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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.: 2024-001088

The School of Hope Christian
Academy, Jacqueline McKie
Burden, and Eugene Burden,
Sr., APPELLANTS,

vs.

South Carolina Department of
Social Services,
RESPONDENT.

RECORD ON APPEAL

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

The School of Hope Christian Academy, Jacqueline McKie, and Eugene Burden, Sr.,	)	Civil Action No. 2022-CP-40-03390
	)	
	)	
Plaintiffs,	)	

vs.

ORDER

South Carolina Department of Social Services	)
	)
	)
Defendant.	)

This matter came before the Court on Defendant South Carolina Department of Social Services' (DSS) motion for summary judgment. After carefully reviewing the motion, memorandum, exhibits, and arguments of counsel, the Court **GRANTS** summary judgment in favor of DSS because Plaintiffs School of Hope Christian Academy (School of Hope), Jacqueline McKie, and Eugene Burden Sr.'s claims are barred by collateral estoppel, res judicata, the law of the case, and failure to exhaust.

BACKGROUND

In 2012, through a contract with DSS, School of Hope began participating in the Child and Adult Care Food Program (CACFP), which is funded by the U.S. Department of Agriculture (USDA) and administered in South Carolina by DSS. School of Hope was to provide meals in after-school care programs within South Carolina and submit claims for reimbursement to DSS for meals served according to the reported meal count. Under the contract, DSS could terminate School of Hope's participation in the CACFP if it determined School of Hope "materially breached, or otherwise failed, to comply with its obligations." Among other things, the contract

required School of Hope to comply with all responsibilities and requirements set forth in applicable laws and regulations, including federal regulations governing the CACFP. *See* 7 C.F.R. § 226.

But in 2018, DSS discovered School of Hope had not complied with federal regulations or the contract and, thus, should be terminated from the CACFP. DSS therefore denied its January through March 2018 reimbursement claims. These circumstances led to two “Serious Deficiency Notices,” two separate requests for administrative hearings, and two separate appeals to the administrative law court (ALC).

Appeal I

From 2015 to 2018, in addition to participating in the CACFP, School of Hope participated in the Summer Food Service Program (SFSP), which is also funded by the USDA but administered in South Carolina by the Department of Education (DOE). In 2018, DOE terminated School of Hope from the SFSP and withheld an August 2017 reimbursement claim “because of concerns regarding the School’s administrative, operational, and financial capacities to successfully operate the SFSP.” Shortly after that, DSS issued a “Serious Deficiency Notice” on February 22, 2018, advising School of Hope that its operations were deficient under the CACFP because of DOE’s termination of it from the SFSP—another federally funded program.

DSS gave School of Hope until May 23, 2018, to correct the deficiency by providing documentation showing it had not been terminated for cause from the SFSP. School of Hope, however, could not provide sufficient documentation because it was terminated for cause from participation in the SFSP.¹

¹ *See* Order Gr. Summ. J., *School of Hope v. S.C. Dep’t of Educ.*, 2021-CP-40-01000 (S.C. Ct. Comm. Pl. filed Mar. 8, 2023) (DOE Order) (finding the law of the case was that School of Hope breached its contract with DOE for participation in the SFSP), *appeal pending*. DSS attached this order as Exhibit C to its motion for summary judgment.

On May 24, 2018, DSS proposed termination and disqualification of School of Hope and its executive director and board chair (the individual Plaintiffs here) from current and future participation in the CACFP. DSS based this decision on Title 7, Subsection 226.6(c)(3)(ii)(S) of the Code of Federal Regulations, which provides an agreement for participation in the CACFP may be terminated if “the institution or any of the institution’s principals have been declared ineligible for any other publicly funded program by reason of violating that program’s requirements.” DSS also denied School of Hope’s January through March 2018 reimbursement claims because it failed to provide sufficient documentation to substantiate the claims.

School of Hope requested an administrative hearing, and a DSS hearing officer held one on July 30, 2018. The hearing officer issued a final administrative order on September 20, 2018, upholding DSS’s termination of School of Hope and its principals from participation in the CACFP as well as its denial of School of Hope’s January through March 2018 reimbursement claims. School of Hope appealed, and the ALC affirmed on October 4, 2019. *See* Order, Appeal No. 18-ALJ-18-0378-AP (Order I).

In Order I, the ALC found substantial evidence supported the finding that School of Hope “should be terminated from participation in the CACFP based upon termination from another federally funded feeding program”—the SFSP administered by DOE. Because School of Hope did not appeal DOE’s termination and presented no evidence the termination was improper, the ALC found DOE’s “unappealed final agency decision terminating the School from the SFSP” was sufficient evidence on which DSS could base its termination of Plaintiffs from the CACFP.

The ALC also found substantial evidence supported DSS’s decision to deny School of Hope’s January through March 2018 reimbursement claims. Specifically, the ALC stated “[t]here were multiple instances (too many to include) of the School overstating its claims including one

instance where the claim was overstated by 994 meals. There were numerous other problems with the School's program and recordkeeping." The ALC concluded, "[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law." School of Hope did not appeal Order I.

Appeal II

In December 2017 or January 2018, one of School of Hope's food distributors—The Merchants Company d/b/a Merchants Food Service of South Carolina—advised DSS that School of Hope had an outstanding debt of \$446,772.12. DSS also discovered School of Hope's executive director, Plaintiff McKie (now Burden), executed a Confession of Judgment in October 2017 for that amount in favor of Merchant Food. This large debt concerned DSS because it was the third complaint within two years DSS had received from School of Hope's vendors, and it established School of Hope's debt far exceeded any outstanding reimbursement claims.

On June 4, 2018, DSS issued another "Serious Deficiency Notice" to School of Hope, requesting it complete a "Corrective Action Plan" to include, among other things, "documentation that it was financially viable and maintained fiscal accountability." School of Hope submitted a Plan, but DSS deemed it unsatisfactory. DSS notified School of Hope on July 21, 2018, proposing termination and disqualification of School of Hope and its executive director and board chair (the individual Plaintiffs here) effective August 9, 2018. DSS based this decision on School of Hope's failure to have management controls in place to ensure financial integrity and accountability for funds received and disbursed, as well as its failure to explain how School of Hope's debt would be satisfied. Pursuant to Title 7, Subsection 226.6(c)(3)(ii)(C), an agreement for participation in the CACFP may be terminated if the participant is not operating in compliance with the

performance standards in Subsections 226.6(b)(1)(xviii) and (b)(2)(vii), which require “financial viability and financial management,” “administrative capability,” and “program accountability.”

School of Hope requested an administrative hearing, and a DSS hearing officer held one on November 20, 2018. The hearing officer issued a final administrative order on January 25, 2019, upholding DSS’s termination of School of Hope and its principals from participation in the CACFP. School of Hope appealed, and the ALC affirmed on October 11, 2019. *See Order, Appeal No. 19-ALJ-18-0046-AP (Order II).*

In Order II, the ALC found substantial evidence supported the finding that School of Hope “is not financially viable and that the parties failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed.” Specifically, the ALC found there were periods during which School of Hope could not pay its employees; School of Hope had satisfied only \$100,000.00 of its debt to Merchants Food in over a year; and School of Hope had at least \$200,000.00 in debts owed to other vendors.

The ALC stated the purpose of the hearing was for School of Hope to show it had complied with federal regulations and performance standards, yet it “was unable to do so, and substantial evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability.” Simply put, “no testimony was rendered as to how the School planned to resolve its outstanding financial obligations as well as ensure its ongoing financial viability.” Order II affirmed DSS’s decision to terminate School of Hope’s agreement to participate in the CACFP. School of Hope did not appeal Order II.

This Lawsuit

Plaintiffs filed this lawsuit on August 9, 2019, against DSS and Defendants Dyretta Fashion and Mary Abney Young—two DSS employees. Defendants moved to dismiss. While the motion

was pending, the parties partially resolved the case, and the Court dismissed the claims against Defendants Fashion and Young with prejudice. Later, Plaintiffs requested—and DSS consented—to dismiss the case pursuant to Rule 40(j), SCRCF. The Court granted the request on July 9, 2021, dismissing the case and striking it from the active trial roster. At Plaintiffs’ request, the Court restored the case to the general docket on July 5, 2022. The next day, Plaintiffs’ initial counsel moved to withdraw. On September 26, 2022, the Court issued an order relieving counsel. Plaintiffs hired new counsel after that. Defendants then moved for summary judgment on May 24, 2023, and the Court held a hearing via WebEx on January 22, 2024. The Court issued a Form 4 Order on May 20, 2024, granting summary judgment in favor of DSS. This final Order follows.

STANDARD

The purpose of summary judgment is “to expedite disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. In determining whether a genuine issue of fact exists, a court must view the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). But when plain and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted if the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ANALYSIS

- I. *Because Plaintiffs waived their right to challenge Orders I and II, Plaintiffs' breach of contract claim is barred by the law of the case, collateral estoppel, and res judicata.*

In Orders I and II, the ALC presented detailed analyses of School of Hope's failures to comply with the contract and federal regulations, affirming DSS's ability to terminate the contract and School of Hope's participation in the CACFP. For instance, Order I explained DOE's "unappealed final agency decision terminating the School from the SFSP" was sufficient evidence on which DSS could base its termination of Plaintiffs' contract for participation in the CACFP. And Order II found DSS was entitled to terminate Plaintiffs' participation in the CACFP because "substantial evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability." Both Orders upheld DSS's termination of School of Hope's contract for participation in the CACFP.

But Plaintiffs failed to appeal either order. *See* S.C. Code Ann. § 1-23-610(A)(1) (providing an appeal from the ALC is to the court of appeals). Thus, they waived the right to challenge those findings. *See Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."). And those unappealed rulings are now the law of the case, scuttling Plaintiffs' allegations that DSS breached its contract with them by terminating the contract and denying reimbursement of certain reimbursement claims. *See Shirley Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case."); *see also Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981) (holding a final decision by the State Grievance Committee not appealed to the courts became the law of the case).

Further, because the ALC's Orders establish that Plaintiffs were in fact the ones who breached the contract with DSS, Plaintiffs' claims are barred by collateral estoppel and res judicata. "The doctrine of collateral estoppel prevents the relitigation of issues . . . necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 556, 684 S.E.2d 779, 783 (Ct. App. 2009). Our appellate courts have repeatedly held the doctrine of collateral estoppel applies to "the decision of an administrative tribunal [and] precludes the relitigation of the issues addressed by that tribunal in a collateral action." *Bennett v. S.C. Dep't of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (emphasis omitted); *see also Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC*, 397 S.C. 101, 108, 723 S.E.2d 813, 817 (Ct. App. 2012) ("Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals.").

Here, the ALC necessarily determined Plaintiffs breached their contract with DSS by breaching the duties imposed on them by the contract and federal regulations. Plaintiffs' claim for breach of contract against DSS rests on the notion that they "fully performed" their duties under the contract "in accordance with all of the requirements and conditions thereof." Pls.' Compl. at ¶ 18. But the ALC concluded the exact opposite in Orders I and II. Plaintiffs failed to comply with the CACFP requirements in Title 7, Subsection 226.6 because they were terminated from another federally funded program² and could not meet the required performance standards due to

² Another member of this Court has likewise rejected Plaintiffs' collateral attack on DOE's termination of School of Hope's participation in the SFSP, granting summary judgment in favor of the DOE. *See* DOE Order at 6–7 (stating "Plaintiffs breached the contract with the Department by failing to comply with their contractual duties or state and federal law" and finding "the law-of-the-case doctrine foreclose[d] [their] breach of contract claim against the Department").

not being financially viable. Thus, Plaintiffs' failures to comply with the contract and DSS's entitlement to terminate the contract were previously litigated.

Under the related but slightly different doctrine of res judicata, Plaintiffs' claims are also barred. See *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties."). Res judicata applies when there is an "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011) (citation omitted). Here, the parties are identical, and Plaintiffs' breach of contract claim directly involves and arises out of DSS's termination of Plaintiffs' contract to participate in the CACFP. This is the exact subject matter at issue before and ruled on by the ALC in Orders I and II. And Plaintiffs appealed neither Order. So res judicata also bars Plaintiffs' claims.

Nor did Plaintiffs appeal the ALC's finding in Order I that DSS properly denied School of Hope's January through March 2018 reimbursement claims. In Order I, the ALC specifically found, "[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law." Therefore, even if Plaintiffs had a viable breach of contract claim, Plaintiffs could not claim damages from DSS's denial of reimbursement claims from January through March 2018 under the same issue and claim preclusion doctrines explained above. See *Carolina Renewal, Inc.*, 385 S.C. at 556, 684 S.E.2d at 783; *Judy*, 393 S.C. at 167, 712 S.E.2d at 412.

Finally, Plaintiffs failed to present any evidence showing DSS breached the contract with Plaintiffs or why they are entitled to reimbursement for claims from January through March 2018. DSS properly supported its motion for summary judgment with the contract and Orders I and II.

Yet Plaintiffs came to the hearing armed with nothing more than the allegations in their complaint and argument of counsel. That is insufficient to defeat a properly supported motion for summary judgment. *See* Rule 56(e), SCRCP (“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but *his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.* If he does not so respond, summary judgment, if appropriate, *shall* be entered against him.” (emphasis added)); *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) (“Arguments of counsel [] are not evidence.”).

Because the ALC adjudicated Plaintiffs’ claim for breach of contract, and because the findings in Orders I and II are the law of the case, the Court finds there is no genuine issue of material fact and DSS is entitled to judgment as a matter of law.

II. Plaintiffs failed to exhaust their administrative remedies on the denial or payment of any other 2018 reimbursement claims.

For the reasons above, Plaintiffs are not entitled to reimbursement for any claims from January through March 2018. As for any other 2018 reimbursement claims, Plaintiffs did not exhaust their administrative remedies. Thus, they have waived their right to challenge any denial of other 2018 reimbursement claims. *See Parker*, 313 S.C. at 487, 443 S.E.2d at 391.

Exhaustion of administrative remedies “requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.” *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) (quoting 2 AM. JUR. 2D *Administrative Law* § 595 (1962)); *see also Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 176–77, 551 S.E.2d 263, 273 (2001) (finding dismissal

proper when plaintiff was “required to exhaust administrative remedies as a matter of law” because agency had exclusive jurisdiction).

Here, Plaintiffs contend they “complied with all administrative prerequisites.” Pls.’ Compl. at ¶ 14. But Article IV, Section (B)(2) of the contract with DSS delineates exactly what administrative remedies must be exhausted—citing section 1-23-380 of the South Carolina Code—to challenge any claim reimbursement disallowances. Plaintiffs never pursued those administrative remedies to challenge partial payments or denials of their April, May, August, and September 2018 reimbursement claims. Nor did they appeal those denials or payments to the ALC or our appellate courts. Because the ALC had exclusive jurisdiction to hear those claims, Plaintiffs are barred from bringing them in this Court. *See Berry v. S.C. Dep’t of Health & Envtl. Control*, 402 S.C. 358, 364-65, 742 S.E.2d 2, 5 (2013) (holding “circuit court complaint involved only the administrative matter, which falls squarely within the ambit of the APA,” and under “the APA, the ALC had exclusive jurisdiction to entertain Appellants’ narrow challenge of the Enforcement Order and the circuit court lacked subject matter jurisdiction to hear Appellants’ claim”).

In any event, Plaintiffs presented no evidence at the hearing as to any remaining 2018 reimbursement claims for which Plaintiffs sought relief. *See* Rule 56(e), SCRCF. DSS is therefore entitled to judgment as a matter of law on the breach of contract claim based on any remaining reimbursement claims.

III. Plaintiffs failed to state a valid claim for defamation against DSS.

As with the breach of contract claim, Plaintiffs are barred from relitigating the defamation claim here because Plaintiffs’ mismanagement and failures to comply with federal regulations while participating in the CACFP were extensively litigated and resulted in adverse rulings against them by the ALC. *E.g., Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Parker*, 313

S.C. at 487, 443 S.E.2d at 391; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231; *Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109. Thus, the law of the case, collateral estoppel, and res judicata bar Plaintiffs' defamation claim. Indeed, another member of this Court previously found identical statements were true in a similar case Plaintiffs brought against DOE. See DOE Order at 8–10.

“The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a *false message* about the plaintiff.” *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, 133 (1999) (emphasis added). Because the gravamen of a defamation claim is falsity, truth is an absolute defense. See *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). Based on the ALC's unappealed findings and this Court's prior order in favor of DOE, if DSS made any statements at all, it spoke truthfully—as a matter of law—with other state and federal governmental agencies.

Plaintiffs first alleged persons acting on behalf of DSS made statements “which implied” Plaintiff McKie “was an incompetent manager.” Pls.' Compl. at ¶ 22. But “pointed criticisms” of individual persons find no refuge in a claim for defamation. See *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 471, 629 S.E.2d 653, 667 (2006). Plaintiffs next alleged persons acting on behalf of DSS made statements that “funds have not been properly applied, and that Plaintiffs McKie and Burden have been guilty of violating state and federal laws.” Pls.' Compl. at ¶ 22. They also allege DSS denied reimbursement claims as “fraudulent” and referred Plaintiffs “for criminal investigation . . . for mishandling of funds with full knowledge of the falsity of such claims.” *Id.*

As to each purported statement, Plaintiffs presented no evidence at the hearing that DSS—or any of its agents or employees—made any statements, much less any false statements, about them. Rather, counsel for Plaintiffs simply stated that he believed there was a genuine issue of

material fact. That is insufficient. See Rule 56(e), SCRCP; *Bowers*, 304 S.C. at 68, 403 S.E.2d at 129. Thus, the Court can dispose of Plaintiffs’ defamation claim on that basis alone.

In any event, Plaintiffs’ defamation claim still fails because the two unappealed ALC Orders establish that Plaintiffs did in fact make overstated and unsupported claims for reimbursement, breached DSS’s contract, and failed to comply with state and federal law in doing so. Order I stated DOE terminated Plaintiffs from the SFSP because they violated that program’s requirements by “[n]ot only . . . fail[ing] to maintain its records in accordance with federal law but also and more importantly, fail[ing] to provide documentation verifying its claims as required by law.” Order II found that School of Hope “is not financially viable and . . . [Plaintiffs] failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed” which violated the CACFP federal regulations.

Another member of this Court previously found the same statements alleged to be defamatory here were in fact true as they related to Plaintiffs’ former dealings and contract with DOE. See DOE Order at 9 (finding “the law of the case establishes that Plaintiffs did make overstated and unsupported claims for reimbursement, breached the [DOE’s] contract, and violated state and federal law in doing so”); Rule 201(b), SCRE (allowing a court to take judicial notice).

Thus, Plaintiffs have not established DSS made any false allegations against them. Even when viewing the facts in a light most favorable to Plaintiffs, they failed as a matter of law to state a valid claim for defamation against DSS under any theory.³

³ Even if Plaintiffs could prove falsity of the alleged statements, the statements were required by law and subject to an absolute or qualified privilege. See *Swinton Creek Nursery*, 334 S.C. at 484, 514 S.E.2d at 134. If both the speaker and the person to whom the communication is made have a common interest and the communication is made in good faith, then the communication is privileged. See *Bell v. Bank of Abbeville*, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (1946); *Kunst v. Loree*, 424 S.C. 24, 42, 817 S.E.2d 295, 304 (Ct. App. 2018) (“A defendant may assert a

CONCLUSION

For these reasons, the Court **GRANTS** summary judgment in favor of DSS. Because Plaintiffs failed to establish a genuine issue of material fact as to the claims for breach of contract and defamation, the Court finds DSS is entitled to judgment as a matter of law. Plaintiffs' complaint is therefore **DISMISSED** with prejudice.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina
June ___, 2024

conditional or qualified privilege as an affirmative defense in a defamation action when the defamation is made in good faith and with proper motives.”). Here, DSS and its employees had a legal duty to report matters relating to the administration of the CACFP to the USDA and refer these matters to law enforcement upon learning of Plaintiffs' actions. See 7 C.F.R. § 226.6(c)(3)(iii); 7 C.F.R. § 226.14(a). Plaintiffs were also on notice of the potential criminal penalties for fraud during their participation of the CACFP. See 7 C.F.R. § 226.25(e). To that end, DSS and the USDA had a common interest in Plaintiffs' failure to comply with the CACFP and contract requirements, and any reports from DSS to the USDA were made in good faith and to comply with its legal duties under the federal regulations. And Plaintiffs presented no evidence or argument to the contrary. See Rule 56(e), SCRCP.



Richland Common Pleas

Case Caption: School Of Hope Christian Academy , plaintiff, et al vs South Carolina
Department Of Social Services , defendant, et al

Case Number: 2022CP4003390

Type: Order/Summary Judgment

So Ordered

Jocelyn Newman

Electronically signed on 2024-06-05 12:32:52 page 15 of 15

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
2019-CP-40-

The School of Hope Christian Academy,
Jacqueline McKie and Eugene Burden, Sr.

Plaintiffs,

vs.

