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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 TWO**

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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,	)	PLAINTIFF’S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANT’S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
Defendant.	)	
	)	

This case stems from the decision of Orangeburg County School District (“District”) to purchase electronic devices for remote learning during the COVID-19 Pandemic. The District authorized its employees to negotiate and procure these devices on its behalf. However, after receiving the devices, the District failed to pay the seller, Owl Labs Inc. (“Owl Labs”), in full. Now, the District seeks dismissal of all claims as a matter of law. For the following reasons, the District’s motion for summary judgment should be denied.

The District contends it contracted with and paid Level 8 Communications, LLC (“Level 8”), not Owl Labs, and alleges it was unaware Owl Labs was the true seller of the devices. This claim is flatly contradicted by the evidence. Multiple of District’s employees, including senior-level assistant superintendents knew, or had they been reviewing their emails, would have known that District employee David Marshall was, in reality, negotiating for the devices with Owl Labs. The District cannot dispute that it accepted Owl Labs’ assistance in implementing the devices from Owl Labs. Nor can it ignore that Level 8 was a sham entity created by Marshall to perpetrate fraud—an act made possible by the District’s own failures. Crucially, all of this occurred *before* District paid Level 8 in full. It is the District’s second payment to Level 8, which should have been paid to Owl Labs which is in dispute in this case.

Owl Labs remains unpaid for the devices the District purchased, used since 2020, and is continuing to use. Instead, Marshall misappropriated the District's funds for personal gain. Yet, the District enabled this misconduct through its own failures and could have readily discovered Marshall's actions before paying Level 8 in full. As a result, the District is not entitled to dismissal but is, in law and equity, liable to Owl Labs.

The District's motion disregards genuine issues of material fact and improperly construes disputed evidence in its favor. To the contrary of District's position, the evidence establishes:

- (i) The District knew Marshall was a criminal before the misconduct in question;
- (ii) The District acted unreasonably in retaining Marshall after knowing of his criminal history and failing to supervise Marshall adequately;
- (iii) The District failed to train or supervise multiple employees regarding its procurement policies, fostering the conditions the enabled Marshall's scheme;
- (iv) The District vested Marshall with actual, apparent, or implied authority to contract for the devices, and he did so with Owl Labs, thereby binding the District;
- (v) The District knew Marshall was negotiating with a third party to contract for the purchase of the devices and was aware of Owl Labs' involvement before Marshall absconded with the money; and
- (vi) The District retained and used 875 devices but failed to pay Owl Labs the full contract price.

Due to its own negligence and the actions of its employees within the scope of employment, the District is liable for the unpaid invoice amount of \$358,391.25, plus pre-judgment interest under S.C. Code Ann. § 34-31-20(B), attorney's fees, and costs. Given the overwhelming factual disputes, this case must be heard by a jury, and the District's motion should be denied.

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). In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). “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 should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 325-26, 608 S.E.2d at 159 (citations omitted).

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), SCRCPP. The Court is not to weigh the evidence. *See S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “[W]here further inquiry into the facts of the case is desirable to clarify the application of law,” summary judgment is not appropriate. *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) (citation omitted).

FACTUAL BACKGROUND

Owl Labs manufactures the “Meeting Owl Pro” (the “Device”), an audio/video conferencing tool featuring a WiFi-enabled, portable 360° camera, microphone, and speaker that automatically focuses on the active speaker using proprietary technology.¹ In 2020, amid the COVID-19 pandemic and widespread remote learning, demand for the Devices surged.²

¹ **Exh. 1**, Smith Dep. at 23:15-24:3.

² *Id.* at 16:25-17:18, 26:20-25 (testifying that prior to this transaction, Smith was personally involved with “hundreds” of sales to public school districts”); *see also Exh. 2*, McNamara Dep. at 29:6-15 (testifying educational buyers were “a very, very strong vertical for us at that time because of COVID.”).



At the beginning of the 2020-21 school year, South Carolina schools, including the District, relied on remote learning. The District’s Director of Technology, Eric Ham, was tasked with procuring technology to enable and facilitate remote learning, using CARES Act funding, and locating a source for purchasing the Devices.³ Ham testified he was familiar with Owl Labs’ Devices because Orangeburg-Calhoun Technical College had purchased them and let Ham borrow a couple on the District’s behalf.⁴ After deciding to purchase the Devices, Superintendent Foster, and others,⁵ testified they believed Ham was communicating with an “approved” vendor, Level 8, but that was not the case. Level 8 was never an approved vendor.⁶

Instead, Ham was “approached” by his subordinate, David Marshall, the District’s Media Communications Specialist, who claimed he could procure the Devices from an “approved” vendor, Level 8.⁷ Ham delegated his authority to Marshall, including permitting him to communicate with the vendor about purchasing the Devices,⁸ even though Ham never assured that

³ **Exh. 4**, Foster Dep. at 36:13-37:1; 41:24-42:5; *see also id.* at 85:8-86:9; 98:14-99:100:2; **Exh. 3**, Ham Dep. at 59:7-62:17. *See also Exh. 5*, Gist Dep. 51:24-52:12.

⁴ **Exh. 3**, Ham Dep. at 61:4-23 (testifying about the benefits of Owl Labs’ devices as explained to him by a contact at Orangeburg-Calhoun Technical College).

⁵ **Exh. 4**, Foster Dep. at 51:9-21; 64:13-18. *See also Exh. 5*, Gist Dep. at 28:9-20

⁶ Something District did not discover until five months later. *See id.* at 64:24-65:3; 66:19-23.

⁷ **Exh. 3**, Ham Dep. at 28:3-7.

⁸ *Id.* at 28:4-19; *see also* 34:13-35:6 (testifying “[Marshall] was always around or ... always kind of showed up. ... And he’d say, ‘Hey, my buddy over at Level 8 can get these and they can get them at this

Level 8 was in fact so “authorized.” In his deposition, Ham admitted he allowed Marshall to communicate with third parties.⁹ Ham characterized this course of dealing with Marshall as typical: “I think it’s safe to say that folks [at the District] knew that they could ask ... Marshall to get or to find out things[.]”¹⁰ The District’s Director of Finance, Gail Sanders, confirmed she knew Marshall was responsible for ordering the Devices.¹¹

Despite claiming to source the Devices through Level 8, on October 23, 2020, Marshall contacted Owl Labs via its website, providing his District email address,¹² and requested a quote for 875 Devices.¹³ Owl Labs’ sales employee, Bill Smith, verified Marshall’s credentials, including his LinkedIn account,¹⁴ and spoke with him by phone.¹⁵ During the call, Marshall confirmed the District wanted to order Owl Labs’ Devices using CARES Act funds.¹⁶

price,’ you know, whatever else. ... And, you know, he’d be like, ‘I’ll talk with him and find out and I’ll let you know.’ And then we would get an email from Zach [Mason].”).

See also Exh. 15, Sentencing Hearing Transcript (June 7, 2022) at 6:7-15 (“Marshall *was tasked with* finding the Orangeburg School District cameras with which they could use to onboard into remote education so that every teacher in a classroom could communicate remotely with all of her students who were at home around the country. Schools received federal funds to purchase products like this so they could facilitate distance learning. And so *the[] [District] asked Mr. Marshall to do that*. And in doing that, he saw an opportunity to enrich himself.”) (emphasis added).

⁹ **Exh. 3**, Ham Dep. at 65:4-67:14.

¹⁰ *Id.* at 67:11-14.

¹¹ **Exh. 6**, Sanders Dep. at 42:23-43:16 (“Yeah. He and Mr. Ham.”). *See also Exh. 7*, Walley Dep. at 23:8-18 (“I know he [Marshall] did recommendations to people[.] ... I know people probably asked him, you know, ‘what do you recommend?’ That’s just nature, people asking stuff. So I’m assuming people might have asked him for recommendations.”).

¹² District’s Director of Finance, Daphne Walley, testified as to her own emails: “Q: And so from the third party, the vendor’s point of view, when they’re communicating with you, they’re communicating with the district, correct? A: That should be the perception.” **Exh. 7**, Walley Dep. 44:11-14.

¹³ **Exh. 13** (OWL_LABS_000316). *See also Exh. 1*, Smith Dep. at 29:23-30:7.

¹⁴ **Exh. 1**, Smith Dep. at 31:9-32:24; *id.* at 34:23-35:3.

¹⁵ *Id.* at 30:8-15.

¹⁶ *Id.* at 30:16-22.

By follow-up email, Marshall, using his District email address,¹⁷ informed Owl Labs¹⁸:

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

In response, Owl Labs sent the District a quote for 875 Devices at a discounted price of \$819.18 per unit (18% off the regular price of \$999 each).¹⁹ Owl Labs requested a purchase order from the District to proceed.²⁰

On October 28, 2020, Marshall sent a purchase order to Owl Labs²¹ using his District email address.²² The Purchase Order appeared to be signed by Greg Twitty, District's Procurement

¹⁷ Smith testified it was common practice for Owl Labs to verify the purchaser was associated with the company transacting with Owl Labs by checking the email signature. *See id.* at 31:9-32:24.

¹⁸ **Exh. 13** (OWL_LABS_000001).

¹⁹ *See id.* at OWL_LABS_000001_000002; OWL_LABS_000003-000004. This discounted rate saved the District a total of \$157,342.50. *See also Exh. 1*, Smith Dep. at 37:24-39:19 (discussing quotation terms prepared by Smith for the District); *see also id.* at 33:24-34:2, 37:17-23, 43:15-23 (testifying it was common to provide a discount based on quantity of devices purchased and to expedite shipping for customers using CARES Act funding).

²⁰ **Exh. 13** (OWL_LABS_000009).

²¹ *Id.* at OWL_LABS_000007. District's Procurement Officer, Greg Twitty, testified that it was "customar[y]" for the District to transact using a purchase order, admitting a purchase order "is a legal document." **Exh. 8**, Twitty Dep. 20:8-11.

²² **Exh. 13** (OWL_LABS_000009). *See also Exh. 1*, Smith Dep. at 44:4-14. At that time, Marshall was undisputedly a District employee. *See Exh. 4*, Foster Dep. at 57:20-24. Foster conceded that the Purchase Order was sent to Owl Labs by Marshall using his District email account. *Id.* at 93:5-24.

Director.²³ Shortly thereafter, Owl Labs realized it inadvertently failed to include freight costs in the quote. The District, through Marshall, immediately objected, stating:

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, although with 16 others that we're working with for other products using these funds. ... [A]dding this [cost] 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?²⁴

Owl Labs apologized and agreed to waive the freight and shipping costs.²⁵

In later emails, the District insisted Owl Labs expedite shipping of the Devices, indicating it would "risk losing [CARES Act] funding[.]"²⁶ Superintendent Foster testified he asked to expedite shipment.²⁷ Marshall relayed that directive to Owl Labs,²⁸ and Owl Labs complied.²⁹

²³ **Exh. 1**, Smith Dep. at 44:4-45:18. *See also* **Exh. 9**, Meltzer Dep. at 25:18-26:20

Superintendent Foster testified that Mr. Twitty would be the person to ultimately sign off on such a purchase order. *See* **Exh. 4**, Foster Dep. at 87:2-11.

