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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Charles J. McCutchen, Circuit Court Judge

Civil Action No. 2024-CP-38-00640
Appellate Case No. 2025-001629

Owl Labs, Inc.,.....Appellant,

v.

Orangeburg County School District.....Respondent.

**RECORD ON APPEAL
VOLUME ONE**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	Case No. 2024-CP-38-00640
OWL LABS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court on Defendant's Motion for Summary Judgment. A hearing on this case was held on March 13, 2025. At the hearing, Plaintiff was represented by Lyndey Bryant, and Defendant was represented by Allen Smith.

FINDINGS OF FACT

Plaintiff initiated this action on September 23, 2022, as civil action no. 2022-CP-38-01363.1 In their Complaint, Plaintiff asserts that \$358,391.25 remains outstanding on a purchase order that, in 2020, Defendant bound itself to pay due to obtaining 875 Meeting Owl Pro devices ("Owl Devices") from Plaintiff.

Plaintiff claims that Defendant is liable for the \$358,391.25 purchase order balance, prejudgment interest, costs, and attorneys' fees, for breaching the purchase order's terms. Alternatively, Plaintiff alleges that Defendant is liable for the \$358,391.25 purchase order balance, plus interest in equity, under theories of unjust enrichment, quantum meruit, and quasi contract. Finally, Plaintiff asserts a claim for negligence and a claim for negligent supervision and retention,

¹ The case was stricken from the active docket pursuant to Rule 40(j), S.C. R. Civ. P., and immediately restored as civil action no. 2024-CP-38-00640, on May 9, 2024.

alleging that Defendant failed to supervise one or more employees and failed to train its employees and enforce its policies regarding procurement, which resulted in Plaintiff's damages.

On November 11, 2024, Defendant filed a Motion for Summary Judgment, seeking dismissal of all of Plaintiff's claims. Defendant contends it contracted with and paid Level 8 Communications ("Level 8"), a fraudulent third-party vendor, not Plaintiff, and was unaware that Plaintiff was the true vendor. Additionally, Defendant asserts that the district employee who facilitated the purchase of the Owl Devices misrepresented his identity and otherwise assumed a false identity to commit fraud against both Plaintiff and Defendant. In opposition, Plaintiff argues that Defendant's personnel were aware, or should have been aware, of Plaintiff's involvement in the purchase of the Owl Devices and that Plaintiff reasonably relied on the district employee's representations and authority. It is undisputed that the district employee was employed by Defendant as its Media Communications Specialist at the time the Owl Devices were purchased.

LEGAL STANDARD

"Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001); *see also BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005). Summary judgment is only appropriate if the pleadings and other supporting documents "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.

To determine whether a triable issue of fact exists, record evidence, and all inferences which can be reasonably drawn from said evidence, must be viewed in the light most favorable to the nonmoving party. *See Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-330, 673 S.E.2d 801, 802 (2009). "If triable issues exist, those issues must go to the jury." *BPS, Inc.*, 362 S.C. at

325, 608 S.E.2d at 158 (citations omitted). Summary judgment is inappropriate “where further inquiry into the facts of the case is desirable to clarify the application of law.” *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) (citation omitted). An inference that is not reasonable or an issue of fact that is not genuine are insufficient for summary judgment. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023).

CONCLUSIONS OF LAW

I. Quantum Meruit/ Unjust Enrichment

Quantum meruit, an equitable doctrine, allows recovery under a quasi-contract theory for unjust enrichment. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 583, 762 S.E.2d 696, 703 (2014). A quantum meruit claim requires the claimant to prove the following: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *See id.* at 583, 762 S.E.2d at 704.

Record evidence is clear that Plaintiff conferred a benefit to Defendant when Plaintiff shipped the 875 Owl Devices to Defendant. Defendant is also using the Owl Devices to date. Defendant’s assertion that they paid a fraudulent third-party vendor and that the district employee stole the funds used to pay for the Owl Devices does not negate that a material issue of fact exists as to whether Defendant’s retention of the Owl Devices without paying Plaintiff the value of said devices is unjust under the circumstances.

In arguing that Summary Judgment should be granted, Defendant cited to *Cruz v. City of Columbia*, 443 S.C. 201, 208, 904 S.E.2d 451, 455 (2024), where the Supreme Court of South Carolina held that firefighters could not rely on verbal or written statements from city employees regarding their future healthcare benefits to support a promissory estoppel claim against the city

of Columbia because there was no evidence that the city employees had authority to bind the city on such matters. *See id.* at 205, 904 S.E.2d at 455. *Cruz*, however, is distinguishable because the firefighters knew the state employees didn't have authority to grant no cost health insurance for life. *See id.* at 207, 904 S.E.2d at 454. Here, Plaintiff did not know of the district employee's inherent lack of authority as asserted by Defendant.

Therefore, genuine issues of material fact issues for a jury to consider, and summary judgment on the Quantum Meruit claim is denied.

II. Breach of Contract

A breach of contract claim requires the claimant to prove the existence of the contract, its breach, and the damages caused by such breach. *See S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). When a contract's existence is questioned and the evidence either conflicts or gives rise to more than one inference, the contract's existence becomes a question of fact for the jury. *See Sherman v. W & B Enters., Inc.*, 357 S.C. 243, 250, 592 S.E.2d 307, 310 (Ct. App. 2003)

An agency is a fiduciary relationship created when a principal manifests assent to the agent that the agent act on the principal's behalf, including the execution of contract, and subject to the principal control. *See Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013). The existence of an agency is generally a question of fact, and if there are any facts tending to prove an agency relationship exists, then the question of an agency is one for the jury, and summary judgment is inappropriate. *See id.* at 49-50, 748 S.E.2d at 631.

Here, a genuine issue of material fact exists as to the existence and terms of Defendant's contract with Plaintiff for Defendant to purchase the Owl Devices. While Defendant contends that

it contracted with Level 8 to purchase the Owl Devices, Plaintiff's quantum meruit claim is based on the grounds that a quasi-contract exists between Plaintiff and Defendant.

Additionally, there are genuine issues of material fact as to whether Defendant authorized or ratified the district employee's conduct and whether Plaintiff reasonably relied on the district employee's authority to purchase the Owl Devices on behalf of Defendant. Record evidence contains various negotiations between Defendant's employees, including some from the district employee, prior to Defendant's final payment to Level 8, and when Defendant received the Owl Devices, Defendant had direct contact with Plaintiff regarding the setup of the Owl Devices.

Therefore, genuine issues of material fact issues for a jury to consider, and summary judgment on the Breach of Contract claim is denied.

III. Negligence and Negligent Supervision and Retention Claims

To recover under a negligence claim, the claimant must prove the following: (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages. *See Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003).

Generally, a legal duty "may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Johnson v. Jackson*, 401 S.C. 152, 160, 735 S.E.2d 664, 668 (Ct. App. 2012). However, a breach of a duty must arise independently of a contract provision in order to support a negligence action. *See Koontz v. Thomas*, 333 S.C. 702, 711, 511 S.E.2d 407, 412 (Ct. App. 1999) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie"). It is only when the duty arises independently of the contract, such as from a special relationship

between the parties, that an action for negligence can be supported. *See Carroll v. Isle of Palms Pest Control, Inc.*, 441 S.C. 1, 12, 892 S.E.2d 161, 167 (Ct. App. 2023).

While Plaintiff alleges that Defendant failed to supervise or otherwise train their employees on how to approach the procurement of the Owl devices, Plaintiff's basis for asserting that Defendant owed any duties to Plaintiff solely arise from the claim that Plaintiff and Defendant entered into a contract. In fact, the only relationship between Plaintiff and Defendant arises from there being a contract for Defendant to purchase the Owl Devices from Plaintiff.

Due to the lack of a duty arising independently from a purported contract between the parties, Plaintiff's negligence claims cannot be supported under the circumstances and summary judgment must be granted on the two negligence claims.

IV. Plaintiff's Claim for Attorneys' Fees

Under the "American Rule," the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees, and such fees cannot be recovered unless authorized by contract or statute. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009), *citing, Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 760 (1997).

Here, there is no contract or statute that would permit the recovery of attorneys' fees, and therefore, Plaintiff is barred from such recovery.

While Plaintiff asserts that it can recover attorney's fees on the breach of contract claim based on a provision in a service contract received by the Plaintiff, the service contract was provided after the transaction at issue in this case and does concern recovery for attorney's fees regarding Plaintiff's delivery of the Owl Devices to Defendant.

Furthermore, the South Carolina Tort Claims Act explicitly limits recovery of attorneys' fees only as a sanction against opposing counsel for filing baseless pleadings or other papers. *See*

S.C. Code Ann. § 15-78-120(c); *see also Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 144, 478 S.E.2d 256, 260 (1996).

Because there is no contract or statute that would permit the recovery of attorneys' fees for Plaintiff, Plaintiff is barred from such recovery.

CONCLUSION

Upon consideration of the arguments by counsel, a review of the record, and a viewing of the evidence in the light most favorable to Plaintiff, I find summary judgment is DENIED for the Quantum Meruit claim and the Breach of Contract claim. However, summary judgment is GRANTED for the negligence claim, the negligent supervision and retention claim, and Plaintiff's request for attorney's fees.

IT IS SO ORDERED.

The Honorable Charles McCutchen

(Signature Page to Follow)



Orangeburg Common Pleas

Case Caption: Owl Labs, Inc. VS Orangeburg County School District

Case Number: 2024CP3800640

Type: Order/Other

IT IS SO ORDERED

Charles J. McCutchen

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	Case No. 2024-CP-38-00640
OWL LABS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF'S MOTION
	)	FOR RECONSIDERATION OF SUMMARY
ORANGEBURG COUNTY SCHOOL	)	JUDGMENT ORDER
DISTRICT,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on Plaintiff Owl Labs, Inc.'s ("Plaintiff") Motion for Reconsideration of Summary Judgment Order ("Motion for Reconsideration"). A hearing on Defendant's Motion for Summary Judgment was heard on March 13, 2025. Both parties presented their arguments and supporting memoranda at the hearing and since. This Court entered an Order on the Motion for Summary Judgment on June 6, 2025, and Defendant timely filed their Motion for Reconsideration on June 16, 2025.

The purpose of a motion under Rule 59(e), SCRCP, to alter or amend a judgment is to request the trial judge "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may choose to file such a motion when they believe the court misunderstood, failed to fully consider, or failed to rule on, an argument or issue, and the party wishes for the court to reconsider or rule on the argument or issue. *See id.* at 24, 602 S.E.2d at 779.

After reviewing the Motion for Reconsideration and supporting memoranda, this Court, in its discretion, declines to hold a hearing to address the motion and, as decided on the record, briefs, and applicable law, respectfully declines to alter, amend, or vacate the prior order. *See* Rule 59(f), SCRCF; *Pollard v. City of Florence*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994).

IT IS SO ORDERED.

The Honorable Charles McCutchen

(Signature Page to Follow)



Orangeburg Common Pleas

Case Caption: Owl Labs, Inc. VS Orangeburg County School District

Case Number: 2024CP3800640

Type: Order/Other

IT IS SO ORDERED

Charles J. McCutchen

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	Case No. 2024-CP-38-00640
OWL LABS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING DEFENDANT’S RULE
	)	59(e) MOTION TO RECONSIDER
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	
	)	

This matter is based on Defendant Orangeburg County School District’s (“Defendant”) Motion to Reconsider. A hearing on Defendant’s Motion for Summary Judgment was heard on March 13, 2025. Both parties presented their arguments and supporting memoranda at the hearing and since. This Court entered an Order on the Motion for Summary Judgment on June 6, 2025, and Defendant timely filed their Motion to Reconsider on June 17, 2025.

The purpose of a motion under Rule 59(e), SCRCF, to alter or amend a judgment is to request the trial judge “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may choose to file such a motion when they believe the court misunderstood, failed to fully consider, or failed to rule on, an argument or issue, and the party wishes for the court to reconsider or rule on the argument or issue. *See id.* at 24, 602 S.E.2d at 779.

After reviewing the Motion to Reconsider and supporting memoranda, this Court finds that Defendant has not shown that the court misunderstood, failed to fully consider, or failed to rule on

an argument or issue before the court. Therefore, this Court, in its discretion, declines to hold a hearing to address the motion and, as decided on the record, briefs, and applicable law, respectfully declines to alter, amend, or vacate the prior order. *See* Rule 59(f), SCRCP; *Pollard v. City of Florence*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994).

IT IS SO ORDERED.

The Honorable Charles McCutchen

(Signature Page to Follow)



Orangeburg Common Pleas

Case Caption: Owl Labs, Inc. VS Orangeburg County School District

Case Number: 2024CP3800640

Type: Order/Other

IT IS SO ORDERED

Charles J. McCutchen

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C/A NUMBER: 2022-CP-38-_____

Owl Labs, Inc.,)

PLAINTIFF,)

v.)

Orangeburg County School District,)

DEFENDANT.)

SUMMONS

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint filed in the above-referenced case, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint upon the attorney listed below, at their office at 1501 Main Street, Fifth Floor, Columbia, SC 29201, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within thirty (30) days, judgment by default will be entered against you for the relief demanded in the Complaint.

ADAMS AND REESE LLP

s/Lyndey R.Z. Bryant

John F. Beach (SC Bar No. 595)

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Attorneys for Plaintiff Owl Labs, Inc.

September 23, 2022.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
OWL LABS INC.,	)	Case No. _____
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	
	)	(JURY TRIAL DEMANDED)
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	

1. Plaintiff Owl Labs, Inc. (“Owl Labs” or “the Company”), by and through its undersigned attorneys, hereby brings this Complaint against defendant Orangeburg County School District (the “District”) for breach of contract, unjust enrichment/quantum meruit, negligent supervision, and negligence.

NATURE OF THE ACTION

2. This is an action to recover funds that are due and owing to Owl Labs for video conferencing devices that Owl Labs sold and delivered to the District in late 2020. Owl Labs received a signed purchase order from the District for the devices in question (875 of the Company’s Meeting Owl Pro devices (the “Devices”)). Owl Labs delivered the Devices to the District on the District’s requested accelerated schedule.

3. Unbeknownst to Owl Labs, the primary District employee with whom the Company dealt perpetrated a fraud upon Owl Labs which resulted in the Company receiving only half of the agreed upon purchase price for the Devices that Owl Labs delivered to the District. That District employee, David Marshall, pled guilty to federal wire fraud charges, and the District has admitted that its employee engaged in fraudulent activities during his

employment in connection with the matters alleged herein. Based on these undisputed facts, Owl Labs is informed and believes that the District acted grossly negligent in enforcing its own policies and procedures and in supervising its employees, including but not limited to Marshall, which proximately and directly caused the Company's damages.

4. Owl Labs seeks to recover the sums due and owing to Owl Labs for the Devices that it delivered to the District in late 2020. The District has had full possession and use of those Devices since late 2020 and, upon information and belief, has used those Devices in its schools since that time. The District has never raised any concerns about the quality of the Devices. Owl Labs also seeks recovery of all its costs incurred in bringing and prosecuting this action, including its attorneys' fees.

PARTIES

5. Owl Labs is a collaborative technology company based in Boston, Massachusetts. Owl Labs is dedicated to creating a better workplace and learning experience for today's virtual classroom and hybrid workforce and with the Company's immersive, 360-degree video devices. The Company's flagship product, the Meeting Owl Pro, features a WiFi-enabled, portable 360° camera, microphone, and speaker with proprietary technology that automatically focuses on who is speaking using audio and visual cues. Owl Labs' suite of products makes meetings more inclusive and collaborative by leveling the playing field between remote and in-room participants.

6. Orangeburg County School District operates public schools located in Orangeburg County, South Carolina. The District maintains a principal place of business at 102 Founders Court, Orangeburg, South Carolina.

JURISDICTION AND VENUE

7. Venue is proper in Orangeburg County, South Carolina pursuant to S.C. Code Ann. §§ 15-7-30 and 15-78-100(b), because the District operates in, and the most substantial part of the alleged acts and omissions occurred in, Orangeburg County, South Carolina.

8. The Court has jurisdiction over the District because it conducts business in South Carolina and the incidents and damages complained of occurred in South Carolina, specifically in Orangeburg County, South Carolina.

9. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.

FACTUAL ALLEGATIONS

10. In 2020, as the COVID-19 pandemic required schools to transition from in-person to remote learning, the District sought to procure technology to facilitate remote learning.

11. In October 2020, District employee David Marshall (“Marshall”) contacted Owl Labs about the District’s potential purchase of a substantial quantity of the Company’s Meeting Owl Pro devices for use at the District’s schools. At that time, Marshall was employed by the District as a Media Communications Specialist. The email signature on emails Marshall sent to Owl Labs regarding the District’s purchase of Meeting Owl Pro devices (from his District email address) indicated that he was responsible for Communications, Business & Community Partnerships. Based on Marshall’s title and role with the District, Owl Labs reasonably relied upon his apparent authority to bind District to a contractual commitment for purchase of the Devices.

12. After further discussions between the parties, during which Owl Labs committed to meet the District’s aggressive delivery schedule – a schedule that the District represented was necessary to avoid losing CARES Act funding for the purchase – the District, through Marshall,

and potentially other employees, delivered a signed purchase order (the “Purchase Order”) to Owl Labs (dated October 28, 2020) for 875 of the Devices, for a total purchase price of \$716,782.50 (the “Purchase Price”). This purchase price reflected a substantial negotiated discount for the Devices, which at the time sold for a retail price of \$999 each, which would have cost the District a total of \$874,125.00, if not discounted by Owl Labs. The Purchase Order appeared to be signed and authorized by District employee Greg Twitty, upon information and belief, District’s Procurement Coordinator. A copy of the Purchase Order is attached hereto as Exhibit 1.

13. The District, through Marshall, and potentially other employees, also delivered to Owl Labs a South Carolina Department of Revenue tax-exemption certificate, also purportedly signed and authorized by District’s Procurement Coordinator Greg Twitty, certifying that the District’s purchase of the Devices was exempt from state sales and use tax. A copy of the tax-exemption certificate is attached hereto as Exhibit 2.

14. The District agreed to pay Owl Labs one-half of the Purchase Price by mid-November 2020. Owl Labs received payment for one-half of the Purchase Price on a timely basis.

15. After receiving this 50% payment of the Purchase Price, Owl Labs delivered the Devices to the District pursuant to the Purchase Order. There is no dispute that the District received the Devices.

16. After receiving the Devices, Marshall introduced Owl Labs to District’s Superintendent for Curriculum and Instruction, Andress Carter-Sims, for the purpose of enabling Owl Labs to answer any District questions regarding the Devices, provide training materials, and assist with the implementation of the Devices at the District’s schools.

17. Owl Labs communicated with Carter-Sims on at least four occasions by telephone, email and/or in person regarding training and implementation assistance as to the Devices.

18. Owl Labs is informed and believes that the District has been using the Devices that Owl Labs sold and delivered to the District pursuant to the Purchase Order in its schools since at least early 2021.

19. The District has never raised any concerns about the quality of the Devices or the services that Owl Labs delivered to the District.

20. The District has not paid Owl Labs the 50% balance of the Purchase Price that is due and owing for the Devices that Owl Labs sold and delivered to the District pursuant to the Purchase Order. Exclusive of interest, the unpaid balance on the Purchase Order is \$358,391.25. Owl Labs has not received payment for this unpaid balance from any other source.

21. At all relevant times, including through the date of its delivery of the Devices to the District pursuant to the Purchase Order, Owl Labs had a reasonable belief that Marshall was authorized to act on behalf of the District in arranging for its purchase of the Devices from Owl Labs. Owl Labs' receipt of the signed Purchase Order and tax-exemption certificate (both purportedly signed and authorized by District's Procurement Coordinator, Greg Twitty, a District employee other than Marshall), and Owl Labs' interactions with other District personnel, including but not limited to Andress Carter-Simms (interactions that Marshall facilitated), further demonstrate the reasonableness of Owl Labs' belief that Marshall was authorized to act on behalf of the District in arranging for its purchase of the 875 Meeting Owl Pro devices from Owl Labs. Based on these interactions, Owl Labs is informed and believes that District knew or should have known of Owl Lab as the manufacturer and seller of the Devices at issue.

22. Upon information and belief, and unbeknownst to Owl Labs at the time, Marshall perpetrated a fraud upon Owl Labs which resulted in the Company receiving only half of the agreed upon Purchase Price for the Devices that Owl Labs sold and delivered to the District. Owl Labs is informed and believes that Marshall received the Devices that Owl Labs sold and delivered to the District and re-sold those devices to the District at a mark-up using one or more corporate alter egos that Marshall created and controlled.

23. When Owl Labs contacted District employees other than Marshall in 2021 to obtain payment for the balance of the Purchase Order, the District confirmed that Marshall had engaged in fraudulent activities during his employment with the District in arranging for the purchase of the Devices from Owl Labs. The District thereafter contacted law enforcement officials regarding Marshall's conduct.

24. The District has admitted that its employee, Marshall, engaged in fraudulent activities during his employment with the District in arranging for the purchase of the Devices from Owl Labs.

25. On January 27, 2022, Marshall pled guilty to wire fraud in federal district court in South Carolina in connection with the matters alleged herein, among other matters. The federal court held a sentencing hearing on June 6, 2022 and entered judgment as to Marshall on June 8, 2022. The court sentenced Marshall to 33 months' imprisonment, followed by 3 years of supervised release. Although the court's judgment orders that Marshall make restitution to Owl Labs (among other payees, including the District), the judgment provides that restitution is to be paid by Marshall in equal monthly installments of \$200, commencing 30 days after release from imprisonment to a term of supervision. *See United States of America v. David Cortez Marshall,*

Jr., Case No. 5:21-CR-00841, United States District Court, District of South Carolina. As of this date, Owl Labs has not received any restitution payments from Marshall.

FIRST CAUSE OF ACTION
Breach of Contract

26. Owl Labs incorporates the allegations contained in paragraphs 1-25 as if fully set forth herein.

27. The Purchase Order is a valid and enforceable contract.

28. Former District employee David Marshall, as District's Media Communications Specialist, had actual or apparent authority to deliver the Purchase Order to Owl Labs on the District's behalf. The District consciously or impliedly represented Marshall and Twitty to be its agents; Owl Labs reasonably relied on these representations; and Owl Labs detrimentally changed its position in reliance on these representations.

29. Owl Labs performed all of its obligations as required by the Purchase Order by delivering the devices to the District on the promised schedule.

30. The District has breached the Purchase Order by failing to make payment to Owl Labs pursuant to the terms of the Purchase Order.

31. As a result of the District's breach of the Purchase Order, Owl Labs has been damaged in an amount to be proven at trial, plus interest, costs, and attorney's fees.

SECOND CAUSE OF ACTION
Unjust Enrichment/Quantum Meruit/Quasi Contract

32. Owl Labs incorporates the allegations contained in paragraphs 1-31 as if fully set forth herein.

33. Owl Labs conferred a benefit on the District by delivering the Devices to the District on District's aggressive delivery schedule.

34. The District has used and, upon information and belief, continues to use the Devices without paying Owl Labs the full value of those Devices.

35. It would be inequitable to allow the District to retain the Devices without paying the full value of the Devices to Owl Labs.

36. As a matter of equity, Owl Labs is entitled to recover the full value of the Devices.

THIRD CAUSE OF ACTION
Negligent Supervision and Retention

37. Owl Labs incorporates the allegations contained in paragraphs 1-36 as if fully set forth herein.

38. The District is responsible for exercising control as to not only Marshall, but also those other employees acting entirely within their scope of employment, who failed to notice or report, or who took part of, Marshall's improper and fraudulent activities on District's behalf with respect to Owl Labs.

39. District's employees' fraudulent and/or grossly negligent behavior while interacting with Owl Labs on behalf of the District occurred on the premises of the District or through the use of District's personal property, property, and/or resources.

40. The District knew or had reason to know that it had the ability to control its employees, and had information sufficient to know that it should control not only Marshall but the other employees who facilitated his fraudulent and grossly negligent behavior by failing to report, failing to properly investigate, failing to supervise, and failing to follow basic policies and procedures as to expenditure of state and federal funds. The District further knew or should have known of the necessity and opportunity for exercising such control over its employees, including but not limited to Marshall.

41. The District knew or had reason to know, given the widespread nature of the fraud, that Marshall was engaged in fraudulent conduct.

42. The District could have reasonably anticipated the harm resulting to a third party, such as Owl Labs, from its grossly negligent retention and/or supervision of its employees and did in fact or should have adopted policies and practices to minimize the opportunities for that harm to occur on District's premises or using its property and/or resources.

43. The District was grossly negligent in supervising and retaining not only Marshall, but also all other employees with knowledge, agency, authority, or right to control, direct, supervise, investigate, or approve the District's state and/or federal funding and contracts.

44. As a result of the District's negligent supervision and retention of its employees, including but not limited to Marshall, Owl Labs was damaged.

45. Owl Labs has been damaged in an amount to be proven at trial, plus interest, and costs.

FOURTH CAUSE OF ACTION **Negligence**

46. Owl Labs incorporates the allegations contained in paragraphs 1-45 as if fully set forth herein.

47. The District owed a duty of care to Owl Labs to have policies and procedures in place to minimize the risk of fraudulent and/or grossly negligent activities by the District's employees and agents, including but not limited to Marshall. The District owed a duty of care to Owl Labs to enforce such policies and procedures in order to minimize the damage that could have been anticipated by District in failing to implement such policies and procedures.

48. The District breached its duties to Owl Labs and was negligent in at least the following ways:
- a. failing to have reasonable and adequate policies and procedures in place that are designed to minimize financial damage to third-parties who reasonably rely on the District's employees with respect to procurement, contracting, and expenditure of the District's state and federal funds;
 - b. failing to implement and enforce policies and procedures designed to minimize financial damages to third-parties who reasonably rely on the District's employees with respect to procurement, contracting, and expenditure of the District's state and federal funds;
 - c. failing to train employees to identify and report fraudulent activity between the District and third-party vendors, such as Owl Labs;
 - d. failing to use that degree of care and caution that a reasonable and prudent School District in the State of South Carolina would have used under the same circumstances.
49. The District's actions were reckless and grossly negligent in permitting the misconduct, in failing to have operating practices to identify and prevent it, and in failing to discover it both before it began to occur and as it was occurring.
50. The District's gross negligence was the direct and proximate cause of the damage to Owl Labs.
51. Owl Labs has been damaged in an amount to be proven at trial, plus interest, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Owl Labs Inc. prays for judgment against Defendant Orangeburg County School District as follows:

1. for compensatory damages in an amount to be proven at trial;
2. for all attorneys' fees and costs incurred by Owl Labs; and
3. for such other and further relief as the Court may deem just, proper and appropriate.