South Carolina Department of Social
Services, Dyretta Fashion and Mary Abney
Young

Defendants.

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

<signature page to follow>

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August 9, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

The School of Hope Christian Academy,
Jacqueline McKie and Eugene Burden, Sr.

Plaintiffs,

vs.

South Carolina Department of Social
Services, Dyretta Fashion and Mary Abney
Young

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
2019-CP-40-

**COMPLAINT
(Jury Trial Demanded)**

Plaintiffs, complaining of the Defendants, would respectfully show to the Court:

PARTIES AND JURISDICTION

1. Plaintiff, The School of Hope Christian Academy (hereinafter “TSHCA”), is a charitable corporation under the provisions of §501(C)3 of the United States Code, with its principal place of business in Richland County, South Carolina where it serves the needs of qualified citizens to receive meals and other services through a federal grant administered by the South Carolina Department of Social Services.

2. Plaintiff, Jacqueline McKie, is a resident of Richland County, South Carolina and is the Chief Executive Officer and Founder of the TSHCA.

3. Plaintiff, Eugene Burden, Sr., is a resident of Richland County, South Carolina and is the Board Chairman of TSHCA.

4. Defendant, The South Carolina Department of Social Services (hereinafter “DSS”), is an agency of the State of South Carolina with its principal place of business in Richland County, South Carolina where it conducts the agency’s business in administering to those qualified citizens who need its services and whose funding is partially furnished by grants from the federal government including the United States Department of Agriculture.

5. Defendant, Dyretta Fashion, upon information and belief, is a resident of Richland County, South Carolina and was at all times mentioned herein, employed by DSS and served as the principal processor of the grant funds for which the Plaintiff was supposed to be paid for the feeding of the children under the contract with DSS.

6. Defendant, Mary Abney Young, upon information and belief, is a resident of Richland County, South Carolina and was at all times mentioned herein the DSS Programs Director for the State of South Carolina, charged with the administration of federal grants including the grant from the United States Department of Agriculture which funds the Plaintiff corporation TSHCA’s activities.

FACTUAL ALLEGATIONS

7. The most recent grant contract entered into between the Plaintiff corporation TSHCA and DSS was awarded in February 2012, which provided among other things, that all covered activities by TSHCA would be funded by payments from DSS and would be paid promptly upon compliance by TSHCA with DSS requirements of certification and verification of covered services. These provisions would allow checks to be written to cover the ongoing operations of the corporation TSHCA until such time as the contract was terminated.

8. While the contract has now been terminated, it was of full force and effect at all times mentioned herein.

9. At all times, TSHCA and Plaintiffs McKie and Burden have complied with the terms of the contract and grant, and have furnished all documentation necessary and possible to justify the approval of payments for services performed by the corporation TSHCA, including the payment of the Plaintiffs' salaries as CEO and Board Chairman, and any other expenses incurred by them which should be reimbursed under the provisions of the contract and grant.

10. Because of a transition in the types of software and programs used by USDA and DSS in obtaining, assimilating, and handling grant data, there was a substantial delay in funding for TSHCA for several months until the "glitches" were worked out.

11. This resulted in TSHCA receiving no grant or contract funds for services performed in April, May, August and September of 2018, and only partial payment for February and March 2018.

12. In March 2018, the alleged software issues were resolved and TSHCA received payments covering most of October, November, December 2017, and most of January 2018. Although the Plaintiffs continued to furnish all necessary services from at least three different locations to at least 2,200 children at a cost of thousands of dollars per month, TSHCA has received no payments of any kind from DSS nor from other sources to allow the program to continue from February 1, 2018 through September 30, 2018.

13. Despite inadequate funding, the Plaintiffs have properly performed services, properly reported and done everything possible to comply with DSS and/or federal inquiries regarding the operation of the programs. To date, there is still approximately Four Hundred Thousand Dollars (\$400,000) due and payable under the contract which has not been paid.

14. Plaintiffs have complied with all administrative prerequisites, have filed timely rebuttals, and requested appropriate documentation; however, the appeal decisions have been

purposefully delayed and continue with no end in sight. The same renders any further administrative appeals futile, moot and clearly exhausted. Plaintiffs have yet to receive any legitimate reason as to why the monies owed under the contract have not been paid.

15. Payment for the full amount owed has been demanded and refused, as well as repeated demands for partial payment.

16. The Defendant Mary Abney Young, has additionally repeatedly reported and published to others that Plaintiff McKie is an incompetent manager, that funds have not been properly applied, that Plaintiffs McKie and Burden have been guilty of violating of state and federal laws, that the Plaintiffs have been subject to criminal investigation. Defendant Young has since made an attempt to remove Plaintiffs as a vendor for the program which is ongoing and contested and has never approved nor paid any of the monies due for services properly rendered during the timeframe described above for which the Plaintiffs are entitled to receive.

FOR A FIRST CAUSE OF ACTION

Against Defendant DSS
(Breach of Contract)

17. Plaintiff realleges the foregoing where not inconsistent herewith.

18. Since 2012, there has been an existing contract between Defendant DSS and Plaintiff TSHCA for the payment of funds in return for the performance of services as required under the grant contract. Such services have been fully performed in accordance with all of the requirements and conditions thereof.

19. Defendant DSS has breached its contract with Plaintiff TSHCA, and there is an outstanding balance owed to Plaintiff TSHCA for services rendered under the contract. The amount owed to Plaintiff TSHCA by Defendant DSS is in excess of Four Hundred Thousand Dollars (\$400,000).

20. Additionally, as special damages, clearly foreseeable at the time of the contract's execution, Plaintiff TSHCA has been unable to maintain its level of services, is in danger of insolvency and financial failure, and has sustained large financial losses in addition to the sums due under the contract for which Defendant DSS is liable.

FOR A SECOND AND SEPARATE CAUSE OF ACTION

(Defamation)

On behalf of Plaintiffs McKie and Burden
Against Defendants Mary Abney Young and DSS

21. Plaintiffs reallege the foregoing where not inconsistent herewith.

22. Defendant Young and others, acting for and on behalf of Defendant DSS, made statements which implied Plaintiff McKie was an incompetent manager, that funds have not been properly applied, and that Plaintiffs McKie and Burden have been guilty of violating state and federal laws. The Defendant's falsely denied the claims as fraudulent and knowingly referred the Plaintiff's for criminal investigation to State and Federal agencies for mis-handling of funds with full knowledge of the falsity of such claims. After thorough investigation no charges have been brought in over a year.

23. That statements made by Defendant Young in her individual capacity, as well as others acting within their official capacities with Defendant DSS as apart and servants thereof, concerning the Plaintiffs McKie and Burden are defamatory, willful, intentional and made with actual malice to harm the Plaintiffs and their reputation as well as to cause them financial loss.

24. Such statements were false, known to be false, and maliciously published by Defendant Young to members of the community. Such publications were made with malice, mean-spirit, and without justification.

25. Such statements were made intentionally in Defendant Young's individual capacity and were defamatory *per se*.

26. The Plaintiffs have suffered severe reputational loss both professionally and personally for which Defendants Young and DSS are the cause and are liable.

27. As a direct and proximate result of the defamatory conduct, Plaintiffs McKie and Burden have suffered reputational loss, embarrassment, humiliation, and sustained mental anguish. Plaintiffs McKie and Burden are entitled to an award of actual damages against Defendants Young and DSS in an amount to be determined by a jury. Plaintiffs McKie and Burden are further entitled to an award of reasonable attorney's fees and costs for this action.

28. Plaintiffs McKie and Burden are further entitled to an award of punitive damages for the willful and intentional acts of Defendant Young through its agents and employees, and pre-judgment interest.

FOR A THIRD AND SEPARATE CAUSE OF ACTION

(Civil Conspiracy)

Against Defendants Dyretta Fashion and Mary Abney Young, as well as
other unnamed conspirators, in their individual capacities

29. Plaintiffs reallege the foregoing where not inconsistent herewith.

30. That the United States Department of Agriculture is the oversight federal agency responsible for the administration of the grants from which the Plaintiffs are supposed to be paid.

31. Over the last year and a half, the Individual Defendants and others in their individual capacities have combined, conspired and schemed with individuals employed by the United States Department of Agriculture in delaying, obstructing, and otherwise interfering with the approval process for the payment of grant money due the Plaintiffs for the administration of its programs due to their personal desires to manipulate federal and state funds for diversion to other projects at the expense of the Plaintiffs and the prompt processing of Plaintiffs' claims for which they reasonably expected.

32. That the combination of such persons was for the purpose of harming the Plaintiffs and causing special damages and amounts to a civil conspiracy under the laws of the State of South Carolina.

33. That such acts were intentional and were performed outside of the course and scope of the employment of the conspirators and are separate and independent actions resulting in separate and independent damages.

34. As a direct and proximate result of the civil conspiracy referred to herein the Plaintiffs have been required to expend large sums of money for attorneys' fees, accounting assistance, and have lost large amounts of revenue and the ability to continue to perform the work required under the contract to feed the children of South Carolina.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the School of Hope Christian Academy prays for damages against the Defendant South Carolina Department of Social Services for an award of actual damages in an amount to be determined by a jury for breach of its contract with the Plaintiff. Plaintiffs Jacqueline McKie and Eugene Burden, Sr. pray for an award of actual damages against Defendant DSS on their breach of contract and defamation claims in an amount not to exceed thirty million (\$30,000,000), as well as actual and punitive damages against the Defendants Mary Abney Young and Dyretta Fashion in their individual capacities in amounts to be determined by a jury. Plaintiff further prays for such other and further relief as the Court may deem just and proper as well as an award for attorney's fees and costs.

AND FURTHER for an award of actual and punitive damages against the individual defendants named herein for the civil conspiracy claim and the damages caused by the same as

alleged in an amount to be determined by a jury. Plaintiffs also pray for an award of attorneys' fees and costs associated with bringing a claim for civil conspiracy.

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Attorneys for Plaintiffs

August 9, 2019
Columbia, South Carolina

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

The School of Hope Christian Academy,) Civil Action No. 2019-CP-40-04421
 Jacqueline McKie, and Eugene Burden,)
 Sr.,)
)
 Plaintiffs,)

vs.)

ANSWER
 (Jury Trial Demanded)

South Carolina Department of Social)
 Services, Dyretta Fashion, and Mary)
 Abney Young,)
)
 Defendants.)

The defendant, South Carolina Department of Social Services (DSS), subject to the voluntary dismissal of the complaint as to defendants Dyretta Fashion and Mary Abney Young, as well as the third cause of action sounding in civil conspiracy, without waiving any right to remove this action to federal court, answers the complaint of the plaintiffs, The School of Hope Christian Academy, Jacqueline McKie, and Eugene Burden, Sr., herein:

PARTIES AND JURISDICTION

1–3. Admitted upon information and belief.

4. Admitted.

5–6. Answering Paragraphs 5 and 6 of the complaint, DSS only admits the allegations stating that Dyretta Fashion and Mary Abney Young are DSS employees who were involved in DSS’s administration of the Child Adult Care Food Program (CACFP) for the U.S. Department of Agriculture through which the School of Hope Christian Academy was a provider, but DSS denies and demands proof of the remaining allegations in Paragraphs 5 and 6.

FACTUAL ALLEGATIONS

7–8. Answering Paragraphs 7 and 8 of the complaint, DSS asserts no response is required given that the allegations call for legal conclusions. To the extent a response is required, each and every allegation not specifically admitted herein is hereby expressly denied.

9–16. DSS denies the allegations in Paragraphs 9, 10, 11, 12, 13, 14, 15, and 16 of the complaint and demands proof of those allegations.

FOR A FIRST DEFENSE TO A FIRST CAUSE OF ACTION (Breach of Contract)

17. DSS reaffirms and realleges each of the defenses above as fully and effectually as if set forth verbatim herein.

18–20. DSS denies the allegations in Paragraphs 18, 19, and 20 of the complaint and demands proof of those allegations.

FOR A FIRST DEFENSE TO A SECOND CAUSE OF ACTION (Defamation)

21. DSS reaffirms and realleges each of the defenses above as fully and effectually as if set forth verbatim herein.

22–28. DSS denies the allegations in Paragraphs 22, 23, 24, 25, 26, 27, and 28 of the complaint and demands proof of those allegations. Further answering, DSS notes that the complaint has been dismissed as to Mary Abney Young.

FOR A FIRST DEFENSE TO A THIRD CAUSE OF ACTION (Civil Conspiracy)

29. DSS reaffirms and realleges each of the defenses above as fully and effectually as if set forth verbatim herein.

30–34. The plaintiffs dismissed the civil conspiracy cause of action and, therefore, no responses are required to Paragraphs 30, 31, 32, 33, and 34 of the complaint. To the extent responses are required, DSS denies the allegations and demands proof thereof.

35. Except as specifically admitted herein, each and every allegation in the plaintiff's entire complaint, including those raised in the plaintiff's prayer for relief paragraphs, is hereby expressly denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

36. The plaintiffs failed to allege facts sufficient to constitute a cause of action against DSS and, thus, the Complaint should be dismissed, with prejudice, under Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE
(Collateral Estoppel, Res Judicata, Waiver, and Law of the Case)

37. The plaintiffs' claims against DSS are barred, in whole or in part, by the doctrines of collateral estoppel, res judicata, waiver, and law of the case given that they failed to appeal the rulings in the companion actions decided by the administrative law court.

FOR A FOURTH DEFENSE
(Equitable Defenses)

38. The plaintiffs' claims against DSS are barred, in whole or in part, by the doctrines of estoppel, laches, unclean hands, and any other equitable defenses.

FOR A FIFTH DEFENSE
(Plaintiffs' Breach of Contract)

39. The plaintiffs' claims against DSS are barred, in whole or in part, by the plaintiffs' own breach of contract, including but not limited to their failure to comply with the reporting requirements of the CACFP. Further, DSS was legally justified in declining to pay the plaintiffs' claimed reimbursements because the plaintiffs failed to adequately report the necessary data on

meals, snacks, and participants served and, therefore, did not demonstrate they were entitled to reimbursements.

FOR A SIXTH DEFENSE

40. DSS had legal grounds to terminate the plaintiffs' services for the CACFP because the plaintiffs were terminated from another federally funded program by the South Carolina Department of Education. See 7 C.F.R. § 226.6(b)(2)(iii)(A).

FOR A SEVENTH DEFENSE

41. DSS had legal grounds to terminate the plaintiffs' services for the CACFP because the plaintiffs lacked financial viability. See 7 C.F.R. § 226.6(b)(2)(vii)(A).

FOR AN EIGHTH DEFENSE

42. The plaintiffs' claims against DSS are barred, in whole or in part, by the failure to join a necessary party in that DSS could not lawfully reimburse claims until it received approval from the U.S. Department of Agriculture. The plaintiffs declined to name the U.S. Department of Agriculture as a defendant solely in an effort to prevent removal to federal court.

FOR A NINTH DEFENSE

43. To the extent the plaintiffs failed to meet their contractual obligations, the plaintiffs' material breaches operate as a bar to recovery, in whole or in part, from DSS.

FOR A TENTH DEFENSE

(Failure to Mitigate Damages)

44. The plaintiffs' claims against DSS are barred, in whole or in part, by their failure to mitigate damages.

FOR AN ELEVENTH DEFENSE

(Truth)

45. The plaintiffs' claims against DSS are barred by the complete defense of truth.

FOR A TWELFTH DEFENSE

(Privilege)

46. The plaintiffs' claims against DSS fail because any alleged communications were made in furtherance of a common interest and were subject to an absolute, qualified, and/or conditional privilege, and DSS neither exceeded the scope of nor abused that privilege.

FOR A THIRTEENTH DEFENSE

(Good Faith)

47. The plaintiffs' claims against DSS are barred because DSS acted in good faith at all relevant times.

FOR A FOURTEENTH DEFENSE

(Lack of Publication)

48. The lack of publication to a third-party by DSS is a complete bar to the plaintiffs' defamation claims.

FOR A FIFTEENTH DEFENSE

(Lack of Special Harm)

49. The plaintiffs cannot show any special harm or harm to their reputation stemming from any alleged defamatory statements made by DSS.

FOR A SIXTEENTH DEFENSE

(Failure to Exhaust Administrative Remedies)

50. The plaintiffs' claims against DSS are barred, in whole or in part, because they failed to exhaust their administrative remedies and, therefore, the complaint should be dismissed, with prejudice, pursuant to Rule 12(b)(6), SCRCP.

FOR A SEVENTEENTH DEFENSE

(South Carolina Tort Claims Act)

51. The plaintiffs' claims against DSS are subject to the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 through -220, including but not limited to the provisions of

section 15-78-120 that limit the plaintiff's recovery under the Tort Claims Act to the statutory caps and bar punitive damages and attorneys' fees, and the provisions of subsections 15-78-60(1)–(5), (12), and (22)–(23) setting forth exceptions to the waiver of immunity. DSS pleads all the provisions of the South Carolina Tort Claims Act, which provides the plaintiffs' exclusive and sole remedy, as if set forth herein verbatim as a defense to this matter.

FOR AN EIGHTEENTH DEFENSE
(Election of Remedies)

52. The plaintiffs' claims for breach of contract and defamation arise from the same set of allegations and, therefore, the doctrine of election of remedies prohibits the plaintiffs from recovering from DSS under both theories of liability.

FOR A NINETEENTH DEFENSE
(Lack of Proximate Cause)

53. The plaintiffs' claims against DSS are barred because they failed to allege facts demonstrating that any acts or omissions of DSS, or its agents or employees, proximately caused the injuries and damages of which the plaintiffs complain.

FOR A TWENTIETH DEFENSE
(Economic Loss Rule)

54. The plaintiffs' claims against DSS are barred, in whole or in part, by the economic loss rule.

FOR A TWENTY-FIRST DEFENSE

55. DSS has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances in the plaintiffs' complaint. DSS intends to act as best it can to inform itself as to the pertinent facts or prevailing circumstances surrounding any report of injury or damage to the plaintiffs as alleged in the complaint and gives notice of its intent to assert an affirmative defenses that its information gathering process may indicate is

supported by law in fact, including but not limited to a defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. DSS expressly reserves the right to amend its answer to assert any such defenses.

WHEREFORE, having fully answered, DSS prays that plaintiffs' complaint, be dismissed, with costs, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, LLC

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*Attorneys for Defendant South Carolina Department
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Columbia, South Carolina
January 28, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
The School of Hope Christian Academy,	)	Civil Action No. 2019-CP-40-04421
Jacqueline McKie, and Eugene Burden,	)	
Sr.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>DEFENDANT'S MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
South Carolina Department of Social	)	
Services	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Department of Social Services (DSS), by and through the undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas for Richland County at 10:00 A.M. on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting summary judgment in its favor under Rule 56(c), SCRCF.

The basis for this motion is that Plaintiffs School of Hope Christian Academy (School of Hope), Jacqueline McKie, and Eugene Burden, Sr. failed to appeal the administrative law court's rulings¹ that DSS not only acted within the requirements of the applicable U.S. Department of Agriculture (USDA) regulations in dealing with the School of Hope but also had grounds to

¹ The ALC's order in Appeal No. 18-ALJ-18-0378-AP (Order I) affirmed DSS's termination of School of Hope's participation in the Child and Adult Care Food Program (CACFP) because it was terminated from the Summer Food Service Program—another federally funded program—by the South Carolina Department of Education. Order I also affirmed the denial of School of Hope's January–March 2018 reimbursement claims. *See also* Order Gr. Summ. J., *The School of Hope v. S.C. Dep't of Educ.*, 2021-CP-40-01000 (S.C. Ct. Comm. Pl. filed Mar. 8, 2023), *appeal pending*. The ALC's order in Appeal No. 19-ALJ-18-0046-AP (Order II) affirmed DSS's termination of School of Hope's participation in CACFP on the ground that it was not financially viable.

terminate its contract—due to Plaintiffs’ breaches and failures to comply with contractual and legal requirements—and properly denied the School of Hope’s reimbursement claims for January through March 2018. *See* S.C. Code Ann. § 1-23-380 (providing for judicial appellate review upon exhaustion of administrative remedies).

Plaintiffs therefore waived their right to contest the ALC’s findings, and those findings are now the law of the case. *See Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) (“Waiver is a voluntary and intentional abandonment or relinquishment of a known right.”); *Shirley Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case.”); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”); *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 556, 684 S.E.2d 779, 783 (Ct. App. 2009) (“The doctrine of collateral estoppel prevents the relitigation of issues . . . necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same.”).

Further, because Plaintiffs breached the contract with DSS, they are not entitled to reimbursement for other 2018 claims as a matter of law. As for any 2018 reimbursement claims that were denied or have already been paid by DSS, Plaintiffs failed to exhaust their administrative remedies and have waived their right to challenge either the denial or the payment. *See Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010). Yet Plaintiffs curiously contend they “have complied with all administrative prerequisites.” Pls.’ Compl. at ¶ 14. However, Plaintiffs never appealed other denials or payments within the Department, to the administrative law court, or our appellate courts. Thus, contrary to their representations to this Court, Plaintiffs

failed to exhaust the exclusive administrative remedies—as delineated in Article IV, Section (B)(2) of the agreement with DSS—on the remaining 2018 reimbursement claims.

