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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

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

Docket No. 2021-CP-10-00426

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

v.

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

RECORD ON APPEAL- VOLUME II

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INDEX

VOLUME I

<i>Consent Order to Amend Complaint</i> filed August 9, 2021	001
<i>Form 4 Order Granting Motion to Dismiss</i> filed April 5, 2022	006
<i>Form 4 Order Granting Motion to Dismiss</i> filed April 26, 2022	009
<i>Summons & Complaint</i> filed January 29, 2021	012
<i>Amended Summons & Amended Complaint</i> filed February 2, 2021	024
<i>Second Amend Summons & Complaint</i> filed August 12, 2021	036
<i>Answer of Steward to Second Amended Complaint</i> filed August 27, 2021	051
<i>Defendants Charleston Coalition for Kids, Thomas J. Bell, Angelica M. Coldwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland and Loren R. Ziff's Motion to Dismiss Plaintiff's Amended Complaint</i> and all Exhibits filed March 22, 2021	063
<i>Defendant Leeza D. Steward's Motion to Dismiss Plaintiff's Amended Complaint</i> and all Exhibits filed March 24, 2021	124
<i>Defendant Courtney S. Waters' Motion to Dismiss Plaintiff's Amended Complaint</i> filed March 25, 2021	184
<i>Defendant Teach for America, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint</i> and all Exhibits filed April 9, 2021	193
<i>Memorandum of Hollinshead in Opposition to 12(b)(6) Motion of Defendants to Dismiss</i> filed July 23, 2021	223

VOLUME II

<i>Motion of Charleston Coalition For Kids to Dismiss</i> filed August 27, 2021	253
<i>Motion of Leeza D. Steward to Dismiss</i> filed August 27, 2021	316
<i>Motion of Teach For America to Dismiss</i> filed October 7, 2021	329
<i>Motion of Leeza D. Steward to Dismiss and for Summary Judgment</i> filed December 6, 2021	362
<i>Memorandum of Charleston Coalition For Kids in support of 12(b)(6) Motion to</i>	

<i>Dismiss</i> filed December 10, 2021	431
<i>Memorandum of Hollinshead in Opposition to 12(b)(6) Motion of Defendants to Dismiss</i> filed December 14, 2021	446
<i>Transcript of Hearing on December 16, 2021</i>	469
<i>Notice of Intent to Appeal</i> , May 12, 2022	504
<i>Certificate of Compliance</i>	513
<i>Certificate of Service</i>	514

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

Kevin Dion Hollinshead, Senior,

)

Plaintiff,

)

v.

)

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

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

)

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)

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Defendants.

)

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

INTRODUCTION

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

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

FACTS

A. Plaintiff's Allegations

The Second Amended Complaint alleges the following facts:

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

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

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

¹ The ad is no longer available on Youtube.

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

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

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

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

(SAC ¶ 40.)

B. The SAS Lawsuit

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

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

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

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

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

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

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

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

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

ANALYSIS

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

I. PLAINTIFF HAS NOT ASSERTED A CLAIM FOR DEFAMATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: August 27, 2021

GORDON & REES LLP

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⁶ In addition, the facts as alleged here clearly do not meet the high threshold to establish that anyone inflicted severe emotional distress, that any conduct was so extreme and outrageous (especially in the form of a political ad), not that the emotional distress allegedly suffered was so severe and pervasive that no reasonable person could be expected to endure it.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STUDENT ASSURANCE SERVICES,
INC.,

Plaintiff,

vs.

HOLLINSHEAD GROUP INSURANCE,
LLC and KEVIN HOLLINSHEAD, SR.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

cc CP 103980

COMPLAINT

(JURY TRIAL DEMAND)

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

FILED

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

I. PARTIES

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

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

II. BACKGROUND FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Balance due SAS - \$144,677.75

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BLAND RICHTER, LLP



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

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
 September ____, 2006

EXHIBIT "A"



July 18, 2003

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

RE: Agent Application for Appointment Forms

Dear Dale:

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

Please contact me if you require any additional information.

Sincerely,

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

Diana Miller
Compliance and Contracts Administrator

Diana Miller, Compliance & Contract Administrator

R-279

333 North Main Street • P.O. Box 196 • Stillwater, MN 55082-0196
(651) 439-7098 • Toll Free: (800) 328-2739 • Fax: (651) 439-0200 • Email: dianam@sas-mn.com

TRANSMITTAL

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

FAX NUMBER: (607) 724-1599

FROM: Diana Miller
ext 203

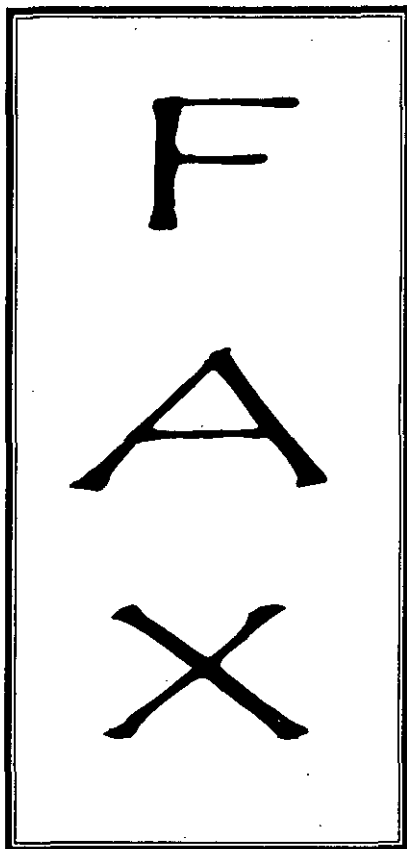
DATE: July 18 2003

PAGES TO FOLLOW: 9(including this page)

RE: Agent Appointment

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

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



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

FAX
(651) 439-0200

Phone Toll Free
1-800-328-2739

Minnesota Metro
(651) 439-7098

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

COLUMBIAN FINANCIAL GROUP

Binghamton, New York 13902

APPLICATION FOR APPOINTMENT AS LICENSED REPRESENTATIVE

with the Student Assurance Services, Inc.

(Name & Number of General Agency)

CML _____

CLIC _____

PLEASE PRINT

CONFIDENTIAL

Personal Information

Mr. ☒ Mrs. ☐ Ms. ☐Name Hollinshead Kevin Dion
Last First MiddleBusiness Address c/o SameResidence Address 3783 Meeting St.
No. Street AddressN. Charleston Charleston S.C. 29405
City County State Zip Code

No. Street Address

City County State Zip Code

Residence Phone No. 843-744-6376
Area Code Phone No.Business Phone No. 843-747-4113
Area Code Phone No.FAX No. 843-747-4143Social Security No. [REDACTED]Spouse's Name _____
(Conference Information, not required)

Business Tax ID. No. _____

Date of Birth [REDACTED]Do you have access to an IBM Compatible Computer? ☒ Yes ☐ No

No Month Date Year

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

☒ Home☐ Business

I am interested in representing the Company as an

☒

Individual

☐

Corporation

☐

Partnership

Licensed or qualified to sell Life Insurance?

☒

Yes

☐

No

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

Licensed or qualified to sell Accident and Health?

☒

Yes

☐

No

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

Engaged in the General Insurance Business?

☐

Yes

☒

No

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

If engaged in any other occupation, give particulars _____

Will our Company be the Representative's primary Company?

☒

Yes

☐

No

If not, which Company? _____

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

☒

Yes

☐

No

Are Company Publications to be sent?

☒

Yes

☐

No

If any relative(s) of representative work(s) for Columbian Financial Group, please name: NOHave you ever been convicted of any criminal felony involving dishonesty or a breach of trust or any offense under the Federal Crime Act (18USCA 1033)? Yes ☐ No ☒ If "yes", give date, penal code section of conviction and disposition.

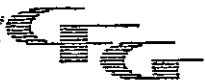
I hereby acknowledge the answers I have provided on this application are true and accurate statements to the best of my knowledge:

(Witness)

(Full Signature of Applicant)

Dated at _____ this _____ day of _____, 2003

COLUMBIAN FINANCIAL GROUP
Binghamton, New York 13902



CML _____ CLIC 1

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

Telephone Number _____

FAX Number _____

Name of applicant Kevin Dion Hollingshead SR
(Corporate name in full) (Fed Employer ID No)

Principal Business Address 3783 Meeting St.
(Street name & number)

N. Charleston Charleston SC 29405
(City) (County) (State) (Zip Code)

List all officers and directors and give information requested below:

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

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

Person to contact relative to this Corporation: _____

Mrs. Dale Evanchof
Director of Licensing
Sales & Marketing

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

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

R-282

COLUMBIAN FINANCIAL GROUP

Binghamton, NY 13902

AUTHORIZATION**Disclosure**

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

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

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

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

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

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

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

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

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

Kevin D. Hollinshead SR

Signature of Applicant

Date

Kevin D. Hollinshead

Name Printed

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

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

You should not:

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

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

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

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

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

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

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

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

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

Give direct monetary or indirect "in kind" rebates.

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

X-D. Hollinshead sr
signature

date

Kevin D. Hollinshead sr
name - print

CONFIDENTIALITY AND NONDISCLOSURE ADDENDUM

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

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

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

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

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

Agreed to this _____ day of _____, 2001

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

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



POLICY REGARDING REPLACEMENTS

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

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

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

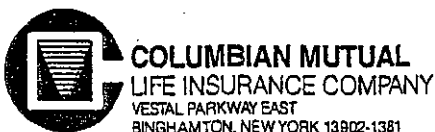
The agent shall provide copies of all state mandated forms and guides to clients at the appropriate time during the sales process.

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

Kevin D. Hollishead SR
Agent's Signature

Date

Kevin D. Hollishead
Agent's Name - Print



COLUMBIAN LIFE INSURANCE COMPANY

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

AGENT CONTRACT

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

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

The Effective Date of this Contract shall be _____

AGENT

K. D. Hollinshead
(Authorized Signature)

(Date)

GENERAL AGENT

Mark L. Deuch
(Authorized Signature)

7-15-2003
(Date)



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

CONSENT OF THE COMPANY

COLUMBIAN LIFE INSURANCE COMPANY

By _____

1. DEFINITIONS

In this Contract,

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

2. AUTHORITIES AND DUTIES OF AGENT

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

3. COMPENSATION

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

4. AGENT OR BROKER OF RECORD

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

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

5. COLLECTION OF MONIES

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

6. COSTS

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

7. ADVERTISING

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

8. LICENSING AND APPOINTMENT OF AGENTS

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

9. ADMINISTRATION

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

10. TERM AND TERMINATION

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

11. GENERAL PROVISIONS

- a) Additions, Amendments, Modifications and Waivers.

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

b) Independent Contractor Relationship.

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

c) Assignments.

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

d) Bond or Insurance

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

e) Service of Process

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

f) Severability

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

g) Governing Law

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

h) Notice

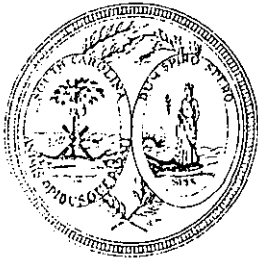
Any notice required or permitted by this Agreement shall be deemed to have been delivered when mailed by registered mail or certified mail, return receipt requested, in any branch of general post office maintained by the United States Postal Service, addressed to the respective parties at their addresses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

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

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

12. CONFIDENTIALITY OF INFORMATION

- a) The undersigned shall not disclose or use any nonpublic personal information concerning the Company's customers (including but not limited to the Company's policy holders, insureds, annuitants, claimants, beneficiaries, and applicants), which information may include names, addresses, telephone numbers, birth dates, ~~18998~~ Security numbers, insurance policy or annuity information, health information, financial information or any other personally identifiable information



**South Carolina
Department of Insurance**

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

*** Producer License ***

Individual #: 168405

Date Issued: 09/09/1997

Type of License: RES - Producer

KEVIN D HOLLINSHEAD

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

19 - Life

21 - Accident/Health

Subject to Cancellation, Suspension, or
Revocation per Statutes.

By order of the
Director of Insurance

(Cut Along This Line)

Remarks:

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

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



**South Carolina Department of Insurance
Producer License**

Name: KEVIN D HOLLINSHEAD

Individual #: 168405

Date Issued: 09/09/1997

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

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

KEVIN D HOLLINSHEAD
3783-A MEETING ST.
N. CHARLESTON, SC 29405-0000 **R-291**

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



South Carolina
Department of Insurance

Interim Producer License

Name: KEVIN D HOLLINSHEAD

Individual Number: 168405

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

EXHIBIT "B"



STUDENT ASSURANCE SERVICES, INC.

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

INVOICE

July 20, 2005

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

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

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

\$50,000.00

AMOUNT DUE

\$50,000.00

TERMS: Payable upon receipt.

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

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

EXHIBIT "C"

08-08-05 16:18:37

25962

KEVIN D HOLLINSHEAD

1003

Kevin Hollinshead

CHECK NUMBER: 000309420

CHECK AMOUNT: 10000.00

CHECK NO: 000309420



INVEST LIFE WISELY

HERITAGE TRUST
FEDERAL CREDIT UNION

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

Student Insurance Service

DETACH AND RETAIN THIS PORTION

R-296

EXHIBIT "D"

Mike Montour

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

Kevin:

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

Let me know if you need any additional assistance.

Thanks.

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

CONFIDENTIALITY NOTICE

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

03-06-06

Mark: These two invoices were
emailed to Kevin today



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

September 23, 2005

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

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

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

\$159,639.00

AMOUNT DUE

\$159,639.00

TERMS: Payable upon receipt.

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

EXHIBIT "E"



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

February 8, 2006

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

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

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

\$150,495.00

AMOUNT DUE

\$150,495.00

TERMS: Payable upon receipt.

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

EXHIBIT "F"

Mark Desch

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



Hollinshed Group
Insurance Pay...

Mr. Desch:

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

Brenda

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

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

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

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

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

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

EXHIBIT B

STATE OF SOUTH CAROLINA 50

COUNTY OF CHARLESTON

PROMISSORY NOTE

2007 OCT 12 AM 9:14

JULIE J. ARMSTRONG
CLERK OF COURT

05/24/07, 2007

\$ 144,677.75

BY _____

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

I RECITALS

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

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

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

II PAYMENT

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

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

2.2 Maturity. Unless sooner due and payable pursuant to or in accordance with the R-307

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

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

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

III DEFAULTS AND REMEDIES

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

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

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

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

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

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

submitted by debtor and approved by the Court.

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

IV GENERAL PROVISIONS

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

(a) If to Student Assurance:

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

With a copy to:

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

(b) If to Payor:

Kevin Hollinshead
 3783 Meeting Street
 N. Charleston, SC 29405

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

principal, balance, to the extent of such payment.

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

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

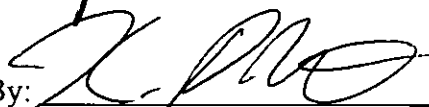
4.5 Time is of the essence with the payment obligations under this Note.

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

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

ATTEST:

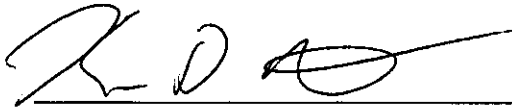
Hollinshead Group Insurance, LLC

By: 

Kevin Hollinshead, Member

Title: Owner

WITNESS:



Kevin Hollinshead

EXHIBIT "A"

EXHIBIT C

FILED

2006-CP-10-3980

26

STATE OF SOUTH CAROLINA)

2007 OCT 12

AM AGREEMENT AND CONFESSION

COUNTY OF CHARLESTON)

OF JUDGMENT

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

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

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

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

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

along with this Agreement and Confession of Judgment.

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

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

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

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

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

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

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

ATTEST:

[Signature]

Hollinshead Group Assurance, LLC

By: [Signature]

Title: owner

WITNESS:

[Signature]

[Signature]
Kevin Hollinshead, Jr. SR

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

[Signature]

Notary Public for South Carolina

My Commission Expires: 3/3/2013

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

TO: EDWARD PRITCHARD, III, ATTORNEY FOR PLAINTIFF, KEVIN DION HOLLINSHEAD, SENIOR:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, Defendant Leeza Steward (hereinafter "Steward") will move to dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. This motion is based upon the First Amendment to the United States Constitution, and federal and state case law including but not limited to the cases set forth below.

In a nutshell, this lawsuit involves a public official who ran for public office who is suing over statements made in a political ad ("political ad") created by a Charleston non-profit. The essence of the lawsuit is Plaintiff's contention that the political ad falsely

summarized an earlier lawsuit ("SAS Lawsuit") wherein Plaintiff was sued for misappropriation of funds. Plaintiff does not dispute the earlier lawsuit. In the Second Amended Complaint, Plaintiff admits he was sued by SAS alleging he "stole," "unlawfully converted \$144,677.75," and "misappropriate[ed] insurance premium checks paid by Benedict." *Id.* at ¶¶43, 51. As a result of the SAS Lawsuit, Plaintiff entered into a Confession of Judgment for \$144,677.75, the total amount claimed by SAS to have been misappropriated. *Id.* at ¶¶43, 56, 59.

As such, Plaintiff's own admissions and alleged facts in the Second Amended Complaint establish that the alleged defamatory statements in the political ad were, at the very least, substantially true as a matter of law. Further, Plaintiff does not allege that Defendant Steward created or authored the political ad. *Id.* at ¶¶22-23. Rather, Defendant Steward appeared in the political ad and presented her opinion based on her understanding of Plaintiff's public record. Specifically, she opined, "We can't have someone like that managing the tax dollars for our schools." *Id.* at ¶40.

Plaintiff's claims for civil conspiracy and intentional infliction of emotional distress involve these same factual allegations. *Id.* at ¶¶88-101. As the statements in the political ad were true, or at the very least substantially true, as a matter of law and as Defendant Steward's statement is protected opinion speech, fair reporting, and fair comment under the First Amendment, the Second Amended Complaint fails to state a claim upon which relief can be granted, and this Court should dismiss the action as against Defendant Steward.

STANDARD

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure allows dismissal of a claim when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRPC. “A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 746 S.E.2d 329 (2013). “The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory. Pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011)(internal citations omitted).