Respectfully submitted,

ADAMS AND REESE LLP

s/Lyndey R.Z. Bryant

John F. Beach (SC Bar No. 595)

Lyndey R.Z. Bryant (SC Bar No. 100804)

1501 Main Street, Fifth Floor

Columbia, South Carolina 29201

Telephone: (803) 254-4190

Facsimile: (803) 779-4749

john.beach@arlaw.com

lyndey.bryant@arlaw.com

Attorneys for Plaintiff Owl Labs, Inc.

September 23, 2022.

Exhibit 1

Purchase Order

Orangeburg County School District
Technology
102 Founder's Court
Orangeburg SC 29115

No. 21045633

PLEASE INCLUDE EMAIL ADDRESS ON
INVOICE

INVOICE FOR ONLY SHIPPED ITEMS
NO BACKORDERS

Send Invoice to Above Address

This PO number must appear on all
packages and correspondence.

P.O. Date: 10/28/2020

Questions ? (803) 534-5454

Ext:

Account:

P.O. Issued To :

Ship To:

Owl Labs
33-1/2 Union Square
Somerville, MA 02143

OCSD Warehouse
Attn: Eric Ham
473 Fair Street
Orangeburg SC 29115
(803) 534-5454

Contact:

Location: Technology

Phone:

Fax:

Project: Undesignated

Req# 64593

Reference:

Award Number:

Line	Qty	Unit	Part#	Description	Account Number	Unit Price	Extended	Tax	Freight
1	875	EA		Meeting Owl Pro SKU MTW200-1000	100.266.00445.0000.000 Technology & Software Supplies	819.18	716,782.50	0.00	0.00

APPROVAL SIGNATURES:



Sub-Total: 716,782.50

Freight: 0.00

Tax: 0.00

Total Amount: 716,782.50

NOTES:

Order Via:

RTS

ENTITY COPY

Wednesday, October 28, 2020

Page

1 of 1

ROA_029

ELECTRONICALLY FILED - 2022 Sep 23 1:25 PM - ORANGEBURG - COMMON PLEAS - CASE#2022CP3801363

Exhibit 2



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
EXEMPTION CERTIFICATE
FOR SALES AND USE TAX
(Single Sale Only)

ST-8
(Rev. 7/14/16)
5009

Purchaser's Name Orangeburg County School District Date October 29, 2020

Signature *Gary Smith* (Please Print) Amount of Sale \$ 716,782.50

Address 102 Founders Court, Orangeburg, SC 29118

This form is to be completed by purchaser and seller must maintain copy of exemption certificate. Do not send certificate to SC Department of Revenue.

The undersigned hereby certifies that the purchases of tangible property made under this certificate are made in accordance with the exemption checked below: that in the event the property so purchased is used for purposes other than specified, the purchaser assumes full liability and must file a return and pay the tax due thereon.

Description of tangible personal property purchased Owl Labs Meeting Owl Pro SKU MTW200-1000, access to online information systems used in a course of study.

SCHEDULE OF EXEMPTIONS FOUND AT CHAPTER 36 OF TITLE 12 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED

Check Applicable Exemption:

- ☐ Tangible personal property sold to the federal government; [12-36-2120(2)].
- ☒ Textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for student's use in the school library of these schools and institutions; [12-36-2120(3)(a)].
- ☐ Books, magazines, periodicals, newspapers, and access to on-line information system sold to publicly supported state, county, or regional libraries; items in this category may be in any form, including microfilm, microfiche, and CD ROM; [12-36-2120(3)(b)].
- ☐ Fuel, lubricants and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce. This exemption does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair or reconditioning of ships and other watercraft; [12-36-2120(13)].
- ☐ Wrapping paper, wrapping twine, paper bags and containers used incident to the sale and delivery of tangible personal property; [12-36-2120(14)].
- ☐ Machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. 'Machines' include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item 'recycling' means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale; [12-36-2120(17)].
- ☐ Electricity, natural gas, fuel oil, kerosene, LP gas, coal or any other combustible heating material or substance used for residential purposes. Individual sales of kerosene or LP gas of twenty gallons or less by retailers are considered used for residential heating purposes; [12-36-2120(33)].
- ☐ Prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases including prescription medicines used to relieve the effects of any such treatment [12-36-2120(28)(a)].
- ☐ Prescription drugs dispensed to medicare part A patients residing in a nursing home [12-36-2120 (28)(f)].
- ☐ Any device, equipment or machinery operated by hydrogen or fuel cells, any device, equipment or machinery used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and any device, equipment or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies [12-36-2120(71)].
- ☐ Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services (CMS) certified kidney dialysis facility. For purposes of this exemption, "biologics" means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. [12-36-2120(80)]

Purchaser's Name _____

The undersigned hereby certifies that the purchases of tangible personal property made under this certificate are made in accordance with the exemption checked below: that in the event the property so purchased is used for purposes other than specified, the purchaser assumes full liability and must file a return and pay the tax due thereon.

When Claiming an exemption on Page 2, be sure to attach Page 1. Both pages must be retained by seller.

Check Applicable Exemption:

- ☐ Construction materials used by an entity organized under Section 501(c)(3) of the Internal Revenue Code as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. For purposes of this item, an individual or family in need' means an individual or family, as applicable, whose income is less than or equal to eighty percent of the county median income." [12-36-2120(81)].
- ☐ Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft;" [12-36-2120(52)].
- ☐ Children's clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the sole purpose of distribution by that organization to needy children. For purposes of this item:
(a) "clothing" means those items exempt from sales and use tax pursuant to item (57)(a)(i) and (iii) of this section;
and
(b) "needy children" means children eligible for free meals under the National School Lunch Program of the United States Department of Agriculture." [12-36-2120(82)]

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
Owl Labs,	)	
	)	C.A. No. 2022-CP-38-01363
Plaintiff,	)	
	)	DEFENDANT'S ANSWER AND
vs.	)	AFFIRMATIVE DEFENSES
	)	
Orangeburg County School District	)	
	)	
Defendant.	)	
	)	
	)	
	)	

Defendant, Orangeburg County School District ("District"), by and through its undersigned counsel, hereby responds to the allegations of Plaintiff's complaint as follows:

1. The District denies each and every allegation of the Plaintiff's complaint, except those allegations expressly admitted herein.

2. The District denies as stated the allegations of paragraph 1; the District admits only that the Plaintiff, Owl Labs, filed its complaint in this case seeking to allege causes of action against the District, but the District denies any actionable conduct and denies that Owl Labs is entitled to any recovery from the District.

3. The District denies as stated the allegations of paragraph 2 of the Plaintiff's complaint. The District admits only that Owl Labs seeks to recover funds from the District for videoconferencing devices, but the District denies that it owes any money to Owl Labs for the videoconferencing equipment. Further responding to paragraph 2, the District never contracted with or made any purchases from Owl Labs; rather, the District purchased its videoconferencing devices from another company, Level Eight, which is or was a South Carolina corporation, and the District fully paid Level Eight for the videoconferencing devices.

4. The District denies as stated the allegations of paragraph 3. The District admits only that David Marshall, a former District employee, perpetrated a fraud on the District, Owl Labs, and possibly others, and that David Marshall pled guilty to federal charges as a result of his fraudulent activities. The District denies that it was grossly negligent, denies any actionable conduct, denies causing any damages to Owl Labs, and denies that Owl Labs is entitled to any recovery from the District.

5. The District denies the allegations of paragraph 4 as stated. The District admits only that Owl Labs has brought this action against the District seeking to recover amounts allegedly owed to Owl Labs, but the District denies that it owes any money to Owl Labs. Instead, to the extent that Owl Labs is owed any funds, the only liable party would be David Marshall, not the District. Moreover, regarding the videoconferencing devices, the District has offered to return them to Owl Labs. Finally, Owl Labs' request for attorney's fees has no basis in law or fact and should be stricken from the complaint.

6. The District denies as stated the allegations of paragraph 5. The District admits only that Owl Labs has represented to the District that it is a Boston, Massachusetts company that provides videoconferencing devices.

7. The District admits the allegations of paragraph 6.

8. Responding to the allegations of paragraphs 7, 8, and 9, the District admits only that jurisdiction and venue are proper.

9. Responding to paragraph 10, the District admits only that it purchased videoconferencing equipment from Level Eight and fully paid Level Eight for the equipment.

10. The District denies as stated the allegations of paragraph 11. The District admits only that David Marshall worked as a District employee in October 2020, but the District denies that Mr. Marshall had any authority to bind the District to any contract he allegedly negotiated with Owl Labs, and also denies that Owl Labs reasonably relied on any alleged authorization or

representation of Mr. Marshall, which would have been made without District authorization and outside the scope of Mr. Marshall's employment.

11. The District denies the allegations of paragraph 12; the District never contracted with or purchased the videoconferencing devices from Owl Labs and never agreed to purchase any videoconferencing devices from Owl Labs. Moreover, on information and belief, David Marshall forged the signature on the purchase order referenced in Owl Labs' complaint without the knowledge or authority of Greg Twitty or the District.

12. The District denies the allegations of paragraph 13; the District never prepared or delivered to Owl Labs a South Carolina Department of Revenue tax-exemption certificate. On information and belief, David Marshall forged the referenced certificate without the knowledge or authority of Greg Twitty or the District.

13. The District denies the allegations of paragraph 14.

14. Answering paragraph 15, the District admits only that it received the videoconferencing devices that it purchased from Level Eight.

15. The District denies for lack of knowledge the allegations of paragraphs 16 and 17.

16. The District denies the allegations of paragraph 18 as stated, admitting only that the District used the videoconferencing devices for a period of time.

17. Answering paragraph 19, the District admits, on information and belief, only that the District never communicated any concerns about the devices to Owl Labs.

18. The District denies the allegations of paragraph 20; the District fully paid Level Eight for the devices and does not owe any money to Owl Labs.

19. The District denies the allegations of paragraph 21.

20. The District denies the allegations of paragraph 22 as stated. The District admits only that a former employee, David Marshall, perpetrated a fraud on the District, Owl Labs, and

possibly others and, further, that the District never contracted with or agreed to purchase any devices from Owl Labs.

21. Regarding paragraph 23, the District admits only that Owl Labs contacted the District to request payment, that the District denied the request because it never contracted with Owl Labs to purchase the devices, that the District discovered David Marshall's fraudulent activities, and that the District contacted law enforcement to report Mr. Marshall's fraud.

22. The District denies as stated the allegations of paragraph 24; the District admits only that it has received information indicating that its former employee, David Marshall, engaged in fraudulent activities in connection with the devices that the District purchased from Level Eight and, further, that any of Mr. Marshall's fraudulent activities were unauthorized and outside the scope of his employment.

23. The District admits the allegations of paragraph 25, except as to the last sentence, which is denied for lack of knowledge.

24. Responding to the allegations of paragraph 26, the District incorporates its prior responses above as if fully repeated herein.

25. The District denies the allegations of paragraphs 27, 28, 29, 30, and 31. Moreover, Plaintiff's request for an award of attorney's fees in paragraph 31 is improper because there is no basis in law or fact for such an award and, therefore, this request should be stricken from the complaint.

26. Responding to the allegations of paragraph 32, the District incorporates its prior responses above as if fully repeated herein.

27. The District denies the allegations of paragraphs 33, 34, 35, and 36.

28. Responding to the allegations of paragraph 37, the District incorporates its prior responses above as if fully repeated herein.

29. The District denies the allegations of paragraphs 38, 39, 40, 41, 42, 43, 44, and 45.

30. Answering paragraph 46, the District incorporates its prior responses above as if fully repeated herein.

31. The District denies the allegations of paragraph 47, 48 (including all subparts thereof), 49, 50, and 51.

32. The District denies that the Plaintiff is entitled to the relief requested in the complaint or any other recovery or relief whatsoever from the District.

FIRST AFFIRMATIVE DEFENSE

To the extent that the complaint fails to state facts sufficient to constitute a cause of action, the Plaintiff's claims should be dismissed.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff cannot plead and prove the essential elements of its causes of action against the District; therefore, Plaintiff's claims fail as a matter of law and should be dismissed.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims fail because estoppel will not lie against the government, and the District cannot be bound by the doctrine of estoppel based on an any unauthorized representations or actions by a former employee. The Plaintiff cannot bind or estop the District based on an unauthorized action of a former employee who acted criminally and without actual or apparent authority.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the South Carolina Procurement Code and the Orangeburg County School District Procurement Code because, among other things, any alleged contract on which the Plaintiff seeks to recover is void because it was not entered in accordance with the requirements of South Carolina law.

FIFTH AFFIRMATIVE DEFENSE

The District is not a proper party to this case, and Plaintiff's complaint should be

dismissed.

SIXTH AFFIRMATIVE DEFENSE

The public interest prohibits the Plaintiff from recovering on the claims alleged in the complaint.

SEVENTH AFFIRMATIVE DEFENSE

The District is immune from liability under the Tort Claims Act because Plaintiff's alleged losses, which are expressly denied, resulted from employee conduct outside of the scope of official duties or which constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

EIGHTH AFFIRMATIVE DEFENSE

The District is not liable because the Plaintiff voluntarily assumed the risk of any and all injuries it may have sustained.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's prayer for an award of attorney's fees must fail and should be stricken from the complaint because there is no basis for such an award.

TENTH AFFIRMATIVE DEFENSE

The District is not liable for any alleged negligence claims because Plaintiff's alleged injuries were directly and proximately caused, if at all, by its own contributory negligence, gross negligence, and recklessness, and Plaintiff's contributory negligence, gross negligence, and recklessness exceeded any alleged negligence, gross negligence, and recklessness of the District.

ELEVENTH AFFIRMATIVE DEFENSE

The District is not liable to the extent that Plaintiff's action is barred by the statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel, waiver, laches, and unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

The District at all times acted in good faith.

FOURTEENTH AFFIRMATIVE DEFENSE

The District is immune from liability under the South Carolina Tort Claims Act to the extent that Plaintiff's alleged loss, if any, which is expressly denied, resulted, if at all, from the District's adoption, enforcement, or compliance with any law, or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policy.

FIFTEENTH AFFIRMATIVE DEFENSE

The District would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness, wantonness, and intentional conduct of some other party or parties, and the District pleads such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness, wantonness, and intentional conduct as the direct and proximate cause of the injuries and damages allegedly sustained by the Plaintiff as alleged in the complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has failed to mitigate his damages, it is precluded from recovery.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' request for prejudgment interest is precluded by the South Carolina Tort

Claims Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages must be denied because an award of punitive damages would violate the South Carolina Tort Claims Act, the South Carolina Constitution, and the United States Constitution, including the equal protection and due process clauses of the Constitution.

NINETEENTH AFFIRMATIVE DEFENSE

Punitive damages are inappropriate in this case because District personnel did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages must be based.

TWENTIETH AFFIRMATIVE DEFENSE

The District denies any and all liability to the Plaintiff, but to the extent that any award may be granted, the District is entitled to a setoff of any sums paid by or on behalf of any other defendants, tortfeasors, or other persons in a settlement or payment of this action or any verdict in this action, or payment or settlement of claims or potential claims arising from the alleged incident which is the subject of this action.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims must fail because it has failed to exhaust its available administrative remedies.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The District pleads as a further bar and limitation on this action each and every provision of the South Carolina Tort Claims Act, including its limitations on damages and its exceptions to the waiver of sovereign immunity.

WHEREFORE, having fully answered Plaintiff's complaint, and also having set forth its affirmative defenses, the District respectfully prays that this Court dismiss this action in its entirety and award the District its costs and other relief as permitted by law.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Allen D. Smith

Allen D. Smith, Fed. I.D. No. 5465
asmith@hmwlegal.com

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendant

July 31, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF ORANGEBURG	*	TRANSCRIPT OF RECORD
-----X		
OWL LABS, INC.,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Case No. 2024-CP-38-00640
	*	
ORANGEBURG COUNTY SCHOOL	*	
DISTRICT,	*	
	*	
Defendant.	*	
-----X		

March 13, 2025

B E F O R E:

The Honorable Charles J. McCutchen, Presiding Judge

A P P E A R A N C E S:

Lydney Bryant, Esq.
Attorney for the Plaintiff

Allen Smith, Esq.
Attorney for the Defendant

Recorded by: WebEx Recording

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

THE COURT: Next is Owl Labs versus Orangeburg County School District. Ms. Bryant -- Mr. Smith, this is your motion?

MR. SMITH: Yes, it's my motion, Judge.

THE COURT: All right. Let me get my stack. Got a small novel here on this one.

Go ahead, Mr. Smith.

MR. SMITH: I hope we did not do a disservice. It's not as complicated as it appears.

I represent the Orangeburg County School District in this case, and this case really presents one question. And the central question in this case is: Can a public school district be held liable for the unauthorized, fraudulent, and criminal actions of an employee? And the answer to that question in South Carolina that has been settled for many years is no, a governmental entity cannot be held liable for an unauthorized, fraudulent, and criminal actions of an employee.

In this case, a former employee of the School District, David Marshall, without the knowledge of the School District, created or had some sort of corporate entity called Level 8 that he used to do business, and he had -- he had indicated or reported, without the knowledge of the School District, this Level 8 company was listed or claimed to be listed as a State

1 -- approved State contract vendor. And the School District
2 had, in the past, made a number of having technology purchases
3 through this company called Level 8 without knowing that one
4 of its employees had some sort of affiliation with that
5 company.

6 Back when COVID-19 hit and school districts began
7 transitioning to virtual instruction, the District needed to
8 purchase a large number of videoconferencing cameras to enable
9 and facilitate virtual instruction of students when they were
10 learning from home because of COVID.

11 The District purchased -- because of its prior dealing
12 with Level 8, the District purchased about 875 Owl Labs video
13 conferencing cameras through Level 8. They issued a purchase
14 order to Level 8. They paid the 50 percent payment upfront.
15 The cameras were delivered. They paid the balance to Level 8.
16 The cameras were installed.

17 The District never had any dealings with a company called
18 Owl Labs. The District discovered that there was a company
19 called Owl Labs claiming to be owed money for these cameras
20 when they were contacted by Owl Labs and began to receive
21 invoices from Owl Labs.

22 What had been going on -- and neither Owl Labs nor the
23 District knew this -- is that David Marshall had concocted
24 this elaborate scheme where, through Level 8, he would buy
25 these cameras from Owl Labs and then he would sell them at a

1 significant markup to the District. I think he marked them up
2 about \$130,000.

3 As part of that, he created a separate sham LLC called
4 Orangeburg Purchasing. This had no affiliation with the
5 District; the District had nothing to do with it. But he used
6 that to process payments to Owl Labs in an effort to conceal
7 the fact that the District was not the one paying for the
8 cameras but that he, through Level 8 and Orangeburg
9 Purchasing, was paying for the cameras.

10 Where the wheels fell off on this thing is that the
11 second payment that the District made to Owl -- to Level 8 in
12 the amount of \$358,000, Mr. Marshall never sent it to Owl
13 Labs, which is what precipitated the invoices, the efforts in
14 collection, and ultimately, Mr. Marshall's confession and
15 later incarceration for wire fraud.

16 But Mr. Marshall never had any authority on behalf of the
17 District to enter any kind of contract to bind the District to
18 any purchase with Owl Labs.

19 There's a fairly recent case, which I think is
20 dispositive of our Motion for Summary Judgment -- it's Cruz,
21 C-r-u-z, v. City of Columbia. In that case -- it's factually
22 a little different, but in that case, there were a group of
23 City employees or City retirees who claimed that supervisors
24 and managers of the City promised them that they would have
25 retirement benefits for life. And when that policy was

1 changed and they were not provided retirement benefits for
2 life, they brought an action seeking to recover, among other
3 theories, promissory estoppel based on the representations of
4 the managers of the City.

5 And the Court very clearly explained in that case that
6 those individuals did not have the authority to bind the City
7 to that type of a transaction. And there's a lot of language
8 in there really emphasizing -- and it just repeats earlier
9 cases -- that anybody who conducts business with or deals with
10 a public entity does so at their own peril if they don't
11 verify that the individual they're dealing with or working
12 with has the authority to enter into whatever agreement they
13 claim to be entering into.

14 And, in this case, the tragedy is, this entire thing
15 could have been avoided if somebody at Owl Labs had picked up
16 the phone and called the District, sent an email to the
17 District to somebody other than David Marshall.

18 But this was a big sale for Owl Labs. I think they were
19 so eager to close the deal that nobody bothered to pick up the
20 phone, nobody bothered to send an email, nobody bothered to
21 contact anybody else at the District to say, "Hey, do you have
22 the authority to do this? Does Mr. Marshall have the
23 authority to do this?"

24 The Cruz case, the cite for that is 443 S.C. 201,
25 904 S.E.2d 451, and that Court -- the Court in that case --

1 the Supreme Court of South Carolina clearly explains that, in
2 a situation where there's been something like this to have
3 occurred, that the normal analysis used for estoppel and those
4 kind of things don't apply to a governmental entity.

5 The Court makes it very plain that, in a situation like
6 this, rather than burdening the governmental entity and the
7 taxpayers, it's better off to let the loss lie with the
8 private entity rather than the governmental entity. And
9 there's some citations to some authorities along those lines.

10 And this is consistent with a long line of cases in South
11 Carolina. I also cite to the Heyward (ph) case, which very
12 clearly has some language in there that says that if you do
13 business with a governmental entity -- and I quote this in our
14 memo on page -- page 9 of my memorandum. Let me quote this
15 language that "all men are bound to take notice of the special
16 authority of the State officers." And if you deal with them
17 outside of their authority, you do so at your own peril.

18 I actually, in the early 2000s, I litigated a similar
19 case. We had a group of employees who sued Greenwood School
20 District 50 based on a claim that the superintendent had told
21 them that if they went through the process -- and it was a
22 fairly rigorous process -- to obtain national board
23 certification, he would pay them a bonus equal to 10 percent
24 of their salary for ten years.

25 And the board ultimately reduced that, for budgetary

1 reasons, to \$3,000. They filed a lawsuit claiming that the
2 superintendent had contracted with them and they had
3 promissory estoppel claims, all the same kind of claims we
4 have here.

5 And I argued in that case. The superintendent did not
6 have the authority -- and, in that case, it was a school
7 district superintendent as opposed to a much lower-level
8 employee in this case. My argument there was the
9 superintendent does not have the authority to bind the
10 District to a 10-year agreement to pay these bonuses.

11 We argued summary judgment in that case, and Judge
12 Saunders granted the motion. The plaintiffs in that case
13 filed an appeal, and the Supreme Court, in that case, affirmed
14 the entry of summary judgment in that case. And that case is
15 Karen Davis and others vs. Greenwood School District 50, 365
16 S.C. 629, 620 S.C. 2d 65.

17 And that's just the backdrop for this case. Owl Labs
18 could have avoided this, but they didn't, and now, they have
19 brought this claim seeking to recover the \$358,000 that they
20 claim they're owed. Our position is they're owed that money
21 by David Marshall and Level 8; they're not owed that money by
22 the School District because we've already fully paid -- our
23 deal was with Level 8. The purchase order came -- was issued
24 to Level 8. Checks were issued to Level 8. All those checks
25 were paid. We had fully paid for the cameras.

1 The plaintiff's claims against the District, they have
2 four causes of action. They have a breach of contract claim.
3 There's no evidence and there's no way they can prove or show
4 that Owl Labs had any contract with the District. The
5 District never agreed to anything with Owl Labs. They will
6 try to argue -- the plaintiff will try to argue that
7 Mr. Marshall had somehow had apparent authority.

8 The problem with that argument is twofold. Number one,
9 you can't -- apparent authority is based on a representation
10 of the principal, the District. The District never made any
11 representation to Owl Labs or anybody else that Mr. Marshall
12 had the legal authority to enter into a contract.

13 And even more importantly, in the Cruz case, the Court
14 makes clear, apparent authority does not even apply when
15 you're dealing with a governmental entity like this because of
16 the concerns about potentially exposing governmental resources
17 to significant liabilities based on alleged, unauthorized
18 actions of an employee.

19 The other claim that the plaintiffs have is a quantum
20 meruit claim. And as we explained in our Memorandum of Law,
21 the plaintiff cannot show the elements of a quantum meruit,
22 unjust enrichment claim. We fully paid for the cameras. We
23 have not received any unfair or undue benefit because the
24 District fully paid for the cameras, and the Cruz case is
25 dispositive of this claim.

1 The final two claims are against the District alleging
2 negligence. Those claims fail for a couple of reasons as
3 well. Number one, the District -- as a matter of law, the
4 District did not owe any legal duty to Owl Labs. The District
5 -- you know, this takes us back to law school: duty, breach,
6 causation, and damages. And I almost cited Palsgraf just
7 because I haven't had to do that or I haven't been able to do
8 that since I left law school.

9 But there's clearly no duty here from a school district
10 owed to some outside company that we don't even have a
11 contract with so the plaintiff cannot meet an essential
12 element of duty.

13 Any tort claims against the District also are covered by
14 the South Carolina Tort Claims Act, which clearly has an
15 immunity in Section 15-78-60, Subsection 17, which states that
16 a governmental entity is not liable for a loss resulting from
17 employee conduct outside the scope of his official duties or
18 which constitutes actual fraud, actual malice, intent to harm,
19 or a crime involving moral turpitude.

20 Mr. Marshall served time in a federal penitentiary for
21 his actions, which clearly were outside the scope of his
22 duties and which constituted a crime and fraud.

23 As a final point in my motion -- I don't think we ever
24 have to reach this issue, but a final point in my motion, I
25 also point out that the plaintiff has requested attorney's

1 fees, and those are not recoverable from the School District.
2 Unless there's a statute or a contract providing for the
3 shifting of attorney's fees, each party is responsible for
4 their own attorney's fees. And even on top of that, the Tort
5 Claims Act explicitly limits attorney's fees recovery. You
6 can only recover attorney's fees from a school district in a
7 tort case for frivolous Rule 11 types of filings, which don't
8 even apply here.

9 So even if there was some basis on which any one of these
10 claims could survive, the plaintiff's request for attorney's
11 fees also should be stricken.