Turning to Plaintiffs’ defamation claim, based on the unappealed findings of the ALC, DSS also—as a matter of law—spoke truthfully with other state and federal governmental agencies. *See Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 133 (1999) (noting “[t]he tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant’s communications to others of a *false message* about the plaintiff”); *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976) (observing that because the gravamen of a defamation claim is falsity, truth is an absolute defense). Indeed, this Court recently found in another case involving Plaintiffs that the same statements Plaintiffs allege are defamatory here are in fact true. *See* Order Gr. Summ. J., *The School of Hope v. S.C. Dep’t of Educ.*, 2021-CP-40-01000 (S.C. Ct. Comm. Pl. filed Mar. 8, 2023), *appeal pending*; *see also Carolina Renewal, Inc.*, 385 S.C. at 556, 684 S.E.2d at 783 (stating “collateral estoppel prevents the relitigation of issues . . . necessarily determined in a former proceeding”).

And DSS, as well as its employees, had a legal duty to report these matters to the USDA and refer them to law enforcement upon learning of Plaintiffs’ actions. *See* 7 C.F.R. § 225.10; 7 C.F.R. § 225.12(b). Plaintiffs were on notice of this too. *See* 7 C.F.R. § 225.6(a)(4)(i). To that end, all statements Plaintiffs reference in the complaint—in addition to being required by law—were subject to an absolute or qualified privilege. *See Swinton Creek Nursery*, 334 S.C. at 484, 514 S.E.2d at 134. Plaintiffs do not and cannot allege to the contrary. And, of course, “pointed criticisms” and truthful statements are not the gravamen of a defamation claim. *See Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 471, 629 S.E.2d 653, 667 (2006).

In all events, Plaintiffs cannot move forward on their defamation claim because the Court already dismissed—with Plaintiffs’ consent and with prejudice—the individual DSS employees as defendants in this action. Plaintiffs also executed a release of the individual defendants regarding any and all claims arising out of the allegations in the complaint, including defamation. Further, under the South Carolina Tort Claims Act, DSS cannot be held liable for the defamatory statements allegedly made by its employees who were already dismissed. *See* S.C. Code Ann. § 15-78-60(17) (stating a “governmental entity is not liable for a loss resulting from . . . employee conduct outside the scope of his official duties or which constitutes . . . actual malice”).² Nor can Plaintiffs add new employees at this late stage—those claims are barred by the statute of limitations. *See* S.C. Code Ann. § 15-3-550(1) (imposing a 2-year statute of limitations on libel and slander claims).

The Court should therefore grant summary judgment in favor of DSS on Plaintiffs’ claims for breach of contract and defamation because no genuine issue of material fact exists and DSS is entitled to judgment as a matter of law. In support of this motion, DSS will rely on a memorandum of law as well as any other documents that may be submitted prior to or at the time of the hearing in this matter. The undersigned certifies that consultation with opposing counsel prior to the filing of this motion was not required or would have served no useful purpose. *See* Rule 11, SCRC.

(Signature page to follow)

² Plaintiffs’ defamation claim here requires proof of actual malice. *Gause v. Doe*, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (Ct. App. 1994).

Respectfully submitted,

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*Counsel for Defendant South Carolina
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Columbia, South Carolina
May 9, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
The School of Hope Christian Academy,	)	Civil Action No. 2022-CP-40-03390
Jacqueline McKie, and Eugene Burden,	)	
Sr.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>DEFENDANT’S MEMORANDUM IN</u>
	)	<u>SUPPORT OF MOTION FOR</u>
South Carolina Department of Social	)	<u>SUMMARY JUDGMENT</u>
Services	)	
	)	
Defendant.	)	
	)	

Defendant South Carolina Department of Social Services (DSS) submits this memorandum in support of its motion for summary judgment. Plaintiffs School of Hope Christian Academy (School of Hope), Jacqueline McKie, and Eugene Burden Sr. failed to appeal prior administrative law court (ALC) orders finding DSS not only acted consistent with applicable U.S. Department of Agriculture (USDA) regulations in dealing with School of Hope but also had grounds to terminate its contract—due to Plaintiffs’ breaches and failures to comply with contractual and legal requirements—and deny School of Hope’s reimbursement claims for January through March 2018. Plaintiffs thus waived the right to contest the ALC’s findings, those findings are now the law of the case, and Plaintiffs are barred from relitigating them here. And Plaintiffs cannot sue DSS for alleged false statements made by employees who are not before the Court. For these reasons and those below, DSS is entitled to judgment as a matter of law. Rule 56(c), SCRCF.

BACKGROUND

On February 13, 2012, School of Hope entered into a contract with DSS to participate in the Child and Adult Care Food Program (CACFP), which is funded by the USDA and administered

in South Carolina by DSS. *See* **Ex. A**, Order, Appeal No. 18-ALJ-18-0378-AP (Order I); *see also* **Ex. B**, Contract. Through the CACFP, School of Hope was to provide meals in after-school care programs within South Carolina. *Id.* After School of Hope—or any participant in the CACFP—serves meals through the CACFP, School of Hope submits claims to DSS to be reimbursed for meals served according to the reported meal count. **Ex. B**, at 2.

Pursuant to the contract, DSS may terminate School of Hope’s agreement to participate in the CACFP if and when it determines School of Hope “has materially breached, or otherwise failed, to comply with its obligations hereunder.” **Ex. B**, at 7. Among other requirements, the contract requires School of Hope to comply with and meet all responsibilities and requirements set forth in applicable laws and regulations, including federal regulations governing the CACFP. *Id.* at 2, 7, & 10; *see also* 7 C.F.R. § 226.

In 2018, DSS learned of circumstances showing School of Hope was not in compliance with the federal regulations or the contract and, thus, should be terminated from participation in the CACFP, as well as establishing that School of Hope’s January through March 2018 reimbursement claims should be denied. These circumstances led to two “Serious Deficiency Notices,” two separate requests for administrative hearings, and two separate appeals to the ALC.

Appeal I

From 2015 to 2018, along with participating in the CACFP, School of Hope participated in the Summer Food Service Program (SFSP), which is funded by the USDA but administered in South Carolina by the Department of Education. **Ex. A**, at 2. In February 2018, the Department of Education advised School of Hope that it was terminating School of Hope’s participation in the SFSP and withholding School of Hope’s August 2017 reimbursement claim “because of concerns

regarding the School’s administrative, operational, and financial capacities to successfully operate the SFSP.” *Id.*

When DSS became aware of School of Hope’s situation in the SFSP, DSS issued a “Serious Deficiency Notice” to School of Hope on February 22, 2018, advising School of Hope it was deficient in its operations under the CACFP because of its termination by the Department of Education from participation in the SFSP—another federally funded program. *Id.* After an extension, DSS gave School of Hope until May 23, 2018, to correct the deficiency by providing supporting documentation showing it had not been terminated for cause from the SFSP. *Id.* Ultimately, School of Hope could not provide sufficient documentation on that point because it had indeed been terminated from participation in the SFSP for cause.¹

On May 24, 2018, DSS proposed termination of School of Hope’s agreement for participation in the CACFP and disqualification of School of Hope—along with its executive director and board chairman (individual Plaintiffs here)—from future participation in the CACFP. **Ex. A**, at 2. DSS based this decision on Title 7, Subsection 226.6(c)(3)(ii)(S) of the Code of Federal Regulations, which provides an agreement for participation in the CACFP may be terminated if “the institution or any of the institution’s principals have been declared ineligible for any other publicly funded program by reason of violating that program’s requirements.”

Further, on June 1, 2018, DSS denied School of Hope’s January through March 2018 reimbursement claims because School of Hope was not able to provide sufficient documentation to substantiate the claims. **Ex. A**, at 3.

¹ See **Ex. C**, Order Gr. Summ. J., *School of Hope v. S.C. Dep’t of Educ.*, 2021-CP-40-01000 (S.C. Ct. Comm. Pl. filed Mar. 8, 2023) (finding the law of the case was that School of Hope breached its contract with the Department of Education for participation in the SFSP), *appeal pending*.

School of Hope requested an Administrative Hearing to review the termination and the reimbursement denial, and a hearing was held on July 30, 2018. The hearing officer issued a Final Administrative Order on September 20, 2018, upholding DSS's termination of School of Hope and its principals from participation in the CACFP and its denial of School of Hope's January through March 2018 reimbursement claims. School of Hope appealed again, and the ALC affirmed the Final Administrative Order in Order I on October 4, 2019. **Ex. A.**

In Order I, the ALC found there was substantial evidence that School of Hope "should be terminated from participation in the CACFP based upon termination from another federally funded feeding program," the SFSP administered by the Department of Education. **Ex. A**, at 5. Because School of Hope rescinded its appeal of its termination from the SFSP and presented no evidence the Department of Education's termination was improper, the ALC found the Department of Education's "unappealed final agency decision terminating the School from the SFSP" was sufficient evidence on which DSS could base its termination of Plaintiffs from participation in the CACFP. *Id.* at 6–7.

The ALC also found there was substantial evidence to support DSS's decision to deny School of Hope's January through March 2018 reimbursement claims. *Id.* at 7. Specifically, the ALC stated "[t]here were multiple instances (too many to include) of the School overstating its claims including one instance where the claim was overstated by 994 meals. There were numerous other problems with the School's program and recordkeeping." *Id.* at 8. School of Hope's director even conceded there were discrepancies. *Id.* As to the reimbursement claims, the ALC concluded, "[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law." *Id.* at 9. School of Hope did not appeal any findings in Order I.

Appeal II

In December 2017 or January 2018, one of School of Hope’s food distributors—The Merchants Company d/b/a Merchants Food Service of South Carolina—advised DSS that School of Hope had an outstanding debt of \$446,772.12. **Ex. D**, Order, Appeal No. 19-ALJ-18-0046-AP (Order II). In fact, DSS found out that, in October 2017, School of Hope’s executive director, Plaintiff Jacqueline McKie (now Burden), executed a Confession of Judgment for that amount in favor of Merchant Food. *Id.* at 2. This large debt concerned DSS because it was the third complaint within two years DSS had received from School of Hope’s vendors, and it established School of Hope’s debt far exceeded any outstanding reimbursement claims with DSS or the Department of Education. *Id.*

On June 4, 2018, DSS issued another “Serious Deficiency Notice” to School of Hope, requesting School of Hope complete a “Corrective Action Plan” to include, among other things, “documentation that it was financially viable and maintained fiscal accountability.” *Id.* School of Hope submitted a Plan, but DSS deemed it unsatisfactory. DSS notified School of Hope on July 21, 2018, proposing termination and disqualification of School of Hope and its executive director and board chairman (individual Plaintiffs) effective August 9, 2018. *Id.* DSS based this decision on School of Hope’s failure to have management controls in place to ensure financial integrity and accountability for funds received and dispersed, as well as its failure to explain how School of Hope would be satisfied. *Id.* at 2–3. Pursuant to Title 7, Subsection 226.6(c)(3)(ii)(C), an agreement for participation in the CACFP may be terminated if the participant is not operating in compliance with the performance standards in Subsections 226.6(b)(1)(xviii) and (b)(2)(vii), which require “financial viability and financial management,” “administrative capability,” and “program accountability.”

School of Hope requested an Administrative Hearing to review this termination, and a hearing was held on November 20, 2018. The hearing officer issued a Final Administrative Order on January 25, 2019, upholding DSS's termination of School of Hope and its principals from participation in the CACFP. School of Hope appealed again, and the ALC affirmed this Final Administrative Order in Order II on October 11, 2019. **Ex. D.**

In Order II, the ALC found substantial evidence supported the finding that School of Hope "is not financially viable and that the parties failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed." *Id.* at 7. Specifically, the ALC found that there were periods during which School of Hope could not pay its employees, School of Hope had satisfied only \$100,000.00 of its debt to Merchants Food in over a year, and School of Hope had at least \$200,000.00 in debts owed to other vendors. *Id.* at 8.

Importantly, the ALC stated the purpose of the hearing was for School of Hope to show it was in compliance with federal regulations and performance standards, yet it "was unable to do so, and substantial evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability." *Id.* And the ALC specifically rejected School of Hope's argument that DSS caused its debts by not reimbursing claims in a timely manner. *Id.* at 9. Simply put, the ALC found that "no testimony was rendered as to how the School planned to resolve its outstanding financial obligations as well as ensure its ongoing financial viability." *Id.* Order II affirmed DSS's decision to terminate School of Hope's agreement to participate in the CACFP. School of Hope did not appeal any findings in Order II.

This Lawsuit

Instead of exhausting their administrative remedies, Plaintiffs filed a lawsuit in this Court on August 9, 2019. Defendants moved to dismiss on September 3, 2019. While the motion was

pending, the parties partially resolved the case. As relevant here, the claims against Defendants Dyretta Fashion and Mary Abney Young—two DSS employees—were dismissed with prejudice. The parties then engaged in extensive discovery. Following an unsuccessful mediation, Plaintiffs requested—and Defendants consented—to dismiss the case pursuant to Rule 40(j), SCRCP. The Court issued an order on July 9, 2021, dismissing the case and striking it from the active roster. At Plaintiffs’ request, the Court restored the case to the general docket on July 5, 2022. The next day, Plaintiffs’ initial counsel moved to withdraw as counsel. On September 26, 2022, the Court issued an order relieving counsel. In the interim, even though they had hired new counsel, Plaintiffs did nothing to prosecute the case. *Cf.* Rule 41(b), SCRCP. Defendants moved for summary judgment on May 24, 2023. This memorandum in support of that motion now follows.

STANDARD

The purpose of summary judgment is “to expedite disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In determining whether a genuine issue of fact exists, a court must view the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). But when plain and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted if the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). “[I]t

is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

I. Because Plaintiffs waived their right to challenge Orders I and II, Plaintiffs’ breach of contract claim is barred by the law of the case, collateral estoppel, and res judicata.

Because Plaintiffs failed to appeal the ALC’s 2019 Orders, **Exs. A & D**, those unappealed rulings are now the law of the case. *See Shirley Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case.”). In Orders I and II, the ALC presented lengthy and thorough analyses of School of Hope’s failures to comply with the contract and the federal regulations, affirming DSS’s ability to terminate the contract and School of Hope’s participation in the CACFP.

For instance, Order I explained the Department of Education’s “unappealed final agency decision terminating the School from the SFSP” was sufficient evidence on which DSS could base its termination of Plaintiffs’ contract for participation in the CACFP. **Ex. A**, at 6–7. Since then, Plaintiffs tried to collaterally attack the Department of Education’s termination of their contract for participation in the SFSP, but this Court rejected that challenge and granted summary judgment in favor of the Department of Education. *See Ex. C*, at 6–7 (stating “Plaintiffs breached the contract with the Department by failing to comply with their contractual duties or state and federal law” and finding “the law-of-the-case doctrine foreclose[d] [their] breach of contract claim against the Department”). And Order II found DSS was entitled to terminate Plaintiffs’ agreement for participation in the CACFP because “substantial evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability.” **Ex. D**, at 8. Both Orders upheld DSS’s termination of their contract for participation in the CACFP.

Plaintiffs, however, failed to appeal either Order to our appellate courts. *See* S.C. Code Ann. § 1-23-610(A)(1) (providing an appeal from the ALC is to the court of appeals). They have waived their right to challenge those findings. *See Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) (“Waiver is a voluntary and intentional abandonment or relinquishment of a known right.”). The law of the case bars Plaintiffs’ allegations that DSS breached its contract with them. *Cf. Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981) (holding a final decision by the State Grievance Committee not appealed to the courts became the law of the case).

Further, because the ALC’s Orders establish that Plaintiffs were in fact the ones who breached the contract with DSS, Plaintiffs’ claims are barred by collateral estoppel and res judicata. “The doctrine of collateral estoppel prevents the relitigation of issues . . . necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 556, 684 S.E.2d 779, 783 (Ct. App. 2009). Our appellate courts have repeatedly held the doctrine of collateral estoppel applies to “the decision of an administrative tribunal [and] precludes the relitigation of the issues addressed by that tribunal in a collateral action.” *Bennett v. S.C. Dep’t of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (emphasis omitted); *see also Crosby v. Prysmian Commc’ns Cables & Sys. USA, LLC*, 397 S.C. 101, 108, 723 S.E.2d 813, 817 (Ct. App. 2012) (“Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals.”). It also applies to unappealed decisions of the ALC.

Here, the ALC necessarily determined Plaintiffs breached their contract with DSS by failing to comply with the duties imposed on them by the contract and federal regulations. Plaintiffs’ claim for breach of contract against DSS rests on the notion that they “fully performed” their duties under the contract “in accordance with all of the requirements and conditions thereof.”

Pls.’ Compl. at ¶ 18. But the ALC concluded the exact opposite in Orders I and II. Plaintiffs failed to comply with the CACFP requirements in Title 7, Subsection 226.6 because they were terminated from another federally funded program and could not meet the required performance standards due to not being financially viable. Thus, Plaintiffs’ failures to comply with the contract and DSS’s entitlement to terminate the contract were previously litigated.

Under the related but slightly different doctrine of res judicata, Plaintiffs’ claims are also barred. “Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Res judicata applies when there is an “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011) (citation omitted). Here, the parties—Plaintiffs and DSS—are identical with respect to claims made against DSS. Plaintiffs’ breach of contract claim directly involves and arises out of DSS’s termination of Plaintiffs’ contract to participate in the CACFP for failure to comply with the contract and the federal regulations. This is the exact subject matter that was at issue before the ALC and ruled on in Orders I and II. And Plaintiffs did not appeal either Order. Thus, res judicata bars Plaintiffs’ claims.

Plaintiffs likewise failed to appeal the ALC’s finding in Order I that DSS properly denied School of Hope’s January through March 2018 reimbursement claims. As to the reimbursement claims, the ALC in Order I specifically found, “[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law.” **Ex. A**, at 9. Therefore, even if Plaintiffs had a viable breach of contract claim (they don’t), Plaintiffs cannot claim damages from a denial of

reimbursement claims from January through March 2018 under the same preclusive doctrines explained above. *But see* Pls.’ Compl. at ¶ 12 (alleging damages from denial of reimbursement claims from “February 1, 2018 through September 30, 2018”).

Because Plaintiffs’ claim for breach of contract involves the same parties, issue, and subject matter adjudicated by the ALC, and because the findings in Orders I and II are the law of the case, the Court should dismiss the claim based on the doctrines of collateral estoppel and res judicata.

II. Plaintiffs failed to exhaust their administrative remedies as to the denial or payment of any other 2018 reimbursement claims.

For the reasons above, Plaintiffs are not entitled to any reimbursement for claims from January through March 2018. As for any other 2018 reimbursement claims, Plaintiffs are not entitled to any further reimbursement because they did not exhaust their administrative remedies. Instead, Plaintiffs simply filed this lawsuit. Therefore, they have waived their right to challenge any denial of other 2018 reimbursement claims. *See Parker*, 313 S.C. at 487, 443 S.E.2d at 391.

The doctrine of exhaustion of administrative remedies “requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.” *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) (quoting 2 AM. JUR. 2D *Administrative Law* § 595 (1962)); *see also Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 176–77, 551 S.E.2d 263, 273 (2001) (finding dismissal proper when plaintiff was “required to exhaust administrative remedies as a matter of law” because agency had exclusive jurisdiction).

Here, Plaintiffs curiously contend they “complied with all administrative prerequisites.” Pls.’ Compl. at ¶ 14. They did not. Article IV, Section (B)(2) of the contract with DSS delineates exactly what administrative remedies must be exhausted—citing section 1-23-380 of the South Carolina Code—to challenge any claim reimbursement disallowances. **Ex. B**, at 5. But Plaintiffs

never tried any of those administrative remedies to challenge partial payments or denials from April, May, August, and September 2018 reimbursement claims. Nor did they appeal those denials or payments to the ALC or our appellate courts. Because the ALC had exclusive jurisdiction to hear those claims, Plaintiffs are barred from bringing them in this Court. *See Berry v. S.C. Dep't of Health & Envtl. Control*, 402 S.C. 358, 364-65, 742 S.E.2d 2, 5 (2013) (holding “circuit court complaint involved only the administrative matter, which falls squarely within the ambit of the APA,” and under “the APA, the ALC had exclusive jurisdiction to entertain Appellants' narrow challenge of the Enforcement Order and the circuit court lacked subject matter jurisdiction to hear Appellants' claim”).

Contrary to their representations, Plaintiffs failed to exhaust the exclusive administrative remedies on the remaining 2018 reimbursement claims. So DSS is entitled to judgment as a matter of law on Plaintiffs' breach of contract claim based on the remaining 2018 reimbursement claims.