FACTS

Plaintiff is a public official and public figure who in November 2020 ran for election for the Charleston County School Board. See Second Amended Compl. at ¶17. During this time, Defendant Charleston Coalition for Kids, a local non-profit, created a political ad which aired on television in the greater Charleston area and on the internet. *Id.* at ¶¶4, 22- 23, 71-72. In the political ad, according to the Second Amended Complaint, the following statements either appeared or were made by an anonymous voiceover:

- “But Kevin Hollinshead is using our money to help himself.” *Id.* at ¶38.

- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars¹ (\$150,000) from a local HBCU and lied to cover it up.” *Id.*
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars² (\$150,000) from Benedict College.” *Id.* at ¶39

The statements in the political ad refer directly to the SAS Lawsuit wherein it was alleged that Plaintiff “stole and unlawfully converted \$144,677.75 of insurance premiums,” was “misappropriating insurance premium checks paid by Benedict,” and “cashing premium checks paid by Benedict.” *See Id.* at ¶¶43, 49, 51. These are not issues in dispute. The SAS Lawsuit further alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. Plaintiff further admits he confessed judgment for the full amount (\$144,677.75) alleged to have been stolen and unlawfully converted. *Id.* at ¶¶43, 59, 65.

Plaintiff’s issue appears to be that “the [SAS] Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance stole or misappropriated money *from Benedict College.*” *Id.* at ¶58 (emphasis added). Yet, Plaintiff readily admits he was sued for “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict.*” *Id.* at ¶¶43, 49, 51 (emphasis added). In other words, Plaintiff was accused of taking monies from Benedict in trust for SAS and then allegedly converting those funds. Importantly, the political ad does not claim Plaintiff was sued

¹ Defendant Steward does not adopt but rather disputes Plaintiff’s version of the purported statements as the word “nearly” should appear before the \$150,000 number in each statement.

² See Footnote 1.

by Benedict. *Id.* at ¶¶38-39. Lastly, Plaintiff appears to take issue with "\$144,677.75 is not \$150,000."³ *Id.* ¶69.

Regardless, none of the above alleged defamatory statements are directly attributable to Defendant Steward. It is not alleged that she created or authored those statements. Defendant Steward appears in the political ad and states her opinion that "We can't have someone like that managing the tax dollars for our schools." *See Id.* ¶40. Based on the First Amendment to the United States Constitution and federal and state case law, Defendant Steward requests this Court dismiss Plaintiff's claims against her.

ANALYSIS

In our democracy, public discourse about a candidate's qualifications while running for public office is viewed under the protective lens of the First Amendment. Our courts recognize that political speech and the free exchange of ideas is the bedrock of our democratic system. Punishing private citizens for political speech has a chilling effect on our system of elections, government accountability to the public, and the vetting of candidates for public office. Our courts stand by the principle that "debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). "The granting of summary judgment is especially appropriate in libel cases, for prolonging a meritless case through trial could result in further chilling of First Amendment rights." *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)

³ See Footnote 1.

In light of the factual allegations alleged in Plaintiff's Second Amended Complaint, Plaintiff's claims against Defendant Steward should be dismissed on the following grounds:

1. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward as Defendant's Statement Is Protected Opinion Under the First Amendment.**

Plaintiff has failed to allege facts sufficient to establish a cause of action for defamation as against Defendant Steward. The elements of defamation are: "(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

Here, Defendant Steward's single statement ("We can't have someone like that managing the tax dollars for our schools") is privileged, protected **opinion speech** under the First Amendment to the United States Constitution. Her statement is privileged fair comment and opinion of a public concern involving a public candidate and his fitness for office. Specifically, "a statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection." *Garrard v. Charleston County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019)(internal citations omitted). "If the defendant's words cannot be described as either true or false, they are not actionable. . . ." *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir. 1987). "Even when a

statement is subject to verification . . . it may still be protected if it can best be understood from its language and context to represent the personal view of the author or speaker who made it.” *Id.* (cited with approval by *Garrard*, 429 S.C. at 201, 838 S.E.2d at 714).

Here, Defendant’s statement of opinion relates to a matter of quintessential public concern (i.e. a candidate’s qualifications for office). Her statement is not provably false and are words that cannot be described as either true or false because they are opinion. From Defendant’s Steward’s language and context, the statement is understood as Defendant Steward’s opinion. As Defendant Steward’s statement is opinion and fair comment, Plaintiff’s claims against her must be dismissed.

2. Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward As The Statements Are Truth, Substantially True, Fair Comment, and Fair Reporting.

As a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading. *See New York Times v. Sullivan*, 376 U.S. 254, 279-280 (1964). In addition to showing falsity, Plaintiff also has the burden of proving the alleged statements were made with actual malice (knowledge of a statement’s falsity or with reckless disregard of whether it was false or not). *Id.*, 376 U.S. at 279-280; *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994). Again, Plaintiff is unable to meet this burden based on the undisputed facts in his own complaint. Indeed, to survive summary judgment, Plaintiff must prove

falsity by clear and convincing evidence which he cannot do. *See George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868 (2001).

As our Supreme Court has stated, ""The considerations which led to the formulation of the *New York Times* rule apply with special force to the case of the candidate." *Id.* (internal citations omitted). "[T]he New York Times rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64 (1964)). "Without question, public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the New York Times rule." *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506 (Ct. App. 2003).

Here, Plaintiff cannot meet his burden of proving falsity as a matter of law, either as to Defendant Steward's single comment or the overall statements in the political ad. Plaintiff admits he was sued for stealing and admits he confessed judgment for the full amount at issue (\$144,677.75). Second Amended Compl. ¶¶43, 59, 65. While he claims the SAS Lawsuit did not allege he "stole or misappropriated money from *Benedict College*," he admits that the SAS Lawsuit alleged he was "misappropriating insurance premium checks *paid by Benedict*" and "cashing premium checks *paid by Benedict*." *Id.* ¶¶49, 51, 58 (emphasis added). In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff

was sued for stealing \$150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict. See *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (S.C. 1967)(affirming grant of summary judgment on defamation claim based on substantial truth); *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)(interpreting South Carolina law and finding that minor inconsistencies in alleged defamatory statements do not defeat the defense of substantial truth).

Additionally, the SAS lawsuit was successful in that Plaintiff confessed judgment for the entire amount claimed to have been misappropriated. While Plaintiff finds it significant that \$150,000 is not \$144,677.75, the statements made in the ad are true or at the very least substantially true as to the amount at issue. *Id.* ¶43, 58, 69.⁴

Further, Plaintiff admits the SAS Lawsuit alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. This court can take judicial notice that “false statements” are generally considered to be “lies.” Black’s Law Dictionary, 6th ed. (“Lie, n. A falsehood uttered for the purpose of deception; an intentional statement of an untruth designed to mislead another. . . .”).

In summary, taking into account the undisputed facts in the four corners of the Second Amended Complaint, Plaintiff is unable to establish the falsity of the political ad as a whole much less Defendant Steward’s single statement (““We can’t have someone

⁴ See Footnote 1.

like that managing the tax dollars for our schools.”). Indeed, the undisputed allegations in the complaint only support the substantial truth of the statements.

Plaintiff alleges in the Second Amended Complaint that the Defendants’ statements “accuse Hollinshead of stealing money,” “suggest unfitness as a public servant, and “impeach the honesty, integrity, virtue, and reputation of [Plaintiff]. Second Amended Complaint, at ¶¶73-75. Given the SAS lawsuit accused Hollinshead of stealing money which suggests unfitness as a public servant and impeaches the honesty, integrity, virtue, and reputation of Plaintiff, the doctrine of “libel-proof” is an additional sustaining ground.

Based on the allegations in the four corners of the Second Amended Complaint, Plaintiff cannot meet his burden of showing falsity as a matter of law. Indeed, Plaintiff’s own factual allegations only demonstrate the substantial truth of the statements made in the political ad, including Defendant Steward’s opinion statement. As such, Plaintiff’s claims against Defendant Steward must be dismissed.

3. Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Civil Conspiracy.

Plaintiff’s civil conspiracy claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. As such, Plaintiff’s civil conspiracy claim against Defendant Steward should be dismissed on similar grounds as set forth above.

The elements of civil conspiracy are set forth in the recent case of *Paradis v. Charleston Cnty. Sch. Dist.* Case. *Id.*, Opinion No. 28030, filed May 19, 2021. The elements of civil conspiracy are: (1) the combination or agreement of two or more

persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. *Id.*

Here, Plaintiff specifically alleges that Defendant Steward conspired through unlawful means “to make *false representations* concerning [Plaintiff] through distortion of the truth.” Second Amended Complaint ¶89(b)(emphasis added). In doing so, Plaintiff has failed to allege facts sufficient to constitute a claim against Defendant Steward as her opinion speech is protected as a matter of law. Moreover, the factual allegations in the Second Amended Complaint fail to establish any “false representation” by Defendant Stewart and instead establish the substantial truth of the statements made in the political ad, especially as to Defendant Stewart’s single opinion statement. See *New York Times v. Sullivan*, 376 U.S. at 254; *Dauterman v. State-Record Co.*, 249 S.C. at 512, 154 S.E.2d at 919; *Paradis v. Charleston Cnty. Sch. Dist.*, Opinion No. 28030, filed May 19, 2021 (setting out standard for emotional distress claims); *Angus v. Burroughs & Chapin*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). As such, Plaintiff’s civil conspiracy claim against Defendant Steward must be dismissed.

4. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Intentional Infliction of Emotional Distress.**

For the reasons stated above, Plaintiff’s claim against Defendant Steward for intentional infliction of emotional distress should also be dismissed. Again, Plaintiff’s emotional distress claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. The elements of intentional infliction of

emotional distress are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007). There is a heightened burden of proof as to the second and fourth elements. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

As a matter of law, Defendant Steward's opinion and hyperbolic rhetoric (i.e. "We can't have someone like that managing the tax dollars for our schools") is protected speech under the First Amendment concerning a matter of public concern. Alternatively and based on the factual allegations contained in the pleading, Plaintiff cannot establish "extreme and outrageous" conduct given the substantial truth of her statement. As such, Plaintiff has failed to allege facts sufficient to establish his cause of action as against Defendant Steward. *See George v. Fabri*, 548 S.E.2d 868, n. 4 345 S.C. 440, n.4 ("a public figure making a claim for emotional distress due to a defamatory publication must meet the *New York Times* actual malice standard in order to recover."); *see generally Snyder v. Phelps*, 562 U.S. 443 (2011); *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 (1988). As such, Plaintiff's intentional infliction of emotional distress claim against Defendant Steward must be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiff's Second Amended Complaint against Defendant Steward must be dismissed.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
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ATTORNEYS FOR DEFENDANT STEWARD

Columbia, South Carolina
this 27th day of August, 2021.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

Kevin Dion Hollinshead, Senior,

)

Plaintiff,

)

v.

)

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

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

)

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Defendants.

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Defendant Teach for America, Inc., ("TFA") respectfully submits this motion to dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The grounds for the motion are set forth below.

INTRODUCTION

Plaintiff asserts claims for defamation, civil conspiracy and outrage/intentional infliction of emotional distress. In this case, the public record clearly establishes that the allegedly defamatory statement at issue here, which was contained in a political ad, was substantially true as a matter of law. Specifically, the statement in the political ad was nothing more than a summary of the circumstances surrounding a lawsuit in which Plaintiff was sued for misappropriation of funds, resulting in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he agreed to pay back those funds. The information in that statement is available in the public record, and the public record thus establishes the substantial truth of the

political ad as a matter of law. Not only was the political ad substantially true as a matter of law but the Plaintiff's claim for civil conspiracy fails to plead any additional acts of TFA specifically or their co-defendants in furtherance of conspiracy separate and independent from the wrongful acts alleged in its cause of action for defamation. Plaintiff's Second Amended Complaint simply set forth the elements of outrage/intentional infliction of emotional distress and plead no fact in its complaint that establishes a prima facie case as to each element of the claim.

Furthermore, in Plaintiff's Second Amended Complaint the only allegations against TFA are that co-defendants Leeza Steward ("Steward") and Courtney Waters ("Waters") were employees of TFA and were acting as agents of TFA. (SAC ¶¶ 27-32.) However, while both Steward and Waters were employees of TFA neither Steward nor Waters were acting in their scope of employment as employees of TFA which Steward admits in her Motion to Dismiss. (Steward's First MTD ¶ 4).

For the foregoing reasons, the Amended Complaint fails to state a claim upon which relief can be granted, and the Court should dismiss it.

FACTS

A. Plaintiff's Allegations

The Amended Complaint alleges the following facts:

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

Co-Defendant Charleston Coalition for Kids (the "Coalition") is a non-profit that is committed to the idea that "every student deserves a quality education." See <https://www.chskids.org>, last visited on March 19, 2021. Upon information and belief, co-

defendant Bell is the executive director of the Coalition, and Co-Defendants Bell, Colwell, Deas, Gibbison, Strickland, and Ziff are members of the board of directors for the Coalition (collectively, the “Board Members”). (SAC ¶¶ 3, 16.) Due to its work in support of children’s education, the Coalition had a vested interest in the outcome of the election. Because the Coalition believed that Waters’ vision for children’s education in the region was more in line with its mission than Plaintiff’s views, it endorsed Waters in the election. (*Id.* ¶ 19.)

Upon information and belief, as part of its support for Waters’s candidacy, the Coalition funded the creation of political ad that was critical of Plaintiff. Coalition did not consult with, receive any funding from or rely upon any decisions from TFA in its creation of the ad. The ad aired on various television networks and was uploaded to the Coalition’s Youtube channel. (SAC ¶ 20-22.)¹ As relevant here, the ad opened with Co-Defendant Steward speaking about the election. Then the ad stated, in an anonymous voiceover:

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

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

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

(SAC ¶ 39.)² At the bottom of the text, the ad referenced the case number of the lawsuit in question (“Case 2006-CP-10-3980, Charleston County 10/9/06”). The ad then went back to Co-Defendant

¹ The ad is no longer available on Youtube.

² In the Amended Complaint, Plaintiff omits the word “nearly” before the \$150,000 figure from the text of the ad, but the ad clearly contains the word “nearly.” The Coalition will bring an electronic copy of the ad to play for the Court at the hearing on this motion.

Steward, who says “We can’t have someone like that managing the tax dollars for our schools.” (SAC ¶ 40.)

B. The SAS Lawsuit

The lawsuit referenced in the ad is captioned *Student Assurance Services, Inc. v. Kevin Hollinshead, Sr., et al.* (hereinafter, “SAS Lawsuit”). A copy of the Complaint in the SAS Lawsuit is attached hereto as **Exhibit A**. The docket for this case is available on the Court’s public index website.³

The SAS Lawsuit pertains to Plaintiff’s dealings with a company called Student Assurance Services (“SAS”) and Benedict College in the early 2000’s. In its Complaint, SAS alleged it procured health and accident insurance coverage for Benedict College and its students. (SAS Compl. ¶¶ 3-7.) The insurance carrier appointed Plaintiff as the insurance agent. (*Id.* ¶ 7.) Under the business arrangement, Benedict would write premium checks to the order of SAS, send them to Plaintiff to distribute to SAS, and SAS would submit a commission to Plaintiff after receiving full payment. (*Id.* ¶¶ 8, 13-14.)

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

³ A trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014)

College was having “severe cash problems,” despite the fact Benedict College submitted all owed premiums to him. (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.)

In response to the SAS Complaint, Plaintiff executed (1) a Promissory Note, a copy of which is attached hereto as **Exhibit B**, and (2) an Agreement and Confession of Judgment, a copy of which is attached hereto as **Exhibit C**. In the Promissory Note and Agreement and Confession of Judgment, Plaintiff admitted that he owed SAS the \$144,677.75 he had taken from Benedict College, agreed to pay it back, and authorized the entry of judgment in favor of SAS. (*See* Promissory Note ¶ 1.1, 2.1; Agreement and Confession of Judgment ¶ 2-3, 5; *see also* SAC ¶¶ 59-60.)

In sum, according to the public record, it is demonstrably true that: (1) Plaintiff was sued in the amount of nearly \$150,000 for stealing money from Benedict College, an HBCU, that did not belong to him; (2) the lawsuit alleged that Plaintiff lied to cover up the fact that he had taken; and (3) the lawsuit was successful in that it resulted in a confession of judgment for the entire amount alleged in the Complaint.

ANALYSIS

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

I. Plaintiff fails to assert a cause of action for defamation.

The elements of a defamation claim are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001). As for the first element, in most cases, a defamatory statement

is presumed to be false and truth is an affirmative defense. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012); *accord Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and “the *plaintiff* must prove the statement was false.” *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)).

Here, Plaintiff is undoubtedly a public figure and a public official. Indeed, he was a member of the Charleston County School Board running for re-election. Thus, he is a public figure and a public official. *See George v. Fabri*, 345 S.C. 440, 548 S.E.2d 88 (2001) (defamation claim by candidate for city council analyzed as a public official); *Anderson v. The Augusta Chronicle*, 364 S.C. 589, 619 S.E.2d 428 (2005) (analyzing defamation claim by a candidate for public office as a public figure). Further, the South Carolina Supreme Court has explained that, in evaluation of defamation claims in the context of a political election, “free speech is particularly important.” *George*, 345 S.C. at 455, 548 S.E.2d at 876. Accordingly, under *Parker*, Plaintiff bears the burden of showing that the statements in the political ad were false.

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

First, Plaintiff was clearly “successfully sued.” Indeed, the SAS Lawsuit resulted in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he agreed that he was liable in the amount of \$144,677.75. Because the SAS Lawsuit resulted in a

judgement in SAS's favor, the SAS Lawsuit was successful, and Plaintiff cannot establish that the statement in the political ad that he was "successfully sued" was false.

Second, the SAS Lawsuit alleged that Plaintiff had stolen \$144,677.75, the Promissory Note was for that amount, and the Agreement and Confession of Judgment were for that amount. That amount of money is—as the political ad says—"nearly \$150,000." The difference in \$144,677.75 and \$150,000 is a difference of only approximately 3.59%, thus making the statement that the amount in question was "nearly \$150,000" substantially true. *See* 20 S.C. Jur. *Libel and Slander* § 34 (2021) ("Under the standard of substantial truth, '[i]t is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies . . . are immaterial provided that the defamatory charge is true in substance.'" (quoting Restatement Second, Torts § 581A Comment f (1977))); *see also Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth). Thus, Plaintiff cannot establish that the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had stolen nearly \$150,000 was false.