12 That's our position, Judge, and I'd be happy to respond
13 to any questions you might have.

14 THE COURT: All right. Ms. Bryant, go ahead. I may have
15 some questions at the end. I just want to hear from both
16 sides.

17 MS. BRYANT: Good morning, Your Honor, and may it please
18 the Court. My name is Lyndey Bryant. I'm an attorney with
19 Adams & Reese in Columbia, and we represent the plaintiff in
20 this case, Owl Labs.

21 Your Honor, Mr. Smith characterized a question in this
22 case as whether a School can be liable for the unauthorized
23 fraudulent and criminal act of an employee. Your Honor, we
24 think the question in this case is whether a District, who
25 puts its head in the sand, can obtain summary judgment through

1 essentially an ostrich defense, on every single claim in a
2 case.

3 The only thing the Court is here to decide is whether
4 there are genuine issues of material fact for trial on the
5 plaintiff's claims. As you are well aware, we are not here to
6 try the merits of the case. We think our brief makes it very
7 clear that, on almost every -- on every claim, in almost every
8 element, there are very substantial genuine issues of material
9 fact for trial, which, for the most part, the District simply
10 ignores or infers in its favor.

11 Your Honor, I will start with the contract claim. We do
12 maintain that the District is liable under contract principles
13 for the purchase order that its employee, David Marshall --
14 who was an employee at the time the contract was entered
15 into -- that he did have authority to bind the District to the
16 purchase order with Owl Labs.

17 Case law is clear that questions of agency, both the
18 existence of it and the scope of that agency, if there are
19 facts to create an issue, are better left for the factfinder,
20 and that's because the question of agency under South Carolina
21 law, it can be expressed or implied, and it can be proved
22 through circumstantial evidence.

23 And, Your Honor, here, we absolutely maintain that
24 Mr. Marshall had actual authority on behalf of the District.
25 Mr. Ham, the District's Director of Technology, delegated his

1 authority to his subordinate, Mr. Marshall. And that is
2 quoted in our brief that everyone agreed it was Ham's
3 responsibility to obtain these devices, and Ham testified he
4 delegated that to his subordinate, Mr. Marshall.

5 Now, the fact that no one but Ham knew that is
6 irrelevant. Mr. Ham is an employee of the District with
7 actual authority provided to him by the Superintendent and
8 others, and he had the right to delegate that. Other
9 employees at the District acknowledged that Mr. Marshall may
10 have authority if it's delegated to him. Greg Twitty, the
11 procurement officer, testified to that under oath.

12 And so, Your Honor, we believe that there is at least a
13 genuine issue of material fact that should be heard by the
14 jury as to whether Marshall had actual authority to negotiate
15 for these devices on the District's behalf.

16 Your Honor, at least two other witnesses -- we have Ham,
17 who knew he delegated authority, and Sanders, who testified
18 she knew that both Ham and Marshall were involved in obtaining
19 these devices for the District. So there are multiple
20 witnesses who have testified under oath that they knew
21 Marshall was involved in this transaction; they just
22 misunderstood that it was with Level 8 instead of Owl Labs.

23 But, Your Honor, they failed to supervise Marshall at
24 all. As Mr. Smith acknowledged, he's a low-level employee.
25 Absolutely. We don't dispute that. But it seems that

1 everyone in the District just let Mr. Marshall conduct his
2 affairs with no supervision whatsoever, even though he had a
3 prior substantial criminal record that the District is aware
4 of.

5 Your Honor, Mr. Smith wants this Court to believe that no
6 one at the District knew who Owl Labs was, that they didn't
7 discover this until 2021 after all the wrongdoing had
8 occurred, and that's simply not true. The record is clear
9 that Mr. Marshall forwarded to at least five different
10 District employees his own communications with Owl Labs in
11 November and December of 2020 before the second payment that
12 the District made to Level 8 occurred.

13 And so, Your Honor, there are multiple instances in which
14 the District not only knew of Marshall's communications and
15 dealings with Owl Labs, but it should have known that he was
16 having these discussions with Owl Labs on its behalf. And so,
17 Your Honor, we think there is a genuine issue of material fact
18 for trial on Mr. Marshall's actual authority with respect to
19 the purchase order.

20 Your Honor, secondarily, Mr. Marshall bound the District
21 through principles of apparent agency. And as Mr. Smith
22 correctly notes, for apparent agency to exist, it's the
23 principal -- in other words, the District -- has to manifest
24 its intent to a third party to hold the agent out as its
25 authorized agent.

1 Your Honor, again, circumstantial evidence can prove
2 apparent authority. And the manifestation of consent by the
3 principal does not have to be explicit. It can be
4 unconsciously through not stopping the communication that it's
5 aware of between its agent and a third party, and that's
6 exactly what happened here.

7 The District knew or should have known that Mr. Marshall
8 was communicating with Owl before it made the second payment,
9 and it failed to stop it. It was on communications with Owl
10 Labs and failed to tell Owl Labs, "Wait, wait, hold on.
11 Mr. Marshall has no authority." Instead, they saw the
12 communication, they failed to stop it, and they received the
13 devices with Owl Lab's support.

14 Your Honor, for these two reasons -- actual authority and
15 apparent authority -- we do believe there exists a binding
16 contract that the -- or at least genuine issues of material
17 fact exist for trial as to the District's liability on
18 contract principles.

19 Of course, the breach element is clear; the District did
20 not pay the second payment to Owl Labs, and Owl Labs has been
21 damaged by not receiving full payment for the devices that it
22 provided to the District.

23 Your Honor, we have an ulterior -- or an alternative
24 theory of liability, which is a quasi-contract theory. You
25 know, Your Honor, Mr. Smith cites the Cruz case -- the recent

1 case from the Supreme Court, and the Heyward case, a 1962
2 case. Those are inapplicable, truly, and Your Honor can read
3 those cases and come to that conclusion for yourself.

4 The Cruz case involved an HR director who told a group of
5 firefighters that they would have (indiscernible) health
6 insurance for the rest of their life. And the absolutely
7 critical distinction in that case that the Supreme Court notes
8 is that the evidence of record demonstrated that several of
9 the firefighters knew that that determination could only be
10 made by City Council. And, Your Honor, the pen cite for that
11 is 443 S.C. at 206.

12 And so what the Court says is -- the Court's finding is
13 that there's no dispute that the HR director had no authority
14 to promise free lifetime health insurance. That's what
15 Mr. Smith relies on. The agent of the City did not have
16 authority, but the critical factor is that the firefighters
17 knew the HR director did not have authority.

18 And, here, the facts are polar opposite. Owl Labs
19 believes and was informed, through the District's failure to
20 inform it otherwise, that Mr. Marshall had authority to bind
21 it to the contract that they entered into. If there is no
22 contract, then the District is still estopped from denying the
23 existence of an obligation between it through principles of
24 equity, through quasi-contract.

25 And so, Your Honor, it is not disputed here that Owl Labs

1 made the devices and sent them to the District. The District
2 received all of the devices that Owl Labs sold to it, and the
3 District failed to pay the seller for the devices. I mean,
4 all the elements of unjust enrichment and quasi-contract are
5 met in this circumstance.

6 Your Honor, the other case, the Heyward case that
7 Mr. Smith relies on, again, is different, and the reason is
8 because, in that case, there was an employee who told a
9 taxpayer essentially, "Don't worry about paying your taxes in
10 the way the law requires you to pay them." And the Court
11 said, you know, that you can't rely on that. That's not fair.
12 A taxpayer can't rely on a misrepresentation of a City
13 employee, which is clearly binding the City as to its police
14 powers, ability to tax people. That case cites similar
15 opinions about paying assessments and statements by employees
16 that do not bind the governmental entity as to police powers.

17 And here, Your Honor, as far as the inequity of requiring
18 the District to pay essentially twice, we think it's not
19 inequitable at all. The District paid Level 8, a non-approved
20 State vendor, when it knew or should have known of Marshall's
21 involvement with that entity and knew or should have known
22 that Marshall was, in fact, contracting with Owl Labs.

23 And so the inequity in this situation is against Owl. I
24 mean, it had no idea. It had no idea who Level 8 was. It
25 knew Marshall was an employee, and it communicated with

1 multiple other District employees. The Assistant
2 Superintendent, Andress Carter-Sims, communicated directly
3 with Owl Labs. Eric Ham, Marshall's supervisor, communicated
4 directly with Owl Labs, and those documents are in the record.

5 Your Honor, I will also touch on the two claims that
6 arise in negligence. The first is negligent supervision and
7 retention, and the second is negligence generally.

8 Your Honor, here, the District does owe a duty --
9 multiple duties to Owl Labs. First and foremost, it has the
10 duty in contract. And so Your Honor would have to find that
11 there is no -- there is no genuine issue of fact on the
12 existence of a contract in order to then find there's no
13 genuine issue of material fact on the negligence claim, and
14 simply stated, there are multiple issues of fact in the record
15 on those claims.

16 In addition to that, Your Honor, the District has a duty
17 to supervise, train, and retain its employees, and here, it
18 failed to do that in multiple respects. With respect to
19 Mr. Marshall, the District knew only a couple of years before
20 this happened that Mr. Marshall had a substantial criminal
21 record -- criminal sexual misconduct with a minor. It put him
22 on administrative leave, and it wrote to him essentially
23 indicating that "we are going to supervise and monitor your
24 activities." And it failed to do that. And the law is clear
25 that, if an employer knows or has reason to know of the

1 ability to control or knows or has reason to know that the
2 employee could cause harm, it does owe a duty. And here,
3 there are genuine issues of fact for trial as to the
4 District's failure in that duty as to Mr. Marshall.

5 Of course, in addition, there's a duty that's created by
6 the procurement policy that the District adopted itself, and
7 it adopted that procurement policy as required by South
8 Carolina law. The District has a procurement policy, which it
9 failed to enforce at multiple levels. Everybody at the
10 District pointed fingers at Greg Twitty, and Greg Twitty
11 essentially put his hands up and said, "Well, I relied on Eric
12 Ham."

13 So no one in the chain of command with respect to the
14 procurement system at the District followed what was required
15 of them. And there were multiple district employees, all of
16 them involved in the transaction at issue, who said the
17 District really never trained them, really never enforced or,
18 you know, taught them or walked them through the procurement
19 policies and issues. And, Your Honor, it's our position that
20 those failures are what enabled and created the environment
21 for Mr. Marshall to do the misconduct which occurred here.

22 Your Honor, we have an argument for respondeat superior,
23 and in order for the District to be liable for the tortious
24 activity of its employees, the employee's conduct must be
25 reasonably necessary to accomplish the purpose of employment.

1 Here, Mr. Marshall was the District's media
2 communications specialist. He worked for the person
3 responsible for obtaining the devices. The District wanted
4 the Owl devices, knew it needed them to facilitate remote
5 learning, and enabled its employees to get those devices.

6 And so, Mr. Marshall's conduct in entering into a
7 contract to obtain the devices was necessary to accomplish the
8 purpose of his employment. And Mr. Marshall's act was done in
9 furtherance of the employer's business; here, conducting
10 education during a pandemic. The District needed these
11 devices in order to conduct remote learning throughout its
12 schools, and Mr. Marshall's act of obtaining these devices was
13 in furtherance of the District's business.

14 And so there are genuine issues of material fact as to
15 Mr. Marshall binding the District through tort principles
16 under the doctrine of respondeat superior. And, again, just
17 like agencies, our law is very clear that any doubt as to the
18 scope of employment must be resolved against the master,
19 against the District, at least for purposes of summary
20 judgment.

21 Finally, Your Honor, the Tort Claims Act. The Tort
22 Claims Act does bar liability for an act outside the scope of
23 employment and constituting a crime. We think there are
24 genuine issues of material fact for trial. We believe -- and
25 the record supports -- that Mr. Marshall was inside the course

1 and scope of his employment. The crime here was taking the
2 money, not contracting to get these devices from the District.
3 The District knew what it needed and wanted these devices.

4 There is also a genuine issue of material fact as to the
5 exception to that Tort Claims Act rule, and page 15 of the
6 District's memo concedes that, when the negligence at issue is
7 that of the government in creating the foreseeable risk, then
8 the Tort Claims Act exception does not apply.

9 Here, that's precisely what Owl Labs alleges. The
10 evidentiary record proves that the District itself is liable
11 for its own misconduct in preventing the wrongdoing that
12 occurred in creating itself the risk of the wrongdoing that
13 occurred here.

14 I've kind of come back, Your Honor, in conclusion that
15 the heart of this case -- at the heart of this defense is
16 fairness. Both parties -- and there's absolutely no doubt
17 that both parties here were duped by Mr. Marshall. But he is
18 not a sophisticated criminal mastermind. He is not. As the
19 District acknowledged, he convinced the District time after
20 time after time to buy products from Level 8, which was a sham
21 entity that he was part of organizing, he's in the Articles of
22 Incorporation, he's the registered agent. The address is a
23 P.O. Box, and he signed the checks that the District wrote.

24 Fairness in this case mandates that the District be
25 liable for the wrongdoing of its employee when time after time

1 it's the District that failed to supervise and prevent the
2 exact wrongdoing that happened here. Multiple District
3 employees testified that Owl Labs would not have known
4 Marshall did not have authority; that the documents Owl Labs
5 received did not appear to be fraudulent other than a couple
6 of numbers on the PO order, and Owl Labs received the first
7 half of the purchase price, over \$350,000.

8 So, you know, for somebody to be defrauded and yet
9 receive 350,000, you know, I just don't think common sense
10 supports that Owl would have any reason to know that this
11 transaction was nothing but legitimate, especially when it
12 communicated with not just Mr. Marshall but Eric Ham and the
13 Assistant Superintendent for Curriculum Instruction, Address
14 Carter-Sims.

15 So for those reasons, Your Honor, fairness dictates that
16 Owl Labs' claims survive summary judgment, and the legal basis
17 for that is the existence of multiple genuine issues of
18 material fact in the record.

19 THE COURT: Ms. Bryant, let me hear from you briefly on
20 the issue of attorney's fees. Obviously, the contract you've
21 alleged exists between Owl Labs and the District don't provide
22 for attorney's fees.

23 MS. BRYANT: You're right, Your Honor. Neither the
24 invoice nor the purchase order have a provision for attorney's
25 fees. I agree with that.

1 THE COURT: Okay. All right. But I think, in your memo,
2 you do reference the service agreement after the fact.

3 MS. BRYANT: Yes, Your Honor, which Eric -- Eric --

4 THE COURT: That's the basis for your attorney's fees
5 argument?

6 MS. BRYANT: Yes. And Eric Ham DocuSigned that
7 agreement. That's not an agreement signed by Mr. Marshall.
8 And the terms and conditions of the service agreement provide
9 for attorney's fees and costs in certain circumstances.

10 And so, Your Honor, we think -- it's really all part and
11 parcel; right? They purchased the Owls. They delivered --
12 the Owls being the devices. The devices were delivered. And
13 as part of registering the devices, they agreed to the terms
14 and conditions of service, which included attorney's fees and
15 costs.

16 And so that is the basis of that request, and that is
17 directly linked to the claim for a breach of contract. I
18 agree that there is not a right to recover attorney's fees and
19 costs for the tort claims -- the equitable claims as well, but
20 the request for fees and costs is linked specifically to the
21 breach of contract, Your Honor.

22 THE COURT: All right. Mr. Allen, anything -- or
23 Mr. Smith -- I'm sorry -- anything in reply?

24 MR. SMITH: Yeah, you know, Ms. Bryant refers to this as
25 the ostrich defense, but in reality, perhaps the same thing

1 should be said about her client, who is aware of the fact that
2 public procurement is a highly regulated area who would have
3 and should have known that, when dealing with a public entity,
4 there are certain requirements that must be met.

5 But in the interest of closing the deal, they chose to
6 ignore their own due diligence. They chose to avoid sending a
7 phone -- making a phone call or sending an email to somebody.
8 They chose to ignore the fact that the payment that Ms. Bryant
9 refers to was not even issued by the District. The District
10 never sent a payment to Owl Labs.

11 And she attempts to muddy the water about the difference
12 between Level 8 and Owl Labs. The District issued a
13 legitimate purchase order to Level 8. They knew they were
14 purchasing Owl Labs devices. If I go buy a computer at Best
15 Buy, it's got Microsoft on it. I don't have a contract with
16 Microsoft; I've got a contract with Best Buy. But I may call
17 Microsoft for customer service if I have issues setting it up.

18 And that's the relationship here. There was some
19 communications with Owl Labs about setting it up and using it,
20 but the District bought the devices -- the Owl Lab devices
21 from Level 8. They issued a purchase order to Level 8. They
22 made two payments and fully paid Level 8. Level 8 was
23 operating as a reseller of the Owl Labs devices. Owl Labs'
24 remedy is to seek recovery from Level 8 and David Marshall,
25 not from the School District.

1 Mr. Marshall did not have the authority -- actual,
2 apparent, or otherwise -- to create a fraudulent purchase
3 order to forge the signatures of District employees on the
4 forms to facilitate this, to create a sham corporation to
5 process payments to Owl Labs.

6 And the case law in South Carolina is clear that the
7 School District should not be held liable for the unauthorized
8 criminal actions of Mr. Marshall.

9 THE COURT: All right. And I guess your comment that,
10 you know, there was a legitimate PO but it was made to a -- I
11 guess, illegitimate contractor --

12 MR. SMITH: Ultimately, yes. Ultimately.

13 THE COURT: The one thing I saw in your memorandum -- and
14 conversely Ms. Bryant's -- was that Level 8 was an approved
15 vendor, but it turns out that they weren't.

16 MR. SMITH: Right. Yeah, Level 8 represented that they
17 were an approved State vendor, and they provided a State
18 contract number that throughout -- through the course of the
19 investigation of this matter as part of this litigation and
20 leading up to it, it was discovered that that also was
21 fraudulent.

22 THE COURT: Right. Okay. Anything else?

23 MS. BRYANT: Nothing further, Your Honor. Thank you.

24 MR. SMITH: Nothing from us, Your Honor.

25 THE COURT: All right. Well, I'm going to go back and

1 read these cases again, and take a look at everything, and
2 I'll let you guys know my decision. Okay?

3 MR. SMITH: Thanks, Judge.

4 MS. BRYANT: Thank you.

5 THE COURT: Thank you-all for preparing it and making it,
6 I guess, as succinct as you can in a situation like this.

7 MR. SMITH: Thanks.

8 MS. BRYANT: Nice to appear in front of you, Your Honor.
9 Thank you.

10 (The hearing concluded.)
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Certificate of Transcriber

CASE NAME: Owl Labs v. Orangeburg County Schools

DATE OF HEARING: 3/13/25

RECORDING METHOD: WebEx Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video 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.

/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 9/26/25

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
Owl Labs,	)	C.A. No. 2022-CP-38-01363
	)	
Plaintiff,	)	DEFENDANT’S MOTION FOR
	)	SUMMARY JUDGMENT
vs.	)	
	)	
Orangeburg County School District,	)	
	)	
Defendant.	)	

**TO: LYNDEY R.Z. BRYANT, ESQ., AND WILLIAM R. STANLEY, ESQ.,
ATTORNEYS FOR PLAINTIFF OWL LABS, INC.**

Defendant Orangeburg County School District (“District”), by and through its undersigned counsel, hereby moves the Court, on the tenth day after service, hereof, as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56, SCRPC, granting the District summary judgment based on the following grounds:

1. The District never had a contract with Owl Labs;
2. The fraudulent purchase order issued without authority could not bind the District to any contract with Owl Labs;
3. The District purchased the video conferencing devices referenced in the Plaintiff’s complaint from another company, Level 8, and fully paid for those devices;
4. There is no basis for a quantum meruit cause of action;
5. The Plaintiff cannot bind or estop the District based on an unauthorized action of a former employee who acted criminally and without actual or apparent authority;
6. The record evidence establishes that the Plaintiff cannot establish the essential elements of any of its claims against the District.
7. With regard to the two negligence-based claims; the District owed no duty to Owl Labs; and

8. The District is immune from liability on the Plaintiff's tort claims under the South Carolina Tort Claims Act because it cannot be held liable for the criminal actions of an employee taken outside the scope of his employment and with actual malice and an intent to harm.

9. Plaintiff's claim for attorney's fees is not supported by law and should be dismissed.

The grounds for the Defendant's motion will be explained further in its memorandum of law, which will be filed with the Court prior to a hearing on this motion. In addition to its memorandum of law, the District will rely on the pleadings, papers, records, files, and depositions in this case, as well as the applicable statutory and case law and the South Carolina Rules of Civil Procedure.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Susan M. Fittipaldi

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November 11, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
Owl Labs,	)	C.A. No. 2022-CP-38-01363
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF DEFENDANT’S MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
Orangeburg County School District,	)	
	)	
Defendant.	)	

I. INTRODUCTION

Plaintiff filed this action on September 23, 2022, seeking to recover damages related to the sale of devices they manufacture and sell. The Complaint asserts four causes of action: (1) breach of contract; (2) unjust enrichment/quantum meruit/quasi contract; (3) negligent supervision and retention; and (4) negligence. Because Defendant Orangeburg County School District (“District”) is a governmental entity, the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.*, governs the tort claims asserted in this case. Pending before the Court is the District’s motion for summary judgment filed on November 11, 2024. For the following reasons, the District is entitled to summary judgment as to all of Plaintiff’s claims.

II. FACTS

The essential facts of this case are not in dispute. Both Plaintiff and Defendant were victims of a criminal wire fraud by former District employee David Marshall. On December 8, 2021, the U.S. Attorney criminally charged David Marshall with federal wire fraud arising out of his scheme to defraud and obtain monies by means of false and fraudulent pretenses. (See Ex. 1) As reflected in the Information, Mr. Marshall used his position with the District to steer the District to purchase video cameras from his corporate alter ego, Level 8, and used another corporate entity, Orangeburg County Purchasing, to process the fraudulent transactions, all while concealing his identity to

deceive others. As a part of his scheme, he contacted Owl Labs to purchase 875 units, without disclosing that he did not have the authority to contract for the District. Mr. Marshall, through the deceptive use of his corporate alter egos, purchased these devices from Owl Labs and then sold these units to the District at a price marked up by \$130,000. Mr. Marshall assumed a false identity, generated false documents, and forged signatures of another District employee. *Id.* Mr. Marshall obtained over \$550,000 through his false procurement scheme, generation of false records, and his retention of monies owed to Owl Labs. Mr. Marshall pled guilty to the charge in the Information. (Exhibit 2) This criminal enterprise arose out of the District's need to purchase video conferencing devices as set forth below.

During the COVID-19 pandemic, school districts across the state and country closed their schools and began to provide instruction to students virtually. This change of instructional delivery required many districts to invest in technology that would better allow teachers to provide virtual instruction to students. In the beginning of the 2020 school year, the Orangeburg County School District determined that it needed to purchase video cameras for teachers to provide virtual instruction to students who were learning from home. Eric Ham, the District's Director of Technology, provided input to Dr. Shawn Foster, the District superintendent, as to technologies the District could obtain to use during COVID. (Ex. 3, Foster Dep. p. 36, line 12-p. 37, line 10) Mr. Ham had seen one of Plaintiff's products, the Owl Meeting Pro camera, and thought it was a good option for the District for the virtual instruction. (Ex. 4, Ham Dep. pp. 60-62) Because Level 8 was a third-party vendor the District had used previously for the purchase of information technology, Mr. Ham, after looking into it, told the superintendent that Level 8 could procure video conferencing cameras manufactured by Plaintiff Owl Labs. (Ex. 3, Foster Dep., p. 41, line 25-p.

42, line 5; Ex. 4, Ham Dep. p. 63) At no time did the District know that Mr. Marshall was affiliated with Level 8.

The District issued a purchase order to Level 8 on October 28, 2020, for 875 Owl Meeting Pro cameras with a purchase price, including tax, of \$945,621.86. (Ex. 5) Level 8 sent the District an invoice dated October 28, 2020, for a 50% payment of \$472,810.94, and a second invoice for the remaining 50% dated November 23, 2020. (Ex. 6) The District paid Level 8 in full for the devices via two separate checks. Eventually, the cameras were delivered to the District warehouse and were distributed to schools to be used for virtual instruction.

At the same time that the District was purchasing the Owl cameras from the third-party vendor Level 8, unbeknownst to the District, David Marshall, then an employee in the Communications Department, was working to defraud both the District and the Plaintiff. His plan was to order the devices from Owl Labs at a discounted price and then sell them to the District at a higher price and then keep the difference for himself. He began by sending an email to Owl Labs on October 23, 2020, inquiring into a purchase of their cameras. (Ex. 7) David Marshall used his Orangeburg County School District email address, and his signature line showed he was with Communications, Business and Community Partnerships. Bill Smith, a salesperson with Owl Labs, responded to that email and called Mr. Marshall about his inquiry. *Id.* Smith eventually emailed Marshall a quote for the sale of the cameras. (Ex. 8) The quote included the normal price per unit of \$999.00 with a discount of \$179.82 per unit for a total per unit cost of \$819.18. The total price for the proposed order of 875 units was \$716,782.50. In communications with Mr. Marshall, Mr. Smith agreed to a 50% pre-payment prior to shipping, instead of the normal 100% prepayment, as was typical with school districts. (Ex. 9, Smith Dep., p. 39, line 13-p. 40, line 17;

Ex. 7) The quote did not include any taxes or freight charges. (Id., p. 41, lines 8-25) When Owl Labs tried to add that, Marshall objected, resulting in the company waiving those charges. (Ex. 10)

On October 28, 2020, Mr. Marshall sent Mr. Smith a purchase order. (Ex. 11) Mr. Marshall also sent Mr. Smith a South Carolina Tax Exemption Form. (Ex. 12) Both documents purport to have the signature of Greg Twitty, Procurement Coordinator for the District. This signature was forged by David Marshall. Owl Labs received the initial 50% payment through ACH wire transfer from “Orangeburg County Purchasing,” one of Mr. Marshall’s shell companies. (Ex. 13, Radovan Dep., p. 20) However, Owl Labs did not receive the second payment after the devices were shipped. Mr. Marshall communicated with Harry Meltzer, an operational associate with Owl Labs, and told him that the District had been hacked which was causing a delay in the payment. (Ex. 14, Meltzer Dep. p. 29, lines 10-25) Significantly, Mr. Meltzer testified that the sales representative was responsible for conducting the due diligence to ensure the authenticity of the purchase order and tax-exempt forms the company received from customers. (Id. pp. 20-21) Owl Labs, presumably eager to close such a large sale, did not conduct the normal, required due diligence. Unfortunately, a single telephone call or email to the District as part of a due diligence effort would have prevented this entire fraudulent transaction, but no such calls were made and no such emails were sent.