III. Plaintiffs fail to state a valid claim for defamation against DSS.

At the outset, as with the breach of contract claim, Plaintiffs are barred from relitigating the defamation claim in circuit court because the same underlying allegations were ruled upon by the ALJ in the unappealed Orders which are now the law of the case. *E.g., Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Parker*, 313 S.C. at 487, 443 S.E.2d at 391; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231; *Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109. The doctrines of collateral estoppel and res judicata bar Plaintiffs' defamation claim because the issue of Plaintiffs' mismanagement and failures to comply with federal regulations while participating in the Program was extensively litigated and resulting in an adverse ruling against them. *See Exs. A & D*. Further, Plaintiffs' defamation claim fails because this Court previously found in an eerily

similar case Plaintiffs brought against the Department of Education that the exact same statements were true. *See Ex. C*, at 8–10.

In any event, “[t]he tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a *false message* about the plaintiff.” *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, 133 (1999) (emphasis added). Because the gravamen of a defamation claim is falsity, truth is an absolute defense. *See Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). Based on the unappealed findings of the ALC and this Court’s prior order in favor of the Department of Education, if it made any statements at all, DSS—as a matter of law—spoke truthfully with other state and federal governmental agencies.

Here, Plaintiffs first allege persons acting on behalf of DSS—who are either unnamed or no longer before this Court—made statements “which implied” Plaintiff Jacqueline McKie Burden “was an incompetent manager.” Pls.’ Compl. at ¶ 22. But “pointed criticisms” of individual persons find no refuge in a claim for defamation. *See Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 471, 629 S.E.2d 653, 667 (2006); *see also Ex. C*, at 8. Plaintiffs next allege persons acting on behalf of DSS made statements that “funds have not been properly applied, and that Plaintiffs McKie and Burden have been guilty of violating state and federal laws.” Pls.’ Compl. at ¶ 22. They further allege DSS denied reimbursement claims as “fraudulent” and referred Plaintiffs “for criminal investigation . . . for mishandling of funds with full knowledge of the falsity of such claims.”² *Id.*

² Even Plaintiff McKie admitted in her deposition that School of Hope was under investigation by the FBI at that time. *Ex. E*, at 126:14–16. As did Plaintiff Burden. *Ex. F*, at 29:17–30:9.

We know from the two *unappealed* ALC Orders, however, that Plaintiffs did in fact make overstated and unsupported claims for reimbursement, breached DSS's contract, and failed to comply with state and federal law in doing so. *See Ex. A*, at 5–6 (finding Plaintiffs had been terminated from the SFSP by the Department of Education because it violated that program's requirements); *id.* at 9 (finding “[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law”); *Ex. D*, at 7 (finding School of Hope “is not financially viable and . . . [Plaintiffs] failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed” which violated the CACFP federal regulations).

Another member of this Court also found that to be true as it relates to Plaintiffs' former dealings and contract with the Department of Education under the SFSP. *See Ex. C*, at 9 (finding “the law of the case establishes that Plaintiffs did make overstated and unsupported claims for reimbursement, breached the Department [of Education's] contract, and violated state and federal law in doing so”); Rule 201(b), SCRE (allowing a court to take judicial notice). Therefore, despite Plaintiffs' best efforts, they cannot claim the Department made any *false* allegations against them, and their defamation claim fails as a matter of law. *Kennedy v. Richland Cnty. Sch. Dist. Two*, 428 S.C. 98, 114, 833 S.E.2d 414, 423 (Ct. App. 2019) (noting a plaintiff must prove “a false and defamatory statement was made” to prove defamation).

Even if Plaintiffs could somehow prove the falsity of the allegedly defamatory statements, all statements Plaintiffs refer to in the Complaint were required by law and subject to an absolute or qualified privilege. “Under this defense, 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.” *Swinton Creek Nursery*, 334 S.C. at 484, 514 S.E.2d at 134.

In considering whether communication is subject to an absolute or qualified privilege, a court must look to the relationship between the parties and determine whether both the speaker and the person to whom the communication is made have a common interest. *See Bell v. Bank of Abbeville*, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (1946). If they do, then “every communication honestly made, . . . to protect such common interest, is privileged” if the communication is “made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.” *Id.* (citations omitted); *see also Kunst v. Loree*, 424 S.C. 24, 42, 817 S.E.2d 295, 304 (Ct. App. 2018) (“A defendant may assert a conditional or qualified privilege as an affirmative defense in a defamation action when the defamation is made in good faith and with proper motives.”).

DSS, as well as its employees, had a legal duty to report matters relating to the administration of the CACFP to the USDA and refer these matters to law enforcement upon learning of Plaintiffs’ actions. *See* 7 C.F.R. § 226.6(c)(3)(iii); 7 C.F.R. § 226.14(a). Plaintiffs were also on notice of the potential criminal penalties for fraud during their participation of the CACFP. *See* 7 C.F.R. § 226.25(e). To that end, DSS and the USDA had a common interest in Plaintiffs’ failure to comply with the CACFP and contract requirements, and any reports from DSS to the USDA were made in good faith and to comply with its legal duties under the federal regulations. Plaintiffs do not and cannot allege to the contrary.

Finally, Plaintiffs cannot move forward with their defamation claim because the Court already dismissed—by consent and with prejudice—the individual DSS employees as defendants

in this action.³ Plaintiffs also executed a release of the individual defendants regarding any and all claims arising out of the allegations in the complaint, including defamation. Under the South Carolina Tort Claims Act, DSS cannot be held liable for defamatory statements allegedly made by its employees who were already dismissed. *See* S.C. Code Ann. § 15-78-60(17) (stating a “governmental entity is not liable for a loss resulting from . . . employee conduct outside the scope of his official duties or which constitutes . . . actual malice”).

Plaintiffs’ defamation claim here requires proof of actual malice because they are limited public figures for purposes of their participation in the CACFP and the SFSP—both federally funded programs. *See Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 474, 629 S.E.2d 653, 669 (2006) (stating a person is a limited public figure if “(1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation” (citing *Foretich v. Capital Cities/ABC*, 37 F.3d 1541, 1553 (4th Cir. 1994))).

In 2018, Plaintiffs had an audience with members of the General Assembly—to which DSS’s employees were summoned—regarding their claim reimbursement disputes multiple times. Plaintiff McKie admitted as much. *See Ex. E*, at 91:12–93:22. Further, by virtue of their voluntary participation in the CACFP and the SFSP, they received public funds, which is often considered a public issue. *See generally Sloan v. Greenville Cnty.*, 356 S.C. 531, 554, 590 S.E.2d 338, 350 (Ct. App. 2003) (observing “[t]here is a keen public interest in the stewardship of public funds”). And

³ And Plaintiffs cannot add new employees at this late stage because those claims are barred by the statute of limitations. *See* S.C. Code Ann. § 15-3-550(1) (imposing 2-year statute of limitations on libel and slander claims).

each alleged defamatory statement occurred while Plaintiffs still participated in the CACFP or shortly after their termination. Thus, Plaintiffs meet the test for being limited public figures, and they must prove actual malice to establish defamation here. It seems Plaintiffs are aware of this requirement too. Pls.' Compl. at ¶ 23 (alleging the purported defamatory statements were "defamatory, willful, intentional and made with actual malice to harm the Plaintiffs and their reputation as well as to cause them financial loss"). Yet Plaintiffs do not, and cannot, introduce a shred of evidence to support a finding of actual malice here.

Even when viewing the facts in a light most favorable to Plaintiffs, they failed as a matter of law to state a valid claim for defamation against DSS under any theory.

CONCLUSION

The Court should grant summary judgment in favor of DSS on Plaintiffs' claims for breach of contract and defamation because no genuine issue of material fact exists, and DSS is entitled to judgment as a matter of law.

Respectfully submitted,

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Columbia, South Carolina
 January 17, 2024

EXHIBIT A

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jacqueline McKie and Eugene Burden,

Docket No. 18-ALJ-18-0378-AP

Appellants,

vs.

ORDER

South Carolina Department of Social
Services,

Respondent.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed on October 15, 2018, by Jacqueline McKie and Eugene Burden (Appellants). Appellants seek review of a Final Administrative Order issued by the South Carolina Department of Social Services (Department) terminating the School of Hope Christian Academy's (School) agreement to participate in the Child and Adult Care Food Program (CACFP); disqualifying the School and its principals from future participation in the CACFP; and denying reimbursement for claims submitted for the months of January through March of 2018. The Court has jurisdiction over this matter pursuant to Sections 1-23-600 (D) and 43-5-150. S.C. Code Ann. § 1-23-600 (Supp. 2018); and S.C. Code Ann. § 43-5-150 (2015). After reviewing the parties' briefs, the record, and the law, the Department's order is affirmed.

BACKGROUND

The Child and Adult Care Food Program (CACFP) is a federal nutrition assistance program which is administered by the Department of Social Services. The United States Department of Agriculture is the federal agency that both funds and governs CACFP and has codified a set of program regulations found at 7 C.F.R. Part 226. The Department administers the CACFP in this state and must comply with federal regulations and program instructions in administering the program. The School is a sponsoring organization that provides CACFP in several after-school care programs in South Carolina. The CACFP reimburses institutions such as the School for meals served. Participatory institutions such as the School must first meet federal requirements and maintain performance standards including those relating to financial viability.

FILED

OCT 04 2019

The South Carolina Department of Education administers the Summer Food Service Program in South Carolina (SFSP). The SFSP is a federally-funded program for states to conduct nonprofit food service programs for children during the summer and at other approved times. The primary purpose of the SFSP is to provide service to children from needy areas during periods when schools are closed for vacation. The United States Department of Agriculture both funds and governs the SFSP and has a codified set of program regulations to which all must adhere.

The Department's director of the CACFP received a copy of a letter dated February 14, 2018 that had been sent by the South Carolina Department of Education to Jacqueline McKie, the director of the School. The letter of February 14th advised the School of its termination from the SFSP because of concerns regarding the School's administrative, operational, and financial capacities to successfully operate the SFSP. The School appealed this termination.¹

On February 22, 2018, the Department issued a "Serious Deficiency Notice" advising the School that it was seriously deficient in operating the CACFP based upon its termination from another federally funded program (here, the SFSP). The letter was sent to the School's executive director, and Eugene Burden, the School's board chairman, because of their responsibility for the overall management of the School. The Department requested corrective action by March 12, 2018 to avoid the School's termination from the CACFP. The deadline was later extended to May 23, 2018. The Department requested supporting documentation that the School had not been terminated for cause from the SFSP and was otherwise in compliance with the SFSP.

On May 23, 2018, the School submitted its CACFP "Corrective Action Plan" to the Department denying non-compliance with the SFSP. On May 24, 2018, the Department advised that the Corrective Action Plan was unacceptable as there was insufficient documentation to indicate that the School was in compliance with the SFSP or that it had been terminated from the SFSP for anything other than cause. The Department sent the School a "Proposed Termination and Proposed Disqualification" on May 24, 2018 proposing the following action effective June 13, 2018: (1) termination of the School's agreement to participate in the CACFP; (2) disqualification of the School from future participation in CACFP; and (3) disqualification of the School's executive director and board chairman from future CACFP participation.

¹ During a conference call on March 28, 2018, the School withdrew its appeal as to its termination from the SFSP. On March 31, 2018, an administrative order was issued confirming the School's withdrawal of its appeal of the School's termination as a sponsor for the SFSP.

Aside from the Department's termination of the School from the CACFP program, the Department was not able to ascertain the correct amount for some of the School's claims for reimbursement. On June 1, 2018, the Department advised the School that the School's request for reimbursement for meals served over a period from January to March of 2018 were being denied because it failed to provide sufficient validating documentation. Despite technical assistance from the Department as to some of the claims, the School was not only not able to provide the requested documentation (e.g., meal count records, attendance records, menus, delivery tickets, and cost documentation) to substantiate those claims but also provided conflicting information. As an example, the meal counts provided by the School conflicted with attendance records for certain food service locations, and in some instances, it appeared that attendance records had been used in lieu of meal counts. The School blamed its inability to provide the requested documentation on the United States Department of Agriculture's seizure of many of the School's records on March 21, 2018 and stated that the meal count and attendance records had previously been acceptable for validating requests for reimbursement.

On June 8, 2018, the School, and its executive director and board chairman submitted a request for a Fair Hearing to the Department's Office of Administrative Hearings. On July 30, 2018, an evidentiary hearing was held. Appellants participated in the hearing and were represented by counsel. Mary Abney-Young, the director of the Department's CACFP, also testified and was represented by counsel. On September 20, 2018, the Department issued a Final Administrative Order (Order) upholding the Department's termination of the School and its principals from participating in CACFP, as well as the Department's denial of the School's claims for reimbursement for January through March of 2018. This appeal followed.

ISSUES

Whether substantial evidence supports the Department's (1) termination and future disqualification of the School, its executive director, and its board chairman from participation in the Child and Adult Care Food Program; and (2) denial of the School's claims for reimbursement.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). This court reviews decisions of the Department in an appellate capacity

and is “restricted to reviewing the decision[s] below.” *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code, when acting in an appellate capacity, the court must apply the criteria of Section 1-23-380(5) which states:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2018).

This section requires the ALC to apply the “substantial evidence” rule. *See e.g., Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n*, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two inconsistent conclusions from the evidence does not mean that the agency’s conclusion was unsupported by substantial evidence. *Id.*

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (citing *Kearse v. State Health and Human Serv. Fin. Comm’n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency action has the burden of proving convincingly that the agency’s decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citing *Hamm v. AT&T*, 302 S.C. 210, 394 S.E.2d 842 (1994)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citing *Gibson v. Florence Country Club*, 282

S.C. 384, 386, 318 S.E.2d 365, 367 (1984)).

DISCUSSION

A. Substantial Evidence Supports the Department's decisions to terminate the School and its principals from participating in the CACFP, and disqualify them from future participation

The administrative responsibilities of each state agency with regard to the CACFP are set forth in federal regulations. *See* 7 C.F.R. § 226.6. 7 C.F.R. § 226.6(c)(3) sets forth the process for terminating a participating institution's participation in the CACFP. "If the State agency determines that a participating institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section, the State agency must initiate action to terminate the agreement of a participating institution and initiate action to disqualify the institution and any responsible principals and responsible individuals." 7 C.F.R. § 226.6(c)(3)(i). Serious deficiencies for which program participation may be terminated include the "The fact the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements." 7 C.F.R. § 226.6(c)(3)(ii)(S). However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed; this is not the case in this matter.

Here, substantial evidence exists in the record to support the hearing officer's conclusion that the School and its principals should be terminated from participation in the CACFP based upon termination from another federally funded feeding program. In February of 2018, the Department received notice from the South Carolina Department of Education advising that the School was being terminated from the SFSP because of the South Carolina Department of Education's inability to validate claims given "the high volume of errors, omissions, inconsistencies, and duplicate documents identified during the onsite visitation on September 20, 2017" and "the systemic considerations regarding [the School's] administrative, operational, and financial capacities to successfully operate the SFSP Program."

Shortly after receiving this notice, the Department sent a letter to the School notifying it of the serious deficiency as to the CACFP and requesting a Corrective Action Plan addressing it. The serious deficiency that was set forth in the communication was the School's termination from another federally funded program. The letter advised the School that its failure to address and correct the deficiency would result in its termination and disqualification from the CACFP. The

School was originally given until March 12, 2018 to respond but the Department granted the School a ninety (90) day extension, the maximum amount allowed by federal law. *See* 7 C.F.R. § 226.6(c)(3)(iii)(E)(4)(i) ([E]xcept as noted in this paragraph (c)(4), the State agency is prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice.”).

During the time that the Department's serious deficiency process was pending, the School withdrew its appeal of the Department of Education's termination of the School from the SFSP. An administrative order from the Department of Education dated March 31, 2018 states, "Due to a conflict, The School of Hope Christian Academy withdraws its appeal of its February 2018 termination as a sponsor for the Summer Feeding Program. "

On May 23, 2018, the School submitted its Corrective Action Plan. It denied non-compliance with the SFSP and stated that the School had filed a complaint with the United States Department of Agriculture with regard to the South Carolina Department of Education's allegations of noncompliance with the SFSP. However, the School did not submit any documentation of the same or from the Department of Agriculture to indicate that it had not “been declared ineligible for any other publicly funded program by reason of violating the program's requirements. *See* 7 C.F.R. 226.6(c)(3)(ii)(S).

On appeal, the School and its principals argue that it was improper for the South Carolina Department of Education to terminate the School from the SFSP as the matter had not reached finality because of the pending investigation by the United States Department of Agriculture. The Court disagrees. The ongoing investigation of the School by the United States Department of Agriculture has nothing to do with the South Carolina Department of Education's decision to terminate the School from the SFSP. The Department terminated the School's participation in CACFP only after (1) the School had already been terminated by the SFSP, another federally funded program and; (2) the School, and its executive director and board chair failed to provide documentation that it had not been terminated for cause from the SFSP and was otherwise in compliance with the SFSP. Even at the administrative hearing on this matter, no such documentation was presented.

At the administrative hearing, the School stated that it had requested that its appeal of the Department of Education's decision terminating the School from the SFSP be reinstated. However, the School presented no documentation from the Department of Education reinstating

the appeal or acknowledging the School's request to reinstate the appeal. As such, there exists an unappealed final agency decision terminating the School from the SFSP. Moreover, the School's executive director testified at the hearing on July 30, 2018, that the School was not serving meals under the SFSP.

B. Substantial Evidence Supports the Department's decision to deny reimbursement of certain claims when the School and its principals failed to present evidence of the precise claim amounts and supporting documentation.

The federal government requires that sponsoring institutions like the School maintain detailed records relating to the meals that it serves. 7 C.F.R. § 226.15(e) addresses recordkeeping and provides that "Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency." At a minimum, the federal regulation requires that an institution such as the School maintain documentation of the enrollment of each participant at centers; daily records indicating the number of participants in attendance and the daily meal counts; copies of invoices, receipts, or other records; and copies of menus, and any other food service records. 7 C.F.R. § 226.15(e)(1)-(14). "Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records." 7 C.F.R. § 226.15(e).

Additionally, "Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of Child and Adult Care Food Program (FNS 44) required under § 226.6(d). 7 C.F.R. § 226.10(c). "Discrepancies between the facilities' meal claim and its enrollment must be subjected to more thorough review to determine if the claim is accurate." 7 C.F.R. § 226.10(c)(2).

Here, substantial evidence supports the hearing officer's conclusion that the Department's denial of reimbursement for the School's January, February, and March 2018 claims was appropriate and in conformance with the law.² At the hearing, the Department's director of the CACFP outlined the claims process and what documentation was needed. The director stated that sponsoring organizations submit claims to the Department through an online claim submission process. The organization must submit to the Department, the number of meals served of each

² The Court notes that the Department paid the School's other claims that were verified through documentation.

meal type (e.g. breakfast, lunch) at each food service location. Each location is pre-approved for a certain number of meals based on the number of children that location serves. The number of meals served will change daily and even meal to meal, depending upon how many children are present at a specific location for each meal. When a sponsoring organization enters a claim, it is certifying that it has all of the required documentation to support the claim for reimbursement. These records should verify the number of meals served at a specific location on a given date and for a given meal. There is a process for revising claims submissions, but the final claim must coincide with the actual number of meals served and must not exceed the number of meals approved for a given location. When the Department has concerns about an organization's claim for reimbursement, such is the case here, or an organization wants to revise a claim, the Department generally requests supporting documentation to validate it.

Because of a debt the School owed to a vendor in excess of \$400,000, and a subpoena received by the Department from the Office of the Inspector General requesting Department records relating to the School, the Department became concerned whether the School's claims for reimbursement were accurate. The Department requested specific documents to attempt to verify the School's claims including menus, delivery tickets, and cost documentation, but only received meal count and attendance records. See 7 C.F.R. 226.10(c)(2). The Department sent workers to about twenty-one (21)³ of the School's service sites and staff identified discrepancies between what the School had previously reported as the number of meals served when compared to the attendance at the facility, and what the School claimed for reimbursement. There were multiple instances (too many to include) of the School overstating its claims including one instance where the claim was overstated by 994 meals. There were numerous other problems with the School's program and recordkeeping.⁴ This had been earlier recognized by the South Carolina Department of Education. Also, the School's director conceded that there were discrepancies in the claims that were submitted. She also admitted to purposefully entering lowering numbers into the system at least on one occasion because the computer system would not accept the actual number which was higher; this is still incorrect.

³ Two of the approved sites were not even operating and the School not only failed to advise the Department of this but also, had documentation indicating that meals had actually been claimed for these sites. Also, other records indicated that the School was serving two other sites for which the School had not been approved to serve meals yet was claiming those meals under different sites.

⁴ Some but not all of the defects are outlined in a letter dated June 15, 2018 from the Department to the School in the Department's Exhibit 10.

