sgt. Jones was never interviewed regarding his statement or whether he personally observed any inappropriate behavior on the part of the Plaintiff. It is believed that further questioning of Sgt. Jones would have revealed facts and information supportive of Plaintiff's denial of accusations.

25. Upon information and belief, students were asked to provide written statements regarding the allegations. Upon information and belief, the students were not interviewed or questioned about their statements. This is notable as: several students said that they did not hear any inappropriate comments or observe any inappropriate gestures, the students' statements contained inconsistencies, and there were circumstances where the accuser/s did not actually witness any inappropriate gestures made by the Plaintiff or hear inappropriate comments spoken directly from the Plaintiff.. It is believed that if properly questioned, the students' allegations would have been determined unfounded.

26. On December 4, 2018, Plaintiff was interviewed by Human Resources Directors, Mr. Richard Neal and Mr. Roger Gray. Defendant Anderson (HR Director) was absent. Once the interview was complete Mr. Neal immediately provided a letter signed by Defendant Anderson

notifying Plaintiff that he was placed on paid administrative leave with full pay and benefits effective immediately and until further notice.

27. Upon information and belief, apart from what has been stated above, nothing more was done by Human Resources, the Principal for Aynor High School, the Assistant Principal, and District Superintendent in relation to the allegations made by the female students. Upon information and belief, nothing more was done to investigate the allegations after December 4, 2018. Despite this, Plaintiff remained on paid administrative leave for a year and was not permitted a hearing before the board regarding the allegations for twenty (20) months after he was placed on administrative leave.

28. On or about April 30, 2019, Plaintiff received a letter informing him that the District decided to recommend that the Board not renew his contract for the 2019-2020 school year. Plaintiff requested a hearing before the Board to appeal the non-renewal of his contract on or about May 9, 2019. Plaintiff's numerous requests for a hearing were ignored for many months.

29. Plaintiff remained on paid administrative leave until December 2019. Plaintiff was terminated January 10, 2020. Plaintiff submitted a request to be heard before the board to appeal his termination on January 13, 2020.

30. Plaintiff again made numerous requests for a hearing before the board to appeal his termination. He was finally given an appearance before the Board on August 17, 2020.

31. At the hearing, Plaintiff presented the results of a polygraph exam that Plaintiff had done by an independent polygraph examiner at Plaintiff's expense. The results of the exam concluded that Plaintiff was not showing deception when he denied the allegations made by the female students, meaning that he passed the polygraph.

32. At the hearing, it came to light that Defendant McCracken, Defendant Todd, and Defendant Anderson conducted a very poor investigation into the allegations made by the female students. It came to light that Defendant Maxey rubber-stamped the decision of Defendants Todd, McCracken, and Anderson and did nothing to verify that the decision to place Plaintiff on administrative leave and eventually terminate him was based upon an investigation properly and thoroughly conducted. Several of the Board members took issue with the substantial deficiencies in the investigation and the documentation supporting said investigation.

33. On or about August 26, 2020, Plaintiff received a letter regarding the Board decision. The “Board found insufficient evidence to support the allegations. However, the Board continued to discuss all the surrounding facts and circumstances and decided that it is not in District’s best interest for [Plaintiff] to be re-employed.” The Board did not elaborate as to what “surrounding facts and circumstances” led to its decision not to re-employ Plaintiff.

34. As Plaintiff was exonerated for the allegations made against him, he should have been restored to his position. Upon information and belief, the District did not choose to rehire Plaintiff because his former position was filled.

35. While Plaintiff’s career remained in limbo for over twenty (20) months, Plaintiff had several opportunities for alternate employment that were blocked by the deliberate inactions of the District and Defendant Maxey.

36. In or around July 2019, Plaintiff applied for an open JROTC position within the District at Green Sea Floyds High School. Plaintiff was informed that his application would not be forwarded or considered because he was on administrative leave. Notably, no determination had been made at the time about the allegations one way or the other. In accordance with the Horry County Employee Handbook, there is no mention of the inability to apply for positions while on

paid administrative leave. Plaintiff learned that this position was filled on or about August 20, 2019.

37. On or about May 15, 2019 Plaintiff applied for a position with Coastal Carolina University, as Waste Management Coordinator. Plaintiff interviewed for the position and was notified in July of not being selected. Upon information and belief, Plaintiff was not selected for the position because of the refusal of Dr. Maxey and the District to provide any response to a request for an employment reference.

38. Upon information and belief, Dr. Maxey refused to provide any response positively or negatively about Plaintiff. Moreover, in refusing to respond at all to a request, did not even verify that Plaintiff was even an employee with the District.

39. The refusal to respond at all to a request for an employment reference would obviously make a potential employer wary of employing any candidate, as it calls into question whether candidate is trustworthy and whether they have misrepresented where they are employed, meaning that they lied on their application. It would be virtually impossible for any person to find employment in the education field if their current District refuses to even say if they are a current employee.

40. In or about August 2019, Plaintiff applied for the Senior JROTC Instructor position at Hannah Pamplico High School (“HPHS”), Florence County School District 2. Plaintiff met with the Principal at HPHS on or about August 20, 2019 and was offered the position, subject to receiving neutral references – dates of employment and last position held – from the District.¹ The Superintendent of Florence 2, Dr. Neal Vincent, reached out multiple times to Defendant Maxey seeking a neutral reference for Plaintiff, but Defendant Maxey never responded in any way to these

¹ Notably, Plaintiff was offered the position even after explaining that he was on paid administrative leave.

requests. This position remained open for almost a year until it was filled, on or about July 27, 2020. Therefore, Defendant Maxey had just shy of a year to respond to the multiple requests for a neutral reference of Plaintiff but refused to respond at all.

41. On or about August 31, 2019, Sgt. Jones resigned his position with the District. This left no instructor for the JROTC program. If Defendant's had timely responded to Plaintiff's numerous attempts to get a hearing before the Board, it is highly possible that the Board would have cleared Plaintiff of the allegations and he could have returned to the open position with Aynor High School in the JROTC program as the Senior Military Instructor. Upon information and belief, Plaintiff's former position was posted on or about September 12, 2019.

42. On or about November 20, 2019, Whiteville City Schools, located in Whiteville, North Carolina, reached out to Plaintiff to see if he would be interested in a Senior JROTC instructor position. Plaintiff applied for the position, was offered an interview by principal Michael Hobbs, but ultimately decided not to pursue the interview because Plaintiff feared the same lack of response from Defendant. Plaintiff's reputation in his home community was already tarnished. Plaintiff believed continued lack of response from the District would further damage his reputation as an educator outside of his home community.

43. Over the twenty (20+) plus months, Plaintiff and the undersigned have asked the District and Defendant Maxey to provide at least some type of response to the various requests for employment references for Plaintiff. Despite his many efforts to mitigate his damages, Plaintiff was prevented from doing so by the District and Defendant Maxey.

44. Because Plaintiff was unable to secure alternate employment as a JROTC instructor – due to the inactions of the District and Defendant Maxey – Plaintiff's certification (extension granted per employment with District) has expired.

45. After the Board's determination that there was insufficient evidence to support Plaintiff's termination, Plaintiff inquired whether the Army would allow him to renew his certification. The Army refused to renew his certification stating that the certification extension was granted for the position with Horry County Schools. Plaintiff's certification to teach as a JROTC instructor expired and he cannot get it back due to the inactions of Defendants. This ends Plaintiff's career in JROTC instruction. His plan was to continue this career until he reached his planned retirement age of sixty-five (65) years old.

46. To add insult to injury, the District has misplaced numerous irreplaceable items of Plaintiff's, such as his Bronze Star, Meritorious Service Medal, Army Achievement Medal, Joint Achievement Medal, Meritorious Unit Commendation, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Iraqi Campaign Medal, Army Service Ribbon, Overseas Service Ribbon, Airborne Badge, and Air Assault Badge.

FOR A FIRST CAUSE OF ACTION

Interference with Contractual Relations
as to Defendant Maxey, in his official and individual capacity,
and as to Defendant District

47. Plaintiff incorporates the allegations in paragraphs (1) through (46) as if set forth verbatim.

48. At the time of being placed on administrative leave, Plaintiff was under a teaching contract for the 2018-2019 school year. But for the allegations made against him, which the board later determined were not enough to substantiate a termination, there is no reason to believe that Plaintiff would not have been offered a contract to teach for the 2019-2020 school year.

49. Defendants intentionally 1) performed an insufficient investigation into the allegations made against Plaintiff, 2) failed to timely conclude the investigation, 3) recommended that the Board not offer Plaintiff a contract for the 2019-2020 school year, and 4) terminated Plaintiff's employment in January 2020.

50. Plaintiff had a contractual relationship with the District which would have continued but for the intentional actions and inactions, described above, of Defendants.

51. In their respective positions, it was within the purview of the District and the individual Defendants to properly investigate and conclude the investigation into the allegations made against Plaintiff. The above-described actions and inactions of individual Defendants were done within the scope of their respective positions with District. As such, the District is liable for the tortious actions and inactions of its employee as outlined in the Factual Allegations of this Complaint.

52. Defendants' malicious interference with Plaintiff's contractual relations with the District resulted in substantial injury to Plaintiff.

53. As a direct result and consequence of Defendants' tortious interference, Plaintiff has experienced actual damages from loss of employment with the District. Plaintiff has and will suffer severe emotional distress. Plaintiff has and will suffer consequential damages financially and emotionally. Plaintiff has and will suffer harm to his reputation.

54. Because of the willful, malicious, and intentional conduct of Defendants, as alleged above, Plaintiff is entitled to actual damages, compensatory damages, consequential damages, and punitive damages.

FOR A SECOND CAUSE OF ACTION

Interference with Prospective Contractual Relations
as to Defendant Maxey, in his official and individual capacity,
and as to Defendant District

55. Plaintiff incorporates the allegations in paragraphs (1) through (54) as if set forth verbatim.

56. Plaintiff has had several opportunities for employment in his chosen career, JROTC instruction, which were lost due to the intentional non-response by Defendant Maxey and the District to employment reference requests.

57. Plaintiff had several opportunities which did not lead to selection for alternative employment, which upon information and belief was due to Defendant Maxey and the District's refusal to confirm the employment of Plaintiff.

58. Plaintiff was offered and accepted an offer of employment for Senior JROTC Instructor position with Florence County School District 2. This position was specifically subject to receiving a neutral reference confirming Plaintiff's dates of employment and last position held.

59. Defendants Maxey and the District were made aware of the prospective contractual relations between Plaintiff and Florence 2. Still Defendant Maxey refused to provide any type of reference and chose, instead, not to respond at all.

60. Being highly knowledgeable about the hiring practices of educational institutions, Defendant Maxey knew or should have reasonably known that his refusal to provide any type of reference would result in Plaintiff not being selected for the position.

61. Defendant Maxey and the District intentionally interfered with Plaintiff's prospective contractual relations with Florence 2 by refusing to provide any type of reference at any point in the year the position remained open. His inaction resulted in Plaintiff not receiving the position.

62. As Defendant Maxey is the District's Superintendent, it is within the purview of his position to provide references regarding current or former employees. Therefore, Defendant Maxey's refusal to provide any reference was done within the scope of his employment with the District. As such, the District is likewise liable for the tortious actions and inactions of its employee as outlined in the Factual Allegations of this Complaint.

63. Defendants' malicious interference (due to inaction) with Plaintiff's prospective contractual relations with various potential employers, including Florence 2, resulted in substantial injury to Plaintiff.

64. As a direct result and consequence of Defendants' tortious interference, Plaintiff has experienced and will experience actual damages in losing the job offer from Florence 2 and the resulting pay and benefits Plaintiff would have earned at that job. Plaintiff has and will suffer severe emotional distress. Plaintiff has and will suffer consequential damages financially and emotionally. Plaintiff has and will suffer harm to his reputation.

65. Because of the willful, malicious, and intentional conduct of Defendants, as alleged above, Plaintiff is entitled to actual damages, compensatory damages, consequential damages and punitive damages.

FOR A THIRD CAUSE OF ACTION

Defamation

as to Defendant District and all individual Defendants,
in their individual and official capacities.

66. Plaintiff incorporates the allegations in paragraphs (1) through (65) as if set forth verbatim.

67. Plaintiff was placed on administrative leave on or about December 4, 2018. Upon information and belief, nothing more was done to investigate the allegations made against Plaintiff after December 4, 2018. Despite this, the investigation was never concluded. Plaintiff has yet to

be returned to his position with the District, despite the Board finding on or about August 17, 2020, that there was insufficient evidence to terminated Plaintiff.

68. The fact that the Plaintiff remains unemployed with Defendant sends the clear, false, and defamatory message that Plaintiff must not have been returned to his position because he did something wrong. This message is clear to Plaintiff's former students, colleagues, and the community.

69. Such defamatory message has and will cause harm to Plaintiff's reputation and has and will impact his ability to find gainful employment in the future. Defendants' statement – not restoring Plaintiff to his position - impugned Plaintiff's ability to effectively perform his duties in his chosen profession and are defamatory per se.

70. Defendants acted with malice in failing to restore Plaintiff to his former position, effectively sending a defamatory message.

71. Defendants' choice not to restore Plaintiff to his position is within the purview of each individual Defendant's position within the District. Therefore, the defamatory statement was made within the scope of individual Defendants' employment with the District. As such, Defendant District is likewise liable for the tortious actions of its employees as outlined in the Factual Allegations of this Complaint.

72. Defendants' defamatory statements caused Plaintiff harm to his reputation, stress and anxiety and other compensatory damages.

73. Plaintiff is entitled to compensatory damages, punitive damages, and attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress
as to all Defendants

74. Plaintiff incorporates the allegations in paragraphs (1) through (73) as if set forth verbatim.

75. From December 4, 2018 to August 17, 2020, Defendants failed to properly investigate the allegations made against Plaintiff. Defendants left Plaintiff's career in limbo for over twenty (20) months by refusing to timely provide Plaintiff with a hearing before the Board to appeal the recommendation not to renew his contract and his termination.

76. Despite the continued requests of the Plaintiff, Defendants refused to provide any type of reference of employment to multiple potential employers of Defendant causing Plaintiff to lose several employment opportunities.

77. Despite finding that there was insufficient evidence to support Plaintiff's termination, the District has refused to restore Plaintiff to his former position.

78. Furthermore, Defendant exerted so little care toward Plaintiff's irreplaceable personal belongings that many items are forever lost to Plaintiff.

79. The District and individual Defendants intentionally and/or recklessly inflicted severe emotional distress upon Plaintiff or was certain or substantially certain that such distress would result from his conduct.

80. Defendants' conduct toward Plaintiff was so outrageous as to exceed all possible bounds of decency and must be regarded as atrocious.

81. The actions of Defendants caused Plaintiff severe emotional distress and the emotional distress he suffers is not one that a reasonable person can or should be expected to endure.

82. As a direct result and consequence of said actions and outrageous conduct of the Defendants, Plaintiff has and will experience and suffer severe emotional distress, mental anguish, pain and suffering, impairment to his mind, medical bills, and attorney's fees and costs.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages, compensatory damages, consequential damages, punitive damages, and attorney's fees and costs.

Respectfully submitted.

BURNETTE SHUTT & MCDANIEL, PA

s/Janet E. Rhodes

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Attorney for Plaintiff

October 8, 2020

Columbia, South Carolina

TATE OF SOUTH CAROLINA

COUNTY OF HORRY

Major Jason J. MacDonald,

Plaintiff,

vs.

Horry County School District, Dr. Rick Maxey, in his individual and official capacities, Michael McCracken, in his individual and official capacities, Brandon Todd, in his individual and official capacities, and Mary Anderson, in her individual and official capacities ,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A NO.: 2020-CP-26-05790

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

TO: JANET E. RHODES, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Defendants, by and through their undersigned attorneys, answering the Complaint of the Plaintiff herein, would respond as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's Complaint which is not hereinafter specifically admitted, qualified, or explained is denied.
2. The allegations contained in Paragraph 1 of Plaintiff's Complaint call for a legal conclusion. To the extent a response is required, Defendants deny the same and demand strict proof thereof.
3. In response to Paragraph 2, Defendants deny the allegations and demand strict proof thereof.
4. Defendants admit the allegations contained in Paragraph 3.
5. Defendants admit the allegations contained in Paragraph 4.
6. Defendants admit the allegations contained in Paragraph 5.

7. Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.
8. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.
9. Defendants admit the allegations contained in Paragraph 8 of Plaintiff's Complaint.
10. Defendants deny the allegations contained in Paragraph 9 of Plaintiff's Complaint and demand strict proof thereof.
11. The allegations contained in Paragraph 10 call for a legal conclusion to which these Defendants are neither required to admit or deny. To the extent a response is required, Defendants do not contest jurisdiction as currently situated.
12. In response to Paragraph 11, Defendants reallege the foregoing Paragraphs.
13. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 12.
14. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 13.
15. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 14 and demand strict proof thereof.
16. Defendants admit the allegations contained in Paragraph 15 upon information and belief.
17. Defendants admit the allegations contained in Paragraph 16 of Plaintiff's Complaint.
18. Defendants admit so much of the allegations contained in Paragraph 17 that shortly after reopening school following Hurricane Florence, Plaintiff was placed on administrative leave. Any remaining and/or inconsistent allegations contained in Paragraph 17 are denied and strict proof demanded thereof.
19. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 18 and demand strict proof thereof.
20. Defendants admit the allegations contained in Paragraph 19 of Plaintiff's Complaint.

21. In response to Paragraph 20, Defendants admit some of Plaintiff's female students made complaints about the Plaintiff that have been reduced to writing. Defendants defer to the actual complaints of the female students in response to Paragraph 20. Any remaining and/or inconsistent allegations contained in Paragraph 20 are denied and strict proof demanded thereof.

22. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 21.

23. Defendants admit the allegations contained in Paragraph 22 upon information and belief.

24. Defendants admit so much of Paragraph 23 that female students made complaints to Sergeant Jones, who then turned the complaints over to administration. Defendants further admit that Sergeant Jones was asked for a written account of the complaints made to him. Defendants further admit that Sergeant Jones sent an email accounting the complaints made to him. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 23 and demand strict proof thereof.

25. Defendants deny the allegations contained in Paragraph 24 and demand strict proof thereof.

26. Defendants admit so much of the allegations contained in Paragraph 25 that students were asked to provide written statements regarding their allegations. Any remaining and/or inconsistent allegations contained in Paragraph 25 are denied and strict proof demanded thereof.

27. Defendants admit the allegations contained in Paragraph 26 of Plaintiff's Complaint.

28. Defendants admit so much of the allegations contained in Paragraph 27 that Plaintiff remained on paid administrative leave for a year. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 27 and demands strict proof thereof.

29. Defendants admit so much of Paragraph 28 that on or about April 30, 2019, Plaintiff received a letter from the District recommending that the Board not renew his contract for the 2019-2020 school year. Defendants further admit Plaintiff requested a hearing before the Board on or

about May 9, 2019. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 28 and demands strict proof thereof.

30. Defendants admit the allegations contained in Paragraph 29 upon information and belief.

31. Defendants admit so much of the allegations contained in Paragraph 30 upon information and belief.

32. Defendants admit the allegations contained in Paragraph 31 that Plaintiff presented results of a polygraph exam that Plaintiff had done by an independent polygraph examiner at the Plaintiff's expense. Defendants are without sufficient information to either admit or deny any remaining and/or inconsistent allegations contained in Paragraph 31.

33. Defendants admit so much of the allegations contained in Paragraph 32 that several Board members asked questions related to the investigation and documentation supporting the investigation of the Plaintiff. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 32 and demand strict proof thereof.

34. In response to Paragraph 33, Defendants admit that it issued a letter to Plaintiff regarding the Board decision. Defendants defer to the contents of its letter to the Plaintiff for the actual verbiage contained therein. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 33 and demand strict proof thereof.

35. Defendants deny the allegations contained in Paragraph 34 and demand strict proof thereof.

36. Defendants deny the allegations contained in Paragraph 35 and demand strict proof thereof.

37. Defendants admit so much of the allegations contained in Paragraph 36 that Plaintiff applied for an open JROTC position within Green Sea Floyd's High School. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 36 and demands strict proof thereof.

38. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 37 and demand strict proof thereof.

39. Defendants deny the allegations contained in Paragraph 38 and demand strict proof thereof.

40. Defendants deny the allegations contained in Paragraph 39 of Plaintiff's Complaint and demands strict proof thereof.

41. Defendants admit so much of the allegations contained in Paragraph 40 that Plaintiff applied for a JROTC instructor position at Hannah Pamlico High School. Defendants are without sufficient information to either admit or deny the remaining allegations contained in Paragraph 40 and demand strict proof thereof.

42. In response to Paragraph 41, Defendants admit so much of the allegations that on or about August 31, 2019, Sergeant Jones resigned his position with the District, leaving a vacancy. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 41.

43. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 42 and demand strict proof thereof.

44. Defendants deny the allegations contained in Paragraph 43 and demand strict proof thereof.

45. Defendants deny the allegations contained in Paragraph 44 as they pertain to the "inactions of the District and Defendant Maxey." Defendants are without sufficient information to either admit or deny the remaining allegations contained in Paragraph 44 and demand strict proof thereof.

46. Defendants deny the allegations contained in Paragraph 45 and demands strict proof thereof.

47. Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 46 and demand strict proof thereof.

48. In response to Paragraph 47 Defendants incorporates the allegations in the Paragraphs above as it set forth fully verbatim.

49. Defendants admit so much of the allegations contained in Paragraph 48 that Plaintiff had a contract for the school year of 2018/2019. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 47 and demands strict proof thereof.

50. Defendants deny the allegations contained in Paragraph 49, including all subparts, and demand strict proof thereof.

51. Defendants admit so much of the allegations contained in Paragraph 50 that Plaintiff had a contract for the 2018-2019 school year. Any remaining and/or inconsistent allegations contained in Paragraph 50 are denied and strict proof thereof.

52. Defendants admit that it was within their purview to investigate allegations made against the Plaintiff. Any remaining and/or inconsistent allegations contained in Paragraph 51 are denied and strict proof thereof.

53. Defendants deny the allegations contained in Paragraph 52 and demand strict proof thereof

54. Defendants deny the allegations contained in Paragraphs 53 and 54 and demand strict proof thereof.

55. In response to Paragraph 55, Defendants incorporate the allegations contained above as if fully set forth verbatim.

56. Defendants deny the allegations contained in Paragraphs 56 and 57 and demand strict proof thereof.

57. Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 58 and demand strict proof thereof

58. Defendants admit so much of the allegations contained in Paragraph 59 that the District became aware of an employment opportunity between Plaintiff and Florence School District Two. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 59 and demands strict proof thereof.

59. Defendants deny the allegations contained in Paragraph 60 and demands strict proof thereof.

60. Defendants deny the allegations contained in Paragraph 61 and demands strict proof thereof.

61. In response to Paragraph 62, Defendants admit so much of the allegations that Defendant Maxey may provide references regarding current or former employees. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 62 and demands strict proof thereof.

62. Defendants deny the allegations contained in Paragraphs 63, 64 and 65 and demand strict proof thereof.

63. In response to Paragraph 66, Defendants incorporate the allegations contained above as if fully set forth verbatim.

64. Defendants admit so much of the allegations contained in Paragraph 67 that Plaintiff was placed on administrative leave on or about December 4, 2018. Defendants deny any remaining and/or inconsistent allegations contained in Paragraph 67 and demand strict proof thereof.

65. Defendants deny the allegations contained in Paragraphs 68, 69, 70, 71, 72, and 73 and demand strict proof thereof.

66. In response to Paragraph 74, Defendants incorporate the allegations contained above as if fully set forth verbatim.

67. Defendants deny the allegations contained in Paragraphs 75, 76, 77, 78, 79, 80, 81, and 82 and demands strict proof thereof.

68. Defendants deny the Wherefore Paragraph of Plaintiff's Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

69. Throughout its relationship with Plaintiff, Defendants acted according to legitimate business purposes based upon reasonable and lawful factors.

FOR A THIRD DEFENSE

70. Plaintiff is not entitled to a jury trial on any equitable issues.

FOR A FOURTH DEFENSE

71. Qualified immunity and/or absolute immunity protect(s) and shield(s) Defendants from liability on Plaintiff's defamation claim. Defendants further plead the statute of limitations and statute of frauds, to the extent that they are applicable. In addition, Plaintiff is barred from relief to the extent that he has unclean hands and/or engaged in any improper, unlawful, illegal, fraudulent, and/or prohibited act.

FOR A FIFTH DEFENSE

72. The after-acquired evidence doctrine limits or completely bars Plaintiff's claims, to the extent that Defendants discover evidence, during this lawsuit, which would have caused Defendants to avoid hiring Plaintiff or otherwise to terminate its relationship with Plaintiff.

FOR A SIXTH DEFENSE

73. Defendants' statements, if any, regarding Plaintiff and/or Plaintiff's actions were true, which is an absolute defense to the Plaintiff's defamation claim. In addition, Defendants never published any statements regarding Plaintiff to any third-party.

FOR A SEVENTH DEFENSE

74. Defendants plead immunity under the business judgment rule, South Carolina Code Sections 33-31-101, *et seq.*, and 33-56-180, and other statutory and/or common law standards that might be applicable.

FOR AN EIGHTH DEFENSE

75. The Court should reduce or quash Plaintiff's alleged damages, if any, to the extent that Plaintiff failed or refused to mitigate his damages, if any, and/or to the extent that he has suffered no damages.

FOR A NINTH DEFENSE

76. Plaintiff is not entitled to recover punitive damages because Defendants' alleged actions were not unlawful, malicious, or in reckless disregard of Plaintiff's purported rights, as Defendants acted in good faith and complied with his/her obligations, if any, under applicable federal and state

laws.

FOR A TENTH DEFENSE

77. At all relevant times, the Defendants acted within the course and scope of its authority and official duties with the Defendants, including in its actions toward Plaintiff.

FOR AN ELEVENTH DEFENSE

78. Defendants' opinions regarding Plaintiff are not actionable.

FOR A TWELFTH DEFENSE

79. Plaintiff is barred from relief to the extent that he has unclean hands and/or breached the duty of loyalty that he owed to the Defendant.

FOR A THIRTEENTH DEFENSE

80. Defendants' statements, if any, regarding Plaintiff and/or Plaintiff's actions were privileged, as they constituted fair comment on matters of public concern.

FOR A FOURTEENTH DEFENSE

81. Defendants' statements, if any, regarding Plaintiff and/or Plaintiff's actions were privileged, as they constituted communication between parties and/or entities with a common business interest.

FOR A FIFTEENTH DEFENSE

82. Defendants' alleged statements, if any, regarding Plaintiff and/or Plaintiff's actions constituted a statement on a matter of public concern or controversy, and Plaintiff must prove both the falsity of the statements and that he suffered actual injury to recover any damages.

FOR A SIXTEENTH DEFENSE

83. Plaintiff's own actions, omissions, and/or unsatisfactory performance caused any adverse action that Plaintiff suffered.

FOR AN SEVENTEENTH DEFENSE

84. Plaintiff must prove common law malice and special damages to recover

on his defamation claim. Plaintiff must prove actual malice to recover punitive damages.

FOR AN EIGHTEENTH DEFENSE

85. The defamation claim alleged by Plaintiff is *per quod*, and Plaintiff must prove common law malice and special damages to recover.

FOR A NINETEENTH DEFENSE

86. Defendants plead immunity and/or pre-emption under the South Carolina Tort Claims Act, South Carolina Code § 15-78-10, *et seq.*, which, among other limitations, limits and/or caps Plaintiff's alleged damages and bars Plaintiff from recovering punitive damages under Section 15-78-120(b).

FOR A TWENTIETH DEFENSE

87. Defendants' alleged statements or communications concerning the Plaintiff were not defamatory or actionable.

FOR A TWENTY-ONE DEFENSE

88. Defendants plead immunity under the South Carolina Tort Claims Act, South Carolina Code §§ 15-78-60(4), (5), (14), (17) and (25).