In the Spring of 2021, with the remaining balance still due, Owl Labs contacted the District requesting that the balance be paid. When the District received the email, it was concerned because the District had no dealings with Owl Labs and had fully paid Level 8 the purchase price for the devices as of December 10, 2020. (Ex. 15) In June 2023, Superintendent Dr. Foster conducted a Zoom call with Owl Labs representatives as well as David Marshall to discuss the unpaid balance owed to Owl Labs. During that call, David Marshall admitted that he defrauded the company and

forged documents, namely the PO and tax exempt certificate he sent to Owl Labs. (Ex. 9, Smith Dep., p. 51, line 17-p. 52, line 11; Ex. 3, Foster Dep. p. 61, line 11-p. 62, line 5)

At his deposition, Mr. Twitty testified that the District is not tax exempt. (Ex. 16, Twitty Dep. p. 10, lines 14-15) He testified that the District used Level 8, a third party vendor to get the Owl cameras, because they were an approved state contract vendor listed in the District's system. (Id., p. 11, line 6 – p. 12, line 10; p. 14, line 18 – p. 16, line 1) If a vendor goes through the vetting process with the state, they receive a state contract number, and other governmental entities such as the District can use that company without having to do their own vetting. In this case, Mr. Twitty looked up Level 8 in the system and saw that it was an approved state vendor. (Id. p. 21, line 23 – p. 23, line 11) After the fraud was uncovered, it turned out that Level 8 provided the state contract number of another company, Flex Technologies, and claimed that Level 8 was doing business as Flex Technologies. (Id. p. 40, line 1 – p. 42, line 18; Ex. 17) Mr. Twitty also testified that only he or the Assistant Superintendent of Finance can generate a purchase order. (Ex. 16, Twitty Dep., p. 23, line 20 – p. 24, line 17) He testified that he was not aware that David Marshall was communicating with Owl Labs to purchase the cameras. (Id. p. 54, line 21 – p. 55, line 19) At his deposition, Mr. Twitty reviewed the fake purchase order Mr. Marshall sent to Owl Labs and noted that an authentic PO would only contain 6 digits (the forged one had two additional digits). (Id. p. 25) He confirmed that no one from Owl Labs ever communicated with him regarding the sale to David Marshall. (Id. p. 30; p. 64 lines 1-4)

In 2020, Ms. Gail Sanders was the Director of Finance. (Ex. 18, Sanders Dep. p. 11, line 8) She also noted in her deposition that the fake PO contained more numbers than an authentic PO from the District. (Id., p. 23, lines 14-24) It also did not contain any charge for taxes or freight, which is not normal. The District is not tax-exempt. (Id., p. 14) Ms. Sanders noted in her testimony

that Mr. Marshall's email signature included a phone number that was not local but started with an 816 area code. (Id., p. 48) She believed that Owl Labs may have avoided this situation if they had simply called Eric Ham, the District's Director of Technology. (Id., p. 51)

Dr. Foster testified that David Marshall worked for the District in its communications department and was considered support staff. (Ex. 3, Foster Dep. pp. 30 and 33) He testified that Mr. Marshall was never involved with the discussions to purchase the Owl cameras. (Id. p. 33, line 23-p. 34, line 11) He also testified that David Marhsall did not have the authority to engage in the procurement of the Owls, which is why he had to forge the documents to make the purchase. (Id. p. 95, line 19-p. 96, line 19) In questioning how someone from Owl Labs might have known Marhsall was not authorized to make this purchase, Dr. Foster noted the incorrect area code in Marshall's email signature and the extra numbers in the fake PO. (Id., p. 89 and 94) Additionally, the District did not use electronic transfer of funds at the time. (Id., p. 111, lines 7-8) Dr. Foster opined that Owl Labs could have called the District to verify the purchase order. (Id. p. 83, lines 5-12)

Ms. Daphne Walley was a bookkeeper in the District's IT department at the time. (Ex. 19, Walley Dep. p. 10, lines 11-20) She testified at her deposition that only Eric Ham or Gail Sanders had the authority to sign off on a requisition for a purchase order. (Id., p. 20, line 18-p. 21, line 4) When she was shown the fake purchase order, she immediately recognized that it was not authentic because the purchase order number contained too many digits; the font of two of the extra digits was bold compared to the other numbers; and because the District is not tax exempt, so the PO should have included taxes. (Id., p. 27-28)

Ms. Brandi Gist, served as the Assistant Superintendent of Finance during the time in question. (Ex. 20., Gist Dep, p. 9, line 20-p. 10, line 23) She also recognized that the fake purchase

order had too many digits in it and that the extra digits were of a different font. (Id., p. 31, line 2-p. 32, line 10) She testified that a new vendor might not know how many digits should be in a PO unless they used a process to verify a purchase order. (Id. p. 36, lines 1-20) To her knowledge she had never spoken to anyone at Owl Labs. (Id., p. 38, lines 5-7)

During his deposition, Mr. Smith, Owl Labs' salesperson, did not recall ever dealing with anyone other than Mr. Marshall in the District, did not recall asking Mr. Marshall to include someone from procurement or finance department in the sales conversation, and never reviewed the District's procurement policy which is publicly available on its website. (Ex. 9, Smith Dep., p. 30, line 23-p. 31, line 8; p. 35, lines 4-8; p. 36, lines 11-17) His supervisor, Kailyn McNamara, also testified at her deposition that she did not recall looking at the District website or into the finance or procurement departments, nor did she recall ever reviewing the District's policies regarding procurement or purchasing. (Ex. 21, McNamara Dep., pp. 46-47) Mr. Smith never communicated with Mr. Greg Twitty, the District's Procurement Officer. (Ex. 9, Smith Dep., p. 45, lines 15-18) Ms. McNamara had no direct communication with anyone at the District other than David Marshall. (Ex. 21, McNamara Dep., p. 56)

III. STANDARD FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *LaMotte v. Punchline of Columbia, Inc.*, 370 S.E.2d 711 (S.C. 1988). It is properly regarded not as a procedural shortcut, but as an integral part of the rules of civil procedure, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Rule 56 must be construed with due regard not only for the rights of persons asserting claims, but also for the rights of persons opposing such claims. *Celotex*, 477 U.S. at 327. A party cannot defeat a motion for summary judgment by creating an inference which is not

reasonable or an issue of fact that is not genuine. *Main v. Corley*, 316 S.E.2d 406 (S.C. 1984). Moreover, where a plaintiff fails to establish an element essential to his case, there can be no genuine issue as to any material fact, since a failure to establish even one essential element of a party's case renders the cause of action insufficient as a matter of law. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 346 S.E. 324 (S.C. 1986); *Celotex*, 477 U.S. at 322.

Our Supreme Court recently clarified that the “mere scintilla” standard is not the correct standard under Rule 56(c). “Rather, the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, ‘it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.’ 403 S.C. at 477.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64 (2023)(holding that a plaintiff who requires the factfinder to speculate on an essential element of a cause of action failed to establish a genuine issue of material fact, and as such, the defendants were entitled to summary judgment as a matter of law.)

In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard). Under South Carolina jurisprudence, where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury. *See Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996) (noting where the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created).

V. ARGUMENTS

A. Plaintiff cannot establish the essential elements of a breach of contract

To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 89 (1962). In this case, it is clear that the District did not enter into a binding contract with Plaintiff. Plaintiff asserts that the Purchase Order constitutes a contract; however, that Purchase Order was a fraudulent document with a forged electronic signature sent by Mr. Marshall and cannot form the basis of a contractual relationship between the parties. Marshall clearly acted outside of his official duties and without actual authority, and as such, there is no binding contract between Plaintiff and the District.

As noted by our Supreme Court in *Heyward v. S.C. Tax Comm'n*, 240 S.C. 347, 356, 126 S.E.2d 15, 20 (1962) citing, *National Bank v. State of South Carolina*, 60 S.C. 465, 38 S.E. 629 (1901):

All men are bound to take notice of the special authority of the state's officers, and when dealing with them outside their authority they assume the peril with their eyes open, and cannot be heard to say that they placed reliance upon the state. The question is not one of intention, but of power; and, if the officer has not power to act, his action is not state action, and so affords no basis upon which to predicate estoppel against the state. And if it were, in any sense, a question of intention, the state's intention can only be evidenced in a constitutional way.

Marshall did not have the power to enter into the Purchase Order with Plaintiff. He not only acted outside of his authority but did so in a fraudulent manner creating sham documents such as the tax exemption certificate and forging signatures on that form as well as on the purchase order—criminal acts for which he was convicted in federal court. Based on his lack of actual authority, the District cannot be bound by his actions.

Plaintiff will argue that their cause of action for breach of contract claim is based on apparent authority of Mr. Marshall. However, Plaintiff cannot establish the elements of a claim of apparent authority.

Apparent authority must be established based upon manifestations by the principal, not the agent. *See Shropshire v. Prahalis*, 309 S.C. 70, 419 S.E.2d 829 (Ct.App.1992). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and the third party. *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 412 S.E.2d 425 (Ct.App.1991) Under South Carolina law, “[t]he elements which must be proven to establish apparent agency are: (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment.” *Froneberger v. Smith*, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013), citing *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991). “Apparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him.” *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244–45, 473 S.E.2d 865, 868 (Ct.App.1996). “Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.” *Id.* at 245, 473 S.E.2d at 868. “Moreover, an agency may not be established solely by the declarations and conduct of an alleged agent.” *Id.*

In this case there is no evidence that the District ever made any direct representations to Owl Labs that Marshall was its agent for the purpose of purchasing the cameras. In fact, Owl Labs concedes that no one from its company had any contact or communication with anyone from the

District regarding the purchase other than David Marshall. No one from Owl Labs sought to speak to his supervisor, or someone in finance or procurement. Moreover, the District did not “impliedly” represent to Owl Labs that David Marshall was its agent for the purpose of purchasing the devices. There is no evidence that the District knowingly permitted Mr. Marshall to appear to others to be its agent. As the District employees testified, none of them knew Mr. Marshall was communicating with Owl Labs to make the purchase. No one at the District had any knowledge of his behavior. Obviously, this was by design. In order to complete his fraudulent scheme, Mr. Marshall had to keep his actions in working directly with Owl Labs secret from the District. The simple fact that Mr. Marshall used his District email address is not enough to impute any liability to the District. No one from the District took any action that could be considered to impliedly represent to Owl Labs that Marshall was its agent. Owl Labs communicated with no one other than Marshall and the District certainly was not aware of Marshall’s actions or communications with Owl Labs prior to and in order to complete his purchase of the devices. It is clear that Owl Labs relied solely upon the conduct and communications of David Marshall which as noted above, is not sufficient to establish apparent authority. As there is no binding contract, Plaintiff cannot establish the first essential element of a breach of contract claim, and this cause of action should be dismissed.

B. Plaintiff cannot establish a cause of action for Unjust Enrichment/Quantum Meruit/Quasi Contract

Absent an express contract, recovery under quantum meruit is based on quasi-contract. To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct.App.2002); *see also Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225

(2010) (providing the same requirements). “A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies.” *JASDIP Props. SC, LLC v. Estate of Richardson*, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct.App.2011) (citing *Franke Assocs. by Simmons v. Russell*, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)).

In this case, there is no basis for Plaintiff’s asserted quantum meruit cause of action. Plaintiff sold the devices, unknowingly, to Mr. Marshall who then, acting as Level 8, his corporate alter ego, sold them at a marked-up price to the District. The District purchase the video conferencing devices referenced in Plaintiff’s complaint from Level 8 and fully paid for those devices.

Mr. Marshall made a 50% payment to Owl Labs. Plaintiff did not confer any benefit upon the District. Level 8, Mr. Marshall’s alter ego company, conferred the benefit upon the District. Even if Plaintiff could establish that the District received some benefit from Owl Labs, Plaintiff cannot establish that retention of the benefit by the District under the circumstances makes it inequitable for the District to retain it without paying its value. There is no unjust enrichment as the District paid Level 8 for the devices. It would not be equitable for Plaintiff to receive additional compensation from the District under the circumstances of this case where the District and Plaintiff were both victims of criminal fraud. Requiring a governmental entity to pay twice for these devices from its limited budget would be unjust to the District.

A recent decision by the South Carolina Supreme Court is instructive. In *Cruz v. City of Columbia*, 443 S.C. 201, 208, 904 S.E.2d 451, 455 (2024), the Court upheld a Court of Appeals decision dismissing a promissory estoppel claim by city firefighters who asserted that they were entitled to no cost health insurance for their lifetimes. The Court ruled that the firefighters could not to rely on verbal or written statements from city employees regarding their future healthcare

benefits because there was no evidence that these employees had actual authority to bind the city on such matters. *Id.* at 205. The Court noted that:

[T]he statements on which Petitioners rely were made by public employees who were not authorized to bind the City. The statements concerned public policy the speakers were powerless to create. Like any citizen dealing with the government, Petitioners were charged with notice of the limits of a public employee's actual authority. When they chose to rely on statements exceeding those limits, they did so at their peril, a peril beyond equity's rescue.

Some may see this result as at odds with the animating aim of promissory estoppel: to relax the formalistic fetters of contract law when necessary to prevent rank injustice. But the reason for the rule we are bound to apply here flows from a wider equitable source: the common good. If public bodies were liable under estoppel for missteps or misstatements of public employees acting outside of their statutorily defined roles, then public monies and public property would be at continuous risk. The law has long recognized the practical notion that it is better for private interests to bear the risk and yield to the public good in such unfortunate circumstances. *See Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 210, 417 S.E.2d 579, 583 (1992)

Id. at 207

Although the case involved a claim of promissory estoppel, such a claim is analogous to Plaintiff's quasi-contract claim. It has also been observed that "[p]romissory estoppel is a quasi-contract remedy." *See, e.g., N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (citing *Higgins*). A "quasi-contract" has been defined as "an obligation imposed by law because of some special relationship between the parties or because one of them would otherwise be unjustly enriched"; it "is not actually a contract *but instead a remedy* that allows the plaintiff to recover a benefit conferred on the defendant." *Thomerson v. DeVito*, 430 S.C. 246, 257, 844 S.E.2d 378, 384 (2020) As the *Cruz* Court recognized, if the District were held liable for fraudulent misstatements of a public employee acting outside of his authority, then public funds would be at risk, and on balance, under circumstances such as these, it is better for private

interests to bear the risk and yield to the public good.

C. With regard to the two negligence-based claims, the District owed no duty to Owl Labs

“In a negligence action, a plaintiff must show the (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages.” *Sabb v. S.C. State Univ.*, 350 S.C. 416, 429 (2002). If the plaintiff fails to prove any one of these elements, the action will fail. *Vinson v. Hartley*, 324 S.C. 389, 399–400 (Ct.App.1996); see also, *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 369, 377 S.E.2d 127, 128–129 (1989)) “The Court must determine, as a matter of law, whether the law recognizes a particular duty. The existence of a duty owed is a question of law for the courts. *Doe v. Batson*, 345 S.C. 316, 323, 548 S.E.2d 854, 857 (2001). An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” *Charleston Dry Cleaners Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (citations omitted). Without a duty, there is no actionable negligence. *Id.*

As matter of law, the District owed no duty to Plaintiff – a corporation outside the State of South Carolina with which it had no dealings or contracts. The only basis to assert a duty would be if the parties entered into a contractual relationship. However, the District did not enter into a contract with Plaintiff. The District entered into a contract with Level 8, from which it purchased and fully paid for the items in question. The District owed no duty to Owl Labs, and in the absence of any duty, there can be no actionable negligence.

More importantly, the South Carolina Tort Claims Act (the “Act”) addresses the circumstances under which a governmental entity is liable for tortious conduct of its employees.

The Act states a governmental entity is not liable for a loss resulting from “employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15–78–60(17) (Supp.1996).

There is no question but that David Marshall committed fraud upon Plaintiff and Defendant District. He pled guilty in federal court to the crime of wire fraud for such actions. The Act is clear that the District is immune from liability under these circumstances because it cannot be held liable for the criminal actions of an employee which were taken outside the scope of his employment and with actual malice and intent to harm. *See Gause v. Doe*, 317 S.C. 39, 42, 451 S.E2d 408, 409 (Ct. App. 1994) (holding that S.C. Code Ann. § 15-78-60(17) excludes a governmental entity’s liability when a state employee’s conduct constitutes actual malice); *Moore by Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 591, 486 S.E.2d 9,13 (Ct. App. 1997) (acknowledging that a school district could not be held liable for its employees’ criminal acts because there was no notice provided to the district of the employee’s improper sexual contact with a student).

As interpreted by the South Carolina Supreme Court, this criminal action exception to the State's waiver of immunity would not apply when the basis of the claim is that the negligence of the governmental entity *created* a reasonably foreseeable risk of such conduct. *Moore v. Berkeley County School Dist.*, 326 S.C. 584 (Ct. App. 1998) (citing *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 247 (1990)) In addressing this question, the *Moore* Court noted that the ultimate conclusion generally hinges on whether the District "knew or should have known" of the need to exercise control over the given situation. *Moore*, 326 S.C. at 590. In looking at the present case, there is no evidence that the District knew or should have known that Mr. Marshall would be involved in this type of action, *i.e.*, communicating without authority and without District knowledge to contract with an outside entity and create and send that outside entity forged

documents. The District had systems in place to control purchasing from and payments to outside vendors. Mr. Marshall concealed his actions, forged documents, set up an alter ego corporations, and stole money from both the District and Owl Labs.

D. Plaintiff's claim for attorneys' fees is not supported by law and should be dismissed.

Plaintiff is not entitled to attorneys' fees. Under the "American Rule," the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees. Attorney's fees are not recoverable unless authorized by contract or statute. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009), citing, *Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 760 (1997). Here, there is no contract or statute that would permit the recovery of attorneys' fees, and therefore, Plaintiff is barred from such recovery.

The South Carolina Tort Claims Act explicitly limits recovery of attorneys' fees only as a sanction against an opposing attorney for filing baseless pleadings or other papers. S.C. Code §15-78-120(c); See also *Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 144, 478 S.E.2d 256, 260 (S.C. 1996); *Doe v. Spartanburg County School Dist. Three*, C.A. No.: 7:15-02764-HMH, 2015 WL 13763039 (D.S.C. Aug. 19, 2015). At this stage, there is no basis to assert a claim for attorneys' fees as there is no allegation that counsel for the District has filed any baseless pleadings. There are no other bases, statutory, contractual, or otherwise, for the Plaintiff to obtain an award of attorneys' fees from the District. Therefore, Plaintiff's prayer for an award of attorneys' fees should be stricken from the complaint.

VI. CONCLUSION

For the foregoing reasons, Defendant respectfully requests an entry of summary judgment in its favor.

(Signature Page Follows)

Respectfully submitted,

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Attorneys for Defendant

March 5, 2025
Columbia, South Carolina

Exhibit 1

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

UNITED STATES OF AMERICA	)	CR. NO. <u>5:21-841</u>
	)	
	)	18 U.S.C. § 1343
vs.	)	18 U.S.C. § 981(a)(1)(C)
	)	28 U.S.C. § 2461(c)
	)	
DAVID CORTEZ MARSHALL, JR.	)	<u>INFORMATION.</u>

1. Beginning no later than October 2020, and continuing until at least February 2021 in the District of South Carolina and elsewhere, the Defendant, DAVID CORTEZ MARSHALL, JR., did knowingly devise a scheme and artifice to defraud and to obtain monies by means of false and fraudulent pretenses, representations, and promises, and during such period, in the course of executing said scheme and artifice, did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain electronic signals, such scheme and artifice and such wire communications being more fully set forth below.

THE SCHEME AND ARTIFICE

2. During the relevant time period, DAVID CORTEZ MARSHALL, JR. was employed by the Orangeburg County School District (“OCSD”) in Orangeburg, South Carolina, as a Media Communications Specialist. In 2020, when the COVID-19 pandemic initiated a transition from in-person to online learning, OCSD sought to procure video cameras to facilitate remote teaching.

3. It was part of the scheme and artifice to defraud that DAVID CORTEZ MARSHALL, JR. used his official position at OCSD to steer the purchasing of video cameras to

corporate alter egos he personally owned and controlled. In the course of his scheme, DAVID CORTEZ MARSHALL, JR. used corporate alter egos Flex Technologies, LLC, Level 8 Communications, and Orangeburg County Purchasing, LLC to conceal his identity and deceive others.

4. It was a part of the scheme and artifice to defraud that DAVID CORTEZ MARSHALL, JR. contacted video camera vendor Owl Labs in his official capacity to arrange for the purchase of eight hundred and seventy-five classroom video cameras. DAVID CORTEZ MARSHALL, JR., through the deceptive use of his corporate alter egos, then sold the cameras to the OCSD at a markup of over \$130,000.

5. It was a part of the scheme and artifice to defraud that DAVID CORTEZ MARSHALL, JR., in order to conceal his identity and scheme to defraud from Owl Labs and OCSD, assumed a false identity, generated false invoices and business records, and forged signatures.

6. It was part of the scheme and artifice to defraud that DAVID CORTEZ MARSHALL, JR. sent to Owl Labs a falsified South Carolina Department of Revenue tax-exempt form. DAVID CORTEZ MARSHALL, JR., through the deceptive use of his corporate alter egos, then sent OCSD an invoice demanding payment of approximately \$60,000 in South Carolina sales tax.

7. It was part of the scheme and artifice to defraud that DAVID CORTEZ MARSHALL, JR. succeeded in obtaining over \$550,000, through his false and deceptive procurement scheme, his generation of fraudulent tax records, and his retention of monies owed to Owl Labs.

COUNT 1

THE ACTING U.S. ATTORNEY CHARGES:

8. The allegations of paragraphs 1 through 7 of this Information are alleged herein as setting forth a scheme and artifice to defraud.

9. On each of the dates reflected below, in the District of South Carolina and elsewhere, DAVID CORTEZ MARSHALL, JR., for the purpose of executing the scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, as described above, did transmit and cause to be transmitted in interstate commerce by means of a wire communication, certain signals, writings, and sounds, a financial transaction as further set forth below:

Count	Check No.	Deposit Date	Description	Amount
1	12101	11/03/2020	Payment from Orangeburg County School District (South State Bank, Columbia, SC) to Level 8 Communications (BBVA USA, Birmingham, AL), endorsed by DAVID CORTEZ MARSHALL, JR.	\$472,810.94

All in violation of Title 18, United States Code, Section 1343.

FORFEITUREWIRE FRAUD:

Upon conviction of violation of Title 18, United States Code, Section 1343, as charged in the Information, the Defendant, DAVID CORTEZ MARSHALL, JR., shall forfeit to the United States, any property, real or personal, which constitutes or is derived from proceeds traceable to such violation.

PROPERTY:

Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), the property which is subject to forfeiture upon conviction of the Defendant for the offense charged in this Information includes, but is not limited to, the following:

Proceeds/Forfeiture Judgment:

A sum of money equal to all proceeds the Defendant obtained, directly or indirectly, from the offense charged in Count 1 of the Information, and all interest and proceeds traceable thereto, and/or such sum that equals all property derived from or traceable to his violation of 18 U.S.C. § 1343.

SUBSTITUTE ASSETS:

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the Defendant –

- A. Cannot be located upon the exercise of due diligence;
- B. Has been transferred or sold to, or deposited with, a third person;
- C. Has been placed beyond the jurisdiction of the court;
- D. Has been substantially diminished in value; or
- E. Has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 18, United States Code, Section 982(b)(1), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property

of the Defendant up to the value of the forfeitable property;

Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).


M. RHETT DEHART
ACTING U.S. ATTORNEY (BBA)

Exhibit 2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA

Criminal No: 3-21-841

v.

PLEA AGREEMENT

DAVID CORTEZ MARSHALL, JR.

General Provisions

This PLEA AGREEMENT is made this 7 day of December, 2021, between the United States of America, as represented by Acting United States Attorney Rhett Dehart, Assistant United States Attorney Brook Andrews; the Defendant, **DAVID CORTEZ MARSHALL, JR.**, and Defendant's attorney, Jonathan Harvey.

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

- DM 1. The Defendant agrees to waive Indictment and arraignment, and plead guilty to an Information charging wire fraud in violation of Title 18, United States Code, Section 1343.

In order to sustain its burden of proof, the Government is required to prove the following:

Count 1

- DM A. First, that the defendant devised or intended to devise a scheme to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises that were material; and

DM B. Second, that, for the purpose of executing the scheme, the defendant transmitted or caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds.

The penalty for this offense is:

up to 20 years in prison, a fine of up to \$250,000, supervised release of up to 3 years, and a special assessment of \$100.

DM 2. The Defendant understands and agrees that monetary penalties [i.e., special assessments, restitution, fines and other payments required under the sentence] imposed by the Court are due and payable immediately and subject to enforcement by the United States as civil judgments, pursuant to 18 U.S.C. § 3613. In the event the Court imposes a schedule for payment of restitution, the Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the Government from seeking to enforce the judgment against other assets of the Defendant at any time, as provided in 18 U.S.C. §§ 3612, 3613 and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Repayment Program if sentenced to

a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

pm A. Special Assessment: Pursuant to 18 U.S.C. § 3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing, or during participation in the Bureau of Prisons Inmate Financial Repayment Program if this plea results in incarceration.

pm B. Restitution: The Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount to be determined by the Court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by his scheme or pattern of criminal activity, pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the Government in identifying all victims. Upon demand, the Defendant shall submit a personal financial

statement under oath and submit to interviews by the Government and the U.S. Probation Office regarding the Defendant's capacity to satisfy any fines or restitution. The Defendant expressly authorizes the U.S. Attorney's Office to immediately obtain a credit report on the Defendant in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. The Defendant understands that the Defendant has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the Court.

DM C. Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. DM The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with any bond executed in this case. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either express or implied, the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to

withdraw his plea of guilty to the offense(s) enumerated herein.

Cooperation and Forfeiture

4.  The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack

of truthfulness on the part of the Defendant, the Defendant understands that:

A. *DM* the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above;

B. *DM* all additional charges known to the Government may be filed in the appropriate district;

C. *DM* the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and

D. *DM* the Government will use any and all information and testimony provided by the Defendant pursuant to this Agreement, or any prior proffer agreements, in the prosecution of the Defendant of all charges.

5. *DM* The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that his refusal to take or his failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government within the Agreement becoming null and void.