Twitty's signature on legitimate purchase orders issued by the District were electronic. Therefore, nothing about Twitty's electronic signature on the Owl Labs purchase order would have given Owl Labs any reason to be concerned. **Exh. 8**, Twitty Dep. at 24:13-25:3 ("Everything is electronic. When I – when I create a PO, it generates my signature on there. I'm the only one that can do that. No. Me and the assistant superintendent of finance. Yeah. Q: What, if anything, do you do to safeguard that electronic signature? A: It's nothing to safeguard because it's system generated.").

Further, Gist testified: "Once you click 'approved[]' [in the system] it becomes a purchase order, and [Twitty's] signature is applied to the purchase order." **Exh. 5**, Gist Dep. at 23:7-12; *see also* **Exh. 3**, Ham Dep. at 78:4-10 ("I think all of our purchase orders have [Twitty's] signature[] on it. It's an electronic, almost like the paycheck signatures. It automatically gets put on the document."); **Exh. 7**, Walley Dep. at 27:8-14 ("Because of the digital signature in the – when it comes out automatically on the purchase[] order[,] that resembles his signature.").

²⁴ **Exh. 13** (OWL_LABS_000035). *See also* **Exh. 2**, McNamara Dep. at 40:12-42:18.

²⁵ **Exh. 13** (OWL_LABS_000034). The District saved an additional \$3,000 in costs that Owl Labs would have charged for an order this size.

²⁶ *Id.* at OWL_LABS_000069-000070.

²⁷ **Exh. 4**, Foster Dep. at 100:10-17.

²⁸ **Exh. 13** (OWL_LABS_000069). *See also* **Exh. 1**, Smith Dep. at 37:13-23 ("[I]t was pretty consistent with what we were hearing with the CARES Act. I know most folks needed product in hand before the end of December, so [this request from Marshall] was pretty ordinary.").

²⁹ **Exh. 13** (OWL_LABS_000009; OWL_LABS_000069).

Then, Marshall informed Owl Labs:³⁰

----- Forwarded message -----

From: **David Marshall** <david.marshall@ocsdsc.org>

Date: Thu, Oct 29, 2020 at 8:47 AM

Subject: Re: Orange County School District -- Owl Labs Follow up

To: Bill Smith <bill@owllabs.com>

Hi Bill,

I found out that we're not tax exempt, as an organization, but finance is not often wrong with their documents. They told me that we're able to be exempt for this specific purchase under form ST-8 under the South Carolina DOR. I've attached it below.



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Orangeburg County School District

Marshall provided Owl Labs with a South Carolina Department of Revenue Exemption Certificate, which also appeared to bear Twitty's signature.³¹ In response to receiving a purchase order from the District that matched Owl Labs' quote as well as a tax exemption certificate, both of which appeared to be signed by the District's Procurement Officer, Twitty, Owl Labs generated Invoice No. 19327,³² which it sent to the District by email on October 29, 2020.³³

Owl Labs first received a "test payment" of \$100 from what it believed to be the District.³⁴ Then, as required by the Purchase Order,³⁵ on November 12, 2020, Owl Labs received half of the

³⁰ **Exh. 13** (OWL_LABS_000008-000009).

³¹ *Id.* at OWL_LABS_000010. *See also* **Exh. 1**, Smith Dep. at 46:14-47:3.

³² **Exh. 13** (OWL_LABS_000012-000013).

³³ *See* **Exh. 9**, Meltzer Dep. at 27:19-28:29:9.

³⁴ **Exh. 13** (OWL_LABS_000041). *See also* **Exh. 10**, Gaughan Dep. at 37:19-38:9.

³⁵ *See* **Exh. 1**, Smith Dep. at 34:11-19 (testifying it was "normal" for public school districts to submit purchase orders in which they would not pay in full prior to shipping).

purchase price, \$358,391.25, by wire from “Orangeburg County Purchasing,”³⁶ which Owl Labs reasonably believed also came from the District. Owl Labs confirmed receipt of these payments.³⁷ Consequently, Owl Labs shipped all 875 Devices to Ham at the District’s warehouse location.

On November 19, 2020, Marshall introduced Owl Labs by email to other District employees, including Assistant Superintendent for Curriculum and Instruction, Dr. Address Carter-Sims.³⁸ Additionally, on December 3, 2020, Owl Labs sent a DocuSign agreement to Ham for Device registration,³⁹ which Ham reviewed and signed.⁴⁰ That same day, at least four District employees⁴¹ received an email thread in which it is readily apparent, had they simply read the entirety of the email that was sent⁴² to them:

- The Devices were purchased by Marshall from Owl Labs;⁴³
- Marshall’s negotiations with Owl Labs beginning in late October 2020;⁴⁴
- Owl Labs’ request for a purchase order from Marshall;⁴⁵
- Owl Labs’ agreement to discounted pricing and waived freight and shipping costs;⁴⁶

³⁶ **Exh. 13** (OWL_LABS_000231); **Exh. 10**, Gaughan Dep. at 39:15-39:4. *See also* **Exh. 11**, Radovan Dep. at 20:9-18 (testifying: “we did receive the down payment for 50 percent” of the purchase order “through ACH wire” from “Orangeburg County Purchasing.”).

Superintendent Foster indicated it was “[n]ot unusual” for the District to order items from vendors with a 50% payment up front and the second 50% upon delivery. **Exh. 4**, Foster Dep. at 102:2-103:2.

³⁷ **Exh. 13** (OWL_LABS_000031).

³⁸ *Id.* at OWL_LABS_000020.

³⁹ **Exh. 14** (DEF 014132).

⁴⁰ *Id.* at 014130.

⁴¹ *See* **Exh. 4**, Foster Dep. 117:8-118:1; *id.* at 118:12-19 (“Q: So we have no less than five Orangeburg County School District employees who have full access to this e-mail string where David Marshall is acquiring the [Devices] directly from Owl Labs, do we not? A: We have three e-mail addresses, David Marshall, Address [Carter-Simms], and Quencenia [Dantzler], and it appears Taphnie [Sanders] and Eric [Ham]’s name are at the top.”).

⁴² **Exh. 14** (DEF 0014129-014145).

⁴³ *Id.* at 014141.

⁴⁴ *Id.* at DEF 014140 (“Your PO was issued today.... will you fulfill the order as quoted or not?”).

⁴⁵ *Id.* at DEF 014141.

⁴⁶ *Id.* at DEF 014139.

- Owl Labs' agreement to expedite shipping;⁴⁷
- Marshall sending to Owl Labs a tax exemption form on behalf of the District;⁴⁸
- Marshall's indication that a "test transaction" of \$100 was sent to Owl Labs and Owl Labs' confirmation of receipt of the test payment;⁴⁹
- Marshall's statement that the first half of the purchase order payment would be paid;
- Marshall's request for expedited shipping;⁵⁰
- Marshall's statement that \$300,000 was sent to Owl Labs, on behalf of the District;⁵¹
- Marshall's assurance that the remaining balance would be paid by District.⁵²

All of these communications were received by the District *before* it paid Level 8 in full.

On January 6, 2021, Ham contacted Owl Labs for assistance in setting up the Devices.⁵³ In response, Owl Labs indicated it "did have a previous email exchange with David Marshall,"⁵⁴ which neither Ham nor any other District employee investigated further. This email also occurred *before* the District's second, and final, payment to Level 8.

After the Devices were received and implemented by the District,⁵⁵ Owl Labs sent several emails inquiring about the balance on the invoice.⁵⁶ Marshall initially cited logistical issues for the

⁴⁷ *Id.* at DEF 014140.

⁴⁸ *Id.* at DEF 014138.

⁴⁹ *Id.*

⁵⁰ *Id.* at DEF014137.

⁵¹ *Id.* at DEF 014136 ("Our district's bank limits us to \$300,000 of EFT payments per day, so we sent the first \$300,000 today, and we'll follow up with the balance tomorrow. So all the funds (the first 50% of the total invoice) should be in your account by the end of the week[.]").

⁵² *Id.* at DEF 014135.

⁵³ *Id.* at DEF 013963.

⁵⁴ *Id.*

⁵⁵ *See* **Exh. 13** (OWL_LABS_000023-000029). *The Times and Democrat*, Gene Zaleski, "Orangeburg County School District: New cameras called 'game changer'" (Jan. 27, 2021), available online at https://thetandd.com/news/local/orangeburg-county-school-district-new-cameras-called-game-changer/article_1dc36fad-b772-5abf-8796-1a4a62a3bde1.html.

⁵⁶ **Exh. 13** (OWL_LABS_000106). *See also* **Exh. 10**, Gaughan Dep. at 39:5-14.

District's failure to pay, claiming the District was unable to pay because it was working remotely and could not issue a wire.⁵⁷ He later claimed the District had "suffered from a cryptocurrency attack" and was "consulting with our district lawyers[.]"⁵⁸

On May 21, 2021, Owl Labs wrote again to the District to remind it of the outstanding invoice.⁵⁹ On June 9, 2021, District bookkeeper, Daphne Walley, contacted Owl Labs,⁶⁰ explaining that the District believed it had fully paid for the Devices.⁶¹ Owl Labs then provided documentation of its communications with Marshall to the District, which were already available on District's own email server.⁶² It was only then the District allegedly realized Marshall had misrepresented the transaction, leading District officials to believe the Devices were purchased from Level 8, when in fact he had procured them directly from Owl Labs. At no point did Owl Labs communicate with anyone whom purported to be representing Level 8.

On June 15, 2021, Owl Labs' Director of Revenue, Narayan Krishnan, and Superintendent Foster confronted Marshall in a Zoom meeting, during which Marshall confessed to stealing the second half of the purchase funds.⁶³ Marshall was indicted on December 8, 2021,⁶⁴ and convicted on June 8, 2022.⁶⁵ The federal court sentenced Marshall to 33 months in prison and ordered full restitution. Marshall has since been released from prison, but Owl Labs remains unpaid.

⁵⁷ **Exh. 13** (OWL_LABS_000106). *See also* **Exh. 10**, Gaughan Dep. at 39:15-18.

⁵⁸ **Exh. 13** (OWL_LABS_000105). *See also* **Exh. 10**, Gaughan Dep. at 30:19-25; **Exh. 9**, Meltzer Dep. at 29:10-30:3.

⁵⁹ **Exh. 13** (OWL_LABS_000042). *See also* **Exh. 11**, Radovan Dep. at 17:6-18:21.