Third, the SAS Lawsuit alleged that Plaintiff had stolen the money from Benedict College, an HBCU. As an initial matter, it is unquestionably true that Benedict College is a HBCU. Moreover, it is also true that the SAS Lawsuit alleged the Plaintiff had stolen Benedict College's money. As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. (SAS Comp. ¶ 7.) In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. (*Id.* ¶ 8.) SAS alleged that, Plaintiff received those payments from Benedict College but, rather than forward those payments to SAS, Plaintiff stole that money and used it for his own purposes. (*Id.* ¶ 34.) Thus,

the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In his Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money *from Benedict College* but, rather, that he stole the money from *SAS*. This argument, however, is demonstrably false. The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money from Benedict College. According, Plaintiff cannot demonstrate the falsity of the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College.

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

For these reasons, the allegedly defamatory statements are true or substantially true as a matter of law and Plaintiff cannot satisfy his burden of establishing that they were false. Therefore, Plaintiff has not stated a claim upon which relief can be granted.

II. Plaintiff has not asserted a claim for civil conspiracy.

Plaintiff cannot state a claim for civil conspiracy because Plaintiff fails to allege additional acts in furtherance of a conspiracy. Additionally, Plaintiff in its claims for civil conspiracy relies upon an unlawful act that was not unlawful or committed by unlawful means.

The elements of a claim for civil conspiracy are: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston County School District*, Case No. 2018-002025, ___ S.E.2d ___, 2021 WL 3668152, at *7 (S.C. Aug. 18, 2021). Further, while “[t]here are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, political expression is not one of them.” *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, Cal.*, 454 U.S. 290, 296, 102 S.Ct. 434, 437 (1981). In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E. 2d 871, 874 (Ct. App. 2009) citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293. 278 S.E. 2d 607, 611 (1981) (dismissing plaintiff’s civil conspiracy claim because “the civil conspiracy” action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy were plead.) *Id.*

Here, the Plaintiff simply incorporates all of his allegations sets forth in his cause of action for defamation and states the elements of the cause of action without stating the overt act they are referencing. (SAC ¶ 89.) Furthermore, Plaintiff only complains of the act of the publication of the political ad; however, it is not unlawful to publish the ad and as stated by co-Defendant for CCFK in its Motion to Dismiss is protected by the First Amendment to the U.S. Constitution. Therefore, the political ad, cannot stand as a basis for a civil conspiracy claim and the Plaintiff’s claim of civil conspiracy fails as a matter of law.

III. Plaintiff has not stated a recoverable claim for Outrage/intentional infliction of emotional distress

TFA further agrees with CCFK in that public figures may not recover for the tort of outrage/intentional infliction of emotional distress. To recover for outrage/intentional infliction of emotional distress the Plaintiff must establish that:

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

Ford v. Hutson, 276 S.C. 157, 160, 276 S.E. 2d 776 (1981). Supreme Court has held that “public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication [] without showing in addition that the publication contains a false statement of *fact* which was made with “actual malice. . .” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988) (emphasis added).

Plaintiff's claim for outrage/intentional infliction of emotional distress similar to is claim for civil conspiracy simply realleges the allegations of defamation and sets forth the elements of a claim of outrage, and, therefore, fails as a matter of law. (SAC ¶ 96.) For this reason and the reasons set forth above the Plaintiff has failed to state any claim for defamation, civil conspiracy or outrage/intentional infliction of emotional distress.

CONCLUSION

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

Dated: October 7, 2021

TURNER, PADGET

By s/ Nickisha M. Woodward
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STUDENT ASSURANCE SERVICES,
INC.,

Plaintiff,

vs.

HOLLINSHEAD GROUP INSURANCE,
LLC and KEVIN HOLLINSHEAD, SR.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT
)

cc CP-103980

COMPLAINT

(JURY TRIAL DEMAND)

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

FILED

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

I. PARTIES

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

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

II. BACKGROUND FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Balance due SAS - \$144,677.75

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BLAND RICHTER, LLP



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ronnie@blandrichter.com (e-mail)

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
 September ____, 2006

2006 - CP - 10 - 3980

20

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PROMISSORY NOTE

2007 OCT 12 AM 9:14

JULIE J. ARMSTRONG
CLERK OF COURT

05/24/07, 2007

\$ 144,677.75

BY _____

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

I RECITALS

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

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

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

II PAYMENT

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

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

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

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

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

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

III DEFAULTS AND REMEDIES

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

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

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

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

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

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

submitted by debtor and approved by the Court.

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

IV GENERAL PROVISIONS

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

(a) If to Student Assurance:

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

With a copy to:

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

(b) If to Payor:

Kevin Hollinshead
3783 Meeting Street
N. Charleston, SC 29405

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

principal, balance, to the extent of such payment.

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

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

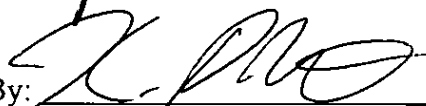
4.5 Time is of the essence with the payment obligations under this Note.

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

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

ATTEST:

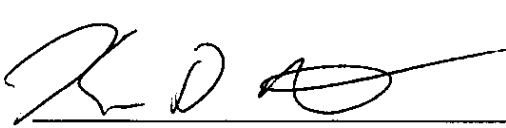
Hollinshead Group Insurance, LLC

By: 

Kevin Hollinshead, Member

Title: Owner

WITNESS:



Kevin Hollinshead

EXHIBIT "A"

FILED 2006-CP-10-3980

26

STATE OF SOUTH CAROLINA)

2007 OCT 12 AM 8

COUNTY OF CHARLESTON)

JULIE J. ARMSTRONG
CLERK OF COURTAGREEMENT AND CONFESSION
OF JUDGMENT

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

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

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

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

Exhibit C



along with this Agreement and Confession of Judgment.

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

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

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

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

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

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

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

ATTEST:

[Signature]

Hollinshead Group Assurance, LLC

By:

[Signature]

Title:

owner

WITNESS:

[Signature]

[Signature]

Kevin Hollinshead, Jr. SC

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

[Signature]

Notary Public for South Carolina

My Commission Expires: 3/3/2013



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 10, 2007

The Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401

**RE: Student Assurance Services v. Hollinshead Group Insurance and Kevin
Hollinshead
Case No. 2006-CP-10-3980**

Dear Ms. Armstrong:

Enclosed please find the originals and one copy of a fully executed Agreement and Confession of Judgment with attached Promissory Note in connection with the above-referenced matter. Please file each of the originals, clock the copy and return the clocked copy marked "Certified True Copy" to me in the enclosed self addressed stamped envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Eric S. Bland'. Below the signature, the name 'Eric S. Bland' is printed in a black font.

Eric S. Bland

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (via email)(w/o enclosures)
Mark Desch (via email)(w/o enclosures)
Kevin Hollinshead, Sr. (w/o enclosures)

m:\files\student assurance services\correspondence\clerk\ltrfileaffidavitservice.doc

Reply to:
1500 Calhoun Street
Columbia, SC 29201
Mail: P.O. Box 72
Columbia, SC 29202
Phone: 803.256.9664
Fax: 803.256.3056
ericbland@blandrichter.com

Offices also at:
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
Phone: 843.573.9900
Fax: 843.573.0200
www.blandrichter.com

ELECTRONICALLY FILED - 2021 Oct 07 3:02 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

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

TO: EDWARD PRITCHARD, III, ATTORNEY FOR PLAINTIFF, KEVIN DION HOLLINSHEAD, SENIOR:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, Defendant Leeza Steward (hereinafter "Steward") will move to dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) and Rule 56 of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. This motion is based upon the First Amendment to the United States Constitution, and federal and state case law including but not limited to the cases set forth below.

In a nutshell, this lawsuit involves a public official who ran for public office who is suing over statements made in a political ad ("political ad") created by a Charleston non-profit. The essence of the lawsuit is Plaintiff's contention that the political ad falsely

summarized an earlier lawsuit (“SAS Lawsuit”) wherein Plaintiff was sued for misappropriation of funds. Defendant Steward is a private citizen who appeared in the ad unrelated to her employment. **Exhibit A.** Plaintiff does not allege that Defendant Steward created or authored the political ad and further does not allege that she was the anonymous voiceover. *Id.* at ¶¶22-23. Rather, the only factual allegations against Defendant Steward is that she appeared in the political ad and opined, “We can’t have someone like that managing the tax dollars for our schools.” *Id.* at ¶40.

Plaintiff’s claims for civil conspiracy and intentional infliction of emotional distress involve these same factual allegations. *Id.* at ¶¶88-101. As the statements in the political ad were true, or at the very least substantially true, as a matter of law and as Defendant Steward’s statement is protected opinion speech, fair reporting, and fair comment under the First Amendment, the Second Amended Complaint fails to state a claim upon which relief can be granted as to Defendant Steward, and this Court should dismiss the action as against Defendant Steward.

STANDARD

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure allows dismissal of a claim when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRPC. “A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” *Disabato v. S.C. Ass’n of Sch. Adm’rs*, 404 S.C. 433, 746 S.E.2d 329 (2013). “The motion may not be sustained if the facts alleged in the complaint and the inferences drawn

therefrom would entitle the plaintiff to relief under any theory. Pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011)(internal citations omitted).

When matters outside the pleading are presented to and not excluded by the Court, the motion is treated as one for summary judgment under Rule 56. SCRCP 12. Under Rule 56, SCRCP, summary judgment is appropriate when "no genuine issue as to any **material fact**" exists. *Id.* (emphasis added); *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). "When determining if any triable issues of fact exist, the evidence and all **reasonable** inferences must be viewed in the light most favorable to the non-moving party." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)(internal citations omitted)(emphasis added). "When opposing a summary judgment motion, the nonmoving party must do more than simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 221, 578 S.E.2d 329, 335 (2003)(internal citations omitted). Where a verdict is not reasonably possible under the facts presented, summary judgment is appropriate. *Id.*

Here, Plaintiff is a public official who has failed to plead sufficient facts to constitute a cause of action as against Defendant Steward, a private citizen voicing a single opinion statement in what is political speech. The claims as against Defendant Steward should be dismissed under Rule 12(b)(6) and/or Rule 56, SCRCP.

FACTS

Plaintiff is a public official and public figure who in November 2020 ran for election for the Charleston County School Board. See Second Amended Compl. at ¶17. During this time, Defendant Charleston Coalition for Kids, a local non-profit, created a political ad which aired on television in the greater Charleston area and on the internet. *Id.* at ¶¶4, 22- 23, 71-72. In the political ad, according to the Second Amended Complaint, the following statements either appeared or were made by an anonymous voiceover:

- “But Kevin Hollinshead is using our money to help himself.” *Id.* at ¶38.
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars¹ (\$150,000) from a local HBCU and lied to cover it up.” *Id.*
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars² (\$150,000) from Benedict College.” *Id.* at ¶39

The ad is attached as **Exhibit B**.

As admitted to the Second Amended Complaint, the statements in the political ad refer directly to the SAS Lawsuit wherein it was alleged that Plaintiff “stole and unlawfully converted \$144,677.75 of insurance premiums,” was “misappropriating insurance premium checks paid by Benedict,” and “cashing premium checks paid by Benedict.” See *Id.* at ¶¶43, 49, 51; **Exhibit C**. The SAS Lawsuit further alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have

¹ Defendant Steward does not adopt but rather disputes Plaintiff’s version of the purported statements as the word “nearly” should appear before the \$150,000 number in each statement.

² See Footnote 1.

opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. Plaintiff further admits he confessed judgment for the full amount (\$144,677.75) alleged to have been stolen and unlawfully converted. *Id.* at ¶¶43, 59, 65. **Exhibit D.**

Plaintiff’s issue appears to be that “the [SAS] Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance stole or misappropriated money *from Benedict College.*” *Id.* at ¶58 (emphasis added). Yet, Plaintiff readily admits he was sued for “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict.*” *Id.* at ¶¶43, 49, 51 (emphasis added). In other words, Plaintiff was accused of taking monies *from Benedict* in trust for SAS and then allegedly converting those funds. Importantly, the political ad does not claim Plaintiff was sued by Benedict. *Id.* at ¶¶38-39. Lastly, Plaintiff appears to take issue with “\$144,677.75 is not \$150,000.”³ *Id.* ¶69.

Regardless, none of the above alleged defamatory statements are directly attributable to Defendant Steward. It is not alleged that she created or authored those statements. Defendant Steward appears in the political ad and states her opinion that “We can’t have someone like that managing the tax dollars for our schools.” *See Id.* ¶40. Based on the First Amendment to the United States Constitution and federal and state case law, Defendant Steward requests this Court dismiss Plaintiff’s claims against her.

ANALYSIS

In our democracy, public discourse about a candidate’s qualifications while running for public office is viewed under the protective lens of the First Amendment.

³ See Footnote 1.

Our courts recognize that political speech and the free exchange of ideas is the bedrock of our democratic system. Punishing private citizens for political speech has a chilling effect on our system of elections, government accountability to the public, and the vetting of candidates for public office. Our courts stand by the principle that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). “The granting of summary judgment is especially appropriate in libel cases, for prolonging a meritless case through trial could result in further chilling of First Amendment rights.” *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)

In light of the factual allegations alleged in Plaintiff’s Second Amended Complaint, Plaintiff’s claims against Defendant Steward should be dismissed on the following grounds:

1. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward as Defendant’s Statement Is Protected Opinion Under the First Amendment.**

Plaintiff has failed to allege facts sufficient to establish a cause of action for defamation as against Defendant Steward. The elements of defamation are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

Here, Defendant Steward's single statement ("We can't have someone like that managing the tax dollars for our schools") is privileged, protected **opinion speech** under the First Amendment to the United States Constitution. Her statement is privileged fair comment and opinion of a public concern involving a public candidate and his fitness for office. Specifically, "a statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection." *Garrard v. Charleston County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019)(internal citations omitted). "If the defendant's words cannot be described as either true or false, they are not actionable. . . ." *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir. 1987). "Even when a statement is subject to verification . . . it may still be protected if it can best be understood from its language and context to represent the personal view of the author or speaker who made it." *Id.* (cited with approval by *Garrard*, 429 S.C. at 201, 838 S.E.2d at 714).

Here, Defendant's statement of opinion relates to a matter of quintessential public concern (i.e. a candidate's qualifications for office). Her statement is not provably false and are words that cannot be described as either true or false because they are opinion. From Defendant's Steward's language and context, the statement is understood as Defendant Steward's opinion. As Defendant Steward's statement is opinion and fair comment, Plaintiff's claims against her must be dismissed.

2. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward As The Statements Are Truth, Substantially True, Fair Comment, and Fair Reporting.**

As a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading. *See New York Times v. Sullivan*, 376 U.S. 254, 279-280 (1964). In addition to showing falsity, Plaintiff also has the burden of proving the alleged statements were made with actual malice (knowledge of a statement's falsity or with reckless disregard of whether it was false or not). *Id.*, 376 U.S. at 279-280; *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994). Again, Plaintiff is unable to meet this burden based on the undisputed facts in his own complaint. Indeed, to survive summary judgment, Plaintiff must prove falsity by clear and convincing evidence which he cannot do. *See George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868 (2001).

As our Supreme Court has stated, ""The considerations which led to the formulation of the *New York Times* rule apply with special force to the case of the candidate." *Id.* (internal citations omitted). "[T]he New York Times rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64 (1964)). "Without question, public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the New York

Times rule.” *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506 (Ct. App. 2003).

Here, Plaintiff cannot meet his burden of proving falsity as a matter of law, either as to Defendant Steward’s single comment or the overall statements in the political ad. Plaintiff admits he was sued for stealing and admits he confessed judgment for the full amount at issue (\$144,677.75). Second Amended Compl. ¶¶43, 59, 65. While he claims the SAS Lawsuit did not allege he “stole or misappropriated money *from Benedict College*,” he admits that the SAS Lawsuit alleged he was “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict*.” *Id.* ¶¶49, 51, 58 (emphasis added). In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff was sued for stealing \$150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict. See *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (S.C. 1967)(affirming grant of summary judgment on defamation claim based on substantial truth); *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)(interpreting South Carolina law and finding that minor inconsistencies in alleged defamatory statements do not defeat the defense of substantial truth).

Additionally, the SAS lawsuit was successful in that Plaintiff confessed judgment for the entire amount claimed to have been misappropriated. While Plaintiff finds it

significant that \$150,000 is not \$144,677.75, the statements made in the ad are true or at the very least substantially true as to the amount at issue. *Id.* ¶43, 58, 69.⁴

Further, Plaintiff admits the SAS Lawsuit alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. This court can take judicial notice that “false statements” are generally considered to be “lies.” Black’s Law Dictionary, 6th ed. (“Lie, n. A falsehood uttered for the purpose of deception; an intentional statement of an untruth designed to mislead another. . . .”).

In summary, taking into account the undisputed facts in the four corners of the Second Amended Complaint, Plaintiff is unable to establish the falsity of the political ad as a whole much less Defendant Steward’s single statement (““We can’t have someone like that managing the tax dollars for our schools.”). Indeed, the undisputed allegations in the complaint only support the substantial truth of the statements.

Plaintiff alleges in the Second Amended Complaint that the Defendants’ statements “accuse Hollinshead of stealing money,” “suggest unfitness as a public servant, and “impeach the honesty, integrity, virtue, and reputation of [Plaintiff]. Second Amended Complaint, at ¶¶73-75. Given the SAS lawsuit accused Hollinshead of stealing money which suggests unfitness as a public servant and impeaches the honesty, integrity, virtue, and reputation of Plaintiff, the doctrine of “libel-proof” is an additional sustaining ground.

⁴ See Footnote 1.

Based on the allegations in the four corners of the Second Amended Complaint, Plaintiff cannot meet his burden of showing falsity as a matter of law. Indeed, Plaintiff's own factual allegations only demonstrate the substantial truth of the statements made in the political ad, including Defendant Steward's opinion statement. As such, Plaintiff's claims against Defendant Steward must be dismissed.

3. Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Civil Conspiracy.