6. ^{PM} The Government agrees that any self-incriminating information provided by the Defendant as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant in determining the Defendant's applicable guideline range for sentencing pursuant to the United States Sentencing Commission Guidelines. The provisions of this paragraph shall not be applied to restrict any such information:

- A. ^{PM} known to the Government prior to the date of this Agreement;
- B. ^{PM} concerning the existence of prior convictions and sentences;
- C. ^{PM} in a prosecution for perjury or giving a false statement; or
- D. ^{PM} in the event the Defendant breaches any of the terms of the Plea Agreement; or
- E. ^{PM} used to rebut any evidence or arguments offered by or on behalf of the Defendant (including arguments made or issues raised *sua sponte* by the District Court) at any stage of the criminal prosecution (including bail, trial, and sentencing).

7. ^{DM} Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person, the Government agrees to move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Commission Guidelines §5K1.1, 18 U.S.C., § 3553(e) or Federal Rule of Criminal Procedure 35(b). Any such motion by the Government is not binding upon the Court, and should the Court deny the motion, the Defendant will have no right to withdraw his plea.

The Defendant agrees to voluntarily surrender to, abandon, and not to contest the forfeiture of any and all assets and property, or portions thereof, which are subject to forfeiture pursuant to any provision of law, including but not limited to, property in the possession or control of the Defendant or Defendant's nominees. Specifically, the Defendant agrees to voluntarily surrender, and not contest the forfeiture of property identified in the Information, and any forfeiture Bill of Particulars: a forfeiture judgment equal to all proceeds the Defendant obtained, directly or indirectly, from the wire fraud offenses, and any property, real or personal, subject to forfeiture from the wire fraud offenses.

With regard to each and every asset listed in the Information or seized in a related investigation or administrative, state, or local action, the Defendant stipulates and agrees:

The Defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The Defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

To its forfeiture herein, if necessary as substitute property under 21 U.S.C. ' 853(p), as made applicable by 18 U.S.C. ' 982(b)(1) or any other statute, or in a separate administrative or civil judicial proceeding.

That the Defendant has or had a possessory interest or other legal interest in each item or property.

To assist the United States in the recovery of all assets by (i) taking whatever steps are necessary or requested by the United States to pass clear title to the United States; (ii) preventing the disbursement of any moneys and sale of any property or assets; (iii) not encumbering or transferring any real estate after the Defendant's signing of this Plea Agreement; and (iv) directing all financial institutions to turn over and surrender to the United States all funds and records regarding accounts listed in any document signed by the Defendant pursuant to this plea agreement, as criminal proceeds or substitute property.

The Defendant waives all rights to notice of forfeiture under Rule 32.2 and of any other action or proceeding regarding such assets. The Defendant consents and waives all rights to compliance by the United States with any

applicable deadlines under 18 U.S.C. § 983(a). Any related administrative claim filed by the Defendant is hereby withdrawn.

Pursuant to Rule 32.2(b)(4), the Defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the Defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the Defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

If the United States discovers that the Defendant has not fully disclosed all assets, the United States may seek forfeiture of any subsequently-discovered assets, and the Defendant agrees to the immediate forfeiture of any such assets.

The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant agrees that Federal Rule of Criminal Procedure 11 and § 1B1.8 of the United States Sentencing Commission Guidelines will not protect from forfeiture, assets disclosed by the Defendant as part of his/her cooperation. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States.

The Defendant agrees to waive any double jeopardy claims the Defendant may have as a result of a forfeiture proceeding against any of these properties as provided for by this Plea Agreement and agrees to waive any claims that the forfeiture described herein constitutes an excessive fine.

Forfeiture of the Defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the Defendant in addition to forfeiture. The United States may use the value of forfeited property for restitution, but is not required to do so.

DM 8. The Defendant also agrees to voluntarily transfer all right, title, interest and claim in the above-described

property and/or assets to the United States of America. Furthermore, the Defendant attests, under penalty of perjury, that the Defendant owns the above-described property and/or assets free of any liens and encumbrances, and that no other person or entity has a claim to the above-described property and/or assets.

Merger and Other Provisions

9. *DM* The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant's sentence. This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters.

10. *DM* The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any

department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

11. *DM* The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

12/2/2021
Date

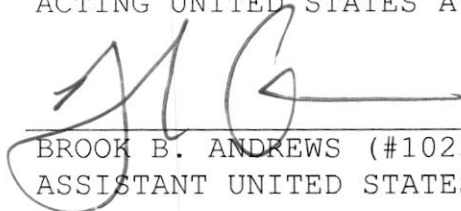
David Cortez Marshall, Jr.
DAVID CORTEZ MARSHALL, JR., DEFENDANT

12/2/2021
Date

Jonathan Harvey
JONATHAN HARVEY
ATTORNEY FOR THE DEFENDANT

12/7/2021
Date

M. RHETT DEHART
ACTING UNITED STATES ATTORNEY


BROOK B. ANDREWS (#10231)
ASSISTANT UNITED STATES ATTORNEY

U.S. DEPARTMENT OF JUSTICE

Statement of Special Assessment Amount

This statement reflects your special assessment only. There may be other penalties imposed at sentencing. This Special Assessment is due and payable at the time of the execution of the plea agreement.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	_____
DEFENDANT'S NAME:	DAVID CORTEZ MARSHALL, JR.
PAY THIS AMOUNT:	\$100.00
PAYMENT DUE ON OR BEFORE:	(date plea agreement signed)

MAKE CHECK OR MONEY ORDER PAYABLE TO:
CLERK, U.S. DISTRICT COURT

PAYMENT SHOULD BE SENT TO:
Clerk, U.S. District Court
Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, SC 29201

OR HAND DELIVERED TO:
Clerk's Office
Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, SC 29201 (Mon. – Fri. 8:30 a.m.– 4:30 p.m.)

INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER (Do Not send cash)

ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT

Exhibit 3

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG

- - -

OWL LABS, INC.,	:	Civil Action No.:
Plaintiff,	:	2022-CP-38-01363
vs.	:	(Original)
ORANGEBURG COUNTY SCHOOL	:	2024-CP-38-00640
DISTRICT,	:	(Restored)
Defendant.	:	

VIDEOTAPED DEPOSITION OF DR. SHAWN DEGREE FOSTER

DATE TAKEN: July 16, 2024
TIME BEGAN: 10:03 a.m.
TIME ENDED: 12:46 p.m.
LOCATION: Orangeburg County School District
102 Founders Court
Orangeburg, South Carolina
REPORTED BY: Tami I. Watters, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
(803) 212-0012

A P P E A R A N C E S

Representing the Plaintiff:

ADAMS AND REESE, LLP
BY: KIRBY D. SHEALY, III, ESQUIRE
1221 Main Street
Suite 1200
Columbia, South Carolina 29201
(803) 212-6518
kirby.shealy@arlaw.com

Representing the Defendant:

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, P.A.
BY: SUSAN M. FITTIPALDI, ESQUIRE
BY: JASMINE R. DRAIN, ESQUIRE
The Tower at 1301 Gervais Street
Suite 1400
Columbia, South Carolina 29201
(803) 254-4035
sfittipaldi@hmwlegal.com

ALSO PRESENT:

RICHARD EDMUND - CLVS

1 would be in his office as well.

2 Q You can't -- let me make sure I
3 understand your testimony.

4 Whether or not that happens is something
5 that Mr. Twitty would be able to tell you -- tell
6 me.

7 A Exactly. Yes.

8 Q Okay. Tell me about David Marshall. Who
9 is he?

10 A He was a former employee of the
11 Orangeburg County School District in our
12 communications department.

13 Q What's -- how did he come to be employed
14 with the school district?

15 A I wasn't the superintendent when he was
16 employed.

17 Q He was here when you got here.

18 A He was here when I got here.

19 Q All right. What's your --

20 Do you have any relationship with him,
21 well, today as we're sitting here?

22 A No.

23 Q Okay. Did you have -- when he was
24 employed with the school district, did you have any
25 kind of a day-to-day interaction with him?

1 A -- and then you have a teacher.

2 Q Okay.

3 A So you have those. So he was -- he'd
4 have support staff. So he would be more of a
5 support staff.

6 Q Okay. And just so we're not talking past
7 each other, in my mind, I was just thinking about
8 all of the folks that work for the district
9 administration.

10 A Oh no. See, a principal's an
11 administrator. A teacher -- the level of authority
12 is different for someone who's on the
13 administrative staff --

14 Q Okay.

15 A -- and then that level is tiered as well.
16 So he doesn't have any authority to make any
17 decisions in the school district --

18 Q Okay.

19 A -- on any level.

20 Q Okay. Thank you. This -- I mean, I'm
21 revealing my lack of knowledge about how the school
22 district is organized.

23 All right. What role -- to the extent
24 you know, what role did Mr. Marshall have in
25 acquiring the Owls, if you know what I mean?

1 A None.

2 Q Okay. From the -- so he was --

3 On the -- from the standpoint of the
4 school district, he had no role in the purchase of
5 the Owls.

6 A The only involvement Mr. Marshall had in
7 the purchasing the Owls is when we found out what
8 happened.

9 Q Okay.

10 A Other than that, he was never involved
11 and never discussed.

12 Q And just for the sake of the record, when
13 I mention the Owls, I'm not talking about birds
14 with big eyes that --

15 A Yes.

16 Q -- turn their heads around further than
17 they should.

18 What am I talking about?

19 A You're talking about the cameras.

20 Q Okay. These are -- these are pieces of
21 hardware that the school district purchased, I
22 guess, during COVID, correct?

23 A Correct.

24 Q And this was to facilitate meetings and
25 other, you know, interactions between people

1 help.

2 Q Okay. And -- now, did he -- did he bring
3 to your attention Level 8 Communications or did he
4 bring to your attention these Owls?

5 A No. The Owl and the Level 8.

6 Q Okay. And what did he -- what did he
7 find out about Level 8 or did he tell you about
8 Level 8?

9 A It was here's a vendor that could get us
10 the Owls.

11 Q All right. Are you aware of how many
12 purchase orders were issued to Level 8?

13 A I don't want to assume. I think there
14 was one that I know of.

15 Q Okay. And do you -- are you aware of the
16 amount of money that the school district spent with
17 Level 8?

18 A Not -- I mean, I can't give you the exact
19 dollar amount. So, yeah, I don't know the exact
20 dollar amount, but the range is like 800 and some
21 thousand maybe, something, 900. So I can't give
22 you exact figure.

23 Q Okay. Are you aware that David Marshall
24 was regularly involved in acquisitions from
25 Level 8?

1 that from his own company?

2 MS. FITTIPALDI: Object to the form.

3 THE WITNESS: Well, first of all, I

4 didn't know Level 8 was his own company.

5 That's the first thing. But he's requesting,

6 as he should, to his supervisor, Merry Glenne,

7 if he can purchase the desk because he doesn't

8 have any authority to approve a purchase. So

9 he would have to request that.

10 BY MR. SHEALY:

11 Q Okay. So he's -- he's seeking that

12 authorization. That authorization comes to you --

13 or request comes to you, correct?

14 A It goes to Merry Glenne Piccolino.

15 Q All right. But then she sends it to you,

16 right?

17 A Yes.

18 Q All right. And you're --

19 So you're aware as of the date of that

20 e-mail that David Marshall is using Level 8 to get

21 the quote from the vendor.

22 A According to what you have in front of

23 me.

24 Q So why -- we talked about this a little

25 bit earlier, but why was Level 8 used to purchase

1 the Owls?

2 A Because that's the recommendation that
3 Eric Ham brought forth that said this third party
4 can get us the Owls, and they were able to fulfill
5 that.

6 Q Okay. And you don't know, as you're
7 sitting here, whether the school district checked
8 the Secretary of State's website to see whether
9 Level 8 was a valid --

10 A I don't know at the time, correct.

11 Q -- entity.

12 Okay. I'm gonna show you Exhibit 13 --

13 - - -

14 (Articles of Organization marked Foster
15 Exhibit Number 13, for identification.)

16 - - -

17 BY MR. SHEALY:

18 Q -- and just ask you, are you familiar
19 with Articles of Organization for a limited
20 liability company?

21 A No.

22 Q Okay. That's not anything that you
23 typically look at or see?

24 A No.

25 Q Okay. But if I show you Exhibit 13 --

1 Q Is that correct?

2 A Correct.

3 Q All right. And do you know, did the
4 school district got the lowest price in this case
5 with respect to the Owls?

6 A Well, I'm not sure.

7 Q Have you learned, though, that the price
8 that Owl Labs charged is actually lower than the
9 price Level 8 allegedly charged?

10 A I'm not -- I'm not sure.

11 Q You don't know. Okay. Did you -- did
12 you come to learn how this sort of scheme
13 perpetuated by Mr. Marshall worked?

14 A Yeah. Throughout -- the reason I don't
15 know the cost, we never dealt with Owl Labs --

16 Q Right.

17 A -- so I wouldn't know what Owl Labs
18 offered. We dealt with Level 8.

19 But in regards to the scheme, you know,
20 from our conversation, what I made the assumption
21 and the findings from my discussions was that David
22 Marshall falsified documents, even forging
23 Mr. Twitty's name and creating his own purchase
24 orders --

25 Q Okay.

1 A -- and was acting at his own admission --
2 Q Right.
3 A -- that no one in the school district was
4 aware, and that he did employ, indeed copy, create,
5 using Adobe, the documents and sent to Owl.
6 Q So -- and as you -- we're talking about
7 the --
8 I'm gonna show you Plaintiff's Exhibit 1.
9 - - -
10 (E-mail with Attached Purchase Order, DEF
11 013156-57, previously marked Plaintiff's
12 Exhibit Number 1, for identification.)
13 - - -
14 BY MR. SHEALY:
15 Q And is this the -- is the second page, is
16 that the falsified purchase order that Mr. Marshall
17 falsified from the school district Owl Labs?
18 A Yeah. I wouldn't know which one's
19 falsified and which one's the original.
20 Q Okay. But is it -- generally, is it your
21 understanding that Mr. Marshall's scheme was that
22 his company, Level 8, purchased the Owls from Owl
23 Labs for a lower price than what the school
24 district ended up paying Level 8 for that
25 equipment?

1 A Some do. Some do, some don't.

2 Q Okay. How could a third party determine
3 if a signature is illegitimate on a purchase order?

4 A I don't know.

5 Q How could a third party determine whether
6 the person whose signature is on a purchase order
7 is actually the appropriate person to have signed
8 the purchase order?

9 A I don't know. In any instance, you can
10 call and verify. So that would be the only way, if
11 someone callid to verify did you sign this
12 particular document.

13 So that can be done and then I believe
14 everything is resolved. So that would be the only
15 way for any of those things, for someone to pick
16 the phone up and say we received this document, we
17 want to verify your signature.

18 Q But do you -- generally speaking, do you
19 expect the district's vendors to rely on purchase
20 orders issued by the district?

21 A Yeah. That's the purpose of a purchase
22 order.

23 Q Okay.

24 A But it's not the purchase orders. It's
25 the verification of the vendor. The purchase order

1 A Yeah. I don't know his phone number.

2 Q You don't know whether the e-mail --
3 whether his phone number is wrong or not.

4 A I don't know -- I don't know -- I don't
5 know my mom's phone number, so, yeah.

6 Q Okay. Let me see that real quickly.

7 A I know that's not a school district phone
8 number. We don't have an 816 area code. I know
9 that much.

10 Q Okay. So that phone number by itself
11 indicates that it's not a school district phone
12 number, correct?

13 A Uh-huh. Correct.

14 Q Just based on the area code. But again,
15 on the -- but the signature block itself has
16 David Marshall's school district e-mail address,
17 does it not?

18 A It does, yes. I'm assuming that's his --
19 his -- it looks like his e-mail address.

20 All right. I'm gonna show you
21 Exhibit 15 --

22 - - -

23 (E-mail String, DEF 002420-2421, marked
24 Foster Exhibit Number 15, for identification.)

25 - - -

1 get that, that appears to be a legitimate purchase
2 order issued by the Orangeburg County School
3 District, does it not?

4 A It does. Aside from the 5 and the 6
5 being bolded and the numbers looking like they were
6 recreated, but I don't know what a regular PO look
7 like.

8 Q Right.

9 A Without the PO number.

10 Q Right. A vendor that has never done
11 business with Orangeburg County School District
12 wouldn't know that there was some difference in
13 that -- in the numbering on that purchase order
14 versus the numbering on some other purchase order,
15 correct?

16 A Would not.

17 Q Okay. What's the purchase price of the
18 Owls listed on -- on the document you're looking
19 at?

20 A 716,000.

21 Q \$716,782.50.

22 A Uh-huh.

23 Q Okay. And that's for 875 Owls, correct?

24 A Correct.

25 Q All right. Now, if you look at

1 Exhibit 2, that's another e-mail from
2 David Marshall to Bill Smith, correct?

3 A Correct. I would assume, yeah.

4 - - -

5 (E-mail Thread with Attached Exemption
6 Certificate, DEF 013176-179, previously marked
7 Plaintiff's Exhibit Number 2, for
8 identification.)

9 - - -

10 BY MR. SHEALY:

11 Q I mean, based on the face of the
12 document, that's what it appears. And
13 David Marshall is, again, using his Orangeburg
14 County School District e-mail account to correspond
15 with Owl Labs; is that right?

16 A In his signature. It still says
17 David Marshall at the top, so I don't know if it
18 came from that e-mail address or not.

19 Q Okay. But David Marshall had authority
20 to engage in this procurement, did he not?

21 A No, he did not.

22 Q Well, didn't he purchase an awful lot of
23 goods and services from Level 8 on other projects?

24 A I don't know.

25 Q Okay. So the school district was not

1 aware that he was making purchases for other
2 things?

3 A I -- I -- I don't know.

4 Q Is it your testimony that David Marshall
5 did not have authority to purchase the Owls?

6 A Correct. He does not have authority to
7 purchase the Owls.

8 Q And why not?

9 A Because his level of authority -- his
10 position doesn't have that level of authority.

11 Q So what on Exhibit 2 would alert a third
12 party that he didn't have authority?

13 A I don't -- I don't know of any.

14 Q Okay. And what --

15 A I think the fact speaks to if he had
16 authority, he wouldn't have had to recreate the
17 documents and forge everything if he had authority
18 to purchase it. So, I mean, that in itself, to
19 me --

20 Q Right. But, I mean, from the standpoint
21 of a third party who has never dealt with a school
22 district, what on Exhibit 2 alerts a third party,
23 hey, this is not --

24 A I wouldn't know.

25 Q Okay.

1 A Yep.

2 Q Okay. Above that, I believe it says:
3 Our district bank limits us to \$300,000 EFT
4 payments per day.

5 That's electronic funds transfer, is
6 that --

7 A We don't do electronic transfers at the
8 time so --

9 Q Okay.

10 A -- I wouldn't know.

11 Q Okay. Well, rather than trying to
12 translate for somebody that -- and you're not the
13 author of that.

14 But that's -- that's Mr. Marshall talking
15 about payment in that e-mail, correct?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q And he's at least purporting to say to
20 Bill Smith, he's talking about the district's bank,
21 right?

22 A I don't know whose bank he's talking
23 about. It isn't ours.

24 Q If we go back to the top, Andress Sims
25 has access to all this information on December 3,

Exhibit 4

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF
COMMON PLEAS OF THE
FIRST JUDICIAL CIRCUIT

OWL LABS, INC.,
Plaintiff,
vs.

CIVIL ACTION NO.
2023-CP-38-01363
(Original)
2023-CP-38-00640
(Restored)

ORANGEBURG COUNTY SCHOOL
DISTRICT,
Defendant.

DEPOSITION OF ERIC HAM

DATE TAKEN: August 15, 2024
TIME BEGAN: 9:32 a.m.
TIME ENDED: 11:38 a.m.
LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 APPEARANCES:

2
3 ADAMS AND REESE, LLC
4 BY: KATHERINE HEIL MILLS, ESQUIRE
5 1221 Main Street
6 Suite 1200
7 Columbia, South Carolina 29201
8 803-254-4190
9 kate.mills@arlaw.com
10 (via videoconference)
11 Representing the Plaintiff
12

13 HALLIGAN MAHONEY WILLIAMS
14 BY: SUSAN M. FITTIPALDI, ESQUIRE
15 The Tower at 1301 Gervais Street
16 Suite 1400
17 Columbia, South Carolina 29201
18 803-254-4035
19 sfittipaldi@hmwlegal.com
20 (via videoconference)
21 Representing the Defendant
22

23 Also Present: None
24
25

1 And so the teacher had their device at home and the
2 students had their device at home, and all you had
3 was this kind of interaction, right.

4 Q. Yes.

5 A. And if a teacher wanted to share notes,
6 you know, they weren't at the time as advanced as we
7 became. So sometimes it would be here, these are my
8 notes, right. So they'd have to hold them up to the
9 screen or something like that. Or if they had them
10 digitally, they could share the screen like they
11 have been doing during this call. But if a teacher
12 had to demonstrate something and they had to get it
13 up, then they had to, you know, move, you know, the
14 laptop around so that the students could actually
15 see what they were demonstrating, you know, or
16 something to that nature.

17 So when they had that conversation, it was
18 "Well, what can we purchase for our teachers that
19 will allow them to teach in more normal movements
20 and interaction with students that would not be
21 difficult for the 800 or 700-plus teachers that we
22 had," right.

23 So I had two recommendations after that
24 conversation. One was a swivel, which was a robotic
25 base that you had to put -- that you had to -- it

1 was just the base, right, and a lanyard that you
2 wear and the base follows you. Like it tracks you
3 around the room when you move around. And then
4 there was the Owl. And how we got introduced to Owl
5 was through Orangeburg-Calhoun Technical College,
6 the person who used to work there, I reached out to
7 them on what were they doing for connecting with
8 students. And they pretty much said they were using
9 laptops and the teachers were using the cameras, but
10 they also had a conference room camera that they
11 were using that allowed for 360 viewing or it would
12 follow you, do the track. So I said, "What is
13 that?" And they let us borrow two of the Owls that
14 they had. And we were able to kind of try it out,
15 demo it and said, you know, "This thing is pretty
16 slick," right. The Owl versus the swivel then
17 became, "Give me the benefits of each and the
18 detriments of each," right, or the challenges of
19 each. The Owl was completely all integrated. It
20 had a camera on the top, it did 360, it had the
21 speaker, and an integrated microphone, right. It
22 directly connects to a laptop and it does act as a
23 camera, so boom, right. The swivel -- I don't have
24 anything to demonstrate. I'm sorry. I'm kind of
25 hands-on.

1 Q. That's okay.

2 A. Okay. Yeah, I do.

3 Q. No, I was going to ask you, do you know
4 who Calhoun got their Owl Labs from?

5 A. Calhoun reached out to us as well. Like
6 several districts, you know, reached out. And I
7 think it was the superintendent may have -- you
8 know, they talk. All the superintendents talk.
9 And, of course, if you're doing anything, you know,
10 especially when everybody is trying to find out, you
11 start reaching out and finding out "What are you
12 doing?" And I think Calhoun wound up being that
13 same kind of conversation, because we're making
14 districts and we're really close. So we had a
15 conversation with them and said, "Hey, we got Owl
16 cameras and we really like them and they really help
17 us."

18 Q. Do you know, did anybody else get the Owls
19 from Level 8, do you know?

20 A. I don't know. From somebody else other
21 than those guys?

22 Q. I'm asking.

23 A. Oh, I don't know. And I'm asking because
24 -- okay.

25 Q. I think you-all actually got it from Owl

1 Labs, not through Level 8. So I didn't know -- do
2 you know if anybody else ordered directly from Owl
3 Labs prior to you-all ordering?

4 A. When we ordered, we ordered through Level
5 8. At least we thought we were ordering through
6 Level 8 and that's who we wrote a check for. So I
7 didn't know if somebody else used them, you know.
8 But I mean, other people asked, you know, or would
9 ask, you know, "What are you using?" or whatever
10 else.

11 Q. When acquiring the Owls, did you do any
12 solicitations for quotes?

13 A. We did not, because at the time -- which
14 is another one of those hindsight things -- you
15 know, it was superintendent was saying, you know,
16 "We need these things. We need our teachers to be
17 fully engaged with students. And, you know, get
18 with Mr. Twitty. Let's figure out what we can do
19 and get this done." And as another hindsight thing,
20 Mr. Twitty, you know, basically said, "Hey, you
21 know, I think we're going to have to put this out
22 for RFP, you know, in order to get it." And it was
23 like, "Well, we need them now."

24 Q. Did you tell Greg Twitty that Level 8 was
25 on state contract vendor when acquiring the Owls?

Exhibit 5

Purchase Order

Orangeburg County School District

No. 211368

Technology

102 Founder's Court

Orangeburg SC 29115

PLEASE INCLUDE EMAIL ADDRESS ON INVOICE

INVOICE FOR ONLY SHIPPED ITEMS

NO BACKORDERS

SEND INVOICE TO: 102 FOUNDERS COURT

ORANGEBURG, SC 29118

This PO number must appear on all packages and correspondence.

P.O. Date: 10/28/2020

Questions ? (803) 534-5454

P.O. Issued To :

Level 8 Communications
1550 Middleton Street, Suite 2671
Orangeburg SC 29115

Ext:

Account:

Ship To:

Maintenance Department Orangeburg

Attn: Eric Ham

473 Fair St

Orangeburg SC 29115

(803) 533-7914

Contact:

Location: Communications and Business Partnerships

Phone:

Fax:

Project: Undesignated

Req# 7633

Reference:

Date Required: 11/12/2020

Award Number:

Line	Qty	Unit	Part#	Description	Account Number	Unit Price	Extended	Tax	Freight
1	875	EA		Meeting Owl Pro	217.266.00445.CRPP.000 Technolgy & Software	972.00	850,500.00	59,535.00	0.00
2	875	EA		Tripod with 3Way Pan and Tilt Head	217.266.00445.CRPP.000 Technolgy & Software	17.21	15,058.75	1,054.11	0.00
3	875	EA		15ft Black Micro USB 2.0 Cable Type A to Micro B	217.266.00445.CRPP.000 Technolgy & Software	8.78	7,682.50	537.78	0.00
4	875	EA		PVC Floor Cord Cover Kit - 6' Long - Gray	217.266.00445.CRPP.000 Technolgy & Software	12.02	10,517.50	736.22	0.00

Please send all invoices to: acctspayable@ocsdsc.org.