⁶⁰ **Exh. 7**, Walley Dep. at 26:2-17.

⁶¹ *See id.* at 31:16-32:10.

⁶² **Exh. 13** (OWL_LABS_000030-000037).

⁶³ *See* **Exh. 4**, Foster Dep. at 53:3-54:5; **Exh. 12**, Krishnan Dep. 26:8-14, 27:23-28:6.

⁶⁴ *U.S. v. Marshall*, 5:21-cr-00841-MGL

⁶⁵ *Id.* at ECF No. 35.

Owl Labs initiated this civil action on September 23, 2022, seeking to recover the unpaid amount for the Devices the District received and used. Owl Labs asserts claims for breach of contract, unjust enrichment/quantum meruit/quasi contract, negligent supervision and retention, and negligence. On November 11, 2024, the District moved for summary judgment.

ARGUMENTS

I. GENUINE ISSUES OF MATERIAL FACT SUPPORT OWL LABS' CLAIM FOR BREACH OF CONTRACT.

To prove a claim for breach of contract, Owl Labs must show: (1) a binding contract entered into by the parties, (2) a breach or unjustifiable failure to perform the contract by the defendant, and (3) damages suffered as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Here, genuine issues of material fact exist regarding (1) whether Marshall had authority to bind the District to the Purchase Order for the Devices with Owl Labs, (2) the District's failure to pay the full amount due under the Purchase Order, and (3) the resulting damages suffered by Owl Labs.

The District contends no contract existed with Owl Labs⁶⁶ because Marshall allegedly issued the Purchase Order fraudulently and without authority.⁶⁷ However, the District ignores the genuine issue of material fact regarding the existence and scope of Marshall's actual and apparent authority to enter into the purchase order with Owl Labs on District's behalf. Nevertheless, whether Marshall acted with actual or apparent agency, and whether his actions bound the District through *respondeat superior*, are quintessential factual questions reserved for the jury.

South Carolina law is clear that questions of agency are ordinarily for the trier of fact. *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App.

⁶⁶ Motion For Summary Judgment at ¶ 1.

⁶⁷ *Id.* at ¶¶ 2, 5.

1984) (“Agency is a question of fact.”). “Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal's behalf and subject to the principal's control.” *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). “[Q]uestions of agency ordinarily should not be resolved by summary judgment where there are *any* facts giving rise to an inference of an agency relationship.” *Fernander v. Thigpen*, 278 S.C. 140, 142, 293 S.E.2d 424, 425 (1982) (internal quotation marks omitted) (emphasis added). “If there are any facts tending to prove the relationship of agency, it then becomes a question for the jury.” *Gathers*, 282 S.C. at 226, 317 S.E.2d at 752.

A. Evidence shows Marshall had actual authority to enter into the Purchase Order.

“[T]he relationship of agency need not depend upon express appointment and acceptance thereof.⁶⁸ Rather, an agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case.” *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 242, 597 S.E.2d 165, 168 (Ct. App. 2004). The relationship of principal and agent can exist where the parties, “in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, *notwithstanding a denial by the alleged principal*, and whether or not the parties understood it to be an agency.” *Id.* (quoting *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979)) (emphasis added). Agency “may be proved circumstantially by the conduct of the purported agent

⁶⁸ Therefore, Superintendent Foster’s testimony that Marshall did not “have any authority to make any decisions in the school district . . . on any level” is irrelevant to whether he did or did not have authority in these circumstances. See **Exh. 4**, Foster Dep. at 33:15-19.

exhibiting a pretense of authority with the knowledge of the alleged principal.” *Town of Kingstree v. Chapman*, 405 S.C. 282, 315, 747 S.E.2d 494, 511 (Ct. App. 2013) (quotation omitted)).

Here, the District expressly authorized Ham to locate a provider to sell the Devices to the District. Ham, Marshall’s supervisor, delegated such authority Marshall.⁶⁹ Marshall did just that with Owl Labs. Although Twitty testified that Marshall wasn’t ordinarily “authorized to negotiate for the acquisition of products or services on behalf of the school district,” but acknowledged he might have been “delegated to” do so.⁷⁰ He was so delegated as to the District’s procurement of these Devices, as the facts of record prove. Ham testified that Marshall was regularly involved in these types of transactions on the District’s behalf.⁷¹

Moreover, weeks before the District sent its second and final payment to Level 8, Marshall included at least five other District employees on multiple emails which clearly showed the scope of his prior negotiations with Owl Labs. In November 2020, Marshall copied an Assistant Superintendent, Dr. Andress Carter-Sims, on an email with Owl Labs to discuss setting up the Devices.⁷² On December 3, 2020, Owl Labs sent a DocuSign to Ham to review and sign in order to register the Devices.⁷³ Ham reviewed and executed the agreement.⁷⁴ Marshall then circulated an email that was eventually shared with other District employees. Had any one of them simply reviewed the emails, they would have readily seen that Marshall was directly communicating and

⁶⁹ **Exh. 3**, Ham Dep. at 28:4-19; *see also* 34:13-35:6.

⁷⁰ **Exh. 8**, Twitty Dep. at 48:10-21 (“Q: Do you know if [Marshall] was authorized to negotiate for the acquisition of products or services on behalf of the school district? A: No, he wasn’t, *unless that was delegated to him*, you know, to go get pricing as an employee. ... *If that was delegated to him and his department*. But as far as authorization to close the deal, that would have been by way of dealing with Mr. Ham[.]”) (emphasis added).

⁷¹ **Exh. 3**, Ham Dep. at 67:11-14 (“I think it’s safe to say that folks [at the District] knew that they could ask ... Marshall to get or to find out things[.]”).

⁷² **Exh. 13** (OWL_LABS_000020).

⁷³ **Exh. 14** (DEF 014132).

⁷⁴ *Id.* at 014130.

negotiating with, discussing payment terms, and sending money purportedly on the District's behalf to Owl Labs.⁷⁵ The District received 875 Devices from Owl Labs, implemented them in its classrooms with Owl Labs' assistance, and benefitted from using them.

The District cannot dispute it authorized Marshall, through Ham, to negotiate for the purchase the Devices from a third party, and Marshall did just that with Owl Labs. This creates at least a genuine issue of material fact for trial regarding the existence and scope of Marshall's actual authority.⁷⁶ Any question regarding the existence and scope of Marshall's authority to bind District to the Owl Labs' Purchase Order should be reserved for the jury. In *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017), the appellate court found an agency relationship existed where the defendant "was 'fully aware that Frank was buying and selling property in her name' and was 'transacting business in her name.'" *Id.* at 481, 807 S.E.2d at 730. Likewise here, genuine issues of material fact exist for trial as to the existence and scope of Marshall's actual authority to enter into the contract with Owl Labs on the District's behalf, and the District's motion should be denied.

B. *Even if Marshall lacked actual authority, his apparent authority binds the District to the contractual commitment with Owl Labs.*

The evidence alternatively demonstrates Marshall had apparent authority to bind the District to the Purchase Order. "The basis of apparent authority is representations made by the principal to [a] third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007) (citation

⁷⁵ **Exh. 14** (DEF 013962-013963).

⁷⁶ *See also Exh. 15*, Sentencing Hearing Transcript (June 7, 2022) at 6:7-15 ("Marshall was tasked with finding the Orangeburg School District cameras with which they could use to onboard into remote education so that every teacher in a classroom could communicate remotely with all of her students who were at home around the country. Schools received federal funds to purchase products like this so they could facilitate distance learning. And so the[] [District] asked Mr. Marshall to do that. And in doing that, he saw an opportunity to enrich himself.") (emphasis added).

omitted). “[A]pparent authority is considered to be a power which a principal holds his agent out as possessing or permits him to exercise under such circumstances as to preclude a denial of its existence.” *R&G Constr., Inc. v. Lowcountry Reg’l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (citations omitted). “When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, [the principal] will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.” *Id.* (citation omitted).

“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.” *Fronberger v. Smith*, 406 S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013) (quoting *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.* (quoting *Frasier*, 323 S.C. at 245, 473 S.E.2d at 868).

South Carolina law requires “three elements be proven to establish apparent authority: (1) ‘(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.’” *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 643, 598 S.E.2d 717, 721 (Ct. App. 2004) (citation omitted). An agency relationship may be proved by circumstantial evidence. *Fronberger*, 406 S.C. at 49, 748 S.E.2d at 631 (citation omitted).

1. The District consciously or impliedly represented Marshall as its agent.

As to the first element—whether the District consciously or impliedly represented Marshall to be its agent—such proof may be made by (1) affirmative conduct or (2) conscious and voluntary inaction. *Fronberger*, 406 S.C. at 47, 748 S.E.2d at 630. Under the first of these two scenarios, the principal makes direct representations to a third party that another has authority to act on his behalf. *Frasier*, 323 S.C. at 244, 473 S.E.2d at 868 (apparent agency is created by “written or spoken words or any other conduct of the principal” showing consent to allow another to act on a principal's behalf).

Under the second scenario, the principal implies authority by passively permitting another to appear to third parties to have authority to act on his behalf. *R&G Constr., Inc.*, 343 S.C. at 434, 540 S.E.2d at 118 (“Such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf.”); *Fernander*, 278 S.C. at 143, 293 S.E.2d at 426 (“[A]gency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal.”).

Here, the evidence demonstrates Marshall was acting under apparent agency, particularly through the District’s conscious and voluntary inaction. The District cannot dispute that at the time of Marshall’s communications, negotiations, and contract execution with Owl Labs he was an employee and the District’s Media Communications Specialist. The District permitted Marshall to

use its email system to correspond with Owl Labs about the purchase of the Devices.⁷⁷ At any time, the District could have discovered Marshall's communications⁷⁸ and stopped them.

On multiple occasions Marshall copied District employees on his communications with Owl Labs,⁷⁹ and these employees never objected to Marshall's communications or raised concern with Owl Labs. Marshall's apparent authority on behalf of the District was enhanced by his introduction of Owl Labs to other employees and officers of District, none of whom objected or inquired further. Through the District's own authorization and supervision, and failure to stop Marshall's conduct, the District signaled to Owl Labs directly that Marshall was its agent.⁸⁰

2. Owl Labs reasonably relied on Marshall's authority and changed its position to its detriment.

As to the second and third elements for apparent agency—that there was a reliance upon the representation and a change of position to the relying party's detriment—the record evidence demonstrates that Owl Labs reasonably relied upon Marshall's title and role to enter into the Purchase Order. From the outset of the communications, Owl Labs checked Marshall's credentials, including his LinkedIn account and signature block,⁸¹ which confirmed he was an employee of the

⁷⁷ See also **Exh. 4**, Foster Dep. 15:5-17 ("Q: And your – when you e-mail – send out e-mails, you have the Orangeburg County School District logo on your e-mail address? A: Correct. Q Not on your e-mail address but on your email signature? A: I think we do, but I'm not sure if I do. I may have. It may be in my signature. ... Q: Okay. But that – there's some indication when you send out an e-mail that lets the public know that you work for the Orangeburg County School District? A: Yes."). The same email signature block, to include the District's logo, was, at all times, also on Marshall's email communications with Owl Labs.

