

Appendix to the Record on Appeal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Lawrence Terry

Appellant,

v.

Allen University

Respondent,

Supplement to Record on Appeal

RECEIVED

AUG 15 2013

SC Court of Appeals

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Attorney for Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2011-CP-40-05469
))
Plaintiff,))
))
vs.))
))
Allen University,))
))
Defendant.))

**PROPOSED ORDER GRANTING
ALLEN UNIVERSITY'S MOTION
TO DISMISS AND MOTION FOR
SANCTIONS**

2012 JUN 20 AM 11:58
JUDGE W. McBRIDE
S.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant Allen University ("Allen") has moved the Court to: dismiss
Plaintiff Lawrence Terry's ("Plaintiff") Complaint pursuant to *res judicata* and Rule
12(b)(6) of the South Carolina Rules of Civil Procedure; and (2) for sanctions pursuant to
the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10. For
the reasons discussed below, the Court grants Allen's motion to dismiss and motion for
sanctions.

STATEMENT OF FACTS¹

Plaintiff is a former student of Allen, having attended Allen in 2002 and 2003.
On December 9, 2003, at Plaintiff's request, Allen sent a copy of Plaintiff's transcript to
Midlands Technical College ("Midlands Tech"), where Plaintiff was planning to transfer.
Plaintiff subsequently attended Midlands Tech during the spring and summer semesters
in 2004. In August 2004, Plaintiff requested Allen send his transcript to Coastal Carolina
University ("Coastal") and the University of South Carolina ("USC"), which Allen did.

¹ The facts as stated herein are pulled from Plaintiff's latest Complaint and the three other
Complaints Plaintiff filed in the preceding lawsuits as well as Plaintiff's testimony during
a hearing on Allen's Motion to Dismiss his third lawsuit. To the extent these facts are
considered to be outside Plaintiff's current Complaint, the Court has treated Allen's
Motion as a Motion for Summary Judgment.

At some later unspecified date, Plaintiff, who was having issues at his current unnamed school, claims he was told about his previous grade point average (“GPA”). Plaintiff then proceeded to open sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003 did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades.² According to Plaintiff, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop.

On December 14, 2009, Plaintiff went to Allen to dispute his student record and claims that the registrar’s office and the office of student affairs agreed to investigate the matter. Plaintiff says he was told to wait approximately one week for Allen to complete the investigation; however, he claims that Allen never completed the investigation.

The present lawsuit is the fourth lawsuit Plaintiff has filed against Allen based on a dispute he has regarding his fall semester 2003 student records.

A. Lawsuit No. 1

On January 14, 2010, Plaintiff filed a lawsuit in the United States District Court for South Carolina, Civil Action No 3-10-cv-00090 (“Lawsuit No. 1”), claiming that Allen had injured him in the amount of \$25,375,000 by sending a copy of his official transcript on December 9, 2003, to Midlands Tech without including his fall semester 2003 grades, and then five days later updating his transcript by adding his fall semester

² Plaintiff requested that Allen send his transcript to Midlands Tech while exams were still ongoing and before grades had to be turned in for the Fall 2003 semester; thus Allen did not have Plaintiff’s fall semester 2003 grades to send.

2003 grades without telling him. On April 12, 2010, the court dismissed the lawsuit for lack of subject matter jurisdiction.

B. Lawsuit No. 2

On April 5, 2010, Plaintiff filed a lawsuit in the South Carolina Court of Common Pleas, Civil Action No. 2010-CP-40-02301 ("Lawsuit No. 2") against Allen, alleging the same facts and claims alleged in Lawsuit No. 1, but dropping his claim for damages from \$25,375,000 to \$15,000,000. Allen timely moved to dismiss Lawsuit No. 2 for failure to serve and because his claim, relating to acts occurring in 2003, was beyond the statute of limitations.

C. Lawsuit No. 3

On September 30, 2010, while Allen's Motion to Dismiss Lawsuit No. 2 was pending, Plaintiff filed Lawsuit No. 3, Civil Action No. 2010-CP-40-06803. Plaintiff based his claim in Lawsuit No. 3 on his assertion that Allen failed to investigate his dispute about his grades in December 2009, and reduced his claim for damages from \$15,000,000 to \$3,430,000.

On February 24, 2011, the Court held a hearing on Allen's Motion to Dismiss Plaintiff's Lawsuit No. 3. After hearing argument by both parties, the Court granted Allen's Motion, holding that Plaintiff had not shown any consideration for the agreement he claimed he had with Allen, and that Allen's agreement to investigate was gratuitous and did not create an enforceable contract. On June 1, 2011, Plaintiff filed a Motion to Reconsider which the Court denied on June 6, 2011.

D. Lawsuit No. 4

On August 12, 2011, Plaintiff filed the instant Complaint against Allen (“Lawsuit No. 4”) claiming that Allen breached an agreement he had that Allen would investigate his dispute regarding his fall semester 2003 grades. He asserts claims for breach of contract, intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel.

I. ALLEN’S MOTION TO DISMISS

A. Plaintiff’s Complaint is barred by *res judicata*.

Allen first moved to dismiss Plaintiff’s Complaint on the basis of *res judicata*. *Res judicata*, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997).

Plaintiff’s claims arising out of his allegation that Allen breached the agreement to investigate was litigated and dismissed in Lawsuit No. 3. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates, in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigate therein); *Deel v. Home Depot USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect.) Because the other causes of actions alleged by Plaintiff in Lawsuit 4 all arose out of the same set of facts and had accrued prior to his filing Lawsuit No. 3, these claims are also barred by *res judicata*.

Therefore, the Court finds that Plaintiff's Complaint should be dismissed because *res judicata* bars him from pursuing these claims in a subsequent action.

B. Plaintiff Has Failed to Allege Facts Sufficient to State a Cause of Action.

Even if Plaintiff's claims were not barred by *res judicata*, Plaintiff has failed to allege facts, even if taken as true, which would be sufficient to support the causes of action he alleges.

1. Breach of Contract

Although Plaintiff argued at the hearing on this matter that he had not asserted a claim for breach of contract, his Complaint specifically states that "Allen University breached the said agreement by intentionally refusing to complete the agreed investigation," thus to the extent Plaintiff does assert a claim that Allen breached the agreement Plaintiff says he had that it would investigate his issue regarding his fall semester 2003 grades, Plaintiff has failed to show the consideration necessary to create an enforceable contract. It is well settled law that gratuitous agreements without consideration over and above a party's moral duty are not binding in law. *See, e.g., Walters v. University of South Carolina*, 280 S.C. 572, 313 S.E.2d 346 (Ct. App. 1984) (holding that extra benefits granted by university to student were gratuitous and not part of the student's grant in aid, and therefore university did not breach the contract with the student when it ceased providing the extra benefits); *Coggeshall v. Coggeshall*, 33 S.C.L. 51, 1847 WL 2157 (S.C. App. L.) ("[A]ll executory contracts to give in future, if exclusively gratuitous, i.e., without some valuable consideration, over and above the mere moral duty of the donor, are not binding in law, unless such valuable consideration be both alleged in the pleadings and proved at the trial.").

Thus as the Court held in Lawsuit No. 3, any agreement by Allen to investigate was gratuitous and did not create an enforceable contract. Therefore, Plaintiff's breach of contract claim should be dismissed.

2. Intentional Infliction of Emotional Distress

To the extent Plaintiff bases this claim of intentional infliction of emotional distress on Allen's "randomly adding failing grades" to his transcript in 2003, the claim is barred by the three-year statute of limitations. S.C. Code § 15-3-530. If Plaintiff is basing this claim on his belief that Allen caused him severe emotional distress because he believes it did not investigate his claim in 2009, Allen's alleged failure to investigate, even if true, does not rise, as a matter of law, to the level required to state a claim for intentional infliction of emotional distress.

As the South Carolina Supreme Court recently held, to state a claim for intentional infliction of emotional distress, Plaintiff must establish that: (1) Allen intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from its conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community; (3) Allen's actions caused him emotional distress; and (4) the emotional distress suffered by Plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 710 S.E.2d 67 (2011).

Plaintiff's allegation that Allen did not investigate does not meet the standard for an intentional infliction of emotional distress claim and thus the Court dismisses that claims.

3. Constructive Fraud/Silent Fraud

To the extent Plaintiff's allegations of fraud pertain to his allegation that Allen wronged him by sending his transcript to another school in 2003 without his fall 2003 grades, these claims are barred by the statute of limitations. S.C. Code § 15-3-550. To the extent Plaintiff is basing these claims on his belief that Allen failed to investigate this issue in 2009, these claims fail as a matter of law.

In order to prove fraud, the following elements must be shown: (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Id.* In addition, Rule 9(b) of the South Carolina Rules of Civil Procedure requires a plaintiff to plead the circumstances surrounding fraud with particularity. "A complaint is fatally defective if it fails to alleged all nine elements of fraud," and "[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

Here, Plaintiff has failed to sufficiently allege any cause of action based on fraud, and therefore the Court dismisses this claim

4. Breach of Trust

Plaintiff apparently bases his claim of breach of trust on his allegation that he trusted Allen to investigate his claim and when it allegedly did not do so, he was injured.

In South Carolina, breach of trust is usually a criminal act punishable under S.C. § 16-13-230, or a claim brought against trustees for violation of a trustee's duty owed to a beneficiary of a trust under S.C. Code § 62-7-100. Otherwise, there is no civil action for breach of trust cognizable under South law. Therefore, the Court dismisses Plaintiff's claim for breach of trust.