APPROVAL SIGNATURES:



Sub-Total:	883,758.75
Freight:	0.00
Tax:	61,863.11
Total Amount:	945,621.86

NOTES:

State Contract 4400013022

Order Via:

Email

FILE COPY

Monday, June 14, 2021

ROA_134

Page 1 of 1
DEF 019825

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Exhibit 6

Invoice

INV-2354

Balance Due
\$472,810.94

Level 8 Communications

1550 Middleton Street
Suite 2671
Orangeburg South Carolina 29115
U.S.A

Please email all purchase orders to zachary@level8c.com

If paying by check, please let us know when it's in the mail:
zachary@level8c.com

Invoice Date : 28 Oct 2020
Terms : Net 30
Due Date : 27 Nov 2020
P.O.# : 211368

Bill To
Orangeburg County School District
102 Founders Court
Orangeburg
29115 South Carolina

#	Item & Description	Qty	Rate	Amount
1	Meeting Owl Pro	437.50	972.00	425,250.00
2	Tripod with 3-Way, Pan-and-Tilt Head	437.50	17.21	7,529.38
3	15ft Black Micro USB 2.0 Cable, Type A to Micro B	437.50	8.78	3,841.25
4	PVC Floor Cord Cover Kit - 6' Long - Gray (Note: This Product Is Shipped by Roll and Is likely To Experience Some Recoiling. This is Normal & Is Temporary.)	437.50	12.02	5,258.75
Sub Total				441,879.38
SC Sales Tax (7%)				30,931.56
Total				\$472,810.94
Balance Due				\$472,810.94

Notes

ABN Level 8 Communications is a South Carolina statewide term contract vendor (Solicitation #4400013022, A/V Products and Services). This contract is valid from 7/22/2019 until 5/02/2024 (SC Vendor #7000269079).

Payment Options



Terms & Conditions

This is the 50% prepayment. Invoice 1 of 2.

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Invoice

INV-2357

Balance Due
\$472,810.94

Level 8 Communications

1550 Middleton Street
Suite 2671
Orangeburg South Carolina 29115
U.S.A

Please email all purchase orders to zachary@level8c.com

If paying by check, please let us know when it's in the mail:
zachary@level8c.com

Bill To
Orangeburg County School District
102 Founders Court
Orangeburg
29115 South Carolina

Invoice Date : 23 Nov 2020
Terms : Due on Receipt
Due Date : 23 Nov 2020
P.O.# : PO# 211368

#	Item & Description	Qty	Rate	Amount
1	Meeting Owl Pro	437.50	972.00	425,250.00
2	Tripod with 3-Way, Pan-and-Tilt Head	437.50	17.21	7,529.38
3	15ft Black Micro USB 2.0 Cable, Type A to Micro B	437.50	8.78	3,841.25
4	PVC Floor Cord Cover Kit - 6' Long - Gray (Note: This Product Is Shipped by Roll and Is likely To Experience Some Recoiling. This is Normal & Is Temporary.)	437.50	12.02	5,258.75
Sub Total				441,879.38
SC Sales Tax (7%)				30,931.56
Total				\$472,810.94
Balance Due				\$472,810.94

Notes

ABN Level 8 Communications is a South Carolina statewide term contract vendor (Solicitation #4400013022, A/V Products and Services). This contract is valid from 7/22/2019 until 5/02/2024 (SC Vendor #7000269079).

Payment Options



Terms & Conditions

This is invoice 2/2 for PO 211368

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Exhibit 7

I wanted to follow up on this to get a better understanding of your timeline for these Owls. i'd love to set up a virtual demonstration to go over some features and some useful case studies we've seen with other school districts.

Feel free to [book some time on my calendar this week or next](#). If you think there is some specific information you'd like me to cover feel free to pass that along and I will make sure I have the right people/information when we speak!

Thanks,
Bill



Bill Smith

Account Executive at **Owl Labs**
+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

--

Prefer fewer emails from me? Click [here](#)

On Fri, Oct 23, 2020 at 3:52 PM Bill Smith <bill@owllabs.com> wrote:

Yup, That's right.

On Fri, Oct 23, 2020 at 3:52 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Makes sense— I think we can do that. So you can take the prepayment via wire transfer? Just making sure =D

Thanks!



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Oct 23, 2020 at 3:48 PM Bill Smith <bill@owllabs.com> wrote:

The original meeting owls are all out of stock. Since the Pros are better suited for classrooms we have shifted production to allow us to focus on that. On an order of this size we'd ask for 50% prepayment and then the rest once you receive your owls, does that work for you?

All we would need on your end would be a purchasing order. If you would like to send a PO that matches the quote sent over I can process that and you'd be invoiced and able to pay via CC, Check, or Wire Transfer. Another option is that I can send a link where you can purchase online via CC.

Let me know if that makes sense.

Thanks,

Bill



Bill Smith

Account Executive at **Owl Labs**

+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

On Fri, Oct 23, 2020 at 3:41 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Also, can you send me in paperwork in advance that we'd need to complete in order to purchase?



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Oct 23, 2020 at 3:39 PM David Marshall <david.marshall@ocsdsc.org> wrote:
No worries—I was actually calling about the regular Meeting Owl. We want to get the pricing on that one to compare both options.

Also, are you able to facilitate our purchase order process? I know for sure that they won't pay in advance for the products. We only send out a check or direct deposit once we receive the items. Do you accept direct deposit?



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Oct 23, 2020 at 3:26 PM Bill Smith <bill@owllabs.com> wrote:
Hi David, Sorry I had a call at 3:00 and missed your call.

[Here is a quote for 875 Meeting Owl Pros.](#)

Please let me know if you have any questions, or need to see any additional information.

Thanks,

Bill



Bill Smith

Account Executive at **Owl Labs**

+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

--

Prefer fewer emails from me? Click [here](#)

On Fri, Oct 23, 2020 at 3:05 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Hey Bill,

We were able to work out the purchasing issue, so we can purchase directly through you. Can you please give me the quantity discount for the regular Meeting Owl? They want to see both options.

Thanks,
David



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Oct 23, 2020 at 2:14 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Howdy! I'm available now— (816) 830-0064.



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Oct 23, 2020 at 2:02 PM Bill Smith <bill@owllabs.com> wrote:

Hi David,

Thanks for reaching out to Owl Labs today. I'd certainly love to hop on a call with you and learn a little bit more about Orangeburg County School District and the timeline you guys have for this order. Do you have any time today for a quick call?

Thanks David, I look forward to speaking with you.



Bill Smith

Account Executive at **Owl Labs**
+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

--

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Exhibit 8



Orange County School District - 875 Meeting Owl Pros

Prepared on October 23, 2020 - Reference: 20201023-151951105

Orange County School District
SC 29118
United States

David Marshall
david.marshall@ocsdsc.org
8168300064

Products & Services

Meeting Owl Pro	875 x \$999.00
SKU MTW200-1000	\$179.82 discount \$716,782.50
One-time discount	\$157,342.50
One-time subtotal	\$716,782.50
Total	\$716,782.50

This quote expires on November 22, 2020.

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE #2020-04CP3800640

Purchase Terms

Payment

- 100% Prepayment required to ship
- We accept Purchase Orders or Online Check out with credit card (fastest option)
- You can pay the PO with credit card, wire transfer, or check

Shipping Options

- Order must be placed with US address
- Standard: Free - ask me for lead time
- Please consider these important details if you plan to bring your Owls internationally

Returns

- Returns accepted within 30 days of receipt

Taxes

- No taxes are included on this quote. If you are tax exempt, please provide certificate prior to purchase. If you would like me to add taxes, please outline the rate that applies to your shipping location.

Questions? Contact me



William Smith

bill@owllabs.com

+1 (413) 454-8353



Owl Labs

33 1/2 Union Square

Somerville, MA 02143

US

Owl Labs,
Plaintiff,
v.
Orangeburg County School
District,
Defendant.

DEPOSITION OF
WILLIAM V. SMITH

* * * * *

Friday, April 26, 2024
11:46 a.m. - 1:08 p.m.

The deposition of WILLIAM V. SMITH was taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Friday, April 26, 2024, via Zoom video conference, pursuant to Notice of Deposition.

4/26/2024

WILLIAM V. SMITH

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

APPEARANCES

Attorney for the Plaintiff:

Lyndey R.Z. Bryant, Esquire
ADAMS AND REESE, LLP
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
lyndey.bryant@arlaw.com

Attorney for the Defendant:

Susan M. Fittipaldi, Esquire
HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA
1301 Gervais Street, Suite 1400
Columbia, South Carolina 29201
sfittipaldi@hmwlegal.com

Cola City Reporting

(803)210-5487 / colacityreporting2@gmail.com

ROA_147

4/26/2024

WILLIAM V. SMITH

1 Owllabs.com, one of the ways to get in contact
2 with our sales team.

3 Q. Okay. And it appears just from some of the
4 email communications that the first contact
5 might have been approximately October 23rd of
6 2020; does that sound about right to you?

7 A. Yeah, that sounds about right.

8 Q. Okay. Do you recall speaking with him on the
9 phone after that initial contact through the
10 website?

11 A. Not the specifics of the phone, no.

12 Q. Okay. But you have a recollection of talking to
13 him as an initial -- I guess you'd call it an
14 initial sales call or something like that?

15 A. Yeah, it was common practice.

16 Q. Okay. And you may have just already answered
17 this, but do you recall at all what he told you
18 about why he was reaching out to your company?

19 A. No. I just remember mentioning CARES Act, and I
20 remember there being a need to have these by a
21 certain date, as most CARES Act deals required
22 at that time.

23 Q. Regarding this purchase, was David Marshall the
24 only person you ever communicated with -- again
25 just regarding the purchase not maybe after the

4/26/2024

WILLIAM V. SMITH

1 sales, but was he the only person that you
2 communicated with about the purchase?

3 A. I don't remember. I want to say there were
4 others, but I'm not certain.

5 Q. Did --

6 A. There were certainly others along the way. I
7 just don't know what was -- when the date of the
8 PO and when I spoke with others.

9 Q. Okay. Did he tell you what department he was
10 with or anything like that in the school
11 district?

12 A. Yeah, I don't know if he told me. I think when
13 he came in, it would be common practice to look
14 at his LinkedIn and his email signature.

15 Q. Did he have a LinkedIn; do you recall?

16 A. Yeah.

17 Q. And his email signature --

18 MS. FITTIPALDI: Andie, will you pull up,
19 let's just say, Mr. Smith, I'm going to have the
20 court reporter pull up some documents. I think
21 these are the ones that you would have received
22 recently. Maybe start with, let's see, Owl Labs
23 76. Yeah, okay. That'd be great right there.
24 Oops, sorry. Keep going down. Down just a
25 little bit more, if you don't mind. Okay.

4/26/2024

WILLIAM V. SMITH

1 A. Yes. That's common practice, just --

2 Q. Yeah.

3 A. -- Googling email.

4 Q. All right. And did you ask him about looping
5 into your conversation anyone from the finance
6 department or the procurement department at
7 Orangeburg County School District?

8 A. I don't recall.

9 Q. Okay. Do you recall looking at the district's
10 website at that time?

11 A. It's possible, yeah. I don't recall.

12 Q. Okay.

13 A. Likely.

14 Q. If you had looked at their website, do you think
15 you would have looked under the finance
16 department and who worked in the finance
17 department?

18 MS. BRYANT: Object to the form. You can
19 answer.

20 A. No. I mean, my --

21 Q. Well, what would have been -- in general, what
22 would have been the purpose of looking at the
23 district's website?

24 A. Typically, if there's anything about specific
25 initiatives, that's just typically what I would

4/26/2024

WILLIAM V. SMITH

1 -- if I went on a website, that's what I would
2 look for.

3 Q. You wouldn't necessarily look to see who their
4 procurement officer was?

5 A. No.

6 Q. Okay. Did you ever inquire from David Marshall
7 about the district's procurement process?

8 A. Yeah. It was a lot of conversation regarding
9 CARES Act and timelines and getting things
10 approved, but I don't remember the specifics.

11 Q. Did you look into the district's procurement
12 policy and procedure independent --

13 A. No.

14 Q. Independent of any conversation with David
15 Marshall, did you yourself look at the
16 district's policy regarding procurement?

17 A. No.

18 Q. Okay. Who else at Owl Labs knew about this
19 potential sale?

20 A. I'm not sure.

21 Q. At some point, Ms. McNamara was included in the
22 conversation, right?

23 A. Yes.

24 Q. Okay. Would anyone because of the large, or
25 because of the amount, did she have to approve

4/26/2024

WILLIAM V. SMITH

1 A. Yes.

2 Q. Okay. So the total cost on this quote was
3 \$716,782.50, right?

4 A. Correct.

5 Q. Okay.

6 MS. FITTIPALDI: And then, Andie, if you
7 don't mind scrolling down one page, the second
8 page of this quote. Thanks.

9 Q. It says the purchase terms, the very first
10 requirement is that 100 percent prepayment is
11 required to ship; do you see that?

12 A. Yep.

13 Q. So at the time that you provided this quote, you
14 were going to require 100 percent prepayment?

15 A. Yeah, that was a typical process we require 100
16 percent prepayment on orders. With public
17 school districts, like I said before, it was
18 very common to negotiate those terms.

19 Q. Okay.

20 MS. FITTIPALDI: Andie, if you don't mind
21 scrolling down. Go ahead, keep going down.
22 Okay. Thanks. Oops, go back up. That's about
23 right. That's good right there.

24 Q. So this is an email and the Bates stamp number
25 on the bottom is Owl Labs 74. And this entire

4/26/2024

WILLIAM V. SMITH

1 packet of documents will be Exhibit 1 from both
2 Ms. McNamara's deposition and yours, okay, Mr.
3 Smith. There's an email from you to David
4 Marshall where you say, "An order this size we'd
5 ask for 50 percent prepayment and then the rest
6 once you receive the Owls, does that work for
7 you?" Do you recall that email?

8 A. Yeah.

9 Q. Okay.

10 A. Yes.

11 Q. If we scroll down one page, I think there is an
12 email from David that actually preceded the one
13 that we just talked about where he says to you,
14 "I know for sure they won't pay in advance for
15 the products." And again, that was sort of
16 normal in your dealings with school districts?

17 A. Yeah.

18 Q. Okay.

19 MS. FITTIPALDI: Andie, can you scroll
20 down to Bates stamp 35. Yeah, there we go. Go
21 back up a little bit. Thanks.

22 Q. All right. Mr. Smith, I want to show you some
23 more of these email exchanges between Owl Labs
24 and David Marshall. What's on your screen right
25 now is one dated October 28th, 2020, at 5:57

4/26/2024

WILLIAM V. SMITH

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

1 p.m. from Ms. McNamara; do you see that?

2 A. Yes.

3 Q. Okay. She was echoing an email that you had
4 sent to him, and she says, "One thing that I
5 overlooked on my end is freight charges. I'm
6 checking with our team to see if there will be
7 any charges associated with an order of this
8 size and will let you know as soon as I do." So
9 your quote didn't include the shipping or the
10 freight charges; is that -- is that right?

11 A. I'm not sure.

12 Q. The document we looked at just a minute ago, it
13 just had the units with a discount, right?
14 There weren't any shipping charges on that
15 quote?

16 A. No, I don't think so.

17 Q. Would you -- well, I'm not trying to trick you
18 or anything. I could show it to you again but
19 there --

20 MS. FITTIPALDI: Andie, you want to pull
21 that back up, the very first page? Yeah.

22 Q. Yeah. So I'm showing you this first page of the
23 quote, Owl Labs 3, there's no shipping charges
24 on this, correct?

25 A. Correct, I don't see any shipping charge.

Cola City Reporting

(803)210-5487 / colacityreporting2@gmail.com

ROA_154

4/26/2024

WILLIAM V. SMITH

1 Q. Okay. Do you know who that signature is for?

2 A. Yes.

3 Q. Okay. Who is that?

4 A. Greg Dwitty, I think.

5 Q. Twitty?

6 A. Twitty.

7 Q. Twitty, yeah. Does that sound familiar?

8 A. Yeah. I remember the name from some of the
9 calls for me.

10 Q. Do you know who Mr. Twitty is?

11 A. I haven't met him, no.

12 Q. I mean, but do you know what position he holds
13 within Orangeburg County School District?

14 A. Not off the top of my head.

15 Q. Okay. You didn't have any communications with
16 Mr. Twitty regarding this purchase prior to it
17 going through, correct?

18 A. Correct.

19 Q. All right. And the only person you dealt with
20 was David Marshall; is that right?

21 A. I'm not sure. I -- like I said, I know I've
22 talked with other Orangeburg employees. I don't
23 know the timelines.

24 Q. Okay. I think there was a Ms. Andress Carter-
25 Sims maybe; does that sound right?

4/26/2024

WILLIAM V. SMITH

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

1 involving getting hacked, their school district
2 getting hacked.

3 Q. Did you look into whether or not there was any
4 truth to that statement, or did you just sort of
5 take him at his word?

6 A. I believe he had sent over something. Like I
7 don't -- I don't really recall, but there was --
8 before we had even asked about it, he had sent
9 something like an insurance proof. I don't
10 know. But that -- no, I don't. I don't really
11 recall.

12 Q. Okay. Tell me what you recall happened next
13 after he communicated to you there had been a
14 hack and --

15 A. So like I really didn't get involved at all with
16 collections.

17 Q. Okay. Mr. Smith, as a result of this situation
18 with David Marshall, I think you had referenced
19 earlier that there was a Zoom call some of the
20 folks from Owl Labs and people higher up in the
21 food chain, so to speak, at the school district,
22 including the superintendent; is that right?

23 A. Yes.

24 Q. Okay. And we have a recording of that, that
25 Zoom meeting. Do you recall who requested that

4/26/2024

WILLIAM V. SMITH

1 call?

2 A. I don't -- I don't recall who initiated it. I
3 know it was mutually agreed.

4 Q. Okay.

5 A. But I forget who initiated that.

6 Q. Okay. And David Marshall participated in that
7 call, and essentially admitted that he had
8 defrauded folks in the course of this purchase;
9 is that your recollection?

10 A. Yeah, I remember him talking about forging
11 documents and --

12 Q. Okay. As a result of that Zoom call, were you
13 requested to, you know, explain to anyone at Owl
14 Labs how this had happened or anything like
15 that?

16 A. Can you explain that question?

17 Q. Well, I remember seeing that you provided a
18 timeline to someone about your communications
19 with David Marshall, but -- do you recall doing
20 that, providing a timeline to someone? Again,
21 I'm sorry, I didn't include that. But does that
22 ring any bells that you did that?

23 A. To someone at Owl Labs?

24 Q. Yeah.

25 A. I guess -- I guess I don't -- I don't really --

Cola City Reporting

(803)210-5487 / colacityreporting2@gmail.com

ROA_157

Exhibit 10



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Wed, Oct 28, 2020 at 6:52 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Thanks Bill. You should have it by 9 AM EST tomorrow.

On Wed, Oct 28, 2020 at 6:51 PM Bill Smith <bill@owllabs.com> wrote:
Thanks David.

Again we appreciate your business and your patience while we work through this with you. Just wanted to follow up and remind you to send that Tax Exempt form tomorrow morning so that you are billed correctly!

Thanks again. Have a great rest of your week.

Bill

On Wed, Oct 28, 2020 at 6:47 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Thank you. If we meet again, we can pretend this didn't happen. Everything else has been amazing and I really appreciate both of you for pulling this order together for us.

On Wed, Oct 28, 2020 at 6:25 PM Kaylin McNamara <kaylin@owllabs.com> wrote:
Hi David,

You are right in that it is unacceptable and I apologize for that. Too many crossed wires on our end and we are moving too quickly to try and meet the impending deadline.

We will execute on the PO as outlined. Don't worry about freight or shipping whatsoever.

Thank you for your patience and your business!

We will

Best,

Kaylin



Kaylin McNamara

Inside Sales Manager | Owl Labs, Inc.

+1 857-214-4341, ext. 018

[Book a Meeting on My Calendar](#)

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--

Prefer fewer emails from me? Click [here](#)

On Wed, Oct 28, 2020 at 6:16 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Greetings:

We simply cannot add any other charges to the invoice. The CARES act funds were divided up to the penny, and every resource has been used to fund these devices for our teachers. Your PO was issued today, along with 16 others that we've been working with for other products using these funds.

I can work with you on the shipping dates, we agreed to fund 50% of the order, but adding this post-agreement is entirely unacceptable. Who's to say that you won't add any other charges before shipping? I can't fathom this.

So the question is: will you fulfill the order as quoted or not?

On Wed, Oct 28, 2020 at 5:57 PM Kaylin McNamara <kaylin@owllabs.com> wrote:

Hi David,

I echo most of Bill's information and sentiment here. One thing that I overlooked on my end is freight charges. I am checking with our team to see if there will be any charges associated with an order of this size and will let you know as soon as I do.

Also, like we said, we will do everything we can to fulfill this order as quickly as possible and we believe we can execute on it by the deadline but please know that we can't make a guarantee.

We will certainly keep you posted as things progress. Please don't hesitate to reach out to us with any questions or thoughts in the meantime.

Thank you again for working closely with us!

Best,

Kaylin



Kaylin McNamara

Inside Sales Manager | Owl Labs, Inc.

+1 857-214-4341, ext. 018

[Book a Meeting on My Calendar](#)

--

Prefer fewer emails from me? Click [here](#)

On Wed, Oct 28, 2020 at 5:05 PM Bill Smith <bill@owllabs.com> wrote:
David,

Thanks again for taking a few minutes to meet with us. As discussed we are going to do our very best to have these 875 units delivered by December 10th. We are very confident that we can get all units to you by the deadline barring any unforeseeable circumstances. We will send out an estimated ship by schedule in the next couple of days and you will also receive shipping confirmations directly to your email.

Once we receive the Purchasing Order, our team will process it and send you an email confirmation as well as an invoice. You mentioned paying via Wire Transfer, attached is our wire instructions.

Thank you for being patient with us. We look forward to working with you.

Bill



Bill Smith

Account Executive at **Owl Labs**
+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

--

Prefer fewer emails from me? Click [here](#)



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

--

Exhibit 11

Purchase Order

Orangeburg County School District
Technology
102 Founder's Court
Orangeburg SC 29115

No. 21045633

PLEASE INCLUDE EMAIL ADDRESS ON
INVOICE

INVOICE FOR ONLY SHIPPED ITEMS
NO BACKORDERS

Send Invoice to Above Address

This PO number must appear on all
packages and correspondence.

P.O. Date: 10/28/2020

Questions ? (803) 534-5454

Ext:

Account:

P.O. Issued To :

Ship To:

Owl Labs
33-1/2 Union Square
Somerville, MA 02143

OCSD Warehouse
Attn: Eric Ham
473 Fair Street
Orangeburg SC 29115
(803) 534-5454

Contact:

Location: Technology

Phone:

Fax:

Project: Undesignated

Req# 64593

Reference:

Award Number:

Line	Qty	Unit	Part#	Description	Account Number	Unit Price	Extended	Tax	Freight
1	875	EA		Meeting Owl Pro SKU MTW200-1000	100.266.00445.0000.000 Technology & Software Supplies	819.18	716,782.50	0.00	0.00

APPROVAL SIGNATURES:



Sub-Total: 716,782.50

Freight: 0.00

Tax: 0.00

Total Amount: 716,782.50

NOTES:

Order Via:

RTS

ENTITY COPY

Wednesday, October 28, 2020

Page 1 of 1

ROA_163

DEF 013157

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Exhibit 12



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
EXEMPTION CERTIFICATE
FOR SALES AND USE TAX
(Single Sale Only)

ST-8
(Rev. 7/14/16)
5009

Purchaser's Name Orangeburg County School District Date October 29, 2020

Signature *Gary Smith* (Please Print) Amount of Sale \$ 716,782.50

Address 102 Founders Court, Orangeburg, SC 29118

This form is to be completed by purchaser and seller must maintain copy of exemption certificate. Do not send certificate to SC Department of Revenue.

The undersigned hereby certifies that the purchases of tangible property made under this certificate are made in accordance with the exemption checked below: that in the event the property so purchased is used for purposes other than specified, the purchaser assumes full liability and must file a return and pay the tax due thereon.

Description of tangible personal property purchased Owl Labs Meeting Owl Pro SKU MTW200-1000, access to online information systems used in a course of study.

SCHEDULE OF EXEMPTIONS FOUND AT CHAPTER 36 OF TITLE 12 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED

Check Applicable Exemption:

- ☐ Tangible personal property sold to the federal government; [12-36-2120(2)].
- ☒ Textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for student's use in the school library of these schools and institutions; [12-36-2120(3)(a)].
- ☐ Books, magazines, periodicals, newspapers, and access to on-line information system sold to publicly supported state, county, or regional libraries; items in this category may be in any form, including microfilm, microfiche, and CD ROM; [12-36-2120(3)(b)].
- ☐ Fuel, lubricants and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce. This exemption does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair or reconditioning of ships and other watercraft; [12-36-2120(13)].
- ☐ Wrapping paper, wrapping twine, paper bags and containers used incident to the sale and delivery of tangible personal property; [12-36-2120(14)].
- ☐ Machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. 'Machines' include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item 'recycling' means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale; [12-36-2120(17)].
- ☐ Electricity, natural gas, fuel oil, kerosene, LP gas, coal or any other combustible heating material or substance used for residential purposes. Individual sales of kerosene or LP gas of twenty gallons or less by retailers are considered used for residential heating purposes; [12-36-2120(33)].
- ☐ Prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases including prescription medicines used to relieve the effects of any such treatment [12-36-2120(28)(a)].
- ☐ Prescription drugs dispensed to medicare part A patients residing in a nursing home [12-36-2120 (28)(f)].
- ☐ Any device, equipment or machinery operated by hydrogen or fuel cells, any device, equipment or machinery used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and any device, equipment or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies [12-36-2120(71)].
- ☐ Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services (CMS) certified kidney dialysis facility. For purposes of this exemption, "biologics" means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. [12-36-2120(80)]

Purchaser's Name _____

The undersigned hereby certifies that the purchases of tangible personal property made under this certificate are made in accordance with the exemption checked below: that in the event the property so purchased is used for purposes other than specified, the purchaser assumes full liability and must file a return and pay the tax due thereon.

When Claiming an exemption on Page 2, be sure to attach Page 1. Both pages must be retained by seller.