⁷⁸ See *id.* at 142:18-143:6.

⁷⁹ **Exh. 13** (OWL_LABS_000020).

⁸⁰ See *Froneberger*, 406 S.C. at 49, 748 S.E.2d at 631 ("If Euro knew Mr. Smith was holding himself out as its Charlotte office branch manager, was using its office space, and was handing out business cards containing its logo but consciously decided not to stop or correct this behavior, then that inaction could serve as conduct to satisfy the first element" for apparent agency).

⁸¹ **Exh. 1**, Smith Dep. at 31:9-32:24; 34:23-35:3. See also **Exh. 4**, Foster Dep. at pp. 89-92 (acknowledging the District knew Marshall used his cell phone number for work purposes and never directed him to utilize an 803 area code for District business).

District. Owl Labs called the phone number provided by Marshall on his inquiry to Owl Labs, which matched the phone number in Marshall's District-issued email signature block.⁸² Later, on multiple emails, Owl Labs communicated with other District employees, none of which raised any questions or concerns about Marshall's prior discussions with Owl Labs about the Devices, further providing assurances to Owl Labs that Marshall was authorized on the District's behalf.

Owl Labs detrimentally relied on Marshall's authority. First, Owl Labs expedited shipment of the Devices to the District at its own expense based on Marshall's insistence that the District needed the Devices earlier in order to effectuate CARES Act funding (apparently based on a directive to Marshall from Superintendent Foster).⁸³ Second, Owl Labs provided a sizable discount⁸⁴ to the District and agreed to waive freight and shipping costs.⁸⁵ More pointedly, Owl Labs never would have contracted with the District without such authority. It would work a manifest injustice if the District is now allowed to contradict that Owl Labs had a contract with the District, especially given that *multiple* District employees were on emails, which reveal the contract. The evidence makes clear that Owl Labs' reliance on Marshall's agency was reasonable.

While the District may view the purchase of 875 Devices at a cost of nearly one million dollars as large and atypical,⁸⁶ Owl Labs' employees consistently testified such a transaction was

⁸² Twitty testified it was typical for the District to communicate with vendors by phone and email, which is exactly what Marshall did with Owl Labs. **Exh. 8**, Twitty Dep. at 32:20-24.

⁸³ **Exh. 13** (OWL_LABS_000009; OWL_LABS_000069).

⁸⁴ Owl Labs sent the District a quotation for 875 Devices (regularly priced at \$999 each) for a discounted price of \$819.18 each (an 18% discount of \$179.82 each). *Id.* at OWL_LABS_000001_000002; OWL_LABS_000003-000004. This discounted rate saved the District a total of \$157,342.50. *See also Exh. 1*, Smith Dep. at 37:24-39:19 (discussing quotation terms prepared by Smith for the District); *see also id.* at 33:24-34:2, 37:17-23, 43:15-23 (testifying it was common to provide a discount based on quantity of devices purchased and to expedite shipping for customers using CARES Act funding).

⁸⁵ **Exh. 13** (OWL_LABS_000034). The District saved an additional \$3,000 in costs that Owl Labs would have charged for an order this size.

⁸⁶ *See Exh. 7*, Walley Dep. at 24:22-25:1 (testifying this purchase was "a huge number."); *see also Exh. 8*, Twitty Dep. at 10:6-13 (agreeing acquisition of these devices was "significant" for the District.).

routine for public school districts in 2020.⁸⁷ There were both larger⁸⁸ and more expedited⁸⁹ sales of these Devices for other schools in 2020 and CARES Act funding was frequently used to purchase the devices.⁹⁰ Owl Labs' employee, Bill Smith, testified the company had completed *hundreds* of similar transactions with public school districts before this one.⁹¹

Furthermore, to the contrary of District's anticipated argument, Owl Labs' employees did not typically review or analyze the specific procurement laws or policies governing the educational institutions with which they conducted business.⁹² To the contrary, Owl Labs' Inside Sales Manager, Kaylin McNamara, testified:

Typically, I was not [involved in procurement] – for bid process[.] I was not handed a bunch of paperwork and said from a customer, hey, can you fill this out for us? All they needed from us, from my understanding, was a quote, and I could generate

⁸⁷ See **Exh. 10**, Gaughan Dep. at 15:10-13 (“It would be considered large [but] [i]t was not atypical in the fall of 2020.”); see also **Exh. 11**, Radovan Dep. at 22:4-23:2 (District's order size was “normal” for Owl Labs at that time).

⁸⁸ See **Exh. 2**, McNamara Dep. at 23:11-24:2 (Owl Labs sold 1,200 devices to San Jose Unified School District, in California, in 2020, a sale nearly 1.5 times larger than the transaction at issue); see also *id.* at 37:11-24 (rejecting Defendant's counsel's characterization of this transaction as “extremely large,” stating Owl Labs had “between seven and ten” orders of at least the District's size in 2020.); see also **Exh. 1**, Smith Dep. at 21:12-24 (orders “varied” from 1-2 to 2,000 devices).

⁸⁹ **Exh. 1**, Smith Dep. at 37:13-23 (“Q: Would that have been out of the ordinary in terms of the turnaround time to deliver that order? A: No, it was pretty consistent with what we were hearing with the CARES Act. I know most folks needed product in hand before the end of December, so it was pretty ordinary.”).

⁹⁰ **Exh. 2**, McNamara Dep. at 27:4-6 (“[A] lot of these entities, especially schools, were leaning on COVID relief funds or COVID-oriented budget.”). See also **Exh. 1**, Smith Dep. at 24:18-25 (“Typically, during that time [2020], a lot of schools were using CARES Act funds where, you know, they were granted money from the federal government more than their typical budget. So, you know, it wasn't out of the ordinary for a school district to purchase and ask for half up front or not to be able to fulfill a 100 percent prepayment.”).

⁹¹ **Exh. 1**, Smith Dep. at 16:25-17:18, 26:20-25 (testifying that prior to this transaction with the District, Smith was personally involved with “hundreds” of sales to public school districts). See also **Exh. 2**, McNamara Dep. at 24:20-23 (“Q: Do you recall how many public school districts you dealt with prior to October of 2020? A: I don't recall, and I don't know if this is helpful, but a lot.”); *id.* at 29:13-25 (“50/50 [educational] to non-[educational] [sales.] [Education] was a very, very strong vertical for us at that time [in 2020] because of COVID.”); *id.* at 30:1-2 (“I don't recall [the exact number of schools Owl Labs' sold to in 2020], but I know there were a lot. It's just been a long time.”).

⁹² **Exh. 12**, Krishnan Dep. at 15:7-12; 16:25-17:10; **Exh. 2**, McNamara Dep. at 47:4-23.

a quote and send them a quote. ... I never had to produce anything outside of a quote to help them participate in the RFP process.⁹³

Smith testified: “There [were only] one or two instances,” out of *hundreds* of school district transactions, in which Owl Labs needed to be on a district’s approved vendor list.⁹⁴

Owl Labs also regularly communicated with individuals within school districts, including IT staff, like Marshall,⁹⁵ and even individual teachers.⁹⁶ McNamara and Smith testified Marshall’s title of “Communications, Business and Community Partnerships” did not concern them⁹⁷ as it was consistent with the type of school officials they previously dealt with to sell these Devices.

Owl Labs also regularly received purchase orders, letters of agreement, and other forms of contracts,⁹⁸ with and without electronic signatures, from educational institutions, including public school districts.⁹⁹ Owl Labs did receive a purchase order from the District, through Marshall, which contained the electronic signature of Greg Twitty, the District’s Procurement Officer.¹⁰⁰

As to the District’s tax exempt status, Owl Labs’ quote required a purchaser to “provide certificate prior to purchase.”¹⁰¹ Multiple Owl Labs’ employees testified that school districts were sometimes tax exempt and sometimes not—“it depends on each state whether or not an

⁹³ **Exh. 2**, McNamara Dep. at 31:19-32:15. *See also* **Exh. 1**, Smith Dep. at 28:22 (“It wasn’t common at Owl Labs to see many RFPs.”).

⁹⁴ **Exh. 1**, Smith Dep. at 29:2-5.

⁹⁵ *See* **Exh. 2**, McNamara Dep. at 28:3-9 (testifying that the point of contact for the San Jose Unified School District order of 1,200 units was someone in the IT department).

⁹⁶ **Exh. 1**, Smith Dep. at 33:6-9 (“I worked with communication directors before, especially dealing with the schools. I mean, sometimes I’d be talking to teachers.”).

⁹⁷ **Exh. 2**, McNamara Dep. at 46:1-11; **Exh. 1**, Smith Dep. at 32:21-33:9.

⁹⁸ **Exh. 12**, Krishnan Dep. at 14:15-15:6.

⁹⁹ *See* **Exh. 10**, Gaughan Dep. at 19:25-24:22.

¹⁰⁰ *See* **Exh. 13** (OWL_LABS_000007). *See also* **Exh. 9**, Meltzer Dep. at 25:18-26:20 (testifying Bill Smith received the signed purchase order from Marshall on District’s behalf and it had the signature of “Greg Twitty” who was “the procurement director for the school district.”).

¹⁰¹ **Exh. 13** (OWL_LABS_000004).

organization is tax exempt.”¹⁰² McNamara and Smith stated their belief that “most of them are tax exempt.”¹⁰³ Owl Labs’ employees were not expected to have read or understood the various states’ laws regarding tax exemption for the educational institutions with which it did business.¹⁰⁴ Instead, Owl Labs depended on the purchaser, who was the one receiving the tax exemption, to provide proof,¹⁰⁵ which Marshall did with respect to the transaction at issue.¹⁰⁶

Owl Labs’ witnesses also testified the District’s payment of the first half of the purchase order by wire was not unusual. That the wire originated from “Orangeburg County Purchasing” (as opposed to Orangeburg County School District, specifically) did not raise any red flags.¹⁰⁷ McNamara testified schools frequently “did not want to purchase with a credit card, or were not authorized to purchase with a credit card. . . . And they typically asked for or required some sort

¹⁰² **Exh. 10**, Gaughan Dep. at 25:6-7; *see also* **Exh. 9**, Meltzer Dep. at 22:20-23:1 (“Q: [W]hat is your understanding about whether or not a school district generally is considered a tax exempt entity? A: Public entities are often tax exempt, but not always, depending on the states that they are in.”).