FOR A TWENTY-SECOND DEFENSE

89. Defendants at all times acted in good faith and without malice.

FOR A TWENTY-THIRD DEFENSE

90. To the extent Plaintiff seeks a double recovery for any alleged single wrong, he must elect his remedy.

FOR A TWENTY-FOURTH DEFENSE

91. Defendants expressly seek to preserve and not waive any and all affirmative defenses available to them pursuant to federal and/or state statutes, regulations, common law, rules of procedure, rules of evidence, and/or any other binding authority that Defendants might rely upon in defending this lawsuit.

FOR A TWENTY-FIFTH DEFENSE

92. Plaintiff's alleged damages are speculative, uncertain, and not recoverable, and he is not entitled to recover any attorneys' fees, as a matter of law.

FOR A TWENTY-SIXTH DEFENSE

93. Defendants expressly deny that facts and circumstances exist sufficient to entitle Plaintiff to an award of punitive damages. Nevertheless, Defendants plead the terms, conditions, procedures, standards, and limitations of Sections 15-32-510 through 15-32-540 *Code of Laws of South Carolina* (1976, as amended) in response to Plaintiff's claim for punitive damages.

FOR A TWENTY-SEVENTH DEFENSE

94. Defendants reserve the right to assert all other defenses available to it under law or equity at the time of trial and further reserve the right to amend this Answer to include additional defenses that discovery may reveal to be appropriate and/or applicable.

FOR A TWENTY-EIGHTH DEFENSE

95. To the extent the Plaintiff seeks to recover for physical and/or emotional injuries he suffered in the workplace, those physical and/or emotion injuries are subject to the exclusive remedy provision of the South Carolina Worker's Compensation Law and constitute an absolute bar to the Plaintiff's recovery to those injuries in this action. Nevertheless, Defendants acted in good faith and a reasonable manner even though Plaintiff was allegedly subjected to distress and/or embarrassment.

FOR A TWENTY-NINTH DEFENSE

96. That the Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, having fully answered, the Defendants pray that the said Complaint be dismissed, with costs, and disbursements for this action.

s/ Carrie A. Fox

CARRIE A. FOX,
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ATTORNEYS FOR THE DEFENDANTS

Florence, South Carolina

December 14, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.: 2020-CP-26-05790
COUNTY OF HORRY	)	
Major Jason J. MacDonald,	)	
	)	
Plaintiff,	)	MOTION FOR SUMMARY JUDGMENT
	)	
v.	)	
	)	
Horry County School District,	)	
Dr. Rick Maxey, in his individual	)	
and official capacities, Michael	)	
McCracken, in his individual and	)	
official capacities, Brandon Todd,	)	
in his individual and official	)	
capacities, and Mary Anderson, in	)	
her individual and official capacities,	)	
	)	
Defendants.	)	
	)	

TO: JANET E. RHODES, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorneys, hereby move this Honorable Court for an order granting summary judgment in favor of Defendants in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law.

Plaintiff brings this suit alleging multiple causes of action against Defendants. Based on the pleadings and depositions, it has been shown that these Defendants are in no way liable for the damages set forth in the Plaintiff's Complaint and; therefore, are entitled to judgment in this case as a matter of law.

This motion is based upon the pleadings in the within action, Rule 56 of the *South Carolina Rules of Civil Procedure*, any memorandum of law and attachments thereto submitted in support of

this motion at or before the hearing of this motion, and upon such additional law and argument as may be appropriate.

S/SAMUEL F. ARTHUR, III
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ATTORNEYS FOR DEFENDANTS

Florence, South Carolina

February 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR SUMMARY JUDGMENT** was filed electronically on February 14, 2023 and is available for viewing and downloading from the ECF system. Notice of Electronic Case Filing has been sent automatically to all parties listed in the Service List in effect on the date of electronic filing, which constitutes service of same and satisfies the requirements of S.C.R.C.P. 5(b)(2)(D). The following parties were served via ECF and U.S. Mail:

Janet E. Rhodes, Esquire
Burnette Shutt & McDaniel, P.A.
PO Box 1929
Columbia SC 29202

S/SAMUEL F. ARTHUR, III
SAMUEL F. ARTHUR, III

(34730)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.: 2020-CP-26-05790
COUNTY OF HORRY	)	
Major Jason J. MacDonald,	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
v.	)	
	)	
Horry County School District,	)	
Dr. Rick Maxey, in his individual	)	
and official capacities, Michael	)	
McCracken, in his individual and	)	
official capacities, Brandon Todd,	)	
in his individual and official	)	
capacities, and Mary Anderson, in	)	
her individual and official capacities,	)	
	)	
Defendants.	)	
	)	

TO: JANET E. RHODES, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Defendants, by and through their undersigned counsel, respectfully submit this memorandum in support of their motion for summary judgment.

STATEMENT OF THE CASE

Plaintiff, a former employee of Horry County Schools (“HCS”) claims HCS did not properly investigate claims of sexual harassment brought by the Plaintiff’s former (minor) students, improperly suspended and then terminated him, and then interfered with his ability to procure other employment. Plaintiff’s Complaint, filed October 8, 2020, states four (4) causes of action: (1) Interference with Contractual Relations as to Defendant Maxey, in his official and individual capacity, and as to Defendant District; (2) Interference with Prospective Contractual Relations as to Defendant Maxey, in his official and individual capacity, and as to Defendant District; (3) Defamation as to Defendant District and all individual Defendants, in their individual

and official capacities; and (4) Intentional Infliction of Emotional Distress as to all Defendants. Defendants filed an Answer to the Complaint on December 14, 2020, denying Plaintiff's allegations and asserting multiple affirmative defenses. Defendants now seek judgment as a matter of law and respectfully submit this memorandum in support of their motion for summary judgment filed contemporaneously herewith.

FACTUAL BACKGROUND

In 2018, Plaintiff was hired by HCS to fill the position of Senior Instructor for JROTC at Aynor High School for the 2018-2019 school year pursuant to a written contract with a term of one year. See Complaint, ¶ 15 and deposition of Jason MacDonald, at page 35, line 15 – page 37, line 17.

Plaintiff alleges that between the dates of November 29, 2018 and December 3, 2018, several of Plaintiff's female students made complaints that Plaintiff made inappropriate comments or gestures to them.

The accusations are summarized as follows:

- When a female cadet was bending over, Plaintiff allegedly made a reference to the brand of her underwear;
- After observing a female cadet drawing a picture of a female cartoon, Plaintiff allegedly commented "oh, you're drawing yourself in a low-cut top";
- Plaintiff allegedly catcalled or whistled after a female cadet walked past him into another classroom, and
- When he heard a female cadet state "f-me" while doing push-ups, Plaintiff allegedly questioned "when?".

Plaintiff categorically denies every allegation.

See Complaint, ¶¶ 19-20.

Plaintiff alleges he was brought in to meet with Defendant McCracken (Principal) and Defendant Todd (Assistant Principal) on or about November 29, 2018; that he was shown the anonymous written statements of several students related to the alleged inappropriate comments and gestures; that he vehemently denied making any inappropriate comments or gestures to any female student; and that he was allowed to provide a written response to the allegations made. *See* Complaint, ¶ 22.

Plaintiff further alleges the female students made the initial complaints to Sgt. Jones who then turned the complaints over to the administration; that Sgt. Jones was asked to submit a written account of the complaints made to him and state what he may or may not have witnessed; that Sgt. Jones sent an email December 2, 2018 accounting what complaints were made to him and what he did to turn them over to the administration. *See* Complaint, ¶ 23.

Plaintiff further alleges the students were asked to provide written statements regarding the allegations; that the students were not interviewed or questioned about their statements; and that several students said that they did not hear any inappropriate comments or observe any inappropriate gestures. *See* Complaint, ¶ 25. Plaintiff further claims “the students’ statements contained inconsistencies, and there were circumstances where the accuser/s did not actually witness any inappropriate gestures made by the Plaintiff or hear inappropriate comments spoken directly from the Plaintiff” and that Plaintiff believes “that if properly questioned, the students’ allegations would have been determined unfounded.” Complaint, ¶ 25.

Per Plaintiff’s Complaint, on December 4, 2018, Plaintiff was interviewed by Human Resources Directors, Mr. Richard Neal and Mr. Roger Gray, and presented a letter signed by Defendant Anderson notifying Plaintiff that he was placed on paid administrative leave with full pay and benefits effective immediately and until further notice. *See* Complaint, ¶ 26.

On or about April 30, 2019, Plaintiff received a letter informing him that the District decided to recommend that the Board not renew his contract for the 2019-2020 school year. *See* Complaint, ¶ 28. Per his Complaint, Plaintiff remained on paid administrative leave until December 2019; was terminated January 10, 2020; submitted a request to be heard before the board to appeal his termination on January 13, 2020; and was granted an appearance before the Board on August 17, 2020. *See* Complaint, ¶¶ 29-30.

Plaintiff alleges that on or about August 26, 2020, he received a letter regarding the Board's decision, indicating that the "Board found insufficient evidence to support the allegations. However, the Board continued to discuss all the surrounding facts and circumstances and decided that it is not in District's best interest for [Plaintiff] to be re-employed." *See* Complaint, ¶ 33.

SUMMARY JUDGMENT STANDARD

A court will grant a moving party's motion for summary judgment when no genuine issue of material fact exists, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any genuine issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). Nonetheless, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one. *Saluda Motor Lines v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct.App.1989). The presence of a factual dispute is not enough to preclude summary judgment; the issue must be one which a party is entitled to litigate. *Id.* "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct.App.1995).

The moving party need not support his motion with affidavits or other similar materials negating the opponent's claim. Once the moving party carries its initial burden, the opposing party "may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct.App.1998) *reh'g denied* (Aug. 1998), *cert. denied* (Apr. 1999).

ARGUMENT

I. The individually named defendants are entitled to immunity pursuant to the *South Carolina Tort Claims Act* for conduct that occurred within the scope of their official duties and should be dismissed.

Plaintiff's Complaint names Dr. Rick Maxey, Michael McCracken, Brandon Todd, and Mary Anderson in their "individual and official capacities." See Complaint, generally. Defendants assert that the claims set forth in Plaintiff's Complaint are expressly precluded by the language of the *South Carolina Tort Claims Act* ("SCTCA"), are not properly pleaded so as to trigger the exception for claims lodged against individuals, and must therefore be dismissed as a matter of law to the extent Plaintiff's claims relate to alleged actions taken in their capacities as employees.

The South Carolina Court Appeals decision in the case of *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) discusses the exclusivity provisions of the SCTCA, the immunity afforded individual employees, the exception to the immunity provision, and the overall purpose of the SCTCA - stating:

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available **for any tort** committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(a) (Supp.2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive

remedy **for any tort** committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a) (Supp.2002) (emphasis added). According to the Act, “[n]otwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act,’ is the exclusive and sole remedy **for any tort** committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.” S.C. Code Ann. § 15-78-200 (Supp.2002) (emphasis added).

Section 15-78-70(a) provides in part that “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” S.C. Code Ann. § 15-78-70(a) (Supp.2002). Subsection (b) declares: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is ***204** proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (Supp.2002).

The Act defines a “[g]overnmental entity” as “the State and its political subdivisions.” S.C. Code Ann. § 15-78-30(d) (Supp.2002). The State “means the State of South Carolina” and includes its commissions. S.C. Code Ann. § 15-78-30(e) (Supp.2002). In the present case, the Act’s definition of an “employee” refers to “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. § 15-78-30(c) (Supp.2002). “ ‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15-78-30(i) (Supp.2002).

The Act is intended to cover those actions committed by an employee within the scope of the employee’s official duty. “The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f) (Supp.2002); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15-78-20(f) ****417** limits coverage to employees acting within the scope of official duty).

Flateau, at 203, 584 S.E.2d 416.

Here, as in *Flateau*, the individually named Defendants are employees of a “governmental entity” as defined by the SCTCA. S.C. Code Ann. § 15-78-30(d) and (h)(Supp.2002). Therefore, also like *Flateau*, the primary issue that controls the disposition of this motion as it relates to the actions of the individual Defendants is a determination of whether the alleged inappropriate conduct was “outside the scope of their official duties.”

In *Flateau*, the Court of Appeals relied on the specific allegations set forth in the complaints of the plaintiffs and found that “despite the contention in the brief of Flateau and Fielding, nowhere in their complaints do Flateau and Fielding allege that the Board members’ actions were outside the scope of their official duty.” *Flateau*, at 204, 584 S.E.2d 417. The Court of Appeals further stated:

The complaints assert tort claims against Commission board members who acted on behalf of the Commission in commanding Commission employees, including Flateau and Fielding, to attend a hearing for the purpose of being interviewed by the Board. The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the South Carolina Commission for the Blind, discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question—all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly. *See* S.C. Code Ann. § 43-25-10 (1985) (creating the South Carolina Commission for the Blind; stating that chairman of Commission may call meeting whenever he deems it necessary); S.C. Code Ann. § 30-4-20 (1991) (defining “public body” to include state commissions). Requiring Flateau and Fielding to attend a hearing and holding them there, as Flateau and Fielding maintain in their complaints, may be argued to go beyond the *authority* of the Commission, but it does not bring the Commissioners’ actions outside the scope of their official duty. *See Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986) (distinguishing scope of servant’s employment from scope of servant’s authority and holding acts outside servant’s authority are still within his scope of duty if done in furtherance of master’s business).

Flateau, at 205, 584 S.E.2d 417.

In *Flateau*, the Court of Appeals concluded that the causes of action alleged by the plaintiffs against the individually named defendants constituted conduct within the scope of the individuals' official duties and therefore there could be no liability attached to the individuals. In so doing, the Court of Appeals stated: "[t]he statutory dialectic reveals that a governmental employee acting within the scope of official duty is exempt from personal liability." *Flateau*, at 206, 584 S.E.2d 417. The Court of Appeals added "that the efficacy of the Tort Claims Act is protection of governmental employees acting in the scope of official duties." *Id.* Finally, the Court of Appeals noted: "The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee." *Id.*

In this case, Plaintiff's Complaint states four (4) causes of action: (1) Interference with Contractual Relations as to Defendant Dr. Maxey, in his official (Superintendent of Horry County Schools) and individual capacity, and as to Defendant District; (2) Interference with Prospective Contractual Relations as to Defendant Dr. Maxey, in his official and individual capacity, and as to Defendant District; (3) Defamation as to Defendant District and all individual Defendants¹, in their individual and official capacities; and (4) Intentional Infliction of Emotional Distress as to all Defendants.

As an initial matter, in light of the clear and unambiguous language of the SCTCA, any claims against the individually named Defendants in their official capacities as employees of Horry County Schools are expressly prohibited and must be dismissed as a matter of law.

Next, the analysis must turn to whether the Complaint actually states individual capacity claims brought against the individually named Defendants fit within one of the exceptions to the

¹ The individually named Defendants are Dr. Rick Maxey, Superintendent of HCS; Michael McCracken, Principal of Aynor High School; Brandon Todd, Assistant Principal of Aynor High School; and Mary Anderson, Human Resources Director of HCS.

immunity provided by the SCTCA at S.C. Code Ann. § 15-78-70(b) as follows: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (Supp.2002).

Plaintiff’s Complaint draws no distinction between claims brought against the individual Defendants for actions in their respective official capacities as compared to actions in their respective individual capacities. Similarly, the Complaint also draws no distinction between claims lodged against the District (“HCS”) and claims lodged against the individual Defendants.

As indicated above, claims against the District for actions taken by employees in their capacities as employees must be brought against the District and not the individual employees. Likewise, inasmuch as S.C. Code Ann. § 15-78-60(17) exempts a governmental entity from claims brought against an employee for actions taken in his or her individual capacity and outside the scope of his or her employment, such claims must be brought against the individual or individuals only and must be pleaded in such a way as to allege acts outside of official duties or actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Put another way, Plaintiff cannot have it both ways within the same cause of action. Either Plaintiff brings claims against the District for the acts of its employees within their official duties or Plaintiff brings claims against individuals for actions that were alleged to have been committed outside the course and scope of employment with intent to harm Plaintiff or that were criminal in nature. While separate claims against governmental entities and individuals can be pleaded in the alternative, it is not appropriate to bring a single cause of action against both classes of defendants for actions both inside and outside the employee’s official duties.

A review of the specific causes of action levied against the individually named Defendants reveals that Plaintiff specifically alleges that the actions giving rise to the first three causes of action were actions conducted by the individually named Defendants within the scope of their employment with the District. More specifically, the first cause of action for interference with a contractual relationship specifically provides, at Paragraph 51, that “[t]he above-described actions and inactions of individual Defendants were done within the scope of their respective positions with District.” See Complaint, ¶ 51. The second cause of action for interference with a prospective contractual relationship specifically provides, at Paragraph 62, that “[a]s Defendant Maxey is the District’s Superintendent, it is within the purview of his position to provide references regarding current or former employees. Therefore, Defendant Maxey’s refusal to provide any reference was done within the scope of his employment with the District.” See Complaint, ¶ 62. The third cause of action for defamation specifically provides, at Paragraph 71, that “[d]efendants’ choice not to restore Plaintiff to his position is within the purview of each individual Defendant’s position with the District. Therefore, the defamatory statement was made within the scope of individual Defendants’ employment with the District.” See Complaint, ¶ 71.

While the fourth cause of action for intentional infliction of emotional distress does not include a similar allegation that all defendants were acting within the scope of their employment, Paragraph 74 does state that “[p]laintiff incorporates the allegations in paragraphs (1) through (73) as if set forth verbatim.” See Complaint, ¶ 74. Furthermore, the allegations related to Plaintiff’s fourth cause of action contain no allegations that any of the individual Defendants acted outside the scope of their employment with the District and that it was the District that “refused to restore Plaintiff to his former position. See Complaint, ¶¶ 74-82. Accordingly, the most reasonable interpretation of the

fourth cause of action is that it purports to allege actionable conduct by employees of the District acting within their official duties.

Further supporting the argument that the individual Defendants should be dismissed are the following additional characteristics of the Complaint: (1) the Complaint contains no causes of action that are directed solely to one or more of the individually named Defendants; (2) the prayer for relief set forth in the Complaint requests judgment against the Defendants without distinction between the governmental entity and the individuals; and most importantly, (3) the entire Complaint is devoid of any allegation that any individually named Defendant acted outside the scope of his or her official duties.

Plaintiff's sworn deposition testimony also supports dismissal of the individually named Defendants. He testified at his deposition that he never had a conversation with Dr. Maxey regarding his employment issues with the District. *See* Deposition of Jason MacDonald (Exhibit A) at page 29, lines 1-4. Plaintiff also testified that he never had any conversation with Mary Anderson about his employment with Horry County Schools; that he had never met her personally; that he had never spoken with her on the phone or exchanged e-mails with her; and that the only time he had a face to face encounter with her was when he went to pick up a copy of his personnel file, but they did not have any conversation. *See* Deposition of Jason MacDonald (Exhibit A) at page 45, line 22 – page 47, line 3.

Plaintiff further testified that he had no knowledge if Defendants McCracken, Todd, or Anderson ever provided another school district or any member of the public any negative information about Plaintiff or ever received a request for a reference, much less affirmatively chose not to respond to the request. *See* Deposition of Jason MacDonald (Exhibit A) at page 67, line 20 – page 68, line 25. He further testified that he had no knowledge of any of Defendants McCracken, Todd, or Anderson

ever making any verbal or written statements about him that were not true. *See* Deposition of Jason MacDonald (Exhibit A) at page 77, line 5 – page 77, line 16.

Plaintiff testified that Defendant Dr. Maxey's actions that he (Plaintiff) takes issue with were actions (or inactions) taken in Maxey's role as Superintendent of HCS. *See* Deposition of Jason MacDonald (Exhibit A) at page 70, line 17 – page 71, line 10. Plaintiff did testify that he believes Defendant Dr. Maxey made a false statement about him within a letter addressed to Plaintiff and placed in his personnel file; however, Plaintiff ultimately admitted that he does not believe the letter was made public or ever read by anyone not employed by HCS. *See* Deposition of Jason MacDonald (Exhibit A) at page 71, line 11 – page 77, line 4.

Plaintiff further testified that he has no knowledge of any of the individual Defendants intentionally trying to cause him emotional harm. *See* Deposition of Jason MacDonald (Exhibit A) at page 114, line 19 – page 116, line 24.

Finally, while Defendants acknowledge that the second prong of the exception set forth at § 15-78-70(b) of the SCTCA for acts that are proven to constitute actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Plaintiff's Complaint, on its face, fails to state any such conduct that triggers that portion of the exception. Furthermore, any argument that Plaintiff's Complaint could be interpreted in such a way as to trigger the exception is undermined by the presence of specific allegations within the Complaint that the individual Defendants were in fact acting within the course and scope of their employment and their official duties.

For these reasons, and following the guidance provided by the South Carolina Court of Appeals in *Flateau*, Defendants respectfully assert that Plaintiff's Complaint attempts to assert tort claims against individually named employees of Defendant Horry County Schools that relate to conduct performed by said individuals that, even if presumed true for purposes of this motion only,

was within the course and scope of their official duties as employees of HCS. Therefore, the Complaint, on its face, fails to properly set forth any allegations that are not subject to the limitations of the South Carolina Tort Claims Act and the individually named Defendants are entitled to the protections set forth therein, including immunity from personal liability, and should be dismissed from this action with prejudice.

II. The claims asserted against Defendant Horry County School District are subject to judgment as a matter of law for lack of supporting evidence sufficient to establish the existence of genuine issue of material fact.

Interference with a contractual relationship.

The elements of a cause of action for tortious interference with an existing contractual relationship are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages. *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981). *See also Kinard v. Crosby*, 315 S.C. 237, 433 S.E.2d 835 (1993); *Camp v. Springs Mortgage Co.*, 310 S.C. 514, 426 S.E.2d 304 (1993); *Cooper v. Laboratory Corp. of Am. Holdings*, 150 F.3d 376 (4th Cir. 1998).

In his Complaint, Plaintiff alleges he was a party to an employment contract with HCS for the 2018-2019 school year and “[b]ut for the allegations made against him...there is no reason to believe that Plaintiff would not have been offered a contract to teach for the 2019-2020 school year.” *See* Complaint, ¶ 48. Plaintiff further alleges Defendants “intentionally 1) performed an insufficient investigation into the allegations made against Plaintiff, 2) failed to timely conclude the investigation, 3) recommended that the Board not offer Plaintiff a contract for the 2019 – 2020 school year, and 4) terminated Plaintiff’s employment in January 2020;” and that he “had a contractual relationship with the District which would have continued but for the intentional actions and inactions...of Defendants.” *See* Complaint, ¶¶ 49-50.

Importantly, Plaintiff's Complaint does not include a breach of contract claim and is devoid of any allegations that the actions of any of the Defendants caused or contributed to a breach of Plaintiff's employment contract with HCS or any other contract. In fact, Plaintiff testified at deposition that he had been given an employment contract with HCS for the 2018-2019 school year; that he received all compensation to which he was entitled for the term of the contract; and that, while he assumed his contract would be renewed, he has no paperwork that he believes serves as a contract between himself and HCS for the 2019-2020 school year. See Deposition of Jason MacDonald (Exhibit A) at page 35, line 15 – page 41, line 14.

While Plaintiff apparently assumes he would have been offered another contract, there are no allegations that he had been promised a second contract or had been engaged in any discussions with anyone at HCS regarding the offer of a second contract or what performance from Plaintiff would be needed in order to receive such an offer. In short, Plaintiff has failed to plead sufficient allegations to state a viable cause of action for intentional interference with a contractual relationship and he was unable to remedy those pleading insufficiencies through his own deposition testimony. The first element of the claim is the existence of the contract and Plaintiff cannot clear that first hurdle. Without the existence of a contract, the second element – tortfeasor's knowledge of the contract – is not possible. The well settled third essential element of the claim requires proof of *intentional procurement by the tortfeasor of the contract's breach* and this element has not even been alleged in Plaintiff's Complaint, much less proven through any discovery in this case. Furthermore, an employer cannot be liable for tortious interference of a contract of employment with its own employee, as agents of the employer are not third parties to the contract of employment. See *Threlkeld v. Chritoph*, 280 S.C. 225, 312 S.E.2d 14 (Ct. App. 1984).

For these reasons, Plaintiff's first cause of action fails as a matter of law and Defendants are entitled to summary judgment as to same.

Interference with prospective contractual relations.

Per the Complaint, Plaintiff's second cause of action for interference with prospective contractual relations appears to relate specifically to Plaintiff's alleged efforts to secure employment with Florence County School District 2. Plaintiff alleges "Maxey and the District intentionally interfered with Plaintiff's prospective contractual relations with Florence 2 by refusing to provide any type of reference at any point in the year the position remained open. His inaction resulted in Plaintiff not receiving the position." See Complaint, ¶ 61.

To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must prove the following elements: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, which (3) caused injury. *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726; See also *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990).

Here, Defendants concede that a representative of Florence 2 placed a telephone call to the HCS district office and left a message requesting a reference for Plaintiff and that said call was not returned and no one from HCS ever affirmatively communicated any information to Florence 2 or any other prospective employers of Plaintiff. Furthermore, HCS respectfully asserts it was not obligated to do so, even if Plaintiff had personally requested such a response, and there are no allegations of such duty or request asserted in Plaintiff's Complaint. It can hardly be said that the mental decision to *not* act, in the absence of any duty to the contrary, is equivalent to an affirmative act of intentional interference. Furthermore, Plaintiff's speculation that HCS choosing to be silent

on the issue resulted in some type of negative inference by Florence 2 is simply insufficient to sustain a claim that HCS or any of its employees *intentionally* interfered with Plaintiff's prospective contractual relations with Florence 2 or any other prospective employer. Allowing such an allegation, without more, would subject any former employer of an individual to civil lawsuits simply for choosing not to disclose the circumstances of that individual's separation from employment to anyone who might inquire. In the event such circumstances were negative, as in this case, the disclosure of that information for the purpose of protection from a claim of interference with prospective contractual relations might likely have the undesired effect of impacting the prospective employer's hiring decision. Furthermore, a former employer's disclosure of negative employment separation circumstances might also give rise to a claim for defamation – though admittedly, declining to disclose the negative details in this case didn't prevent such a claim.

In sum, Defendants concede Plaintiff's allegations that Florence 2 requested a reference and HCS chose not to respond; however, Defendants assert that they had no legal obligation to respond and there is simply no legal authority to support Plaintiff's claim that not responding to a request for a reference is equivalent to an intentional interference with a prospective contract. Therefore, in the absence of any additional evidence to support Plaintiff's second cause of action for interference with prospective contractual relations, said claim fails as a matter of law and Defendants are entitled to summary judgment as to same.

Defamation

Plaintiff alleges “[t]he fact that the Plaintiff remains unemployed with Defendant sends the clear, false, and defamatory message that Plaintiff must not have been returned to his position because he did something wrong. This message is clear to Plaintiff's former students, colleagues, and the community.” See Complaint, ¶ 68.

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. See *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998); *Dockins v. Ingles Markets, Inc.*, 306 S.C. 287, 411 S.E.2d 437 (1991); *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

To recover for defamation, the plaintiff must prove, Plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). See also *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

Here Plaintiff is not alleging defamation by written statements, verbal statements, actions, or insinuations. Rather, Plaintiff claims the fact that the District ultimately chose not to rehire Plaintiff somehow qualifies as a defamatory statement because it is possible for the decision by the District to be interpreted by the public in a way that casts Plaintiff in a negative light. While Defendants concede that anyone who becomes aware that an individual is no longer employed can freely speculate about the circumstances of one's departure from employment when not provided explanation by the employer or former employee, the decision to not renew an employment contract is not in and of itself defamatory and the District was under no legal obligation to rehire Plaintiff or publicly explain its decision, regardless of basis.

Plaintiff cannot identify a false and defamatory statement, much less that said statement was published to a third party in an unprivileged manner. Furthermore, Plaintiff's Complaint contains no allegations of extrinsic evidence that would support a claim of defamation by insinuation. For these reasons, Plaintiff's third causes of action for defamation fails as a matter of law and Defendants are entitled to summary judgment.

Intentional infliction of emotional distress.

The appellate courts of South Carolina have defined the cause of action known as intentional infliction of emotional distress as a scenario whereby an individual "who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another." See *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (S.C. 2007).

To recover damages on a cause of action for the alleged intentional infliction of emotional distress, a plaintiff must establish:

- (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 the defendant caused the plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it.