Check Applicable Exemption:

- ☐ Construction materials used by an entity organized under Section 501(c)(3) of the Internal Revenue Code as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. For purposes of this item, an individual or family in need' means an individual or family, as applicable, whose income is less than or equal to eighty percent of the county median income." [12-36-2120(81)].
- ☐ Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft;" [12-36-2120(52)].
- ☐ Children's clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the sole purpose of distribution by that organization to needy children. For purposes of this item:
(a) "clothing" means those items exempt from sales and use tax pursuant to item (57)(a)(i) and (iii) of this section;
and
(b) "needy children" means children eligible for free meals under the National School Lunch Program of the United States Department of Agriculture." [12-36-2120(82)]

Exhibit 13

Owl Labs,
Plaintiff,
v.
Orangeburg County School
District,
Defendant.

DEPOSITION OF
FLEUR RADOVAN

* * * * *

Thursday, May 16, 2024

2:01 p.m. - 2:31 p.m.

The deposition of FLEUR RADOVAN was taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Thursday, May 16, 2024, via Zoom video conference, pursuant to Notice of Deposition.

5/16/2024

FLEUR RADOVAN

APPEARANCES

Attorney for the Plaintiff:

Lyndey R.Z. Bryant, Esquire
ADAMS AND REESE, LLP
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lyndey.bryant@arlaw.com

Attorney for the Defendant:

Susan M. Fittipaldi, Esquire
HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA
1301 Gervais Street, Suite 1400
Columbia, South Carolina 29201
sfittipaldi@hmwlegal.com

5/16/2024

FLEUR RADOVAN

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1 payment that you did receive -- that Owl Labs
2 did receive for this purchase. Do you recall
3 looking into the initial payment that was
4 received, I'd say like maybe the first 50
5 percent?

6 A. I'm not sure if Narayan was the one who asked me
7 about that. But I would say I did look into the
8 payment transactions in the past.

9 Q. And what did you find by looking into those
10 payment transactions?

11 A. That we did receive the down payment for 50
12 percent.

13 Q. And how did you receive that?

14 A. I believe it was through ACH wire.

15 Q. And do you have a record of who you received
16 that from?

17 A. Based on what I can remember, it says Orangeburg
18 County purchasing.

19 Q. Okay. So it wasn't from Orangeburg County
20 School District?

21 MS. BRYANT: Object to the form. You can
22 answer if you know.

23 A. That's the only thing that I can remember.

24 Q. Okay. In terms of the positions that you've
25 held there, Fleur, if there was an arrangement

Exhibit 14

Owl Labs,
Plaintiff,
v.
Orangeburg County School
District,
Defendant.

DEPOSITION OF
HARRY MELTZER

* * * * *

Monday, April 29, 2024
11:39 a.m. - 12:26 p.m.

The deposition of HARRY MELTZER was taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Monday, April 29, 2024, via Zoom video conference, pursuant to Notice of Deposition.

4/29/2024

HARRY MELTZER

APPEARANCES

Attorney for the Plaintiff:

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1301 Gervais Street, Suite 1400
Columbia, South Carolina 29201
sfittipaldi@hmwlegal.com

4/29/2024

HARRY MELTZER

1 director?

2 A. I would, yes, be aware that school districts
3 have people in place whose titles designate them
4 as procurement.

5 Q. In your previous experience, like prior to this
6 sale with David Marshall and dealing with school
7 districts, would you be communicating with
8 someone in the district yourself directly or
9 would most of the communications go through the
10 sales rep?

11 A. During the sales process, most of the
12 communications would go through the sales rep.

13 Q. Okay. And when would you get involved?

14 A. I would get involved at the point where the
15 sales rep had confirmed the deal and received
16 the purchase order. They would involve me by
17 sending me the purchase order.

18 Q. Okay. And when you received the purchase order,
19 would you inquire from the sales rep about, you
20 know, anything about the purchase order
21 typically, like just to ensure that the purchase
22 order was legitimate or had approval from who it
23 needed to be approved from from the purchaser's
24 end?

25 A. No, once the sales -- the sales representative

4/29/2024

HARRY MELTZER

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

1 delivers the purchase order, then we would
2 assume that they had done the due diligence.
3 And if we had any questions on the details of
4 the purchase order, we would -- we would ask the
5 sales rep.

6 Q. Okay. And when you say they would do the due
7 diligence, are you talking about the sales rep?

8 A. Yes, the sales reps.

9 Q. Okay. And what kind of due diligence are you
10 talking about, or what do you mean by that?

11 A. I don't have knowledge of their processes.

12 Q. Okay. Well, just a minute ago you said that you
13 would -- they would have done their due
14 diligence. What did you mean by that?

15 A. They would have asked whatever questions they
16 felt they needed to ask before initiating the
17 order. Once they had provided me the purchase
18 order, they had initiated the order. So I'd
19 assume that they had done whatever -- done
20 whatever back and forth they needed to do before
21 initiating a purchase.

22 Q. Okay.

23 A. Before delivering that.

24 Q. Okay. In that timeframe, the fall of 2020,
25 October 2020, were you aware of generally the

4/29/2024

HARRY MELTZER

1 Q. Okay. And how would that have been transmitted?
2 Would that been via email?

3 A. Yes, email.

4 Q. Okay. And do you recall who you would have
5 emailed it to? Would it be --

6 A. Ah --

7 Q. Sorry, would it be David Marshall?

8 A. I don't recall who exactly was listed as the
9 contact for payment.

10 Q. Okay. What's your next recollection of what
11 occurred with this purchase after the invoice
12 was sent? You said earlier there was some
13 communication with him about a delay for making,
14 is it the balance of the payment?

15 A. Yes, it was a delay for the balance of the, I
16 believe it was remaining 50 percent. And I had
17 emailed the contact that we had for this account
18 and said something along the lines of your
19 invoice is due, can you give us an update on the
20 payment status? And I believe they said
21 something about a cyber attack, or maybe --
22 yeah, a cyber attack or some sort of security
23 issue that meant that they were delayed in
24 sending payment. And we communicated back and
25 forth about that just a couple times.

Exhibit 15

Greg Twitty

From: Daphne Walley
Sent: Thursday, June 10, 2021 10:32 AM
To: Eva Gail Sanders; Greg Twitty
Subject: FW: [External] FW: Owl Labs Outstanding Invoice
Attachments: Invoice 19327.pdf

Mrs. Sanders,

The forwarded email contains the requested outstanding balance invoice.



Daphne Walley
 Information Technology
 Orangeburg County School District

From: Fleur Radovan <fleur.radovan@owllabs.com>
Sent: Thursday, June 10, 2021 10:27 AM
To: Daphne Walley <Daphne.Walley@ocsdsc.org>
Cc: fleur.radovan@owllabs.com; narayan.krishnan@owllabs.com
Subject: [External] FW: Owl Labs Outstanding Invoice

*** EXTERNAL EMAIL: This email was sent from outside of the district. Please do not click on links or open attachments unless you recognize the sender and know the content is safe.***

Good Day!

Your outstanding balance of \$358,391.25 is 193 days past due.
 I have attached the invoice for your reference:

INV # 19327 - \$358,391.25

Please respond as soon as possible with the expected payment date.

Thank you,

Fleur Radovan
 562-650-5658

From: Fleur Radovan <fleur.radovan@owllabs.com>
Sent: 5/21/2021 6:09 pm GMT-04:00
To: 100019 Orangeburg County School District, Technology (david.marshall@ocsdsc.org)
Subject: Owl Labs Outstanding Invoice

Good Day!

This is a reminder that the balance below is long past due:

INV # 19327 - \$358,391.25

Kindly help review and provide us with a payment status.

Please let us know if your records are complete and if you need any more information.

Thank you

Selection Criteria

Group ID:		Vendor Name:	Level 8 Communications		☐ Show Related
Fiscal Year:	Current	User ID:		Check Date From: (None)	☐ Show Has Documents
Invoice:		As Of Due Date:	(None)	Check Date To: (None)	☐ Show Check Payee
Status:		☐ Show Account Detail		☐ Include Zero Amount Lines	

Apply Selection

Clear Selection

Invoices																
Invoice	Inv. Date	PO No	Voucher	Vendor	Total	Status	User	Group	Inv. Due Date	Check No.	Check Date	Check Status	Clear Date	Void Date	Check Bank Account	1099
INV-2367	05/11/2021	212420	1324	Level 8 Communications	\$3,648.73	Posted to G/L	397418.d	ap	05/13/2021	15284	05/13/2021	Printed				Yes
INV-2366	05/11/2021	213223	1332	Level 8 Communications	\$2,065.11	Posted to G/L	397418.d	ap	05/14/2021	15431	05/20/2021	Printed				Yes
INV-2364	02/24/2021	212117	1252	Level 8 Communications	\$7,522.05	Posted to G/L	397418.d		02/25/2021	13759	02/25/2021	Printed	03/31/2021			Yes
INV-2363	02/09/2021	211538	1242	Level 8 Communications	\$318.01	Posted to G/L	397418.d		02/09/2021	13506	02/11/2021	Printed	02/28/2021			Yes
INV-2362	02/09/2021	211789	1242	Level 8 Communications	\$1,419.85	Posted to G/L	397418.d		02/09/2021	13506	02/11/2021	Printed	02/28/2021			Yes
INV-2361	02/09/2021	212132	1258	Level 8 Communications	\$1,286.21	Posted to G/L	397418.jc		03/11/2021	14070	03/11/2021	Printed	04/30/2021			Yes
#F548ET167-0001	12/16/2020	211956	1199	Level 8 Communications	\$7,796.13	Posted to G/L	397418.d		12/16/2020	12928	12/17/2020	Printed	12/31/2020			Yes
INV-2358	12/03/2020	211581	1189	Level 8 Communications	\$65,184.12	Posted to G/L	397418.d		12/10/2020	12794	12/10/2020	Printed	12/31/2020			Yes
INV-2357	11/23/2020	211368	1189	Level 8 Communications	\$472,810.94	Posted to G/L	397418.d		12/04/2020	12794	12/10/2020	Printed	12/31/2020			Yes
INV-2356	11/06/2020	211318	1166	Level 8 Communications	\$301.95	Posted to G/L	397418.pj		11/19/2020	12521	11/18/2020	Printed	11/30/2020			Yes
INV-2355	11/06/2020	211317	1208	Level 8 Communications	\$1,447.90	Posted to G/L	397418.jc	ap	01/07/2021	13002	01/07/2021	Printed	01/31/2021			Yes
INV-2354	10/29/2020	211368	1136	Level 8 Communications	\$472,810.94	Posted to G/L	397418.jc		10/29/2020	12101	10/29/2020	Printed	11/30/2020			Yes
INV-2352	09/17/2020	210605	1109	Level 8 Communications	\$206.53	Posted to G/L	397418.pj		09/17/2020	11272	09/17/2020	Printed	10/31/2020			Yes
INV-2350	09/03/2020	210433	1091	Level 8 Communications	\$2,027.82	Posted to G/L	397418.pj		09/03/2020	11022	09/02/2020	Printed	09/30/2020			Yes
INV-2351	09/03/2020	210160	1095	Level 8 Communications	\$2,459.99	Posted to G/L	397418.jc		09/03/2020	11085	09/04/2020	Printed	09/30/2020			Yes

Exhibit 16

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

OWL LABS, INC.,

Plaintiff,

vs.

C/A No.: 2022-CP-38-01363 (original)

2024-CP-38-00640 (restored)

ORANGEBURG COUNTY SCHOOL DISTRICT,

Defendant.

VIDEOTAPED DEPOSITION OF GREG TWITTY

DATE TAKEN: Thursday, June 27, 2024

TIME START: 10:46 a.m.

TIME END: 12:34 p.m.

LOCATION: Orangeburg County School District
102 Founders Court
Orangeburg, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFF
OWL LABS, INC.:

ADAMS AND REESE, LLP
BY: W. TAYLOR STANLEY, ESQUIRE
1221 Main Street, Suite 1200
Columbia, South Carolina 29201
803.212.6518
taylor.stanley@arlaw.com

ATTORNEYS FOR THE DEFENDANT
ORANGEBURG COUNTY SCHOOL DISTRICT:

HALLIGAN MAHONEY & WILLIAMS, P.A.
BY: SUSAN M. FITTIPALDI, ESQUIRE
1301 Gervais Street, Suite 1400
Columbia, South Carolina 29201
803.254.4035
sfittipaldi@hmwlegal.com

ALSO PRESENT:

MATTHEW STARLING, Videographer

1 of our curriculum instruction items, Hartford --
2 Harcourt Mifford [sic], stuff like that, yeah.

3 Q. Was Owl Labs a significant contract?

4 A. We didn't have a -- when I think back, we
5 didn't have anything with Owl Labs.

6 Q. Okay. Was the acquisition of the Owls, the
7 Owl devices?

8 A. Yes.

9 Q. Was that a significant contract?

10 A. That -- a purchase, yes, that was. Yeah.

11 Q. In terms of dollar figures, it was a large
12 number?

13 A. Yes.

14 Q. Is the school district tax exempt?

15 A. We are not tax exempt.

16 Q. Does it have a procurement policy?

17 A. Yes.

18 Q. What does it generally call for?

19 A. As far as what?

20 Q. What are some of the policies? What do you
21 have to do to acquire products or services?

22 A. Well, it's a gamut of things. If it's
23 over -- we have thresholds. If it's over \$10,000 and
24 1 cent, there's three bona fide quotes you have to
25 get. If it's over 25,000, then we go through

1 solicitation process by posting on South Carolina
2 Business Opportunity. If that's what you're
3 referencing, yes.

4 Q. When you were acquiring the Owls, did you
5 do any solicitations?

6 A. No, we didn't because -- twofold here.
7 They provided a state contract number, and technology
8 kind of falls under our exemptions on our
9 procurement. It falls under exemptions under
10 curriculum and technology.

11 Q. And when you say they provided a state
12 contract number, who is they?

13 A. That was Level 8. They provided the state
14 contract number on a quote.

15 Q. And did you look up to see if that was a
16 valid state contract at the time you received that
17 quote?

18 A. Well, what happens when I went to check, I
19 put in Level 8 and, you know, the Level 8 name came
20 up. They was on the state contract. They're on
21 state contract for consulting services.

22 But the number after the fact was a number
23 with another vendor. It was with another vendor that
24 they were not a reseller with. They provided a
25 letter saying they was from Flex Technology or

1 something like that, if I remember correctly.

2 Q. I'm sorry, I didn't mean to cut you off.

3 A. Yeah.

4 Q. Prior to the purchase of the Owls, were you
5 able to confirm that Level 8 was, in fact, on a state
6 contract for technology services?

7 A. Not for tech -- well, consulting services,
8 that's what it was. Technology services, that's what
9 they did, the consultant for technology services.
10 Yeah.

11 Q. Let me show you what's previously been
12 marked as Exhibit 6.

13 If you would, flip back in that document
14 Exhibit 6 to -- do you see in the bottom right it has
15 DEF and the numbers? If you'll flip to DEF 014316,
16 please.

17 A. Yes.

18 Q. Is that the state contract that Level 8
19 represented they were on?

20 A. Yes. Yeah, it was audio-visual, if I
21 remember correctly.

22 Q. And are they listed on this anywhere?

23 A. No. They were not a reseller on that. But
24 they provided a letter with Flex Technology.

25 MR. STANLEY: Let me mark this as Exhibit

1 purchase date, but it was prior to that date.

2 MS. FITTIPALDI: Just for the record,
3 you're just going to jump numerically to
4 Exhibit 7? Are you going to use 1 through 6 for
5 Mr. Twitty as well?

6 MR. STANLEY: I may.

7 MS. FITTIPALDI: Okay. Okay.

8 BY MR. STANLEY:

9 Q. What do you do to confirm that a purchase
10 should be made with a particular vendor?

11 A. Well, the end user, when I utilize end
12 user, that's going to be the department. So end
13 user, I had a conversation with the vendor. In
14 reference to this, it would have been Mr. Ham because
15 he was the technology director, or whoever he
16 delegated that to for this purchase before it started
17 coming through the system. Yeah.

18 Q. Do you know if prior to the Owls, the
19 school district purchased anything from Level 8?

20 A. I don't recall at this point what activity
21 had taken place prior to this purchase. I don't
22 recall.

23 Q. Other than -- well, what did you do to
24 determine whether or not Level 8 was an acceptable
25 vendor?

1 Q. Okay.

2 A. Yeah, it may be a clause in there. The
3 exemption is tied to the local area.

4 Q. Well, I -- I have the Orangeburg County
5 procurement code. Would it be in that procurement
6 code?

7 A. I don't think the list is in there.

8 Q. Is there any way you could get that list to
9 Ms. Fittipaldi and ask that she get that to me?

10 A. Yeah, I could get that. Yes.

11 Q. Okay. Thank you.

12 A. Yes.

13 MR. FITTIPALDI: Just so it's clear, a list
14 of?

15 THE WITNESS: Just the exemptions.

16 MS. FITTIPALDI: Okay.

17 MR. STANLEY: And if you have it from the
18 October -- the one that was in effect in
19 October 2020, that's the one I would really like
20 to see.

21 THE WITNESS: Okay. Yeah. Okay.

22 BY MR. STANLEY:

23 Q. What does it mean when a contractor is on
24 state contract? What does that mean?

25 A. Well, the state have gone through a

1 process, issued out information to bring in vendors
2 to provide services to state agencies. And local
3 divisions, like local subdivision, like school
4 districts. And we're not required to use state
5 contract, but I do because they have gone through the
6 vetting process. So it just makes sense to use them.
7 Then you don't have to, you know, go through the
8 process yourself.

9 And so they'll bring in vendors. Normally
10 contracts are five years. So that's the stance.

11 Q. Do you have any standard operating
12 procedure for confirming that a vendor is on state
13 contract when they want to do business with the
14 school district?

15 A. Yeah. We just look up the name. We look
16 up the name to see if they're on there when they say
17 it's a state contract vendor.

18 Q. Did you do that for Level 8?

19 A. Yeah. I looked up Level 8, but the number
20 I didn't, you know -- I just looked up Level 8. It
21 will come up Level 8. You know, it'll pop up Level 8
22 when you put the name in.

23 Q. Did you -- and where did you look it up, I
24 guess?

25 A. On -- it's a South Carolina procurement

1 center site on state contract.

2 Q. And you typed in Level 8 Communications and
3 up popped a contract for Level 8?

4 A. You can -- yeah, it pops up Level 8.
5 That's how you will find it, if you're asking how do
6 you find the state contracts. You just put in the
7 name of the company.

8 Q. Okay.

9 A. Not the company. You put in -- you can put
10 in the name of the company or, you know, if it's
11 technology or something like that.

12 Q. Now, did you type in the solicitation
13 number, the contract number that was on their
14 estimate, or how did you verify that what was on
15 there was accurate?

16 A. I don't recall until after we realized they
17 sent in a fake document. That's all I can remember
18 when we started a lot of the activity of trying to
19 determine Level 8.

20 Q. When you're signing a purchase order, what
21 do you do?

22 A. Normally it comes through our system, and
23 it would have gone through the approval process.
24 Like, for instance, if it came from technology, the
25 bookkeeper would enter it in. It would have went to

1 the director of technology for approval. And then if
2 it's -- it's according to the type funding it is, it
3 will go to -- if it's just our regular general fund,
4 it will come straight over to procurement. It'll go
5 to the staff accountant for review on the account
6 numbers. Then it comes to me and I turn it into a
7 PO.

8 Q. How do you do that? How do you turn --

9 A. Through our system.

10 Q. Okay.

11 A. We have a system. Tyler Technology,
12 Infinite Vision.

13 Q. Do you physically sign a piece of paper?

14 A. No. Everything is electronic. When I --
15 when I create a PO, it generates my signature on
16 there. I'm the only one that can do that. No. Me
17 and the assistant superintendent of finance. Yeah.

18 Q. What, if anything, do you do to safeguard
19 that electronic signature?

20 A. It's nothing to safeguard because it's
21 system generated. What we have to do, we have to
22 submit something to Tyler Technology in order for my
23 name to print out on the PO. We have to send it to
24 that company. I have to do a written sample, send it
25 to them, and they electronically put it in the

1 system. Then it generates when the PO is created.
2 It's nothing we just go in and put it. It comes from
3 Infinite Vision.

4 Q. Let me show you a document that's
5 previously been marked as Exhibit 1.

6 Have you seen that email or the PO attached
7 to it before?

8 A. This would be the PO. Let me see. No,
9 this is not the PO. This is the PO that's fake
10 because the PO number.

11 Q. Okay.

12 A. Our PO numbers are six -- six numbers. So
13 this is the fake one.

14 Q. Now look at this signature, if you will.

15 A. Yeah.

16 Q. Does that differ in any way from the
17 electronic signature on a legitimate PO?

18 A. That looks like my standard signature on an
19 official Orangeburg County School District PO.

20 Q. Okay.

21 A. But this is not -- Exhibit 1, this is not
22 an official Orangeburg County School District PO.

23 Q. Okay.

24 A. Because the number is not the same. We're
25 six numbers.

1 Q. Yes, sir.

2 A. Yes. It's a legitimate document for the
3 school district.

4 Q. Well, how is it that -- let's talk about
5 Exhibit 1. How is it that Owl Labs could have
6 determined whether or not that was legitimate?

7 A. As far as the PO?

8 Q. Yes, sir.

9 A. They could have done their due diligence by
10 contacting the school district because we had no
11 communication with Owl Labs. Not from my standpoint.
12 Now, if the director of technology did, I don't know.
13 But I didn't.

14 Q. Do you know if David Marshall had direct
15 contact with Owl Labs?

16 A. I -- I don't recall. I don't know.

17 Q. When you issue a purchase order, you want
18 that order to be fulfilled; is that right?

19 A. Yes.

20 Q. Forget about Level 8 or Owl Labs. When a
21 new vendor is being looked at, what do you do to look
22 into whether or not the school district should do
23 business with them?

24 A. Well, again, what happens, the end user is
25 dealing with the vendor. So they feel comfortable

1 Q. Prior to the acquisition of the Owls, did
2 you know that Level 8 purported to be affiliated with
3 Flex Technologies?

4 A. We started an investigation, that's when it
5 was identified. Yeah. They provided a letter.

6 Q. At the time that the Owls were procured,
7 required, did you know that Level 8 was affiliated or
8 claimed to be affiliated with Flex Technologies?

9 A. I don't recall if I did, you know. I can't
10 recall what came through. I cannot recall if I did
11 or not.

12 Q. Will you look at Exhibit 6 again.

13 A. Okay.

14 Q. Is this -- the first email chain that's
15 right there on the first page, is that the first time
16 that you learned that Level 8 claimed to be
17 affiliated with Flex Technologies?

18 A. Yes, based on this email. Yeah.

19 Q. And I understand that you're saying based
20 on this email. My question is: Did you know prior
21 to this email whether or not Level 8 was affiliated
22 with Flex Technologies?

23 A. Based on this email, yes, here, but prior
24 to, I don't recall.

25 Q. If you'll flip a couple of pages to 14314.

1 A. Okay.

2 Q. Is that an email that you wrote to Eric Ham
3 and is it Taphnie Sanders? Is that how you say her
4 name?

5 A. Yes.

6 Q. Dated March 4th?

7 A. 314?

8 Q. 314, yes, sir.

9 A. Okay.

10 Q. Dated March 4th, 2021. Did you write that
11 email?

12 A. The one up top?

13 Q. Yes, sir. The one that says "They have not
14 proved to be a state contract yet still working with
15 them this morning."

16 A. Yeah. That's when that Zachary Mason --
17 yeah, that's when we started trying to contact or
18 find out what was going on. And that's when Zachary
19 Mason may have mentioned Flex and then he sent a
20 letter. He sent a letter. But I think with this
21 date, we had the cameras by then, if I'm not
22 mistaken.

23 Q. Yes, sir, you did.

24 A. Yeah. All this came about when they was
25 trying to get another payment.

1 Q. Then if you'll flip in that same exhibit to
2 14320.

3 A. Okay.

4 Q. Is that an email that you wrote to an email
5 address affiliated with Zachary Mason dated May 8th,
6 2021?

7 A. The one up top?

8 Q. I'm sorry, that's March 8, not May 8. Yes,
9 sir.

10 A. Seems to be, yeah. Never received
11 anything. Yeah.

12 Q. And in that chain you're asking for some
13 proof --

14 A. Yeah.

15 Q. -- that Level 8 was on a state contract?

16 A. Well, as far as a reseller, when they
17 identified Flex, then you got to be a reseller, and
18 they couldn't prove that.

19 - - -

20 (PLAINTIFF EXHIBIT NUMBER 9, South Carolina
21 Statement Procurement Vendor Query, was marked
22 for identification.)

23 - - -

24 BY MR. STANLEY:

25 Q. I'm showing you what's been marked as

1 A. How do I determine the scope?

2 Q. So state contract is for specific things,
3 right?

4 A. Things, yes. Yes. And on the audio with
5 the number they were using at the time, it -- that
6 will qualify for an install and TV installation,
7 different things that would have qualified for those
8 kind of activities.

9 Q. How about construction?

10 A. Construction? To be honest with you, I
11 can't think of any construction on state contract. I
12 don't recall any construction on there, so it's hard
13 to say. Normally construction, you're going to bid
14 that out.

15 Q. How about desks? Would desks be within the
16 audio -- sorry -- visual state contract?

17 A. If the vendor -- if something's tied to,
18 you know, whatever you're trying to do, it could be
19 part of that if they selling it. If the vendor is
20 selling it, it could be part of that. It could be a
21 tabletop or something like that that would be used.
22 It could be, yes.

23 Q. How about like a -- just a regular old desk
24 like --

25 A. A student desk?

1 Q. No, sir. Like a desk in this building.

2 A. Well, there are state contract vendors that
3 sell, you know, those kind of items, yes.

4 Q. Is that within the audio-visual state
5 contract scope?

6 A. It could be. I'm not looking at it, but it
7 could be.

8 Q. How -- what would you need to look at to
9 determine that?

10 A. I think on there it may be some list of
11 things that they sell. They may have a list of items
12 they sell.

13 Q. When you say on there, what do you mean?

14 A. On state contract. On state contract.

15 Q. What document would you look at?

16 A. You would just pull up state contract and
17 see -- see what they sell.

18 Q. Where would you go to pull up?

19 A. The South Carolina procurement center
20 website.

21 Q. Okay.

22 A. Yeah. Yeah.

23 Q. And if it's on that website, then they're
24 good to go as far as being on the state contract?

25 A. And then some might, if they can get, you

1 know, they can get the -- you know, go with their
2 package, you know, the state contract vendor can.
3 They can get the item. It's according to what
4 they're trying to set up, the state contract vendor.