5. Negligent Supervision

Plaintiff's allegation that Allen negligently supervised the registrar when she failed to include his fall 2003 on his transcript she sent in December 2003 is barred by the three-year statute of limitations for negligence claims. S.C. Code § 15-3-530.

6. Libel

Plaintiff claims that Allen "has been and continues to print and send out false information about me," and that "[t]hey have sent those false grades to numerous schools" Nowhere in the Complaint, however, has Plaintiff alleged that the grades on his transcript were false—only that Allen failed to initially include the fall semester 2003 grades on his transcript. To the extent Plaintiff is now claiming that the grades posted for fall semester 2003 are somehow false, then he should have disputed those grades when he received them and thus his claim is barred by the statute of limitations. S.C. Code § 15-3-550. Furthermore, Allen only sent his transcripts to other schools at his explicit request to do so and thus he cannot attempt to hold Allen liable for acts that he requested it do. Therefore, the Court dismisses Plaintiff's libel claim for failure to allege facts sufficient to state a cause of action.

II. ALLEN'S MOTION FOR SANCTIONS

Allen has also moved for sanctions under the South Carolina Frivolous Civil Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for making frivolous arguments that are not reasonably supported by the facts. § 15-36-10(A)(4)(b). Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

As discussed above, this is the fourth lawsuit Plaintiff has brought against Allen in the last year and a half, all arising from the same set of facts. Plaintiff knows that his complaint regarding his fall semester 2003 grades is time-barred, yet he persists in bringing yet another action based on that issue. Then, in an apparent attempt to avoid dismissal because of the statute of limitations, Plaintiff re-characterize his claim as one pertaining to an alleged agreement he had with Allen in 2009 to investigate what had occurred in 2003. This is nothing more than an attempt to bootstrap his 2003 claim to a "new and improved" 2009 claim, based still, however, on the same facts. Plaintiff also knows that claims based on an alleged 2009 agreement are not valid because he had no enforceable agreement with Allen, as the Court informed him when it dismissed Lawsuit No. 3.

Although the Court respects the rights of persons to bring legitimate claims for adjudication in a court of law, Allen and the Court should not be forced to continue expending time and money in defending these repeated lawsuits brought by Plaintiff. Therefore, The Court grants Allen's Motion for Sanction and enjoins Plaintiff's from bringing further lawsuits against Allen based on these facts.

IT IS SO ORDERED

June 18, 2012
Columbia, South Carolina



Casey L. Manning
Circuit Court Judge

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 June 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Lawrence Terry

Debbie Whittle Durban

Lawrence Terry

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED

ORDER INFORMATION

This order ends does not end the case
Additional Information for the Clerk _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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		\$
		\$
		\$

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Circuit Court Judge [Signature] Judge Code 2061 Date JUNE 18, 2012

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of June, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT FILED ON JULY 5, 2012, IS HEREBY DENIED. THIS CASE HAS PREVIOUSLY BEEN DISMISSED AND A MOTION FOR RECONSIDERATION HAS ALREADY BEEN DENIED. PLAINTIFF IS HEREBY ENJOINED FROM FILING ANY ADDITIONAL MOTIONS IN THIS MATTER AT THE CIRCUIT COURT LEVEL AND MUST PROCEED TO THE APPELATE COURT LEVEL FOR ANY FURTHER DISPOSITION OF THIS CASE.

JAN 11 2012
JUL 11 9 42 50
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

ORDER INFORMATION

This order ends does not end the case
Additional Information for the Clerk _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code 2061 Date JULY 9, 2012

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of JULY, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of JULY, 2012 to attorneys of record or to parties (when appearing pro se) as follows.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court [Signature]

FOR MANDATED ADR COUNTIES ON

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters,
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

IN THE COURT OF COMMONS PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry)
)
)
Plaintiff (s),)
)
v.) Civil Action No.
)
)
Allen University)
)
Defendant (s),)

2012 JUL 16 AM 4:04
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO THE SHERIFF OF RICHLAND COUNTY,
YOU ARE COMMANDED:

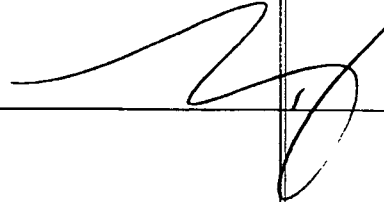
To Summon the above named defendant(s) and serve upon said defendant(s) a copy of this summons and complaint.

TO THE ABOVE NAMED DEFENDANT(S):

Within thirty (30) days after you receive this Summons, excluding the day you receive it, you must file an Answer to the attached Complaint if you want to deny the allegations. The original of your Answer must be filed with the Clerk's Office of the Court of Common Pleas, 1701 Main Street, Room 205 P.O. Box 2766 Columbia, SC 29202, South Carolina and must include proof that a copy of the Answer was served on the plaintiff or his/her attorney who is named on this Summons.

Failure to file an Answer denying the allegations will result in a judgment against you, and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.

PLEASE TAKE NOTICE that Plaintiff Lawrence Terry also requires of Defendant Allen University answers under oath to the attached Requests for Admissions within thirty (30) days from the date of service hereof pursuant to South Carolina Rules of Civil Procedure 36.

DATED: July 16, 2012 _____


Lawrence Terry
P.O. Box 24138 Columbia, SC 29224
803-414-0760

1 They admitted to and provided evidence that they sent false grades to multiple 3rd parties. That is
2 the definition of Libel. It is also Fraudulent and Grossly Negligent of Allen University. It without
3 a doubt proves my claims of Libel, Intentional Infliction of Emotional Distress, both counts of
4 Fraud, and Negligence.

5
6
7 **As for the claim of Negligence**, the December 2003 transcript sent to Midlands Tech did
8 not have grades on it for the fall 2003 semester. Marilyn Young stated in her Sworn Affidavit,
9 submitted January 2012, that I requested that transcript on December 8, 2003 and exams were
10 still going on at that time. Now keep in mind that she stated I "requested" it on December 8,
11 2003. **I had no control over when they were sent out. That is the Registrar's job.** She also
12 stated and I quote, "final grades were not due to the Registrar until December 16, 2003." She
13 later stated and I quote, "Once the fall semester 2003 grades were reported, Mr. Terry's
14 transcript was updated to reflect those grades." On track 1 of the audio transcript attached to the
15 Complaint I asked Marilyn Young and once again I quote, "If you knew my grades or yall were
16 going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do
17 that, we are about to add some grades?" she responded with, **"Yeah, that's what we would put.**
18 **Yeah that's what we would do."** She also stated "I will have to pull your file...cause then, cause
19 ummm, if they sent it without those grades on it then we, are going to have to note it in the
20 system and that's how we are going to have to sent it out because if that's how it was sent out,
21 because we can't just go back and add." , end quote. The question to be answered is: What would
22 the **reasonable professional** have done under the same or similar circumstances? Well with the
23 current Registrar Marilyn Young stating that she would not do that, we have our answer. Allen
24 University's Registrar Marilyn Young stated in Exhibit B that they would not do the same
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1 actions as the previous did in handling my transcript request. The current or previous registrar
2 Marilyn Young also stated on the audio transcript attached to this Complaint, track 3, that she
3 **could not verify my student records** from when I attended because, "they weren't taking
4 accurate records so I can't see what they sent." The current registrar and/or staff were also
5 **grossly negligent** because it is clear that they knew of at least one issue with some students'
6 transcripts and when I initially asked NOBODY told me that major material fact. Since the
7 President is supposed to be head of the university then I would guess she would be the one that
8 the claim of Negligence would fall on. Allen University stated in their Sworn Affidavit,
9 submitted on January 11, 2012, that they did not discover one error(s) in the system that caused
10 false information to be published on some students' transcripts until 2008 and did not disclose
11 that material fact to any of the students affected by that information. The last sentence on page
12 two, paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an
13 error that has since been corrected." end quote. That statement shows ownership of their gross
14 negligence and attempted fix. Therefore, because of this the Plaintiff was injured.
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19 **As for the claim of Libel**, Allen University has been and continues to print and send out
20 false information about me and admitted to it in the Sworn Affidavit. The Defendant stated and
21 attached evidence in their Sworn Affidavit that they printed false information concerning my
22 educational background and published and sent it to multiple 3rd parties. On page two, paragraph
23 #8, of the Defendant's Sworn Affidavit they stated and I quote, "I have also reviewed the copy of
24 Mr. Terry's transcript dated November 27, 2007, which he filed with the Court on September 23,
25 2001 also. This copy has an error in it..." end quote. They later went on to state that beginning
26 in 2008 they discovered for some "**unknown reason**" they were printing false grades on
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1 multiple students' transcripts. They have sent those false grades to numerous schools therefore
2 causing me to be humiliated and denied acceptance into schools. The Defendant later went on
3 to admit and attach evidence that they sent those false grades to Morris College, the
4 University Of South Carolina, and Coastal Carolina University. Allen University has
5 satisfied ALL elements of Libel. There is no reason for a trial on this issue because of this.
6 My character, reputation, and name have been ruined many times over! I cannot begin to explain
7 the embarrassment I suffered and continue to suffer daily. It is clear that by Allen University
8 publishing multiple official transcripts with false information it created defamatory statements
9 and/or representations that conveys an unjustly unfavorable impression of me and my
10 educational background. I have multiple official documents and/or transcripts from Allen
11 University with different grades and GPAs on them. Now only one can be true meaning the
12 others are false, containing false information. Carelessness, negligence, or recklessness is not an
13 excuse for libel. The incorporated document on page 9 of the Complaint proves that Allen
14 published false information about me and I have an Official Transcript from 2007, that the
15 Defendant stated had false grades on it in their Sworn Affidavit, and 2009 that Allen University
16 published that have different grades and GPAs. Correct and true photo copies of the official
17 transcripts published by Allen University are incorporated herein:
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Allen University - 008417
Office of the Registrar
1520 Hudson Street - Columbia, SC 29904