State Farm Fire & Cas. Co. v. Barrett, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000); *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 672 (D.S.C. 1995); *Hainer v. American Medical International, Inc.*, 320 S.C. 316, 465 S.E.2d 112, 117 (Ct. App. 1995), *aff'd*, 328 S.C. 128, 492 S.E.2d 103 (1997).

Per the South Carolina Supreme Court, there is a heightened burden of proof for the second and fourth elements of the cause of action. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). Additionally, a court cannot properly deny a motion for summary judgment on such a claim upon

a finding that a genuine issue of material fact exists as to only one element, but must determine that a genuine issue of material fact exists for each essential element. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (S.C. 2007)(holding that when ruling on summary judgment motion, court must determine whether plaintiff has established a *prima facie* case as to each element of claim for intentional infliction of emotional distress).

In this case, Defendants assert Plaintiff has not sufficiently alleged allegations that, even if assumed to be true for purposes of this motion, would demonstrate *prima facie* cases as to any of the elements of proof for his intentional infliction of emotional distress cause of action. Defendants further assert that Plaintiff has not discovered and cannot present to this court sufficient evidence for said claim to survive this motion for summary judgment.

Plaintiff's allegations with regard to this cause of action are as follows: that from December 4, 2018 to August 17, 2020, Defendants failed to properly investigate the allegations made against Plaintiff; Defendants left Plaintiff's career in limbo for over twenty (20) months by refusing to timely provide Plaintiff with a hearing before the Board to appeal the recommendation not to renew his contract and his termination; that despite the continued requests of the Plaintiff, Defendants refused to provide any type of reference of employment to multiple potential employers of Plaintiff, causing Plaintiff to lose several employment opportunities; that despite finding that there was insufficient evidence to support Plaintiff's termination, the District has refused to restore Plaintiff to his former position; that Defendant exerted so little care toward Plaintiff's irreplaceable personal belongings that many items are forever lost to Plaintiff. See Complaint, ¶¶ 75-78.

Plaintiff further alleges "[t]he District and individual Defendants intentionally and/or recklessly inflicted severe emotional distress upon Plaintiff or was certain or substantially certain that such distress would result from his[sic] conduct" and "Defendants' conduct toward Plaintiff

was so outrageous as to exceed all possible bounds of decency and must be regarded as atrocious.” See Complaint, ¶¶ 79-80.

At most, Plaintiff’s allegations amount to criticisms of Defendants’ handling of the complaints submitted by HCS students and assertions that they should have gone to greater lengths in an effort to discredit the students rather than take steps to protect them from what they perceived to be inappropriate comments and gestures from a staff member charged with responsibility for their safety. Plaintiff further appears to be suggesting Defendants should have willingly returned him to his position and voluntarily assumed the risk that Plaintiff might engage in future conduct that made a student or students uncomfortable or worse, after receiving complaints of inappropriate behavior from multiple students in this instance.

Defendants’ positions with respect to Plaintiff’s claims are simple and straightforward. Students submitted complaints to administrators regarding conduct they believed to be that of Plaintiff and that they believed to be inappropriate; officials at the school these students were attending at the time investigated these complaints by requesting written statements from the students and Plaintiff; Plaintiff was suspended with pay and he continued to receive his contractual compensation beyond the stated term of his contract and through the date of his grievance hearing with the HCS Board of Directors; the HCS Board determined there was not sufficient evidence to prove the allegations of the students, but agreed it would be best for Plaintiff and HCS to part ways. The individual Defendants did their jobs, including receiving complaints from students of alleged inappropriate conduct, investigation of those complaints, and acted to protect the safety of the students involved while also complying with the terms of the HCS employment contract with Plaintiff. No criminal charges were pursued against Plaintiff and there is no evidence that any of the individually named Defendants acted outside the scope of his or her employment in connection

with employment decisions related to Plaintiff or otherwise took any action to intentionally harm Plaintiff.

Furthermore, the South Carolina Tort Claims Act specifically excludes recovery of damages for emotional harm and provides immunity to governmental entities for employee conduct that constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code § 15-78-60(17).

CONCLUSION

Rule 56 of the *South Carolina Rules of Civil Procedure* specifically provides for relief to a party when there is no genuine issue as to any material fact and applicable law weighs in favor of a specific party. In such a case, the moving party is entitled to judgment as a matter of law. The Complaint in this case fails to raise any genuine issue that Plaintiff is entitled to the relief sought and the law weighs in favor of Defendants. Therefore, judgment as a matter of law should be ordered in favor of Defendants or the Complaint should be dismissed on other grounds set forth herein.

Respectfully submitted.

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Florence, South Carolina

February 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was filed electronically on February 14, 2023 and is available for viewing and downloading from the ECF system. Notice of Electronic Case Filing has been sent automatically to all parties listed in the Service List in effect on the date of electronic filing, which constitutes service of same and satisfies the requirements of S.C.R.C.P. 5(b)(2)(D). The following parties were served via ECF and U.S. Mail:

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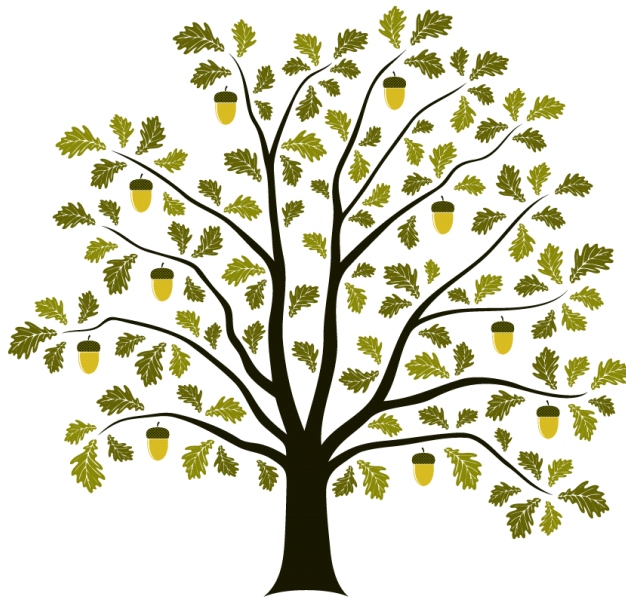
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Transcript of the Testimony of

Jason MacDonald

March 28, 2022

Major Jason J. MacDonald v. Horry County School District, et al.



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EXHIBIT A

Jason MacDonald - March 28, 2022

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO. 2020-CP-26-05790
Major Jason J. MacDonald,)
)
Plaintiff,)
)
vs.)
)
Horry County School)
District, Dr. Rick Maxey,)
in his individual and)
official capacities,)
Michael McCracken, in his)
individual and official)
capacities, Brandon Todd,)
in his individual and)
official capacities, and)
Mary Anderson, in her)
individual and official)
capacities,)
)
Defendants.)

* * * * *

DEPOSITION OF: JASON J. MacDONALD
DATE TAKEN: Monday, March 28, 2022
TIME: 11:04 a.m.
PLACE: Mike Kelly Law Group
816 Broadway Street
Myrtle Beach, South Carolina
REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21119
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Jason MacDonald - March 28, 2022

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1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and
3 between the parties hereto, through their
4 respective counsel, that the reading and signing
5 of the transcript is reserved by the Deponent.
6 JASON J. MacDonald, SWORN.

7 EXAMINATION

8 BY MR. ARTHUR:

9 Q. Good morning, Mr. MacDonald. We met a
10 moment ago. Again, my name is Buddy Arthur. I'm
11 an attorney with the Aiken Bridges Law Firm in
12 Florence. And I represent the Defendants in this
13 civil case that you have brought against the Horry
14 County School District, Dr. Maxey, Michael
15 McCracken, Brandon Todd and Mary Anderson.

16 We've asked you to appear for a
17 deposition today. And -- is that your
18 understanding of why we are here?

19 A. Yes.

20 Q. Have you ever had your deposition taken
21 before?

22 A. No.

23 Q. I'm sure that your attorney has
24 explained the process to you, but essentially this
25 is my opportunity, and probably my only

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Deposition Testimony of Jason J. MacDonald, Direct Examination by Samuel F. Arthur, Jr., Esq.

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1 opportunity, as the lawyer for the Defendants to
2 meet you in person and interview you and find out,
3 you know, what you're likely to testify to if this
4 case were to go to trial.

5 Your attorney is present, and she may
6 object to the form of my questions from time to
7 time. But if she only objects to the form, you're
8 still required to answer my question. Do you
9 understand that?

10 A. Yes.

11 Q. The only time you would not answer is if
12 she instructs you specifically not to answer the
13 question. Then she and I will have a discussion
14 and go from there.

15 Ms. Wilbanks is our court reporter
16 today, and she's going to take down everything
17 that is said on the record, every question that I
18 ask, every response that you provide. And she's
19 going to make a transcript of the deposition. And
20 because of that, it's important that we do a
21 couple of things. Number one, please try to let
22 me finish my question before you give an answer,
23 and I will try to let you finish your answer
24 before I ask the next question, so that we have a
25 clean transcript and we're not trying to talk over

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1 each other during the course of the deposition.

2 Do you understand that?

3 A. Yes.

4 Q. You're doing great so far. Please try
5 to give verbal responses to my questions, a "yes,"
6 "no," or whatever explanation you want to give.
7 But if you say "uh-huh" or "huh-uh," we might
8 understand how you intended to respond to the
9 question, either negatively or affirmatively,
10 while we're sitting here, but, you know, we want
11 to be able to -- when we go back and look at this
12 deposition weeks or months down the road, we want
13 to make sure we understood -- or that it's easy to
14 discern how you intended to answer the question
15 when we look at the transcript. Okay? So if I
16 notice that you're nodding your head or saying
17 "uh-huh" or "huh-uh," I may ask you to clarify. I
18 may say, Is that a yes or is that a no? I'm not
19 trying to aggravate you, intimidate you or agitate
20 you in any way; I just want to make sure we have a
21 clean record. Okay?

22 A. Okay.

23 Q. If I ask a question that you do not
24 understand, please ask me to rephrase it. I'll be
25 happy to rephrase it as many times as necessary

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1 for you to understand it. Okay?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. Because this is possibly the only
6 opportunity I'll have to meet with you and ask you
7 questions, I want to make sure that you understand
8 the questions that I ask before you answer them,
9 so that I can rely on your answers. Okay? Is
10 that fair?

11 A. Yes.

12 Q. I don't expect this to take very long;
13 we certainly will not be here all day. But we do
14 have some ground to cover. If you need to take a
15 break for any reason, just let me know. I'll be
16 happy to take a break for whatever reason you
17 would like. You should know, however, that the
18 attorney-client privilege does not protect
19 conversations that you might have with your
20 attorney during the course of any breaks that we
21 would have during the deposition. Do you
22 understand that?

23 A. Yes.

24 Q. Essentially what that means is if we
25 take a break and when we go back on the record,

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1 I'm entitled to ask you if you had conversations
2 with your lawyer about the case; and if you did,
3 I'm entitled to know what those conversations
4 were. I just want to make sure you're aware of
5 that rule. I think that's about it for the
6 preliminaries. Can you think of any reason why
7 your deposition should not or cannot be taken
8 today?

9 A. No.

10 Q. Are you under the influence of any
11 drugs, alcohol, prescription medication or
12 anything that would impair your ability to listen
13 to my questions, understand my questions and then
14 respond truthfully?

15 A. No.

16 Q. Have you done anything to prepare for
17 your deposition today?

18 A. I reviewed my previous statements that I
19 provided to Michael McCracken and Todd and to the
20 board -- the letter to the board.

21 Q. Okay. Have you reviewed the Complaint
22 in this case? Did you review that to prepare for
23 your deposition?

24 A. I'm sorry. Can you --

25 Q. Did you review the Complaint to prepare

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1 for your deposition?

2 A. Yes.

3 Q. Did you review the -- any discovery
4 responses to prepare for your deposition, either
5 from you or from anyone else?

6 A. No, I did not, other than sitting in on
7 the depositions.

8 Q. Okay. That's right. You were -- you
9 were on-line and present --

10 A. Yes.

11 Q. -- when the depositions of the former
12 students were taken --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes.

16 Q. How about any other folks; were you
17 on-line when the deposition of Dr. Maxey was
18 taken?

19 A. Yes.

20 Q. And Michael McCracken?

21 A. Yes.

22 Q. And Mr. Todd?

23 A. Yes.

24 MR. ARTHUR: Let's go off the record for
25 a second.

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1 (The deposition went off the record.)

2 BY MR. ARTHUR:

3 Q. That may be all the depositions that
4 have been taken, but can you think of any other
5 deposition that you have been present for?

6 A. No.

7 MS. RHODES: Did you mention Anderson?

8 Q. Oh, Mary Anderson, did you listen in on
9 her deposition?

10 A. Yes.

11 Q. Would you please state your full name
12 for the record?

13 A. Jason Joshua MacDonald.

14 Q. And what is your date of birth?

15 A. June 1, 1975.

16 Q. What are the last four digits of your
17 Social Security number?

18 A. -0276.

19 Q. What is your current address?

20 A. 2005 Woodburn Drive, Myrtle Beach, South
21 Carolina 29579.

22 Q. 2005 Woodburn?

23 A. Yes.

24 Q. How do you spell that?

25 A. W-O-O-D-B-U-R-N.

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1 Q. All one word?

2 A. All one word.

3 Q. How long have you lived at that address?

4 A. Almost four years -- over four years.

5 Q. Where are you from originally?

6 A. Um, I was born in Louisiana, New
7 Orleans; my father was in the military. Family
8 divorced; spent early childhood in Pensacola,
9 Florida. And then from elementary until I
10 graduated high school, here in Horry County,
11 Socastee.

12 Q. So you graduated from Socastee High
13 School?

14 A. That's correct.

15 Q. What year?

16 A. 1993.

17 Q. And what other public schools did you
18 attend in Horry County?

19 A. I attended the Socastee Elementary
20 School, Socastee Middle School and Socastee High
21 School.

22 Q. So when did you start Socastee
23 Elementary?

24 A. Fourth grade.

25 Q. Fourth grade. So you all moved from

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1 Florida to --
2 A. To Myrtle Beach.
3 Q. About that time?
4 A. Uh-huh.
5 Q. Are your parents still living?
6 A. Yes.
7 Q. Do they live in Horry County?
8 A. No longer, no. My mother moved here,
9 and she moved to North Carolina when I was --
10 shortly after I graduated from college.
11 Q. Where did you go to college?
12 A. The Citadel.
13 Q. And when did you graduate The Citadel?
14 A. 1997.
15 Q. Any post-graduate education?
16 A. Yes. I got a master's degree in
17 environmental management from Webster University
18 and a master's of business administration from
19 Campbell University. And I have started a
20 doctorate in education from Wingate.
21 Q. You have started that?
22 A. I had started one, but I dropped out of
23 that course.
24 Q. When was that?
25 A. 2019; in the spring of that, 2019.

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1 Q. Are you currently pursuing any type of
2 doctorate or any other post-graduate education?

3 A. No.

4 Q. Are you married?

5 A. Yes.

6 Q. What is your wife's name?

7 A. Ann Dameron MacDonald.

8 Q. And when did you and Ann get married?

9 A. March 7th, 1998.

10 Q. Is that your only marriage?

11 A. Yes.

12 Q. Do you have children?

13 A. I have four children. I have an
14 18-year-old daughter.

15 Q. Does she live in Horry County?

16 A. She's a senior at Carolina Forest High
17 School.

18 Q. What is her name?

19 A. D [REDACTED] C [REDACTED] A [REDACTED] M [REDACTED].

20 Q. The next oldest --

21 A. My next oldest is M [REDACTED] S [REDACTED] W [REDACTED]
22 M [REDACTED]; she's 15 years old; currently a
23 freshman at Carolina Forest High School.

24 Q. Do all four of your children attend
25 Horry County schools?

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1 A. No.

2 Q. Okay. Do you have --

3 A. My third child is C [REDACTED] A [REDACTED] J [REDACTED]
4 M [REDACTED]; she's currently 11. She attended Ocean
5 Bay Elementary for third -- no -- second grade,
6 third grade, and she's currently being
7 homeschooled. And then my last child is 2 years
8 old, and her name is W [REDACTED] G [REDACTED] -- W [REDACTED] G [REDACTED],
9 excuse me -- W [REDACTED] G [REDACTED] M [REDACTED].

10 Q. Your wife, Ann, where is she from?

11 A. Tabor City, North Carolina.

12 Q. And where did the two of you meet?

13 A. Myrtle Beach; karate school.

14 Q. Is she currently employed?

15 A. Yes.

16 Q. Where does she work?

17 A. She works at Fort Bragg, North Carolina,
18 at the hospital. And she also works at McLeod --
19 does work for McLeod.

20 Q. In what capacity?

21 A. She's a nurse anesthetist.

22 Q. She works at a medical facility that's
23 on base at Fort Bragg?

24 A. Yes, the hospital there.

25 Q. Does she work at a particular location

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1 of McLeod, or does she travel around? Do you
2 know?

3 A. Loris.

4 Q. Do you know how long she has been
5 working at McLeod-Loris?

6 A. She started working there when we moved
7 to Myrtle Beach part-time.

8 Q. All right. When did you move to Myrtle
9 Beach?

10 A. August of 2018.

11 Q. And where were you before then?

12 A. Fayetteville, North Carolina.

13 Q. Where were you working in Fayetteville?

14 A. I was working at Fayetteville Technical
15 Community College.

16 Q. What were you doing there?

17 A. I was the director of military programs.

18 Q. How long did you hold that position?

19 A. I held that position for a little bit
20 over three years, until I took the position at
21 Aynor High School.

22 Q. Had you secured the position at Aynor
23 High School before leaving Fayetteville Technical
24 Community College?

25 A. Yes.

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1 Q. My understanding is you served in the
2 military?

3 A. Yes.

4 Q. Thank you very much for that; I
5 appreciate that. When did you -- well, strike
6 that.

7 What branch did you serve in?

8 A. The Army.

9 Q. And did you go straight from The
10 Citadel?

11 A. Yes. I was commissioned directly out of
12 The Citadel.

13 Q. And at what rank?

14 A. Commissioned as a second lieutenant.

15 Q. And how long were you in the Army?

16 A. Seventeen years.

17 Q. Have you -- let's see. When were you
18 discharged?

19 A. Retired.

20 Q. You're retired?

21 A. I retired January 2015.

22 Q. At what rank?

23 A. Major.

24 Q. Any foreign deployments?

25 A. Yes.

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1 Q. Where have you been deployed?

2 A. Korea, Iraq, Kuwait; I've been to Iraq
3 three times.

4 Q. Any time served in an active combat
5 zone?

6 A. Yes.

7 Q. Where was that?

8 A. Iraq. That would be three deployments.

9 Q. Did you receive any awards while in the
10 military?

11 A. Yes.

12 Q. What were those?

13 A. Meritorious Service Medal, Army
14 Achievement Medal, Army Service Medal, Joint
15 Service Medal, Army Commendation Medal, Bronze
16 Star.

17 Q. Tell me about that. What did you
18 receive the Bronze Star for?

19 A. Deployment-wise with the first COSCOM in
20 Iraq, and I was part of logistics, doing
21 logistical support during that effort.

22 Q. Okay. Was there any specific event that
23 resulted in your being awarded the Bronze Star?

24 A. Well, me and my team, we were moving
25 from each logistical hub in that theater, setting

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1 up for -- supplies for the theater, so it was --
2 um, I don't know. For me, it was just doing my
3 job, so...

4 Q. Do you know if -- well, strike that.

5 So you -- from midway through elementary
6 school through high school, you grew up in Horry
7 County?

8 A. That's correct.

9 Q. Did your wife grow up in Tabor City?

10 A. Yes.

11 Q. Do you know if she ever lived in Horry
12 County for any period of time --

13 A. No.

14 Q. -- before -- you may -- I should have
15 said this before. You may anticipate my questions
16 and be anxious to answer to try to move things
17 along, but, actually, it's going to slow things
18 down. So if you would let me finish, I will try
19 to let you finish.

20 A. I apologize.

21 Q. Do you know if your wife lived in Horry
22 County for any period of time before moving to
23 Horry County with you in August of 2018?

24 A. No.

25 Q. Do you have any relatives by blood or

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1 marriage over the age of 18 that currently reside
2 in Horry County other than -- well, you mentioned
3 your oldest daughter is 18. But other than your
4 immediate family --

5 A. No.

6 Q. -- do you have any other relatives?
7 Does your wife have any relatives, to your
8 knowledge, that live in Horry County?

9 A. No.

10 Q. Have you ever -- have you ever run for
11 the Horry County School Board?

12 A. No.

13 Q. Has your wife ever run for the Horry
14 County School Board?

15 A. No. She has not run for the school
16 board, but did she did interview for the school
17 board.

18 Q. Okay. What do you know about that?

19 A. I know that Horry County put out a job
20 application for an open position for the school
21 board and she applied for it and then interviewed.

22 Q. What is your understanding of the
23 position that was open?

24 A. Um, I believe one of the -- the position
25 that was held by the previous board member that

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1 passed away became open, and then Horry County
2 Schools -- I mean, Horry County put out an open
3 application for all interested parties to apply
4 and so she did.

5 Q. Do you know who she interviewed with?

6 A. She interviewed with the school board.

7 Q. The full board?

8 A. The full board. I believe. I think she
9 may have told me one person wasn't there. I
10 cannot remember.

11 Q. Do you currently have any personal
12 relationships with any current member of the Horry
13 County School Board?

14 A. I do not have a personal relationship
15 with any current member of the school board.

16 Q. Have you ever had a personal
17 relationship with any member of the Horry County
18 School Board?

19 A. I do not have a personal relationship
20 with any members of the current school board. I
21 did know one school board member, Mr. James
22 Poston, because I was in his Sunday school class
23 at Conway First Baptist Church prior to his
24 passing.

25 Q. Anybody else that you know of that has

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1 been a member of the Horry County School Board
2 that you have either been an acquaintance of or a
3 friend of, something more than just knowing who
4 they are?

5 A. No.

6 Q. How about your wife; do you know if your
7 wife has any ongoing friendships with any current
8 or former member of the Horry County School Board?

9 A. No.

10 Q. Do you regularly attend a church?

11 A. Yes.

12 Q. What church do you attend?

13 A. I currently attend North Myrtle Beach
14 First Baptist Church.

15 Q. Are you a member of that church?

16 A. We are not a member of that church
17 currently.

18 Q. Have you ever been a member of a church
19 in Horry County?

20 A. Yes.

21 Q. What church?

22 A. I was a member of Socastee Pentecostal
23 Church when I was growing up.

24 Q. Did you ever hold any leadership
25 positions at Socastee Pentecostal?

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1 A. No.

2 Q. How long have you been attending North
3 Myrtle Beach First Baptist?

4 A. We started attending shortly after the
5 COVID restrictions allowed us to go back to
6 church.

7 Q. Have you ever been arrested or charged
8 with a crime?

9 A. No.

10 Q. Have you ever received counseling or
11 treatment for any substance abuse issues?

12 A. No.

13 Q. Have you ever received any type of
14 mental health counseling or treatment?

15 A. Yes.

16 Q. When was that?

17 A. It was the summer of 2019. It was
18 during that...

19 Q. Okay. And --

20 A. It's ongoing treatment.

21 Q. You're still receiving --

22 A. Yes.

23 Q. Is it counseling?

24 A. It's mental health counseling, yes.

25 Q. And who is providing that?

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1 A. Robin Starr, Advanced Medical.

2 Q. Is that a male or female?

3 A. Female.

4 Q. And what is the name of her practice?

5 A. It's Advanced Medical, um, Solutions. I
6 believe that's it.

7 Q. Is that mental health treatment related
8 to this lawsuit in any way?

9 A. Yes.

10 Q. How so?

11 A. Shortly after these false allegations of
12 December 4th and I was put on administrative
13 leave, and we started this whole process of this
14 investigation in that time period. As the time
15 kept going on and the case was not resolved and
16 then we finished out the school year of 2019, and
17 then we were going into the summer and we still
18 had not had any type of resolution, so my
19 demeanor, my actions, my personality with my
20 family, my girls, my wife, it got to the point
21 where even my children were like, What is wrong
22 with Dad?

23 And my wife finally got to the point,
24 You need to go get some help. You can't function.
25 My wife was pregnant at the time. My

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1 mother-in-law at the time said, Hey, he's not
2 going to be able to take care of that baby.

3 So at that time, that forced me to go
4 outside of myself and go seek some help to find
5 something that will help me. And that's why I
6 went and got that treatment. And at that time,
7 she diagnosed me with major depression, some
8 anxiety issues and so forth.

9 And I truly believe, if this case from
10 December 4th had not taken so long and keep (sic)
11 dragging out, I would not have -- I guess spiral
12 downward, I guess you could say, emotionally,
13 stressfully, of trying to -- I don't know -- just
14 do what was right.

15 Q. Okay. When you say things have dragged
16 out for so long, what are you referring to?

17 A. I can only -- from my point of view, as
18 an outside agent of whatever the Horry County
19 School System does, of how they do -- handle
20 investigations and processes. But the initial
21 interview I had with Mr. Neal and Gray on December
22 4th, at the end of that interview, I was put on
23 administrative leave and I had asked Mr. Neal,
24 Well, how long will I be on administrative leave
25 and how long will this take? And I was told

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1 approximately two weeks.

2 So my understanding was that, before
3 Christmas, this investigation would be complete
4 and resolved. The next word I got from Horry
5 County Schools was April 30th with a letter,
6 indicating non-rehire and I can appeal to the
7 board, which I immediately did. And then the next
8 time I got to speak to Horry County Schools was --
9 of course the next time we got to do the board was
10 18 months later. To me, that -- to me, that feels
11 like it dragged on.

12 Q. When did you first seek the assistance
13 of legal counsel relating to the issues that
14 ultimately resulted in this lawsuit?

15 A. On December 7th, I went and secured
16 legal assistance from Martin Morgan.

17 Q. December 7th?

18 A. 2018.

19 Q. 2018. Okay. Now, as we discuss these
20 things, I certainly don't want to know anything
21 that you have discussed with your current lawyer
22 or your former lawyer, any conversations you've
23 had with your lawyers. Okay? So you said it was
24 18 months before you got to go before the board?

25 A. Yes.

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1 Q. Do you recall when that occurred?

2 A. I believe the board hearing was on
3 August -- was it 17th? -- 2020, I think. Yeah.

4 Q. And this is --

5 A. August 2020.

6 Q. -- not an examination like a quiz. If
7 you -- but you think it was sometime around that
8 time, August of 2020; does that sound about right?

9 A. Yeah. I believe so.

10 Q. And I'll represent to you, as we sit
11 here, I don't know the exact date in the back of
12 my mind. So I'm not going to hold it against you
13 if there are documents that reflect it was a
14 different date around that time. Anyway, just
15 making that clear on the record.

16 In any event, how many times did you go
17 to a board meeting related to your employment
18 issues with Horry County Schools?

19 A. One time.

20 Q. And what do you recall about that one
21 time?

22 A. At that board meeting, that's when they
23 had set aside to hear my appeal to the letter I
24 had received on April 30th, 2019.

25 Q. Okay.

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1 A. And I presented my response, and I
2 answered questions from the board.

3 Q. Were you represented by counsel at that
4 meeting?

5 A. Yes.

6 Q. When the issue of your employment was
7 brought up in the meeting, was that during the
8 open -- the public portion of the meeting? Do you
9 know? Do you recall?

10 A. I believe it was. I don't think it was
11 closed. I cannot remember.

12 Q. Do you remember if there were members of
13 the public in attendance at that meeting?

14 A. I can't recall. I believe there were
15 other people at that meeting, other than the board
16 members.

17 Q. Do you recall if that meeting was open
18 to the public for in-person attendance?

19 A. I cannot recall.

20 Q. Do you remember if there were any COVID
21 protocols in place that were observed during that
22 board meeting?

23 A. I believe we were wearing masks, if I
24 remember correctly, at that meeting.

25 Q. What is your understanding of why you

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1 did not get to go before the board for 18 months?