¹⁰³ **Exh. 2**, McNamara Dep. at 33:6-7. *See also* **Exh. 1**, Smith Dep. at 29:8-16 (“Q: [W]hat was your understanding in October of 2020 about whether school districts in general were tax exempt from a purchase such as this? A: . . . I would say most of the public school districts that were purchasing from Owl Labs were tax exempt. So that was a common practice to ask if they were tax exempt and if they had a letter of tax exemption.”).

¹⁰⁴ **Exh. 12**, Krishnan Dep. at 17:24-18:11; *see also* **Exh. 2**, McNamara Dep. at 52:5-22 (“[N]either account executives nor I are responsible or were responsible for validating tax exempt forms. We were responsible for getting them and uploading them to a Google Drive, and then attaching them to the email that we would send to accounting to process the [purchase order].”).

¹⁰⁵ **Exh. 10**, Gaughan Dep. at 25:8-15; **Exh. 1**, Smith Dep. at 47:4-19.

¹⁰⁶ **Exh. 13** (OWL_LABS_000010). *See also* **Exh. 1**, Smith Dep. at 46:14-47:19; **Exh. 9**, Meltzer Dep. at 27:1-18.

¹⁰⁷ *See* **Exh. 12**, Krishnan Dep. at 27:9-22 (“Ultimately, these orders, typically the orders that I’ve dealt with at my experience at various companies you have, you know, a purchase order coming and if there are other tiers involved, the payment could come from various sources. That is not unusual.”); **Exh. 11**, Radovan Dep. at 20:24-21:7 (“Q: [I]f there was an arrangement for the purchase of devices from Orangeburg County School District, and a payment was received from Orangeburg County purchasing, would that raise any questions in your mind? . . . A: In my opinion, no. Q: In your experience regarding the sales of the Owl Labs’ devices, is it common to receive payment from an organization with a different name than the organization that’s receiving the devices? . . . In my experience, there are some institutions that like to pay under a different name where we have to follow up with a band to give us more information so that we can trace back transactions.”).

of net terms[,] [meaning] they did not pay entirely or 100 percent upfront prepayment before we would ship inventory.”¹⁰⁸ In other words, this transaction was *typical* with the hundreds of other school district transactions Owl Labs was engaged with during the same period of time.

District cannot genuinely claim that Owl Labs “should have known” Marshall was a fraudster. Superintendent Foster agreed that Marshall’s use of his District email account in communications with Owl Labs would not give any reason for Owl Labs to question Marshall’s authority.¹⁰⁹ He also acknowledged the purchase order sent by Marshall, which contained Twitty’s signature, might appear to a third-party, like Owl Labs, to be a legitimate purchase order and signature on behalf of the District.¹¹⁰ Multiple District employees, including the Superintendent, conceded they would expect a vendor to rely on a purchase order issued by the District. Superintendent Foster testified: “Yeah. That’s the purpose of a purchase order.”¹¹¹

¹⁰⁸ **Exh. 2**, McNamara Dep. at 25:14-24; *see also* **Exh. 9**, Meltzer Dep. at 19:8-18 (“I know that often public entities were unable to provide any sort of prepayment or couldn’t provide full prepayment based on public purchasing rules. And so I know that we were more often making deals, making exceptions to our 100 percent prepayment policy for public institutions in order to accommodate their needs.”).

¹⁰⁹ **Exh. 4**, Foster Dep. at 93:5-24.

¹¹⁰ *Id.* at 81:9-13; *see also id.* at 83:2-12 (testifying he did not know how a third-party could determine if a signature is legitimate or illegitimate on a purchase order other than calling to verify); *id.* at 93:25-94:16.; *id.* at 97:6-10 (“Q: From the standpoint of a third party, what on Exhibit 2 would alert the third party, hey, this fella [Marshall], doesn’t have authority to do what he’s doing? A: I’m not sure what would or wouldn’t. Q: You don’t – you don’t see anything on Exhibit 2 that would alert a third party, do you? A: I wouldn’t – I’m not a third party so I don’t know what they look for or indicate so I wouldn’t know. But I don’t see anything that would say, hey, here’s what sticks out. But I’m not sure what they – what they look for.”). *See also* **Exh. 5**. Gist Dep. at 36:1-20.

¹¹¹ **Exh. 4**, Foster Dep. at 83:18-22. *See also* **Exh. 5**, Gist Dep. at 30:15-18 (“Q: Do you expect that those entities that are on contract with the school district to rely on the purchase order? A: Yes.”); **Exh. 6**, Sanders Dep. at 21:21-22:10 (“Q: What is a purchase order? A: It’s a legal document saying that – for instance, it would be a legal document saying that we are – and it basically is kind of like a little commitment, saying that, you know, we are ordering, we want to order these devices. And then, of course, this is saying that, yes, we are ordering these devices and then, of course, when they are received, then, of course, payment will be submitted. Q: Do you expect those with whom you’re contracting to rely on purchase orders? A: Yes. Q: And the district when it issues a PO, they want it to be fulfilled? A: Yes.”).

Numerous District employees further testified that there was nothing on the purchase order itself that would have indicated to Owl Labs the document was fraudulent.¹¹² District's Director of Finance, Gail Sanders, testified that a legitimate purchase order would have "a lot more numbers,"¹¹³ but she acknowledged a third party, like Owl Labs, would not have known.¹¹⁴

With regard to the tax exemption form, which also purported to bear Twitty's signature on behalf of the District, Superintendent Foster and Twitty agreed there was nothing on the document that would have alerted Owl Labs to the fact that it had been forged.¹¹⁵

Because the record is replete with facts which show that there are genuine issues of material fact for trial as to the existence, scope, and extent of Marshall's apparent agency, as well as Owl Labs' reasonable reliance on Marshall's agency on behalf of the District and its detrimental reliance on Marshall's authority, the Court should deny District's motion as to the breach of contract cause of action.

C. Owl Labs is contractually entitled to an award of its attorney's fees and costs.

The District claims that the evidence fails to create a genuine issue of material fact for trial as to the availability of contractual attorneys fees and costs to Owl Labs. It is well-established in South Carolina law that attorney's fees and costs may be awarded if provided for by contract or statute. *See Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005) (quotations omitted).

¹¹² **Exh. 3**, Ham Dep. 72:25-74:11; **Exh. 7**, Walley Dep. at 27:23-28:14.

¹¹³ **Exh. 6**, Sanders Dep. at 23:15-24. *See also* **Exh. 7**, Walley Dep. at 26:15-17 and 27:19-22 ("A: I think this is what gave it away right here, this purchase order number. When I saw that, I realized that that was not a district PO.").

¹¹⁴ **Exh. 6**, Sanders Dep. at 38:21-39:4; **Exh. 7**, Walley Dep. at 27:19-22 ("Q: Would a third party that had never dealt with Orangeburg County School District before, would they be aware that that number was incorrect? A: Probably not."); *id.* at 48:4-8.

¹¹⁵ **Exh. 4**, Foster Dep. at 97:18-98:7; **Exh. 8**, Twitty Dep. at 63:5-10. *See also* **Exh. 5**, Gist Dep. at 37:11-15 (same).

On December 3, 2020, Owl Labs sent a DocuSign to Ham to review and sign in order to register the Devices that the District had received.¹¹⁶ Ham reviewed and executed the agreement.¹¹⁷ The agreement referenced Owl Labs' terms of service, which are available on Owl Labs' website.¹¹⁸ The terms and conditions as of December 3, 2020,¹¹⁹ permit, by way of indemnity, Owl Labs to recover legal fees and expenses.¹²⁰ Accordingly, genuine issues of material fact exist for trial as to the existence and terms of the District's contract with Owl Labs.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT SUPPORTING OWL LABS' CLAIMS FOR NEGLIGENCE AND NEGLIGENT SUPERVISION AND RETENTION.

The District moved for summary judgment as to Owl Labs' claims for negligent supervision and retention as well as negligence. However, these claims are supported by evidence which create genuine issues of material fact for trial. District's motion centers on its contention that Marshall was a sophisticated criminal mastermind, who not only defrauded Owl Labs but also duped the District and, in doing so, acted outside the course and scope of his employment. In other words, the District believes the responsibility for payment should be borne by Marshall alone. But for purposes of tort liability for the acts of its employees, it is legally irrelevant whether Marshall was acting outside the scope of his agency.

The evidence establishes the District was *itself* responsible for creating the circumstances that enabled Marshall to commit his fraudulent act. It is undisputed the District was aware of Marshall's prior criminal record¹²¹ and District cannot genuinely dispute that it failed to reasonably

¹¹⁶ **Exh. 14** (DEF 014132).

¹¹⁷ *Id.* at 014130.

¹¹⁸ **Exh. 16**, Affidavit of John Stevens.

¹¹⁹ *Id.*

¹²⁰ *Id.*; see also *id.* at **Exh. 16-1** at ¶ 2(h).

¹²¹ See **Exh. 13** (OWL_LABS_000330-332), SLED Report.

supervise Marshall's communications, even though Ham authorized him to communicate about these Devices with third parties. Separately, the District failed to enforce its own Procurement Code at multiple levels, thereby creating opportunities for Marshall to defraud the District. At a minimum, the District should be held liable for its employees' failure to read emails on which they were copied which revealed the scope of Marshall's communications with Owl Labs, specifically, before the District sent the second payment, which is the payment at issue, to Level 8.

A. The following facts create genuine issues of material fact of the District's negligence and negligent supervision and retention.

Marshall is not a criminal mastermind. Rather, he easily took advantage of the multiple opportunities created by the District's numerous failures to supervise its employees and enforce its own policies and procedures. The evidence is clear the District permitted the expenditure of millions of taxpayer dollars, including those at issue, with little or no training or oversight, and in contravention of its own policies and procedures. On multiple occasions, the District permitted its employees to enter into transactions with Level 8, a vendor who was not approved by the State of South Carolina or vetted by the District. Instead, it was an entity organized and/or operating under the direction of the District's own employee, Marshall, which the District could have readily discovered had it performed even a cursory background check and investigation. The District should be responsible for its negligence which harmed Owl Labs, an innocent third-party.

1. The District permitted Marshall, a known criminal, to remain employed.

The District hired (or, at a minimum, retained) Marshall in the role of Media Communications Specialist, in which he was tasked with communication and media production.¹²² During his employment with the District, criminal charges were brought against Marshall for

¹²² **Exh. 4**, Foster Dep. at 120:11-16.

criminal sexual misconduct with a minor aged 11-14 years. The District knew about, and seemingly followed,¹²³ the status of the charges and criminal case against Marshall, as it placed him on administrative leave.¹²⁴ However, the District should have taken additional action to prevent Marshall from remaining employed with the District,¹²⁵ rather than allowing him to remain employed¹²⁶ and, later allowing him to be involved with sizeable financial transactions without any supervision whatsoever. Had it done so, the misconduct involving his sham company, Level 8, may have never occurred. Rather, the District gave Marshall wide authority to communicate with third party vendors and failed to double-check his representations, which turned out to be untrue. Ultimately, the District expended substantial sums of taxpayer dollars, including those at issue, which Marshall, a known criminal, pocketed for himself and an innocent third party, Owl Labs, was damaged.