Page 1 of 1

Name: Lawrence M Terry
Program/Degree/Curriculum:
Previous Institution:
Degree Awarded:
No Degree Yet Awarded
Name:
Date Received:
Cumulative GPA: 1.36

Course #	Title	Grade	Credits	GPA	Course #	Title	Grade	Credits	GPA
Fall 2002 (Aug 26, 2002 - Dec 16, 2002)									
EDU111	University 101	C	3.00	0.000	MAT110	Fund. of Math II	F	3.00	0.000
ENG101	English Comp I	A	3.00	0.000	ENG102	English Comp II	F	3.00	0.000
PHI101	French I	A	3.00	12.000	REL101	Intro to Chr Testame	F	3.00	0.000
MAT109	Fund. of Math I	C	3.00	0.000					
REL101	Intro to Chr Testame	F	3.00	0.000					
Spring 2003 (Jan 6, 2003 - May 2, 2003)									
ART300	Art Appreciation	C	3.00	4.000					
BDI110	General Biology	F	4.00	0.000					
BUS300	Microcomputer Apps	W	3.00	0.000					
ENG102	English Comp II	A	3.00	0.000					
PHI102	French II	A	3.00	12.000					
MAT110	Fund. of Math II	D	3.00	3.000					
Summer I 2003									
BUS300	Microcomputer Apps	B	3.00	0.000					
ENG102	English Comp II	A	3.00	0.000					
PHI102	French II	A	3.00	12.000					
MAT110	Fund. of Math II	D	3.00	3.000					
Fall 2003 (Aug 21, 2003 - Dec 15, 2003)									
BDI110	General Biology	W	4.00	0.000					
ENG102	English Comp II	F	3.00	0.000					

Date Processed:
IN ACCORDANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, AS AMENDED, TRANSCRIPTS MAY NOT BE RELEASED TO A THIRD PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT

OFFICIAL TRANSCRIPT

Date Processed: May 27 2007
Name: Lawrence M Terry
Program/Degree/Curriculum:
Previous Institution:
Degree Awarded:
No Degree Yet Awarded
Name:
Date Received:
Cumulative GPA: 1.36

Course #	Title	Grade	Credits	GPA	Course #	Title	Grade	Credits	GPA
Fall 2002 (Aug 24, 2002 - Dec 16, 2002)									
EDU111	University 101	C	3.00	0.000	MAT110	Fund. of Math II	F	3.00	0.000
ENG101	English Comp I	A	3.00	0.000	ENG102	English Comp II	F	3.00	0.000
PHI101	French I	A	3.00	12.000	REL101	Intro to Chr Testame	F	3.00	0.000
MAT109	Fund. of Math I	C	3.00	0.000					
REL101	Intro to Chr Testame	F	3.00	0.000					
Spring 2003 (Jan 6, 2003 - May 2, 2003)									
ART300	Art Appreciation	C	3.00	4.000					
BDI110	General Biology	F	4.00	0.000					
BUS300	Microcomputer Apps	W	3.00	0.000					
ENG102	English Comp II	A	3.00	0.000					
PHI102	French II	A	3.00	12.000					
MAT110	Fund. of Math II	D	3.00	3.000					
Summer I 2003									
BUS300	Microcomputer Apps	B	3.00	0.000					
ENG102	English Comp II	A	3.00	0.000					
PHI102	French II	A	3.00	12.000					
MAT110	Fund. of Math II	D	3.00	3.000					
Fall 2003 (Aug 21, 2003 - Dec 15, 2003)									
BDI110	General Biology	W	4.00	0.000					
ENG102	English Comp II	F	3.00	0.000					

Lawrence M Terry 11-27-07
Date Processed:
IN ACCORDANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, AS AMENDED, TRANSCRIPTS MAY NOT BE RELEASED TO A THIRD PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT

It is generally known and accepted that the publication need only be to one person, but it must be a statement which claims to be fact and is not clearly identified as an opinion. With the publication being my official college transcript, signed and officially stamped by Allen, it is clear that it is meant to be fact and not opinion.

1 The four elements of libel are:

- 2
- 3 • The statement is false- **I provided incorporated evidence to prove false information**
4 **and Allen University admitted it in their Sworn Affidavit and submitted evidence of**
5 **publication to multiple 3rd parties. That alone is the definition of Libel.**
 - 6 • The statement has a defamatory meaning- **Stating that I had grades to some third**
7 **parties and also stating that I did not have grades to other third parties is**
8 **fraudulent, defamatory and deceitful. Only one can be right, if that.**
 - 9 • The allegedly injured party is clearly identified in the statement- **My full name is clearly**
10 **posted at the top of each transcript and document.**
 - 11 • The statement has been published- **The Defendant admitted to at least sending the**
12 **statements to the University of South Carolina and Coastal Carolina University.**
13
14

15 I have supplied more than enough evidence, facts, and statements to support my claim of Libel.
16 The last sentence on page two, paragraph #8, in their Sworn Affidavit the Defendant stated and I
17 quote, "It was simply an error that has since been corrected." end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
19
20

21 **As for the claim of Constructive Fraud**, based on the statements by Marilyn Young
22 specifically, but not wholly, track one on Exhibit B and the Sworn Affidavit, the school would
23 have known that I would be harmed from Allen University adding random grades to students
24 transcripts and by knowing that material fact but yet failed to disclose that fact. Marilyn Young
25 stated in her Sworn Affidavit, submitted January 2012, that the school has known of issues with
26 false grades on some students' transcripts since 2008 but **failed to disclose this material fact.**
27

28 As a young student I trusted that Allen University's Registrar would help me not hurt me and

1 that confidence was broken. The current staff also knew that by correcting my transcript they
2 would get in trouble with their accrediting agencies and also State and Federal departments for
3 financial aid fraud. As the statements and evidence incorporated into the Complaint show, the
4 Plaintiff has satisfied all of the required elements. As defined by Nolo's Plain-English Law
5 Dictionary, "When the circumstances show that someone's actions give that person an unfair
6 advantage over someone else by unfair means (lying or not telling a buyer about defects in a
7 product, for example), the court may decide to treat the situation as if there was actual fraud even
8 if all the technical elements of fraud have not been proven." So although I may have or may not
9 have satisfied all of the technical elements, as I stated before Allen University actions were
10 clearly to gain an unfair advantage over me. Bad intent or dishonesty is not a requirement to
11 satisfy constructive fraud. The elements for actual and constructive fraud are the same with two
12 exceptions: constructive fraud drops the element of scienter--knowledge on the part of the injurer
13 of the representation's falsity--and adds the element of a fiduciary relationship. As a former
14 student I had complete confidence in Allen University to do the right thing but they did not. This
15 not the first time the Defendant has allegedly committed Fraud in respect to financial aid and
16 most likely won't be the last time unless something is done. The elements of constructive fraud
17 are:
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22 (1) a false misrepresentation; (Allen University stated in their Sworn Affidavit that they
23 knew of false grades being published on multiple student transcripts but failed to disclosed
24 that material fact. Marilyn Young also stated that she knew they did not keep accurate
25 records in the past. They also sent those false misrepresentations of my grades to multiple
26 3rd parties.)
27
28

1 (2) in reference to a material fact; (**Failing to disclose the material fact of known false grades**
2 **on students' official transcript is of great importance.**)

3
4 (3) for the purpose of inducing the other party to rely on such representation;(**By not disclosing**
5 **that significant material fact they expected me and others to rely on the representation)**

6
7 4) on which the other party did justifiably rely;(**I and other students affected had no choice**
8 **but to rely on those false grades and so did the other 3rd parties who received them)**

9
10 (5) which resulted in damages or injury; and (**My reputation and self-esteem have been**
11 **injured many times over)**

12
13 (6) a fiduciary relationship between the parties.(**As a former student that paid a lot of money**
14 **I had complete confidence in Allen University to do the right thing but they did not)**

15
16 The last sentence on page two, paragraph #8 of their Sworn Affidavit, the Defendant stated and I
17 quote, "It was simply an error that has since been corrected." end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.