Plaintiff's civil conspiracy claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. As such, Plaintiff's civil conspiracy claim against Defendant Steward should be dismissed on similar grounds as set forth above.

The elements of civil conspiracy are set forth in the recent case of *Paradis v. Charleston Cnty. Sch. Dist.* Case. *Id.*, Opinion No. 28030, filed May 19, 2021. The elements of civil conspiracy are: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. *Id.*

Here, Plaintiff specifically alleges that Defendant Steward conspired through unlawful means "to make *false representations* concerning [Plaintiff] through distortion of the truth." Second Amended Complaint ¶189(b)(emphasis added). In doing so, Plaintiff has failed to allege facts sufficient to constitute a claim against Defendant Steward as her opinion speech is protected as a matter of law. Moreover, the factual allegations in the Second Amended Complaint fail to establish any "false

representation” by Defendant Stewart and instead establish the substantial truth of the statements made in the political ad, especially as to Defendant Stewart’s single opinion statement. *See New York Times v. Sullivan*, 376 U.S. at 254; *Dauterman v. State-Record Co.*, 249 S.C. at 512, 154 S.E.2d at 919; *Paradis v. Charleston Cnty. Sch. Dist.*, Opinion No. 28030, filed May 19, 2021 (setting out standard for emotional distress claims); *Angus v. Burroughs & Chapin*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). As such, Plaintiff’s civil conspiracy claim against Defendant Stewart must be dismissed.

4. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Stewart For Intentional Infliction of Emotional Distress.**

For the reasons stated above, Plaintiff’s claim against Defendant Stewart for intentional infliction of emotional distress should also be dismissed. Again, Plaintiff’s emotional distress claim against Defendant Stewart is based on the same alleged defamatory statements and factual allegations. The elements of intentional infliction of emotional distress are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so ‘extreme and outrageous’ as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff’s emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007). There is a heightened burden of proof as to the second and fourth elements. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

As a matter of law, Defendant Steward's opinion and hyperbolic rhetoric (i.e. "We can't have someone like that managing the tax dollars for our schools") is protected speech under the First Amendment concerning a matter of public concern. Alternatively and based on the factual allegations contained in the pleading, Plaintiff cannot establish "extreme and outrageous" conduct given the substantial truth of her statement. As such, Plaintiff has failed to allege facts sufficient to establish his cause of action as against Defendant Steward. *See George v. Fabri*, 548 S.E.2d 868, n. 4 345 S.C. 440, n.4 ("a public figure making a claim for emotional distress due to a defamatory publication must meet the *New York Times* actual malice standard in order to recover."); *see generally Snyder v. Phelps*, 562 U.S. 443 (2011); *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 (1988). As such, Plaintiff's intentional infliction of emotional distress claim against Defendant Steward must be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiff's Second Amended Complaint against Defendant Steward must be dismissed.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
 Joseph M. McCulloch, Esq.
 Kathy R. Schillaci, Esq.
 McCulloch & Schillaci, Attorneys at Law
 1116 Blanding Street, First Floor
 P.O. Box 11623 (29211)
 Columbia, South Carolina 29201
 T: 803-779-0005

F: 803-779-0666

joe@mccullochlaw.com

kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT STEWARD

Columbia, South Carolina

this 6th day of December, 2021.

Exhibit A

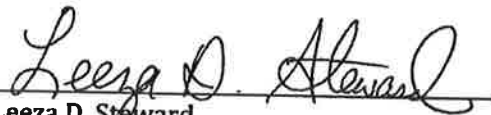
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Kevin Dion Hollinshead, Senior,	)	Civil Action No.: 2021-CP-10-00426
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AFFIDAVIT OF LEEZA D. STEWARD
Thomas J. Bell, individually and as	)	
Executive Director of Charleston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

PERSONALLY APPEARED BEFORE ME, Leeza D. Steward, who, being duly sworn, deposes, and states:

1. I am a resident of the city of Charleston and have been employed on a full-time basis with teach for America as a Teacher Coach since 2016.
2. In September of 2020, I was contacted by Mr. Josh Bell who is currently employed with Charleston Coalition for Kids and who I knew from his previous job. Mr. Bell called to ask if I would agree to participate in a television ad endorsing candidates for a local school board election. I agreed.
3. Thereafter, I participated briefly in a Zoom call in which I was told when and where the ad would be filmed. I attended this filming where several sentences were suggested to me as the "script," and I was briefly filmed for the ad.
4. I was not paid, nor did I receive any benefit for my participation. My participation in the ad was voluntary and on my personal time.

5. I did not discuss, reveal, nor conceal my participation in the ad from my employer, Teach for America (TFA). I did not seek approval from my employer, TFA, before or after my participation. I did not notify my employer nor do I have any information that Teach for America, or any of my co-workers, knew of my participation in the ad, until perhaps, the ad appeared on television.

FURTHER AFFIANT SAYETH NAUGHT.


Leeza D. Steward

SWORN TO AND SUBSCRIBED

before me this 21st day of March, 2021.


Notary Public for South Carolina
Print Name: Dontre Prioleau
My commission expires: Sept 21 2030



Exhibit B

Visual	Audio
Name: Hollinshead HBCU	
	Type: :30 Second TV
Parent DTC Parent b-roll with her kid(s) Gfx: School Boardmember Kevin Hollinshead <u>Hollinshead clip</u> Gfx: Successfully sued for stealing nearly than \$150,000 from Benedict College Money meant to help students Case 2006-CP-10-3980, Charleston County, 10/9/06 Stock of portraits of students Extra DTC Gfx: Charles Monteith and Courtney Waters Working for our students Parent DTC Gfx: Vote Charles Monteith and Courtney Waters for Charleston Schools DISCLAIMER	<i>We need school board members looking out for our kids, first and always</i> But Kevin Hollinshead... is using our money to help himself. Hollinshead was successfully sued for stealing nearly \$150,000 from a local HBCU – and lying to cover it up. <i>We cannot have him managing the tax dollars meant for our schools</i> Charles Monteith and Courtney Waters will put us first. They'll better manage our tax dollars to give every child a fair shot. <i>Charles Monteith and Courtney Waters for our schools.</i>

Visual	Audio
Name: Himself First	
	Type: :30 Second TV
Parent DTC Gfx (appear on a chalkboard): Voted to raise his own pay CCSD board meeting, 7/17/17; Post & Courier, 7/27/17 Give himself a monthly \$800 taxpayer fund for personal expenses CCSD committee of the whole meeting, 1/14/19; Live5News.com, 1/14/19 Enough to have hired 13 new teachers [Post & Courier, 7/27/17 While trying to raise our taxes CCSD board meeting, 5/28/19 \$20,000 in personal ethics fines Debtor's List, State Ethics Commission, April 2020 Parent DTC Parent b-roll with their kids Gfx: Charles Monteith and Courtney Waters Working for our students Photos of Monteith and Waters Parent DTC Gfx: Vote Charles Monteith and Courtney Waters for Charleston Schools DISCLAIMER	<i>More funding our schools and teachers would make all the difference</i> VO: But Chris Collins... puts himself first. He tried to raise his pay and use tax dollars to give himself a \$800 a month slush fund All of that money could've hired 13 new teachers And he did it while trying to raise our taxes <i>It's unbelievable. It's hurting kids.</i> Charles Monteith and Courtney Waters will fight for students, better managing tax dollars to get everyone the help they need. <i>Charles Monteith and Courtney Waters for our schools.</i>

A DVD with the ad has been filed with the Clerk of Court. The ad can also be viewed by going to the link below:

<https://vimeo.com/465403454/671aaba6da>

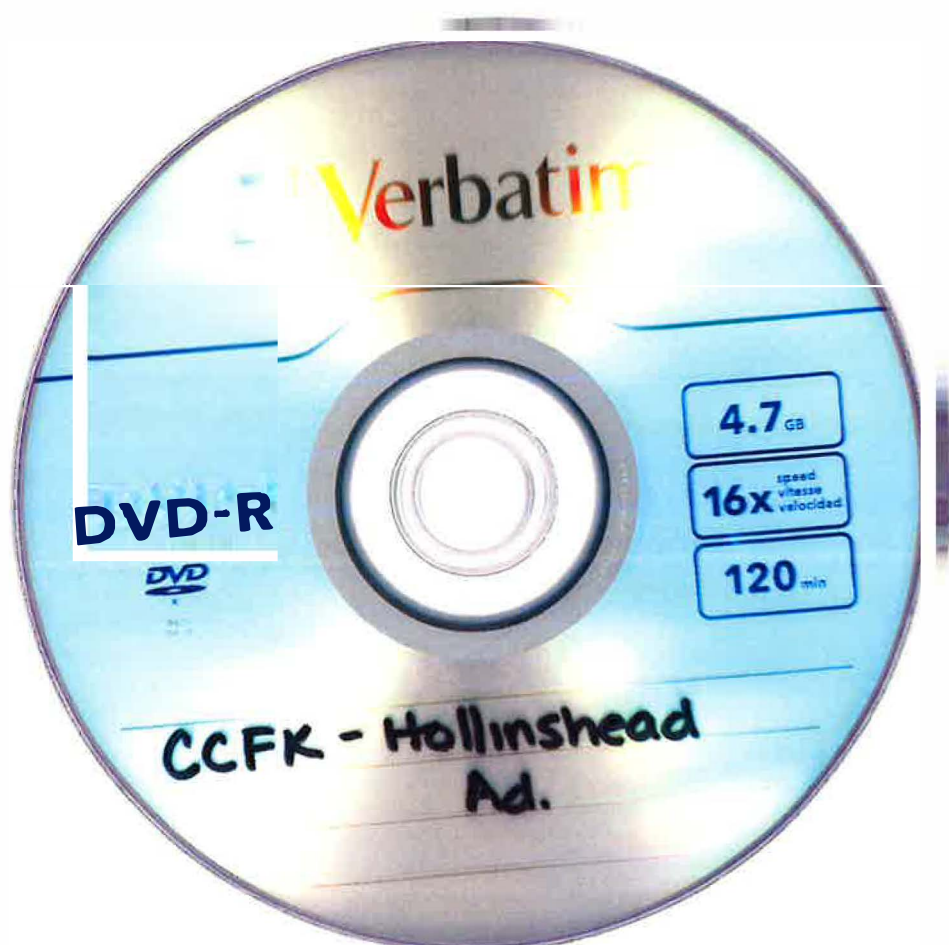


Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STUDENT ASSURANCE SERVICES,
INC.,

Plaintiff,

vs.

HOLLINSHEAD GROUP INSURANCE,
LLC and KEVIN HOLLINSHEAD, SR.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

cu CP-103980

COMPLAINT

(JURY TRIAL DEMAND)

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

FILED

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

I. PARTIES

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

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

II. BACKGROUND FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Balance due SAS - \$144,677.75

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BLAND RICHTER, LLP



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

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
 September 5, 2006

EXHIBIT "A"



July 18, 2003

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

RE: Agent Application for Appointment Forms

Dear Dale:

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

Please contact me if you require any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana Miller".

Diana Miller
Compliance and Contracts Administrator

Diana Miller, Compliance & Contract Administrator

TRANSMITTAL

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

FAX NUMBER: (607) 724-1599

FROM: Diana Miller
ext 203

DATE: July 18 2003

PAGES TO FOLLOW: 9(including this page)

RE: Agent Appointment

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

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



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

FAX
(651) 439-0200

Phone Toll Free
1-800-328-2739

Minnesota Metro
(651) 439-7098

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

COLUMBIAN FINANCIAL GROUP

Binghamton, New York 13902

APPLICATION FOR APPOINTMENT AS LICENSED REPRESENTATIVE
with the **Student Assurance Services, Inc.**

(Name & Number of General Agency)

CML _____

CLIC _____

PLEASE PRINT

CONFIDENTIAL

Personal Information

Mr. ☒ Mrs. ☐ Ms. ☐

Name Hollinshead Kevin Dion
Last First Middle

Business Address c/o Same

Residence Address 3783 Meeting St.
No. Street Address

No. Street Address

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

City County State Zip Code

Residence Phone No. [REDACTED]
Area Code Phone No.

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

Social Security No. [REDACTED]

FAX No. 843-747-4143

Business Tax I.D. No. _____

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

Date of Birth [REDACTED]
No Month Date Year

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

PLEASE INDICATE WHICH ADDRESS IS TO BE USED FOR MAIL (Check only one) ☒ Home ☐ Business

I am interested in representing the Company as an ☒ Individual ☐ Corporation ☐ Partnership

Licensed or qualified to sell Life Insurance? ☒ Yes ☐ No If "Yes", give name(s) of Company(ies), if any, and

Licensed or qualified to sell Accident and Health? ☒ Yes ☐ No If "Yes", give name of Company(ies), if any, and

Engaged in the General Insurance Business? ☐ Yes ☒ No If "yes", give name(s) of Company(ies), if any, and

If engaged in any other occupation, give particulars _____

Will our Company be the Representative's primary Company? ☒ Yes ☐ No

If not, which Company? _____

May name be published in Agency Magazine, Honor Rolls, Etc.? ☒ Yes ☐ No

Are Company Publications to be sent? ☒ Yes ☐ No

If any relative(s) of representative work(s) for Columbian Financial Group, please name:

ND

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

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

(Witness)

Dated at _____ this _____ day of _____, 2003

COLUMBIAN MUTUAL LIFE INSURANCE COMPANY
BINGHAMTON, NY 13902-1381
Columbian Life Insurance Company is not licensed

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

R-400

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPT1000426

COLUMBIAN FINANCIAL GROUP
Binghamton, New York 13902



CML _____ CLIC 1

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

Telephone Number _____

FAX Number _____

Name of applicant Kevin Dion Hollingshead sr
(Corporate name in full) (Fed Employer ID No)

Principal Business Address 3783 Meeting St.
(Street name & number)

N. Charlestown Charlestown SC 29405
(City) (County) (State) (Zip Code)

List all officers and directors and give information requested below:

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

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

Person to contact relative to this Corporation: _____

Mrs. Dale Evanchof
Director of Licensing
Sales & Marketing

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

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

COLUMBIAN FINANCIAL GROUP

Binghamton, NY 13902

AUTHORIZATION**Disclosure**

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

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

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

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

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

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

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

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

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

 SR
Signature of Applicant

Date

Kevin D. Hollinshead
Name Printed

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

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

You should not:

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

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

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

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

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

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

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

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

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

Give direct monetary or indirect "in kind" rebates.

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

X-D Hollinshead sr
signature

date

Kevin D. Hollinshead sr
name - print

CONFIDENTIALITY AND NONDISCLOSURE ADDENDUM

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

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

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

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

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

Agreed to this _____ day of _____, 2001

Name: _____

(Signature)

Title: _____

Name: _____

(Printed Name)

Company: _____



POLICY REGARDING REPLACEMENTS

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

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

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

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

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

Kevin D. Hollishead
Agent's Signature

Date

Kevin D. Hollishead
Agent's Name - Print



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



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

COLUMBIAN LIFE INSURANCE COMPANY

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

AGENT CONTRACT

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

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

The Effective Date of this Contract shall be _____

AGENT:

Kevin D. Hollinshead, Jr.
(Authorized Signature)

(Date)

GENERAL AGENT

Mark L. Deuch
(Authorized Signature)

7-15-2003
(Date)



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

CONSENT OF THE COMPANY

COLUMBIAN LIFE INSURANCE COMPANY

By _____

1. DEFINITIONS

In this Contract,

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

2. AUTHORITIES AND DUTIES OF AGENT

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

3. COMPENSATION

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

4. AGENT OR BROKER OF RECORD

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

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

5. COLLECTION OF MONIES

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

6. COSTS

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

7. ADVERTISING

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

8. LICENSING AND APPOINTMENT OF AGENTS

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

9. ADMINISTRATION

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

10. TERM AND TERMINATION

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

11. GENERAL PROVISIONS

- a) Additions, Amendments, Modifications and Waivers.

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

b) **Independent Contractor Relationship.**

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

c) **Assignments.**

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

d) **Bond or Insurance**

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

e) **Service of Process**

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

f) **Severability**

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

g) **Governing Law**

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

h) **Notice**

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

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

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

12. CONFIDENTIALITY OF INFORMATION

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



**South Carolina
Department of Insurance**

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

***** Producer License *****

Individual #: 168405
Type of License: RES - Producer

Date Issued: 09/09/1997

KEVIN D HOLLINSHEAD

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

19 - Life

21 - Accident/Health

Subject to Cancellation, Suspension, or
Revocation per Statutes.

By order of the
Director of Insurance

(Cut Along This Line)

Remarks:

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

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

	South Carolina Department of Insurance Producer License
Name: KEVIN D HOLLINSHEAD	
Individual #: 168405	
Date Issued: 09/09/1997	
Line(s) of Authority: 19-Life 21-Accident/Health	
Subject to Cancellation, Suspension, or Revocation per Statutes.	By order of the Director of Insurance

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

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



South Carolina
Department of Insurance

Interim Producer License

Name: KEVIN D HOLLINSHEAD

Individual Number: 168405

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

R-411

EXHIBIT "B"



STUDENT ASSURANCE SERVICES, INC.

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

INVOICE

July 20, 2005

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

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

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

\$50,000.00

AMOUNT DUE

\$50,000.00

TERMS: Payable upon receipt.

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

EXHIBIT "C"

08-08-05 16:18:37	25962	KEVIN D HOLLINSHEAD	1003
-------------------	-------	---------------------	------

Kevin Hollinshead

CHECK NUMBER: 000309420 CHECK AMOUNT: 10000.00

CHECK NO: 000309420

Student Insurance Service

UNVEST LIFE WISELY

 **HERITAGE TRUST**
FEDERAL CREDIT UNION

P.O. BOX 418000
Charleston, SC 29423-8000
(843) 832-2600

DETACH AND RETAIN THIS PORTION

R-415

EXHIBIT "D"

Mike Montour

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

Kevin:

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

Let me know if you need any additional assistance.

Thanks.

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

CONFIDENTIALITY NOTICE

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

03-06-06

Mark: These two invoices were
emailed to Kevin today

9/23/2005

R-417



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

September 23, 2005

- Benedict College
- 1800 Harden Street, MS #10
- Columbia, SC 29204

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

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

\$159,639.00

AMOUNT DUE

\$159,639.00

TERMS: Payable upon receipt.