2 A. I do not know.

3 Q. Did you ever personally attempt to
4 attend any board meetings during that time?

5 A. No.

6 Q. Did you ever attempt to communicate with
7 anyone at the district regarding the timing of
8 going before the board?

9 MS. RHODES: Object to the form.

10 A. Yes. Through -- my legal counsel
11 contacted the district office numerous times
12 trying to set up a board --

13 Q. Right. And that's really kind of what
14 I'm getting at. Is it fair to say that you relied
15 on your lawyers to take care of that process, the
16 appeal and whether or not you would go before the
17 board?

18 A. Yes.

19 Q. And other than relying on your lawyers
20 to do that, you didn't do anything personally
21 yourself?

22 A. I only tried -- I believe it was in July
23 2019. I can't recall if it was July or not. I
24 did go to the district office to try to speak with
25 Rick Maxey, but he would not see me.

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1 Q. Have you ever had a conversation with
2 Dr. Maxey regarding your employment issues with
3 the district?

4 A. No.

5 Q. Did you ever personally attempt to
6 contact a sitting Horry County board member prior
7 to your appeal hearing?

8 A. No.

9 Q. Do you know if your wife ever did?

10 A. No.

11 Q. Do you know if anyone attempted to
12 contact a sitting Horry County School Board member
13 to discuss your situation prior to the board
14 meeting in August of 2020?

15 A. No. The only contact to the board
16 members -- I remember sending an e-mail letter to
17 the board members.

18 Q. Was that from you?

19 A. Yes.

20 Q. When did you send that?

21 A. It was prior to the board hearing.

22 Q. How much prior? I mean, can you --

23 A. It was, I believe -- a couple weeks,
24 three weeks, I believe, once it was scheduled.

25 Q. And what was the purpose of that e-mail?

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1 A. To provide more information on my
2 background as an instructor, parent and a husband
3 to the board members.

4 Q. Did anyone -- who was that e-mail sent
5 to?

6 A. It was to the current sitting board
7 members.

8 Q. Was it sent to anyone at the district
9 office?

10 A. I do not remember. I can't remember.

11 Q. Did you receive any kind of response to
12 that e-mail from anyone?

13 A. I think I received a response of "thank
14 you." I think it was -- I can't recall which
15 board member. I think it was one of the women
16 from -- I would have to go back and look at the
17 e-mail and see if I have that response.

18 Q. Have you provided that e-mail to your
19 counsel?

20 A. I do not know. I would have to go back
21 and look.

22 Q. Do you recall if you went into any
23 detail in that e-mail about the complaints from
24 the students or your response to them?

25 A. No.

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1 Q. No, you don't recall, or, no, you did
2 not?

3 A. No, I did not.

4 Q. It may have been a poor question.

5 A. No, I did not. The whole e-mail was
6 just my background, where I was from, who I was.

7 Q. Are you currently employed?

8 A. No.

9 Q. Have you held any employment since your
10 employment with the Horry County Schools?

11 A. No.

12 Q. What is your estimated annual income
13 from your military retirement?

14 A. 30,000.

15 Q. Have you ever been self-employed?

16 A. No.

17 Q. Have you ever been an owner of a
18 business?

19 A. No.

20 Q. Have you ever been a co-owner of a
21 business?

22 A. No.

23 Q. Do you currently derive income from any
24 other source besides your military retirement?

25 A. No.

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1 Q. Are you a member of any social clubs or
2 organizations?

3 A. No.

4 Q. Are you a member of any civic
5 organizations?

6 A. No.

7 Q. Are you a member of any military
8 organizations?

9 A. Yes.

10 Q. What would those be?

11 A. 82nd Airborne Division; 101st Airborne
12 Division Association.

13 Q. Is there a local chapter of that
14 organization?

15 A. Yes. But I have not attended.

16 Q. Do they have meetings or gatherings in
17 Horry County?

18 A. Yes.

19 Q. Have you registered for that, or are you
20 a member of that just by virtue of the fact that
21 this is where you are located?

22 A. No. I have not registered with that
23 local chapter there. I'm registered with the
24 chapter up in Fayetteville, that I retired out of.

25 Q. Are you active in any type of military

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1 organization?

2 A. No.

3 Q. We talked briefly about the mental
4 health treatment. Had you ever received any type
5 of counseling or mental health treatment prior to
6 the summer of 2019?

7 A. No.

8 (Defendant's Exhibit No. 1, Summons, was
9 marked for identification.)

10 BY MR. ARTHUR:

11 Q. All right. Mr. MacDonald, I'm going to
12 hand you what has been marked as Exhibit 1 to your
13 deposition. Do you recognize this document?

14 A. Yes.

15 Q. What is your understanding of what this
16 document is?

17 A. It's filed against the Horry County
18 Schools for their actions against me.

19 Q. Is this your Complaint -- a copy of your
20 Complaint?

21 A. Yes.

22 Q. Did you review this document before it
23 was filed?

24 A. Yes.

25 Q. And did you approve of it being filed?

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1 A. Yes.

2 Q. Are the allegations contained in the
3 Complaint your allegations?

4 A. Yes.

5 Q. And I should have asked you this before,
6 do you have -- have you ever received any training
7 in the law?

8 A. No, other than what courses I had in my
9 M.B.A. program and the doctorate program.

10 Q. And so what types of courses would --
11 what types of courses have you taken that you
12 believe have provided you some understanding of
13 legal topics or issues?

14 A. For the M.B.A., it would be the business
15 law course; and for the education, was educational
16 law, going over individual case studies and --
17 against -- case studies for the current policies
18 and rules that were for education --

19 Q. When was that?

20 A. -- court claims and so forth. So for
21 the education, I believe I would have taken that
22 course -- it would have been five, six years ago.
23 And the M.B.A. would have been even further back,
24 so...

25 Q. So you do not have a law degree, though,

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1 correct?

2 A. No.

3 Q. And never been licensed to practice law?

4 A. No.

5 Q. Did the courses that you took that
6 touched on legal issues, was there any coursework
7 related to contract law in there?

8 A. No.

9 MR. ARTHUR: Let's go ahead and mark
10 this while we're at it.

11 (Defendant's Exhibit No. 2, Contract for
12 Professional Services, was marked for
13 identification.)

14 BY MR. ARTHUR:

15 Q. I'm going to hand you what has been
16 marked as Exhibit 2 to your deposition and ask you
17 if you recognize that document?

18 A. Yes.

19 Q. Okay. And does your signature appear on
20 Exhibit 2?

21 A. Yes.

22 Q. And can you just describe for us where
23 on the document your signature appears?

24 A. It appears on the signature line at the
25 bottom of the page.

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1 Q. And would you say that's the left side
2 of the page?

3 A. Yes.

4 Q. Okay. The handwriting above that that
5 appears to be a date, is that your handwriting
6 also?

7 A. Yes.

8 Q. Now, what is your understanding of what
9 Exhibit 2 is?

10 A. It's the Contract for Professional
11 Services for 2018 to 2019 at Horry County Schools.

12 Q. Okay. And is this what you believe to
13 be your employment contract with Horry County
14 Schools?

15 A. Yes.

16 Q. Are there any other documents that you
17 believe constitute a contractual agreement with
18 Horry County Schools?

19 A. No.

20 Q. The -- Exhibit 2 -- well, strike that.
21 What is your understanding of the term
22 of this contract, Exhibit 2? When did it start,
23 and how long was it supposed to last?

24 A. It started the August -- the beginning
25 of the August school year -- I believe the 12th --

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1 August 12th, August 14th -- for ten months.

2 Q. Okay. If you would look at the -- it
3 looks like the fourth paragraph -- and I realize
4 this copy is a little bit -- I think this document
5 has been copied a lot, and it might be a little
6 bit difficult to read. But do you see the second
7 line there, it says "The board agrees to employ
8 the employee in a professional position for the
9 2018-2019 school year"?

10 A. Uh-huh.

11 Q. Do you see that?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes.

15 Q. So was it your understanding that this
16 contract was for the 2018-2019 school year?

17 A. Yes.

18 Q. What was your understanding of what
19 would happen at the end of the 2019 school year
20 with regard to your employment?

21 A. A renewal of the contract.

22 Q. And what is the basis of that
23 understanding?

24 A. The basis of the understanding is
25 because they issued these out in April or the

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1 month prior for the following year of the
2 contract, and you, therefore, sign it indicating
3 that you're working the following year.

4 Q. Were you ever presented with an
5 invitation to renew your contract for the
6 following year?

7 A. I did receive an e-mail that had that,
8 yes.

9 Q. An e-mail stating what?

10 A. That -- for the following contract for
11 the previous -- for the next year, to sign and
12 submit forward.

13 Q. Okay. Do you still have that e-mail?

14 A. I do not.

15 Q. Did you provide it to your lawyer?

16 A. I believe I provided it to Morgan at the
17 time. But answering your previous, I would expect
18 to renew that contract; I would have no
19 expectation that I would not renew that contract.

20 Q. Did anybody ever -- did anybody with the
21 school district ever represent to you that this
22 contract, Exhibit 2, would be automatically
23 renewed?

24 A. Mr. Gray, during his initial hiring,
25 orientation, when we signed this contract, stated

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1 that you would sign this every year. So all
2 employees sign these contracts every year. So the
3 expectation is, yes, I expected that I would be
4 signing one of these for every academic school
5 year I worked there.

6 Q. Do you have any paperwork that you
7 believe served as a contract between you and the
8 Horry County School District for the school year
9 of 2019-2020?

10 A. No, I do not have any signed paperwork
11 that indicated a contract.

12 Q. Were you -- well, strike that.

13 MR. ARTHUR: Let's mark this.

14 (Defendant's Exhibit No. 3, 8/7/18 Human
15 Resources form, was marked for identification.)

16 BY MR. ARTHUR:

17 Q. I'll hand you what has been marked as
18 Exhibit 3. Do you recognize Exhibit 3?

19 A. Yes.

20 Q. What is your understanding of what
21 Exhibit 3 is?

22 A. This was from the human resources,
23 indicating what the step in grade would be for the
24 position.

25 Q. Does your signature appear on Exhibit 3?

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1 A. Yes.

2 Q. Does Exhibit 3 indicate what you were to
3 be paid for the 2018-2019 school year?

4 A. Yes.

5 Q. And were you paid that amount?

6 A. No.

7 Q. How much were you paid; do you know?

8 A. Um, I believe I was paid the actual --
9 the actual correct amount was \$349 per day. So I
10 believe it was like 80 -- 80,000. So when I got
11 this, I had to call HR. They had me sign this,
12 submit it in that I received it, and then I called
13 HR indicating that the salary was incorrect. And
14 during orientation, I had crossed out the actual
15 salary amount they had on that paperwork and wrote
16 in the correct one.

17 Q. Okay.

18 A. Because -- I don't know if you are
19 aware, JROTC positions are cost shared between the
20 school system and the Army. So the school pays
21 half and the Army pays the other half. So to me,
22 when I got this, I immediately recognized that
23 this was not correct -- the salary was not.

24 Q. And I recall reviewing some paperwork
25 indicating there was an issue about compensation

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1 when you first started with the district.

2 A. Yes.

3 Q. And I'll also represent to you that the
4 main reason I pulled this out was because it had
5 your signature on it and I just wanted to verify
6 that your signature was on this document. Let me
7 ask you this: For the 2018-2019 school year, did
8 you receive all of the compensation from the
9 school district that you believed you were
10 entitled to?

11 A. Yes.

12 Q. And would you agree that there is not a
13 claim for unpaid earned wages in your Complaint?

14 A. Yes.

15 MR. ARTHUR: Let's take a restroom
16 break.

17 (The deposition went off the record.)

18 (Defendant's Exhibit No. 4, Junior ROTC
19 Instruction Qualification, was marked for
20 identification.)

21 BY MR. ARTHUR:

22 Q. Major MacDonald, we're back on the
23 record after a short break. I'm going to hand you
24 what's been marked as Exhibit 4 to your
25 deposition. Do you recognize that document?

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1 A. Yes.

2 Q. Is this a document that was sent to you?

3 A. Yes.

4 Q. What is your understanding of what
5 Exhibit 4 is?

6 A. It's the instructor certification for
7 JROTC. It's the memorandum they issue to you.
8 And it indicates the qualification is valid for
9 three years from the recipient (sic) of the date.

10 Q. There appears to be a handwritten circle
11 on there. Is that your handwriting, by any
12 chance?

13 A. No.

14 Q. The only date that I see on this
15 document appears to be a stamp date of May 12th,
16 2015. Would you agree with that?

17 A. Yes.

18 Q. Do you know who placed that stamp date
19 on this document?

20 A. That would be the JROTC Command
21 headquarters, from Ms. Owens here.

22 Q. Did you in fact receive a copy of this
23 document?

24 A. Yes.

25 Q. And did you receive it in the May 2015

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1 timeframe?

2 A. Yes.

3 Q. Okay. Was it your understanding that
4 the three years would run from May 12th, 2015 --

5 A. Yes.

6 Q. -- until May 12th, 2018?

7 A. Yes, that's correct.

8 Q. Okay.

9 (Defendant's Exhibit No. 5, 12/4/18
10 letter from Horry County Schools to Jason
11 MacDonald, was marked for identification.)
12 BY MR. ARTHUR:

13 Q. I'm going to hand you what has been
14 marked as Exhibit 5 to your deposition. Do you
15 recognize this document?

16 A. Yes.

17 Q. What is your understanding of what
18 Exhibit 5 is?

19 A. This memorandum was given to me on
20 December 4th, following my interview with Mr. Neal
21 and Mr. Gray, placing me on administrative leave
22 December 4th, 2018.

23 Q. And is that your signature at the bottom
24 left of this document?

25 A. Yes.

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1 Q. And did you write that phone number
2 there?

3 A. Yes.

4 Q. And did you write the date?

5 A. Yes.

6 Q. Why did you include the phone number?

7 A. I do not recall.

8 Q. What is your recollection of the meeting
9 with Mr. Neal and Mr. Gray?

10 A. Discussion of the false allegations
11 presented by the students.

12 Q. Do you recall anything specific that Mr.
13 Gray said to you during that conversation?

14 A. No.

15 Q. Do you recall anything specific that Mr.
16 Neal said to you?

17 A. No. They repeated verbatim the
18 statements from the students.

19 Q. Were you provided an opportunity during
20 that meeting to tell your side of the story?

21 A. Yes.

22 Q. And did you do so?

23 A. Yes. I repeated what I had written and
24 presented to Mr. Todd and when I had spoken to Mr.
25 McCracken.

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1 Q. My understanding is that, at some point,
2 you prepared a written response to the
3 allegations, correct?

4 A. Correct.

5 Q. Did you take that with you to the
6 meeting with Mr. Neal and Mr. Gray?

7 A. No. I was unaware of what this meeting
8 was about when I attended the Horry County School
9 District office.

10 Q. Was anyone else present during this
11 meeting?

12 A. No.

13 Q. How long did it last, approximately?

14 A. I believe it lasted a little bit over an
15 hour.

16 Q. And it took place at the district
17 office?

18 A. Yes.

19 Q. Did you meet with anyone else at the
20 district office while you were there that day?

21 A. No.

22 Q. Have you ever had any conversation with
23 Mary Anderson about your employment with Horry
24 County Schools?

25 A. No.

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1 Q. Do you know who Mary Anderson is?

2 A. Yes.

3 Q. Have you ever met her personally?

4 A. No.

5 Q. Have you ever spoken with Mary Anderson
6 on the phone?

7 A. No.

8 Q. Have you ever exchanged e-mails with
9 Mary Anderson, to your knowledge?

10 A. No.

11 Q. Can you think of any communication that
12 you had with Mary Anderson at any time?

13 A. Yes.

14 Q. What was that?

15 A. When I went to the district office to
16 pick up my personnel file that they had on record
17 so I can give it to my legal counsel.

18 Q. When was --

19 A. And at that time, Mary Anderson happened
20 to be there, and she gave me my file and had me
21 sign for it. And I believe that was in May 2018,
22 I think. Yes.

23 Q. Did you have any conversation with her
24 during that encounter?

25 A. No.

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1 Q. Did she say anything to you during that
2 encounter?

3 A. No.

4 Q. Other than the meeting that -- with Mr.
5 Neal and Mr. Gray that you spoke about just a
6 moment ago, have you ever had any other
7 conversations with Mr. Neal about your employment
8 with Horry County Schools?

9 A. No.

10 Q. How about Mr. Gray?

11 A. Yes.

12 Q. Did that conversation take place before
13 or after the meeting with Neal and Gray?

14 A. After.

15 Q. Okay. And I need to back up. Did you
16 ever have any communication with Neal or Gray
17 about these issues prior to the December 4th,
18 2018, meeting?

19 A. No.

20 Q. So tell me about any contact that you
21 had with Mr. Gray after the December 4th, 2018,
22 meeting.

23 A. When I was placed on administrative
24 leave, a position opened up for JROTC at Green Sea
25 Floyds High School. I then applied, and then I

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1 went to the district office and spoke with Mr.
2 Gray to find out verification if being on
3 administrative leave would stop me from applying
4 for that position.

5 Q. And did he answer that question?

6 A. Yes.

7 Q. What were you told?

8 A. He said that it would not stop me from
9 applying for that position.

10 Q. Okay. Did you have any other
11 conversation with him at that time?

12 A. No.

13 Q. Did you ever have any conversation with
14 him after that meeting about your employment with
15 Horry County Schools?

16 A. No.

17 (Defendant's Exhibit No. 6, 4/30/19
18 letter from Horry County Schools to Jason
19 MacDonald, was marked for identification.)

20 BY MR. ARTHUR:

21 Q. I'm going to hand you what has been
22 marked as Exhibit 6 to your deposition. Do you
23 recognize this document? Take your time and look
24 at it if you would like.

25 Do you recognize that document --

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1 A. Yes.

2 Q. -- Exhibit 6? What is your
3 understanding of what Exhibit 6 is?

4 A. It's a letter from Horry County Schools
5 telling me that Dr. Maxey is not recommending me
6 to be -- contract to be renewed for the following
7 school year to the board.

8 Q. Did you receive this document?

9 A. Yes.

10 (Defendant's Exhibit No. 7, 8/26/20
11 letter from Horry County Schools to Jason
12 MacDonald, was marked for identification.)
13 BY MR. ARTHUR:

14 Q. I'm going to hand you what has been
15 marked as Exhibit 7 to your deposition. Do you
16 recognize Exhibit 7?

17 A. Yes.

18 Q. What is your understanding of what
19 Exhibit 7 is?

20 A. This is a memo that the board submitted
21 after the hearing, indicating that false
22 allegations were insufficient evidence and -- but
23 that the board would not re-employ me.

24 Q. Just to make sure I've got my copies
25 numbered correctly, just bear with me one moment.

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1 All right. Did you receive Exhibit 7?

2 A. Yes.

3 Q. I want to ask you a few things about
4 your Complaint, but before I do that, I want to go
5 back a little bit. Your employment with
6 Fayetteville Technical Community College, how long
7 did that last?

8 A. I was hired on in January 2015, and I
9 resigned in July --

10 Q. Did you --

11 A. -- of 2018.

12 Q. Were you ever disciplined in any fashion
13 while working with Fayetteville Technical
14 Community College?

15 A. No.

16 Q. The director of military programs, was
17 that a match-type situation, like what you
18 described with ROTC?

19 A. No.

20 Q. What was your salary at Fayetteville
21 Technical Community College?

22 A. 57,000.

23 Q. Tell me about the process -- to the best
24 of your recollection, the process of becoming
25 certified to be an ROTC instructor.

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1 A. I followed the steps that were listed on
2 the JROTC Command website. And on that website it
3 stated the requirements that -- in order to be a
4 JROTC instructor: Your rank, years of service.
5 And then you submit to the JROTC Command an
6 application. And then once they receive it, they
7 give you a callback to set up an interview. And
8 from there, I conducted an interview. And then
9 shortly after that, I received the letter of
10 certification.

11 Q. Had you ever previously been certified
12 to work as a JROTC instructor?

13 A. That is the only letter that I got.

14 Q. Did you participate in JROTC at Socastee
15 High School?

16 A. No.

17 Q. Was there an ROTC program at The
18 Citadel?

19 A. Yes.

20 Q. And it was separate and apart from just
21 being a student at The Citadel? Can you explain
22 that to me? I didn't go to The Citadel, so I'm
23 not familiar. I just assumed that everybody there
24 was treated the same way with regard to military
25 activities.

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1 A. Sure. So at The Citadel, every person
2 is part of the -- a ROTC program, whether it is
3 Army, Air Force, Navy or Marines. That does not
4 require you to join the military. You can go into
5 any of those programs. So by your senior year,
6 you're pretty much done with the ROTC coursework,
7 whereas those who are accepted and commissioned
8 into the military are continuing that coursework.

9 Q. So are you saying that every student of
10 The Citadel has to select one of the ROTC
11 programs?

12 A. Yes.

13 Q. And then help me understand the
14 difference between those who commit to enter the
15 military versus those who do not.

16 A. Those who are entering the military have
17 additional requirements while they are doing the
18 ROTC coursework. Those would be labs, where they
19 go off campus, they're going to Fort Jackson
20 overnights, doing common military tasks, such as
21 riflemanship, orienteering, rappelling, obstacle
22 coursework.

23 Q. Is that an election that you make at
24 some point during your time at The Citadel?

25 A. Yes.

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1 Q. And when would you -- when do you decide
2 -- when does the average student at The Citadel
3 decide whether they're going to go straight into
4 the military following graduation?

5 A. Speaking for myself, I chose my
6 sophomore year to accept an ROTC scholarship with
7 the Army. So I then proceeded down that path.
8 There's other members who may do it as a four-year
9 scholarship contract. There are some that start
10 their junior year, and there's even some that
11 start their last semester of their senior year a
12 contract. But the majority of -- I know of my
13 year group, 80 percent of the people do not go in
14 the military.

15 Q. What -- I may get this totally wrong,
16 but when you get to The Citadel, you're assigned
17 to a battalion; is that right?

18 A. That's correct.

19 Q. What battalion were you in?

20 A. I was in fourth battalion, Tango
21 company.

22 Q. Is there also a troop assignment, or is
23 it just the company -- battalion and company?

24 A. Battalion and company.

25 Q. Were you a member of any -- I don't know

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1 what you would call them -- special -- special
2 groups at The Citadel, like -- I've heard of
3 Summerall Guards, but I'm not sure I understand
4 what that is. Were you a member of anything like
5 that?

6 A. Yes. I was a member of the Summerall
7 Guards.

8 Q. Can you explain to me, as a layperson,
9 what Summerall Guards is and what they do?

10 A. Sure. Summerall Guards is a silent
11 drill team. They're named Summerall Guards after
12 General Summerall. And normally what the
13 Summerall Guards do is they go and they
14 participate in events such as Mardi Gras parades,
15 Wilmington -- you know, the Festival of the
16 Azaleas and so forth. But we don't go and compete
17 against other -- there's not other college silent
18 drill teams, but just a representation of The
19 Citadel. And we perform at, you know, the
20 football game halftimes and so forth.

21 Q. Were you a member of any leadership
22 groups at The Citadel?

23 A. I was -- yes. My sophomore year I was a
24 cadre member. I received incoming freshmen, to
25 process them, help train them how to do drill,

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1 make your bed, clean your room. And then my
2 senior year, I was a platoon leader, which
3 indicated I had a squad of underclassmen that we
4 conducted with.

5 Q. What -- my understanding is they do have
6 rank at The Citadel, correct?

7 A. Yes.

8 Q. What was your rank at graduation?

9 A. Lieutenant.

10 Q. And then when you went to the Army, you
11 came in as a second lieutenant?

12 A. That's correct.

13 Q. And, again, I'm not well versed in the
14 military, but -- in your 17 years in the military,
15 did you serve as a company commander or a
16 commander over a large number of people?

17 A. Yes. I'll give you a brief rundown of
18 that. My initial -- as the second lieutenant, I
19 was in command of a platoon of -- in Korea. From
20 there, my next command was as a captain. I was in
21 command of a company. That command had almost 300
22 people, the platoon has 600 during different
23 mergers and so forth. And then, as a major, I was
24 a rear detachment commander, so I had over 800
25 people.

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1 Q. Did you ever have any complaints brought
2 against you while you were in the military?

3 A. No.

4 Q. I asked you about your parents. Where
5 did you say your parents currently reside?

6 A. My mother lives in Hickory, North
7 Carolina.

8 Q. Is your father deceased?

9 A. No.

10 Q. Where does he live?

11 A. I believe he lives in Washington state.

12 Q. Your in-laws, where do they live?

13 A. Tabor City, North Carolina.

14 Q. To your knowledge, have they ever lived
15 in Horry County?

16 A. No.

17 Q. What are their names?

18 A. Richard and Ann -- sorry -- Richard -- I
19 was going to say Ann -- Margaret Ann --

20 Q. So Richard --

21 A. Richard and Margaret Ann Dameron.

22 Q. There's some Damerons that live in
23 Florence. You don't happen to know if they're
24 related to them, do you?

25 A. No.

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1 Q. Okay. Have you ever been a -- other
2 than this particular case, have you ever been a
3 plaintiff in a civil action in any -- for any
4 other cases?

5 A. No.

6 Q. How about a defendant; ever been named
7 as a defendant in any case?

8 A. No.

9 Q. Have you ever testified in court for any
10 reason?

11 A. No.

12 Q. Have you ever lived in Horry County --
13 well, strike that.

14 Obviously, you grew up in the Socastee
15 area, and you currently live at 2005 Woodburn
16 Drive, Myrtle Beach. Have you ever lived anywhere
17 else in Horry County?

18 A. No.

19 Q. Are you currently taking any
20 prescription medications?

21 A. Yes.

22 Q. What prescription medications are you
23 taking?

24 A. Vyvanse, D-amphetamine -- yeah.

25 Q. Is that one or two?

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1 A. Those are two. Those are from the
2 mental health counselor.

3 THE COURT REPORTER: Can you repeat
4 those one more time for me?

5 A. I don't think I can pronounce them
6 correctly. Do you mind if I give you -- show you
7 --

8 Q. That's fine with me. If you want to
9 just look them up and spell them, that would be
10 great.

11 MR. ARTHUR: Do you want to see this
12 before I look at it?

13 Okay. So I'm just going to spell this,
14 I guess. The first one is -- for the record,
15 Major MacDonald has been nice enough to look
16 up the prescriptions that he is currently
17 taking. And I'm looking at his phone and I'm
18 going to read off what I see. The first one
19 appears to be D-amphetamine salt combo. So
20 it's D-A-M-P-H-E-T-A-M-I-N-E salt combo 15
21 milligrams -- 15-milligram tabs.

22 Q. Is that your understanding of the dosage
23 that you have?

24 A. Yes.

25 Q. And then the next one is Vyvanse,

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1 V-Y-V-A-N-S-E, 40-milligram capsules. Is that
2 your understanding of the dosage?

3 A. Yes.

4 Q. And were these prescribed to you by --
5 is it Dr. Starr or --

6 A. DPN.

7 Q. DPN?

8 A. Nurse practitioner; works underneath a
9 doctor.

10 Q. But did she prescribe them?

11 A. Yes.

12 Q. Now, what type of mental health
13 certification does she have; do you know?

14 A. She has the -- her master's in mental
15 health.

16 Q. But --

17 A. And I know she has some licenses because
18 they hang up on her office wall.

19 Q. Right. But does she provide counseling
20 for you?

21 A. Yes.

22 Q. But she also provides medical --

23 A. Yeah.

24 Q. -- evaluation and care and treatment?

25 A. Yes.

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1 Q. Do you have a family doctor?

2 A. No.

3 Q. Had you ever seen Nurse Practitioner
4 Starr prior to the summer of 2019?

5 A. No.

6 Q. Do you currently maintain any social
7 media accounts?

8 A. I have a Facebook account.

9 Q. Is that under your name?

10 A. Yes.

11 Q. Is it -- what is the screen name?

12 A. I do not know what that means.

13 Q. Well, if I were to go on Facebook and
14 try to find your account, what would I search for?
15 Would it be Major MacDonald or Jason MacDonald or
16 what would it be?

17 A. It would be my name.

18 Q. Is there a "Major" in front of it?

19 A. No.

20 Q. How long have you had that account, do
21 you know, roughly? If you asked me the same
22 question, I wouldn't be able to answer it. I'm
23 just being fair.