19
20 **As for the claim of Silent Fraud, Allen University knew that by not disclosing the fact**
21 **that they knew of random false grades being published on students' official transcripts and if**
22 **they sent my transcript to Midlands Tech without certain grades I would continue to believe that**
23 **they did the right thing and that I would rely on that false impression and that is what they**
24 **intended the happen the whole time in order to keep the financial aid money. I know and they**
25 **know for a fact that they did not send my transcript with those grades on it to Midlands**
26 **Technical College. I also have supplemental evidence that supports the sworn statements of the**
27
28

- 1 • The Defendant failed to disclose one or more material fact about the subject matter of the
2 claim- **Allen did fail to disclose fact(s) two, one being the fact that they knew they**
3 **had been publishing false grades and they knew of an error in system since 2008.**
- 4 • The Defendant had actual knowledge of the fact(s)- **Allen did have actual knowledge**
5 **and seen the transcript evaluation form from Midlands Tech and they stated in**
6 **their Sworn Affidavit that they have known since 2008 of some error(s) in the**
7 **system in regards to false grades on some students' transcripts, including mine.**
- 9 • The Defendant's failure to disclose the fact(s) caused the plaintiff to have a false
10 impression- **It created a false impression of good and/or bad grades to me and other**
11 **3rd parties whom received those false grades.**
- 13 • When the Defendant failed to disclose the fact(s), the Defendant knew the failure would
14 create a false impression- **Allen clearly knew the outcome and relied on it**
- 15 • When Defendant failed to disclose the fact(s), Defendant intended that plaintiff rely on
16 the resulting false impression- **Allen definitely intended me to rely on the outcome**
- 18 • The plaintiff relied on the false impression; *and*
- 19 • The plaintiff was damaged as a result of the reliance upon the false impression." **Both**
20 **true.**

21
22 The statements and evidence incorporated into the Complaint satisfy the required elements. The
23 last sentence on page two, paragraph #8, of their Sworn Affidavit the Defendant stated and I
24 quote, "It was simply an error that has since been corrected." end quote. That statement shows
25 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
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1 **As for the claim of Intentional Infliction of Emotional Distress**, based on but not
2 wholly on the statements (Exhibit B) and the Sworn Affidavit made by Allen University's
3 registrar, Marilyn Young, any reasonable person would know with substantial certainty that a
4 student would suffer emotional distress if Allen University randomly added failing grades to a
5 student's transcript or Allen University **recklessly disregards** the high probability that emotional
6 distress will occur. They stated in their Sworn Affidavit that they knew of false grades on
7 students' transcript but intentionally did not inform any students. That material fact is of great
8 importance to me and all other students potential affected. As a young college student trying to
9 better yourself in this tough economy you cannot say that it is not "extremely wicked, brutal, or
10 cruel" for a school, that you paid good money to attend, refuse to correct the disputed
11 information within your student records which would clear up important issues concerning your
12 grades, GPA, and educational background? That is absurd and unrealistic. That far exceeds any
13 and all bounds of decency by a university! Their failure to inform and correct the disputed
14 information on my student records is affecting my ability to make a living and my ability to
15 further my education so that I may get a better job during these tough economic times. I am also
16 having issues sleeping and every day enjoyment of life. The tort of intentional infliction of
17 emotional distress has four elements: (1) the defendant must act intentionally or recklessly; (2)
18 the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause
19 (4) of severe emotional distress. The last sentence on page two, paragraph #8, the Defendant
20 stated and I quote, "It was simply an error that has since been corrected." end quote. That
21 statement shows ownership of their negligence and attempted fix. I have proved all of these
22 elements within my complaint and attached evidence. Because of this the Plaintiff was injured.
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1 3. I believe, because of the above information, that I am entitled to relief in the form of the
2 specific performance I was offered, general and special damages in an amount to be determined
3 by the court and or a jury, punitive damages requested because the Defendant's actions are
4 particularly egregious, interest on damages, and/or other relief as below requested:
5

6 **Allen University admitted to Libel, Negligence, and Fraud in their Sworn Affidavit.**

7 Allen University admitted to and provided evidence that they sent false grades to multiple 3rd
8 parties. That is Fraud and Grossly Negligent of them. **The last sentence on page two,**
9 **paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an**
10 **error that has since been corrected." end quote. That statement shows ownership of their**
11 **negligence and attempted fix. I did not discover this information until the Defendant filed**
12 **their Sworn Affidavit in January 2012. I confirmed this in my Sworn Affidavit. I have since**
13 **undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and**
14 **emotional distress. It has also affected my enjoyment of life past, present, and future. What I**
15 **would like to come from this case is to have my Official Transcript corrected by taking off the**
16 **grades from the Fall 2003 Semester as promised by Allen University, an apology letter, punitive**
17 **damages requested, general and special damages, including interest, and any costs resulting in**
18 **this action. For such other and further relief as the Court may deem proper. Thank you.**
19
20
21
22

23 I state under penalty of perjury that the above is correct and truthful, except those based on my
24 information and belief.

25 Date July 16, 2012
26


27 
28 Plaintiff Signature
Post Office Box 24438
Columbia, Sc 29224
Lawrence Terry, Pro Se

Exhibit A

<< Back

SITE SEARCH WEB SEARCH BY Google Go



Students say they haven't received Allen track scholarships

Posted Mar 11, 2010 5:33 PM EST
Updated Mar 16, 2010 12:05 AM EDT

COLUMBIA, SC (WIS) - Some students on Allen University's track team say they were promised a full-ride scholarship but did not receive it. Members of the team say they started getting bills for student loans they didn't know about, bills for thousands of dollars.

"He promised me that he would pay for everything," said student Kyle Vicks of the proposal.

"I thought he was there genuinely to help us out," said student Mark Walden.

"The money was supposed to cover everything from room and board, book money, tuition," said student Chester Braggs.

Since last week, Allen University track Coach Jeffrey Hughes has not responded to phone calls and could not be found on campus or at his house.

The three students say they are not waiting on answers from the coach they've been meeting with attorneys.

"These young men were asked to sign original documents under duress," said attorney Grant Vamer. "They were essentially handed documents by their coach, told sign on the dotted line and then the papers were collected."

"If we don't receive a response from the school in the near future, we're going to have no choice except to file a lawsuit," said attorney Kim Vamer.

Allen University's executive vice president says the school is looking into the students' claims.

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Transcript for attached audio cd.

Track 1: On this clip I was talking to Ms. Marilyn Young, Allen University's registrar, about my transcript and why grades were added. I stated (at 5sec mark), "If you knew my grades or yall were going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add some grades?" she responded with (at 13sec mark), "Yeah, that's what we would put. Yeah that's what we would do." She also stated that (at 20sec mark), "I will have to pull your file...cause then, cause ummm, if they sent it without those grades on it then we are going to have to note it in the system and that's how we are going to have to sent it out because if that's how it was sent out because we can't just go back and add." That statement clearly shows that if it is found that they did not send my transcript to MTC with fall 2003 grades on it then they would note it in the system, take those grades off, and resend my new transcript out without those made up grades. They never completed that investigation and if they did I was never given the results. I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College. They discovered that if they did change my grades they would have to answer to government for stealing/mishandling federal and state financial aid money and their accrediting agencies.

Track 2: On this clip Marilyn Young stated, "Because what you complained about, that's money from the government. You got to show you wasn't here because the government don't play." and I stated, "They going to come back for yall" and she stated, "That's right! but they ain't going to come back for me because I'm the registrar. That's business office."

Track 3: This clip is me and Ms Young talking about the record keeping from the past. She stated (21sec mark), "I thought you were talking about December.." I stated, "No not this year, no no '03 that fall." She later when to state (at 28sec mark), "No I cannot verify that cause umm... cause...back then they weren't taking accurate records so I can't see what they sent."

1 **IN THE COURT OF COMMON PLEAS FOR THE STATE OF SOUTH CAROLINA**
2 **IN AND FOR RICHLAND COUNTY**

3
4
5 Lawrence Terry,

6 Plaintiff,

7 vs.

8 Allen University,

9 Defendant

) **Case No. : 2012-CP-40-04857**

) **PLAINTIFF'S AMENDED COMPLAINT**
) **FOR NEGLIGENCE AND**
) **INTENTIONAL INFLICTION OF**
) **EMOTIONAL DISTRESS**

JANELLE W. HIBBRIDE
C.C.P. & G.S.

2012 AUG 10 PM 4:43

RICHLAND COUNTY
FILED

10
11
12
13 I, Lawrence Terry, the plaintiff in this civil action do make the following claims:

14
15 1. I believe the Defendant, Allen University, is a business of Richland County in South Carolina,
16 and does business at 1530 Harden Street Columbia, SC 29204 for which this Complaint is
17 properly filed in Richland County.

18
19 2. Plaintiff complains and for causes of action alleges as follows:

20
21 **Allen University has established a pattern of Negligence in regards to**
22 **financial aid mishandling, see Exhibit A.** I have provided evidence that Allen University was
23 extremely reckless and they published and then sent false grades to multiple 3rd parties. That is
24 Fraudulent and Grossly Negligent of Allen University. Those material facts without a doubt
25 prove my claims of Intentional Infliction of Emotional Distress and Negligence. Allen University
26 was negligent in more than one way in regards to the handling of my student records.
27
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1
2 **As for the claim of Negligence**, the December 2003 transcript sent to Midlands Tech did
3 not have grades on it for the fall 2003 semester. The transcript evaluation form from Midlands
4 Technical College incorporated below proves this fact. I was told I requested that transcript on
5 December 8, 2003 and exams were still going on at that time. Now keep in mind I was told that I
6 “requested” it on December 8, 2003. **I had no control over when they were sent out. That is**
7 **the Registrar’s job.** Final grades were not due to the Registrar until December 16, 2003 and
8 once the fall semester 2003 grades were reported my transcript was allegedly updated to reflect
9 those grades. On track 1 of the audio transcript attached to the Complaint I asked Marilyn Young
10 and once again I quote, “If you knew my grades or yall were going to add grades to my
11 transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add
12 some grades?” she responded with, **“Yeah, that's what we would put. Yeah that's what we**
13 **would do.”** She also stated “I will have to pull your file...cause then, cause ummm, if they sent it
14 without those grades on it then we, are going to have to note it in the system and that's how we
15 are going to have to sent it out because if that's how it was sent out, because we can't just go back
16 and add.”, end quote. The question to be answered is: What would the **reasonable professional**
17 have done under the same or similar circumstances? **Well with the current Registrar Marilyn**
18 **Young stating that she would not do that, we have our answer.** Allen University’s Registrar
19 Marilyn Young stated in Exhibit B that they would not do the same actions as the previous did in
20 handling my transcript request. The current or previous registrar Marilyn Young also stated on
21 the audio transcript attached to the Complaint, track 3, that she **could not verify my student**
22 **records** from when I attended because, **“they weren’t taking accurate records** so I can’t see
23 what they sent.” My character, reputation, and name have been ruined many times over! I cannot
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1 begin to explain the embarrassment I suffered and continue to suffer daily. It is clear that by
2 Allen University publishing multiple official transcripts with false information it created
3 defamatory statements and/or representations that conveys an unjustly unfavorable impression of
4 me and my educational background. **I have multiple official documents and/or transcripts**
5 **from Allen University with different grades and GPAs on them. Now only one can be true**
6 **meaning the others are false, containing false information.** The incorporated document on page 5
7 of the Complaint proves that Allen was negligent in publishing false information about me and I
8 also have Official Transcripts from 2007 and 2009 that Allen University published which have
9 different grades and GPAs. Since the President and the Board of Trustees are supposed to be
10 head representatives of the University, then I would guess they would be the ones that the claim
11 of Negligence would fall on. This information was discovered in December 2009 and is well
12 within the statue of limitations. These material facts could not have been discovered any sooner.
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- 16 1. Allen University owed me the duty of care. I was a paying student and Allen University
17 owed me the duty of making sure my student records were correct.
- 18 2. Allen University breached that duty of care on more than one occasion. Marilyn Young
19 told me in December 2009 that the previous staff at Allen University were not taking
20 accurate records and did not following proper procedures I regards to handling my
21 student records. If not for her informing me of those material facts in 2009 I would have
22 never known and could not have discovered that information any sooner. Another
23 instance of their gross negligence occurred when Marilyn Young stated, Exhibit B, that
24 she would correct the errors made by the previous staff within my student records but
25 refused to when the school realized they would have to answer to the State and Federal
26 government about financial aid mishandling.
27
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1 3. If not for the gross negligence of Allen University's past and present staff I would not
2 have occurred injuries. They are the direct cause of my pain.

3 4. Allen University has cause me great harm in the forms daily headaches, loss of
4 enjoyment of life, loss of reputation, and many more issues I continue to suffer.
5

6 Therefore, because of this the Plaintiff was injured.
7
8

9 **As for the claim of Intentional Infliction of Emotional Distress**, based on but not
10 wholly on the statements (Exhibit B), any reasonable person would know with substantial
11 certainty that a student would suffer emotional distress if Allen University randomly added
12 failing grades to a student's transcript or Allen University **recklessly disregards** the high
13 probability that emotional distress will occur. They knew of false grades on students' transcript
14 but intentionally did not inform any students. That material fact is of great importance to me and
15 all other students potential affected not to mention the colleges and universities they sent them
16 too. They knew my Official Transcript had false grades on it but intentionally refused to correct
17 the issues as they stated they would, see Exhibit B. As a young college student trying to better
18 yourself in this tough economy you cannot say that it is not "extremely wicked, brutal, or cruel"
19 for a school, that you paid good money to attend, refuse to correct the disputed information
20 within your student records which would clear up important issues concerning your grades,
21 GPA, and educational background? That is absurd and unrealistic. That far exceeds any and all
22 bounds of decency by a university! Their failure to inform and correct the disputed information
23 on my student records is affecting my ability to make a living and my ability to further my
24 education so that I may get a better job during these tough economic times. I am also having
25 issues sleeping and every day enjoyment of life. The tort of intentional infliction of emotional
26
27
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1 distress has four elements: (1) the defendant must act intentionally or recklessly; (2) the
 2 defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4)
 3 of severe emotional distress. Allen University knew that by not disclosing the fact that they sent
 4 my transcript to Midlands Tech without certain grades I would continue to believe that they did
 5 the right thing and that I would rely on that false impression and that is what they intended the
 6 happen the whole time in order to keep the financial aid money. I know and they know for a
 7 fact that they did not send my transcript with those grades on it to Midlands Technical
 8 College. I also have supplemental evidence that supports the statements of the Defendant that
 9 shows multiple false grades being published by Allen University over the years. A correct and
 10 true photo copy of the transcript evaluation of the official transcript sent to Midlands Technical
 11 College, dated 01/05/2004, is incorporated herein:

STUDENT NAME: Mr. Lawrence M. Terry
 ADDRESS: 2913 Shelby Dr.
 Columbia, SC 29223

PROGRAM: CE
MS

Undergraduate - CAREER

Midlands Technical College
 P.O. Box 1600
 Columbia, South Carolina 29202

INSTITUTION: Allen University

TRANSFER COURSE				MTC EQUIVALENT COURSE			
ACC-111	Calculus I	3.00	C	ACC-111	Calculus I	3.00	C
ACC-121	English Composition	3.00	C	ACC-121	English Composition I	3.00	C
ACC-101	French I	3.00	C	ACC-101	French I	3.00	C
ACC-100	Fund of Math I	3.00	C	ACC-100	Fund of Math I	3.00	C
ACC-100	Art Appreciation	3.00	C	ACC-100	Art Appreciation	3.00	C
ACC-100	Physical Ed	1.00	C	ACC-100	Physical Education	1.00	C
ACC-103	Microscopic Appl.	1.00	C	ACC-103	Microscopic Applications	1.00	C
ACC-100	Advanced Placement Calc	3.00	C	ACC-100	Advanced Placement Calculus	3.00	C
ACC-112	Fund of Math II	3.00	C	ACC-112	Fund of Math II	3.00	C
ACC-100	English Comp II	3.00	C	ACC-100	English Composition II	3.00	C
ACC-110	General Biology	3.00	C	ACC-110	General Biology	3.00	C
ACC-101	Human Calc	3.00	C	ACC-101	Human Calculus	3.00	C
23.00				27.00			

Sara Samson
 COORDINATOR OF ADVANCED PLACEMENT

1 **This clearly shows and supports the fact that they did indeed send my official**
2 **transcript without grades for the fall 2003 but refused to correct my transcript as**
3 **promised. They discovered that if they did correct my grades they would have to answer to**
4 **government for stealing/mishandling federal and state financial aid money and their accrediting**
5 **agencies. Because of this the Plaintiff was injured.**
6

7
8 **3. I believe, because of the above information, that I am entitled to relief in the form of the**
9 **specific performance I was offered, general and special damages in an amount to be determined**
10 **by the court and or a jury, punitive damages requested because the Defendant's actions are**
11 **particularly egregious, interest on damages, and/or other relief as below requested:**
12

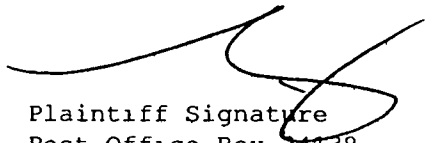
13 **Allen University admitted to being Negligent. I provided evidence of their negligent**
14 **actions and the material fact that they sent false grades to multiple 3rd parties. That is Grossly**
15 **Negligent of them. I have since undergone extreme mental suffering, problems controlling my**
16 **emotions, loss of sleep, and emotional distress. I also have suffered from excruciating headaches**
17 **daily since discovering these issues. It has also affected my enjoyment of life past, present, and**
18 **future. What I would like to come from this case is to have my Official Transcript corrected by**
19 **taking off the grades from the Fall 2003 Semester as promised by Allen University, an apology**
20 **letter, punitive damages requested, general and special damages, including interest, and any costs**
21 **resulting in this action. For such other and further relief as the Court may deem proper. Thank**
22 **you.**
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26 **I state under penalty of perjury that the above is correct and truthful, except those based on my**
27 **information and belief.**
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Date

August 10, 2012



Plaintiff Signature
Post Office Box 24138
Columbia, Sc 29224
Lawrence Terry, Pro Se

Exhibit A

<< Back

SITE SEARCH WEB SEARCH BY Google

10

Students say they haven't received Allen track scholarships

Posted Mar 11 2010 5:33 PM EST
Updated Mar 16, 2010 12:05 AM EDT

COLUMBIA, SC (WIS) - Some students on Allen University's track team say they were promised a full-ride scholarship but did not receive it.

Members of the team say they started getting bills for student loans they didn't know about, bills for thousands of dollars

"He promised me that he would pay for everything," said student Kyle Vicks of the proposal

"I thought he was there genuinely to help us out," said student Mark Walden

"The money was supposed to cover everything from room and board, book money, tuition," said student Chester Braggs

Since last week, Allen University track Coach Jeffrey Hughes has not responded to phone calls and could not be found on campus or at his house

The three students say they are not waiting on answers from the coach they've been meeting with attorneys

"These young men were asked to sign original documents under duress," said attorney Grant Varner "They were essentially handed documents by their coach, told sign on the dotted line and then the papers were collected "

"If we don't receive a response from the school in the near future, we're going to have no choice except to file a lawsuit," said attorney Kim Varner

Allen University's executive vice president says the school is looking into the students' claims

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Millions Ignore The President's Refinancing Advice Select Your Age

Under 18 | 19-25 | 26-35 | 36-45 | 46-55 | 56-65 | 66-75 | Over 75

worldnow

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Transcript for attached audio cd.