2. The District failed to train and enforce its procurement policies.

Marshall's fraudulent scheme did not occur through just his own actions in isolation, as the District would have this Court believe. Rather, they were facilitated and enabled by multiple failures within the District's system at nearly all levels. The evidence establishes there was little oversight over Marshall and almost everyone neglected to follow procurement policies, which would have caught Marshall's scheme before Owl Labs brought it to the District's attention.

¹²³ See **Exh. 14** (DEF 00141).

¹²⁴ **Exh. 14** (DEF 00121, DEF 00138, DEF 000135)

¹²⁵ See **Exh. 4**, Foster Dep. at 132:12-133:8 (testifying a criminal background check is an important part of the District's hiring process because any employee of the school district might conceivably come into contact with children, including someone such as Marshall who was responsible for filming children).

¹²⁶ **Exh. 14** (DEF 00135).

According to all witnesses except Twitty himself, Greg Twitty, the District's Procurement Coordinator, was responsible for compliance with the District's Procurement Code.¹²⁷ Twitty, however, attempted to shrug off responsibility, testifying he relied on the "end user" of the transaction within the District, in this case, Eric Ham, the District's Chief Information Officer, to verify third-party vendors with whom the District contracted.¹²⁸ Ham, though, testified he was provided with little or no training on the Procurement Code or the District's policies related to it.¹²⁹ When Marshall came back to Ham recommending Level 8 for the Owl Labs Devices, neither Ham nor any other District employee, including Twitty, the person responsible for enforcing the Procurement Code, verified that Level 8 was on state contract or approved as a vendor.¹³⁰

It is no wonder that the District's employees did not uniformly enforce the Procurement Code. They did not know how. Multiple District employees testified there was little or no training, including Brandi Gist, the District's Assistant Superintendent for Finance,¹³¹ Daphne Walley, the

¹²⁷ See *id.* at 14:6-13 ("We have a procurement director, coordinator, Mr. Greg Twitty. He ensures all processes are followed [per] the procurement code. Obviously, any bids and things like that, they go out, we review those and then he gives final approval on those."); see also *id.* at 21:6-22:3, 22:21-23:11; *id.* at 28:24-29:2. See also **Exh. 5**, Gist Dep. at 13:4-10 (testifying Twitty "was the procurement officer, so he handled everything related to procurement, unless there was an issue, or concern, or question, and we were there to support."); *id.* at 17:14-18; 61:9-19; **Exh. 7**, Walley Dep. at 18:17-19:6 ("He was the procurement officer. And if something had to be purchased, there were procedures that we were expected to follow."); *id.* at 45:6-16 ("[H]e makes sure the district is making purchases with valid vendors. And that if they're on a state contract, they're true state contract vendor[s].... [He's] the person you would go to if you had a question about the legality of a vendor, or a price or something.").

Superintendent Foster acknowledged that he, as superintendent, had "the ultimate authority and responsibility with respect to the school district," including "the ultimate authority and responsibility for the school district's procurement." **Exh. 4**, Foster Dep. at 19:25-20:7; *id.* at 29:3-5.

¹²⁸ **Exh. 8**, Twitty Dep. at 14:9-17; 15:7-16:1; 30:20-31:20; 33:22-34: ("Q: And you relied on Mr. Ham to look into the legitimacy of Level 8 before you signed the ... Level 8 [purchase order]? A: Normally, that's how it's done. The end user would have communicated, yeah, with them on what was needed.").

¹²⁹ See **Exh. 3**, Ham Dep. 17:18-18:8.

¹³⁰ **Exh. 8**, Twitty Dep. at 11:11-24 (testifying that Level 8 was already in the system, because the District did previous transactions with Level 8, so Twitty did not check the contract number provided; which turned out to be a contract number for an entirely different entity).

¹³¹ **Exh. 5**, Gist Dep. at 15:2-9.

District's bookkeeper in the IT department,¹³² and Gail Sanders, the District's Director of Finance.¹³³ Now, the District's employees all point the finger for who to blame. No one appears to be responsible for ensuring compliance with the District's policies and procedures, which enabled Marshall's scheme to occur right under the District's nose.

3. Despite multiple employees being copied on communications which would have revealed the problem, the District failed to monitor and respond to Marshall's communications with Owl Labs regarding the Devices.

While the District's Superintendent and others disclaim knowledge of Marshall's involvement in the transaction, the District cannot dispute it knew or should have known Marshall was assisting the District in buying these Devices on its behalf. Superintendent Foster gave responsibility to Ham, but Ham delegated that responsibility to his subordinate, Marshall.

The District contends that because Marshall did not tell the District he was negotiating with Owl Labs, it should not be responsible to Owl Labs. However, the evidence undermines this position. Multiple District employees were copied on separate emails between Marshall and Owl Labs in November and December 2020 which revealed that Marshall agreed, **on the District's behalf**, to pay Owl Labs directly.¹³⁴ Based on these emails, the District knew or should have known that Marshall had negotiated directly with Owl Labs to obtain the Devices.

Had the District's multiple employees only read the emails they received, one or more of them could have alerted the District to stop payment on any money to Level 8 and redirected the second payment, which had not yet been made to Level 8, to Owl Labs. Ham admitted: "if any of the recipients at the school district had received [and read] th[e] email . . . it would indicate that

¹³² **Exh. 7**, Walley Dep. at 16:10-23.

¹³³ **Exh. 6**, Sanders Dep. at 13:10-11 (testifying she would "periodically . . . look at [the procurement policy] and talk about it."); *id.* at 13:17-19 (testifying she was "[j]ust generally" familiar with the policy).

¹³⁴ **Exh. 14** (DEF 014129-014145).

the [Devices] were purchased directly from Owl Labs.”¹³⁵ Yet, he conceded he did not read the email.¹³⁶ Ham also testified, in his opinion, not one of the five District employees copied “read past the first lines in the communication.”¹³⁷

The mere fact that Marshall was communicating with Owl Labs about anything (and not just payment) should have raised alarms within the District, but it apparently did not. Ham testified that in “typical” transactions, the District would communicate with a third-party approved vendor (like Level 8, *if* it was approved) rather than with the ultimate seller (like Owl Labs).¹³⁸ However, when Ham was shown the communications between Marshall and Owl Labs using the District’s email server and on which District employees, including himself, were copied,¹³⁹ he acknowledged this was atypical.¹⁴⁰ These facts lead to a reasonable inference that someone at the District knew, or reasonably should have known, Marshall was negotiating with Owl Labs, which should have caused the District to investigate further before sending payment to Level 8.

Rather, until March 2021, months after Marshall’s fraud had been perpetuated, and after Owl Labs spoke with the District about its outstanding payment, no one at the District endeavored to validate Level 8 or question Marshall and as soon as it did, it discovered its own negligence.¹⁴¹

¹³⁵ *Id.* 82:19-24 (“Yes.”); *id.* at 83:17-85:4.

¹³⁶ *Id.* at 83:3-8, 83:17-85:4. Ham admitted Marshall’s misconduct caused the District to be more careful in following protocols going forward. He was also aware the District did not enforce other policies, at least as to him. *Id.* at 87:16-88:25.

¹³⁷ **Exh. 3**, Ham Dep. at 83:3-8; *id.* at 83:17-85:4.

¹³⁸ *Id.* at 72:6-18 (“[T]ypically ... when we deal with a third party, we deal with a third party.”); *id.* at 77:14-19 (“[S]o in this case, dealing with Owl Labs, that was a bit unique, correct? A: Yes.”).

¹³⁹ *Id.* at 80:23-83:8.

¹⁴⁰ *See id.*

¹⁴¹ **Exh. 4**, Foster Dep. at 55:14-56:19; **Exh. 3**, Ham Dep. at 38:5-24 (Ham testified that in March 2021, which is after District fully paid Level 8 for the devices in issue, Twitty asked Ham to confirm Level 8’s contract number, which Ham attempted to do by asking Mr. Mason); *id.* at 41:5-9 (“Q: [Was] March 2021 ... the first time you realized that Level 8 was not a state contract vendor? A: Yes.”); *see also* **Exh. 8**, Twitty Dep. at 11:22-13:22 (testifying that when the District asked Level 8 to confirm it was an approved vendor, it sent a letter from another entity, Flex Technology).

4. The District allegedly contracted with and paid an unauthorized vendor.

Even accepting the District's position—that it does not owe Owl Labs because it contracted and paid Level 8 for the Devices—the District essentially admits it transacted with an unauthorized third-party, a separate basis of proving the District's negligence, and therefore, liability.

The Procurement Code requires the District to confirm a vendor is legally qualified to contract with the governmental entity before contracting and sending payment.¹⁴² Gail Sanders, the District's Director of Finance testified Twitty was responsible for due diligence on a vendor.¹⁴³ Superintendent Foster and other District employees testified similarly.¹⁴⁴ However, Twitty claimed that failed in his responsibilities by relying on the "end user"—in this case, Ham—to confirm whether Level 8 was an approved vendor with a state contract.¹⁴⁵ Ham denied he was expected to check or vet a vendor's qualifications.¹⁴⁶ In short, no one did.

No one at the District appears to have confirmed Marshall's representation that Level 8 was on state contract.¹⁴⁷ It was not. No one at the District did any research on Level 8, including a

¹⁴² See **Exh. 4**, Foster Dep. 78:6-14.

¹⁴³ **Exh. 6**, Sanders Dep. at 16:2-8 ("that's what Greg does."); *id.* at 16:20-23 (further testifying that performing due diligence on a vendor "should have been an ongoing requirement. It should still be an ongoing requirement."); *id.* at 39:5-11; *id.* at 40:16-23 (testifying that had someone looked at Level 8's address and determined it was a post office, it might have sent off some flags within District's system; "I would say so.").

¹⁴⁴ **Exh. 4**, Foster Dep. 25:5-26:27:5. Other District employees also affirmed it was Twitty's responsibility, including Gail Sanders, District's Director of Finance. **Exh. 6**, Sanders Dep. at 49:1-11 ("Q: What procedures are in place to make sure that a purchase order is valid? A: He [Twitty] goes on and checks sam.gov to make sure that the – for disbarment and that type of thing for a vendor. ... And then he'll also check, as well, to see if they're on a state contract. Q: And you would expect that he [Twitty] did that right before purchasing from Level 8; is that right? A: Yes.").

¹⁴⁵ **Exh. 8**, Twitty Dep. at 14:9-17.

¹⁴⁶ **Exh. 3**, Ham Dep. at 20:23-14 ("Q: So was it your responsibility at all to look into a vendor to check legitimacy? A: That wasn't my responsibility, not to my knowledge.").