24 A. I would -- maybe a decade. I have no
25 idea.

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1 Q. Is it fair to say that you had that
2 prior -- you had your Facebook prior to your
3 employment with Horry County Schools?

4 A. Yes.

5 Q. Any other social media accounts?

6 A. No.

7 Q. Have you posted anything on Facebook
8 relating to your employment with Horry County
9 Schools?

10 A. No.

11 Q. And is that like an absolute no, like
12 not even -- you didn't even post anything about
13 the fact that you were working with Horry County
14 Schools at any time?

15 A. That's correct. Absolute no.

16 Q. Have you posted anything on Facebook
17 about this lawsuit?

18 A. No.

19 Q. Okay. So if you could look at Exhibit
20 1, I'd like to go through some of the allegations
21 in your Complaint. So paragraph 2 of the
22 Complaint, the first -- well, it appears to be
23 only one sentence. So the first part of paragraph
24 2, it says, "These actions arise out of the
25 district's poor handling of false allegations made

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1 against Plaintiff by a few female students of
2 Defendant Horry County School District." Do you
3 see that?

4 A. Yes.

5 Q. What is the basis for the allegation
6 that the -- of the district's poor handling? Is
7 that something you came up with, or is that
8 something your lawyer came up with?

9 A. Going back to my earlier statement about
10 the length of time dragging on, the poor handling
11 -- what I perceived as poor handling of the false
12 allegations was that I was spoken to by Michael
13 McCracken and Todd and then by Neal and Gray one
14 time about these allegations. And, apparently,
15 they were given some more after I already talked
16 to them, but I never got to talk to those guys
17 again.

18 And then neither Todd nor Neal ever went
19 and spoke to the students one-on-one about their
20 actual allegations.

21 Q. Is it fair to say that you were not
22 satisfied with the way the situation was handled
23 by the school district?

24 A. Yes.

25 Q. Are you alleging that the school

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1 district or any employees of the school district
2 failed to do something that they were required to
3 do by some sort of policy?

4 MS. RHODES: Object to the form. You
5 can answer.

6 A. I'm sorry. Can you repeat that? I
7 didn't hear what she said.

8 Q. She objected to the form, so I'll
9 rephrase the question, or I will attempt to just
10 re-ask the question, I guess. She's certainly
11 entitled to object to the form of my question.
12 And I certainly understand that your lawyer may
13 argue that certain policies were not followed; she
14 wants to protect that right. I understand that.

15 What I'm curious about is, do you
16 believe -- personally believe that there was some
17 policy not followed by any district employees in
18 connection with the handling of the allegations by
19 the students?

20 A. Yes.

21 Q. And what policy are you referring to?

22 A. Well, I don't believe Horry County
23 actually had a policy. That's the policy I'm
24 making my Complaint to. So Horry County,
25 specifically the HR office, indicated they would

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1 conduct an investigation; that's what they told me
2 on the 4th. But I did not get word back that the
3 investigation was complete until I got a certified
4 letter on April 30th of 2019, which, to me, is an
5 extraordinarily long time to tell the person
6 that's been accused of something that they have
7 been found -- misconduct, without giving that said
8 person an opportunity to address the allegations.

9 Q. Okay. So are you saying there was not a
10 clear written policy for you to refer to as to how
11 the investigation would be conducted?

12 A. Yes. The only policy or how the
13 investigation would be conducted provided by the
14 HR office was, I would be placed on administrative
15 leave; they would conduct an actual investigation
16 that would be completed within two weeks, and then
17 I would be notified. I was not notified about
18 anything until April 30th of 2019.

19 Q. Is it your belief that there was a
20 requirement of some sort that the district
21 investigate the allegations?

22 A. Yes. Michael McCracken and Todd stated
23 that; when allegations come up, that they're
24 required to conduct an investigation.

25 Q. Did you ever ask anyone for -- anyone

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1 with the district for any policies that would
2 provide you additional information about the
3 investigation or any rights that you might have?

4 A. I did not.

5 Q. The next part of paragraph 2 says, "The
6 district's refusal to timely grant Plaintiff the
7 opportunity to be heard before the district's
8 board." Is that your allegation?

9 A. Yes.

10 Q. What is the basis for the allegation
11 that the district refused to timely grant you an
12 opportunity to be heard?

13 A. After receiving the April 30th letter on
14 2019, in there it stated, Submit a written
15 response back in order to appeal.

16 Q. Okay.

17 A. At that time, Mr. Morgan submitted the
18 written response back, and the school district
19 never responded back. And after I changed my
20 legal counsel, my legal counsel again initiated
21 another response for a board hearing. And finally
22 got their board hearing, as indicated, in 2020.
23 So in my humble opinion, the response was not
24 timely.

25 Q. Did you ever receive anything from

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1 anyone at the district advising you that they were
2 refusing to allow you to go before the board?

3 A. No.

4 Q. The next part says, "The district and
5 individual Defendants' refusal to respond to
6 employment reference requests, causing Plaintiff
7 to lose employment opportunities and the
8 expiration of his certification to teach JROTC."
9 Is that your allegation?

10 A. Yes.

11 Q. And how did the district refuse to
12 respond to employment reference requests?

13 A. For one specific case, when I
14 interviewed for the Hannah-Pamplico JROTC
15 position, I spoke with the principal and then
16 spoke with the superintendent, informing them that
17 currently I was on admin leave from Horry County,
18 awaiting my board hearing, and that I was
19 interested in the Hannah-Pamplico position.

20 The superintendent stated, That's great.
21 What I would just need from the school district is
22 just a letter. And he responded multiple times to
23 the school district and received no response. In
24 order for me to move up to the -- to take that
25 job, he had to present it to the board, but they

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1 needed that letter, as per their policies.

2 Q. Do you believe that there was some
3 requirement applicable to the school district that
4 required the school district to respond to those
5 requests?

6 A. I do not know. All I know is that
7 professionally, when a superintendent calls
8 another superintendent, I would think that they
9 would respond to it.

10 Q. Okay. But apparently you believe that
11 the failure to respond to it somehow gives rise to
12 a legal remedy to you --

13 MS. RHODES: Object to the form.

14 Q. -- is that fair?

15 A. Again, I believe not responding to the
16 superintendent's request to another superintendent
17 gave rise that an outcome for me to move from
18 Horry County Schools to another school system did
19 not allow that to happen.

20 Q. Do you have any reason to believe that
21 anyone at the school district ever provided
22 another school district or any member of the
23 public any negative information relating to you?

24 A. I do not know.

25 Q. Do you have any belief that that ever

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1 happened?

2 A. I do not know.

3 Q. Are you claiming that each one of the
4 individually named Defendants refused to respond
5 to employment reference requests?

6 A. I do not know.

7 Q. Do you have any knowledge that Michael
8 McCracken ever received an employment reference
9 request?

10 A. I do not know. I have to -- again, I do
11 not know.

12 Q. How about Brandon Todd; any knowledge
13 that Brandon Todd ever received an employment
14 reference request?

15 A. I do not know.

16 Q. Do you recall if there was any testimony
17 in their depositions, McCracken and Todd, about
18 that issue?

19 A. I do not remember.

20 Q. How about Mary Anderson; do you know if
21 Mary Anderson has ever received any employment
22 reference requests?

23 A. I -- I think the superintendent from
24 Hannah-Pamplico may have e-mailed the HR office.
25 But I don't know Mary Anderson in particular.

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1 Q. So in your Complaint you have named the
2 school district and four individuals as
3 Defendants. Do you understand that?

4 A. Yes.

5 Q. What, if anything, do you believe any of
6 the individually named Defendants did that caused
7 harm to you?

8 A. I think the principal and assistant
9 principal at Aynor High School failed to do their
10 job of conducting a proper investigation, which
11 led to this year-plus time prior to me standing in
12 front of the board.

13 Q. Are you claiming that any of these
14 individually named Defendants did anything that
15 harmed you that was outside of their duties and
16 responsibilities as an employee of the school
17 district?

18 A. Can you repeat that?

19 Q. Right. So do you believe that any of
20 these individually named employees did anything to
21 harm you that they did outside of their duties and
22 responsibilities as an employee of the school
23 district?

24 A. I'm not sure I understand the question.
25 Can you say it one more time? I'm sorry.

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1 Q. Well, your Complaint names these
2 individuals in their individual and their official
3 capacity.

4 A. Yes.

5 Q. Do you have an understanding of what the
6 difference is?

7 A. Of their positions?

8 Q. Individual versus official capacity.

9 MS. RHODES: Object to the form.

10 Q. Do you believe that you have an
11 understanding of whether or not there's any
12 difference between someone's individual capacity
13 versus their official capacity?

14 MS. RHODES: Object to the form.

15 A. I'm not sure I do understand a
16 difference.

17 Q. So what, if anything, did Dr. Maxey do
18 or not do that you believe harmed you -- that he
19 did or didn't do outside of his employment with
20 the district?

21 A. I don't think as a superintendent that
22 they actually looked at my case and reviewed it or
23 spoke with me.

24 Q. Okay.

25 A. He -- as a superintendent, he refused to

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1 see me. As a superintendant, he wrote a letter on
2 April the 30th, indicating that I was accused of
3 misconduct. Supposedly I was told I was accused
4 of -- that my conduct was unprofessional, which I
5 never was told that prior. So I would think, as a
6 superintendent, that if you're going to have some
7 sort of sexual allegations, misconduct, that you
8 would -- you would actually have a little bit more
9 hypervigilance in the overall process and the
10 person involved and -- professionally.

11 Q. And I think I already asked you, but let
12 me just make sure, I think I asked you, and you
13 said you had not discussed any of these issues
14 directly with Dr. Maxey; is that correct?

15 A. No.

16 Q. And so have you ever communicated with
17 him by e-mail?

18 A. I sent him an e-mail.

19 Q. Did he respond?

20 A. No.

21 Q. Did you send the e-mail to him to his
22 Horry County --

23 A. Yes.

24 Q. -- address?

25 A. I did send it to his Horry County

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1 address.

2 Q. Did you ever attempt to contact Dr.
3 Maxey at his home address?

4 A. No.

5 Q. Did you ever attempt to contact Dr.
6 Maxey at any personal e-mail address that he may
7 have?

8 A. No.

9 Q. Did you ever attempt to contact Dr.
10 Maxey on any personal phone that he has?

11 A. No.

12 Q. And I'm assuming he did not attempt to
13 contact you. You said you haven't had any contact
14 with him, correct?

15 A. Right.

16 Q. Have you received any communication from
17 Dr. Maxey that was not on Horry County letterhead
18 or from an Horry County e-mail address?

19 A. No.

20 Q. Do you have any knowledge of Dr. Maxey
21 saying anything publicly about your employment
22 with Horry County Schools?

23 A. No.

24 Q. Do you believe that Dr. Maxey has made
25 statements about you, either verbally or in

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1 writing, that were not true?

2 A. Yes.

3 Q. And what are those statements?

4 A. Right here in this letter, April 30th,
5 stating I was informed -- my conduct was
6 unprofessional.

7 Q. Anything else?

8 A. No.

9 Q. And you're referring to Exhibit 6?

10 A. Yes.

11 Q. And that's a letter that's addressed to
12 you?

13 A. Yes.

14 Q. And it appears to have been
15 hand-delivered and sent to you by e-mail?

16 A. Yes.

17 Q. Did you receive the e-mail?

18 A. I'm sorry. No, I did not get this by
19 e-mail.

20 Q. How did you receive it?

21 A. A courier hand-delivered it.

22 Q. Courier and delivered?

23 A. Hand delivery by a courier.

24 Q. Hand-delivered. Okay. Did you sign for
25 it?

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1 A. Yes.

2 Q. Was it in a sealed envelope?

3 A. No.

4 Q. How was it presented to you?

5 A. I was at Pepper Geddings Recreation
6 Department, and the courier called me and asked me
7 where my location was; I told him where I was.
8 And he drove up in his -- I believe it was an
9 Horry County vehicle. And in the seat he had a
10 packet like this, and it was sitting there and he
11 handed it to me.

12 Q. Did you sign for it?

13 A. Yes.

14 Q. Do you know that courier's name?

15 A. I do not recall.

16 Q. Do you have any knowledge -- well,
17 strike that.

18 Did you have any conversation with the
19 courier at the time?

20 A. No.

21 Q. Do you have any reason to believe that
22 the courier read the contents of the letter?

23 A. No.

24 Q. Do you have any reason to believe that
25 the courier shared the contents of the letter with

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1 anyone?

2 A. I do not know.

3 Q. The letter dated April 30th that is
4 Exhibit 6th, on the second page it appears to have
5 been copied to Mary Anderson, Michael McCracken
6 and to your personnel file. Can you look and see
7 if you agree with me on that?

8 A. Yes. I agree.

9 Q. Do you know if anyone other than Mary
10 Anderson -- well, strike that.

11 Mary Anderson is the chief human
12 resources officer, right?

13 A. Correct.

14 Q. And she would be -- well, strike that.

15 Do you have an understanding of the
16 personnel file -- how it would get to your
17 personnel file?

18 A. Yes. I would -- my understanding would
19 be that Mary Anderson or someone in the HR office
20 would put it in a file at the district office.

21 Q. And Michael McCracken was the principal
22 at Aynor High School, correct?

23 A. That's correct.

24 Q. Do you have any reason to believe that
25 this letter, Exhibit 6, was sent by Dr. Maxey to

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1 anyone else?

2 A. I do not know.

3 Q. Did you share the contents of this
4 letter with anyone else?

5 A. I shared it with my legal counsel.

6 Q. Anyone else?

7 A. My wife.

8 Q. Do you know if your wife shared the
9 contents of the letter with anyone else?

10 A. No.

11 Q. No, you don't know --

12 A. No, she did not share it with anybody
13 else.

14 Q. Did you specifically tell her not to?

15 A. No.

16 Q. Have you discussed with her whether or
17 not she shared it with anyone else?

18 A. No.

19 Q. But you believe she did not share it
20 with anyone else?

21 A. Correct.

22 Q. And you didn't share it with anyone
23 else?

24 A. No.

25 Q. So you don't have any reason to believe

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1 that this letter found its way into the hands of
2 anyone that was not an Horry County School
3 District employee?

4 A. I do not know.

5 Q. Are you claiming that Mr. McCracken ever
6 made any verbal or written statements about you
7 that were not true?

8 A. No. I don't know.

9 Q. Are you claiming that Brandon Todd ever
10 made any verbal or written statements about you
11 that were not true?

12 A. I do not know.

13 Q. Are you claiming that Mary Anderson ever
14 made any verbal or written statements about you
15 that were not true?

16 A. I do not know.

17 Q. So you have alleged that -- in your
18 first cause of action -- well, let me back up.
19 Let's don't go there yet.

20 Paragraph 16 of your Complaint states,
21 "At the time of his hire, Plaintiff's
22 certification to teach was extended as the final
23 background check and CNACI paperwork could be
24 completed. Plaintiff was placed on administrative
25 leave before this process was concluded." Tell me

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1 a little bit more about that. The certification
2 -- well, strike that.

3 When you took the job with Horry County
4 Schools for the 2018-2019 school year, were you
5 fully certified and cleared to start working as a
6 JROTC instructor?

7 A. When I took that position, as I knew it,
8 I was fully certified to take a position as a
9 JROTC instructor. Other than my certification was
10 three months out of tolerance, which I brought up
11 to Colonel Davis, and he said, No problem; we'll
12 get an exception to that policy.

13 Unbeknownst to me at that time, the
14 Department of Defense, the Army for JROTC had
15 enacted requirement for all JROTC instructors to
16 conduct a CNACI, child care national registration
17 check -- background check.

18 So when I took that position and then I
19 got the exception to the policy, I then started
20 the CNACI process shortly after I took it.

21 Q. Okay.

22 A. Because I did not have the CNACI,
23 unbeknownst to me at that time, I could not
24 conduct -- could not sign a contract to the JROTC
25 Command, which is normally what happens. You get

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1 hired by a school, and then you go -- you're in
2 process with them, and then you do a contract with
3 the JROTC Command. So you have two contracts
4 because it's -- but the JROTC Command submits your
5 pay over to the school, and the school pays your
6 full salary.

7 Q. Okay.

8 A. So when my first paycheck came and I
9 noticed I was not getting my full salary, I
10 brought that up, and that's when I found that my
11 CNACI had to be complete first before the JROTC
12 Command would consider me an actual full JROTC
13 instructor for them. What they did was they just
14 recognized me in that position until that CNACI.

15 Q. Okay. So I just want to clarify things
16 a little bit here. With regard to the
17 certification, what we looked at with Exhibit 4,
18 it sounds like what you're telling me is that the
19 three-year timeframe had expired before you
20 started with Aynor High School, but you all were
21 able to -- through Colonel Davis or some other
22 means, you were able to get an extension --

23 A. Colonel Davis did the extension with the
24 JROTC command, exception to policy for Horry
25 County.

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1 Q. And that extended the expiration date of
2 your certification so that you could get in the
3 window and hold the position to prevent that
4 certification from expiring?

5 A. Right. So to follow on that, for a
6 JROTC instructor, once they start working in
7 JROTC -- say your certification is fine -- it's
8 fine once you complete the school year, and then
9 you start another one. Because it's a continuous
10 position. So as long as you don't have an
11 extended period or break, then you're able to
12 continue on to work as a JROTC instructor.

13 Q. Right. And you are alleging that your
14 certification to be a JROTC instructor has now
15 expired, correct?

16 A. My certification to be a JROTC
17 instructor was only -- for the exception of
18 policy, was only for Horry County Schools. And
19 since I never did sign in with the JROTC command,
20 when I was let go from Horry County Schools, my
21 certification was lapsed -- past the three months
22 now.

23 Q. So the exception was solely for the
24 position with Horry County?

25 A. Yes.

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1 Q. So -- okay. So, then, the CNACI -- was
2 the CNACI process ever completed, to your
3 knowledge?

4 A. Yes.

5 Q. When?

6 A. I believe it was completed -- I know for
7 a fact it was completed in July, but I think it
8 was completed a little bit earlier. But I did not
9 get the e-mail from the CNACI until July of the
10 certificate.

11 Q. July of 2018?

12 A. '19.

13 Q. '19. Okay. All right. Paragraph 17
14 says that, "When he began teaching, he became
15 aware through a direct communication that Junior
16 JROTC Instructor Sergeant First Class David Jones
17 planned to leave the district in December of
18 2018." Is that correct?

19 A. Yes. He had told me that he had planned
20 on leaving.

21 Q. When did he tell you that?

22 A. I believe it was in the month prior,
23 November.

24 Q. The month prior to him leaving?

25 A. Yes. So in November, he had stated that

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1 he had planned on leaving in December.

2 Q. Do you know if he made that known to the
3 students?

4 A. I do not know. He was close to them.
5 He may have, but I do not know.

6 Q. You know -- in the next sentence you
7 say, "The students were fond of Sergeant Jones,
8 presumably because Sergeant Jones had been in the
9 position longer and had formed closer
10 relationships with the students." Is that a
11 personal belief of yours?

12 A. It's from observation and his
13 interactions with the students --

14 Q. Okay.

15 A. -- and with the parents.

16 Q. Okay. Did any of the students ever tell
17 you anything along those lines?

18 A. Yes. They said they loved Sergeant
19 Jones and hugged him all the time.

20 Q. And can you think of anyone in
21 particular -- any student in particular?

22 A. Um, I -- most of the current students
23 that were in leadership positions.

24 Q. Are any of the former students that were
25 recently deposed in this case students that you're

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1 referring to in paragraph 17?

2 A. Yes.

3 Q. And who would that be?

4 A. Alicia Prada (ph), Krause (ph). Is it
5 Abigail? I'm trying to recall their names off the
6 top of my head. I can't remember their names
7 specifically, but those are normally the ones in
8 leadership.

9 Q. Do you know what type of certifications
10 or qualifications that Sergeant First Class David
11 Jones had for his position?

12 A. His qualifications would have been the
13 memo from the JROTC command and then the CNACI
14 background check.

15 Q. But do you know if his qualifications
16 were the same as yours?

17 A. I believe all qualifications for JROTC
18 instructors are the same.

19 Q. Do you believe that Sergeant First Class
20 Jones would have been qualified to serve in the
21 same position that you took with Aynor High
22 School?

23 A. No. Only if it was rewritten to -- from
24 an officer position to an NCO position.

25 Q. So explain to me how that works.

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1 A. So each JROTC, depending on the size --
2 so you have an officer and an NCO. So the
3 position would be either an officer position, so
4 you would have a warrant officer or a commissioned
5 officer, and the other position would have a
6 noncommissioned officer. So you're either -- in
7 order to be qualified -- for me to work as a
8 noncommissioned officer, I would have to be an NCO
9 and not an officer and vice versa. Do they do the
10 exact same stuff? Pretty much, yes, absolutely.

11 Q. But with regard to this particular
12 situation, you were in the officer slot? Is that
13 fair?

14 A. That's correct.

15 Q. And Jones was in the noncommissioned
16 officer slot?

17 A. Correct.

18 Q. Is it a situation where you were
19 qualified to do both or to do either but he was
20 only qualified to do his? Does that make sense?
21 You had a higher rank than him, right?

22 A. Well, the position calls for the
23 teaching part, the curriculum part. I believe
24 anybody can do it because it is a program of
25 instruction that you are provided with, so -- just

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1 like any curriculum that a teacher provides. But
2 for doing the outside of the classroom labs that
3 required an NCO for a drilling ceremony and an
4 officer for other events, then, no.

5 MR. ARTHUR: All right. I need to take
6 another restroom break.

7 (The deposition went off the record.)

8 BY MR. ARTHUR:

9 Q. Major MacDonald, we're back on the
10 record after a short break. In paragraph 18, you
11 -- there's an allegation that says -- this is the
12 second sentence that I'm looking at. "Upon
13 information and belief, some of the students in
14 the JROTC program at Aynor High School are
15 involuntary placed in the course by
16 administration, believing the students, some with
17 disciplinary issues, could benefit from the
18 structure of the JROTC program." What is the
19 basis of that allegation?

20 A. We had a couple of students in there
21 that were involuntarily placed into the program.
22 They were -- unbeknownst to me, because, as a new
23 instructor, I'm learning how students are put into
24 courses, where they're coming from. A couple of
25 these students were disciplinary issues, where in

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1 the past -- I forget the number -- acronym,
2 whatever they call it -- 401 -- I forget what they
3 call it, the 401, 501 or whatever, which indicates
4 that that's a disciplinary issue student; they
5 have to set up a plan for that student where they
6 meet with the parent and so forth.

7 So I would have students that would not
8 want to participate at all; and asking why they
9 are not participating, was, I did not select this
10 course; I don't want to be in this course.

11 So those students were a disruption
12 continuously to the course. And the expectation
13 was that somehow a JROTC instructor would provide
14 more discipline to said student.

15 Q. Did anybody ever tell you that that was
16 the expectation?

17 A. Yes.

18 Q. Who did?

19 A. So Sergeant Jones said these students --
20 and I believe Michael McCracken has stated that
21 some of these students that are in this program
22 would benefit from a more structured curriculum,
23 where they're in a uniform, by the JROTC.

24 Q. What I'm interested in, though, is, did
25 anybody ever tell you that they believed that

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1 those specific students would benefit from more
2 structure because they were disciplinary problems?

3 A. I cannot say they said that because they
4 are disciplinary problems, other than, in the
5 past, their attitude in the school inhibits for
6 them to have a good outcome in the learning
7 process. And they thought by putting them in the
8 JROTC, that they would have a better attitude and
9 be better able to focus and learn.

10 Q. Can you identify any student that you
11 believe was involuntarily enrolled in the JROTC
12 program?

13 A. I would have to look at the names and
14 the pictures to recall their name.

15 Q. Were any of the students that submitted
16 allegations of inappropriate conduct against you
17 students that you believe were involuntarily
18 enrolled in the JROTC program?

19 A. No.

20 Q. All right. Let me turn your attention
21 to paragraph 35. It says, "While Plaintiff's
22 career remained in limbo for over 20 months,
23 Plaintiff had several opportunities for alternate
24 employment that were blocked by the deliberate
25 inactions of the district and Defendant Maxey."

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1 Is that your allegation?

2 A. Yes.

3 Q. Paragraph 36 talks about the JROTC
4 position at Green Sea Floyds. Paragraph 37 talks
5 about an application for a position at Coastal
6 Carolina. Paragraph 40 talks about the JROTC
7 position at Hannah-Pamplico. Are there any other
8 employment opportunities that you pursued in
9 addition to those three that are discussed in your
10 Complaint?

11 A. Yes. But they were not JROTC positions.

12 Q. Okay. In terms of -- let's break it
13 down. The three that are referred to in your
14 Complaint, Green Sea Floyds, Coastal Carolina --
15 and to be fair, Coastal Carolina was not an ROTC
16 position?

17 A. Correct.

18 Q. -- and then Hannah-Pamplico -- so Green
19 Sea Floyds was ROTC, Hannah-Pamplico was ROTC, and
20 Coastal Carolina was waste management coordinator;
21 is that correct?

22 A. Correct.

23 Q. Did you pursue all three of those
24 employment positions prior to the school board
25 appeal decision?

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1 A. Yes.

2 Q. And did you pursue any other employment
3 opportunities prior to the school board appeal
4 decision?

5 A. Yes.

6 Q. And what were those?

7 A. The --

8 Q. I see another one in Whiteville, North
9 Carolina.

10 A. The other ones were overseas military
11 contracting positions, which would have me
12 deployed -- work out of the country.

13 Q. Okay.

14 A. As I was trying to find work other than
15 the education system that relied on my experience
16 in the military.

17 Q. Okay. Tell me about that. What --
18 specifically what position were you pursuing?

19 A. One was with the CBRN. I was a chemical
20 officer. So I was trying to work with the --
21 overseas in a capacity of doing military operation
22 contract work.

23 Q. Okay. And you were not able to secure
24 that position?

25 A. No. A lot of those jobs also were

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1 dependent upon that company getting the contract
2 for the -- for that work. So you -- normally you
3 apply and then, upon them getting your information
4 and they got the accepted bid contract, and you
5 get to call in. So for one I was working with, I
6 was helping them write the bid work for that, but
7 they didn't get the job. They didn't get the bid.

8 Q. Are there any employment opportunities
9 that you sought that are not identified in the
10 Complaint that you believe you were not able to
11 secure because of the issues with Horry County
12 Schools?

13 A. Specifically the ones that are in the
14 Complaint.

15 Q. And it sounds like you believe that you
16 did not get -- or you did not receive the
17 positions that are identified in the Complaint
18 because no one at the district responded to any
19 requests for employment references; is that
20 accurate?

21 A. I know for one specifically, that is
22 accurate. And I do not know for the Green Sea job
23 since it was open and I never got an interview,
24 which I was qualified for.

25 Q. Okay.

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1 A. For every JROTC position that I've been
2 qualified for, I've gotten an interview.

3 Q. So which ones were those?

4 A. Well, when I was in North Carolina
5 trying to get a JROTC position prior to the Aynor
6 one, I had South High School -- I believe it was
7 South High School, in Fayetteville. The one after
8 that was South Brunswick -- Southport -- excuse me
9 -- Southport, and that's when I actually met
10 Colonel Davis. And he put me on his radar for
11 when positions open up that he knew about.

12 So the next one after that was Loris I
13 applied to. And then the next one after that was
14 Aynor I applied to. So every position I applied
15 for, I've always had an interview and a JROTC
16 position. So when these false allegations came
17 about and I was put on the admin leave and it was
18 just running, running, running, the Green Sea job
19 opened up, and I thought, I'll just apply for
20 that, and if the issue is me -- personally me, me
21 being at Aynor High School, then I'll go to a
22 different high school. But I never even got a
23 response back from the Green Sea application.

24 Q. So your understanding is -- from your
25 earlier testimony, your understanding is that the

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1 principal at -- the principal and/or the
2 superintendent at Florence County that was over
3 Hannah-Pamplico reached out to the Horry County
4 School District for a reference, correct?