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

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI000426

EXHIBIT "E"



STUDENT ASSURANCE SERVICES, INC.

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

INVOICE

February 8, 2006

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

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

Coverage for Spring Semester period, 01-05-2006 to 07-31-2006

Premium for Spring Semester, \$63.50 per student X 2,370 Students

\$150,495.00

AMOUNT DUE

\$150,495.00

TERMS: Payable upon receipt.

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

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI000426

EXHIBIT "F"

Mark Desch

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



Hollinshed Group
Insurance Pay...

Mr. Desch:

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

Brenda

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

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

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

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

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

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



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 5, 2006

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Student Assurance Services, Inc. v. Hollinshead Group Insurance, LLC
and Kevin Hollinshead, Sr.

Dear Ms. Armstrong:

Enclosed herein for filing are an original and two (2) copies of the Civil Action Cover Sheet, Summons and Complaint in connection with the above-referenced matter. I have also enclosed my firm's check number 8783 in the amount of \$150.00 as payment for the fee associated with the filing of the Complaint. Please file the original and return the clocked-in copies to me in the self-addressed postage prepaid envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'ESB', written over the typed name 'Eric S. Bland'.

Eric S. Bland

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (w/o enclosures)
Mark Desch – Student Assurance Services (w/o enclosures)

m:\files\student assurance services\ltr to clerk filing complaint 100506.doc

Exhibit D

26

FILED 2006-CP-10-3980

STATE OF SOUTH CAROLINA)

2007 OCT 12

AM

COUNTY OF CHARLESTON)

JULIE J. ARMSTRONG

CLERK OF COURT

AGREEMENT AND CONFESSION
OF JUDGMENT

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

1. Debtor Hollinshead Group Insurance, LLC is a licensed and duly authorized limited liability company with the office of the South Carolina Secretary of State with its principal place of business in the county of Charleston, State of South Carolina. Debtor Kevin Hollinshead is a citizen and resident of Charleston County, South Carolina.
2. Debtors are liable to Student Assurance in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, which amount is justly due to Student Assurance because Debtors have, as a part of the Note, agreed and acknowledged that it currently owes Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, inclusive of attorney's fees and interest.
3. As such, Debtors hereby confess and authorizes the entry of judgment in favor of Student Assurance in the sum of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, minus credits for any amounts that have previously been paid, which shall be identified with an affidavit itemizing payments or credits to be filed

along with this Agreement and Confession of Judgment.

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

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

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

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

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

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

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

ATTEST:

[Signature]

Hollinshead Group Assurance, LLC

By: [Signature]

Title: Owner

WITNESS:

[Signature]

[Signature]
Kevin Hollinshead, Jr. SC

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

[Signature]

Notary Public for South Carolina
My Commission Expires: 3/3/2013



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 10, 2007

The Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401

**RE: Student Assurance Services v. Hollinshead Group Insurance and Kevin
Hollinshead
Case No. 2006-CP-10-3980**

Dear Ms. Armstrong:

Enclosed please find the originals and one copy of a fully executed Agreement and Confession of Judgment with attached Promissory Note in connection with the above-referenced matter. Please file each of the originals, clock the copy and return the clocked copy marked "Certified True Copy" to me in the enclosed self addressed stamped envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Eric S. Bland'. Below the signature, the name 'Eric S. Bland' is printed in a small, sans-serif font.

Eric S. Bland

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (via email)(w/o enclosures)
Mark Desch (via email)(w/o enclosures)
Kevin Hollinshead, Sr. (w/o enclosures)

m:\files\student assurance services\correspondence\clerkltrfileaffidavitservice.doc

Reply to:
1500 Calhoun Street
Columbia, SC 29201
Mail: P.O. Box 72
Columbia, SC 29202
Phone: 803.256.9664
Fax: 803.256.3056
ericbland@blandrichter.com

Offices also at:
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
Phone: 843.573.9900
Fax: 843.573.0200
www.blandrichter.com

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

Kevin Dion Hollinshead, Senior,

)

Plaintiff,

)

v.

)

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

**DEFENDANTS CHARLESTON
 COALITION FOR KIDS, THOMAS J.
 BELL, ANGELICA M. COLWELL, LEE P.
 DEAS, GODFREY A. GIBBISON, ERIC P.
 STRICKLAND, AND LOREN R. ZIFF'S
 MEMORANDUM IN SUPPORT OF
 MOTION TO DISMISS PLAINTIFF'S
 SECOND AMENDED COMPLAINT
 UNDER SCRPC RULE 12(B)(6)**

Defendants.

)

Defendants Charleston Coalition for Kids, Thomas J. Bell, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, and Loren R. Ziff (collectively, the "Coalition Defendants") respectfully submit this Memorandum in Support of their Motion to Dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRP") for failure to state a claim upon which relief can be granted. For the following reasons, as well as those set forth in the Motion to Dismiss and in arguments, the Coalition Defendants hereby request an Order dismissing Plaintiff's Second Amended Complaint, *with prejudice*.

As set forth in the Coalition Defendants' Motion to Dismiss, the Second Amended Complaint fails to state a claim upon which relief can be granted under SCRPC Rule 12(b)(6). Plaintiff, a public official and/or public figure, purports to assert claims for defamation, civil conspiracy, and outrage based on a political advertisement, but fails to set forth facts, even considered in the light most favorable to Plaintiff, that could constitute any such claims.

Specifically, documents in the public record that are referred to and incorporated into the Second Amended Complaint establish that the statements made in the political ad are true as a matter of law. As a result, the Court must dismiss this action.

FACTS

A. Plaintiff's Allegations

The Second Amended Complaint alleges the following facts:

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

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

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

¹ The ad is no longer available on Youtube.

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

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

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

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

(SAC ¶ 40.)

B. The SAS Lawsuit

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

In order to survive a motion to dismiss pursuant to SCRCP Rule 12(b)(6), the court should consider whether Plaintiff has “state[d] facts sufficient to constitute a cause of action.” Unlike the more lenient standard under the federal rules, SCRCP preserve the Code pleading standard. *Paradise v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E. 2d 147, 153 (Ct. App. 2018). “When a plaintiff states nothing more than legal conclusions, a claim should fail.” *Id.* (citing *Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889)). Stated simply, “Rule 12(b)(6) requires the plaintiff to allege facts.” *Id.* at 614, 819 S.E. at 153.

Moreover, a trial court may properly consider documents that are referenced in the complaint without converting a motion to dismiss to a motion for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto [without converting a motion to dismiss to one for summary judgment] prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”). “[R]eliance on [] court orders in the underlying [] action d[oes] not convert the motion to one for summary judgment.” *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497-98 (2014).

However, if the Court does find that the documents attached to the Motion Dismiss were not incorporated in the Second Amended Complaint, the Court must treat the motion as one for summary judgment. SCRCP Rule 12(b) provides in part that,

[i]f, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.

SCRCP 56(c) states that the Court will grant summary judgment where “there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law.”

ANALYSIS

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

I. PLAINTIFF’S DEFAMATION CLAIM FAILS AS A MATTER OF LAW.

Plaintiff’s defamation claim fails as a matter of law because the allegations in the Second Amended Complaint, taken in consideration with the documents referenced therein, which are part of the public record, clearly establish that the allegedly defamatory statements are true or at least substantially true. Generally, the elements of a defamation claim are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

A. The allegedly defamatory statements are true as a matter of law.

As for the first element, in some cases, a defamatory statement is presumed to be false and truth is an affirmative defense. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012); *accord Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and “the *plaintiff* must prove the statement was false.” *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)). Further,

the South Carolina Supreme Court has explained that, in evaluation of defamation claims in the context of a political election, “*free speech is particularly important.*” *George v. Fabri*, 345 S.C. 440, 455, 548 S.E.2d 868, 876 (2001) (emphasis added). The Supreme Court touted “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720 (1964).

Here, Plaintiff is undoubtedly a public figure and a public official. Indeed, he was a member of the Charleston County School Board running for re-election. (SAC ¶ 17.) Thus, he is a public figure and a public official. *See George*, 345 S.C. 440, 548 S.E.2d 868 (defamation claim by candidate for city council analyzed as a public official); *Anderson v. The Augusta Chronicle*, 364 S.C. 589, 619 S.E.2d 428 (2005) (analyzing defamation claim by a candidate for public office as a public figure). Accordingly, under *Parker*, Plaintiff bears the burden of showing that the statements in the political ad were false.

Plaintiff cannot satisfy that burden. In sum and substance, the facts stated in the political ad are that Plaintiff (1) was successfully sued, (2) for stealing nearly \$150,000 (3) from Benedict College, a HBCU, and (4) lying to cover it up. (SAC ¶¶ 38.) Based on the face of the Second Amended Complaint and documents referenced therein and available in the public record, each of these statements is true, or at the very least substantially true.

First, Plaintiff was undoubtedly “successfully sued.” Indeed, the SAS Lawsuit resulted in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he admitted that he was liable in the amount of \$144,677.75, the exact amount alleged in the SAS Lawsuit. This fact is supported by the allegations in the Complaint and confirmed in the public

record. (SAC ¶ 59 (“Hollinshead [] confessed judgment...”); Agreement and Confession of Judgment at 1.) Because the SAS Lawsuit resulted in a judgment in SAS’s favor, the SAS Lawsuit was successful. Thus, on the face of the Second Amended Complaint, the statement that Plaintiff was “successfully sued” is true.

Second, the SAS Lawsuit alleged that Plaintiff had stolen \$144,677.75, the Promissory Note was for that amount, and the Agreement and Confession of Judgment was for that amount. (Confession at 1.) That amount of money is—as the political ad says—“nearly \$150,000.” The difference in \$144,677.75 and \$150,000 is a difference of only approximately 3.59%, thus making the statement that the amount in question was “nearly \$150,000” substantially true. *See* 20 S.C. Jur. *Libel and Slander* § 34 (2021) (“Under the standard of substantial truth, ‘[i]t is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies . . . are immaterial provided that the defamatory charge is true in substance.” (quoting Restatement Second, Torts § 581A Comment f (1977))); *see also Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth). Thus, Plaintiff’s allegations, coupled with the public record referenced therein, plainly show that this statement, too, is true or substantially true.

Third, the SAS Lawsuit alleged that Plaintiff had stolen the money from Benedict College, an HBCU. As an initial matter, it is unquestionably true that Benedict College is an HBCU. *See* <https://www.benedict.edu/about-benedict/>, last visited on March 22, 2021. Moreover, it is also true that the SAS Lawsuit alleged the Plaintiff had stolen Benedict College’s money. (*See* SAC ¶ 51 (“[T]he [SAS] Lawsuit alleges Hollinshead [] breached a contract . . . by misappropriating insurance premium checks paid by Benedict.”); SAS Complaint at ¶ 36 (“Hollinshead had over-

billed Benedict for the health insurance premium for the Plan...”).) “Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner’s rights. . . Conversion may arise by some illegal use or misuse, or by illegal detention of another’s chattel.” *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975). Thus, the SAS Lawsuit alleges that he committed conversion, *i.e.* he stole from Benedict College and/or its students.

As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. (SAS Comp. ¶ 7.) In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. (*Id.* ¶ 8.) SAS alleged that Plaintiff received those payments from Benedict College but, rather than forward the money to SAS, Plaintiff stole that money and used it for his own purposes. (*Id.* ¶ 34.) In other words, Plaintiff improperly assumed control over funds belonging to Benedict College and its students, since he had no right to use the money or do anything more than submit it to SAS. Accordingly, the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In the Second Amended Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money *from Benedict College*, but, rather, that he stole the money from **SAS**. This argument, however, is demonstrably false. The money at issue was Benedict College’s money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money *from Benedict College*. Even more, the SAS Complaint alleges that Plaintiff “over-billed

Benedict,” *i.e.* took money from Benedict College above and beyond what was owed to SAS. (SAS Compl. ¶ 36.) There is no reasonable way to read the SAS Lawsuit such that it did not allege that Plaintiff stole from Benedict College and/or its students. Accordingly, the Second Amended Complaint coupled with the public record establishes that, as a matter of law, the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College is true.

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

For these reasons, based solely on the Second Amended Complaint and the public record, the allegedly defamatory statements at issue here are true or substantially true as a matter of law. Thus, Plaintiff cannot satisfy his burden of establishing that they were false, and in fact has established the truth of all factual statements. Accordingly, Plaintiff cannot state a claim for defamation.

B. The allegedly defamatory statements are protected under the doctrine of fair speech.

Further, even if the statements at issue here were false (and they were not), Plaintiff also fails to state a claim upon which relief can be granted because the ad at issue here is protected speech under the fair comment doctrine, *Oswalt v. State-Rec. Co.*, 250 S.C. 429, 435, 158 S.E.2d 204, 207 (1967), and *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and is subject to a qualified privilege, *see Fountain v. First Reliance Bank*, 398 S.C. 434, 444, 730 SE.2d 305, 310 (2012) (statement is not defamatory if subject to qualified privilege). “When a citizen holds a

public office he becomes subject to criticism; any citizen [] is privileged to criticize his acts, fitness and qualifications for the office he holds. . .” *Oswalt*, 250 S.C. at 435, 158 S.E.2d at 207. A privilege defense can properly be decided on a motion to dismiss, especially where the text / video / audio of the actual allegedly defamatory statements and the underlying public records are available for review, as they are here. *See Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546 (granting a motion to dismiss defamation claim based on the fair report privilege after review of the news reports and public records attached to the motions).

As demonstrated above, in this case, Plaintiff is a citizen holding public office and is therefore “subject to criticism.” The Coalition Defendants, therefore, were “privileged to criticize [Plaintiff’s] acts, fitness and qualification for the office he holds. . .” *See Oswalt*, 250 S.C. at 435, 158 S.E.2d at 207. Again, based on the allegations in the Second Amended Complaint, any criticism of Plaintiff’s acts, fitness, and qualification for the office of Charleston County School District North Area, therefore, are privileged as a matter of law. As Plaintiff alleges, the speech at issue was a political ad in the heat of an election for public office. Therefore, any statements by any citizen that criticize Plaintiff’s acts, fitness, and qualification for the office he holds are privileged.

C. Any remaining statements in the political ad were mere opinions and cannot form the basis of a defamation claim.

The remaining statement alleged (other than the statements that Plaintiff was successfully sued for stealing nearly \$150,000 from an HBCU, and lied to cover it up), is protected opinion speech under the First Amendment to the United States Constitution. “[A] statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection.” *Garrard v. Chas. County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019) (internal citations omitted). Thus, “[i]f the defendant’s words

cannot be described as either true or false, they are not actionable. . .” *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir 1987).

The only other allegedly defamatory statement in the Second Amended Complaint is the statement that: “[w]e can’t have someone like that managing the tax dollars for our school.” (SAC ¶ 40.) That statement is not provably true or false, but is a matter of opinion. Accordingly, it is not actionable and cannot form the basis for a defamation claim.

For all of these reasons, Plaintiff’s allegations, coupled with the public record referenced in those allegations, cannot form the basis of a defamation claim. While it is clear from the face of the Second Amended Complaint and the documents referenced and incorporated therein, if the Court determines that consideration of the documents attached to the Coalition Defendants Motion to Dismiss (or those attached to motions filed by any of the Co-Defendants), then the Court should convert the motion to one for summary judgment. *See* SCRCF 12(b). As demonstrated above, there is no genuine issue of material fact as to the truth of the allegedly defamatory statements (or that they are opinions), and Defendants are therefore entitled to judgment as a matter of law under SCRCF Rule 56.

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

Plaintiff cannot state a claim for civil conspiracy because the unlawful act upon which it relies, the political ad, was not unlawful or committed by unlawful means. The elements of a claim for civil conspiracy are: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston County School District*, Case No. 2018-002025, __ S.E.2d __, 2021 WL 3668152, at *7 (S.C. Aug. 18, 2021). Further, while “[t]here are, of course, some activities, legal

if engaged in by one, yet illegal if performed in concert with others, [] political expression is not one of them.” *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkely, Cal.*, 454 U.S. 290, 296, 102 S.Ct. 434, 437 (1981).

Here, the only action about which Plaintiff complains is the act of publishing the political ad. The ad, however, is not unlawful (as described above) and is in fact protected by the First Amendment to the United States Constitution and Article 1 § 2 of the Constitution of the State of South Carolina. As the Supreme Court stated in *Citizens Against Rent Control / Coalition for Fair Housing*, the political ad, which is undoubtedly political expression, is not an act that can become illegal by virtue of being performed with others. The political ad, therefore, cannot stand as the basis for a civil conspiracy claim and this cause of action also fails as a matter of law under both the Rule 12(b)(6) standard for a motion to dismiss and Rule 56 standard for summary judgment.

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

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

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

Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (S.C. 2004). The Supreme Court has held that “public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication [] without showing in addition that the publication contains a false statement of *fact* which was made with “actual malice. . .” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988) (emphasis added).

Plaintiff's claim for outrage / intentional infliction of emotional distress fails because Plaintiff failed to allege facts to support the elements of his claim. Instead, he merely recited the elements of the claim in a conclusory fashion. (SAC ¶ 96.) Moreover, as demonstrated above, Plaintiff cannot establish that the political ad contained any false statement of fact, and in fact establishes that the statements of fact were true as a matter of law. Accordingly, Plaintiff's claim for outrage / intentional infliction of emotional distress must also fail as a matter of law.⁵

Plaintiff has failed to state a claim for any of the three causes of action in the Second Amended Complaint and the Court must therefore dismiss this action. Moreover, even if the Court determines that consideration of the documents attached to the Motion to Dismiss require conversion to a motion for summary judgment, the Court should grant summary judgment in favor of Defendants and dismiss this action.⁶

CONCLUSION

For the foregoing reasons as well as those set forth in the Coalition Defendants' Motion to Dismiss and those argued at the hearing on the motion, the Court should DISMISS the Second Amended Complaint.

⁵ In addition, the facts as alleged here clearly do not meet the high threshold to establish that anyone inflicted severe emotional distress, that any conduct was so extreme and outrageous (especially in the form of a political ad), or that the emotional distress allegedly suffered was so severe and pervasive that no reasonable person could be expected to endure it.