¹⁴⁷ Gail Sanders, District's Director of Finance testified that Twitty "normally checks" whether a vendor is actually on the state vendor list. **Exh. 6**, Sanders Dep. at 14:4-10. However, Twitty testified that because Level 8 was appearing in the system as a prior vendor, he did nothing further to confirm that Level 8 had a state contract or legitimate vendor number. **Exh. 8**, Twitty Dep. at 15:7-16:1.

simple review Level 8's articles of organization, which are publicly on record with the South Carolina Secretary of State. If they had, the articles would have readily shown it was formed *by Marshall himself*.¹⁴⁸ Superintendent Foster testified Twitty would be expected to review records maintained by the Secretary of State when vetting a vendor,¹⁴⁹ but Twitty did not do that before the nearly \$1 million transaction for purchase of the Devices. Twitty did nothing to vet Level 8 before authorizing the District to purchase these devices.¹⁵⁰

In fact, the District engaged in *multiple* transactions with Level 8,¹⁵¹ not just the one at issue, all under the misinformed (and uninformed) belief that Level 8 was an authorized vendor, when it never was. Ham admitted he learned about Level 8's ability to procure the Owl Labs' devices *from Marshall*.¹⁵² Ham confessed he did not independently check Level 8, acknowledging had he checked it, he would have easily seen it was not on state contract. Tellingly, Ham stated

¹⁴⁸ Foster testified that reviewing records with the South Carolina Secretary of State's office to vet a vendor was "what Mr. Twitty would do. That would be in his office as well." **Exh. 4**, Foster Dep. at 29:21-30:1. Foster also testified that he did not typically look at or see a business's articles of incorporation during the vetting process. *Id.* at 42:18-24.

Foster testified it would have been inappropriate for the District to do business with a company owned by an employee. **Exh. 4**, Foster Dep. at 68:22-69:4; *see also* **Exh. 3**, Ham Dep. at 38:18-24 ("Q: If you had seen this [Level 8 Articles of Incorporation of Level 8], would that have raised any red flags for you? A: Yes. Q: So would you all be allowed to use a vendor that was associated with an employee? A: No.").

See also **Exh. 13** (OWL_LABS_000321-323), Level 8 Articles of Incorporation; *Id.* at OWL_LABS_000324-325, Level 8's registered agent (David Marshall), filed September 19, 2019. *See also* **Exh. 4**, Foster Dep. at 43:9-20 (did not know Marshall was listed in Level 8's articles of incorporation).

¹⁴⁹ **Exh. 4**, Foster Dep. 29:21-30:1.

¹⁵⁰ **Exh. 8**, Twitty Dep. at 18:6-19:11 ("Q: [D]id you do anything to determine whether or not Level 8 had the available and appropriate financial material, equipment, facility, and personnel resources and expertise or the ability to obtain them? A: No, sir. I didn't go through that process to that in-depth. Q: Did you determine whether they had a satisfactory record of performance? A: I had no recollection that it was any problem with Level 8 from the end user. ... Q: Did you do any due diligence on Level 8? A: I had no reason to at that time[.]").

¹⁵¹ **Exh. 3**, Ham Dep. at 29:1-6; *id.* at 30:12-31:1.

¹⁵² *Id.* at 28:3-7.

had he known Marshall's involvement with Level 8 (an easy thing to check), the District would not have used it as a vendor.¹⁵³

Gist and Walley also confirmed the District could have checked Level 8's vendor number to confirm whether it was approved,¹⁵⁴ yet no one did. Superintendent Foster testified he "assume[d] Mr. Twitty would" check a vendor to see if it had a valid employer identification number "as part of his process."¹⁵⁵ Twitty did not. In reality, no one at the District checked Level 8's vendor number, which would have revealed the issues *before* it occurred.

These multiple levels of negligence destroys the credibility of the District's stated belief that its "safeguards" caught the issues that occurred.¹⁵⁶ Instead, the payment issue was only brought to the District's attention after Owl Labs proactively contacted the District to inquire about payment. After Owl Labs communicated with the District, Gail Sanders checked the payments to Level 8 (after the fact) and discovered "Marshall was the person that endorsed the checks."¹⁵⁷

When asked what the District could have done to avoid this situation, Daphne Walley testified: "I guess we could have made sure that all of our vendors were actually in the vendor file, were actually vetted as bona fide vendors."¹⁵⁸ But it failed to do so here.

B. The evidence supports Owl Labs' claim of negligent supervision and retention.

As a matter of law, the District had responsibility to ensure its employees were properly hired, retained, trained, and supervised. It failed in this responsibility at least by continuing to

¹⁵³ *Id.* at 29:22-24.

¹⁵⁴ **Exh. 5**, Gist Dep. at 68:12-22.

¹⁵⁵ **Exh. 4**, Foster Dep. at 24:2-7. Gail Sanders also testified that it was Twitty's responsibility to check whether Level 8 had a valid vendor number. **Exh. 6**, Sanders Dep. at 35:2-6.

¹⁵⁶ **Exh. 4**, Foster Dep. at 71:7-9.

¹⁵⁷ **Exh. 6**, Sanders Dep. at 19:23-20:1.

¹⁵⁸ **Exh. 7**, Walley Dep. at 49:25-50:4.

employ a criminal, permitting Marshall (without any supervision) to negotiate substantial transactions with third parties, and failing to train and supervise Marshall, and others, as to expenditure of the District's funds. *See James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330-331 (2008) ("In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.").

The District is liable to Owl Labs for its own negligence in failing to reasonably supervise and retain Marshall, and other employees, which caused Owl Labs to be injured. Negligent supervision is a tort action in which an employer may be held liable for the conduct of an employee, even when such conduct occurs *outside* the scope of employment. *Dennis v. Timmons*, 313 S.C. 338, 437 S.E.2d 138, 141 (Ct. App. 1993). Liability is not based on principles of agency, as when the employee is acting *within* the scope of employment.¹⁵⁹ Restatement (Second) of Torts § 317, cmt a (1965); *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292, 299 (1996); *Brockington v. Pee Dee Mental Health Ctr*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993).

To succeed on its claim for negligent supervision, Owl Labs must show that Marshall, as the District's employee, harmed Owl Labs and (1) the employee was on the premises of the employer or using a chattel of the employer, (2) the employer knows or has reason to know of the ability to control the employee, and (3) the employer knows or should know of the necessity and opportunity for exercising control. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d

¹⁵⁹ Plaintiff contends the relevant actions of Marshall and others were within the scope of their employment. Defendant claims the actions were outside of their scope of employment. *See Motion at ¶ 8.*

495 (1992); *Moore v. Berkeley County School District*, 326 S.C. 584, 486 S.E.2d 9, 12 (Ct. App. 1997); *Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993). All three elements are shown through the factual record in this case.

Marshall's conduct, as the District's employee, occurred while on District's premises or through use of the District's personal property, real property, and/or resources, i.e., electronic mail, computers, and other electronic devices. Marshall exclusively communicated with Owl Labs using his District-issued email address.¹⁶⁰ He asked Owl Labs to ship the Devices to the District's procurement warehouse¹⁶¹ and authorized registration of the Devices in Ham's name.¹⁶² Marshall introduced Owl Labs to other District employees whom Owl Labs communicated with, also using their District email addresses.¹⁶³ These employees knew or should have known of Owl Labs' involvement¹⁶⁴ in Marshall's procurement of the Devices on the District's behalf.

The District has the ability to control its employees, including Marshall. *Cf. Paschal v. Price*, 392 S.C. 128, 132, 708 S.E.2d 771, 773 (2011) ("Under South Carolina law, the primary consideration in determining whether an employer/employee relationship exists is whether the alleged employer has the right to control the employee in the performance of the work and the manner in which it is done. The test is not the actual control exercised, but whether there exists the right and authority to control and direct the particular work or undertaking." (internal quotation

¹⁶⁰ **Exh. 13** (OWL_LABS_00001, 00008-00009, 00020, 00031, 00035, 00069-00070).

¹⁶¹ *Id.* at OWL_LABS_000007. District's Procurement Officer, Greg Twitty, testified that it was "customar[y]" for the District to transact using a purchase order, admitting a purchase order "is a legal document." **Exh. 8**, Twitty Dep. 20:8-11.

¹⁶² **Exh. 14** (DEF 013963).

¹⁶³ **Exh. 13** (OWL_LABS_000020).

¹⁶⁴ **Exh. 4**, Foster Dep. 117:8-118:1; *id.* at 118:12-19 ("Q: So we have no less than five Orangeburg County School District employees who have full access to this e-mail string where David Marshall is acquiring the [Devices] directly from Owl Labs, do we not? A: We have three e-mail addresses, David Marshall, Address [Carter-Simms], and Quencenia [Dantzler], and it appears Taphnie [Sanders] and Eric [Ham]'s name are at the top.").

marks and citations omitted)). Despite the ability to do so, the District failed to control and supervise its employees in any meaningful manner, which led to the harm suffered by Owl Labs.

The District was aware that Marshall was purchasing the Devices for the District, which would necessarily involve negotiating with a third party and would eventually lead into a contract, including a payment obligation. These actions were neither criminal nor fraudulent, as the District suggests.¹⁶⁵ Rather, it is undisputed the District knew Marshall was purchasing the devices, it just failed to competently oversee the related financial transactions, which it has an obligation to do.

C. The record supports Owl Labs' negligence claim.

There is significant evidence to support Owl Labs' negligence claim, and the District's motion on this claim should be denied. To succeed on a claim for negligence, Owl Labs must show: (1) a duty of care, (2) a breach of that duty by a negligent act or omission, and (3) damages proximately resulting from the breach. *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). “[N]egligence is the failure to use due care,’ i.e., ‘that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances.’ It is often referred to as either ordinary negligence or simple negligence.” *Id.* (alteration by court) (quoting *Hart v. Doe*, 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973)).

1. The District owed Owl Labs a duty of care in multiple respects.

In its motion, the District first claims it owed no duty to Owl Labs.¹⁶⁶ This argument, however, is flawed in that it rest on the mistaken assumption that the contractual and other relationships and dealings between the parties should either be ignored or construed in the

¹⁶⁵ See *id.* at ¶¶ 2, 5.

¹⁶⁶ *Id.* at ¶ 7.

District's favor.¹⁶⁷ Based on principles of agency and/or *respondeat superior*, Marshall bound the District to a contractual relationship with Owl Labs. Through the actions of multiple other employees of the District—Superintendent Foster, Assistant Superintendent Carter-Sims, Procurement Director Twitty, and others¹⁶⁸—the District knew or should have known that Marshall was dealing with Owl Labs on its behalf.