Exhibit B

Track 1: On this clip I was talking to Ms. Marilyn Young, Allen University's registrar, about my transcript and why grades were added. I stated (at 5sec mark), "If you knew my grades or yall were going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add some grades?" she responded with (at 13sec mark), "Yeah, that's what we would put. Yeah that's what we would do." She also stated that (at 20sec mark), "I will have to pull your file...cause then, cause ummm, if they sent it without those grades on it then we are going to have to note it in the system and that's how we are going to have to sent it out because if that's how it was sent out because we can't just go back and add." That statement clearly shows that if it is found that they did not send my transcript to MTC with fall 2003 grades on it then they would note it in the system, take those grades off, and resend my new transcript out without those made up grades. They never completed that investigation and if they did I was never given the results. I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College. They discovered that if they did change my grades they would have to answer to government for stealing/mishandling federal and state financial aid money and their accrediting agencies.

Track 2: On this clip Marilyn Young stated, "Because what you complained about, that's money from the government. You got to show you wasn't here because the government don't play." and I stated, "They going to come back for yall" and she stated, "That's right! but they ain't going to come back for me because I'm the registrar. That's business office."

Track 3: This clip is me and Ms Young talking about the record keeping from the past. She stated (21sec mark), " I thought you were talking about December.." I stated, " No not this year, no no '03 that fall." She later when to state (at 28sec mark), "No I cannot verify that cause umm... cause...back then they weren't taking accurate records so I can't see what they sent."

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2012-CP-4004857
)

Plaintiff,)

vs.)

Allen University,)

Defendant.)

DEFENDANT'S MOTIONS TO
SHOW CAUSE, FOR SANCTIONS,
AND TO DISMISS

2012 JUN 21 PM 4:59

Defendant Allen University ("Allen") hereby moves the Court (1) to show cause why Plaintiff should not be held in contempt; (2) to assess sanctions; and (3) to dismiss Plaintiff's Complaint with prejudice.

PROCEDURAL BACKGROUND

The present lawsuit is the fifth lawsuit¹ Plaintiff has filed against Allen in the last year and a half based on a dispute he has regarding his fall semester 2003 student records. As shown in the previous lawsuits, Plaintiff, who was a student at Allen in 2002-2003, requested in December 2003 that Allen send his transcript to Midlands Technical College, where he was planning to transfer. Allen promptly did this but because the request came in prior to the end of the fall 2003 semester, Plaintiff's fall 2003 grades were not included on that transcript sent to Midlands Technical College. Plaintiff's fall semester 2003 grades, however, were included in subsequent transcripts sent to other schools at Plaintiff's request. Plaintiff claims that he did not realize that his fall semester 2003 grades had been added to his transcript until 2009, at which time

¹ Lawsuit No. 1 was dismissed for lack of jurisdiction, Lawsuit No. 2 was voluntarily dismissed by Plaintiff, Lawsuits No. 3 and 4 were dismissed by the Court.

he went to Allen to request that the grades be removed. When Allen refused to remove the grades, Plaintiff began this unending process of suing Allen.

Regarding Plaintiff's fourth lawsuit, on April 26, 2012, the Court granted Allen's Motion to Dismiss and Motion for Sanctions in a text order. On June 18, 2012, the Court issued a formal order denying Plaintiff's claims of breach of contract, intentional infliction of emotional distress, constructive/silent fraud, breach of trust, negligent supervision, and libel on the basis of *res judicata* and failure to allege facts sufficient to support his causes of action. The Court further granted Allen's Motion for Sanctions and enjoined Plaintiff from bringing further lawsuits against Allen based on these facts. A copy of this Order is attached as Exhibit A. Plaintiff subsequently filed a Motion for Reconsideration which the Court denied on June 20, 2012. A copy of this Order is attached as Exhibit B.

On Jun 21, 2012, Plaintiff filed a Motion to Clarify, Alter or Amend Judgment. On June 29, the Court denied Plaintiff's Motion and held that the Order dismissing the case entered on June 20 was sufficiently clear. A copy of this Order is attached as Exhibit C.

On July 5, 2012, Plaintiff filed a Motion for Leave to Amend his Complaint. On July 9, 2012, the Court denied Plaintiff's Motion for Leave to Amend stating that the case had previously been dismissed and a Motion for Reconsideration had already been denied. The Court further enjoined Plaintiff from filing any additional motions in this matter at the circuit court level and informed him that he must proceed to the appellate court level for any further disposition of this case. A copy of this Order is attached as Exhibit D.

PRESENT LAWSUIT

On July 15, 2012, in contravention of the Court's Orders, Plaintiff filed yet a fifth lawsuit against Allen alleging claims of fraud, negligence, and libel, based on the same facts alleged in his other four lawsuits. Plaintiff attempts to color this new lawsuit as being based on different facts stating that the lawsuit is based in part, but not entirely on an affidavit filed by Allen in the fourth lawsuit. In the affidavit by Marilyn Young, the Registrar at Allen, Ms. Young stated that at some point after 2003, courses that Plaintiff had taken at Midlands Technical College were added twice to his transcript. When this mistake was discovered, his transcript was corrected by deleting the duplicate courses. Plaintiff claims this is evidence that Allen has committed fraud, negligence and libel. Plaintiff, however, misses an integral point—that the innocent mistake was to Plaintiff's benefit, not his detriment. This is because the addition of the duplicate courses increased his grade point ratio rather than decreasing it. Therefore Plaintiff can show no harm to him by this innocent error and this alleged "new fact" does not support any of his alleged causes of action. Furthermore, any statements made in the course of litigation, as was the statements in Ms. Young's affidavit, are absolutely privileged and thus cannot support Plaintiff's claims.

Therefore, Allen requests the following:

- (1) The Court hold Plaintiff in contempt for failing to adhere to the Court's order enjoining him from filing additional lawsuits against Allen based on these facts;
- (2) The Court assess sanctions against Plaintiff in the form of Allen's fees and costs for violating the injunction; and

(3) The Court dismiss Plaintiff's instant lawsuit on the basis of *res judicata* and failure for Plaintiff to allege facts sufficient to support his causes of action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Debbie Whittle Durban
Debbie Whittle Durban
SC Bar No. 16893
E-Mail: debbie.durban@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorney for Allen University

Columbia, South Carolina

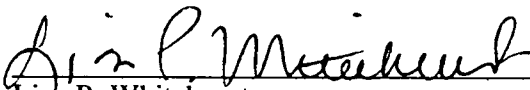
July 31, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Allen University, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, the following address(es):

Pleadings: Defendant's Motions to Show Cause, for Sanctions and to Dismiss

Counsel Served: Lawrence Terry, Plaintiff Pro Se
P.O Box 24138
Columbia, SC 29224



Lisa P. Whitehurst
Administrative Assistant

July 31, 2012

2012 JUL 31 PM 4:59
C.C.P. & G.

1 complete the agreed investigation.' See **Exhibit C attached**. The instant Complaint
2 is based on the Defendant's "failure to exercise reasonable care" or **Negligence**.

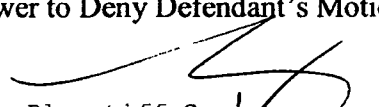
3 **5. Cornell Law defines Negligence** as: "A failure to behave with the level of care that
4 someone of ordinary prudence would have exercised under the same circumstances.
5 The behavior usually consists of actions, but can also consist of omissions when there
6 is some duty to act (e.g., a duty to help victims of one's previous conduct)." Allen
7 University admitted, Exhibit B attached to Complaint, that the previous staff was
8 Negligent in handling my student records and admitted that under the same
9 circumstances they would not do the same actions. After admitting that material fact
10 the Defendant intentionally refused to help correct the previous staffs' misconducts.

11 **6. Definition from Nolo's Plain-English Law Dictionary:** "Failure to exercise the care
12 toward others that a reasonable or prudent person would use in the same
13 circumstances or taking action that such a reasonable person would not, resulting in
14 unintentional harm to another. Negligence forms a common basis for civil litigation,
15 with plaintiffs suing for damages based on a variety of injuries, from physical or
16 property damage to business errors and miscalculations." The Defendant admitted,
17 exhibit B attached to Complaint, they made business errors and miscalculations in
18 regards to my educational background.

19 **7. No investigation is needed because I have supplied more than enough evidence to**
20 **support my claims of Negligence, including the Defendant's own statements.**

21 Therefore, I respectfully request the Court use its power to Deny Defendant's Motions.

22
23
24
25
26
27 Date August 17, 2012

28

Plaintiff Signature
Lawrence Terry, Pro Se

At some later unspecified date, Plaintiff, who was having issues at his current unnamed school, claims he was told about his previous grade point average ("GPA"). Plaintiff then proceeded to open sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003 did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades.² According to Plaintiff, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop.

On December 14, 2009, Plaintiff went to Allen to dispute his student record and claims that the registrar's office and the office of student affairs agreed to investigate the matter. Plaintiff says he was told to wait approximately one week for Allen to complete the investigation; however, he claims that Allen never completed the investigation.

The present lawsuit is the fourth lawsuit Plaintiff has filed against Allen based on a dispute he has regarding his fall semester 2003 student records.