⁶ The Coalition Defendants also incorporate herein all arguments made by Co-Defendants in their respective motions and supporting briefs.

Dated: December 10, 2021

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Strickland and Loren R. Ziff*

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

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

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

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

BACKGROUND

This is an action for defamation, civil conspiracy, and outrage. Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as "Hollinshead") initiated this action on January 29,

2021, by filing a summons and complaint with the Charleston County Court of Common Pleas. The complaint was subsequently amended on February 2, 2021, and amended for a second time on August 2, 2021, to include a cause of action for civil conspiracy¹. In this action Hollinshead seeks to recover actual and punitive damages for defamatory statements published by Defendants, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids (hereinafter referred to as "Bell"), Charleston Coalition for Kids, a nonprofit Organization (hereinafter referred to as "Coalition"), Angelica M. Colwell (hereinafter referred to as "Colwell"), Lee P. Deas (hereinafter referred to as "Deas"), Godfrey A. Gibbison (hereinafter referred to as "Gibbison"), Eric P. Strickland (hereinafter referred to as "Strickland"), Loren R. Ziff (hereinafter referred to as "Ziff"), Courtney S. Waters (hereinafter referred to as "Waters"), Leeza D. Steward (hereinafter referred to as "Steward"), and Teach for America, Inc. (hereinafter referred to as "TFA"), as well as for their outrageous conduct and civil conspiracy. Defendants have moved to dismiss this action pursuant to Rule 12(b)(6), S.C.R.CIV.P., for failure to state facts sufficient to constitute a cause of action. Additionally, Steward has moved for summary judgment pursuant to Rule 56(b), S.C.R.CIV.P.² Defendants' motions are now before this Court for consideration. For the reasons herein stated all of the motions to dismiss must be denied.

STANDARD OF REVIEW

"Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 83, 655 S.E.2d 736, 737 (Ct. App. 2007). "Rule 12(b)(6)

¹ All defined terms in the Second Amended Complaint shall have the same meanings throughout this Memorandum. An Order permitting the filing of the Second Amended Complaint was entered by this Court August 9, 2021.

² Defendants made similar motions as to the Amended Complaint filed February 2, 2021. These motions were withdrawn as a result of the filing of the Second Amended Complaint

permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim.” *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). “A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (cited with approval *Skydive Myrtle Beach, Inc. v. Horry Cty.*, *supra* at 180, 826 S.E.2d at 587).

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

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

Spence v. Spence, 368 S.C. 106, ___, 628 S.E.2d 869, 874 (2006) (citations omitted). “[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929, 940-41 (2007) (internal quotations omitted) (cited with approval *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588). “At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the

pleading states a claim. . . [A] plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588. “[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).

ANALYSIS

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

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

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

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

The South Carolina rule goes further and holds that a demurrer to a complaint (and inferentially a motion for summary judgment) ‘will only be

sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.’ Our courts also hold that any words which raise a strong suspicion of the plaintiff’s guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. And even stronger, our courts hold that if the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies.

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

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

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

25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were agents of CCFK.
26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting within the scope of their agency with CCFK.
27. That at all times relevant hereto Waters was employed by TFA.
28. That at all times relevant hereto Waters was acting as an agent of TFA.
29. That at all times relevant hereto Waters was acting within the scope of her agency with TFA.
30. That at all times relevant hereto Steward was employed by TFA.
31. That at all times relevant hereto Steward was acting as agent of TFA.
32. That at all times relevant hereto Steward was acting within the scope of her agency with TFA.
33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.
34. That Waters directed and/or requested Steward appear in the Ad.
35. That Steward appears in the Ad.
36. That Steward narrates portions of the Ad.
37. That at all times relevant hereto, Steward was acting at the direction of Waters.
38. That an anonymous voiceover in the Ad states 'but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up.'
39. That the Ad states 'Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College.'
40. That, following the anonymous voiceover in the AD, Steward states 'We can't have someone like that managing the tax dollars for our schools.'

41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the 'Lawsuit') brought against them by Student Assurance Services, Inc., (hereinafter referred to as 'SAS').
42. That Benedict College was not a party to the Lawsuit.
43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted \$144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.
44. That the Lawsuit refers to these insurance premiums as 'SAS's funds.'
45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of \$144,677.75 of insurance premiums.
47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.
48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.
50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.
51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.
52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.
53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

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

69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths (\$144,677.75) is not one hundred fifty thousand and zero one hundredth dollars (\$150,000.00.).

FOR A FIRST CAUSE OF ACTION
(Defamation)

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

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

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

The crux of the libelous statements are that: (1) "Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up." (2) "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College." (3) "We can't have someone like that managing the tax dollars for our schools." As alleged in the Amended Complaint, Hollinshead, of course, did no such thing. As explained in the Second Amended Complaint, Hollinshead was involved in a commission dispute with SAS relating to commissions earned as a result of sales of health insurance to students enrolled in Benedict College. Benedict College itself was in no way involved in the commission dispute, was not an insured under any of the policies and was in no way involved in any of the transactions out of which the commission dispute lawsuit arose. None of the students' policies involved in the suit between Hollinshead and SAS were cancelled for nonpayment of premiums. The statements in question are irrefutably a lie

fabricated by the defendants which tends “to impeach the honesty or integrity or reputation” of Hollinshead which “expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.” That was obviously the Defendants intent. On this, reasonable minds cannot differ.

Further, the claim that Hollinshead is “using our³ money to help himself” implies that Hollinshead is misappropriating and/or stealing taxpayer money. This is brought further into focus when put into context with the later statement that “We can’t have someone like that managing the tax dollars for our schools.”

The statement that Hollinshead is “using our money to help himself” implies that Hollinshead is misappropriating and/or stealing taxpayer money. The statement that “We can’t have someone like that managing the tax dollars for our schools” when coupled with and put in context with the statement that Hollinshead is “using our money to help himself” is far more than an opinion: it is a statement to the effect that Hollinshead is misappropriating and/or stealing taxpayer money. This is unquestionably defamatory.

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

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

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

The clear and unequivocal insinuation is that Hollinshead is misappropriating taxpayer money to his own use; in other words stealing. Yet, there is no suggestion or evidence of any kind,

³ The word “our” means “belonging to or associated with the speaker and one or more other people previously mentioned or easily identified” or alternatively, “used by a writer, editor, or monarch to refer to something belonging to or associated with himself or herself.” Online Dictionary. There is literally no way to construe, reasonably or otherwise to construe the term “our” in this context to include SAS or Benedict College. Clearly the term “our” as meaning the taxpayers whose taxes support the Charleston County School District.

in the Lawsuit or otherwise – or even a rumor - that Hollinshead has ever stolen or misappropriated taxpayer dollars or funds designated for or allocated to a school district, any school or any governmental entity or agency. This representation is pure and simply a lie created by the Defendants out of whole cloth.

The Defendants have failed to argue that their representation that Hollinshead has stolen and/or misappropriated taxpayer money to his own use is not defamatory. They have not bothered to take the position that this representation is true and that it is not defamatory for the obvious reason that they have no basis upon which to argue that this representation is not defamatory. Clearly it is. This failure is in and of itself a reason why this Court must deny the Rule 12(b)(6) motions to dismiss.

It is clear that the Defendants acted with actual malice or, as it is sometimes referred to, constitutional malice. Given that the Lawsuit involved a commission dispute between SAS and Hollinshead which in no way involved Benedict Collage or anyone affiliated with Benedict Collage and that the statement that Hollinshead is “using our money to help himself” despite there being no allegation of this in the Lawsuit or any evidence to support this or even a rumor that he was doing so, when construed in a light most favorable to Hollinshead, there is no escaping the conclusion that Defendants knew the statements were false or acted in reckless disregard for their falsity. This is quintessential actual malice. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, (1964); *see also Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978)(public officials liable complaint alleging that liable was willful and malicious cured by amendment to add that publication was made “with wanton and reckless disregard for the truth”).

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

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

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

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

It is well settled that this Court is not permitted to consider matters outside of the four corners of the Amended Complaint when passing on the Defendants' Rule 12(b)(6) motion⁴. *See, e.g., Charleston Cty. Sch. Dist. v. Harrell, supra* (reversing the trial court's order granting the defendants motion to dismiss because the trial court considered matters outside of the four corners of the complaint when deciding the motion). Rather, when considering the Defendants' motions, this Court may only consider the allegations contained in the Amended Complaint, which it must accept as true and all inferences drawn from the facts alleged in the Amended Complaint must be viewed in the light most favorable to Hollinshead. *See, e.g., Id.; Spence v. Spence, supra*. If the factual allegations entitle Hollinshead to relief on any theory – which is the case here - Defendants' motions must be denied. *Id.* Because the facts alleged and inferences reasonably deducible

⁴ Citing *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014), Defendants contend that “[a] trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment.” This argument is, of course, specious.

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

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

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

therefrom as alleged in the Second Amended Complaint entitle Hollinshead to relief, Defendants' motion must be denied. *Id.*

All of the Defendants content that the statements they made – none, by-the-way deny that the statements were made – were true as a matter of law and therefore, not defamatory. Their positions in this regard are premised on the notion that because Hollinshead confessed judgment and entered into a promissory note and he admitted the allegations of the SAS Complaint since he did not dispute the facts in either the Promissory Note or the Agreement and Confession of Judgment. Defendants, however, failed to note that Hollingshead, likewise, failed to admit the allegations of the SAS Complaint in the Promissory Note or the Agreement and Confession of Judgment either. The fact of the matter is that both the confession of judgment and promissory note are silent on the issue of whether Hollinshead admitted or denied the allegations of the SAS Complaint. Thus, Defendants' claim that the allegations ore rue as a matter of law is without merit

Furthermore, even if the factual allegations contained in the SAS Complaint are considered true – which they are not permitted to be – the motions to dismiss must be denied⁵. Because the arguments made by Defendants are virtually identical they will be addressed together.

Though they basically admit that the Lawsuit arose out of a commission dispute between SAS and Hollinshead⁶, Defendants - impermissibly relying heavily on matters outside of the Amended Complaint - take the position that because SAS accused Hollinshead of stealing from Benedict College, the claim that Hollinshead "stole" from Benedict College is, therefore, true as a

⁵ The "facts" set forth in the factual recitation section of Defendants' respective motions contains numerous factual assertions not contained in either the Second Amended Complaint or any of the attachments submitted there with, including inclusion of hyperlinks to websites. It goes without saying that none of this can be considered in passing on the Defendants' motions to dismiss, even if they are true, which many of them are not.

⁶ This admission in their respective motions to dismiss constitute a judicial admission and is binding on Defendants. *See, e.g., Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261 (4th Cir. 2004).

matter of law. Even if it were permissible to rely on the matters outside the Amended Complaint submitted by Defendants in support of their motions, a reading of the SAS Complaint belies their position in this regard.

Defendants acknowledge that the Ad accuses Hollinshead of stealing \$150,000.00 from Benedict College⁷. However, a close reading of the in the SAS suit against Hollinshead clearly demonstrates that nowhere does SAS allege that Hollinshead stole from Benedict College. Defendants simply made that up. A reading of the SAS Complaint demonstrates that SAS is alleging that Hollinshead withheld money which belongs to it.

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

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

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

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

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

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

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

⁷ This is yet another binding judicial admission. See footnote 1, *supra*.

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

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

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

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

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

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

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

“When the language alleged to be libelous, or slanderous, is plain and unambiguous, and admits of but one reasonable construction, it becomes a matter of law for the action and determination of the court. If said language be ambiguous, or doubtful of meaning, it should be left to the jury to determine in what sense it was used, and what its meaning is.” *Drakeford v. Dixie Home Stores*, 105 S.E.2d 711,714, 233 S.C. 519, 524 (1958). Dismissal of a complaint “‘will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.’ . . . [A]ny words which raise a strong suspicion of the plaintiff’s guilt in the minds of the hearers are sufficient upon which to

base a cause of action for slander or libel. . . . [I]f the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies.” *Adams v. Daily Tel. Printing Co., supra*.

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

Defendants take the position that:

While he [Hollinshead] claims the SAS Lawsuit did not allege he ‘stole or misappropriated money from Benedict College,’ he admits that the SAS Lawsuit alleged he was ‘misappropriating insurance premium checks paid by Benedict’ and ‘cashing premium checks paid by Benedict.’ In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff was sued for stealing \$150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict.

They further maintain that:

As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. SAS alleged that Plaintiff received those payments from Benedict College but, rather than forward the money to SAS, Plaintiff stole that money and used it for his own purposes. In other words, Plaintiff improperly assumed control over funds belonging to Benedict College and its students, since he had no right to use the money or do anything more than submit it to SAS. Accordingly, the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In the Second Amended Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money from Benedict College, but, rather, that he stole the money from SAS. This argument, however, is demonstrably false. The money at issue was Benedict College’s money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS.

Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money from Benedict College. Even more, the SAS Complaint alleges that Plaintiff “over-billed Benedict,” i.e. took money from Benedict College above and beyond what was owed to SAS. There is no reasonable way to read the SAS Lawsuit such that it did not allege that Plaintiff stole from Benedict College and/or its students. Accordingly, the Second Amended Complaint coupled with the public record establishes that, as a matter of law, the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College is true.

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

The last sentence of the first quoted paragraph is demonstrably false. Paragraph 39 of the Second Amended Complaint specifically alleges “[t]hat the Ad states ‘Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars (\$150,000) from Benedict College.’”

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

Additionally, there is nothing in the law or public policy to support this unsupported conclusory assertion. The funds were paid by Benedict – or more aptly its students – as premiums for insurance and once paid, they were covered. Thus, once the premiums were paid, the premium dollars belonged to Hollinshead and/or SAS. If Defendants’ position is accepted it will lead to the untenable situation whereby every customer who pays for and receives a good or service will be deemed the owner of the funds if a dispute subsequently develops between the owners of the business or an agent and principal. Such a result is preposterous.

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

That Defendants are now having to engage in such post hoc mental gymnastics to legitimize their statements as not defamatory is proof positive that they acted with knowledge of the falsity of these statements, or, at the very least acted with reckless disregard for their falsity.

Defendants maintain that the statements which they admit making were mere matters of opinion. A reading the statements made by them shows that they were clearly statements of fact, not opinion.

Defendants contend that as a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading.” The burden of proof is an evidentiary standard. *See Jones v. Leagan*, 681 S.E.2d 6, 384 S.C. 1 (Ct. App. 2009). Defendants’ position would, therefore, necessarily require this Court to consider the evidence in this case to reach such a conclusion. It is well settled that the Court is to consider only the allegations of the complaint under consideration when passing on a motion to dismiss under Rule 12(b)(6). Factual considerations are not permitted.

Defendants contend that the ad at issue here is protected speech under the fair comment doctrine and is subject to a qualified privilege. This position is without merit.

“In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege.” *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, ____ (1999) (emphasis added). As a consequence, the burden of establishing the defense of qualified

privilege is on the party asserting it. *Duckworth v. First Nat. Bank*, 176 S.E.2d 297, 254 S.C. 563 (1970)

One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. “The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.”. An abuse of the privilege occurs in one of two situations: (1) a statement made in good faith that goes beyond the scope of what is reasonable under the duties and interests involved or (2) a statement made in reckless disregard of the victim's rights.

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

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

Defendants request that this Court dismiss the Amended Complaint with prejudice. Though the Second Amended Complaint obviously should not be dismissed at all pursuant to Rule 12(b)(6),

[a] circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), **the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint**, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.”

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

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

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

Finally Defendants take the position that the causes of action for outrage and civil conspiracy fail because the statements which they admit making in concert are true rather than false. This issue has been adequately addressed. They further seem to miss the point that once one is engaged in a conspiracy, the acts of one are the acts of all if made in furtherance of the conspiracy. Thus, the fact that one or more of the particular defendants did not actually make the statement in the d does not absolve him or her from liability for civil conspiracy. As the statements are clearly false, the Defendants' positions with regard to outrage and civil conspiracy are without merit.

CONCLUSION

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

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Senior*

December 14, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2021-CP-10-00426

Kevin Dion Hollinshead, Sr.,)
 Plaintiff) TRANSCRIPT OF RECORD
 - vs -)
) December 16, 2021
Thomas J. Bell, et al)
 Defendants)
) Charleston, South
) Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

A P P E A R A N C E S:

Edward K. Pritchard, Esquire
Attorney for the Plaintiff

Nickisha M. Woodward, Esquire
Dwayne M. Green, Esquire
Victoria T. Kepes, Esquire
Joseph M. McCulloch, Esquire
Attorneys for the Defendants

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 MS. KEPES: We have motions from most
2 of the Defendants here today, and I'm here representing
3 -- my name is Victoria Kepes. I represent Thomas
4 Bell, Charleston Coalition for Kids, and Angelica
5 Cowell, Lee Deas, Godfrey Gibbison, Eric Strickland,
6 and Loren Ziff.

7 THE COURT: Okay.

8 MS. KEPES: Do you want us all to introduce
9 our motions separately, or just go forward ---

10 THE COURT: Whatever you do.

11 MS. KEPES: Okay.

12 THE COURT: One at a time, I guess.

13 MS. KEPES: Okay. All right. Well, I will
14 start, Your Honor. Do you mind if I remove my mask
15 to argue?

16 THE COURT: That would be wonderful if you
17 want me to hear you.

18 MS. KEPES: It is so hard to hear someone
19 wearing that, so I appreciate that. Thank you. Your
20 Honor, we are here on a motion to dismiss for failure
21 to state a claim, or in the alternative, for summary
22 judgment. The compliant filed in this case is centered
23 entirely around a political ad. And as I'll tell you,
24 Your Honor, and as I think it's in -- it's in the briefs
25 submitted to the Court and the motion that I submitted

1 to the Court.

2 The claim -- the complaint does not state
3 a claim simply because the allegation as admitted do not
4 allege false statements. The ad at issue, Your Honor,
5 states that -- and I have a copy of that if Your Honor
6 would like to see it electronically. But it states
7 that, "We need school board members that put our
8 students and teachers first, but Kevin Hollinshead
9 is using our money to help himself. Hollinshead
10 was successfully sued for stealing nearly \$150,000
11 from a local HBCU and lied to cover it up. We can't
12 have someone like that managing the tax dollars meant
13 for our schools. Charles Monteith and Courtney Waters
14 will put us first."