Appellants claim that they were limited in ability to provide records to support their claims for the months of January, February, and March of 2018 because its computer and other records had been seized by the Federal Bureau of Investigation, the United State Department of Agriculture's Office of the Inspector General, and the South Carolina Law Enforcement Division. This argument appears to have been rejected by the hearing officer and is likewise, rejected by this Court. It was the School's burden of proof to establish definitive claim numbers, and the School failed to do that through either supporting documentation or witness⁵ testimony. Finally, there was nothing in the record to demonstrate that the School had even attempted to procure copies of the records that had been seized in April in time for the hearing on July 30, 2018.

Substantial evidence exists to sustain the hearing officer's decision affirming the Department's denial of certain claims. A review of the entire record evidences that the hearing officer's decision was not arbitrary, capricious, erroneous; was not affected by error; and did not constitute an abuse of discretion. Not only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law.

ORDER

Based on the foregoing,

IT IS HEREBY ORDERED that the South Carolina Department of Social Services' Final Administrative Order is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
 Administrative Law Judge

October 4, 2019
 Columbia, South Carolina

CERTIFICATE OF SERVICE
 This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).
 This 4 day of October 2019
 By: 
 Judicial Law Clerk

⁵ The School presented some witnesses at the hearing to testify regarding the number of meals that were served at some of the sites but even those witnesses testified that there were some variations in the numbers.

EXHIBIT B

**SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES
CHILD AND ADULT CARE FOOD PROGRAM
AGREEMENT**

The School of Hope Christian Academy
NAME AND ADDRESS OF INSTITUTION

113 Peninsula Way
Columbia, SC 29229

A R 20211
AGREEMENT NUMBER

C12079 F
CONTRACT NUMBER

In order to carry out the purpose of Section 17 of the National School Lunch Act as amended, and the Regulations governing the Child and Adult Care Food Program (CFDA # 10.558) issued thereafter (7 CFR, Part 226), the South Carolina Department of Social Services (hereinafter referred to as the "Department" or "DSS"), and the "Institution" (hereinafter referred to as Institution, Provider or Contractor) whose name and address appear above, agree to the terms set forth in this document.

**ARTICLE I
AGREEMENT PERIOD**

This agreement shall be effective 2/13/2012 and shall, unless terminated in accordance with ARTICLE V, continue in full effect.

This contract is effective between the parties as of the effective date specified herein. If any services are provided on or after 2/13/2012, but prior to the execution date of the contract such services shall be reimbursed in accordance with this contract.

ARTICLE II
DEPARTMENT'S RESPONSIBILITIES

The Department shall:

Comply with and meet all responsibilities and requirements set forth in 7 CFR parts 226 and 3015 as amended;

Review and approve or disapprove all applications for program participation;

Provide technical assistance to institutions and facilities;

Assess institutional compliance with provisions of Federal and State Regulations and policies concerning the At-Risk Afterschool Snack Program, which is a component of the Child and Adult Care Food Program;

Provide standards for financial management to be adhered to by institutions; and

Reimburse the Institution for snacks served in "At Risk" programs, according to the institution's reported meal count.

Reimburse the Institution for allowable audit expenses, if funding is available. SCDSS will have sole responsibility for determining: whether funds are available for reimbursement of any audit costs; whether a given audit qualifies for funding; and the amount of funds provided to any institutions for a portion of its audit costs.

ARTICLE III
INSTITUTION'S RESPONSIBILITIES

The Institution shall:

Accept final administrative and financial responsibility for total Child and Adult Care Food Program operations at all centers, Proprietary Title XX or Proprietary Free and Reduced-Price centers for whom it submits a program application.

Agree that any publications under this Program by the Institution may be freely copied by the Department or by other Institutions under the Child and Adult Care Food Program.

Certify and provide the total number of private for-profit care centers under its auspices that receive compensation from amounts granted to the State under Title XX of the Social Security Act for at least 25 percent of its enrolled participants during the month preceding application to the program.

The Institution shall not claim reimbursement for meals served in a for-profit center for any month during which the center received such compensation for less than 25 percent of its enrolled participants. If the Institution is a for-profit sponsoring organization, the Institution shall certify that all centers under this Agreement have the same legal identity as the Institution.

Comply with and meet all responsibilities and requirements set forth in 7 CFR Parts 226 and 3015 as amended, applicable instructions and handbooks issued by Food and Nutrition Service (FNS) and USDA to clarify or explain the regulations, and responsibilities and requirements as established by DSS.

Except for Proprietary Title XX centers, as defined in 7 CFR Part 226, be a public or private nonprofit organization having tax exempt status under Internal Revenue Code of 1986.

Ensure all appropriate staff attends training sessions as required by DSS.

Not participate in both the Child and Adult Care Food Program and the Special Milk Program at the same time.

Provide training to appropriate staff of sponsored centers as often as necessary, but at a minimum once during the program year.

Promptly notify DSS of any change of the organization's director and/or board chairperson.

Submit to DSS a Public Release and any other information deemed necessary on an annual basis which may effect proper program management.

Establish procedures to collect and maintain all necessary program records as prescribed by 7. CFR 226 and DSS. Such records shall be kept for a minimum of three (3) years or until no longer needed for audit purposes.

Submit claims for reimbursement by the 15th of the month following the claim month except as follows:

STATE FISCAL YEAR END

If any reimbursement period or the contract ends June 30, the reimbursement documentation is due in the South Carolina Department of Social Services by the close of business on the 3rd working day of July. For any other quarterly/monthly reimbursement, the due dates remain as written in this Article.

Claims will be submitted to:

**South Carolina Department of Social Services
Division of Finance
Post Office Box 1520
Columbia, South Carolina 29202-1520**

ARTICLE IV
AUDITS AND RECORDS

At any time during the institution's normal business hours, announced or unannounced reviews of institutions may be conducted as often as DSS, the State Auditor, the Office of the Attorney General, GAO, DHHS, and any other appropriate federal agency and/or the designee of any of the above may deem necessary. Anyone making such reviews must show photo identification that demonstrates that they are employees of one these entities. The Provider shall immediately make available for examination all records of the Provider with respect to all matters covered by this contract. The Provider shall permit any of the above to audit, examine, make copies, excerpts, or transcripts from such records and contact and conduct private interviews with Provider clients and employees and on-site reviews of all matters relating to service delivery. If any review, audit, litigation, claim, or other action involving the records has been initiated prior to the expiration of a three (3) year period since the date of contract termination/expiration, this Article and the terms hereunder shall continue to apply until the action is completed and the issues are resolved.

A. AUDIT REQUIREMENTS

The Provider agrees that it shall comply with any federal and/or state audit requirements.

1. Private for Profit

Private for Profit sub recipient organizations that receive \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in federal financial assistance from DSS for the CACFP in a fiscal year shall have an audit conducted by the DSS Office of Audit Services in accordance with the Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors and Governmental Auditing Standards. The audit will include tests of program and accounting records as prescribed by the United States Department of Agriculture-Office of Inspector General guide for audits of the CACFP. In lieu of an audit conducted by DSS, the Private For-Profit sub recipient organization may obtain, at their expense, an audit conducted by a private audit firm in accordance with the Governmental Auditing Standards issued by the Comptroller General of the United States and the United States Department of Agriculture-Office of Inspector General guide for audits of the CACFP.

2. Audits of States, Local Governments and Nonprofit Organizations

States, local governments and nonprofit sub recipient organizations (both private and public) that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in federal financial assistance from all sources shall obtain, at their expense, an annual audit in accordance with the Single Audit Act and the revised Office of Management and Budget (OMB) Circular A-133. The organization must notify SCDSS in writing of the name of the auditing firm that will conduct their audit within six (6) months of the due date.

3. Additional Audit Requirements - Change of Institution's Key Personnel

DSS shall have, in its discretion, the right to require the Institution to conduct at its expense, or for DSS to conduct, an audit after a key employee of the Institution leaves its service. Key employees would be those individuals who are responsible for the day-to-day administration of the CACFP and the institution's staff responsible for the monitoring of these same individuals.

4. Filing Audit Reports

Each organization required to have an audit shall supply a copy of their Audit Reporting Package and any Management Letter issued by the audit firm to the:

**South Carolina Department of Social Services
Office of Audit Services
Post Office Box 1520
Columbia, South Carolina 29202-1520**

The Audit Reporting Package and any Management Letter issued by the audit firm should be submitted to the above address within the earlier of 30 days after receipt of the audit report or nine (9) months after the end of the organization's fiscal year. The Audit Reporting Package for an A-133 Single Audit should include the following: (a) Financial Statements and a Schedule of Expenditures of Federal Awards, (b) Summary Schedule of Prior Audit Findings (if there were any prior year audit findings), (c) Auditor's Reports concerning the Financial Statements, Compliance and Internal Controls, and a Schedule of Findings and Questioned Costs and (d) the Corrective Action Plan (if there are any current year findings). Any Management Letter issued by the audit firm should also be sent to DSS. Failure to comply with this section is grounds for termination as contained in Article V, F, or suspension of payments.

5. Working Papers

Working papers are to be retained by the audit firm used for the annual audit and must be available for examination by DSS or its designee for at least three (3) years following the issuance of the audit report to the auditee. Retention of working papers by the audit firm beyond three (3) years is required where questioned costs and/or practices have not been resolved with DSS. DSS shall provide written notification to the audit firm of record that the working papers need to be retained past three years.

B. CORRECTIVE ACTION PLANS AND/OR SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS

When the audit describes weaknesses in Internal Controls and/or Program compliance, the Provider must submit a corrective action plan to eliminate the weaknesses indicating the actions taken, actions to be taken, dates of anticipated completion, and contact person responsible, or submit an explanation of specific reasons why no corrective action is required. A summary schedule of Prior Audit Findings shall be submitted reporting on the status of corrective action taken on prior year audit findings when there were findings included in the audit reports for the prior two (2) fiscal years. The corrective action plan and any summary schedule of Prior Audit Findings must be submitted as part of the audit reporting package within thirty (30) days of the receipt of the final audit report/management letter. Corrective action should be initiated within 90 days of the receipt of the audit report and proceed as rapidly as possible. In the event that an audit report contains audit exceptions or disallowances, it is agreed that the following procedures shall be used in making the appropriate audit adjustment(s):

1. Notice of Exception and Disallowances

DSS shall furnish the Provider with written notice containing the adjustment for each exception. Such notice shall state the total sum disallowed and that payment is due to DSS in the full amount within thirty (30) days after the receipt of notice. Notice will be sent to the Provider by certified mail. Audit exceptions or disallowances shall be accepted as final unless appealed within fifteen (15) days of receipt of the notice of disallowance. Payment shall be made within thirty (30) days from the receipt of notice of disallowance regardless of the filing of an appeal.

2. Disallowances - Appeals

In the event the Provider disagrees with the audit exceptions and disallowances, they may seek administrative appeal of such matters in accordance with DSS appeals procedures. Judicial review of any final agency decision pursuant to this contract shall be in accordance with S. C. Code Ann. Section 1-23-380 (1976, as amended) and shall be the sole and exclusive remedy available to either party. Provided, however, no administrative appeal shall be available unless the Provider has given written notice of appeal to DSS within fifteen (15) days of receipt of the notice of disallowance. Payment shall be made within thirty (30) days from the receipt of notice of disallowance regardless of the filing of an appeal.

3. Disallowances Sums, Setoff

Any provision for appeal notwithstanding, DSS is authorized to recoup at any time after receipt of the notice of disallowances any funds owed to DSS. The means of recoupment shall be by

withholding and/or offsetting such funds for which DSS may be obligated to the Provider under this or any previous and/or future contracts. Provided, however, if the Provider can demonstrate that such withholding or setoff would constitute a serious hazard to the quality of services, DSS may, in its sole discretion, grant such repayment terms as may be determined by DSS to be consonant with sound business practice.

4. Interest Provision/Repayment (for Disallowed Amounts)

As required by Federal or State law or regulations, the Provider shall pay interest on the disallowed amount with said interest accruing from the thirtieth (30th) day following the date of receipt of the notice of disallowance. The Provider may request that they be permitted to make repayment on an installment payment schedule. Such request must be made in writing within thirty (30) days of the receipt of the notice of disallowance and must contain evidence to support the Provider's allegation of financial inability to pay the sum in full. At the sole option of DSS, DSS may agree in writing to permit the Provider to repay pursuant to an installment payment schedule. The legal interest rate [S.C. Code Ann. Section 34-31-20 (B)] plus two percent (2%) is DSS rate on extended / installment repayment.

5. Audits During and After the Contract Period

The provisions of this Article shall apply to audits commenced during the contract period and audits commenced after termination of this contract and for a period of three (3) years thereafter.

C. ACCURACY OF DATA AND REPORTS

The Provider agrees that all statements, reports, and claims, financial and otherwise, shall be certified as true, accurate, and complete, and the Provider shall not submit those claims, statements, or reports which it knows, or has reason to know, are not properly prepared or payable pursuant to federal and state laws, applicable regulations, this contract, and DSS policy.

1. Maintenance of Records

The Provider must maintain an accounting system with supporting fiscal records adequate to assure that claims for funds are in accordance with this contract and all applicable laws, regulations, and policies. The Provider shall keep one (1) copy of the OMB approved Data Collection Form and one (1) copy of the OMB A-133 reporting package on file for three (3) years from the date of submission to the Federal Clearinghouse. The Provider further agrees to retain all financial and programmatic records, supporting documents, and statistical records under this contract for a period of three (3) years after the expiration of this contract. Property and equipment records must be maintained until three (3) years after transfer, replacement, sale, or junking of the item. If any audit, litigation, claims, or other actions involving the records have been initiated prior to the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues.

D. INFORMATION REQUIRED

1. Ownership Information

The Provider agrees to supply within thirty (30) days of the date of this contract and to report any changes within five (5) days to DSS full and complete information as to the identity:

- a. Of each person having an ownership or control interest either directly or indirectly of five percent (5%) or more in the facility.
 - b. Of each officer and director of a corporation, and if the facility is organized as a partnership, of each partner.
2. Information Related to Business Transactions

The Provider agrees to furnish to DSS and/or to DHHS information related to significant business transactions as set forth in 42 C.F.R. 455.105(a) and (b).
3. Information Related to Criminal Activity

The Provider agrees to furnish to DSS and/or to DHHS information related to any person convicted of a criminal offense under a program relating to the CACFP or the Social Services Block Grant program. Failure to submit such information may lead to termination of this contract.

ARTICLE V SUSPENSION, TERMINATION AND GRANT CLOSE-OUT PROCEDURES

DSS and the Institution shall comply with the provisions of 7 CFR Part 226 and the Department of Agriculture's Uniform Federal Assistance Regulations 7 CFR Part 3015 Subpart N concerning grant suspension, termination and closeout procedures.

- A. Termination for Lack of Fund. The parties hereto covenant and agree that their liabilities and responsibilities, one to another shall be contingent upon the availability of Federal funds for the funding of services, and that this Contract shall be terminated if such funding ceases to be available. DSS may terminate if such funding ceases to be available. DSS shall have the sole responsibility for determining the lack of availability of such Federal funds. The organization has no recourse against DSS for termination under this section for lack of funding.
- B. Termination for Breach of Contract. This Contract may be canceled (terminated) by either party at any time within the Contract period whenever it is determined by such party that the other party has materially breached, or otherwise materially failed, to comply with its obligations hereunder.
- C. Termination for Breach of Previous Contracts or Nonpayment of Previous Audit Exceptions. This Contract may be canceled, or terminated by DSS at any time within the Contract period, if the Institution, after exhaustion of all administrative and judicial appeals, has failed to make payment in full to DSS for audit disallowances pursuant to any previous contract between the parties.
- D. Insolvency. This Contract is voidable and subject to immediate termination by DSS upon the Provider's insolvency, including the filing of proceedings in bankruptcy.
- E. Notice of Termination. In the event of any termination of this Contract under this Article, the party terminating the Contract shall give notice of such termination in writing to the other party. Notice of termination shall be sent by certified mail, return receipt requested, (or the equivalent private delivery service), by facsimile or by email and shall be effective 30 days after the date of the receipt, unless otherwise, provided

by law; however, if terminated pursuant to Sections A, B, C, F and/or J of this Article, said termination shall be effective upon receipt of such notice.

- F. Termination For Failure to Meet Conditions for Contract Continuation. After DSS has conducted a review of records or performance, DSS will issue to the Provider a report of such review. If the report identifies deficiencies, it will be sent by certified mail, return receipt requested, (or the equivalent private delivery service), by facsimile or by email and will specify conditions for contract continuation. Such conditions will state both the corrective action which must be taken and the time frame in which such action must be taken. This contract shall be terminated effective any date that the Provider fails to meet the specified conditions for contract continuation. Notice of termination will follow.
- G. Filing of Financial Report. Upon termination of this Contract under this Article, the Provider shall submit a final financial claim for reimbursement under this Contract within 30 days after the date of termination.
- H. Termination in Best Interest of DSS. Termination action shall be taken by DSS when it is determined that such termination is in its best interest.
- I. Suspension of the Institution's Activities. DSS reserves the right to reject temporarily suspend action on program applications submitted by the sponsor when DSS determines that such action is necessary for the sponsor to come into compliance with Federal, State, and DSS requirements.
- J. Termination for Violation of S.C.C. Section 8-13-755. DSS reserves the right under this law to terminate the contract immediately upon notification that the Institution employing a former regulatory employee of DSS whom has been an employee of DSS in the last calendar year.
- K. Suspension and Disbarment. The contractor/provider certifies by its representative's signature to this contract/agreement that neither the contractor/provider nor any of its principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency. The contractor/provider agrees to and shall inform SCDSS immediately if at any point it is suspended, debarred, proposed for debarment, or declared ineligible for the award of contract by any state or federal agency. If at any point the SCDSS and/or the State of South Carolina determines that the contractor/provider knowingly or in bad faith rendered an erroneous certification and/or that either the contractor/provider or any of its principals are suspended or debarred, then, in addition to other remedies available to the SCDSS, the SCDSS may terminate this contract immediately and, upon such termination, the contractor/provider agrees to and shall, within thirty (30) days, return to the SCDSS all funds paid to it under this contract with a 2% penalty.

"Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

ARTICLE VI
COVENANTS AND CONDITIONS

In addition to all other stipulations, covenants, and conditions contained herein, the parties to this Contract agree to the following covenants and conditions:

- A. Compliance with Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the American's with Disabilities Act of 1990. The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the requirements of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from the Department; and hereby gives assurance that it will immediately take any measure necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds, reimbursable expenditures, grant or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use, Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by the Department. This includes any Federal agreement, arrangement, or other contract, which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food representations and agreements made in this assurance.

By accepting this assurance, the Program applicant agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of Title VI and permit authorized USDA personnel during normal working hours to review such records, books and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, the Department of Agriculture, Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The Person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.

- B. Employment of Personnel. In all hiring or employment made by or resulting from this Contract, the Institution agrees that (1) there will be no discrimination against any employee or applicant for employment because of disability, age, race, color, religion, sex, or national origin, and that (2) affirmative action shall be taken to employ and advance disabled and Vietnam era veterans. The Institution further agrees to give public notice to employees and applicants setting forth the provisions of this clause.
- C. Safety Precautions. DSS and USDA assume no responsibility with respect to accidents, illnesses, or claims arising out of any work undertaken with the assistance of Federal and/or State funds. The Institution is expected to take necessary steps to insure or protect itself and its personnel. The Institution shall comply with all applicable local, State, and Federal occupational and safety acts, rules and regulations.
- D. Subcontracts, Employees and Non-Assignability. No services required to be provided under this contract shall be provided to a recipient by anyone other than the Institution, employee of the

Institution, or a volunteer of the Institution. Unless otherwise expressly authorized in writing, no subcontract for the provision of services shall be entered into by the Provider. Authorized subcontracts under this Contract shall be in writing and shall be subject to the terms of this contract. The Institution shall be solely responsible for the performance of any subcontracts. All subcontracts must be submitted to DSS for written approval before any reimbursement is made or services rendered. No assignment of this contract or any rights hereunder shall be valid without written consent of DSS.