A. Lawsuit No. 1

On January 14, 2010, Plaintiff filed a lawsuit in the United States District Court for South Carolina, Civil Action No. 3:10-cv-00090 ("Lawsuit No. 1"), claiming that Allen had injured him in the amount of \$25,375,000 by sending a copy of his official transcript on December 9, 2003, to Midlands Tech without including his fall semester 2003 grades, and then five days later updating his transcript by adding his fall semester

² Plaintiff requested that Allen send his transcript to Midlands Tech while exams were still ongoing and before grades had to be turned in for the Fall 2003 semester; thus Allen did not have Plaintiff's fall semester 2003 grades to send.

2003 grades without telling him. On April 12, 2010, the court dismissed the lawsuit for lack of subject matter jurisdiction.

B. Lawsuit No. 2

On April 5, 2010, Plaintiff filed a lawsuit in the South Carolina Court of Common Pleas, Civil Action No. 2010-CP-40-02301 ("Lawsuit No. 2") against Allen, alleging the same facts and claims alleged in Lawsuit No. 1, but dropping his claim for damages from \$25,375,000 to \$15,000,000. Allen timely moved to dismiss Lawsuit No. 2 for failure to serve and because his claim, relating to acts occurring in 2003, was beyond the statute of limitations.

C. Lawsuit No. 3

On September 30, 2010, while Allen's Motion to Dismiss Lawsuit No. 2 was pending, Plaintiff filed Lawsuit No. 3, Civil Action No. 2010-CP-40-06803. Plaintiff based his claim in Lawsuit No. 3 on his assertion that Allen failed to investigate his dispute about his grades in December 2009, and reduced his claim for damages from \$15,000,000 to \$3,430,000.

On February 24, 2011, the Court held a hearing on Allen's Motion to Dismiss Plaintiff's Lawsuit No. 3. After hearing argument by both parties, the Court granted Allen's Motion, holding that Plaintiff had not shown any consideration for the agreement he claimed he had with Allen, and that Allen's agreement to investigate was gratuitous and did not create an enforceable contract. On June 1, 2011, Plaintiff filed a Motion to Reconsider which the Court denied on June 6, 2011.

D. Lawsuit No. 4

No need to investigate because I have evidence and their own admissions of negligence

On August 12, 2011, Plaintiff filed the instant Complaint against Allen ("Lawsuit No. 4") claiming that Allen breached an agreement he had that Allen would investigate his dispute regarding his fall semester 2003 grades. He asserts claims for breach of contract, intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel.

I. ALLEN'S MOTION TO DISMISS

A. Plaintiff's Complaint is barred by *res judicata*.

Allen first moved to dismiss Plaintiff's Complaint on the basis of *res judicata*. *Res judicata*, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997).

Plaintiff's claims arising out of his allegation that Allen breached the agreement to investigate was litigated and dismissed in Lawsuit No. 3. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates, in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigate therein.); *Deel v. Home Depot USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect) Because the other causes of actions alleged by Plaintiff in Lawsuit 4 all arose out of the same set of facts and had accrued prior to his filing Lawsuit No. 3, these claims are also barred by *res judicata*.

Therefore, the Court finds that Plaintiff's Complaint should be dismissed because *res judicata* bars him from pursuing these claims in a subsequent action.

B. Plaintiff Has Failed to Allege Facts Sufficient to State a Cause of Action.

Even if Plaintiff's claims were not barred by *res judicata*, Plaintiff has failed to allege facts, even if taken as true, which would be sufficient to support the causes of action he alleges.

1. Breach of Contract

Although Plaintiff argued at the hearing on this matter that he had not asserted a claim for breach of contract, his Complaint specifically states that "Allen University breached the said agreement by intentionally refusing to complete the agreed investigation," thus to the extent Plaintiff does assert a claim that Allen breached the agreement Plaintiff says he had that it would investigate his issue regarding his fall semester 2003 grades, Plaintiff has failed to show the consideration necessary to create an enforceable contract. It is well settled law that gratuitous agreements without consideration over and above a party's moral duty are not binding in law. *See, e.g., Walters v. University of South Carolina*, 280 S.C. 572, 313 S.E.2d 346 (Ct. App. 1984) (holding that extra benefits granted by university to student were gratuitous and not part of the student's grant in aid, and therefore university did not breach the contract with the student when it ceased providing the extra benefits); *Coggeshall v. Coggeshall*, 33 S.C.L. 51, 1847 WL 2157 (S.C. App. L.) ("[A]ll executory contracts to give in future, if exclusively gratuitous, i.e., without some valuable consideration, over and above the mere moral duty of the donor, are not binding in law, unless such valuable consideration be both alleged in the pleadings and proved at the trial.").

Thus as the Court held in Lawsuit No. 3, any agreement by Allen to investigate was gratuitous and did not create an enforceable contract. Therefore, Plaintiff's breach of contract claim should be dismissed.

2. Intentional Infliction of Emotional Distress

To the extent Plaintiff bases this claim of intentional infliction of emotional distress on Allen's "randomly adding failing grades" to his transcript in 2003, the claim is barred by the three-year statute of limitations S.C. Code § 15-3-530. If Plaintiff is basing this claim on his belief that Allen caused him severe emotional distress because he believes it did not investigate his claim in 2009, Allen's alleged failure to investigate, even if true, does not rise, as a matter of law, to the level required to state a claim for intentional infliction of emotional distress.

As the South Carolina Supreme Court recently held, to state a claim for intentional infliction of emotional distress, Plaintiff must establish that: (1) Allen intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from its conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community; (3) Allen's actions caused him emotional distress; and (4) the emotional distress suffered by Plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S C 462, 710 S.E.2d 67 (2011).

Plaintiff's allegation that Allen did not investigate does not meet the standard for an intentional infliction of emotional distress claim and thus the Court dismisses that claims.

3. Constructive Fraud/Silent Fraud

To the extent Plaintiff's allegations of fraud pertain to his allegation that Allen wronged him by sending his transcript to another school in 2003 without his fall 2003 grades, these claims are barred by the statute of limitations. S.C. Code § 15-3-550. To the extent Plaintiff is basing these claims on his belief that Allen failed to investigate this issue in 2009, these claims fail as a matter of law.

In order to prove fraud, the following elements must be shown: (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Id.* In addition, Rule 9(b) of the South Carolina Rules of Civil Procedure requires a plaintiff to plead the circumstances surrounding fraud with particularity. "A complaint is fatally defective if it fails to alleged all nine elements of fraud," and "[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

Here, Plaintiff has failed to sufficiently allege any cause of action based on fraud, and therefore the Court dismisses this claim.

4. Breach of Trust

Plaintiff apparently bases his claim of breach of trust on his allegation that he trusted Allen to investigate his claim and when it allegedly did not do so, he was injured.

I provided audio, paperwork, and sworn statements.

Allen has also moved for sanctions under the South Carolina Frivolous Civil Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for [REDACTED] § 15-36-10(A)(4)(b). Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

This Complaint is based on Negligence, not on investigation.

As discussed above, this is the fourth lawsuit Plaintiff has brought against Allen in the last year and a half, all arising from the same set of facts. Plaintiff knows that his complaint regarding his fall semester 2003 grades is time-barred, yet he persists in bringing yet another action based on that issue. Then, in an apparent attempt to avoid dismissal because of the statute of limitations, Plaintiff re-characterize his claim as one pertaining to an alleged agreement he had with Allen in 2009 to investigate what had occurred in 2003. This is nothing more than an attempt to bootstrap his 2003 claim to a "new and improved" 2009 claim, based still, however, on the same facts. Plaintiff also knows that claims based on an alleged 2009 agreement are not valid because he had no enforceable agreement with Allen, as the Court informed him when it dismissed Lawsuit No. 3.

No investigation is needed. I have evidence.

Although the Court respects the rights of persons to bring legitimate claims for adjudication in a court of law, Allen and the Court should not be forced to continue expending time and money in defending these repeated lawsuits brought by Plaintiff. Therefore, The Court grants Allen's Motion for Sanction and enjoins Plaintiff's from bringing further lawsuits against Allen based on these facts.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Lawrence Terry)

Plaintiff)

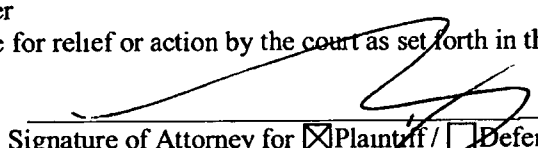
v.)

Allen University)

Defendant.)

CASE NO.
2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Lawrence Terry, Bar No. Pro Se Address: PO Box 24138 Columbia, SC 29224 phone: 803-414-0760 fax: e-mail: other:	Defendant's Attorney: Debbie Whittle Durban, Bar No. 16893 Address: Nelson Mullins Riley & Scarborough, LLP, PO Box 11070, Columbia, SC 29211 phone: 803-255-9465 fax: 803-255-9065 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	8/27/2012 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>metts</u>	Date Filed: <u>8/27/12</u>
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

RICHLAND COUNTY
 FILED
 2012 AUG 27 PM 4:55
 JENNIFER W. MCBRIDE
 CLERK & G.S.

3. The audio transcript attached to the Complaint, incorporated document on page 5 of the Complaint, and Sworn Affidavit of the Plaintiff submitted to the Court supports the facts that the Defendant was Grossly Negligent on multiple occasions.
4. Admittedly the Defendant was thereby Grossly Negligent.

ARGUMENT

With Allen University admitting to Negligence there is not an argument. The Complaint is based off of the Defendant's own words. The question to be answered is: What would the reasonable professional have done under the same or similar circumstances? Well with the current Registrar Marilyn Young stating that she would not do that, we have our answer.