5 A. Correct.

6 Q. And they did not receive a response?

7 A. Correct.

8 Q. Did they tell you that?

9 A. Yes.

10 Q. Who told you that?

11 A. The superintendent.

12 Q. Do you recall his name?

13 A. Neal Vincent.

14 Q. Have you received similar information
15 from any other prospective employer; that is, you
16 submitted an application and they told you later
17 that they tried to get a reference from Horry
18 County and that no one responded?

19 A. No.

20 Q. Have you attempted to secure that kind
21 of information from any of those prospective
22 employers?

23 A. I did for Coastal, but I got -- I did
24 not get a response.

25 Q. So is it fair to say that you do not

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1 know what, if anything, Coastal did when
2 considering your application?

3 A. That's correct.

4 Q. Did you disclose the situation with
5 Horry County Schools to anyone at Coastal?

6 A. No.

7 Q. Did you disclose the situation with the
8 Horry County Schools to anyone at Green Sea
9 Floyds?

10 A. No.

11 Q. How about, did you disclose the
12 situation with Horry County Schools with anyone at
13 Whiteville city schools in Whiteville, North
14 Carolina?

15 A. Yes. The principal.

16 Q. What did you tell the principal?

17 A. I told the principal, currently I'm on
18 administrative leave pending the board hearing.

19 Q. Did you tell him any -- did you give him
20 any details about the situation?

21 A. No.

22 Q. Did you tell him why you were on
23 administrative leave or your understanding of why?

24 A. I just told him that I was on
25 administrative leave pending -- well, I did tell

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1 him, pending alle- -- false allegations and I was
2 waiting for the board hearing for the appeal.

3 Q. Did you ever have any further
4 communication with anybody with Whiteville city
5 schools?

6 A. No.

7 Q. And you don't know what, if anything,
8 they did to evaluate you for employment?

9 A. No.

10 Q. Do you have any knowledge that Dr. Maxey
11 or anyone connected with the district ever
12 affirmatively contacted any prospective employer
13 and provided a negative reference for you?

14 A. I have no knowledge.

15 Q. Do you have any suspicion that that
16 happened?

17 A. I do not know.

18 Q. Because, I mean, in reading your
19 Complaint, it seems to me that your Complaint is
20 that they didn't respond to requests that were
21 received, not that they, you know, affirmatively
22 told someone that they shouldn't consider you for
23 employment; is that fair?

24 A. Can you repeat that? I just want to
25 make sure.

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1 Q. When I read your Complaint, I take it --
2 I interpret your Complaint, at least in part, to
3 be a Complaint that no one from the school
4 district responded to any request for employment
5 references about you. Is that fair?

6 A. That's correct.

7 Q. And that there does not appear to be any
8 allegation in there that anyone from the district
9 ever affirmatively provided negative information
10 to a prospective employer about you?

11 A. I do not know.

12 Q. You don't have any reason to believe
13 that anyone with the school district actively
14 engaged in any conduct for the purpose of
15 preventing you from employment, do you?

16 A. I only know that they actively did not
17 provide information so that I could be hired on at
18 Hannah-Pamplico by not responding to the
19 superintendent's request.

20 Q. Okay. What was the last employment that
21 you pursued?

22 A. My last one would be last week when I
23 applied for a position with North Myrtle Beach
24 City.

25 Q. For what? What job?

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1 A. For a project analyst.

2 Q. Okay. And that's with North Myrtle
3 Beach City Government?

4 A. Yes.

5 Q. Have you received any communication
6 about that?

7 A. I have not.

8 Q. Did you provide any information in that
9 application -- well, strike that.

10 Did you have to submit an application
11 for that position?

12 A. Yes.

13 Q. And did you provide any information in
14 that application regarding your prior employment
15 with Horry County Schools?

16 A. Yes. I listed them as the prior
17 employer.

18 Q. Okay. Did you disclose any information
19 about the circumstances of your employment with
20 Horry County Schools?

21 A. No.

22 Q. Or the circumstances of your separation
23 from Horry County Schools?

24 A. No.

25 Q. Have you pursued any employment outside

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1 of Horry County, other than what is in the
2 Complaint and the military -- it wasn't a military
3 job, but you told me about a job that you would
4 rely on your military experience with.

5 A. Correct.

6 Q. And that was obviously outside of Horry
7 County?

8 A. Yes, that's correct.

9 Q. And then the position in North Carolina
10 is outside of Horry County. Is there anything
11 else that you've tried -- any other employment
12 you've tried to get outside of Horry County?
13 Obviously Hannah-Pamplico is outside of Horry
14 County too. But I'm looking for stuff that's
15 outside of what is in the Complaint.

16 A. I have not applied for any other JROTC
17 jobs outside of Horry County other than the ones
18 that are listed in the Complaint. The only jobs
19 I've applied for outside of Horry County would be
20 government service jobs dealing with environmental
21 management and operations officer for positions
22 that would be either in D.C. or Virginia, which
23 are outside of the scope of education, doing
24 JROTC.

25 Q. Okay. Have you applied for any

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1 unemployment benefits?

2 A. Yes.

3 Q. When did you do that?

4 A. Shortly after Horry County Schools
5 terminated me in December.

6 Q. And were you approved?

7 A. Yes.

8 Q. Are you currently receiving unemployment
9 benefits?

10 A. No.

11 Q. How long did you receive them?

12 A. I'm not quite sure. I think maybe six
13 months.

14 Q. Do you recall the amount that you
15 received and how frequent?

16 A. I think it was like -- was it a thousand
17 dollars a month or something? I would have to go
18 back and look. But I do know I was applying for
19 positions through the South Carolina State
20 Government job website also. I remember that.

21 Q. Have you ever applied for disability
22 benefits?

23 A. I receive disability benefits from the
24 military, from the V.A., from services...

25 Q. From your prior --

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1 A. Yes.

2 Q. -- service?

3 A. That's right.

4 Q. How much is that?

5 A. \$1,600 a month.

6 Q. A month. Okay. But you haven't pursued
7 any type of disability benefit because of mental
8 health reasons associated with your employment
9 with Horry County?

10 A. No.

11 Q. You just said you submitted an
12 application for employment with North Myrtle Beach
13 last week, right?

14 A. Last week or the week prior, yes.

15 Q. Have you submitted any other
16 applications for employment at any other
17 businesses or entities this calendar year?

18 A. Not -- no, I have not.

19 Q. I guess what -- maybe a better question
20 is, you know, are you actively seeking employment?

21 A. I actively am seeking a position that
22 will allow me to try to maintain the type of
23 income I had before and where it would help cover
24 childcare costs if I take that position to
25 alleviate my wife from working the additional

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1 part-time job she does.

2 Q. Which is what?

3 A. The McLeod.

4 Q. Your First Cause of Action is
5 interference with contractual relations. What
6 contract are you referring to there?

7 MS. RHODES: Object to the form.

8 Q. This is on page 11. I'm sorry.

9 A. For the following school year, I was not
10 offered a contract because of the lateness of
11 Horry County School District in providing the
12 board hearing. If they had provided the board
13 hearing, based off of what the board had stated, I
14 would have resumed teaching. At the time of the
15 board hearing, Aynor had already hired another
16 JROTC instructor even though I was on
17 administrative leave.

18 Q. Has anybody ever -- has anybody with the
19 district ever told you that, if you had just had
20 the board hearing sooner, you would have gotten a
21 second contract?

22 A. No one in the district told me that by
23 having the board hearing, I would not receive the
24 contract.

25 Q. So --

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1 A. Because, based off the letter on April
2 30th, the board can appeal what Dr. Maxey had
3 recommended. That's based -- based off that
4 letter and that appeal to the board, that they
5 would find in favor of myself.

6 Q. Right. But you would agree that the
7 board ultimately issued a decision that they felt
8 it was best for you to no longer be employed by
9 the school district; is that correct?

10 A. Yes. That's what the letter of April
11 30th -- I mean, that's what the letter from the
12 August date that was sent to me said.

13 Q. Right. But the -- are you saying that
14 the First Cause of Action has to do with the fact
15 that you were not provided a second contract for
16 the 2019-2020 school year?

17 MS. RHODES: Object to the form.

18 A. Yes. They placed me on administrative
19 leave on December 4th and then did not discuss the
20 following year contract that the board should have
21 had prior to the start of the new school year. So
22 if -- I have no idea if the board would have ruled
23 in favor of me or if they ruled the same -- how
24 they did when I spoke with them. Then stated
25 that, yes, the false allegations are insufficient

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1 to say that you did anything, but we are not going
2 to rehire you. I had no idea that that would
3 happen and neither does the board, because they
4 did not provide me a board hearing prior to the
5 start of the school year.

6 Q. So paragraph 50, if you would, the next
7 page, it says, "Plaintiff had a contractual
8 relationship with the district which would have
9 been continued but for the intentional actions and
10 inactions described above of Defendants." So what
11 I would like to know is, what's the basis for your
12 allegation that it would have been continued if it
13 weren't for the actions of others?

14 A. If they would have supposedly concluded
15 their investigation in a timely manner, I then
16 would have had an opportunity to address the board
17 prior to May or April about these allegations.

18 Q. Has anybody from the district or any
19 school board member told you that if you had had a
20 hearing sooner, you would have gotten a second
21 contract?

22 A. No. Based off of their April 30th --
23 the board can appeal whatever decision the
24 superintendent made. So based off that
25 assumption, I would assume I would have gotten a

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1 contract.

2 Q. So what were the intentional actions of
3 Dr. Maxey that you believe interfered with your
4 relationship -- contractual relationship with the
5 district?

6 A. Delaying the board meeting --

7 Q. Okay.

8 A. -- repeatedly.

9 Q. What were the inactions of Dr. Maxey, if
10 any, that you believe contributed to interference
11 with your contractual relationship with the
12 district?

13 A. Delaying the board meeting.

14 Q. How do you believe the district
15 interfered with your contractual relationship with
16 the district?

17 MS. RHODES: Object to the form.

18 A. All the letters from my legal counsel
19 went to the district and the board. The district
20 interfered on that by not taking up the action and
21 presenting it in a timely manner to get to the
22 board hearing by delaying, delaying, delaying.

23 Q. Your Second Cause of Action is for
24 interference with prospective contractual
25 relations. So what I would like to know is, what

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1 prospective contractual relations do you believe
2 were interfered with?

3 MS. RHODES: Object to the form.

4 A. When I went to Hannah-Pamplico School
5 District and I spoke with the principal and then
6 later the superintendent, I made them aware of --
7 that I was on administrative leave and the process
8 I was going through with Horry County Schools.
9 The superintendent stated he was interested in me,
10 and he reached out to the superintendent, Maxey,
11 for a reference and he did not get a response
12 after reaching out a couple of times. And when I
13 had spoke with the superintendent, he had
14 indicated I have to have a letter from the school
15 so I can present it to the board for all teachers
16 that are coming from another location; it's part
17 of our hiring policy. Without that letter, I
18 could not be hired on at Hannah-Pamplico.

19 Q. And do you believe that there was some
20 obligation -- that Dr. Maxey had some obligation
21 to respond to the request?

22 A. I do not know about legal obligations.
23 All I know is professionally, when a
24 superintendent from one district contacts another
25 superintendant, I would think they would speak to

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1 each other. Because I do know superintendents go
2 to group conferences and they talk to each other.
3 I can only tell you from my experience in the
4 military, if a colonel of a brigade contacts
5 another colonel from another brigade about the
6 transfer of an individual to their brigade, that
7 that colonel would then proceed to tell them what
8 they thought about that person. That's what you
9 do about your personnel.

10 Q. In the military?

11 A. Absolutely.

12 Q. Right. This was not the military,
13 though?

14 A. No. It's just a professional courtesy I
15 would expect from another professional.

16 MR. ARTHUR: Let's go off the record a
17 second.

18 (The deposition went off the record.)

19 BY MR. ARTHUR:

20 Q. Is it your belief that the only way you
21 could have gotten the job at Hannah-Pamplico was
22 if Dr. Maxey responded to the request for a
23 reference?

24 A. When I spoke to the superintendent,
25 Vincent, I was currently on administrative leave

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1 with Horry County Schools. The superintendent
2 indicated to me -- he goes, it doesn't matter what
3 the response was, he just needed a response. So
4 it can be neutral, negative, positive. It didn't
5 matter; he just had to have a response from the
6 school.

7 Q. At any time during your employment with
8 Horry County Schools -- at any time after these
9 allegations came forward, were you provided an
10 opportunity to resign in lieu of administrative
11 leave or termination, any of that? Were you ever
12 approached by anybody at the district about
13 resigning?

14 MS. RHODES: Object to the form. Off
15 the record.

16 (The deposition went off the record.)

17 BY MR. ARTHUR:

18 Q. I will rephrase. At any time after
19 these allegations came to light in the fall of
20 2019 -- excuse me -- in the fall of 2018, did you
21 consider resigning your employment with Horry
22 County School District?

23 A. No.

24 Q. Did you ever have any follow-up
25 conversations with Neal Vincent regarding his

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1 request to Horry County School District for a
2 reference?

3 A. I had a follow-up conversation with him,
4 I believe, after I was terminated from Horry
5 County Schools. But, by then, Hannah-Pamplico had
6 filled their position.

7 Q. Okay.

8 A. And he repeated again that he still
9 never got a response from Horry County Schools.

10 Q. Do you know if he ever spoke with Dr.
11 Maxey about your employment with Horry County
12 Schools?

13 A. He told me he never got an opportunity
14 to speak with Dr. Maxey.

15 Q. Do you know if Neal Vincent ever spoke
16 with anybody at Horry County Schools about your
17 employment with Horry County Schools?

18 A. I do not know.

19 Q. Your Fourth Cause of Action is for
20 intentional infliction of emotional distress. And
21 it indicates that it is directed to all
22 Defendants. So what I would like to do is go down
23 the list of all of the Defendants and ask you for
24 each Defendant what they did or what you claim
25 they did to intentionally cause you emotional

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1 distress. Okay? So the first one is Horry County
2 School District. What did it do to cause you
3 emotional distress?

4 MS. RHODES: Object to the form. You
5 can answer.

6 A. When I was placed on administrative
7 leave on December 4, 2018, I had never been
8 accused of any type of misconduct with females.
9 Any time in my military career, as commander,
10 platoon leader, battalion commander, all of that,
11 never as a gymnastics coach for girls, a soccer
12 coach for girls, as a youth leader. So I was
13 rightly shocked when these allegations came out.

14 And as time went on and there was no
15 response from the Horry County School District, no
16 response from supposedly my leadership,
17 superintendent, board members, principal,
18 assistant principal, about -- anything about my
19 case, about the timeline, what was going on, other
20 than I was on administrative leave. And as time
21 went on and then my children thought I was -- my
22 one child thought I was going to jail; my other
23 children, who are in the Horry County Schools, the
24 high school, the middle school and elementary,
25 especially my high schooler, they thought, you

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1 know, I was a sex offender on the registry, all
2 due to sexual misconduct allegations and the
3 discussions my wife and I were having about why I
4 was no longer teaching.

5 So it was compounded by the fact that my
6 future employment was in limbo; we had moved
7 within a couple weeks down here. My wife and I
8 tried to do everything we can to speed up this
9 process, to request resolution early, and the
10 Horry County Schools just kept doing -- basically
11 not doing anything, no response.

12 And so when my children started getting
13 questioning looks at the church -- at Conway First
14 Baptist Church youth group, who had kids that went
15 to Aynor, my Sunday school -- my youth leader was
16 an administrator at Conway High School, we had a
17 board member there, we had people from that area,
18 and it became blatantly obvious that something was
19 going on when my kids are getting asked, Hey,
20 what's up with your dad? What's going on?

21 And at the time, my wife is pregnant.
22 And then when my child is born, nobody from the
23 Sunday school calls us, asks us about how we're
24 doing. It's the first time -- I've got four
25 children. Every church I've been in has always

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1 asked how you are after your child is born. But
2 the uncomfortableness of that situation and then
3 what my children were going through, it led me
4 down to a downward spiral, and it about ruined my
5 marriage; this whole process about ruined my
6 marriage.

7 Q. What is it that the district did, in
8 your mind, that you believe was an intentional
9 infliction of emotional harm to you?

10 A. I think it was very intentional of the
11 district by not speedily resolving this case.

12 Q. What do you believe the district should
13 have done?

14 A. I think the district, after January 1st,
15 should have stated whether or not they're going to
16 recommend rehire or not or state that there's no
17 further issue with these allegations.

18 Q. So are you saying that it's the -- it
19 was the delay in a resolution that caused the
20 emotional harm?

21 A. I think the delay led into that my kids
22 had a dad that was home, wasn't going to school
23 anymore and everybody in the community was like,
24 What's up with your dad? And then, come to find
25 out through -- come to find out from my oldest

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1 daughter, who had friends in Conway, Myrtle Beach
2 and so forth, that it was known that, Your dad is
3 not at Aynor anymore because of some issues there.

4 And that led to other items, being that
5 if it was not for this -- false allegations and
6 then the lack of compassion and process of how
7 Horry County Schools handled this, I wouldn't have
8 been -- when your children think you're a sex
9 offender and then their friends around you think
10 there's something up with your dad and then
11 there's no more sleep-overs at your house -- we've
12 never had a sleep-over at my house since I've
13 moved to Myrtle Beach. I've got four girls. And
14 then when -- supposedly you're part of a church
15 community, and then, all of a sudden, you're not a
16 part of a church community, it has an effect on
17 you emotionally of how you're going to care for
18 your children, how you speak with the current
19 administration of the schools that your children
20 are in, how -- when you've got to go out to the
21 elementary, talk to her principal because your
22 daughter thinks that you're getting ready to go to
23 jail, and that she's hypersensitive, so that she
24 can have some type of learning environment and
25 have somebody that has some empathy for her.

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1 It's -- when -- you just -- it's -- they
2 almost ruined my marriage. They almost caused me
3 to lose my kids and my marriage, all due to
4 this -- accusations and how they are handling it.
5 This is prior to me going to the board, waiting.

6 Q. Did you share with your wife what the
7 allegations were?

8 A. Absolutely.

9 Q. Did you share with your children what
10 the allegations were?

11 A. Absolutely.

12 Q. And did you tell your wife that you did
13 not do what the students alleged you had done?

14 A. Absolutely, categorically denied
15 everything.

16 Q. And did you tell your children that you
17 did not do what the students alleged you had done?

18 A. Absolutely.

19 Q. Do you have any reason to believe that
20 your wife did not believe you?

21 A. No.

22 Q. Do you have any reason to believe that
23 your children did not believe you?

24 A. No.

25 Q. Do you have any reason to believe that

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1 anyone at Aynor High School that was employed by
2 the district made the allegations of the students
3 public?

4 A. I do not. But the issue is my wife is
5 from Tabor City, North Carolina. A lot of the
6 teachers that work in the Horry County School
7 District are retired teachers from North Carolina,
8 from Plymouth County. So when I no longer worked
9 at Aynor and it became apparent I wasn't there any
10 longer, they all had questions. It became a known
11 fact that I was no longer there due to some type
12 of issue going on at Aynor High School, which made
13 its rounds.

14 Q. But it was not a surprise to you that
15 the allegations of the students was investigated,
16 was it?

17 A. I would expect any allegation from a
18 student to be investigated, absolutely.

19 Q. Right. So do you believe that Principal
20 McCracken intended to cause harm to you?

21 A. I do not know if McCracken's lack of
22 procedures and how he handled it was his intention
23 to cause harm.

24 Q. Do you believe that he did anything
25 outside of his job as the principal of Aynor High

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1 School to cause harm to you?

2 A. I do. I think it's part of his job that
3 it's his responsibility to make sure that a proper
4 investigation was conducted and conducted in a
5 timely fashion. I also think, as a supervisor,
6 when he called me to his office on December 4th
7 and told me that I need to go up to HR to meet
8 them, that when I asked him what I was meeting
9 them about, that he would have told me. Instead,
10 he told me he did not know.

11 Q. Do you know if he did know?

12 A. Yes, I do know.

13 Q. Why do you know that? How do you know
14 that?

15 A. Because after receiving -- from the
16 written deposition documents in there, it stated
17 from Neal to McCracken, Hey, I need to talk to you
18 and -- before I talk to -- to me.

19 Q. What I want to know is what do you
20 believe Principal McCracken did with the intention
21 that you be emotionally harmed by it?

22 A. I do not know if that was his intention
23 or not.

24 Q. Would you agree that the things that
25 Principal McCracken did do were things that he did

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1 because of his job being the principal of Aynor
2 High School? I understand that you disagree with
3 how he did his job. But did he do anything that
4 was outside of his role of principal of Aynor High
5 School?

6 A. I do not know.

7 Q. How about Brandon Todd; do you have any
8 reason to believe that he wanted to bring harm to
9 you or intended to cause harm to you?

10 A. I do not know, other than he just took
11 statements without doing anything with them, other
12 than passing them up.

13 Q. And Mary Anderson, do you believe she
14 intended to cause you harm in some way?

15 A. I do not know what she intended. All I
16 know is that she had a document ready for me to be
17 placed on administrative leave while she was at a
18 conference. I don't know.

19 Q. Do you believe that Dr. Maxey intended
20 to cause harm to you?

21 A. Well, I think Dr. Maxey's indifference
22 is what caused the harm. I will go back and say
23 that Mary Anderson had already recommended to Dr.
24 Maxey what she thought -- if I should be rehired
25 or not, and then he proceeded to go with that. I

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1 think when I repeatedly request audiences with Dr.
2 Maxey to try to get this resolved, after waiting
3 months and months and months, that it resulted in
4 this prolonged affair that just kept going down a
5 rabbit hole.

6 Q. Now, you were not criminally charged
7 with anything related to these allegations, were
8 you?

9 A. No.

10 Q. And are you aware of even any criminal
11 investigation related to these allegations?

12 A. I'm not aware.

13 Q. You never -- you were never interviewed
14 by any law enforcement agency or officer related
15 to these allegations, were you?

16 A. No.

17 Q. And you certainly have not been placed
18 on the sex offender registry because of these
19 allegations?

20 A. No.

21 Q. To your knowledge, was there any media
22 coverage of your suspension, your administrative
23 leave from the school?

24 A. Not that I'm aware of.

25 MR. ARTHUR: I think I'm about finished,

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1 if you'd just bear with me a minute or two.

2 (The deposition went off the record.)

3 BY MR. ARTHUR:

4 Q. Major MacDonald, I understand that you
5 are concerned that people are curious about why
6 you no longer work at Aynor High School. Is that
7 fair?

8 A. Yes.

9 Q. Have you had any conversations with any
10 members of your church or parents of children that
11 are friends with your children about the
12 allegations and your side of the story?

13 A. The only friends I spoke with about
14 that, they live in Utah, close friends that we
15 were church members with. And he's a special ed
16 teacher and his wife is a principal. And she was
17 one of the letters of reference that I used for
18 that position.

19 Q. Has anybody contacted you and told you
20 that they heard about the allegations made by the
21 students at Aynor High School and they believed
22 them to be true?

23 A. No one has contacted me personally.

24 Q. Have you heard rumors of that?

25 A. Not that I'm aware of. I'm not sure if

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1 my wife or in-laws had heard something through
2 their friends in the school system.

3 MR. ARTHUR: Let's go off the record for
4 a second.

5 (The deposition went off the record.)

6 BY MR. ARTHUR:

7 Q. Are you claiming that your reputation
8 has been negatively impacted by this situation?

9 A. Yes.

10 Q. And I guess what I want to know is, when
11 we go to try this case, what are you going to tell
12 the jury about how you believe your reputation has
13 been negatively impacted?

14 MS. RHODES: Object to the form. You
15 can answer.

16 A. Right now members of the Aynor community
17 know about these allegations from the students
18 that went to school there and so forth and the
19 board members. And then also, based off what the
20 board members put out in their board meeting, not
21 recommending to rehire, even though -- about these
22 allegations. I feel like they -- they said one
23 thing but not the other. Either you -- they
24 didn't say I didn't do it; they just said there's
25 no evidence either that I didn't or did do it.

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1 So for me, during this whole process,
2 there's always been -- there's -- there's a shade
3 over any action I do in the eyes of that -- that
4 has anything to do with working with kids.

5 Q. That's what you believe?

6 A. Well, that's what I came to believe
7 based off of what my children were being asked at
8 school, what they were asked at that youth group
9 there, and by the actions of the Sunday school
10 there of basically not -- not totally welcoming
11 you; but just -- when we didn't return back to
12 that Sunday school, we never got a call. When
13 COVID happened, you're at the house. So we had
14 been going to that church since we moved down
15 here, and then we don't come back to that church,
16 but there's no call. We're on their group rosters
17 for all that. And there's -- okay. That's it.

18 Q. What church are you referring to there?

19 A. The Conway First Baptist Church.

20 Q. Conway First Baptist. Okay.

21 A. When we first moved to Myrtle Beach, we
22 started going to church there to be part of the
23 community that was closer toward Aynor. And that
24 church had a large youth group with kids from
25 Aynor, Conway and so forth and members of that

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1 community.

2 Q. Has anybody ever contacted you and said,
3 Hey, Major MacDonald, I'm concerned because I'm
4 hearing things about something happening at Aynor,
5 and I want to hear your side of the story?

6 A. No.

7 MR. ARTHUR: All right. I think that's
8 all the questions I have for you today. I
9 appreciate your time today. I know this has
10 not been easy, and I'm sorry we had to meet
11 under these circumstances.

12 THE WITNESS: Thank you, sir.

13 MS. RHODES: I do not have any
14 questions.

15 (The deposition concluded at 2:39 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 21st day of April, 2022, in the City of Charleston, County of Charleston, State of South Carolina.



Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
November 18, 2024

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ERRATA SHEET

I have read the transcript of my deposition
and find that no changes are necessary.

JASON J. MacDONALD

Having read the transcript of my deposition, I
wish to make the following corrections (Please
state reason):

Page ____ Line ____:

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JASON J. MacDONALD

Sworn to and subscribed before me this
day of _____,
County, S.C.

Notary Public

My commission expires

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Major Jason J. MacDonald,
Plaintiff,

v.

Horry County School District, Dr. Rick
Maxey, in his individual and official
Capacities, Michael McCracken, in his
Individual and official capacities, Brandon
Todd, in his individual and official
capacities, and Mary Anderson, in her
individual and official capacities,
Defendants.

Case No. 2020-CP-26-05790

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD:

COMES NOW the Plaintiff, Major Jason MacDonald, by and through undersigned counsel, respectfully submitting this memorandum of law in opposition to Defendants' Motion for Summary Judgment filed on February 14, 2023.

STATEMENT OF THE CASE

Plaintiff asserts that he was falsely accused of making inappropriate comments to female students when he served as a JROTC instructor at Horry County School District (Defendant) in the fall of 2018. Defendant placed Plaintiff on administrative leave. While on leave Defendant failed to conduct a fair and adequate investigation which led to Defendant's decision not to renew Plaintiff's contract for the 2018-2019 school year. Plaintiff timely requested a hearing before the board to appeal the decision. Defendant did not grant Plaintiff an appeal for twenty (20) months after he was placed on leave. In the intervening time, Defendant refused to provide Plaintiff's

potential employer with a reference which prevented him from being able to find another job in his chosen field. On appeal the Board found that there was insufficient evidence to substantiate the termination but refused to return Plaintiff to work. When Plaintiff was not returned to work after being placed on leave and was not returned to work after the Board found there was insufficient evidence, the message to the students, parents, and the community was that Plaintiff had actually done something wrong, which harmed his reputation and defamed his character. Additionally, the District lost invaluable and irreplaceable personal items of Plaintiff's.

Plaintiff asserts the following actions against Defendant Horry County School District ("Defendant"): interference with prospective contractual advantage, defamation, and intentional infliction of emotional distress. Plaintiff requests that Defendant's Motion for Summary Judgment be dismissed against Defendant for the above listed claims.