5 Q. If you have a state contract for
6 audio-visual, is there any limit to what you can
7 sell?

8 MS. FITTIPALDI: Object to the form.
9 You can answer.

10 THE WITNESS: Okay. Is it any limit?

11 BY MR. STANLEY:

12 Q. Yes, sir.

13 A. Pertaining to a vendor, there probably are
14 some things they can get, you know, that -- to make
15 the project work that they're trying to put together,
16 yes.

17 Q. Did you know that David Marshall was
18 heavily involved in purchasing through Level 8?

19 A. I didn't. I had no -- I don't have any
20 recollection of that.

21 Q. Did you know he was negotiating with
22 Level 8?

23 A. No, I wouldn't have no recollection of
24 that.

25 Q. Why didn't anybody stop David Marshall from

1 negotiating with Owl Labs?

2 A. Why didn't anyone stop him? I mean, I had
3 no recollection he was negotiating. I didn't -- if I
4 knew he was with Level 8, we would not have done
5 business with Level 8 because doing business with an
6 employee is something that we don't do. We sent a
7 memo out, you know -- you know, to our principals and
8 cabinet and stuff like that just to, you know, send
9 that message through that we don't do business with
10 employees, so ...

11 Q. And my question was why didn't anyone stop
12 David Marshall from negotiating with Owl Labs?

13 A. Well, from my standpoint, I don't know if
14 anybody knew that. I mean, not anybody I've had
15 conversation with don't know if they knew that. That
16 that was happening. We thought we was dealing with
17 Level 8, you know. I had no recollection that he was
18 part of Level 8. I can only speak for me. I don't
19 know what anybody else had.

20 Q. And you keep going back to Level 8, and I
21 guess my question is why do you keep going back to
22 Level 8? Because we looked at some emails earlier
23 where David Marshall was emailing using his
24 Orangeburg County School District email address --

25 A. Okay.

1 Q. Have you ever spoken to anybody at Owl
2 Labs?

3 A. Not to my recollection. I never -- not to
4 my recollection.

5 Q. Were you in a meeting with the
6 superintendent and Ms. Sanders and David Marshall and
7 some individuals from Owl Labs, were you in that
8 meeting?

9 A. Yeah, we was here. Yes. It was a virtual
10 meeting from that standpoint yes.

11 Q. And it was recorded, right?

12 A. I think so, yes.

13 Q. Other than that time, have you spoken with
14 anybody at Owl Labs?

15 A. No.

16 Q. Do you believe the school district owes Owl
17 Labs for the Owl Pros that are in its possession?

18 A. No, I don't.

19 Q. Why not?

20 A. Because I think we made legitimate payments
21 to the vendor that we did business with.

22 Q. What is it that Owl Labs could have done
23 differently to avoid this situation?

24 MS. FITTIPALDI: Object to the form, but
25 you can answer.

Exhibit 17

From: [Gregory Twitty](#)
To: [Zachary Mason](#)
Subject: RE: [External] Re: [External] Re: State Contract #
Date: Thursday, March 4, 2021 9:35:23 AM

Sir I need a partnership letter or something with Level 8 under state contract. This could be an auditing issue for us. Please provide an agreement letter for Level 8, which I need today. Thanks!

Sent from [Mail](#) for Windows 10

From: [Zachary Mason](#)
Sent: Thursday, March 4, 2021 9:30 AM
To: [Gregory Twitty](#)
Subject: [External] Re: [External] Re: State Contract #

*** EXTERNAL EMAIL: This email was sent from outside of the district. Please do not click on links or open attachments unless you recognize the sender and know the content is safe.***

Hi Mr. Twitty,

I was so certain that you were incorrect, but upon double checking, we've been putting the incorrect number on our invoices for a long time. Thank you for pointing this out. I've attached our award letter for Flex Technologies from the State. Level 8 is a registered DBA for Flex.

Zachary (Zach) Mason
 Customer Success Manager
 Level 8 Communications

On Thu, Mar 4, 2021 at 8:36 AM Gregory Twitty <greg.twitty@ocsdsc.org> wrote:

Sir you have to be on the actual contract. Do you have a letter of partnership with Camcor or a letter from the state. The vendor # is total different from the state contract number.

Sent from my iPhone

On Mar 4, 2021, at 8:19 AM, Zachary Mason <zachary@level8c.com> wrote:

*** EXTERNAL EMAIL: This email was sent from outside of the district. Please do not click on links or open attachments unless you recognize the sender and know the content is safe.***

Hello Mr. Twitty,

The number 4400013022 is the specific state contract number for Audio Visual Products and Services.

I think you're looking for the vendor number. We have a DBA under Flex Technologies— I'll get you the number later this afternoon.

On Wed, Mar 3, 2021 at 11:41 PM Gregory Twitty <greg.twitty@ocsdsc.org> wrote:

Trying to find your South Carolina State Contract #. I noticed you are using 4400013022 but this belong to a company named Camcor.

<image001.png> **Greg Twitty**
 Procurement Coordinator
Phone 803-533-6549
Cell 803-707-6270

Exhibit 18

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

OWL LABS, INC.,

Plaintiff,

vs.

C/A No.: 2022-CP-38-01363 (original)

2024-CP-38-00640 (restored)

ORANGEBURG COUNTY SCHOOL DISTRICT,

Defendant.

DEPOSITION OF GAIL SANDERS

DATE TAKEN: Thursday, June 27, 2024

TIME START: 9:03 a.m.

TIME END: 10:28 a.m.

LOCATION: Orangeburg County School District
102 Founders Court
Orangeburg, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFF
OWL LABS, INC.:

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BY: W. TAYLOR STANLEY, ESQUIRE
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803.212.6518
taylor.stanley@arlaw.com

ATTORNEYS FOR THE DEFENDANT
ORANGEBURG COUNTY SCHOOL DISTRICT:

HALLIGAN MAHONEY & WILLIAMS, P.A.
BY: SUSAN M. FITTIPALDI, ESQUIRE
1301 Gervais Street, Suite 1400
Columbia, South Carolina 29201
803.254.4035
sfittipaldi@hmwlegal.com

1 A. With the consolidated district, we
2 consolidated in 2000 -- 2019. There was -- I think
3 Michael Thom. And the next year we had Brandi Gist,
4 and then I followed Ms. Gist. So I've been in this
5 position a little over two years maybe, going on
6 three years.

7 Q. In 2020, what was your position?

8 A. 2020, I was the director of finance.

9 Q. Okay. And what were your responsibilities
10 as the director of finance?

11 A. My responsibility was basically to help
12 with the day-to-day operation. We're responsible
13 for, of course, payroll, accounts payable, and all of
14 that. Just basically assisting the assistant
15 superintendent with the day-to-day operation.

16 Q. Did you have any procurement
17 responsibilities or oversee anyone with procurement?

18 A. At that time my role was -- I was in the
19 process where requisitions came through the cue, and
20 my job was primarily to check the account numbers,
21 making sure the account numbers were the appropriate
22 account numbers for that particular purchase, and
23 that was my role at the time.

24 Q. Did anybody report to you that was in
25 procurement?

1 already -- if it's on the -- already on the state --
2 state list, of course we don't have to -- I can't
3 think of what it's called. It's leaving me.

4 Q. If it's on the state list, do you all do
5 anything to make sure that it's actually on the state
6 list? State contract?

7 A. Yes. Mr. Twitty normally checks that.

8 Q. Okay. So are you involved in any of the
9 checking of the state contracts?

10 A. No. That's the procurement coordinator.

11 Q. Is the school district tax exempt?

12 A. No, we are not tax exempt.

13 Q. You mentioned earlier somebody forged your
14 name on -- I think you said there's an affidavit.

15 A. Yes. It was someone that was trying to
16 get -- they were -- I think it was someone that was
17 on the sub list in my prior district.

18 Q. Substitute teacher list?

19 A. Yes.

20 Q. Okay.

21 A. And they were trying to get benefits, and
22 they realized that whenever the information was
23 turned in, I think it was DSS, that it did not appear
24 to be my signature. So they came down to the
25 district and had me to verify it and wanted to take

1 label, I'm referring to that number down at the
2 bottom right. Okay?

3 A. Okay.

4 Q. Mr. Marshall there says, "Hi Bill. Thank
5 you for the update. Attached is the PO."

6 Is that right?

7 A. Uh-huh.

8 Q. And underneath that it's got the Orangeburg
9 County School District signature block; is that
10 right?

11 A. Right here, uh-huh.

12 Q. And the second page of that document,
13 Exhibit 1, what is that?

14 A. This is a purchase order.

15 Q. And this is in the normal form that
16 Orangeburg County School District uses?

17 A. Yes, but I think it's a lot more numbers.

18 Q. What do you mean a lot more numbers?

19 A. Purchase orders. It would have been the
20 '21 year, but I would think it would have been
21 something like 2101. And I'm going to have to look
22 at it, but I don't -- 5633 looks like a little bit
23 more numbers than our POs were. I think Mr. Twitty
24 can verify, you know.

25 Q. And this is a purchase order issued to Owl

1 Q. And this is Mr. Marshall negotiating with
2 Owl Labs to purchase the 875 Owls that the school
3 district currently has; is that right?

4 A. Uh-huh.

5 Q. Using his school district email address?

6 A. Where is the email? Yeah, that's the
7 school district email. But one thing that I'm
8 looking at, he used the school district's email but
9 then that's not the district's phone number. That
10 816. Normally, the district email will have
11 803-534-.

12 - - -

13 (Off-the-record discussion.)

14 - - -

15 BY MR. STANLEY:

16 Q. Mr. Twitty reported to you at this time?

17 A. Uh-huh.

18 Q. And he reported to you in October of 2020;
19 is that right?

20 A. Uh-huh.

21 Q. Has Mr. Twitty ever been disciplined?

22 A. When you say disciplined?

23 Q. Has he been written-up formally with it
24 going into his personnel file?

25 A. No.

1 offer. I'm --

2 Q. Do you believe that the school district
3 owes Owl Labs for the Owl Pros that are in the school
4 district's possession?

5 A. I'm saying no because we -- we paid -- we
6 paid -- we processed checks and we sent those checks.
7 The school district does not have that money.

8 Q. Any other reason?

9 A. No.

10 Q. What is it that Owl Labs could have done
11 differently to avoid the situation?

12 MR. FITTIPALDI: Object to the form, but
13 you can answer.

14 THE WITNESS: Maybe they should have
15 instead of I guess talking with David on his
16 behalf, maybe Mr. Ham, who is actually director
17 of technology, because normally on the email, I
18 think it says -- not email -- on the purchase
19 order it says "Attention Eric Ham." So at some
20 point in time, I think they should have talked
21 with him directly.

22 BY MR. STANLEY:

23 Q. Anything else?

24 A. Not that I can think of.

25 MR. STANLEY: Okay. That's all the

1 questions I have for you. I really appreciate
2 your time.

3 THE WITNESS: Thank you.

4 MR. FITTIPALDI: I have no questions.

5 - - -

6 (The deposition concluded at 10:28 a.m.)

7 - - -

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Exhibit 19

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF
COMMON PLEAS OF THE
FIRST JUDICIAL CIRCUIT

OWL LABS, INC.,
Plaintiff,
vs.

CIVIL ACTION NO.
2023-CP-38-01363
(Original)
2023-CP-38-00640
(Restored)

ORANGEBURG COUNTY SCHOOL
DISTRICT,
Defendant.

DEPOSITION OF DAPHNE WALLEY

DATE TAKEN: August 15, 2024

TIME BEGAN: 3:02 p.m.

TIME ENDED: 4:00 p.m.

LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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14
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22 (via videoconference)
23 Representing the Defendant
24
25

Also Present: None

1 Q. And what year did you become the director
2 of technology?

3 A. 1999.

4 Q. Are you employed right now?

5 A. Yes.

6 Q. With Orangeburg County School District?

7 A. Yes.

8 Q. What is your role currently?

9 A. PowerSchool facilitator for grades 6
10 through 12.

11 Q. Were you -- did you have any other role
12 between director of technology and your current
13 role?

14 A. Yes. I was the bookkeeper, fixed asset
15 specialist, in the IT department.

16 Q. What years were you in that role?

17 A. I don't remember the -- probably 20 --, we
18 started consolidating 2019 through probably 20 --
19 the fall -- I think I started in my current position
20 in January of 2021.

21 Q. And can you tell me one more time what
22 your current position is?

23 A. PowerSchool facilitator for grades 6
24 through 12.

25 Q. In your position as bookkeeper, what did

1 account?

2 A. No.

3 Q. Did you ever have to sign on for Mr. Ham
4 to do orders?

5 A. No.

6 Q. What about did everybody, every district
7 employee have an iVisions account?

8 A. Every employee has an iVisions account,
9 but then that's on the employee side. Then on the
10 purchasing and payable side, everybody doesn't have
11 one.

12 Q. Who would have access to the purchasing
13 side?

14 A. I'm not sure of everybody, but I know
15 bookkeepers would do requisitions and all of the
16 approvers would, because they would have to see what
17 requisitions were in there to approve them.

18 Q. Okay. For signing off on a requisition
19 and making it a purchase order, who had authority to
20 sign?

21 A. That, I am -- when you say "authority,"
22 where? In the technology department?

23 Q. Yes.

24 A. Okay. In the technology department, it
25 was Mr. Ham. And the second person that -- if he

1 was out of the office that could have signed would
2 have been Taphnie Sanders.

3 Q. Did Daphne Sanders --

4 A. Taphnie.

5 Q. Taphnie. Thank you. When Taphnie would
6 sign, did she have her own signature or would she
7 use Mr. Ham's signature?

8 A. She had her own.

9 Q. And were these signatures like a physical
10 signature to a piece of paper or were these an
11 electronically stored signature?

12 A. Usually these were electronic, I believe,
13 but I've never -- like I say, I've never had to deal
14 with a paper investigation of her signature, so I'm
15 not sure.

16 Q. Do you know if there was anything done to
17 safeguard these electronic signatures?

18 A. Well, I don't think people would be giving
19 it to just anybody, because it's tied to your
20 particular account and all that stuff in our school
21 in iVisions. So unless you -- I don't think they
22 would be able to. I wouldn't share that personal
23 information with nobody, no. So it's not very easy
24 to get in.

25 Q. Okay. We'll change paces a bit. Who is

1 A. Scroll back up to the top. We would never
2 say "technology." It would not -- I don't believe
3 -- it doesn't have -- the purchase orders don't have
4 "technology" on them. It just has the district
5 information, I believe. It's been a while since
6 I've had to do that, but I don't believe they have
7 that on it.

8 Q. And this signature, is that Greg Twitty's
9 signature?

10 A. Because of the digital signature in the --
11 when it comes out automatically on the purchase,
12 order that resembles his signature. I don't know
13 for sure, because it's been a while since I looked
14 at his signature.

15 Q. On this document, you said it shouldn't
16 say "technology" and the purchase order number is
17 incorrect?

18 A. Right.

19 Q. Would a third party that had never dealt
20 with Orangeburg County School District before, would
21 they be aware that that number was incorrect?

22 A. Probably not.

23 Q. Is there anything on this purchase order
24 that would alert a third party that this was a
25 fraudulent purchase order?

1 A. The difference in the font is what gave it
2 away to me. The "56" is different from the rest of
3 the numbers, to let me know it wasn't there
4 originally.

5 Q. And so as a third party, that would be
6 cause for you to think it was fraudulent?

7 A. Yes. To take a look at this, I would be
8 curious as to why the rest of the numbers -- it
9 doesn't look like the rest of the information on
10 that. That line is off.

11 Q. Is there anywhere that's published for
12 vendors to be able to confirm what a purchase order
13 should look like from the school district?

14 A. I am not aware.

15 Q. Okay. I'm going to show you another part.
16 This is another attachment. This is the exemption
17 certificate that was attached. Does that appear to
18 be Mr. Twitty's signature there?

19 A. Possibly, yes.

20 Q. Have you seen one of these before?

21 A. This is a tax-exempt certificate.

22 Q. Yes.

23 A. I happen to know the district is not tax
24 exempt, so I mean, I've never had to deal with that.

25 Q. Okay. Is there anything on this that

Exhibit 20

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF
COMMON PLEAS OF THE
FIRST JUDICIAL CIRCUIT

OWL LABS, INC.,
Plaintiff,
vs.

CIVIL ACTION NO.
2023-CP-38-01363
(Original)
2023-CP-38-00640
(Restored)

ORANGEBURG COUNTY SCHOOL
DISTRICT,
Defendant.

DEPOSITION OF BRANDI GIST

DATE TAKEN: August 15, 2024
TIME BEGAN: 12:33 p.m.
TIME ENDED: 2:02 p.m.
LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 APPEARANCES:

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18 803-254-4035
19 sfittipaldi@hmwlegal.com
20 (via videoconference)
21 Representing the Defendant
22

23 Also Present: None
24
25

1 A. Yes, at Webster University.

2 Q. Okay. Do you have any certifications?

3 A. Yes. I'm a certified school business
4 official, certified government finance officer, and
5 a certified public accountant.

6 Q. Okay. Wonderful. What is your work
7 experience? If you can start from where did you
8 start working out of postgrad?

9 A. Postgrad. So I did an intern at the City
10 of Spartanburg and was hired on during my tenure at
11 Wofford College. So I was there for three years,
12 moved to Spartanburg School District 7, was there
13 for about 16 years. Filled different roles from
14 payroll, AP senior accountant, special revenue
15 accountant, to director. And then was hired on at
16 Orangeburg County School District in 2020 as their
17 assistant superintendent for finance. And left
18 there in '21 and came back to Spartanburg District 2
19 as their CFO.

20 Q. So you were with Orangeburg County School
21 District from 2020 to 2021?

22 A. Yes. I was there from July 2020, I
23 believe, until May -- until April of 2021. I
24 started in Spartanburg in May of 2021.

25 Q. Why did you leave Orangeburg County School

1 District?

2 A. I was commuting two hours one way every
3 day. And initially when I took the job, my husband
4 and I were considering relocating to Columbia so
5 that I wouldn't have such a commute, but we never
6 really made that leap. And I had a colleague that
7 was retiring in Spartanburg, and she called up and
8 said, "We're going to be posting my position," and I
9 said, "I'm getting off the highway." So it was just
10 that the commute was beginning to be a bit much.
11 And it was my daughter's senior year, so I was
12 missing out on a lot having that two-hour drive, and
13 just came back home.

14 Q. Absolutely. I don't blame you one bit for
15 that. When you were with Orangeburg County School
16 District, your position -- what was your position
17 again?

18 A. Assistant superintendent for finance.

19 Q. And what did that entail?

20 A. All things finance. Payroll, accounts
21 payable, procurement, special revenues. So
22 literally anything dealing with finance for the
23 school district.

24 Q. Who did you report to?

25 A. The superintendent.

1 A. Okay.

2 Q. It's Bates labeled Defendant's 13156.

3 I'll zoom in. Is that better?

4 A. Yes.

5 Q. Okay. This is an email from David
6 Marshall to Bill Smith at Owl Labs, and this is in
7 October of 2020. And he says, "Attached is the PO."
8 Does that mean purchase order?

9 A. Yes. And if I use PO, that's what I mean,
10 purchase order.

11 Q. And here is the attachment. Ignore the
12 highlight. I believe that was from my end. Is this
13 a typical purchase order from the school district?

14 A. No, because the purchase order number, the
15 leading number is typically the fiscal year, but
16 that is much longer than a normal purchase order.
17 Other than that, can you zoom in a little bit more?
18 Sorry.

19 Q. Absolutely.

20 A. I'm not 100 percent sure if it used to say
21 "technology" at the top. But everything else -- can
22 you scroll down some more?

23 Q. (So complied with request of witness.)

24 A. Yes, everything else looks fine.

25 Q. You say -- so this number at the top, how

1 many digits is it typically?

2 A. I'm trying to think, because I'm now, of
3 course, in a different school district, but I think
4 they were the same six. I know the first two
5 reflects the ending of the fiscal year. So it would
6 be the fiscal year 2020 to 2021. So the first two
7 digits would be 21 for that fiscal year, but it was
8 definitely not that many numbers. And you can tell
9 that the numbers look different. They're in
10 different fonts on that document.

11 Q. Would a third party that didn't work at
12 Orangeburg County School District, would they have
13 knowledge of how those numbers work on a purchase
14 order?

15 A. It depends on if they've done business
16 with our district before, then maybe, yes.
17 Otherwise, I'm not sure. We would have to ask the
18 third party.

19 Q. Are you aware of if there's any sort of
20 published policy of how those numbers get posted to
21 a purchase order?

22 A. Help me understand that question.

23 Q. So I guess just if you're a third party
24 and it's your first time doing business with
25 Orangeburg County School District, do you know of

1 Q. Okay. Is there anything on this purchase
2 order that to you would indicate for a third party
3 to know that this is a fraudulent purchase order?

4 A. Me, because I'm used to seeing it at the
5 originator end of it, I would definitely know. I'm
6 not sure about a third party. I don't know what
7 they check or verify when receiving purchase orders.

8 Q. And just as a regular vendor, this would
9 probably appear to be a normal purchase order?

10 A. Potentially, yeah.

11 Q. Well, is there anything on here that you
12 could point to that might alert a third party to
13 think it was fraudulent?

14 A. If they've done business with us before,
15 they would be familiar with our purchase order
16 number. If they're a new vendor, I'm not sure if
17 they go through any process to verify purchase
18 orders. I haven't been on the vendor side of
19 procurement, so I'm not sure what steps they
20 normally take, if any.

21 Q. I'm going to show you another exhibit.
22 This is marked, for purposes of your deposition, as
23 Defendant's Exhibit 1. This is Bates labeled
24 Defendant's 13176. This is an email from David
25 Marshall to Bill Smith at Owl Labs, and he's

1 were supposed to record meetings, and provide sound,
2 and be able to allow us to conduct professional
3 development for instruction virtually. And as far
4 as I know, they did provide that.

5 Q. Have you ever spoken with anyone at Owl
6 Labs?

7 A. Not that I'm aware of.

8 Q. There was a call when all of this came to
9 light. Were you on the recorded call with David
10 Marshall?

11 A. No.

12 Q. Did you ever communicate with David
13 Marshall after the school district learned of the
14 fraud?

15 A. No.

16 Q. What is Level 8 Communications?

17 A. It's a company, that's about all I know,
18 that provides this form of technology.

19 Q. How did you learn about Level 8?

20 A. The request to come in to purchase items
21 from them. Me specifically, had it been a regular
22 purchase order with general fund or local funds, I
23 wouldn't have been involved at all. But because it
24 was a one-time funding, I had to be in the meetings
25 on how we planned to meet the needs of our students

Exhibit 21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	C/A NO: 2022-CP-38-01363

Owl Labs,	)
	)
Plaintiff,	)
	)
v.	)
	)
Orangeburg County School	)
District,	)
	)
Defendant.	)

DEPOSITION OF
KAYLIN N. MCNAMARA

Friday, April 26, 2024
10:01 a.m. - 11:20 a.m.

The deposition of KAYLIN N. MCNAMARA was taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Friday, April 26, 2024, via Zoom video conference, pursuant to Notice of Deposition.

4/26/2024

KAYLIN N. MCNAMARA

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

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ROA_232

4/26/2024

KAYLIN N. MCNAMARA

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

1 Q. You see where he's -- his signature line says
2 David Marshall, Communications, Business and
3 Community Partnerships. It has a phone number,
4 an email address, and then says Orangeburg
5 County School District; do you see that?

6 A. I do, yes.

7 Q. Did his title in any way cause you any sort of,
8 you know, concern that he wasn't either in
9 purchasing or finance reaching out to make this
10 --

11 A. Not at all.

12 MS. BRYANT: Object to the form. Kaylin,
13 if you'll just make sure to let her answer or
14 finish asking her questions so I can get an
15 objection in there. I know it's hard with video
16 sometimes, but --

17 Q. Okay. Did you ever take any steps to, you know,
18 look at Orangeburg County School District's
19 website prior to the sale?

20 A. I don't recall.

21 Q. Okay. Did you -- do you recall ever looking and
22 seeing that there's a finance department at
23 Orangeburg County School District?

24 A. I don't recall.

25 Q. Okay. Do you recall ever looking and seeing

4/26/2024

KAYLIN N. MCNAMARA

1 that there is a procurement officer at the
2 school district?

3 A. I don't recall.

4 Q. Okay. And do you recall ever specifically
5 looking at the district's policies and
6 procedures for procurement or purchasing?

7 A. I do not recall that.

8 Q. Okay. Would that have been something you would
9 normally do when you're making a large sale to a
10 school district?

11 MS. BRYANT: Object to the form. Answer
12 if you know.

13 A. Would what have been something we normally would
14 do?

15 Q. Something you would do? Would you normally look
16 at a school district's procurement or purchasing
17 policy?

18 MS. BRYANT: Object to the form.

19 A. I don't recall, no.

20 Q. No, you didn't typically look at a school
21 district's procurement policy, or you really
22 just don't remember if you did?

23 A. I don't recall that being common practice.

24 Q. Okay. So who else at Owl Labs knew about this
25 purchase agreement? Obviously, you and Bill

4/26/2024

KAYLIN N. MCNAMARA

ELECTRONICALLY FILED - 2025 Mar 05 5:07 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

1 communication with anyone other than David
2 Marshall regarding the sale in the Orangeburg
3 County School District; is that right?

4 A. Directly, no. I believe I was cc'd on some
5 other emails with other Orangeburg folks.

6 Q. Was that after the sale had been sort of
7 completed --

8 A. I believe -- sorry. I believe, if I recall
9 correctly, yeah. I believe there was one around
10 like training enablement. We wouldn't send that
11 before, you know, we were solid on the sale.

12 Q. Okay. All right. I have no further questions
13 for you, Ms. McNamara. Thank you so much. The
14 court reporter is probably going to have some
15 spelling questions, and actually Ms. Bryant
16 might have some follow-up questions that she
17 wants to ask.

18 MS. BRYANT: Thank you, and I have no
19 questions at this time.

20 (There being nothing further, the deposition was
21 concluded at 11:20 a.m.)

22 (Defendant's Exhibit Number 1 was marked for
23 identification purposes after the conclusion of the
24 deposition.)

25