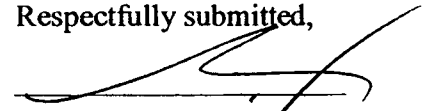
CONCLUSION

Plaintiff is entitled to judgment as a matter of law. The undisputed facts show that as a direct and proximate result of the Negligence of the Defendant. The Defendant owed the Plaintiff duty of care, admittedly breached that duty of care, caused Plaintiff to be injured, and that breach is a direct cause of the Plaintiff's injuries. I have since undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and emotional distress. It has also affected my enjoyment of life past, present, and future. I have also been completely humiliated. The damages were directly and proximately caused by the aforementioned Negligence of the Defendant and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiff. Their admitted Negligence is affecting my ability to make a living and my ability to further my education so that I may get a better job during these very tough economic times.

Accordingly, Plaintiff respectfully requests that this honorable Court enter judgment in favor of Plaintiff and against Defendant, and that this matter be set for a jury trial on the issue of damages only.

8/27/2012
Date

Respectfully submitted,



Signature of Plaintiff

Lawrence Terry, Pro Se

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Lawrence Terry)
 Plaintiff)

v.)

Allen University)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Lawrence Terry, Bar No. Pro Se
Address:
PO Box 24138 Columbia, SC 29224
phone: 803-414-0760 fax:
e-mail: other:

Defendant's Attorney:
Debbie Whittle Durban, Bar No. 16893
Address:
Nelson Mullins Riley & Scarborough, LLP, PO Box
11070, Columbia, SC 29211
phone: 803-255-9465 fax: 803-255-9069
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted: 9/18/12

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - (check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:
- Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: metts

Date Filed: 9/14/12

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

1 Plaintiff served process on the Defendant weeks ago. The Defendant has not answered or
2 otherwise responded to the Amended Complaint. If Plaintiff's motion for default
3 judgment is not granted, Plaintiff will likely be without other recourse for recovery and
4 Plaintiff will be forced to suffer continued irreparable injuries in the form of lost reputation, lost
opportunities, and goodwill everyday that the false and misleading statements remain on
Plaintiff's student records.

5 **B. The Merits of the Claim and the Sufficiency of the Complaint.**

6 The second and third factors favor a default judgment where the Amended Complaint
sufficiently states a claim for relief under the liberal pleading standards of Rule 8.
7 Plaintiff's Amended Complaint states plausible claims for relief under Rule 8, and the
8 Defendant has stipulated that Plaintiff is likely to succeed on its claims. The Defendant
has admitted to making mistakes in within the Plaintiff's student records and the exhibits
9 submitted by the Plaintiff also make the claims clear. The second and third factors
10 therefore favor a default judgment.

11 **C. The Amount of Money at Stake.**

12 Under the fourth factor, the Court considers the amount of money at stake in relation to
the seriousness of Defendant's conduct. Allen University, for nearly a decade, has
13 engaged in fraudulent and negligent business practices resulting in major losses and
inconvenience to students, many of them being teenagers. Plaintiff has presented
14 evidence showing that in the past three years alone Allen University has extracted an
unknown amount of state and federal financial aid money from students through their
15 unlawful activities. Given the duration and egregious nature of Defendant's misconduct,
16 a default judgment is reasonable. This factor weighs in favor of a default judgment.

17 **D. Possible Dispute Concerning Material Facts.**

18 Given the sufficiency of the Amended Complaint and Defendant's default, no genuine
19 dispute of material facts would preclude Granting Plaintiff's Motion. Plaintiff has
20 supplied more than enough evidence to support his claims of negligence.

21 **E. Whether Default Was Due to Excusable Neglect.**

22 The Defendant was properly served with the summons and Original Complaint on
23 7/30/2012. The Defendant responded to that Complaint on 7/31/2012. The Amended
Complaint was delivered on 8/10/2012 and it is now 9/13/2012 with no reply having been
24 submitted. It therefore is highly unlikely that Defendant's failure to answer and the
25 resulting default was the result of excusable neglect. The Defendant is well represented
by licensed counsel with multiple years of experience and who is also a Partner at a
26 prestigious law firm. The Defendant did not have an issue responding to the initial
27 complaint one day after being served either. It therefore is perfectly appropriate for the
28 court to enter default judgment against a university that failed to appear in the action
through licensed counsel.

1 **F. The Policy Favoring a Decision on the Merits.**

2 Cases should be decided upon their merits whenever reasonably possible, but the mere
3 existence of Rule 55 indicates that this preference, standing alone, is not dispositive.
4 Moreover, Defendant's failure to answer or otherwise respond to the Amended
5 Complaint makes a decision on the merits impractical, if not impossible. The Court
6 therefore is not precluded from entering default judgment against Defendant.

6 **G. Conclusion.**

7 After having reviewed Plaintiff's motion and supporting exhibits, and having carefully
8 considered the factors as a whole, the Plaintiff requests that, pursuant to Rule 55, the
9 entry of default judgment is Granted against Defendant Allen University. Plaintiff also
10 requests a hearing to be set for the issue of damages.

11 Date

9/14/2012



Plaintiff Signature
Post Office Box 24138
Columbia, SC 29224
Lawrence Terry, Pro Se

1 Key facts about this case are as follows:

- 2 i. Plaintiff had no knowledge of a pending Motion To Dismiss.
- 3 ii. There is not and was not a pending Motion To Dismiss on the docket.
- 4 iii. The Defendant has failed to respond to the Plaintiff's Amended Complaint.
- 5 iv. Plaintiff filed an Affidavit Of Default on 9/11/2012. Plaintiff also filed a Motion For
6 Default Judgment on 9/14/2012 which included evidence that the Defendant failed to file
7 any type of Answer or response to the Amended Complaint within the specified time.
- 8 v. The Plaintiff has multiple Motions pending while the Defendant has none on the docket.
- 9 vi. The initial Motion to Dismiss submitted by the Defendant requested a "hearing" although
10 it was voided by the Amended Complaint.
- 11 vii. The Plaintiff did not receive any notice of an unknown Motion.
- 12 viii. The Plaintiff was denied the right to object or present evidence against the unknown
13 Motion To Dismiss.
- 14 ix. The Defendant failed to respond to any of the Plaintiff's Requests For Discovery
15 including Requests For Admissions which were served with the Original Complaint.
16 Therefore pursuant SCCRP 36 all Requests For Admissions are deemed Admitted and
17 that in itself would defeat any real Motion To Dismiss if the Defendant presented one.
- 18 x. To date the Defendant still has not filed anything other than their voided Motion To
19 Dismiss.

20 The Court previously stated that the Plaintiff's claim of a breached investigation was void
21 because it lacked consideration. The Defendant stated multiple times that they did not owe the
22 Plaintiff any right or obligation to investigate his educational records and called it a "gracious
23 offer" and the Court agreed. Based on the Defendant's own Privacy Guidelines on the university
24 website, Exhibit A attached, which they take from a Federal Law of The Family Educational
25 Rights and Privacy Act of 1974 the Plaintiff does have certain Rights which the school denied.
26 The Plaintiff's claim of negligence refers to the multiple negligent acts in regards to the handling
27 of the Plaintiff's educational records by the Defendant. FERPA/the Defendant's own guideline
28 affords students certain rights with respect to their educational records.

1 So the instant complaint is based on negligence. The Defendant does not deny the fact that they
2 made mistakes. The fact that the Defendant failed to inform the Plaintiff of his rights under
3 FERPA is fraudulent and they broke Federal Laws. The recently discovered FERPA information
4 only strengthens the Plaintiff's claim of negligence. Once the Plaintiff discovered this FERPA
5 information I immediately sent a certified letter requesting a formal hearing and written
6 explanation but did not receive either. The emails are dated February 2010 so they are well
7 within the statue of limitations and once again they further prove negligence by the Defendant.

8 CONCLUSION

9 So if the Defendant is now claiming the instant Complaint is based on a failure to
10 investigate the Plaintiff's educational records then based on the newly discovered material facts
11 they are correct. I submitted audio and paperwork to support my claims. What more do I need to
12 provide to get a fair chance at a trial? The Defendant was grossly and willfully negligent in
13 handling the Plaintiff's educational records. I would file a Motion To Vacate the previous based
14 on this newly discovered FERPA evidence but the Court told me I could not file any more
15 Motions and if the information is not presented to the trial judge then the Court of Appeals will
16 not consider it.

17 For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court reverses its
18 previous Order To Dismiss and allow this case to move forward.

19 Date

20 9/18/2012

21 Plaintiff Signature
22 Post Office Box 24138
23 Columbia, SC 29224
24 Lawrence Terry, Pro Se

PROOF OF SERVICE OF APPELLANT'S Appendix to the Record on Appeal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

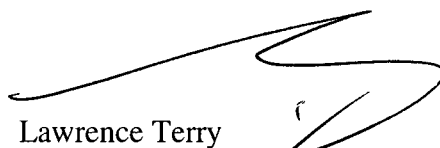
Appellant.

RECEIVED
AUG 15 2013
SOUTH CAROLINA COURT OF APPEALS

PROOF OF SERVICE

I certify that I have served copies of the Motion For APPELLANT'S Appendix to the Record on Appeal on Allen University by personally delivering the copies of it to his attorney of record, Debbie Whittle Durban, at her office at Post Office Box 11070 Columbia, South Carolina 29211, on August 15, 2013.

August 15, 2013


Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se