- E. Compliance with Applicable Laws and Regulations. The Institution agrees to comply with all applicable Federal and State laws and regulations in effect and as may be promulgated during the term of this Contract in the provision of services and performance of its obligation under this Contract.
- F. Integration and Amendment. This Contract shall be construed to be the complete integration of all understandings between the parties hereto. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in a written contract executed and approved by both parties.
- G. Non-Waiver of Breach and/or Rights. DSS and the Institution agree that the execution and any performance of any provision of this Contract, or the continued payment to the Institution by DSS, shall in no way affect the right of DSS to enforce the provision of this Contract. Nor shall the waiver by DSS of any breach of such provision hereof be taken or held to be waiver of any succeeding breach of any provision, or as a waiver of the provision itself. All rights or obligations are hereby preserved, protected, and reserved.
- H. Attorney's Fees and Legal Services. No attorney-at-law shall be engaged through the use of any funds provided by DSS pursuant to the terms of this contract. Further, with the exception of the attorney's fees awarded in accordance with S.C. Code Ann 15-77-300 (1976, as amended), DSS shall under no circumstances become obligated to pay attorney's fees or the cost of legal action to the Institution. The Institution shall and will pay to DSS legal fees as the court may adjudge reasonable in addition to the amount of judgment and costs.
- I. Place of Suit. Any action at law, suit in equity, or judicial proceeding for the enforcement of this contract or any provision thereof, shall be instituted only in the courts of Richland County, the State of South Carolina.
- J. Procurement Codes. When applicable the Contractor must comply with the terms and conditions of both Federal and State procurement codes in the acquisition of equipment and supplies and in all subcontracts.
- K. Governing Law. It is mutually understood and agreed that this contract shall be governed by the laws of the State of South Carolina, both as to interpretation and performance.
- L. Severability and Conformity with Law. The provisions of this contract and performance hereunder are subject to all laws, regulations, ordinances and codes of the Federal, state and local governments. All terms of this contract shall be construed in a manner consistent with the aforesaid; and should any of the terms hereof conflict with any of the aforesaid, then the terms shall be deemed modified to conform therewith; and the remaining provisions of this contract shall not be invalidated. The Institution agrees to comply with all the aforesaid laws and regulations as may be promulgated during the term of this contract.

- M. Copyrights. If any material is developed in the course of or under this contract that is capable of being copyrighted by the Institution, DSS shall have a royalty-free, exclusive, and irrevocable right to reproduce, publish or otherwise use the work for DSS purposes.
- N. Political Activity. None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office or any activity in violation of the Hatch Act.
- O. Reporting of Fraudulent Activity. If at any time during the term of this Contract, the Institution becomes aware of or has reason to believe by whatever means that, under this or any other program administered by DSS, a recipient of or applicant for services, an employee of the Institution or DSS, and/or subcontractor or its employees, have improperly or fraudulently applied for or received benefits, moneys, or services pursuant to this or any other Contract, such information shall be reported in confidence by the Institution directly to DSS.
- P. Titles. All titles used herein are for the purpose of clarification and shall not be construed to infer a contractual construction of language.
- Q. Incorporation of Schedules/Appendices. All schedules or appendices attached to this contract are expressly made a part hereof and incorporated by reference. Whenever this contract sets a higher standard than contained in a schedule or appendix, the standard set in the body of the contract shall prevail.
- R. Age Discrimination. In accordance with 45 CFR Parts 90 and 91 (1985), the Institution agrees that there shall be no bias or age discrimination as to benefits and participation under the program of this Contract.
- S. S.C. Law Clause. Upon award of a Contract under this proposal, the persons, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful proposer from requirements that it be authorized and/or licensed to do business in this State by submission of a signed proposal, the offerer agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina as to all matters and disputes arising or to arise under the Contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.
- T. Federal or State Law and Regulation. Reference to or attached copies of Federal or State regulations or law are believed to be the most current, but it is the Institution's responsibility to obtain updates, amendments, or other changes of these.
- U. Lobbying Restrictions (P.L. 101-121 Section 319). Upon award of this contract the CACFP Institution to whom the award is made must comply with the lobbying restrictions outlined in (P.L. 101-121 Section 319), and must ensure that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the CACFP Institution to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal loan, the entering into of a cooperative

agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

- V. Drug Free Work Place Act. By signing this contract the Institution certifies it will comply with all terms and conditions of the Drug Free Workplace, Act, S.C. Code Ann. 44-107-10 et. seq. (1976, as amended).
- W. Disclaimer. S.C. Department of Social Services disallows and disclaims all responsibility for any liability losses, damage, claims, demands, or costs from third parties asserted against it as a result of operations performed by the Institution herein in the performance of this agreement; AND, the Institution acknowledges and agrees that he/she/it is an independent contractor and does not act as an agent, servant or employee of S.C. Department of Social Services in the performance of this contract.
- X. American Disabilities Act. The Institution shall comply with all requirements of the American Disabilities Act as applicable.

CERTIFICATION STATEMENT

I HEREBY CERTIFY that all of the above information is true and correct. I understand that this information is being given in connection with the receipt of Federal funds; that Department officials may, for cause, verify information; and that deliberate misrepresentation will subject me to prosecution under applicable State and Federal criminal statutes.

IN WITNESS WHEREOF, DSS and the Institution, by their authorized agents, hereby agree to the terms and conditions of this contract as specified herein.

INSTITUTION

J. Christopher Parish
Signature

Title BOARD CHAIR

Date 10/7/11

Federal I.D. Number 80-0142884

Telephone Number 803-419-5227

Contact Person J. Christopher Parish

TWO WITNESSES:

1. Keeo. Parish

2. Rondell

**SOUTH CAROLINA DEPARTMENT
OF SOCIAL SERVICES "DSS"**

Mary A. Young
Signature

Title: Program Manager

Date: 3/9/12

TWO WITNESSES:

1. Carlton F. Harland

2. [Signature]

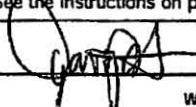
Form W-9 (Rev. December 2000) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Please print or type	Name (See Specific Instructions on page 2.) The School of Hope Christian Academy	
	Business name, if different from above. (See Specific Instructions on page 2.)	
	Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership ☐ Other	
	Address (number, street, and apt. or suite no.) 113 Peninsula Way City, state, and ZIP code Columbia, S.C. 29229	
	Requester's name and address (optional)	
	List account number(s) here (optional)	
	Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2. Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.	
	Part II For U.S. Payees Exempt From Backup Withholding (See the instructions on page 2.)	
	Part III Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. person (including a U.S. resident alien). Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)	
	Sign Here Signature of U.S. person 	Date 9/21/11
Purpose of Form A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to: 1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued), 2. Certify you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If you are a foreign person, use the appropriate Form W-8. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations. Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.		
What is backup withholding? Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding. If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if: 1. You do not furnish your TIN to the requester, or 2. You do not certify your TIN when required (see the Part III instructions on page 2 for details), or 3. The IRS tells the requester that you furnished an incorrect TIN, or 4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or 5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only). Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate Instructions for the Requester of Form W-9. Penalties Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect. Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty. Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment. Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.		

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
The School of Hope Christian Academy,	)	Civil Action No. 2021-CP-40-01000
Jacqueline McKie Burden, and Eugene	)	
Burden, Sr.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>ORDER</u>
	)	
South Carolina Department of Education,	)	
Ronald Jones, and Shirley Jenerette,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on three separate motions to dismiss filed by Defendants South Carolina Department of Education (the Department), Ronald Jones, and Shirley Jenerette against Plaintiffs School of Hope Christian Academy (School of Hope), Jacqueline McKie Burden, and Eugene Burden, Sr. During the hearing on these motions, the Parties consented to the Court converting the motions to dismiss into motions for summary judgment pursuant to Rule 56(c), SCRCP. After carefully reviewing the motions, memoranda, and arguments of counsel, the Court **GRANTS** summary judgment in favor of all Defendants because Plaintiffs' claims are barred by the law-of-the-case doctrine.

BACKGROUND

On May 1, 2015, School of Hope entered into a contract with the Department to participate in the Summer Food Service Program, which is federally funded by the U.S. Department of Agriculture (USDA) and administered in South Carolina by the Department. Through the Program and under the contract, School of Hope was to provide meals to eligible children at 156 sites within South Carolina. In compliance with Title 7, Subsections 225.7 and 225.10 of the Code of Federal

Regulations, the Department conducted an administrative audit of School of Hope's participation in the program beginning in September 2017. During the audit, the Department uncovered numerous inconsistencies with meal count records, which indicated systemic issues with School of Hope's recordkeeping and failures to comply with the Program and contract requirements, resulting in School of Hope submitting many unsubstantiated claims for reimbursement.

Due to the issues revealed in the audit, on February 14, 2018, the Department notified School of Hope it was terminating the contract for participation in the program and withholding School of Hope's August 2017 reimbursement claim. School of Hope initially appealed the termination and withholding of the August 2017 reimbursement within the Department pursuant to the right explained in the February 14, 2018 letter. Subsequently, however, School of Hope agreed to withdraw its appeal of the termination and to hold the appeal of the denial of the August 2017 reimbursement in abeyance pending further administrative review by the Department.

On August 30, 2018, the Department issued a "Serious Deficiency Determination"¹ letter against Plaintiffs, in which the Department barred School of Hope from future participation in the Program and imposed fiscal penalties in the amount of \$673,203.41—which reflected penalties in the amount of \$891,432.88 reduced (or offset) by the August 2017 reimbursement claim of \$218,229.47—for failure to comply with duties imposed by federal regulations and School of Hope's contract with the Department. School of Hope appealed the imposition of fiscal penalties within the Department, and the Department held hearings on the appeal in front of a hearing officer on January 29, 2019, January 30, 2019, February 5, 2019, and March 5, 2019.

The hearing officer issued a Final Order on March 12, 2019. The hearing officer found the imposition of fiscal penalties, reduced (or offset) by the August 2017 reimbursement claim, was

¹ See 7 C.F.R. § 225.11(c).

proper due to “School of Hope’s failure to comply with duties imposed by federal regulation and its contract with [the Department].” Specifically, the hearing officer found “[t]he evidence presented leaves no question that School of Hope failed to maintain accurate records substantiating their claims for reimbursement.” “[I]t became obvious,” the hearing officer found, “that the volume and pervasiveness of the inconsistencies were huge and indicated systematic problems as opposed to minor human error.” Consequently, the hearing officer upheld the Department’s imposition of fiscal penalties due from Hope of School in the net amount of \$654,779.18 after adjustments for other amounts due to School of Hope.

Plaintiffs did not appeal the Department’s Final Order. Instead, Plaintiffs filed this action on March 3, 2021, bringing claims against the Department for breach of contract, the Department and Defendant Jones for defamation, and Defendants Jones and Jenerette for civil conspiracy. Defendants each moved to dismiss Plaintiffs’ complaint under Rule 12(b)(6), SCRCp. The Department and Jones also moved, in the alternative, to strike Plaintiffs’ \$30 million prayer for relief. *See* Rule 12(f), SCRCp.

The Court held a hearing on Defendants’ motions on February 13, 2023, at 9:30 A.M. via WebEx. During the hearing, the Parties—all of whom were represented by counsel—agreed to convert the motions to ones for summary judgment so that the Court could consider the Final Order, which was referenced in Plaintiffs’ complaint and attached to the Department’s motion and memorandum in support, in this decision. At the conclusion of the hearing, the Court took the matter under advisement. The Court then issued a Form 4 Order on February 15, 2023, indicating

its intent to grant summary judgment in favor of Defendants because Plaintiffs' claims are barred by the law of the case.² This Order follows.

STANDARD

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP.

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). “In determining whether any triable issue of fact exists, the evidence and all reasonable inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). But when plain and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted if the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

Although Plaintiffs must “produce only a ‘scintilla’ of evidence to avoid judgment as a matter of law,” our appellate courts have recognized that “a scintilla is a perceptible amount.” *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). In other words, “[t]here still must be a verifiable spark, not something conjured by shadows.” *Id.*; see also *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908) (asserting that “a scintilla of

² Because this Court grants summary judgment for Defendants, the Court need not consider the request to strike Plaintiffs' \$30 million prayer for relief. That issue is now moot.

evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror”).

“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, 220, 578 S.E.2d 329, 335 (2003) (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 107, 410 S.E.2d 537, 545 (1991)). Further, our supreme “court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.” *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933); see also *S.C. Dep’t of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (“Arguments made by counsel are not evidence.”).

ANALYSIS

Defendants argue Plaintiffs’ claims for breach of contract, defamation, and civil conspiracy are barred by the doctrine of the law of the case. The Court agrees.

“An unappealed ruling is the law of the case.” *Shirley Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). The law-of-the-case doctrine “applies to an order or ruling which finally determines a substantial right.” *Id.* (quoting *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)). By the same token, “[c]ollateral estoppel . . . prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “Our appellate courts have repeatedly held that collateral estoppel applies to “the decision of an administrative tribunal [and] precludes the relitigation of the issues addressed by that tribunal in a collateral action.” *Bennett v.*

S.C. Dep't of Corr., 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (emphasis omitted); *see also Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC*, 397 S.C. 101, 108, 723 S.E.2d 813, 817 (Ct. App. 2012) (“Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals.”).

In affirming the decision to impose sanctions on Plaintiffs, the Department’s hearing officer issued a detailed Final Order making numerous findings of fact and conclusions of law. The Court finds that order constitutes a final ruling on the merits determining “a substantial right.” *Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785. Plaintiffs, however, did not appeal the Department’s Final Order to the administrative law court and our appellate courts. *See* S.C. Code Ann. § 1-23-380 (“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.”).

Because the Department’s unappealed Final Order is now the law of the case, the Court finds Plaintiffs are barred from litigating their claims in this Court.³ The Court will address each claim in turn.

I. Plaintiffs’ breach of contract claim is barred by the law of the case.

First, the Court finds the law-of-the-case doctrine forecloses Plaintiffs’ breach of contract claim against the Department.

³ Plaintiffs nevertheless argue the Final Order—if binding against School of Hope—is not binding as to the Burdens because the fiscal penalties were imposed against the School of Hope, not them. But Plaintiffs overlook that the Department issued the Serious Deficiency Determination against the School of Hope, Eugene Burden as Board Chair, and Jacqueline Burden as Executive Director. Indeed, School of Hope is the Burdens’ company. Further, the Burdens testified during the nonconsecutive four-day hearing in front of the hearing officer, and the hearing officer made findings and rulings against the Burdens. Accordingly, the Court rejects this contention.

Plaintiffs' breach of contract claim is based on an amount Plaintiffs claim they are owed for services rendered under the now terminated contract with the Department. In Plaintiffs' view, the Department breached the contract by not reimbursing them "more than Two Hundred Thousand Dollars (\$200,000)." Notably, Plaintiffs claimed they were owed \$218,229.47 for the August 2017 reimbursement claim before the hearing officer. But the hearing officer found the Department's "imposition of fiscal penalties in the amount of \$654,779.18 after adjustments for amounts due to School of Hope" and "offset by the August 2017 reimbursement claim" was proper.

That was because Plaintiffs breached the contract with the Department by failing to comply with their contractual duties or state and federal law. The hearing officer specifically found:

- a. The imposition of sanctions reduced (or offset) by the August 2017 reimbursement claim was proper "based upon the School of Hope's failure to comply with duties imposed by federal regulation and its contract with [the Department]."
- b. "The evidence presented leaves no question that School of Hope failed to maintain accurate records substantiating their claims for reimbursement."
- c. "Testimony from numerous [Department] employees directly involved in the audit established that the School of Hope's records were in a total disarray."
- d. "In addition, there was clear and convincing evidence that Daily Meal Count forms were being altered."
- e. "The School of Hope [] failed to adequately perform both of the[] duties" "to maintain its own records" and "to train its sites to maintain their records."
- f. "School of Hope received \$654,779.18 in federal meal reimbursements for which it was not entitled based on the available documentation."
- g. "[T]here is substantial evidence that fraudulent claims were being submitted for payment."

Dep't Mot. to Dismiss, Ex. 1, Final Order, at 17–18.

At bottom, Plaintiffs' claim rests on the notion that they "fully performed" under the contract "in accordance with all of the requirements and conditions thereof." But the Department's

hearing officer concluded otherwise, and Plaintiffs never appealed the Final Order. Therefore, Plaintiffs' breach of the contract with the Department and the propriety of the Department's imposition of sanctions—which was reduced (or offset) by the August 2017 reimbursement claim—were previously litigated against Plaintiffs. *E.g.*, *Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231. Plaintiffs cannot now come before this Court seeking another bite at the apple. Consequently, the Court finds the Department is entitled to judgment as a matter of law on Plaintiffs' breach of contract claim.

II. Plaintiffs' defamation claim is barred by the law of the case.

Second, the Court finds the law-of-the-case doctrine bars Plaintiffs' defamation claim against the Department and Jones.

“The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff.” *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, 133 (1999). Because the gravamen of a defamation claim is falsity, truth is an absolute defense. *See Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976).

Plaintiffs first allege the Department and Defendant Jones made “statements which implied Plaintiff Jacqueline McKie Burden was an incompetent manager.” Of course, “pointed criticisms” of individual persons do not amount to defamation. *See Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 471, 629 S.E.2d 653, 667 (2006). Nonetheless, Plaintiffs allege Jones and persons acting on behalf of the Department made statements that “funds have not been properly applied, and that [the Burdens] have been guilty of violating state and federal laws.” They further allege the Department denied reimbursement claims as “fraudulent” and referred Plaintiffs “for criminal investigation . . . for mishandling of funds with full knowledge of the falsity of such claims.”

Contrary to Plaintiffs' claims that these statements are false, the Department's unappealed Final Order establishes they are true. The hearing officer found School of Hope "fail[ed] to comply with duties imposed by federal regulation and its contract with [the Department]" and that "there [was] substantial evidence that fraudulent claims were being submitted for payment." Likewise, the hearing officer noted "[t]he presence of altered records presents more serious concerns of a criminal nature." As noted above, Plaintiffs never appealed these findings. Thus, the law of the case establishes that Plaintiffs did make overstated and unsupported claims for reimbursement, breached the Department's contract, and violated state and federal law in doing so.

Plaintiffs are barred from relitigating this claim here because the same underlying allegations were ruled upon by the Department's hearing officer. *E.g.*, *Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231. The issues of Plaintiffs' mishandling of funds and failures to comply with federal regulations throughout their participation in the Program were extensively litigated before the hearing officer. While the hearing officer did not specifically rule on a defamation claim, as Defendants concede none was before her, the unappealed rulings in the Final Order establish the truth of the statements Plaintiffs contend are defamatory here. *See Carolina Renewal, Inc.*, 385 S.C. at 555, 684 S.E.2d at 783 ("The doctrine of collateral estoppel prevents the relitigation of *issues*, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same.").

Put simply, Plaintiffs cannot now claim that the Department and Jones defamed them by making statements that the law of the case demonstrates were true. *Kennedy v. Richland Cnty. Sch. Dist. Two*, 428 S.C. 98, 114, 833 S.E.2d 414, 423 (Ct. App. 2019) (noting a plaintiff must prove "a false and defamatory statement was made" to prove defamation). Because truth is an

absolute defense to defamation, *Ross*, 266 S.C. at 80, 221 S.E.2d at 772, the Court finds the Department and Jones are entitled to judgment as a matter of law.

III. Plaintiffs' civil conspiracy claim is barred by the law of the case.

Third, the Court finds the law-of-the-case doctrine bars Plaintiffs' civil conspiracy claim against Jenerette, Jones, and "other unnamed conspirators."

Our supreme court recently confirmed that, to state a claim for civil conspiracy, a plaintiff "must establish (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 Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

Plaintiffs allege that Jenerette conspired with Jones "to seek benefits through the payment of federal and state funds to her own feeding programs and . . . to take sites from the Plaintiffs through contacts that she had made while employed by The School of Hope." What is more, Plaintiffs allege "Individual Defendants" conspired and interfered "with the approval process for the payment of grant money due the Plaintiffs for the administration of its programs." Plaintiffs, however, raised the same arguments before the hearing officer in support of their position that—despite the record-keeping irregularities—Plaintiffs "provided the meals and should be paid." And the hearing officer wholly rejected these arguments.

First, the hearing officer determined Plaintiffs were not reimbursed for the August 2017 claim—and were terminated from participating in the program—because there was "no question" they "failed to maintain accurate records substantiating their claims for reimbursement," and the "records were in total disarray." Second, the hearing officer found there was "no evidence on the record that any leaks [regarding the audit] occurred or that School of Hope ha[d] been prevented

from presenting any evidence otherwise admissible in defense of this matter.” The hearing officer also found that the Department, through Jones as the Director of the Office of Health and Nutrition, “took extreme care to protect the integrity of this audit.” Specifically, the hearing officer noted the Department “invoke[ed] security procedures such as requiring nondisclosure agreements of its staff; maintain[ed] documents in a secure location with access documentation; and recus[ed] any member of its staff with known connections to School of Hope from the audit.”

As the hearing officer determined, the denial of Plaintiffs’ August 2017 reimbursement claim was caused by Plaintiffs’ own actions, not by any alleged conspiracy on the part of Jenerette and Jones. *See Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (stating a plaintiff must show “damages proximately resulting” to establish a civil conspiracy claim). Defendant Jenerette’s uncontroverted affidavit confirms as much. Plaintiffs cannot replew that field in this Court. *Cf. Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231. This Court finds Defendants Jenerette and Jones are entitled to judgment as a matter of law on Plaintiffs’ civil conspiracy claim.