15 And, Your Honor, in that ad while that is
16 playing on the screen, the case number -- the civil case
17 number for the underlying lawsuit, which is referenced
18 in the ad, appears on the screen. And in that second
19 amended complaint, which is the complaint at issue
20 right now, Plaintiff admits that he was sued by
21 Student Assurance Services, which is a third party.

22 The allegations in that lawsuit involved
23 allegations that premiums paid by Benedict College
24 to Mr. Hollinshead that were meant to be paid to this
25 third party, Student Assurance Services, were never

1 paid to the third party, and the lawsuit alleges
2 that the premiums were over-billed by Mr. Hollinshead.
3 So he over-billed Benedict College more than the
4 premiums that they were due, and then he never remitted
5 them for payment.

6 The complaint admits that Plaintiff
7 confessed judgment in that lawsuit, and the complaint
8 also admits that in that lawsuit Student Assurance
9 Services alleges that false statements and
10 representations were made to Student Assurance Services
11 regarding these funds and the lack of payment.

12 Now the lawsuit, the underlying lawsuit,
13 was attached to our memo, and the confession of judgment
14 is part of the public record. As I said, the case
15 number appeared on the screen in the ad, making
16 it available to anyone who saw the ad.

17 And the crux for our argument really
18 here is two-folds; one, no matter what characterizations
19 are put into it, based on what the allegations of the
20 complaints say in the public record, there's no claim
21 here because the statements in the ad were true. He has
22 not alleged a false statement, Your Honor.

23 In addition, under the fair comment
24 doctrine, the statements were privileged. As to
25 the extent there are statements that are not factual,

1 they were opinion and also privileged. And without
2 having allegations of a false statement that is
3 unprivileged, a claim for defamation cannot stand.
4 And the other two causes of action, civil conspiracy
5 and outrage, also fail for the same reason, which
6 I will get to.

7 But the important thing here is that
8 everything in this case must be viewed through the lens
9 of the First Amendment Rights of citizens to speak out
10 regarding public figures. Plaintiff was, at the time
11 of this ad, a member of the Charleston County School
12 Board and was running for re-election. He was a public
13 figure. He put himself out there for that purpose.
14 And as a result, it is important that the Court consider
15 this as particularly protected speech and not allow
16 this lawsuit to move forward when there is no allegation
17 of falsity.

18 And the first sort of important thing to
19 think about here is that the allegations -- I'm sorry,
20 the statements in the ad are essentially that Plaintiff
21 was successfully sued for stealing nearly \$150,000 from
22 a local HBCU and lied to cover it up. And, Your Honor,
23 that is true. He was successfully sued. He was sued;
24 he confessed judgment. And the allegations in the
25 complaint in that case involved taking money from

1 a local HBCU and lying to cover it up.

2 No amount of mischaracterizing that fact
3 changes it, and that's the crux of the ad. That's what
4 the ad does. It tells the public about a prior lawsuit.
5 That's all it does. It doesn't say that the allegations
6 in that lawsuit are true. It says that he was
7 successfully sued for it, and he was.

8 Moreover, the amount at issue in that
9 lawsuit for which judgment was confessed was
10 \$144,677.75. And, Your Honor, I would say that there's
11 really no argument that that is not nearly \$150,000.
12 It's a difference of about 3.6 percent. The lawsuit
13 alleges that he took the money from Benedict.

14 While it's true that Benedict College
15 was not the Plaintiff in that case, the ad does not
16 say that Benedict or an HBCU was the suing entity
17 in that lawsuit. It nearly says -- merely says that
18 in that lawsuit there's allegations that he took money
19 from a local HBCU.

20 And so for those reasons, the statements
21 in the ad are unequivocally true. Can't get around
22 that, can't mischaracterize them to attempt to make
23 them mean something that they are not.

24 And, in addition, as discussed -- as
25 mentioned previously, under the doctrine of fair

1 comment, Your Honor, there is a protection, a privilege,
2 for citizens speaking about a public official's
3 fitness for office. That is a privileged speech.
4 It is the backbone for our society that we can speak
5 out about those running for election. So any -- all
6 of the statements in the entire ad is privileged.
7 It's privileged under the fair comment doctrine,
8 and no claim can lie for a privileged statement.
9 That's the basis of a defamation claim; it must
10 be unprivileged.

11 Similarly, to the extent of the other
12 statements -- to the extent Plaintiff is saying the
13 other statements in the ad are inflammatory, they're
14 most certainly opinion, Your Honor. There's no way
15 to prove or disprove that the other statements are
16 true. They are merely opinions that sort of surround
17 the factual statements that I have already explained
18 are very much true.

19 And so for that reason, the entire ad
20 is privileged and no claim can go forward. And the
21 remaining two causes of action for civil conspiracy
22 and outrage or intentional infliction of emotional
23 distress, they -- because without a defamation, without
24 an unlawful, underlying act there's no conspiracy,
25 and the same goes for the outrage.

1 And, in addition, there's cases from
2 the Supreme Court on both of those causes of action
3 stating that statements about public officials cannot
4 be the basis for those claims, defamatory allegations
5 against public officials cannot be the basis for outrage
6 and civil conspiracy.

7 And, therefore, there really is no need
8 to go further. There's no need for the Court to let
9 this case linger because on the face of the complaint,
10 coupled with the public record, there's no doubt
11 that there is no cause of action here, Your Honor.
12 And I know we submitted -- some of the documents
13 attached were part of the public record. I will
14 submit that Your Honor can consider without converting
15 this to a motion for summary judgment.

16 However, if Your Honor disagrees
17 or considers any of the other documents submitted
18 by co-defendants, we would ask that the Court submit
19 this -- convert this to a motion for summary judgment
20 instead of allowing again this lawsuit to move forward
21 where no amount of discovery, or talking about it,
22 is going to change the basic facts that the ad is true
23 and that it was privileged. Thank you, Your Honor.

24 THE COURT: Okay. Thank you. Anybody
25 else want to tell me anything?

1 MS. WOODWARD: Your Honor, Nickisha Woodward
2 on behalf of Teach for America. Part of the allegations
3 of the complaint, Teach for America becomes a Defendant
4 -- sorry. I'll take off this mask to make it easier.
5 I apologize. Part of the allegations of the complaint
6 make Teach for America a party of it because Courtney
7 Waters, who was running for the Charleston County School
8 Board against Mr. Hollinshead, the Plaintiff in this
9 action, was an employee of Teach for America at the
10 time.

11 Her counsel is here, but what she would
12 assert and had asserted in her prior filings, that she
13 in no way actually even knew about the ad, that she was
14 a beneficiary of the advertisement, was never contacted
15 by Charleston Coalition for Kids in order to participate
16 in the ad, and she in no way appeared in the ad,
17 other than Charleston Coalition for Kids advocating
18 for her election.

19 THE COURT: Okay.

20 MS. WOODWARD: Additionally, the speaker,
21 or the person that's speaking in the advertisement,
22 is Leeza Steward, who is also a Defendant in the action
23 and is also an employee of Teach for America.

24 Ms. Steward and Ms. Waters do in no way work
25 together. And, in fact, Ms. Steward's counsel has filed

1 in his brief an affidavit asserting that in no way did
2 she inform Teach for America, Teach for America did not
3 know, or was not aware of her participation, and only
4 through this lawsuit did they become aware that there
5 was even an advertisement that she had participated
6 in there.

7 So looking at even the allegations of the
8 complaint, the complaint -- the second amended complaint
9 filed by Plaintiff, there are no allegations contained
10 in there that Teach for America knew, should have known,
11 or participated in any way, shape, form or fashion in
12 the advertisement that would run, or had any knowledge.
13 Therefore, they could not participate in any --
14 involving any civil conspiracy, which is alleged
15 in the Plaintiff's second amended complaint because
16 they were not even aware of the advertisement, but for
17 this lawsuit.

18 Secondly, if we go back to the motion
19 to dismiss, looking at the pleading, as it relates
20 to the defamation claim, Your Honor, I probably don't
21 need to tell you this, but in order to assert a rightful
22 claim for defamation, one has to make a false or
23 defamatory statement. And as Ms. Kepes has indicated,
24 there was no false or defamatory statement.

25 All of that information that was advertised

1 in the advertisement, in fact, was published in the
2 public record. Any person had access to the information
3 regarding that lawsuit. And, in fact, the advertisement
4 provided the civil action number so that people could
5 do their research as it relates to the allegations
6 of the underlying lawsuit.

7 Secondly, it has to be an unprivileged
8 publication to a third party. Well, as we already
9 indicated, it was a matter of public record. There
10 is a confession of judgment. Therefore, there is
11 no privilege on something that is public and published
12 that someone else can access -- a third party can access
13 on their phone. And then it says it's on the fault
14 of the publisher.

15 In this particular instance, we did
16 not publish the advertisement. We did not publish --
17 we were not aware of it. At Teach for America, we did
18 not know about it; we did not participate in it.
19 And our employees specifically have an agreement
20 that if they do those things, they do them outside of
21 the purview of Teach for America and are not permitted
22 to utilize Teach for America's name in their
23 endorsement. And in no way is there any in that
24 advertisement by Ms. Steward or by Ms. Waters that --
25 you know, that she's the beneficiary of, that they ever

1 indicated that they are employees of Teach for America.

2 And so for those reasons, Your Honor,
3 we believe that the motion to dismiss as to Teach
4 for America should definitely be granted because there's
5 no indication that the allegations in the complaint
6 asserts any causes of action against them.

7 But again, as Ms. Kepes said, if, in fact,
8 Your Honor finds that there are allegations contained
9 within Plaintiff's second amended complaint against
10 Teach for America, that you would convert this for
11 a motion for summary judgment, as we did provide
12 as well exhibits related to the publication
13 on the civil action. Thank you, Your Honor.

14 THE COURT: Thank you, ma'am.

15 MR. MCCULLOCH: Your Honor, good morning.

16 THE COURT: Good morning.

17 MR. MCCULLOCH: Your Honor, I'm not going
18 to try to duplicate, but I am here, Joe McCulloch from
19 the Columbia bar, I suppose. I represent Leeza Steward,
20 one of the Defendants in this case, and her
21 participation and role has been accurately described by
22 co-counsel. The -- this lawsuit arises out of a rather
23 hotly-contested local election. And this motion that
24 I have filed on Ms. Steward's behalf is necessitated
25 by her voluntary participation in a single television

1 ad, Your Honor, as an attachment to our motion, which
2 was filed 12(b)(6), or in the alternative, summary
3 judgment. And I did that in an abundance of caution
4 because I think this case can be decided today under
5 either theory.

6 It's not -- it's a locked room but not
7 a mystery. You have as an exhibit the exact transcript,
8 which if you watch the video, which has also been made
9 an exhibit, it tracks the transcript, which is Exhibit
10 B, attached to our motion. Ms. Steward is sued based
11 upon the complaint, second amended complaint, because
12 she stated as a volunteer in this ad as a citizen in
13 the ad, "We cannot have him managing the tax dollars
14 meant for our schools." That simple phrase.

15 There's no allegation of any degree of
16 specificity, nor frankly, if you take 20 depositions.
17 There are no substance and facts that can be put
18 forward to show an illegal or improper civil conspiracy.
19 I think that's important because there are four claims,
20 defamation -- three claims; defamation, outrage, which
21 is one I'm still waiting to see work in our courts ---

22 MS. WOODWARD: Civil conspiracy.

23 MR. MCCULLOCH: I'm sorry?

24 MS. WOODWARD: Civil conspiracy.

25 MR. MCCULLOCH: And civil conspiracy,

1 Your Honor. So, Your Honor, you have a confluence here,
2 we believe, of truth, the truth of the assertions made
3 in this ad, only a part of which my client participated
4 in, in the sense of her statement.

5 So you have truth or substantial truth,
6 which our courts have constantly recognized as a valid
7 defense to defamation. It's not a fact, and the facts
8 are right here. They are corroborated --
9 self-corroborating; transcript, video, truth and
10 substantial truth. You have this in the context of
11 political speech, which resides with a special degree --
12 protection, as it should. You have the New York Times
13 v. Sullivan standards, which recognize that special
14 concern for the protection of political speech.

15 And, frankly, Your Honor I'm sure you've
16 read a million cases, as I have, and I teach a couple
17 of them at the law school, that talk about judges having
18 to have thick skins in the public forum of criticism,
19 and it's also the same has been said of political people
20 who inject themselves and render themselves by their
21 activities as political officials and public figures.
22 They are a different breed of cat. They are higher --
23 much higher standards for the proving of defamation.
24 We don't believe that occurred here or can occur here.

25 So you've got this substantial truth

1 of the assertions of the ad. You've got fair comment
2 as an additional defense, very similar. You've got
3 all of this in the context of political opinion,
4 and we have argued in our briefs that Ms. Steward,
5 because she was a volunteer, and we've attached
6 an affidavit to our filings, that she was not employed
7 by Teach for America. She was contacted, and they
8 asked if she would volunteer. She was unpaid, and she
9 rendered her opinion.

10 As simple as I have read, we cannot have him
11 managing the tax dollars for our schools. Nothing could
12 be a purer opinion, Your Honor. So if for no other
13 reason, we believe that is a defense that should result
14 in the dismissal of the action against her.

15 Now, Your Honor, we filed on Friday
16 this sheath of documents. These are materials that
17 are newspaper ads and lawsuits Mr. Hollinshead have
18 been involved in, which all involve financial
19 difficulties, financial problems, if not financial
20 misconduct.

21 Now that's not, I guess, pertinent today,
22 except to the extent that in the answer that we filed
23 we asserted that Mr. Hollinshead is libel-proof.
24 He has, by his own conduct in the public sphere for
25 the last 25 years, been constantly sued, constantly

1 under investigation for financial misconduct issues.

2 We think that is something pertinent,

3 and that's one of our defenses in the lawsuit.

4 That may not be -- need to be a consideration for you

5 today, Your Honor. We think it's actually as simple

6 as looking again at the transcript and applying the law.

7 The facts are clear in this Student Assurance Services

8 lawsuit brought by my good friend, Eric Bland [ph.].

9 There was an action brought by Mr. Bland on

10 behalf of an insurance provider against Mr. Hollinshead

11 in his wholly-owned and solely-owned company,

12 Hollinshead Group Insurance, or something of that

13 nature. And the causes of action are clear and clearly

14 stated in Mr. Bland's lawsuit, and that complaint

15 is an attachment to our -- to one of our exhibits.

16 And, essentially, I think that the

17 Plaintiff concedes the allegations of that complaint,

18 and they were Benedict gathered money for their

19 students, they forwarded them to Mr. Hollinshead for his

20 deduction of his proper commission for whatever services

21 he's providing, and then the forwarding of that money

22 onto Student Assurance Services.

23 SAS, the Plaintiff in that action,

24 determined that they weren't getting their money,

25 and the Court can look at that file and take judicial

1 notice of it, it's right here in this courthouse,
2 that Mr. Bland, based on the evidence that they
3 have, sued him for converting, which is a fancy legal
4 way of saying stealing money, essentially from them,
5 which had been sent to them by Benedict, passing through
6 Mr. Hollinshead. They asserted that he lied about
7 the circumstances; they asserted that he breached
8 his contract with SAS, and that he breached it with
9 fraudulent intent.

10 All of those things were alleged,
11 Your Honor. And as the court records will reflect,
12 what then transpired -- and this is only relevant
13 I think to, ultimately, where I hope you end up.
14 Thereafter, Mr. Hollinshead and his then lawyer
15 in that lawsuit as the Defendant, on his behalf
16 and that of his company, they filed a 12(b)(6) motion.

17 It was scheduled -- as the court records
18 will show, it was scheduled for hearing. At the time
19 of the hearing, neither Mr. Hollinshead nor his lawyer
20 appeared in court. The judge had them telephoned
21 and learned -- and this is all set forth in a motion
22 that's filed in the court records. Mr. Hollinshead
23 lawyer's indicated that he intended to withdraw it,
24 which he apparently then tried to do, Your Honor.
25 Tried to withdraw the 12(b)(6) motion, and then he tried

1 to file an answer.

2 Mr. Bland immediately filed a motion
3 to strike any answer as untimely and in violation
4 of the rules. And suddenly and immediately thereafter,
5 Mr. Hollinshead had entered into a confession of
6 judgment in the full amount claimed to have been stolen
7 and lied about in breach of the contractual relations
8 with SAS.

9 So as counsel has said, the assertion
10 in the ad that he was successfully sued for stealing
11 money is accurate. It is substantially true, with
12 the exception that it wasn't Benedict suing him over
13 the money they sent; it was SAS suing over the money
14 that Benedict had indeed sent.

15 A find and irrelevant consideration
16 in the broader context of substantial truth and what
17 is important enough, the confession of judgment, Your
18 Honor, and notwithstanding the fact that the Plaintiff's
19 counsel has filed a memorandum in opposition two days
20 ago that talks about well, it wasn't \$150,000 that
21 the ad -- that he stole, it was \$140,000 -- it was
22 \$144,000 that got repaid. Well, the ad says nearly
23 \$150,000. So that's accurate.

24 The confession of judgment nowhere on
25 its face says, nor does it include the usual language

1 that lawyers put in these confessions of judgment,
2 this is a settlement of a dubious claim.

3 So, I would submit to you, Your Honor,
4 based on the SAS court file, there was never a valid
5 answer in the confession of judgment that can be taken
6 into consideration as an indication. But in all
7 likelihood, all of that answer that was untimely filed
8 would have been struck, Mr. Hollinshead would have been
9 stuck with having admitted that, all of these very
10 allegations that are substantially true in this matter.

11 Your Honor, the other -- I mean, there
12 are hosts of facts that are born out by court records;
13 they're born out by the exhibits we've provided you.
14 Plaintiff's counsel here has determined not to submit
15 any affidavits or any information. He rests on his
16 pleadings as if this is merely a 12(b)(6) motion.
17 It is not that, Your Honor. We ask you not to consider
18 it.

19 We ask you to consider all of these
20 exhibits. We think they are properly considered and
21 that they properly demonstrate the appropriate ruling
22 for you today is to dismiss against Leeza Steward.
23 And I believe, Your Honor, join in the dismissal
24 against all Defendants is proper. Thank you.