FACTUAL ALLEGATIONS

1) Background

Plaintiff was born into a military family in New Orleans, Louisiana. From elementary school until high school Plaintiff lived in Horry County. He graduated from Socastee High School. He graduated from the Citadel in 1997, then received a Master's Degree in Environmental Management from Webster University and a Master's of Business Administration from Campbell University. (Ex. A, Plaintiff Dep., Major Jason MacDonald, pp. 11-12) He married his wife Ann Dameron MacDonald in 1998 and has been married twenty-five years, and he and his wife were blessed with four (4) daughters from the marriage. (Ex. A, Plaintiff Dep. p. 13)

Plaintiff served in the Army for seventeen years achieving the rank of Major. He retired from the Army in January 2015. (Ex. A, Plaintiff Dep. p. 16) While in the Army, Plaintiff was deployed to Korea and Kuwait. Additionally, he was deployed to Iraq three (3) times while in an

active combat zone. (Ex. A, Plaintiff Dep. pp. 16-17) In the Army, Plaintiff received numerous awards including the Meritorious Service Medal, the Army Achievement Service Medal, the Joint Service Medal, and he received a Bronze Star for his service with the first COSCOM in Iraq. (Ex. A, Plaintiff Dep. p 17) As one would imagine the awards and the medals that went along with the commendations were very valuable to Plaintiff and were irreplaceable.

Plaintiff was certified as a prospective JROTC instructor on May 12, 2015, by the Department of the Army. (Ex. A, Plaintiff Dep. p. 43, Ex. 4) This pre-certification for a JROTC instructor is only valid for three (3) years which would have made Plaintiff's valid through May 12, 2018. (*Id.*) To be eligible to receive a full certification for JROTC, an instructor would need to be hired as a JROTC instructor. Once hired the instructor would need to complete the Child Care National Agency Check (CNACI) and would need to be employed to take the final steps to become fully certified to teach JROTC. (Ex. B, Lt. Colonel James Davis Dep. pp. 18, 30-31)

Plaintiff's JROTC pre-certification to teach JROTC was three (3) months out of tolerance, meaning he had not received a letter of intent to hire from a school, when Lt. Colonel James Davis, the Director of the JROTC programs in Horry County contacted Plaintiff to see if he would be interested in the Senior JROTC instructor position at Aynor High School (Ex. A, Plaintiff Dep. p. 78; Ex. B, Davis Dep. pp. 8, 10-11) An exception was made to Plaintiff's pre-certification because it was only out of tolerance for a short period of time. (Ex. B Davis Dep. pp. 22-24) Once hired and once Plaintiff completed his Child Care National Agency Check (CNACI), the Army and the Horry County School District would start a cost share of the salary of the instructor. (Ex. B, Davis Dep. p. 14)

2) Plaintiff's Employment at Aynor High School

The Principal of Aynor High School, Michael McCracken ("McCracken"), began talking to the Plaintiff about the open JROTC position in the summer of 2018. (Ex. C., Dep. Michael McCracken p. 10) McCracken and Lt. Colonel Davis ("Davis") were involved in the decision to hire Plaintiff. (*Id.*) Plaintiff was hired to be the Senior JROTC Instructor at Aynor High School. (Ex. A, Plaintiff Dep. Ex. 3 and Ex. 4) Plaintiff received a contract for the position for the 2018-2019 school year. (Plaintiff Dep. Ex. 2) While the contract was for only one school year, Plaintiff was given the impression that he would be given a renewal of the contract each year. (Ex. A, Plaintiff Dep. pp. 38-39)

Plaintiff experienced some difficulties in his first JROTC instructing position. Sgt. David Jones ("Jones") held the other non-officer JROTC instructor position at Aynor High School. Jones had served in the role since January 2017. (Ex. D, Sgt. David Jones Dep. pp. 9-10) The two instructors taught all grades and much of their instruction was done together with multiple classes of students. Plaintiff and Jones' classes received instructions from both instructors at least two days a week, whether in class or in physical fitness. (Ex. D, Jones Dep. pp. 25-27) The two instructors worked together after school with drill practice, service events, ropes courses, and other group activities. (*Id.*)

Plaintiff observed that the students and parents were very fond of Jones, presumably because he had been in the position longer, especially the students in leadership positions. Some of the students would hug Jones. (Ex. A, Plaintiff Dep. pp. 82-83) Plaintiff was told by Jones and possibly McCracken that some of the students were placed in JROTC classes because they had disciplinary issues and would benefit from more structure. (Ex. A, Plaintiff Dep. pp. 85-87) Upon information and belief, the students preferred Jones to Plaintiff because Plaintiff was stricter in

requiring students to adhere to the uniform policy, gave graded assignments, and gave more emphasis to physical training than Jones. (Plaintiff's Complaint ¶ 18) Further, Jones indicated that he would be leaving the District in December 2018. (Ex. A, Plaintiff Dep. p. 81)

On or about November 29, 2018, Plaintiff was called into a meeting with McCracken and Assistant Principal Brandon Todd ("Todd") (Ex. C, McCracken Dep. pp. 26-28) At the meeting, Plaintiff was made aware that there were statements written by students making allegations against him, but he was not provided a copy of those statements. (*Id.*) During the meeting, Plaintiff was allowed to verbally respond to the allegations, and then he was allowed to submit a written statement in response dated November 30, 2018, in which he vehemently denied the allegations. (Ex. A, Plaintiff Dep. p. 44; Ex. E, Brandon Todd Dep. Ex. 2) On December 4, 2018, Plaintiff was called to the District Office to meet with Richard Neal and Roger Gray. Plaintiff was interviewed by the two at the Direction of Mary Anderson, Chief Human Resources Director. (Ex. A, Plaintiff Dep. pp. 43-44, Ex. G, Mary Anderson Dep. p. 23) At the conclusion of the meeting, Plaintiff was handed a letter placing him on administrative leave. (Ex. A, Plaintiff Dep. Ex. 5)

3) Summary of Female Student Allegations

Between the dates of November 29, 2018 and December 3, 2018, several of Plaintiff's female students made complaints that Plaintiff made inappropriate comments or gestures to them. The accusations are summarized as follows:

- When a female cadet was bending over, Plaintiff allegedly made a reference to the brand of her underwear,
- After observing a female cadet drawing a picture of a female cartoon, Plaintiff allegedly commented "oh, you're drawing yourself in a low-cut top",

- Plaintiff allegedly catcalled or whistled after a female cadet walked past him into another classroom, and
- When he heard a female cadet state “f-me” while doing push-ups, Plaintiff allegedly questioned “when?”.

Plaintiff categorically denies every allegation.

4) Lack of Investigation

a) Investigation at School Level

The Principal of Aynor High School testified that when allegations of sexual nature are made, the Assistant Principal would notify him and would begin to investigate, and Human Resources would be notified due to the nature of such allegations. (Ex. C, McCracken Dep. p. 17) “My Assistant principals typically handle investigations and those types of things.” (*Id.*) Here, the Assistant Principal, Brandon Todd (“Todd”), did the only investigation of any sort at the school level or any other level other than the interviews of Plaintiff outlined above.

Much of Todd’s testimony about the steps that he took during his investigation are plagued by his failure to remember the exact dates, times, and steps he took in his investigation. In his deposition he concedes that he probably should have taken notes – no notes were taken at all – to better answer detailed questions about the investigation. (Ex. E, Todd Dep. pp. 26-27)

At the outset, Todd does not recall whether he was approached by one of the female students about complaints or whether he was approached by Jones. To the best of his knowledge Jones approached him and did not give details into each accusation but told Todd “some information that administration should look into.” When reviewing a November 19, 2018, email sent by Todd to Richard Neal stating that two female students approached him with concerns, he believes that A■■■■ P■■■■ and A■■■■ W■■■■ were the first two students to approach him with

allegations. Todd believes he called the students to his office because of the concerns Jones shared. (Ex. E, Todd Dep. pp. 15-16) Todd described asking broad questions of the female students and then having them write a statement. Todd did not take notes of what the students told him verbally. (Ex. E, Todd Dep. pp. 16-18) Todd testified that after the students wrote their statements, he would ask if there were any witnesses; this is where he says the other statements derived. (Ex. E, Todd Dep. pp. 18-19) However, when asked for more details about whether the remaining statements came to Todd to report, were named as witnesses, or whether they were called in by Todd to provide a statement, Todd could not recall and had no notes to confirm. (Ex. E, Todd Dep. pp. 20-30) When asked about why he did not take better records of his specific steps in the investigation, Todd stated that it was a “Monday morning quarterback situation” and that we could all do better. (Ex. E, Todd Dep. p. 27)

There are numerous inconsistencies within the statements given by the fourteen (14) students who wrote statements. (Ex. E, Todd Dep. Ex. 1) In relation to the conversation about her drawing, J■■■■ C■■■■ said, “there was something off-putting about the way he said it, but maybe I was being paranoid.” (*Id.*) About the drawing, M■■■■ D■■ A■■ L■■ put in his statement that he commented that the picture looked good but did not hear anyone say anything. (*Id.*) In relation to the same drawing, J■■■■ B■■■■ stated that Plaintiff said “It looks like a self-portrait” with a smile on his face. (*Id.*) In his or her statement, A■■■■ L■■■■ said that they were all talking about the picture but he or she did not hear anyone say anything bad. (*Id.*)

In relation to the alleged catcall or whistle, several students said that they believed that the whistle had to come from the Plaintiff, but none of them saw the Plaintiff whistle. They assumed it was him because they believed it came from the room he was allegedly in. (*Id.*) To the same point, the three students who believed the Plaintiff said something about Calvin Klein underwear

were doing exercises, the Plaintiff was not in front of them, and no one saw him actually say those words. (*Id.*) The same point is pertinent to the “f-me” allegation. None of the witnesses saw the Plaintiff say anything. (*Id.*)

Despite the inconsistencies and circumstantial evidence, Todd testified that he did not even consider doing follow-up interviews with the students, he simply “gave that information to my supervisor, and then would’ve waited for further instruction.” (Ex. E, Todd Dep. p. 34)

Todd also requested that Jones submit a statement on or about December 3, 2018, which was provided by email the same day. (Ex. E, Todd Dep. p. 39, Ex. 3) Noted above Plaintiff and Jones had to work together with their classes during and after school. Todd concedes that nothing in Jones’ statement said that he ever saw, heard, or witnessed the Plaintiff doing anything inappropriate. (*Id.* 38-39) When asked if Todd considered doing an interview with Jones considering the necessary collaboration between Jones and Plaintiff’s work with the students to ask more about what Jones witnessed with Plaintiff’s interactions with the students, Todd testified, “I gave that information to my supervisor and as I stated before – earlier, awaited further instruction.” (*Id.* 39-40) After December 3, 2018, Todd did not collect any further information, he submitted the statements to his supervisor and did nothing else with regards to the allegations. (*Id.* 41) McCracken, the Principal and Todd’s supervisor, testified that he made no recommendations regarding the statements submitted and that everything was passed along to HR. (Ex. C, McCracken Dep. p. 25)

After the submission of the statements, no one at District HR and the Superintendent, including Richard Neal, Roger Gray, Mary Anderson, nor Dr. Rick Maxey approached Todd to ask him anything about the school level investigation and nothing else was required of him relating

to the allegations. (*Id.* 41-43) After December 3, 2018, the investigation was done at the school level. (Ex. E, Todd Dep. p. 41)

b) Investigation at District Level

Richard Neal (“Neal”) is a Director of Human Resources and was the point of contact from Aynor High School to the District Office and Human Resources. (Ex. F, Richard Neal Dep. p. 12) As noted above Neal took part in an interview with the Plaintiff that occurred on December 4, 2018. Apart from that Neal’s role in the investigation of the allegations against Plaintiff was to collect statements from Aynor’s Principal and Assistant Principal. (*Id.* 10-11) He would then make sure that there were statements from all relevant witnesses, then simply pass them up the chain of command. (*Id.* 12-13) Neal testified that it was not his role to advise that interviews be conducted of witnesses, he would only collect statements, and that if his chain of command asked for something additional then he would ask Todd to get additional information. (*Id.* 21-22) When asked whether he took the statements of students at face value, he answered “I submit what is written to my chain of command.” (*Id.* 23)

On December 3, 2018, Neal sent Chief Human Resources Director, Mary Anderson (“Anderson”), statements from the students and Jones. (Ex. G, Mary Anderson Dep. Ex. 3) Anderson then decided to place Plaintiff on administrative leave on December 4, 2018. (Ex. A, Plaintiff Dep. Ex. 5) On or about December 20, 2018, Neal submitted a folder with the final packet of investigative documents to Anderson indicating which documents were situated on the left of the folder and which were on the right. (Ex. F, Neal Dep. p. 34, Ex. 5) From December 4, 2018, the final interview in the investigation, nothing else took place in the investigation before the submission of the packet on December 20, 2018. (Ex. F, Neal Dep. p. 37)

Once the investigation packet was turned over to Anderson, no further investigation took place. Anderson never followed up with any further instruction to conduct any further investigation at the school level or at the District level other than a review of statements that had already been taken. (Ex. G, Anderson Dep. pp. 24, 26) Then Anderson simply passed along the information to the Superintendent, Dr. Rick Maxey, to see what next steps would be taken. (Ex. G, Anderson Dep. p. 26) Anderson does not recall when she passed along the information to Dr. Maxey, it could have been a few days or it could have been longer. (*Id.*) Anderson's role is to provide a recommendation for what next steps should be taken based upon the information at hand. (*Id.*) Anderson's general practice is not to share a recommendation with the Superintendent in writing but in person. (*Id.* 29-30) In her role Anderson could have asked that additional statements or interviews be conducted, but that was not done here. (*Id.* 30-31) Anderson recommended to Dr. Maxey that Plaintiff's contract not be renewed. (*Id.* 36) She does not recall when that recommendation was made. (*Id.* 37-38)

Dr. Maxey took no part in the investigation of allegations against Plaintiff. (Ex. G, Maxey Dep. p. 24) He never reviewed the recording of the interview Plaintiff had with Neal and Roger Gray. He only reviewed the packet of information sent by Anderson. (*Id.* 24-26) Dr. Maxey had no idea as to whether Jones was interviewed. (*Id.* 46) When asked if Dr. Maxey knew if the students were interviewed about their statements, he stated that you would have to ask Anderson or Neal perhaps, that he did not know. (*Id.* 43) However, as indicated above, no one other than Todd interviewed the students, and his interview consisted of only open-ended questions before he asked the students to write their statements. None were interviewed about the statements themselves.

c) More Investigation Necessary

Had the District took the minimal measure of interviewing the witnesses in this matter, they would have discovered more of the inconsistencies in the witness statements, the group pressure of reporting, the lack of conviction behind some of the statements, and the clear lack of concrete evidence to substantiate the allegations against Plaintiff.

Had the female students who made allegations been questioned further, the investigation would likely have recovered some of the inconsistencies and factual disputes that were uncovered when four of the former students were deposed. Here are a few of the examples:

- Consistent with their statements, none of the girls deposed actually saw Plaintiff make a catcall or a comment about underwear. (Ex. K, A████ A████ D████. pp. 13-14; Ex. L, A████ P████ Dep. pp. 10-11; Ex. M, A████ W████ Dep. p. 9)
- A████ A████ testified she reported the catcall incident only after meeting with JROTC staff leaders, K████ K████, K████ Y████, E████ V████ K████, and A████ W████, who then decide they would collectively report Plaintiff. (Ex. K, A████ Dep. pp. 22-24) A████ testified that she discussed reporting with A████ W████ before reporting Plaintiff to Jones. (*Id.* 20) In contrast, A████ W████ testified that she did not consult with others that she went to report to Jones on her own. (Ex. M, W████ Dep. p. 14)
- A████ A████ testified that her reason for reporting the catcall and blaming Plaintiff was “because it made sense” and she “assumed” what A████ W████ said was true. (Ex. K, A████ Dep. pp. 18-19)
- Notably, J████ C████ and A████ W████ both testified that other than what was in their statements, they never witnessed Plaintiff doing anything else inappropriate. (Ex. N, C████ Dep. pp. 15-16; Ex. M, W████ Dep. p. 17)

- J█████ C█████ testified that she was not sure if Plaintiff was complimenting her drawing or something else. (Ex. N, J█████ C█████ Dep. p. 13) She also testified that the only reason that she reported the drawing conversation weeks after it happened was because other students were reporting allegations. (*Id.* 14)
- Likewise, A█████ P█████ testified she waited a month before reporting the allegations in her statement, but decided to report when other girls were talking about reporting. (Ex. L, P█████ Dep. p. 16)

These few examples from the above deponents show that the District could have benefitted from learning a more clear and comprehensive recitation of the facts from the witnesses. Plaintiff could argue that those reporting “jumped on the bandwagon” and talked each other into reporting false accusations against Plaintiff. Further, Plaintiff could argue that there is no concrete evidence that he did anything of the actions of which he was accused.

As stated above, the District could have benefitted from interviewing Jones who worked closely with Plaintiff and the students to get a better understanding of how Plaintiff and the students interacted.

The District chose not to do so and did not do a fair and comprehensive investigation costing Plaintiff his career.

d) Determinations and Appeal

Dr. Maxey signed the April 30, 2019, letter advising Plaintiff that he was recommending to the Board that Plaintiff’s contract with the District not be renewed for the 2019-2020 school year. (Ex. H. Dr. Rick Maxey Dep. p. 24; Ex. A, Plaintiff Dep. Ex. 6) Dr. Maxey states in the letter that he has determined that Plaintiff engaged in misconduct in violation of District policies. (Ex. A. Plaintiff Dep. Ex. 6) The letter indicated that, “Prior to the Board acting on my recommendation

at its next regularly scheduled meeting, you may request to address the Board to appeal my recommendation, provided that you do so in writing within ten (10) workdays from the date of this letter. (*Id.*, *emphasis added*)

On May 9, 2019, Plaintiff's prior attorney submitted a written appeal and request for a hearing before the Board of Trustees. (Ex. H, Maxey Dep. Ex. 10) Instead of being heard at the Board's "next regularly scheduled meeting", Plaintiff was not permitted an appeal before the Board until August 17, 2020. (Ex. C, McCracken Dep. Ex. 8) This was over twenty (20) months from when Plaintiff was put on administrative leave, despite Plaintiff and his counsel making multiple efforts to have the appeal heard. (Ex. A, Plaintiff Dep. p. 65) Clearly, the District did not follow its own directive to provide Plaintiff an opportunity to address the board at "its next regularly scheduled. Meeting".

At the appeal hearing before the Board, the Board heard testimony from McCracken, Davis, and Plaintiff (Ex. H, Maxey Dep. p. 51) Dr. Maxey was present at the Board hearing and recalls that there were board members who had questions about the sufficiency of the investigation into the allegations. (Ex. H. Maxey pp. 50, 51) The Board ultimately found that there was "insufficient evidence to determine whether Employee A committed the infractions that led to his termination." (Ex. C, McCracken Dep. Ex. 8.) However, despite making this determination, Plaintiff was notified by letter dated August 26, 2020, that the District decided "that it was not in the best interest of the District for [Plaintiff] to be re-employed." (Ex. A, MacDonald Dep. Ex. 7)

e) Impact to Plaintiff's Certification

When the District terminated Plaintiff, he was no longer eligible to become certified as a JROTC instructor. While he had completed the CNACI portion of the process in or around July 2019, he was not able to finish the requisite training required to become fully certified because

employment was a condition of becoming fully certified. (Ex. B, Davis Dep. pp. 30-31; Ex. A, Plaintiff Dep. p. 81) Moreover, his pre-certification expired before he was hired by Aynor High School and an exception was made only for his hire to Aynor High. (*Id.* 22-24; Ex. A, Plaintiff Dep. p. 80) Therefore, by the time of Plaintiff's termination and the decision of the Board, Plaintiff could no longer get a job in his chosen field as a JROTC instructor. (Ex. A, Plaintiff Dep. p. 66)

5) **District Interference with Plaintiff Seeking Work**

While awaiting his appeal hearing before the Board, Plaintiff attempted to find employment. (*Id.* 88-89) Finding a position as a JROTC instructor was top priority because only if he was employed in a JROTC position he could continue the certification process. In or about July 2019, a JROTC instructor position at Green Sea Floyd High School within Horry County School District became open and Plaintiff applied. (*Id.* 47-48; Complaint ¶ 36) Plaintiff made a specific inquiry with Roger Gray in Human Resources for the District as to whether he was able to apply for an open position within the District while he was on administrative leave. (*Id.* 47-48) Roger Gray said that there was nothing that would prevent him from applying because of the leave. (*Id.*) Additionally, there is nothing in the employee handbook that states that an employee could not apply for a position while on administrative leave. (Ex. H, Maxey Dep. Ex. 1)

However, Plaintiff was never given an interview for the position. For each JROTC position for which he had applied in the past, three separate High Schools, Plaintiff had always been given an interview. (Ex. A, Plaintiff Dep. p. 91)

In or about August 2019, Plaintiff applied for an open JROTC position with Hannah-Pamplico High School with Florence County School District 2. (Complaint ¶ 40; Ex. I Sterling Mosby Dep. Ex. 1; Ex. A, Plaintiff Dep. 66) Plaintiff was interviewed by the Principal, Sterling Mosby ("Mosby"). (*Id.* 9) Mosby recalls that Plaintiff seemed like a good fit for their program and

Plaintiff was the candidate he was interested in. (*Id.* 9-10) After that Mosby submitted a recommendation to hire Plaintiff to the superintendent, Neal Vincent (“Vincent”), but noted that they were having difficulty getting information from Horry County. (*Id.* 10)

Superintendent Vincent testified that he spoke with Plaintiff about the position. (Ex. J, Neal Vincent Dep. pp. 9-10) In their discussion, Vincent recalls Plaintiff saying that he was on administrative leave with the Horry County School District. (*Id.* 11) Plaintiff told Vincent that he was on leave waiting for his appeal before the Board. (Ex. A, Plaintiff Dep. p. 66) Vincent attempted to contact Maxey would not return his call for a reference. Vincent emailed Maxey on August 13, 2019 and August 15, 2019 seeking a reference for Plaintiff, but Maxey never responded. (Ex. J, Vincent Dep. Ex. 1) He was then referred to the Chief of HR. (Ex. J, Vincent Dep. p. 12)

Vincent found it very unusual that a neighboring superintendent would not give a reference or would not call another superintendent. (Ex. J, Vincent Dep. 12) Vincent testified that most superintendents would call each other back and that it was very unusual that a sitting superintendent wouldn’t call another sitting superintendent. (*Id.* 17) He also found it strange because he does not typically talk to the Chief of HR, in this type of situation, he would talk to a superintendent. (*Id.* 12-13) Vincent explained to the admin assistant, that is not the way that things are typically done. (*Id.* 17)

Vincent told Plaintiff that “it doesn’t matter what the response was, he just needed a response. So, it can be neutral, negative positive. It didn’t matter; he just had to have a response from the school.” (Ex. A, Plaintiff Dep pp. 66-67) Vincent testified that while it was speculation, had he gotten even a neutral reference from Horry County School District, he probably would have

gone with the principal's recommendation to hire Plaintiff, because Plaintiff had great references. (Ex. J, Vincent Dep. pp. 18-19)

The position remained open for almost a year before it was filled in or around July 27, 2020. (Ex. I, Mosby Dep p. 13) Mosby testified that it was his understanding that Plaintiff would be hired in the JROTC position as long as it remained open, and a reference came from Horry County School District. (*Id.* 14)

Plaintiff followed up with Vincent after he was terminated, but by that time the position had been filled at Hannah-Pamplico. (Ex. A, Plaintiff Dep. p 107)

6) Mental and Emotional Harm Suffered by Plaintiff

Plaintiff is a religious man who formerly attended Conway First Baptist Church. (Ex. A, Plaintiff Dep. p. 22) Plaintiff has never been accused of any type of misconduct. He never received any type of complaint as the allegations that were made against him in his military career, and he has never had to be a part of a lawsuit. (*Id.* 56-57) Plaintiff testified:

I had never been accused of any type of misconduct with females. At any time in my military career, as commander, platoon leader, battalion commander, all of that, never as a gymnastics coach for girls, a soccer coach for girls, as a youth leader.

So, I was rightly shocked when these allegations came out.

(Ex. A, Plaintiff Dep. p. 108)

Plaintiff testified that the allegations caused severe damage to his family and nearly ruined his marriage. (*Id.* 110) Plaintiff had to deal with the stress placed on his children, who are in the Horry County School system, who thought that their father was going to jail or would have to be put on a sex offender registry because of the allegations made against him. (*Id.* 108-109) His kids started getting questioning looks at church in their youth group. (*Id.* 109) It became blatantly

obvious that people were aware of the allegations because his children were getting asked “what is going on with your Dad?” (*Id.* 109) Plaintiff found out from his oldest daughter, who had friends in Conway and Myrtle Beach that it was known that Plaintiff was no longer at Aynor High because of “some issues” there. (*Id.* 111)

Since the allegations, people began treating Plaintiff and his family differently. At the time, Plaintiff had three (3) daughters. Suddenly there were no longer any sleepovers at his house. (*Id.* 112) When his wife was pregnant with their fourth child and when his child was born, no one from his Sunday School class reached out to ask how they were doing. (*Id.* 109-110) This was very strange because the group was very close.

There were fourteen students who wrote statements as a part of the investigation. (Ex. E, Todd Dep. Ex. 1) Further, there were many more students in the JROTC classes. It became obvious that members of the community knew about the allegations made against Plaintiff from conversations with the students that went to school there. (Ex. A, Plaintiff Dep. p. 119) Then when Plaintiff was not put back to work after the administrative leave pursuant to the determination of the board, people drew the conclusion that Plaintiff had done something wrong, though this was false. (*Id.* 119)

In addition to the false message sent by the District to the community, Plaintiff believes that he suffered more mental and emotional harm because the matter was drawn out so long, taking twenty (20) months to get a hearing. (*Id.* 24) Prior to the allegations made against him and the subsequent actions of the District, Plaintiff had never received any type of mental health treatment or counseling. (*Id.* 23) At one point when his wife was pregnant, his mother-in-law worried that without treatment, Plaintiff would not be able to care for the baby. (*Id.*) Beginning in the summer of 2019 and ongoing, Plaintiff received/receives mental health counseling and is on prescription

medications. (*Id.*) He was diagnosed with major depression and anxiety and prescribed Vyvanse and D-amphetamine. (*Id.* 23, 57)

7) **Invaluable Missing Personal Items**

To add insult to the many injuries outlined above, while Plaintiff was on administrative leave and waiting for his hearing before the Board, numerous of Plaintiff's personal items were lost by the District. In or around May 1, 2020, Plaintiff was allowed to go to campus to retrieve his personal items. (Ex. C, McCracken Dep. p. 38) Plaintiff's counsel gave to the District a list of missing items. (Ex. G, Anderson Dep. Ex. 7) The Principal of Aynor High School did not know where the items could have been misplaced. (Ex. C, McCracken Dep. pp. 38-39) Some of the missing belongings were items of clothing or things that could be replaced. However, some of the missing items were irreplaceable and invaluable items such as Plaintiff's: Bronze Star, Meritorious Service Medal, Army Achievement Medal, Joint Achievement Medal, Meritorious Unit Commendation, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Iraqi Campaign Medal, Army Service Ribbon, Overseas Service Ribbon, Airborne Badge, and Air Assault Badge. (Ex. G, Anderson Dep. Ex. 7; Complaint ¶ 46)

LEGAL STANDARD

Summary judgment is an "extreme remedy to be cautiously invoked." *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 723, 729 (1986). Summary judgment is only appropriate where there is no genuine issue of material fact. Rule 56(c), SCRCF. However, where there is a dispute as to the conclusion to be drawn from those undisputed facts, [s]ummary judgment should not be granted." *Gignillat v. Gignillat, Savitz, and Bettis, LLP*, 382 S.C. 452, 456, 684 S.E.2d 756, 758 (2009).

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom, must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Under the summary judgment standard, the Court gives every benefit of the doubt to the non-moving party. *Watters v. Terminix Service, Inc.*, 376 S.C. 632, 635, 658 S.E.2d 180, 183 (Ct.App.1986).

Finally, “[b]ecause summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003) (internal quotation marks omitted); accord *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002); *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

ARGUMENT

Defendants argue that individual Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act for conduct that occurred within the scope of their official duties. Defendants also argue that Plaintiff’s claims of interference with contractual relations, interferences with prospective contractual relations, defamation, and intentional infliction of emotional distress are subject to summary judgment as a matter of law for lack of supporting evidence sufficient to establish the existence of a genuine issue of material fact.