CONCLUSION

For these reasons, the Court grants summary judgment in favor of Defendants. Plaintiffs failed to appeal the Department hearing officer’s Final Order and, thus, the factual and legal conclusions therein became the law of the case. Accordingly, Plaintiffs are collaterally estopped from relitigating those issues. Because Plaintiffs failed to establish a genuine issue of material fact as to the claims for breach of contract, defamation, or civil conspiracy, the Court finds Defendants are entitled to judgment as a matter of law. Plaintiffs’ complaint is dismissed with prejudice.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge, Fifth Judicial Circuit

Anderson, South Carolina
March __, 2023



Richland Common Pleas

Case Caption: School Of Hope Christian Academy , plaintiff, et al vs Sc Department
Of Education , defendant, et al
Case Number: 2021CP4001000
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2023-03-08 09:36:38 page 13 of 13

EXHIBIT D

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jacqueline McKie and Eugene Burden,

Docket No. 19-ALJ-18-0046-AP

Appellants,

vs.

ORDER

South Carolina Department of Social
Services,

Respondent.

In Re: The School of Hope Christian Academy

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed on February 27, 2019, by Jacqueline McKie and Eugene Burden (Appellants). Appellants seek review of a Final Administrative Order issued by the South Carolina Department of Social Services (Department) terminating the School of Hope Christian Academy's (School) agreement to participate in the Child and Adult Care Food Program (CACFP). The Court has jurisdiction over this matter pursuant to Sections 1-23-600 (D) and 43-5-150. S.C. Code Ann. § 1-23-600 (Supp. 2018); S.C. Code Ann. § 43-5-150 (2015). After reviewing the parties' briefs, the record, and the law, the Department's order is affirmed.

BACKGROUND

The Child and Adult Care Food Program (CACFP) is a federal nutrition assistance program which is administered by the Department of Social Services. The United States Department of Agriculture is the federal agency that both funds and governs CACFP and has codified a set of program regulations found at 7 C.F.R. Part 226. The Department administers the CACFP in this state and must comply with federal regulations and program instructions in administering the program. The School is a sponsoring organization that provides CACFP in several after-school care programs in South Carolina. The CACFP reimburses institutions such as the School based on the number of meals served. Participatory institutions such as the School must first meet federal requirements and maintain performance standards including those relating to financial viability.

FILED

OCT 11 2019

On October 23, 2017, Jacqueline McKie, the School's executive director, executed a Confession of Judgment in the amount of \$446,772.12 in favor of The Merchants Company d/b/a Merchants Food Service of South Carolina (Merchants Food), a food distributor. The Judgment was to be filed with a court of law in the event of non-payment by the School. In December 2017 or January 2018, Merchants Food advised the Department of the outstanding debt. The CACFP director testified that this was the third complaint received by the Department in two years about the School's failure to pay vendors. The Department became concerned that the School's debt appeared to be greater than any outstanding claims from the CACFP and Summer Food Service Program. The Department was also worried that the School was not utilizing the money it received in reimbursements to pay its food service vendors and to maintain financial viability.

On June 4, 2018, the Department sent the School's executive director and Eugene Burden (the School's chairman of the board), a "Serious Deficiency Notice" and requested that the School complete a "Corrective Action Plan" addressing its financial issues. The lengthy letter included a request that the School submit documentation that it was financially viable and maintained fiscal accountability to include in writing its demonstration of a financial system with management controls of all funds and property received, held, and disbursed as well as all expenses incurred. The Department also required the School to provide documentation of the origins of its debt to the food distributor and how it would be satisfied.

On June 21, 2018, the School submitted a Corrective Action Plan. On June 25, 2018, the Department requested additional information which was received on June 29, 2018. The School's Plan was still deemed unsatisfactory. On July 20, 2018, the Department notified the School's executive director and board chairman of their "Proposed Termination and Proposed Disqualification" which would terminate the School's agreement to participate in CACFP and disqualify the School, its executive director and board chairman from participating in the program effective August 9, 2018. The Proposed Termination and Proposed Disqualification letter outlined a number of deficiencies in the Corrective Action Plan including that the School: (1) did not detail management controls in place to ensure fiscal integrity and accountability for all funds received and disbursed; (2) did not provide documentation to support its contention that its debt was incurred as a result of the South Carolina Department of Education not reimbursing its claims for reimbursement; and (3) did not provide specific documentation as to how the debt owed to

Merchants Food was incurred, whether it has been satisfied and if not, how it would be satisfied.

The School, and its executive director and board chairman appealed stating that any financial viability issues were related to the delay in the Department's processing and payment of its claims. On November 20, 2018, an evidentiary hearing was held. Mary Abney-Young, the director of the Department's CACFP, testified and was represented by counsel. At the time of the hearing, the School had some pending claims for which it had not yet been reimbursed by the Department.¹ The Department's director of the CACFP testified that there were several bundles of claims that had not been paid including two bundles for February and March 2018 that were the subject of another pending case and were not raised or addressed in this matter. These claims were as follows:

- January 2018: \$944.27 and \$2,214.68
- April 2018: \$998.78
- May 2018: \$93,926.45

The CACFP director testified that these amounts were still pending because of insufficient supporting documentation. While additional documentation had been subsequently submitted in late October or early November of 2018 for the April and May 2018 claims, the Department had not yet completed its review as of the date of the hearing on November 20, 2018. The School's executive director and board chairman who were also represented by counsel testified regarding their knowledge of the pending claims and the School's debt.

On January 25, 2019, the Department issued a Final Administrative Order (Order) upholding the Department's termination of the School and its principals from participating in CACFP. The Order stated in part that

It is alarming that the School of Hope had at least \$500,000 of transactions and the board/School of Hope had been without a treasurer, CFO, and CPA firm for almost an entire year. ... [I]t is concerning that [the School's] defense and [the executive director] specifically, were unable to clearly articulate or provide documentary evidence showing the total amount of the School of Hope's alleged outstanding debt, the debt that is specifically attributable to outstanding CACFP claims and how they intend to pay all their CACFP outstanding related debt ... It is also concerning that there was no testimony as to the Petitioners' financial system or management controls.

This appeal followed.

¹ According to the School's executive director, one claim had been filed just one day prior to the hearing.

ISSUE

Whether substantial evidence supports the Department's termination and future disqualification of the School, its executive director, and its board chairman from participation in the Child and Adult Care Food Program.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). This court reviews decisions of the Department in an appellate capacity and is "restricted to reviewing the decision[s] below." *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code, when acting in an appellate capacity, the court must apply the criteria of Section 1-23-380(5) which states:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2018).

This section requires the ALC to apply the "substantial evidence" rule. *See e.g., Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two inconsistent conclusions from the evidence does not mean that the agency's conclusion was unsupported by substantial evidence. *Id.*

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (citing *Kearse v. State Health and Human Serv. Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citing *Hamm v. AT&T*, 302 S.C. 210, 394 S.E.2d 842 (1994)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citing *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984)).

DISCUSSION

The administrative responsibilities of each state agency with regard to the CACFP are set forth in 7 CFR § 226.6. 7 C.F.R. § 226.6(c)(3) sets forth the process for terminating a participating institution's participation in the CACFP: "If the State agency determines that a participating institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section, the State agency must initiate action to terminate the agreement of a participating institution and initiate action to disqualify the institution and any responsible principals and responsible individuals." 7 C.F.R. § 226.6(c)(3)(i). Serious deficiencies for which program participation may be terminated include the "Failure to operate the program in conformance with the performance standards set forth in Paragraphs (b)(1)(xviii)² and (b)(2)(vii)³ of this section." See 7 C.F.R. § 226.6(c)(3)(ii)(C). Paragraphs (b)(1)(xviii) and (b)(2)(vii) address new and renewing participating institutions. While the list of deficiencies is not identical for each category of institutions (e.g., new, renewing, participating) because the type of information likely to be available to each State agency is different, the substance of these paragraphs is essentially the same. All participating institutions must submit information sufficiently documenting compliance with standards delineated in the paragraphs that are relevant to its program. The relevant provisions of Paragraph (b)(2)(vii) state as follows:

(vii) Compliance with performance standards. Each renewing institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and

² Paragraph (b)(1)(xviii) specifically addresses new participating institutions.

³ Paragraph (b)(2)(vii) specifically addresses renewing participating institutions.

has internal controls in effect to ensure accountability. To document this, any renewing institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards ...

(A) Performance Standard 1—Financial viability and financial management. The renewing institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part ... To demonstrate financial viability, the renewing institution must document that it meets the following criteria:

...

(2) Fiscal resources and financial history. A renewing institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to continue to pay employees and suppliers during periods of temporary interruptions in Program payments and/or to pay debts when fiscal claims have been assessed against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

...

(B) Performance Standard 2—Administrative capability. The renewing institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part ...

(C) Performance Standard 3—Program accountability. The renewing institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program operates in accordance with the requirements of this part. To demonstrate Program accountability, the renewing institution must document that it meets the following criteria:

- (1) Governing board of directors. Has adequate oversight of the Program by an independent governing board of directors as defined at § 226.2;
- (2) Fiscal accountability. Has a financial system with management controls specified in writing. For sponsoring organizations, these written operational policies must assure:
 - (i) Fiscal integrity and accountability for all funds and property received, held, and disbursed;
 - (ii) The integrity and accountability of all expenses incurred;
 - (iii) That claims are processed accurately, and in a timely manner;

(iv) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(v) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(3) Recordkeeping. Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations ...

7 C.F.R. § 226.6(b)(2)(ii).

Appellants argue that the hearing officer erred in concluding that the School was not financially viable. In particular, they argue that any evidence of a lack of financial viability (including the \$446,772.12 debt owed to Merchants Food) is a result of the Department's delayed reimbursement of the School's claims. The Court disagrees. A review of the entire record reveals that substantial evidence exists to support the hearing officer's findings that the School is not financially viable and that the parties failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed.

The chairman of the School's board of directors testified that the board was not involved in the executive director's execution of a Confession of Judgment for the debt owed to Merchant's Food but was aware of it. After being unable to answer some questions responsive to the issue of the School's viability and fiscal accountability, the chairman said that he had involvement but not necessarily responsibility for the School's finances, and that he coordinated field operations. He did, however, testify that the board's treasurer was removed in October 2017 and volunteered that it had a Certified Public Accountant. When asked for the name of the accountant, the board chairman said that they were in the process of negotiating with one.

The School's board has not had a finance committee since September of 2017, and the board's chairman was not certain as to whether the School's 2017 taxes had been filed. There were periods of time in the past year where the School failed to timely pay its employees or had not been able to pay them for as long as two months. The Board chairman was salaried by the School in the amount of \$3,000.00 per month but he and the executive director had elected to go

without pay for up to six or seven months;⁴ he did not know what the executive director's salary was. He also did not know how much of the School's \$446,772.12 debt to Merchants Food remained as of the date of the hearing in this matter, November 20, 2018 (more than one year after the School's executive director executed the Confession of Judgment).⁵

The executive director testified that the School was in the process of "revamping" its internal structure and confirmed that an accountant was being interviewed. The executive director also confirmed that the School's 2017 tax returns had been filed but that there was a pending lien held by the Internal Revenue Service. The executive director did not know the amount of the lien. In addition to the debts owed to Merchants Food, amounts were owed to other vendors, but the executive director was uncertain of the amounts. She estimated that the School owed US Foods a little over \$100,000, and Performance Foods under \$100,000 (but she did not know if it was more or less than \$75,000 owed to Performance Food). The Performance Food debt was originally \$168,000 and while the School had been placed on a payment plan of \$10,000 a month, the School was not in compliance with the payment plan. When asked if there were any other debts, the executive director responded in part that the School "owes a host, a whole lot of debt," and that "I'm not sure of everything that we owe."

The purpose of the hearing was for the School, its executive director and board chairman to demonstrate to the hearing officer that the School was in compliance with federal regulations and performance standards. The School was unable to do so, and substantial evidence exists in the record that indicates that the School was lacking in internal controls and effective management to insure accountability. As an example, neither the School's board chairman nor executive director could state with any certainty what the School's debts were, let alone what the School's plan was for reimbursement of those debts. As of the end of 2017, the School had no accountant or financial officer, and they had not been replaced at the time of the hearing.

While the School maintained that its debts were attributable to the Department's failure to timely reimburse it for claims, most if not all of the pending claims owed to the School had been reimbursed when the executive director executed the Confession of Judgment. Although some of the claims required the Department to perform an override of its system before the claims could

⁴ He had been the School's board chair since February 2016 and had become an employee of the School in the summer of 2016.

⁵ The executive director testified that the Confession of Judgment was executed on October 23, 2017, and as of the date of the hearing on November 20, 2018, one payment of \$100,000 was made by the School in April 2018.

be entered, the delayed payment primarily resulted from shortcomings in the School's submission of supporting documentation for those claims. The executive director explained that some of the debt was not capable of being reimbursed dollar for dollar as the School was only reimbursed for meals consumed versus those that were delivered, but she provided no documentation of what amount was not reimbursable. When asked what percentage of the School's debt was related to the CACFP and summer food program, the executive director first estimated 75-80% and then said 70-80%, but no supporting documentation was provided. It is unclear what debt is related to the CACFP as the executive director could not attest to the School's total debt, and even provided confusing testimony relative to the debt to Merchants Food. She initially stated that the debt was incurred when the School was asked to provide meals to other schools but later testified that, "well, all of that isn't food, it was court costs, you know, attorney fees and everything they added in that \$446,000."

Moreover, even if the Department paid all of the School's outstanding claims listed above (including a \$218,000 reimbursement for August 2017 which the executive director said was withheld by the South Carolina Department of Education), the amount would be insufficient to satisfy the School's known debts to its vendors. Also, the existence of additional debt was referenced during the hearing, but the School's executive director and board chairman could not provide the specific amounts. Similarly, no testimony was rendered as to how the School planned to resolve its outstanding financial obligations as well as ensure its ongoing financial viability. Although the executive director stated that the School had large lines of credit with vendors that would allow it to continue providing meals, there was an absence of evidence that the School had "adequate sources of funds to continue to pay employees and suppliers during periods of temporary interruptions in Program payments and/or to pay debts ..." *See* 7 C.F.R. § 226.6(b)(2)(vii)(A)(2). Contrarily, the board chairman testified that employees had gone up to two months without pay and that the executive director and he had elected to not pay themselves for several months.

CONCLUSION

Following careful review of the entire record, I find there is substantial evidence in the record to support the Department's decision to terminate the School of Hope Christian Academy and Appellants' agreement to participate in the CACFP.

Accordingly, **IT IS HEREBY ORDERED** that the South Carolina Department of Social Services' Final Administrative Order is **AFFRIMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 11th, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 11 day of October, 2019

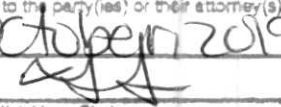
By: 
Judicial Law Clerk

EXHIBIT E



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JACQUELINE MCKIE

March 08, 2021

The School of Hope Christian Academy, etc.

VS

SC Dept of Social Services

2019-CP-40-04421

REPORTER: Lisa Marie Weesner

1 State of South Carolina

2 In the Court of Common Pleas

3 County of Richland

4
5 The School of Hope Christian Academy,
6 Jacqueline McKie, and Eugene Burden, Sr.,
Plaintiffs,

7 V. 2019-CP-40-04421

8 South Carolina Department
9 of Social Services,
Defendant.

10
11 Deposition of: Jacqueline McKie

12 Date: Monday, March 8, 2021

13 Time: 9:03 a.m. - 12:38 p.m.

14 Location: Cromer Babb Porter & Hicks, LLC
15 1418 Laurel Suite A
16 Columbia, SC 29201

17 Court Reporter: Lisa Weesner

18 The deposition is taken pursuant to notice and/or
19 agreement, in the above-entitled cause pending in the
20 above-named court and pursuant to the
21 South Carolina Rules of Civil Procedure.

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A P P E A R A N C E S

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C O N T E N T S

Deposition of Jacqueline McKie

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Defendant's Exhibit Number 2, Plaintiff's Responses to Defendant's Discovery Requests (17 pages)	Page 78 / Line 10
Defendant's Exhibit Number 3, AllSouth Federal Credit Union Bank Statements (35 pages)	Page 135 / Line 13
Defendant's Exhibit Number 4, Wells Fargo Opportunity Checking Bank Statements (33 pages)	Page 135 / Line 18
Defendant's Exhibit Number 5, BB&T Consolidate Statement (44 pages)	Page 135 / Line 23

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

It is stipulated among Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated among Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

Jacqueline McKie,
being first duly sworn by the Court Reporter, as
hereinafter certified, testified as follows:

E X A M I N A T I O N

BY MR. TRAYWICK:

Q Good morning, Ms. McKie. As we just met off the record, my name is Lisle Traywick, and this is Haley Saxby, another attorney in my office. And we have been retained to represent DSS in this matter that -- that y'all filed against our client, and just wanted to come talk to you this morning and take your deposition and kind of get some more background on the case and -- and learn what you contend are your damages and things of that nature. Have you ever had your deposition taken before?

A No, sir.

1 like an adviser to the board, and he definitely has
2 donated money, loaned money, all of that, to keep us
3 going. Donated the first set of Cambros. I didn't
4 even know what a Cambro was until, you know, he donated
5 it to us. And just a good advocate.

6 **Q And is he married to Vanessa Frazier?**

7 A He was. They're -- they're -- that's our --
8 that's her ex-husband.

9 **Q Gotcha. And William Duncan, is that your**
10 **attorney?**

11 A Right.

12 **Q Okay. And Pastor Sammy Wade?**

13 A Yes. Pastor Sammy Wade, he used to be on the
14 program. I don't know if he was on the CACFP program
15 or the summer program. I think he may have just been
16 on the summer program. I think. At that time, those
17 -- many, many years ago, when we first started, DSS
18 housed both -- they -- they -- they were over -- they
19 over -- they were the overseers for both the food
20 program for the summer and the fall. And then they
21 lost that contract in 2014, and it went to DOE. So
22 they used to be the -- you know?

23 So he was like right there, he's arranged
24 meetings with Senator Jackson with some other --
25 Bernice Scott, some other city offici--- state

1 officials to meet with Ms. Young so that she would pay
2 us. So then when -- of course, when we would have
3 these meetings, the very next day, the money would be
4 in our account. That kind of thing. So he was a
5 supporter. He -- he just saw what we went through.
6 And -- and, also, two of his kitchens -- because he
7 pastored both churches, we -- two of our central
8 kitchens were out of his facilities, Eastover and the
9 Hopkins area. And, of course, we couldn't pay the rent
10 and -- and some of the employees. So he definitely
11 know the story as well.

12 **Q Can you give me some more specific**
13 **information about these meetings with state officials**
14 **and when that would have occurred?**

15 A It was -- it was some years ago. Like --
16 like I said to you earlier, this is not something that
17 just started in 2018, like, it's just -- this was a --
18 it's been a lon--- a long history with Ms. Abney-Young.
19 So I want to say I want to say it was back in 2014 or
20 2013, I'm not sure. But we had gone without being
21 paid, without being reimbursed. And Pastor Wade
22 reached out to Bernice Scott, who used to be a council
23 woman, and she reached out to Senator Jackson, and we
24 -- we had a meeting --

25 **Q Okay.**

1 A -- with Mary Young. And --

2 Q So all of y'all were present for that?

3 A We were all present, my board -- my board ---
4 several of my board members were present along with --
5 at the time, Christopher Parrish was the board chair at
6 the time, and along with -- Ms. Young brought Shirley
7 -- Cheryl McDonald -- Cheryl Evans McDonald.

8 Q Okay.

9 A Or Cheryl McDonald Evans -- no -- yeah,
10 Cheryl Evans McDonald -- however it goes, Cheryl came.

11 Q I think I know who you're talking about.

12 A Yeah. So she came to the meeting as well.

13 Q Okay.

14 A And...

15 Q Did you know Senator Jackson personally
16 before that?

17 A I -- I didn't, no, sir.

18 Q Okay. And how about Representative Scott?

19 A I didn't know them before then, no.

20 Q Okay.

21 A I was introduced through, you know, Pastor
22 Wade.

23 Q Okay. All right. And where is -- Pastor
24 Wade, where's his church?

25 A He has two churches.

1 defamatory because we kind of have to nail down what
2 those were, who made them, to whom, and things like
3 that so that we can get a record and figure out whether
4 that amounts to defamation or not. So I do want to ask
5 some more specific questions if that's okay.

6 So what -- what statements do you contend
7 defamed you, first of all; and then, my next question
8 will be as to the School of Hope?

9 A When the state agency called our facilities,
10 contacting our facilities, letting them know that you
11 should go -- trying to encourage them to go to other
12 sponsors, telling them that we were under
13 investigation. Those are defame statements.

14 Q Were y'all under investigation at the time,
15 Ms. Burden?

16 A Yes.

17 Q Okay.

18 A Uh-huh.

19 Q And do you know who made those phone calls?

20 A Several of the -- well, Dyeretta Fashion was
21 one. Shanta Cook was another.

22 Q Okay.

23 A Gloria Richardson or Robinson, I can't
24 remember her last name. Gloria Robinson. I can't
25 remember all of the names, but --

1 CERTIFICATE OF REPORTER

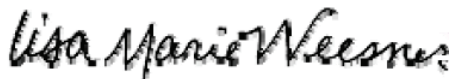
2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Lisa Marie Weesner, Court Reporter and Notary
6 Public for the State of South Carolina, do hereby
7 certify that the deponent in the foregoing deposition
8 was, by me, first duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that said
10 deposition transcript was taken via steno mask with
11 backup; that the foregoing transcript contains a true
12 record of the deposition of said deponent.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to or employed by, any of the
15 parties connected to the action, nor am I financially
16 interested in the action.