25 THE COURT: Thank you, sir. Yes, sir.

1 MR. GREEN: I was about to say good morning,
2 but good afternoon, Your Honor, and thank you for
3 allowing me to be heard. My name is Dwayne Green,
4 and I represent the Defendant, Courtney Waters.
5 I concur with the statements of co-defendant counsel.
6 I have nothing substantially to add, other than I want
7 to make clear that my Defendant does also join in,
8 in this motion to dismiss. I'm not sure in the written
9 submission of the last motion that she was included
10 in the Coalition of Kids, but she is a co-defendant
11 with very limited involvement, as Ms. Woodward said.

12 And so I just wanted to stress for
13 the record that she does join in with the arguments
14 of co-defendant counsel in the motion to dismiss.
15 Thank you.

16 THE COURT: Thank you, sir. Anybody else?

17 MR. PRITCHARD: Thank you, Your Honor.
18 May is please the Court. I'm Edward Pritchard,
19 and I represent Mr. Hollinshead. Your Honor, you know
20 when I was -- many, many years ago, 35 years ago,
21 when I was Judge Bell's law clerk, we were considering
22 an appeal that involved a 12(b)(6) motion. It was
23 granted, and Judge Bell said something, which I think
24 is pertinent here, and that is if you can't state
25 your 12(b)(6) motion in about two or three pages,

1 if it's not that obvious, that's a pretty good indicator
2 that it ought to be denied, and that's what's going
3 on here.

4 There's a whole lot of gymnastics; there's
5 a whole lot going on here and shifting things around.
6 But at the end of the day, and I'm not going to belabor
7 this because you can read and I can read, there is
8 no allegation anywhere in the complaint that was filed
9 that Mr. Hollinshead stole money from Benedict College.

10 You know, I mean, for instance if I go
11 into Lowe's tomorrow and buy something and pay with
12 cash, and the clerk takes the money. She didn't steal
13 anything from me; I have the merchandise. I got what
14 I was supposed to get. That's between her and Lowe's.
15 I don't agree with their characterization of what took
16 place in the SAS claim. There simply is no -- anywhere
17 alleged that Mr. Hollinshead took anything from
18 Benedict.

19 Now pretty clearly they were trying to whip
20 stuff up by using Benedict rather than an insurance
21 agent commissioned -- because if they had said it
22 that way, it really wouldn't have gotten a whole lot of
23 people very excited. But any reading of the complaint
24 doesn't get you past that problem. And pretty
25 clearly they were using that to try and insinuate

1 that Mr. Hollinshead was stealing money from Benedict.

2 But putting all that aside for a minute,
3 let's assume that they had just said he was sued
4 by an insurance broker for whom he worked involving
5 money that was paid by Benedict, and they just laid
6 it out exactly like the complaint. Let's assume
7 they've done that. We would still be sitting here,
8 and here's why. The ad states, and this is important,
9 and Ms. Kepes actually kind of admitted to the libel
10 right off the rip.

11 In the first statement she said, "We need
12 school board members who support our children, but
13 Kevin Hollinshead is using our money to help himself."
14 And that's a clear insinuation that he's stealing
15 taxpayer dollars, and there is not one shred of
16 evidence. Nowhere. None of their arguments even
17 address that statement. They've got 40 pages of briefs.
18 We just listened to 30 minutes of argument, and not
19 once has any one of them refuted that statement is not
20 -- that's a clear insinuation, is that Kevin Hollinshead
21 is stealing taxpayer money, and there's nothing
22 to support that, and that is actual malice because
23 it is fabricated out of thin air.

24 There's no way to get around that statement,
25 and that's why they're not addressing it. That's why

1 you don't see it in the briefs; that's why you didn't
2 hear it in the arguments because that's what it says.
3 And, I mean, it just -- it's clear, plain and equivocal
4 that that's the implication, our money to help himself.
5 Okay? Not Benedict's, not SAS's. Our. The speaker
6 and the listener, and that's being targeted towards
7 the voters of Charleston County.

8 So who else can that mean? It has to mean
9 taxpayer -- and I think it's a jury question, obviously.
10 I made an argument, but I think that's a jury question
11 that gets us past summary judgment, not to mention
12 a 12(b)(6). That statement is in there; there's nothing
13 to support it. They haven't introduced anything.

14 They've gone through -- golly, I read them,
15 but I didn't count how many pages of stuff that was
16 submitted in support by Mr. McCulloch. Mr. McCulloch,
17 I must admit, has probably forgotten more about
18 this area of law than I want to know. But the reality
19 is, you know, he finds himself where he finds himself,
20 and that is, that statement was made. I've never
21 heard libel-proof, but that one seems to me to be
22 more of a damage question than a liability question
23 on a 12(b)(6) motion.

24 And so I don't think that given that
25 statement, we can twist and turn and do what we have

1 to do on this whole Benedict thing, which I think
2 is false, and I mean libelous. But I don't know
3 how you get past the Mr. Hollinshead is helping himself
4 to our money, and they haven't addressed it, and there's
5 a reason they haven't addressed it because it is per se
6 libel, it is per se malice. There's nothing to support
7 this, and there's no way they can get around it.

8 The other thing I want to point out
9 is that some of these Defendants are tempted to convert
10 these motions for summary judgment. Well, of course,
11 I did not have a chance to take someone's deposition.
12 I did serve discovery with the complaint, none of which
13 have been answered yet, of course. And I have read
14 extensions -- past these motions to be fair. So it's
15 not as though they're doing something they shouldn't
16 be doing.

17 But I think I'm entitled to get behind
18 and find out what they've got and what went on and
19 determine whether or not they knew what they were
20 doing and whether or not it was with reckless disregard
21 for the truth. Certainly, the statement that Kevin
22 Hollinshead is using our money to help himself, I mean,
23 that's libel per se. There's no question about it.
24 There's just no way that they can ever prove that
25 that's a true statement.

1 So given that, I don't know how we get past
2 any motion. I think this thing has to go to the jury
3 given that, and that's really about all I've got to say.

4 THE COURT: Thank you.

5 MS. WOODWARD: Your Honor, if I may?

6 THE COURT: Okay.

7 MS. WOODWARD: I just want to point out
8 one thing. In all of this argument, is he also never
9 pointed out anything in his complaint that asserts
10 that some of the Defendants were even aware, knew
11 or participated.

12 THE COURT: Okay. What about that?

13 MR. PRITCHARD: Well, Your Honor, getting
14 back to the discovery question, I mean, you know --
15 I mean, I don't know how they did not know, but I think
16 without getting in there -- I mean, if she can --
17 I think once we get through discovery and it turns
18 out they didn't know, I won't even enforce her to make
19 a summary judgment motion. I'll dismiss it if I can't
20 establish that they knew or had some participation
21 in this.

22 But at this point, you know, they're behind
23 a black veil right now. I can't -- I think I've got
24 a right to figure out -- since they're all kind of band
25 together, to figure out who knew what and how. I think

1 as Judge Norton said, kind of a similar motion about
2 a month ago that I was involved in, you know, a 12(b)(6)
3 is drastic remedy. You may very well get past --
4 you may very well be entitled to summary judgment,
5 but I have to at least go figure out what they've got.

6 MS. WOODWARD: They have to assert actual --
7 substantiate the allegation or fact of information
8 against the Defendant, none of which are asserted in
9 his first complaint, first amended complaint or second
10 amended complaint.

11 THE COURT: Okay.

12 MR. PRITCHARD: They were employees
13 of Teach for America so it's hard to know what --
14 I think their actions stick to Teach for America.

15 THE COURT: Okay.

16 MS. KEPES: Your Honor, if I could respond
17 to the claim made by Plaintiff regarding the statement
18 about using our money to help himself. I would
19 respectfully disagree that it was not addressed,
20 Your Honor. Again, this is all within the context
21 of fair comments. Nowhere in there does it say he stole
22 taxpayer money. That's not in here. He's reading into
23 it what's not there. He's trying to mischaracterize
24 what's in the complaint, what's in the public record,
25 to be something different than what it is.

1 This is all under the guise of the First
2 Amendment, and that's very, very important, a particular
3 right that citizens have to criticize people who
4 are in public office and are running for public office,
5 and to criticize their acts and their fitness to
6 that office, and that statement falls well within
7 there. You know, I mean, he says that we can't prove
8 that it's true. Well, I mean, to that extent, if it's
9 not provable, then it's opinion, and again falls under
10 this privilege.

11 The -- taking the ad as a whole, it is true,
12 or at the very least it is substantially true, Your
13 Honor. No amount of discovery is going to change that.
14 No deposition; no other documents are going to show --
15 that's the truth because Your Honor can see the public
16 record shows that that's there. There is nothing that
17 can be done further to establish one way or the other.
18 And so we submit that this is appropriate for summary
19 judgment and that Defendants are entitled to summary
20 judgment on that.

21 THE COURT: Okay.

22 MS. KEPES: I'm sorry. Dismiss.

23 MS. WOODWARD: Just wanted to add one
24 additional thing. He says he's entitled to discovery
25 to figure out who knew what. There was actually

1 an affidavit filed by Ms. Steward that says in no way --
2 she was volunteering, she didn't inform her employer.
3 That information is out there, also was articulated
4 by Mr. Green on behalf of Ms. Waters. So as it relates
5 to that, what's been produced alone has indicated
6 that Teach for America had no part in the ad, hadn't
7 made payments for the advertisement, we're not aware
8 of it.

9 So just asserting alone that they were
10 employees does not get him beyond a complaint as
11 to Defendant Teach for America, and as to the other
12 Defendants as well because of substantial truth.
13 You have to be able to assert an actual cause of action,
14 and there are no facts contained within his first
15 complaint, his amended -- first amended complaint
16 or his second amended complaint, Your Honor.

17 THE COURT: Thank you.

18 MR. MCCULLOCH: I'll be the last,
19 Your Honor.

20 THE COURT: Okay.

21 MR. MCCULLOCH: Your Honor, you might
22 in your deliberation look at Paragraphs 38, 39 and 40
23 of the second amended complaint of Plaintiff. It refers
24 -- it makes reference to what you just heard from
25 Mr. Pritchard about -- Paragraph 38 says an anonymous

1 voiceover in the ad states that Kevin Hollinshead
2 is using our money to help himself, was successfully
3 sued for stealing \$150,000.

4 I would note for the record again
5 that that's not an exact quote. The quote from
6 the transcript from the ad is nearly \$150,000
7 and the confession was for \$144,000. So -- but it goes
8 on to say that, and lied to cover it up. All of those
9 are allegations clearly set forth -- I mean, they're
10 explicitly set forth in the SAS complaint.

11 The next paragraph, 39, Kevin Hollinshead
12 was successfully sued for stealing \$150,000. Again,
13 it really says nearly, and those are anonymous
14 voiceovers, according to the Plaintiff, not Ms. Steward.
15 Paragraph 40 accurately states that following
16 the anonymous voiceover in the ad, Steward states,
17 "We can't have someone like that managing tax dollars
18 for our schools."

19 Now -- so there are no allegations that
20 she did anything in any kind of civil conspiracy;
21 there's no real allegations she committed an act
22 of outrage. And, frankly, I think on the basis of
23 that single statement, that is fair comment and opinion.
24 So, I believe that she's entitled to be dismissed
25 out of this litigation.

1 But also I think -- I don't want to leave
2 the other Defendants in this case hanging. I think
3 that -- the one thing I haven't forgotten in the law
4 is the beauty and value of semantics.

5 Mr. Pritchard asserts that nowhere does
6 this SAS complaint allege that money was stolen from
7 Benedict. Well, that's accurate, Your Honor, if you
8 stop there. But if you read that complaint, as I know
9 you will, the semantics is the money that was stolen
10 was Benedict money. Whether it was Benedict complaining
11 or SAS complaining, the substantial truth of the matter
12 is that Mr. Hollinshead was accused and ultimately
13 agreed to repay the very money that came from Benedict
14 and went to SAS. Nothing could be more substantially
15 true and accurate than that fact.

16 That's why there is no air in this
17 Plaintiff's balloon, and that's why, Your Honor,
18 we believe it should be dismissed and these parties
19 repair to their corners. Mr. Hollinshead can run
20 for election next time, but these Defendants should
21 be released from the burden of this litigation because
22 it's fair comment and substantially true, based on
23 everything before you. Thank you, sir.

24 THE COURT: Thank you.

25 MR. PRITCHARD: Your Honor.

1 THE COURT: Yes.

2 MR. PRITCHARD: I go back to Paragraph 38.
3 Fair comment means just that, but they're complaining
4 fair comment with a license to lie. It is not a license
5 to lie. That statement clearly indicates that
6 Mr. Hollinshead has taken taxpayer dollars, and there
7 is nothing anywhere to back that up. They're not going
8 to get there if we go to trial.

9 You know, as the Court said in Warner v.
10 Rudnick, which is a Court of Appeals opinion, 313 S.E.2d
11 359, 1984. It said, "In determining whether words are
12 libelous, they are to be given the ordinary and popular
13 meaning, and if they are susceptible of two meanings,
14 one libelous and the other innocent, the former is
15 not to be adopted, and the latter rejected, as a matter
16 of course, but it must be left to the jury to determine
17 in what sense they were used. If the words are plainly
18 libelous, or wanting in any defamatory signification,
19 it is the province and duty of the Court to say so."

20 So what they're saying is if that's capable
21 of interpretation -- if that statement is capable
22 of interpretation, implying that Mr. Hollinshead stole
23 money from taxpayer -- using taxpayer dollars to help
24 himself, which is clearly what that implies, that's
25 a jury question. That, I think, is obvious.

1 And this whole fair comment, I mean,
2 I understand what it is, but, you know, it is not
3 a license to lie. And there's no way that that
4 statement can be construed as an opinion any more
5 than the outcome of a South Carolina Clemson football
6 game can be construed as an opinion. It's a fact;
7 this is a fact. That's what they state; that's how
8 they stated it. And that, they can't get around.

9 And with regard to the two affidavits
10 regarding what Teach for America knew, I'm going to take
11 it at face value that Ms. Steward and Ms. Waters didn't
12 tell Teach for America. But I don't have an affidavit
13 from Teach for America saying they didn't know that.
14 Somebody else may have told them. I don't know.
15 Mr. Bell may have told them. I don't who told them.
16 I didn't have a chance to find that out.

17 And I think it's interesting that we have
18 those two affidavits that quote they didn't tell them,
19 but that means somebody else did. And I didn't even
20 get a chance to go figure this out. I think summary
21 judgment is premature based on those affidavits,
22 and that's all I've got to say. Thank you.

23 MS. WOODWARD: Judge, to address
24 the affidavit from Teach for America. I don't want
25 to be disingenuous. I work with a law partner.

1 Mr. Pritchard was asked very early on before we actually
2 filed any responsive motion if he needed us to provide
3 him with an affidavit about the knowledge, and he said,
4 no, don't do that, we'll just proceed, so we responded
5 the same.

6 So it's disingenuous to come here today
7 and say we didn't provide much because we would have
8 more than done so. But it was definitely sufficient
9 that the employees who worked there indicate they
10 know the terms, and said they -- one said they had
11 no knowledge of it, and one said it was voluntary.

12 THE COURT: Okay. Thank you. Okay.

13 MR. PRITCHARD: Thank you, Your Honor.

14 MS. KEPES: Can I say one more thing?
15 I do apologize, Your Honor. I just want to make sure
16 that -- Your Honor, there's been made very, very clear
17 here two things. One, this was not a commissioned
18 dispute, an underlying SAS lawsuit. The allegation
19 that the cause of action were conversion, fraud, breach
20 of contract, breach accompanied by a fraudulent act,
21 unjust enrichment. It's not a commissioned dispute;
22 that's an allegation of stealing funds, Your Honor.

23 And I will also point out that the ad
24 again does not say that Benedict was the Plaintiff
25 in that case, that Benedict sued them. I believe when

1 you read it, Your Honor, there will be no issue there.
2 And, again, I would say that fair comment is a privilege
3 to criticize public officials with regards to fitness
4 for office. That is exactly what that statement -- if
5 that statement is not that, then what is? This ad --
6 all this ad does is question his fitness for office,
7 Your Honor. Thank you.

8 THE COURT: Thank you. I will look at all
9 this information and review that ad a number of times
10 and give you all an opinion.

11 MR. PRITCHARD: Thank you very much.

12 MS. KEPES: Thank you, Your Honor.

13 MR. PRITCHARD: Merry Christmas to you.

14 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

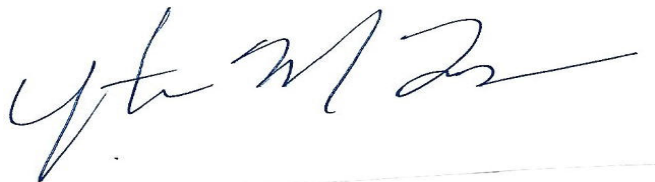
State of South Carolina)

County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 16th of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 23, 2022



Yvestre Torres

Circuit Court Reporter

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

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

Docket No. 2021-CP-10-00426

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

v.

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

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT Appellant, Kevin Dion Hollinshead, Senior, hereby
appeals the order of The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge, dated and filed
April 26, 2022, a copy of which is attached hereto as Exhibit A, and incorporated herein by
reference. Appellant received written notice of entry of this order via the SC Courts E-Filing
System on April 26, 2022.

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[Signature Appears on Next Page]

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May 12, 2022
Charleston, South Carolina

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

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

Docket No. 2021-CP-10-00426

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

v.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete and accurate copy of the foregoing
NOTICE OF APPEAL was served upon The Honorable Jana E. Shealy, Clerk, Charleston County,
South Carolina Court of Common, and counsel of record, as listed below, on May 12, 2022, via
the SC Courts E-Filing System as follows:

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Charleston County Judicial Center
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Pritchard Law Group, LLC

/s/ Edward K. Pritchard, III /s/

Edward K. Pritchard, III, Esq

May 12, 2022
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000426

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Amended Form 4:

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

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

Case Number: 2021CP1000426

Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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Jun 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

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

Docket No. 2021-CP-10-00426

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

v.

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

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material and complies with Rules 210 and
267, SCACR.

Respectfully Submitted,

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June 26, 2023
Charleston, South Carolina