Below Plaintiff asserts that Plaintiff can satisfy the elements of the claims and show that there is a genuine issue of material fact for the claims of interference with prospective contract,

defamation, and intentional infliction of emotional distress against Defendant Horry County School District, hereinafter referred to as “Defendant”.¹

I. Plaintiff can establish a genuine issue of material fact in his claim for interference with prospective contractual relations

To state a claim for intentional interference with prospective contractual relations under South Carolina law, a plaintiff must allege: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. *Callum v. CVS Health Corporation*, 137 F. Supp. 3d 817 (D.S.C. 2015).

To satisfy the first element, i.e., intentional interference with prospective contractual relations, of the cause of action for tortious interference with prospective contractual relations, a plaintiff must demonstrate that he had a truly prospective or potential contract with a third party; that the agreement was a close certainty; and that the contract was not speculative. *First South Bank v. South Causeway, LLC*, 414 S.C. 434, 778 S.E.2d 493 (Ct. App. 2015).

Here the Plaintiff can satisfy the first element of the claim because he can show that he had a truly prospective or potential contract with a third party. As outlined in the Factual Allegations, in July 2019, Plaintiff was in communications with the Principal, Mosby, at Hannah-Pamplico High School who felt like Plaintiff was a good fit for the open JROTC position there, and Mosby made a recommendation to the superintendent to hire Plaintiff. The superintendent, Vincent, testified that all he needed was a reference from Defendant. Vincent went as far as to say even if he only had a neutral reference for Plaintiff, he would have followed the recommendations of Mosby, who spoke highly of Plaintiff, and because the Plaintiff had great recommendations.

¹ The Plaintiff makes no arguments for the claims against the individual Defendants and the cause of action for interference with contractual advantage.

To recover on a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove that the defendant intentionally interfered with the plaintiff's potential contractual relations for an improper purpose or by improper methods and that the interference caused injury to the plaintiff. *Santoro v. Schulthess*, 681 S.E.2d 897 (S.C. Ct. App. 2009)

The plaintiff alleging intentional interference with prospective contractual relations may prove that the defendant's method of interference was improper under the circumstances. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, No. 8:15-CV-01964-JMC, 2018 WL 3996294 (D.S.C. Aug. 21, 2018).

Here there is no question that the superintendent of Defendant, Maxey, refused to provide Plaintiff with any type of reference. This is despite Vincent reaching out at least once by phone and twice by email. While Defendant asserts that the failure to act is not an intentional action, the undersigned disagrees. Intentional interference can be proved if the method of interference was improper under the circumstances. Maxey knew that if he refused to provide a reference for Plaintiff that Plaintiff would not be able to get the position at Hannah-Pamplico. It is well known in the education field that Districts give references to other Districts.

Vincent testified that it was very unusual that a sitting superintendent would not call another superintendent. There was an expectation that these types of communications would take place. Plaintiff and other employees would surely expect that a superintendent would not refuse to call another superintendent to provide a reference.

While Maxey may not have had a legal obligation to return a call to Vincent regarding Plaintiff, Maxey knew for certain that a failure to return the call would result in Plaintiff not being

considered for the position. Therefore, the improper method was to do nothing and the act of doing nothing was intentional.

In determining whether a defendant's conduct in intentionally interfering with a contract [a prospective contractual relation] of another is improper, you should consider the following factors:

- (1) the nature of the defendant's conduct; |
- (2) the defendant's motive;
- (3) the interests of the other with which the defendant's conduct interferes;
- (4) the interests sought to be advanced by the defendant;
- (5) the social interests in protecting the freedom of action of the defendant and the contractual interests of the other;
- (6) the proximity or remoteness of the defendant's conduct to the interference; and
- (7) the relations between the parties.

Santoro v. Schulthess, 384 S.C. 250, 262, 681 S.E.2d 897, 903 (Ct. App. 2009).

Here several of the factors are relevant to the consideration of this cause of action. First, in considering the nature of the Defendant's conduct. One would argue that what Defendant would need to do not to interfere with Plaintiff's prospective contract was of so little effort to Defendant. He simply would have needed to return a call.

Another factor to consider is the interests of the other, here the Plaintiff, with which Defendant's contract interfered. Here Plaintiff's interests were significant because the prospective contractual relations was an employment position.

Another factor to consider is the proximity or remoteness of the defendant's conduct to the interference. Here there is no remoteness. Maxey, representing the District, directly and intentionally refused to return the call or respond to the email.

The final factor to consider is the relations between the parties. Plaintiff was a former employee of Defendant. It is reasonable that he could expect that his former employer would provide at least a neutral reference for him to a prospective employer.

To state a claim for intentional interference with prospective contractual relations under South Carolina law, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts. *Wellin v. Wellin*, 135 F. Supp. 3d 502 (D.S.C. 2015).

As stated above, Plaintiff was basically promised the JROTC position at Hannah-Pamplico where he would have earned wages and benefits from his employment.

Pursuant to the above arguments, Plaintiff has established facts to support the elements of this cause of action and there are genuine issues of material facts that should be adjudicated and summary judgment would not be appropriate.

II. Plaintiff can establish a genuine issue of material fact in his claim for defamation

The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third *560 party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). “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.” *Id.*

Defamation need not be accomplished in a direct manner. *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980). A mere insinuation is actionable as a positive assertion if it is false and malicious, and its meaning is plain. *Id.* Malice may be proved by direct or circumstantial evidence. See *Hainer*, 492 S.E.2d at 107. In South Carolina, defamation can occur not only by word but also by act and insinuation. *Tyler*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980); *Lynch v. Toys “R” Us-Del., Inc.*, 375 S.C. 604 (Ct. App. 2007) (holding that a jury could reasonably conclude that the Defendant’s act of requiring the Plaintiff, a shoplifting suspect, to be handcuffed while walking through the store at a busy time was defamatory). Defamation is actionable per se if it charges the defendant with commission of a crime of moral turpitude. See *Murray v. Holnam, Inc.*, 344 S.C. 128, 138 (Ct. App. 2001).

Additionally, a statement may be actionable per se or not actionable per se. *Id.* “The determination of whether or not a statement is actionable per se is a matter of law for the court to resolve.” *Id.* When the statement is classified as actionable per se, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. *Id.* “Slander is actionable per se when the defendant’s alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or *561 profession.” *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322–23 (Ct.App.2001).

Here, Plaintiff can establish defamation per se by Defendant through Defendant’s actions of placing Plaintiff on administrative leave, refusal to renew Plaintiff’s contract, and refusal to return Plaintiff to work after the board determined that there was insufficient evidence to support Plaintiff’s termination.

First, there were numerous students that wrote statements about Plaintiff and whether they witnessed or did not witness Plaintiff behaving in an inappropriate manner. There is no doubt that the students discussed these allegations with other students, their parents, or other members of the community. While it is logical that the school investigate the allegations, the fact that Plaintiff was on leave for an inordinate length of time and was not returned to school sent the message to all those that knew of the allegations that Plaintiff had been found to have done something wrong, which is false.

The same is true when Plaintiff's contract was not renewed and when Plaintiff was not returned to work after the board determination in his favor. The clear message was that the allegations were confirmed by Defendant, which is why Plaintiff did not return to school.

It became clear that the message was spread throughout the school system and the community when Plaintiff and his family began to be treated differently. His daughters began to get questioning looks from people in their youth group, people were asking his daughters "what is going on with your Dad?", and people were telling his eldest daughter that it was known that Plaintiff had "some issues" at Aynor because he had not returned to work. Additionally, people at Plaintiff's church began to treat him and his wife differently. Children no longer wanted to come to his house for sleepovers with his daughters.

Defendant is at fault for defaming Plaintiff's character for failing to provide him with a fair and sufficient investigation into his claims which would have cleared his name and put him back to work. Moreover, the District left him in limbo for twenty (20) months before it provided him a hearing before the board that would clear his name, giving the students, parents, and the community even more time to believe that he had done something wrong because he was not returned to work. Finally, the District refused to return him to work even though the board found

insufficient evidence to terminate him, continuing the message that the Plaintiff had done something wrong, which was false.

While the defamation here is per se, based upon allegations of a crime of moral turpitude, and damages are presumed, there is ample evidence that Plaintiff suffered emotional and reputational harm as outlined in the Factual Allegations.

For the above reasons, Defendant's Motion for Summary judgment as to this claim should be denied.

III. Plaintiff can establish a genuine issue of material fact in his claim intentional infliction of emotional distress

To establish the tort of intentional infliction of emotional distress or outrage, the plaintiff must establish the following: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his or her conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the 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. *Talamantes v. Berkeley County School Dist.*, 340 F. Supp. 2d 684 (D.S.C. 2004). One's willful, malicious conduct proximately causing another's emotional distress may be actionable as intentional infliction of emotional distress or the tort of outrage. *Williams v. Lancaster Cnty. Sch. Dist.*, 369 S.C. 293, 631 S.E.2d 286 (Ct. App. 2006)

Plaintiff can establish that the Defendant District intentionally or recklessly inflicted severe emotional distress or knew that distress would probably result from his or her conduct.

At the outset, the Defendant was aware that Plaintiff's pre-certification to teach JROTC was out of tolerance when it hired Plaintiff. Davis decided to make an exception to Plaintiff's certification being out of tolerance only for Plaintiff to be hired at Aynor High School. Defendant knew that employment was a requirement for Plaintiff to continue the training and further processes to become fully certified as a JROTC instructor after he completed the CNACI check. Defendant was fully aware that if Plaintiff lost his job with Defendant without having another position, his pre-certification was expired, and he would not be able to continue in his chosen career as a JROTC instructor.

Defendant failed to conduct a fair and thorough investigation into the false and defamatory allegations made by the female students in the JROTC program. The full sum of the investigation into the false allegations consisted of 1) Plaintiff being interviewed by McCracken and Todd, 2) Plaintiff being allowed to provide a written statement, 3) students were asked broad questions about the allegations by Assistant Principal Todd and then asked to provide written statements, 4) Sgt. Jones was asked to provide a written statement, and 5) Plaintiff was interviewed by Richard Neal and Roger Gray. As of December 4, 2018, the sum of everything that was done as a part of the investigation into the serious allegations was completed. No other steps were taken to verify the allegations made by the female students.

At the school level many mistakes were made in the investigation and necessary steps were not taken. Todd, who collected all of the statements from the students, took no notes as to the steps that he took as a part of the investigation. Without any notes, he could not say whether certain students approached him about the allegations, whether Jones approached him about the allegations, which students came to him to make a report, or which students he called in to provide

statements as to what they witnessed. These are important factors to consider in this type of investigation.

However, for the students ended up speaking with him about the allegations, the only actions he took was to ask the student broad questions about what they may or may not have witnessed and then asked them to provide written statements. Todd testified that it was not his job to make a judgment call on the information he gathered, but as the only person who did anything to gather information from the witnesses, he should have gone further, or he should have been instructed by his chain of command or those in HR to investigate further.

One of the primary errors in the investigation is that Todd nor anyone else interviewed the students about their statements. As outlined in the Factual Allegations, there are several examples of reasons further interviews were necessary. On their face, the statements have inconsistencies. There are students that contradict allegations saying that they did not see any problematic behavior. Students say that they made “assumptions” and that they were unsure and that they may have just been “paranoid”. Most notably there are no student statements that give concrete evidence that Plaintiff committed any of the alleged acts because none of the students said in their statements that they witnessed the Plaintiff make a catcall, say “when” after a “f-me” comment, or reference the brand of a student’s underwear. A reasonable person would review the statements and determine that there should be follow-up interviews with the students to ask additional questions. That was not done here.

Moreover, Jones was asked only to provide a written statement. In his statement, Jones relayed that he was approached by female students with complaints. He then relayed this information to Todd. Likewise, Jones should have been interviewed as a part of the investigation. Jones should have been asked about which students approached him about the allegations, whether

they came individually or in a group, and what they said to Jones. Further, Jones was the person that worked closest to Plaintiff and saw the interactions Plaintiff had with the students. Jones should have been questioned about whether he ever saw Plaintiff behave inappropriately with the students or had any suspicions of such. Then when Jones confirmed that Plaintiff always behaved in a professional manner with the students, this should have been taken into consideration.

Instead, Todd simply collected the statements and sent them to his supervisor Principal McCracken. McCracken did nothing more than turn the statements over to Neal, who then did nothing more than turn the statements over to the Chief of HR Anderson, who then turned the information over to the superintendent. At each level, the District had the opportunity – no, obligation - to make sure that there was a fair and complete investigation, and instead simply took the student statements at face value. Based upon only the face value, they decided to place Plaintiff on administrative leave, eventually leading to the non-renewal of his contract, and ultimately to his termination.

As outlined in the Factual Allegations, had the District followed up and interviewed some of the students, much of the information collected should have been evaluated in their decisions.

Once again, the former students deposed all confirmed that none of them had concrete evidence against Plaintiff. They testified that they “assumed” Plaintiff made inappropriate comments or sounds or that they believed so “because it made sense.” One of the most notable things that the District would have uncovered was that the students were talking to each other about whether they should report. Some said that they did not report until others reported. This could lead to the conclusion that the students colluded to make up allegations simply because they did not like the Plaintiff or that others jumped on the “band wagon” along with the other students and reported instances that they did not think serious enough to report weeks before.

Based upon the information provided there is a question of fact as to whether Defendant intentionally or recklessly failed to properly investigate the allegations against Plaintiff causing him severe emotional distress.

Additionally, Defendant inflicted severe emotional distress in failing to renew Plaintiff's contract and not providing him with a timely appeal. When Plaintiff's certification was not renewed, he received a letter stating that he could appeal and that would be heard at the board's next "regularly scheduled meeting." Despite numerous attempts by Plaintiff to have his appeal heard, Plaintiff was not heard before the board until twenty (20) months after he was placed on administrative leave. The plaintiff desperately wanted an appeal before the board and a chance to clear his name and to get his job back, especially because if not re-employed he would lose his certification to instruct JROTC. Twenty (20) months to have your appeal heard is an unreasonable and outrageous amount of time for a person to have their career in limbo.

Moreover, as discussed above, the Defendant intentionally prevented Plaintiff from being able to acquire other positions in the twenty (20) month limbo period. It is unreasonable and outrageous that a superintendent would refuse to provide another superintendent with *any* type of reference for Plaintiff, whether good or bad.

Once the Plaintiff was able to be heard by the board, the board found that there was "insufficient evidence to determine whether [Plaintiff] committed the infractions that led to his termination." But despite this, the board chose not to put the Plaintiff back into his position or into a vacant position. As discussed above, this provided the defamatory message that Plaintiff did something wrong despite being exonerated. It was unreasonable and outrageous that the board would find in favor of the Plaintiff but fail to put him back to work, especially in light of the fact that Defendant knew that this would end Plaintiff's career as a JROTC instructor.

Finally, and arguably one of the most hurtful actions of the District, is that they took so little care of Plaintiff's personal belongings while Plaintiff was on administrative leave and awaiting his appeal hearing, that the District lost numerous of Plaintiff's irreplaceable and invaluable personal items, including many medals and commendations he painstakingly earned by in his numerous deployments – several in combat zones - and seventeen (17) years of service in the Army.

As outlined in the Factual Allegations, Plaintiff has suffered severe emotional harm. Before his contract with the Defendant was not renewed, Plaintiff received no treatment or counseling for mental health issues. Subsequently, and continuing today, Plaintiff goes to counseling and is prescribed medications, and has been diagnosed with major depressive disorder and anxiety.

While one may argue that only one of the actions of the Defendant does not meet the legal standard for intentional infliction of emotional distress, taken together and considering the length of time that Defendant has caused Plaintiff's suffering in so many ways, this court and a fact finder can determine that the actions of Defendant were so extreme and outrageous that it exceeded all possible bounds of decency and were utterly intolerable in a civilized community. Further, this Court and a fact finder can determine that the actions of Defendant were so severe that no reasonable person should be expected to endure them.

As such, Defendant's motion for summary judgment should be denied as to this claim.

CONCLUSION

Plaintiff has presented evidence to satisfy the elements of the causes of action for interference with prospective contractual advantage, defamation, and intentional infliction of emotional distress. This court can conclude there are questions of fact related to these claims against the Defendant Horry County School District that should be presented to a jury. As such,

the Plaintiff respectfully requests that Defendants' Motion for Summary Judgment be denied as to these claims against Defendant.

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August 3, 2023
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO. 2020-CP-26-05790
Major Jason J. MacDonald,)
)
Plaintiff,)
)
vs.)
)
Horry County School)
District, Dr. Rick Maxey,)
in his individual and)
official capacities,)
Michael McCracken, in his)
individual and official)
capacities, Brandon Todd,)
in his individual and)
official capacities, and)
Mary Anderson, in her)
individual and official)
capacities,)
)
Defendants.)

* * * * *

DEPOSITION OF: JASON J. MacDONALD
DATE TAKEN: Monday, March 28, 2022
TIME: 11:04 a.m.
PLACE: Mike Kelly Law Group
816 Broadway Street
Myrtle Beach, South Carolina
REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21119
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A P P E A R A N C E S

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1 Q. All one word?

2 A. All one word.

3 Q. How long have you lived at that address?

4 A. Almost four years -- over four years.

5 Q. Where are you from originally?

6 A. Um, I was born in Louisiana, New
7 Orleans; my father was in the military. Family
8 divorced; spent early childhood in Pensacola,
9 Florida. And then from elementary until I
10 graduated high school, here in Horry County,
11 Socastee.

12 Q. So you graduated from Socastee High
13 School?

14 A. That's correct.

15 Q. What year?

16 A. 1993.

17 Q. And what other public schools did you
18 attend in Horry County?

19 A. I attended the Socastee Elementary
20 School, Socastee Middle School and Socastee High
21 School.

22 Q. So when did you start Socastee
23 Elementary?

24 A. Fourth grade.

25 Q. Fourth grade. So you all moved from

1 Florida to --

2 A. To Myrtle Beach.

3 Q. About that time?

4 A. Uh-huh.

5 Q. Are your parents still living?

6 A. Yes.

7 Q. Do they live in Horry County?

8 A. No longer, no. My mother moved here,
9 and she moved to North Carolina when I was --
10 shortly after I graduated from college.

11 Q. Where did you go to college?

12 A. The Citadel.

13 Q. And when did you graduate The Citadel?

14 A. 1997.

15 Q. Any post-graduate education?

16 A. Yes. I got a master's degree in
17 environmental management from Webster University
18 and a master's of business administration from
19 Campbell University. And I have started a
20 doctorate in education from Wingate.

21 Q. You have started that?

22 A. I had started one, but I dropped out of
23 that course.

24 Q. When was that?

25 A. 2019; in the spring of that, 2019.

1 Q. Are you currently pursuing any type of
2 doctorate or any other post-graduate education?

3 A. No.

4 Q. Are you married?

5 A. Yes.

6 Q. What is your wife's name?

7 A. Ann Dameron MacDonald.

8 Q. And when did you and Ann get married?

9 A. March 7th, 1998.

10 Q. Is that your only marriage?

11 A. Yes.

12 Q. Do you have children?

13 A. I have four children. I have an
14 18-year-old daughter.

15 Q. Does she live in Horry County?

16 A. She's a senior at Carolina Forest High
17 School.

18 Q. What is her name?

19 A. D [REDACTED] C [REDACTED] A [REDACTED] M [REDACTED].

20 Q. The next oldest --

21 A. My next oldest is M [REDACTED] S [REDACTED] W [REDACTED]
22 M [REDACTED]; she's 15 years old; currently a
23 freshman at Carolina Forest High School.

24 Q. Do all four of your children attend
25 Horry County schools?

1 Q. My understanding is you served in the
2 military?

3 A. Yes.

4 Q. Thank you very much for that; I
5 appreciate that. When did you -- well, strike
6 that.

7 What branch did you serve in?

8 A. The Army.

9 Q. And did you go straight from The
10 Citadel?

11 A. Yes. I was commissioned directly out of
12 The Citadel.

13 Q. And at what rank?

14 A. Commissioned as a second lieutenant.

15 Q. And how long were you in the Army?

16 A. Seventeen years.

17 Q. Have you -- let's see. When were you
18 discharged?

19 A. Retired.

20 Q. You're retired?

21 A. I retired January 2015.

22 Q. At what rank?

23 A. Major.

24 Q. Any foreign deployments?

25 A. Yes.

1 Q. Where have you been deployed?

2 A. Korea, Iraq, Kuwait; I've been to Iraq
3 three times.

4 Q. Any time served in an active combat
5 zone?

6 A. Yes.

7 Q. Where was that?

8 A. Iraq. That would be three deployments.

9 Q. Did you receive any awards while in the
10 military?

11 A. Yes.

12 Q. What were those?

13 A. Meritorious Service Medal, Army
14 Achievement Medal, Army Service Medal, Joint
15 Service Medal, Army Commendation Medal, Bronze
16 Star.

17 Q. Tell me about that. What did you
18 receive the Bronze Star for?

19 A. Deployment-wise with the first COSCOM in
20 Iraq, and I was part of logistics, doing
21 logistical support during that effort.

22 Q. Okay. Was there any specific event that
23 resulted in your being awarded the Bronze Star?

24 A. Well, me and my team, we were moving
25 from each logistical hub in that theater, setting

1 A. No.

2 Q. How long have you been attending North
3 Myrtle Beach First Baptist?

4 A. We started attending shortly after the
5 COVID restrictions allowed us to go back to
6 church.

7 Q. Have you ever been arrested or charged
8 with a crime?

9 A. No.

10 Q. Have you ever received counseling or
11 treatment for any substance abuse issues?

12 A. No.

13 Q. Have you ever received any type of
14 mental health counseling or treatment?

15 A. Yes.

16 Q. When was that?

17 A. It was the summer of 2019. It was
18 during that...

19 Q. Okay. And --

20 A. It's ongoing treatment.

21 Q. You're still receiving --

22 A. Yes.

23 Q. Is it counseling?

24 A. It's mental health counseling, yes.

25 Q. And who is providing that?

1 month prior for the following year of the
2 contract, and you, therefore, sign it indicating
3 that you're working the following year.

4 Q. Were you ever presented with an
5 invitation to renew your contract for the
6 following year?

7 A. I did receive an e-mail that had that,
8 yes.

9 Q. An e-mail stating what?

10 A. That -- for the following contract for
11 the previous -- for the next year, to sign and
12 submit forward.

13 Q. Okay. Do you still have that e-mail?

14 A. I do not.

15 Q. Did you provide it to your lawyer?

16 A. I believe I provided it to Morgan at the
17 time. But answering your previous, I would expect
18 to renew that contract; I would have no
19 expectation that I would not renew that contract.

20 Q. Did anybody ever -- did anybody with the
21 school district ever represent to you that this
22 contract, Exhibit 2, would be automatically
23 renewed?

24 A. Mr. Gray, during his initial hiring,
25 orientation, when we signed this contract, stated

1 that you would sign this every year. So all
2 employees sign these contracts every year. So the
3 expectation is, yes, I expected that I would be
4 signing one of these for every academic school
5 year I worked there.

6 Q. Do you have any paperwork that you
7 believe served as a contract between you and the
8 Horry County School District for the school year
9 of 2019-2020?

10 A. No, I do not have any signed paperwork
11 that indicated a contract.

12 Q. Were you -- well, strike that.

13 MR. ARTHUR: Let's mark this.

14 (Defendant's Exhibit No. 3, 8/7/18 Human
15 Resources form, was marked for identification.)

16 BY MR. ARTHUR:

17 Q. I'll hand you what has been marked as
18 Exhibit 3. Do you recognize Exhibit 3?

19 A. Yes.

20 Q. What is your understanding of what
21 Exhibit 3 is?

22 A. This was from the human resources,
23 indicating what the step in grade would be for the
24 position.

25 Q. Does your signature appear on Exhibit 3?

1 timeframe?

2 A. Yes.

3 Q. Okay. Was it your understanding that
4 the three years would run from May 12th, 2015 --

5 A. Yes.

6 Q. -- until May 12th, 2018?

7 A. Yes, that's correct.

8 Q. Okay.

9 (Defendant's Exhibit No. 5, 12/4/18
10 letter from Horry County Schools to Jason
11 MacDonald, was marked for identification.)

12 BY MR. ARTHUR:

13 Q. I'm going to hand you what has been
14 marked as Exhibit 5 to your deposition. Do you
15 recognize this document?

16 A. Yes.

17 Q. What is your understanding of what
18 Exhibit 5 is?

19 A. This memorandum was given to me on
20 December 4th, following my interview with Mr. Neal
21 and Mr. Gray, placing me on administrative leave
22 December 4th, 2018.

23 Q. And is that your signature at the bottom
24 left of this document?

25 A. Yes.

1 Q. And did you write that phone number
2 there?

3 A. Yes.

4 Q. And did you write the date?

5 A. Yes.

6 Q. Why did you include the phone number?

7 A. I do not recall.

8 Q. What is your recollection of the meeting
9 with Mr. Neal and Mr. Gray?

10 A. Discussion of the false allegations
11 presented by the students.

12 Q. Do you recall anything specific that Mr.
13 Gray said to you during that conversation?

14 A. No.

15 Q. Do you recall anything specific that Mr.
16 Neal said to you?

17 A. No. They repeated verbatim the
18 statements from the students.

19 Q. Were you provided an opportunity during
20 that meeting to tell your side of the story?

21 A. Yes.

22 Q. And did you do so?

23 A. Yes. I repeated what I had written and
24 presented to Mr. Todd and when I had spoken to Mr.
25 McCracken.

1 with the district for any policies that would
2 provide you additional information about the
3 investigation or any rights that you might have?

4 A. I did not.

5 Q. The next part of paragraph 2 says, "The
6 district's refusal to timely grant Plaintiff the
7 opportunity to be heard before the district's
8 board." Is that your allegation?

9 A. Yes.

10 Q. What is the basis for the allegation
11 that the district refused to timely grant you an
12 opportunity to be heard?

13 A. After receiving the April 30th letter on
14 2019, in there it stated, Submit a written
15 response back in order to appeal.

16 Q. Okay.

17 A. At that time, Mr. Morgan submitted the
18 written response back, and the school district
19 never responded back. And after I changed my
20 legal counsel, my legal counsel again initiated
21 another response for a board hearing. And finally
22 got their board hearing, as indicated, in 2020.
23 So in my humble opinion, the response was not
24 timely.

25 Q. Did you ever receive anything from

1 anyone at the district advising you that they were
2 refusing to allow you to go before the board?

3 A. No.

4 Q. The next part says, "The district and
5 individual Defendants' refusal to respond to
6 employment reference requests, causing Plaintiff
7 to lose employment opportunities and the
8 expiration of his certification to teach JROTC."
9 Is that your allegation?

10 A. Yes.

11 Q. And how did the district refuse to
12 respond to employment reference requests?

13 A. For one specific case, when I
14 interviewed for the Hannah-Pamplico JROTC
15 position, I spoke with the principal and then
16 spoke with the superintendent, informing them that
17 currently I was on admin leave from Horry County,
18 awaiting my board hearing, and that I was
19 interested in the Hannah-Pamplico position.

20 The superintendent stated, That's great.
21 What I would just need from the school district is
22 just a letter. And he responded multiple times to
23 the school district and received no response. In
24 order for me to move up to the -- to take that
25 job, he had to present it to the board, but they

1 needed that letter, as per their policies.

2 Q. Do you believe that there was some
3 requirement applicable to the school district that
4 required the school district to respond to those
5 requests?

6 A. I do not know. All I know is that
7 professionally, when a superintendent calls
8 another superintendent, I would think that they
9 would respond to it.

10 Q. Okay. But apparently you believe that
11 the failure to respond to it somehow gives rise to
12 a legal remedy to you --

13 MS. RHODES: Object to the form.

14 Q. -- is that fair?

15 A. Again, I believe not responding to the
16 superintendent's request to another superintendent
17 gave rise that an outcome for me to move from
18 Horry County Schools to another school system did
19 not allow that to happen.

20 Q. Do you have any reason to believe that
21 anyone at the school district ever provided
22 another school district or any member of the
23 public any negative information relating to you?

24 A. I do not know.

25 Q. Do you have any belief that that ever

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule 210(g),
SCACR.

s/Lydia Robins Hendrix
Lydia Robins Hendrix (SC Bar No. 106334)
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