17 Witness my hand at Florence, South Carolina, this
18 the 22nd day of March, 2020.

19 
20

21 Lisa Marie Weesner

22
23
24 Notary Public for South Carolina

25 My commission expires: November 4, 2026

EXHIBIT F



1226 Pickens Street
Columbia, South Carolina 29201
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Telephone: (803) 256-4500 | Fax (803) 256-1999

EUGENE BURDEN, SR.

March 08, 2021

The School of Hope Christian Academy, etc.

VS

SC Dept of Social Services

2019-CP-40-04421

REPORTER: Lisa Marie Weesner

1 State of South Carolina

2 In the Court of Common Pleas

3 County of Richland

4
5 The School of Hope Christian Academy,
6 Jacqueline McKie, and Eugene Burden, Sr.,
Plaintiffs,

7 V. 2019-CP-40-04421

8 South Carolina Department
9 of Social Services,
Defendant.

10
11 Deposition of: Eugene Burden, Sr.

12 Date: Monday, March 8, 2021

13 Time: 12:40 p.m. - 1:33 p.m.

14 Location: Cromer Babb Porter & Hicks, LLC
15 1418 Laurel Suite A
16 Columbia, SC 29201

17 Court Reporter: Lisa Weesner

18 The deposition is taken pursuant to notice and/or
19 agreement, in the above-entitled cause pending in the
20 above-named court and pursuant to the
21 South Carolina Rules of Civil Procedure.

A P P E A R A N C E S

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C O N T E N T S

Deposition of Eugene Burden, Sr.

Stipulations	3
Exhibit Index (No exhibits were proffered)	
Examination by Mr. Traywick	3
Examination by Ms. Millender	41
Further Examination by Mr. Traywick	44
Certificate of Reporter	45
Word Index	

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

It is stipulated among Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated among Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

Eugene Burden, Sr.,
being first duly sworn by the Court Reporter, as
hereinafter certified, testified as follows:

E X A M I N A T I O N

BY MR. TRAYWICK:

Q Good afternoon, Mr. Burden.

A Good afternoon.

Q My name is Lisle Traywick and this Haley Saxby.

A Okay.

Q And we've been retained to represent DSS in this action that you, and your wife, and -- and your former school, the School of Hope, have file against our client. I enjoyed speaking with your wife earlier this morning, and sorry we kept you waiting a little bit, I was a little more long winded than I

1 Connection, Elite Entrepreneurs, those things, they
2 suffered because the question was -- we had some
3 members who, at some point, had some relationship and
4 conversations -- and some of the members had sites that
5 we serviced that had been told that we could not be
6 trusted and that we were actually going to be, you
7 know, indicted by the FBI. And so a lot of questions
8 went up about that. And so it just -- I had to back
9 away from some of them, and -- without going into
10 information that wasn't necessary at the time.

11 Q Okay. Do you know what the result of the
12 investigation was?

13 A The investigation with?

14 Q You mentioned an investigation by the FBI.

15 A Oh, no, I said, they were alleging that that
16 was the case.

17 Q Okay. Are you aware of the FBI, or any other
18 federal entity, investigating?

19 A Yes, I am.

20 Q Okay. Which ones?

21 A So I'd just rather not go into that at this
22 point because I -- I haven't had a chance to share, so
23 I don't want to --

24 THE DEPONENT: Is it okay?

25 MS. MILLENDER: Yeah, you got to -- I mean,

1 you got to answer his questions.

2 THE DEPONENT: Okay.

3 MR. TRAYWICK: Right.

4 MS. MILLENDER: Yep.

5 THE DEPONENT: Well, with -- with -- we
6 were -- it was alleged that we had created
7 sites, and so that -- the USDA and FBI came
8 out and -- to seize our records and -- at
9 that time. And while it was discovered that
10 -- in questioning, it was that, So you're
11 telling us that if we go out to this
12 particular address, we won't see a mailbox in
13 a field?

14 And it's like, What are you talking about?
15 And, at that time, they realized, these are
16 sites. And so as a result of that, you know,
17 those records -- per this office here with
18 Mr. Cromer, our records were returned and all
19 of the allegations were dismissed.

20 BY MR. TRAYWICK:

21 Q Okay. So did the -- was there ever a grand
22 jury convened?

23 A No.

24 Q Okay. Did you receive notice from the US
25 attorney, or anyone else, that the investigation was

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Lisa Marie Weesner, Court Reporter and Notary
6 Public for the State of South Carolina, do hereby
7 certify that the deponent in the foregoing deposition
8 was, by me, first duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that said
10 deposition transcript was taken via steno mask with
11 backup; that the foregoing transcript contains a true
12 record of the deposition of said deponent.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to or employed by, any of the
15 parties connected to the action, nor am I financially
16 interested in the action.

17 Witness my hand at Florence, South Carolina, this
18 the 22nd day of March, 2020.

19 
20 _____

21 Lisa Marie Weesner

22
23
24 Notary Public for South Carolina

25 My commission expires: November 4, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TRANSCRIPT OF RECORD
CASE NO. 2022-CP-40-03390

January 22, 2024

BEFORE: The Honorable Judge Jocelyn Newman

The School of Hope,
Plaintiff,
vs.
South Carolina DSS,
Defendant.

APPEARANCES:

W. Michael Duncan, Esq.
Attorney for the Plaintiff.

Lisle Traywick, Esq.
Attorney for the Defendant.

Official Court Reporter/Transcriber
Cynthia D. Weaver

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: Or maybe there's an email somewhere.
7 Moving onto number 23, that is 2022-CP-40-03390,
8 School of Hope Christian Academy versus DSS.

9 Actually, before you all get to it, I'm going to
10 step away for just two minutes, I'll be right back with you.

11 MR. DUNCAN: Thank you, Your Honor.

12 (OFF THE RECORD.)

13 THE COURT: All right. Mr. Duncan, are you there?
14 Mr. Duncan, can you hear me. I just unmuted you.

15 MR. DUNCAN: Okay. All right. Thank you.

16 THE COURT: Turn on your video.

17 MR. DUNCAN: I'm in a courtroom trying to handle a
18 guilty plea. I'll do the best I can, Your Honor.

19 THE COURT: Okay. All right.

20 Well, Mr. Traywick, this is your motion for
21 summary judgment. Let me hear from you.

22 MS. TRAYWICK: Thank you, Your Honor, may please
23 the Court.

24 Lisle Traywick on behalf of the defendant,
25 Department of Social Services in this action.

1 Your Honor, This is about a food program
2 administered by the Department of Social Services for the
3 United States Department of Agriculture. And it's basically
4 for needy after school kids who need nutritious food. And
5 the defendant entered into an agreement with plaintiffs to
6 provide services for that. And under this agreement, which
7 was governed by the State and Federal Law, they would submit
8 claims for reimbursement for providing these food -- for
9 providing food to kids after school.

10 A problem, however, rose during the course of that
11 relationship in which plaintiffs were overstating claims for
12 reimbursement. And a number of denials were issued by the
13 Department of Social Services, and the plaintiffs decided on
14 some of them, at least, to follow the sole and exclusive
15 remedy provided for, in the contract, which is Exhibit B to
16 our Motion for Summary Judgment, B, as in boy, and that is
17 in Section Article 4, Section B2. And it said, Judicial
18 review of any final agency decision pursuant to this
19 contract shall be in accordance with SC Code in Section 123,
20 380.

21 So that, of course, is the Administrative
22 Procedures Act, and you have both contract and state law
23 requiring that this be the exclusive and sole remedy for
24 reviewing any decisions that were appealed from the
25 administrative agency, which is where they would have to

1 file any claims disputing reimbursement determinations by
2 the Department of Social Services.

3 Plaintiffs said that on at least two occasions,
4 and the cases made their way up to Judge Shirley Robinson at
5 the Administrative Law Court, and she agreed with the
6 department in both and those rulings or un appealed. And,
7 therefore, they are the law of the case and that's a well
8 settle case of South Carolina. And so the findings in those
9 orders bind what we're doing here and that's important for a
10 number of reasons. Plaintiffs are seeking reimbursement for
11 January to March of 2018 claims. And yet, Judge Robinson
12 found that those were not -- that DSS validly denied those
13 claims.

14 We also have an issue here, a defamation claim.
15 And although defamation was not pleaded in the
16 administrative action, there are findings in that un
17 appealed order that preclude any argument here on defamation
18 and establish truth as a matter of law. And so, therefore,
19 we're asking that the Court enter summary judgment based
20 upon our motion, the memorandum we found in accordance with
21 the course deadline of last Wednesday, and the five exhibits
22 that we appended to it. And those exhibits include both the
23 agreement between the parties, the two orders of the
24 administrative law court, and another order from a member of
25 this court. So, this isn't an isolated incident involving

1 the plaintiffs. They ran into the exact same problems with
2 the Department of Education. And we were involved in that
3 action to obtain summary judgment from Judge Lawton
4 McIntosh. And that case is now pending on appeal. We've
5 appended his order making the exact same findings under the
6 law of the case doctrine that we are asking that you make
7 here with respect to the claims against DSS.

8 And so just to go through it again, Article 4,
9 Section is quite clear, so is the law regarding the
10 exhaustion of administrative remedies. When a statute, or
11 here a contract and a statute, provide for exclusive means,
12 by which someone is to adjudicate a claim before an
13 administrative agency, they cannot run to the courts until
14 they've exhausted those remedies. Plaintiffs availed
15 themselves of it here, albeit selectively and have
16 articulated no basis on which what they should be excused
17 from doing so.

18 And so under the Unisys and Berry cases that we've
19 cited in our memorandum, we think that the Court should
20 dismiss any claims founding in breach of contract because
21 they are both precluded under the law of the case doctrine
22 under collateral estoppel, and under res judicata with
23 respect to the claims from January to March of 2018. And to
24 the extent that they're challenging any claims for
25 reimbursement on April, May, August, or September of 2018,

1 then those are barred because there was an exclusive remedy
2 provided for by the contract and statute, and so all of that
3 should be dismissed.

4 Moving on to defamation, again the law the case.
5 So the plaintiffs claim that defendants made defamatory
6 statements about them regarding them claiming reimbursements
7 for sites that didn't exist. Well, guess what, Judge
8 Robinson found that they did that. Footnote 3 on Page 8 of
9 the order attached as Exhibit A to our Motion for Summary
10 Judgment, says, Two of the approved sites were not even
11 operating and the school not only failed to advise the
12 department, but also had documentation indicating that meals
13 had actually been claimed for these sites.

14 They also said -- the Court also said there were
15 multiple instances, too many to include of the school
16 overstating its claims, including one instance, where the
17 claim was overstated by 994 meals.

18 So simply put the judge found that they were
19 overstating their claims for reimbursement for federal funds
20 administered by a state agency and they have not pointed
21 into any specific statements made by DSS or an identified
22 agent on its behalf that were defamatory and to the extent
23 they were, they're true as a matter of law.

24 DSS had a right and indeed an obligation under
25 federal law to report any allegations of potential

1 malfeasance in this program to the United States Department
2 of Agriculture and it did. And as the administrative law
3 judges findings demonstrate those were true and they didn't
4 appeal on them and they're now bound by that record here.

5 I also need to give a little bit of background on
6 the beginning of this case. The plaintiffs initially named
7 some individual defendants that were then dismissed by --
8 with prejudice, pursuant to a partial settlement between the
9 parties, and that was missed Direta Fashion (ph) and Marian
10 B. Young (ph). So they are no longer parties. There's no
11 individual defamation claims surviving against them. All
12 claims against them in their individual capacity were
13 dismissed.

14 So, here, we're left with just the allegations and
15 the complaint that plaintiffs claim that DSS or its agents
16 made willful intentional and with actual malice to harm to
17 the plaintiffs statements. Well, guess what that's barred
18 by the South Carolina Tort of Claims Act, under Statute
19 15-78, 60, Subsection 17, Claims are excluded for employee
20 conduct outside the scope as official duties, or which
21 constitutes actual fraud, actual malice, intent to harm or a
22 crime involving moral turpitude.

23 Two, at least two articles there are triggered.
24 Actual malice, which they pleaded in their complaint, and so
25 therefore they must agree that that is the standard

1 governing this defamation claim, and intent to harm. They
2 claim that it was intentional and made with actual malice to
3 harm plaintiffs.

4 So, DSS as the only surviving defendant as a
5 matter of law under the Tort Claims Act cannot be held
6 liable for that. And even on the merits, as we discussed,
7 any statements made were true, they did fail to comply with
8 the law both state and federal. They failed to comply with
9 the requirements in the contract and they admitted in their
10 deposition, which I've attached Exhibit E to our Motion for
11 Summary Judgment, that they were, in fact, under
12 investigation by the federal government and that was their
13 complaint about what was said about them and they admitted
14 it was true.

15 And so we believe, you know, a fundamental
16 claim -- or a fundamental element of a defamation claim is
17 that the defendant must make a false statement. Plaintiffs
18 can't get out of the batter's box here because the
19 statements were true as a matter of law as found by another
20 judge and is binding here as law of the case And by their
21 own testimony in the record.

22 I'd also know that any statements made would be
23 subject to a qualified privilege and plaintiffs have
24 introduced no evidence to the contrary. Again, DSS had a
25 duty under the walls report these allegations to the USDA.

1 Also, to the extent they want to point the finger
2 at employees now and tag them individually or get DSS, I
3 mean, this case has been sitting for a very long time. We
4 moved for a summary judgment in May of 2023 and for whatever
5 reason we appeared on roster in December, Mr. Duncan was
6 then unable to attend that hearing, so we agreed to a
7 continuance and it was moved to today's roster.

8 So we're here no additional discovery has taken
9 place. This case has already been 40Jd and then it's been
10 sitting there thereafter. I'd also note that after I got
11 40Jd, and was restored to the trial roster initial counsel
12 move to withdrawal as counsel upon restoration and a
13 plaintiff substituted Mr. Duncan's as counsel.

14 So, this was a well litigated case that's been
15 sitting around for a long time plaintiffs have failed to
16 prosecute it. They've failed to put forth any genuine issue
17 of material fact after we clearly met our burden. And so
18 under Rule 56e we believe summary judgment shall be entered
19 against the plaintiffs.

20 Happy to ask or answer any questions the Court may
21 have. There's also no evidence of damages in this record.
22 And so for any host of reasons that are in our memorandum
23 and summary judgment should be entered here.

24 THE COURT: Mr. Duncan.

25 MR. DUNCAN: Your Honor.

1 THE COURT: Yes, sir.

2 MR. DUNCAN: I apologize to the Court but I do
3 need about five minutes as the courtroom that I'm in
4 there -- it's 5:00 o'clock and you're still working, but
5 they'd like to shut down the courtroom and we need to get a
6 couple of matters -- if you could --

7 THE COURT: Yes, sir.

8 MR. DUNCAN: -- take just a brief recess, I would
9 appreciate it.

10 THE COURT: Happy to do it.

11 MR. DUNCAN: Thank you.

12 THE COURT: Yes, sir.

13 MR. DUNCAN: Okay.

14 THE COURT: Mr. Duncan, are you ready for us?

15 MR. DUNCAN: Yes, ma'am. We are.

16 THE COURT: All right. Let me hear your response
17 to the Motion for Summary Judgment.

18 MR. DUNCAN: Yes. So the plaintiffs in this case
19 -- have we filed this action a while ago, a good while ago.
20 It was 40Jd. The prior attorney -- essentially, at least
21 semi retired from practicing and withdrew approximately a
22 year-and-a-half ago, his law firm withdrew from this case.

23 Your Honor, I would respectfully submit that we do
24 have material issues of fact in particular regarding the
25 defamation claims, but also the breach of contract claims

1 the actions of the complaint.

2 Mr. Traywick argued this proof as a defense to the
3 defamation claim to the federal -- there was at one point in
4 time, for a lengthy period of time, there was a federal
5 investigation claim but it went nowhere. And the
6 individuals the agents of DSS certainly made statements were
7 not accurate in regards to the business practices of
8 Ms. Mackey, Jacqueline Mackey and Mr Eugene Burden and The
9 School of Hope as an entity.

10 And, again, Your Honor, we would rely on those
11 false allegations as our -- on our defamation claim. And,
12 Your Honor, I would contend that the orders issued by the
13 AOJ, Judge Robinson, do not address specifically all claims
14 the plaintiffs have made for reimbursement. And as to the
15 sites not being in existence, again, I think that it's just
16 factually inaccurate. My clients fed the children at sites
17 all over the state of South Carolina and sought
18 reimbursement and DSS delayed -- delayed and otherwise
19 beyond delayed they simply did not pay some valid, a number
20 of valid claims and cost my clients their business.

21 That's -- That's our position and, again, that
22 they are material issues of fact such that a summary
23 judgment motion should not be granted, that's where we are.

24 THE COURT: Okay. Anything else, Mr. Duncan?

25 MR. DUNCAN: Not -- no, Your Honor.

1 THE COURT: Anything else, Mr. Traywick?

2 MS. TRAYWICK: May I briefly reply, Your Honor?

3 THE COURT: Yes, sir.

4 MS. TRAYWICK: So, with regard to the withdrawal,
5 you know, Paul Porter and Elizabeth Milner had long been
6 handling that case, so I'm not sure it's quite accurate to
7 say that they withdrew through just because Louis Farmer
8 retired, but that's sort of beside the point.

9 With regard to the federal investigation going
10 nowhere, the alleged statement was that one was existing and
11 they've both conceded that there was so that's true. With
12 respect to agents of DSS making statements that weren't
13 accurate regarding the business practices of plaintiffs,
14 we're here on summary judgment. We found a properly
15 supported motion Rule 56e says that, you know, an adverse
16 party can't rest upon the mere allegations or denials of
17 this pleading. And, then, of course, argument of counsel is
18 not evidence.

19 So, therefore, we believe that summary judgment is
20 required under 56e as well. We agreed that the orders
21 didn't address all of their claims. The plaintiffs failed
22 to address the second part of that argument, right? So the
23 orders did address January to March of 2018, but with
24 respect to the remaining claims in 2018, we've got two
25 provisions of law, a contract and the statute that provided

1 the sole and exclusive remedy that they failed to exhaust.
2 And so, therefore, you know, this Court is not a proper
3 forum in which to raise those issues for the first time.

4 And then with regard to plaintiffs taking issue
5 with sites not being in existence, again, I will just point
6 to Page 8, Footnote 3 of Exhibit A, that's Judge Hurley
7 Robinson's order finding that, you know, two of the approved
8 sites were not even operating.

9 So, again, that's the law of the case. And with
10 respect, we would ask the Court to enter summary judgment
11 our favor for the reasons addressed today as well as in our
12 brief. I'm trying to be respectful of, Your Honor's time,
13 this was quite a marathon motions to roster. So, I
14 appreciate your indulgence and your time as always.

15 THE COURT: Yes, sir. Any final words on this
16 motion, Mr. Duncan?

17 MR. DUNCAN: Your Honor, I appreciate the Court --
18 I'm looking on here, it says you've been going for
19 three-and-a-half hours. So, I believe that there are
20 material issues of facts such that summary judgment would
21 not be proper. Summary judgment, the motion was filed
22 several years after the case was initiated. And, again, I
23 don't believe that summary judgment is appropriate and I
24 would ask the Court to deny respectfully the motion. Thank
25 you.

1 THE COURT: Sir, I'm going to take that one under
2 advisement, as well. You know, as the day wears on my quick
3 thinking fades, not that I can't think, but it just comes a
4 little slower towards the end of the day. And I'm reserving
5 some energy for this next set of motions because --

6 MS. TRAYWICK: Thank you, Your Honor.

7 THE COURT: -- the next case on the docket has a
8 trial on Monday. So, yes, I'll let you all know.

9 MR. DUNCAN: Thank you.

10 THE COURT: Thank you. Thank you.

11 MS. TRAYWICK: Thank you, Your Honor.

12 END OF REQUESTED PROCEEDINGS

13

14

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CERTIFICATE OF TRANSCRIBER

Case Name/Number: The School of Hope v. SC DSS,
2022-CP-40-03390

Date of Hearing: January 22, 2024

Court Reporter/Monitor: WebEx

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

October 11, 2024

Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina

RECEIVED

Dec 31 2025

SC Court of Appeals

Certificate of Counsel

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.

December 30, 2025

Duncan and Heydary Law, PLLC.

/s/ W. Michael Duncan

W. Michael Duncan (SC Bar # 0001162)

2411 Pineview Drive

Greensboro, North Carolina 27407

(803) 315-4500

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Attorney for Appellants