In *South Carolina Insurance Co. v. James C. Greene and Co.*, 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986), the court explained the distinction between agency and *respondeat superior*. “Under the doctrine of *respondeat superior*, the principal is liable in addition to the agent, not by reason of his consent to be liable, but by operation of law.” *Id.* at 184, 348 S.E.2d at 624 (citing *Reynolds v. Witte*, 13 S.C. 5 (1879)). “This is most plainly illustrated in those cases where the agent acts against the express instructions of his principal, but within the scope of his employment: the principal is still liable.” *Id.* Here, the District contends Marshall acted contrary to its express instructions or misrepresented the party with whom he was contracting. However, even if true, these allegations do not change the fact that, as the District's employee, Marshall's actions within the course and scope of his employment remain legally attributable to the District, particularly where the District benefitted from those actions.

In South Carolina, “*respondeat superior* makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment.” *James C. Greene & Co.*, 290 S.C. at 179, 348 S.E.2d at 621. “An act falls within the scope of the servant's

¹⁶⁷ See *id.* at ¶¶ 1, 2, 5 (asserting the District never had a contract with Owl Labs, the Purchase Order was “fraudulent[ly] . . . issued without authority,” and Marshall's conduct was “unauthorized.”).

¹⁶⁸ **Exh. 4**, Foster Dep. 117:8-118:1; *id.* at 118:12-19 (“Q: So we have no less than five Orangeburg County School District employees who have full access to this e-mail string where David Marshall is acquiring the [Devices] directly from Owl Labs, do we not? A: We have three e-mail addresses, David Marshall, Address [Carter-Simms], and Quencenia [Dantzler], and it appears Taphnie [Sanders] and Eric [Ham]'s name are at the top.”)

employment if it was reasonably necessary to accomplish the purpose of the servant's employment, and it was done in furtherance of the master's business." *Wade v. Berkeley Cnty.*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998). Accordingly, "the master is liable for the torts of his servant even when the servant acts against the express instructions of his master, so long as the servant acts to further the master's business." *Id.* "What is within the scope of employment may be determined by implication from the circumstances of the case." *Id.* "Any doubt as to whether the servant was acting within the scope of his authority when he injured a third person must be resolved against the master, at least to the extent of requiring that the question be submitted to the jury." *Id.* Under these legal precedents, summary judgment to the District should be denied.

In *Froneberger*, 406 S.C. 37, 748 S.E.2d 625, the Court of Appeals reversed a grant of summary judgment as to the existence of an agency relationship as well as the scope of employment. *Id.* at 54, 748 S.E.2d at 633. Instead, as to employment, the Court found that "the proper question for the circuit court was whether Mrs. Smith's acts facilitating her husband's investment scheme were: (1) in furtherance of Euro's business and (2) reasonably necessary to accomplish the purpose of her employment" *Id.* at 53, 748 S.E.2d at 633. The Court found there were genuine issues of material fact on these points.

There are genuine issues of material fact as to whether Marshall was acting within the course and scope of his employment, as Media Communications Specialist, with the District in contracting for the Devices with Owl Labs. Through Ham, the District authorized Marshall to negotiate for and obtain 875 of the Devices from a third party.¹⁶⁹ Marshall's outreach to Owl

¹⁶⁹ *Id.* at 28:4-19; *see also* 34:13-35:6 (testifying "[Marshall] was always around or ... always kind of showed up. ... And he'd say, 'Hey, my buddy over at Level 8 can get these and they can get them at this price,' you know, whatever else. ... And, you know, he'd be like, 'I'll talk with him and find out and I'll let you know.' And then we would get an email from Zach [Mason].").

See also Exh. 15, Sentencing Hearing Transcript (June 7, 2022) at 6:7-15 ("Marshall was tasked with finding the Orangeburg School District cameras with which they could use to onboard into remote education

Labs,¹⁷⁰ communications and negotiations with Owl Labs,¹⁷¹ and contract with Owl Labs¹⁷² were all in furtherance of the District's business (of education) and facilitating the District's ability to conduct remote learning during the Pandemic.

Marshall's act of sending the Purchase Order was reasonably necessary to accomplish the purpose of his employment with the District. The District does not dispute that it received all 875 Devices and used them in its classrooms. These facts support that the District is bound by Marshall's conduct through the doctrine of *respondeat superior* in addition to the agency principles outlined above. Therefore, the District's motion for summary judgment as to the negligence and negligent retention and negligent supervision claims must be denied.

At a minimum, the District acknowledges it knew Marshall was communicating with and transacting with some third party to purchase these devices.¹⁷³ The District's knowledge of Marshall purchasing the devices from *any* third party (Level 8 or Owl Labs) invokes the District's duty and ability to exercise oversee and control of Marshall's communications, actions, inactions, and expenditure of public funds. The District authorized its employee to use nearly \$1 million in public funds to purchase the Devices, which invokes a duty on behalf of the District to verify the recipient of those funds and ensure payment was made to the appropriate entity. While the District

so that every teacher in a classroom could communicate remotely with all of her students who were at home around the country. Schools received federal funds to purchase products like this so they could facilitate distance learning. And so *the[] [District] asked Mr. Marshall to do that. And in doing that, he saw an opportunity to enrich himself.*") (emphasis added).

¹⁷⁰ **Exh. 13** (OWL_LABS_000316). *See also Exh. 1*, Smith Dep. at 29:23-30:7.

¹⁷¹ **Exh. 13** (OWL_LABS_00001, 00008-00009, 00020, 00031, 00035, 00069-00070).

¹⁷² *Id.* at OWL_LABS_000009. *See also Exh. 1*, Smith Dep. at 44:4-14. At that time, Marshall was undisputedly a District employee. *See Exh. 4*, Foster Dep. at 57:20-24. Foster conceded that the Purchase Order was sent to Owl Labs by Marshall using his District email account. *Id.* at 93:5-24.

¹⁷³ Motion for Summary Judgment at ¶ 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.").

has a right to refute this claim with evidence at trial, summary judgment is not appropriate as genuine issues of material fact exist in the record.

Further, the District owes Owl Lab a duty by virtue of the fact that it permitted its employee, Marshall, to communicate with a third party, Owl Labs, and in doing so owed Owl Labs an obligation to provide truthful information. *See Associated Receivables Funding, Inc. v. Dunlap, Inc.*, 443 S.C. 56, 905 S.E.2d 816 (Ct. App. 2024) (“The duty of care necessary for a negligent misrepresentation claim does not require a defendant to take every possible care, but it is a duty to use the care necessary to communicate truthful information.”) (citation omitted). The District’s own Procurement Code created an obligation on the District, through its employees, to ensure that inaccurate transactions with third party vendors do not occur. Due to District’s multiple failures to train its employees as to the rules of its own Procurement Code, multiple failures to supervise those responsible for carrying out the Procurement Code, and failure to verify transactions as reasonably necessary to meet the obligations of the Procurement Code, it is the District that created the circumstances which enabled Marshall’s actions to occur.

Because there is a genuine issue of material fact regarding the existence of the obligation between the District and Owl Labs, there is a genuine issue of material fact regarding the duty of care owed by the District to Owl Labs. *See McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 46, 644 S.E.2d 43, 47-48 (2007) (stating affirmative legal duty may be created by a contractual relationship); *Kennedy v. Columbia Lumber and Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (“If [the defendant] acts in a way as to violate a legal duty ... his liability is both in contract and in tort.”). Accordingly, the District’s position regarding the non-existence of any legal duty between it and Owl Labs must be rejected.

2. The District breached its duty of care to Owl Labs.

There are also genuine issues of material fact regarding the District's breach of its duty to Owl Labs. The District's conduct enabled the wrongdoing of its employee, Marshall, and negligence of its other employees. Had the District properly supervised Marshall, especially after knowing that Marshall had a criminal record while still employed by the District, and properly trained and enforced its procurement policies and procedures, Marshall would not have had the significant latitude which resulted in damages to Owl Labs. Moreover, had the District's employees simply read email communications sent to them, they would have discovered Marshall was contracting directly with Owl Labs before sending final payment, the one due to Owl Labs, to Level 8 for the Devices.

3. Owl Labs was harmed by the District's breaches of care.

The District's acts or omissions created the harm to Owl Labs. Owl Labs received a solicitation from the District, through Marshall, to purchase 875 Devices that the District needed to educate schoolchildren throughout Orangeburg County.¹⁷⁴ Owl Labs negotiated in good faith to facilitate remote education. Owl Labs agreed to substantial discounts¹⁷⁵ and waived shipping costs¹⁷⁶ which benefitted the District. Owl Labs expedited shipping in order to accommodate the District's request.¹⁷⁷ In response to multiple requests by Marshall, on the District's behalf and for its benefit, Owl Labs provided training and assisted with implementation of the Devices. This assistance was at the request of and for the benefit of the District.

¹⁷⁴ **Exh. 13** (OWL_LABS_000316). *See also* **Exh. 1**, Smith Dep. at 29:23-30:7.

¹⁷⁵ *See id.* at OWL_LABS_000001_000002; OWL_LABS_000003-000004. This discounted rate saved the District a total of \$157,342.50. *See also* **Exh. 1**, Smith Dep. at 37:24-39:19 (discussing quotation terms prepared by Smith for the District); *see also id.* at 33:24-34:2, 37:17-23, 43:15-23 (testifying it was common to provide a discount based on quantity of devices purchased and to expedite shipping for customers using CARES Act funding).

¹⁷⁶ **Exh. 13** (OWL_LABS_000034). The District saved an additional \$3,000 in costs that Owl Labs would have charged for an order this size.

¹⁷⁷ **Exh. 13** (OWL_LABS_000069-000070; OWL_LABS_000009).

The District's motion as to Owl Labs' claims for negligence and negligent supervision and retention must be denied. Genuine issues of material fact exist for trial on these claims.

D. The District is not immune from liability under the South Carolina Tort Claims Act.

The District claims it is immune from liability for negligence under the South Carolina Tort Claims Act ("SCTCA") because it cannot be held liable for *criminal* actions of employees taken outside the scope of employment and with actual malice and intent to harm.¹⁷⁸ Under the SCTCA, the government has the "burden of establishing a limitation upon liability or an exception to the waiver of immunity." *City of Hartsville v. S.C. Municipal Ins. & Risk Fin. Fund*, 382 S.C. 535, 549-50, 677 S.E.2d 574, 581-82 (2009).

Further, under the SCTCA, although the government entity may not be vicariously liable for certain types of egregious wrongdoing, *see* S.C. Ann. Code. §§ 15-78-60(17), -60(2), it may be liable for wrongful failure to prevent such wrongdoing. *See, e.g., Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990); *Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997). Here, there are genuine issues of material fact for trial as to the District's negligence in failing to prevent the very wrongdoing that damaged Owl Labs and the District (as well as taxpayers in Orangeburg County).

Based on the foregoing evidence of record, there are genuine issues of material fact for trial as to Marshall's conduct occurring within the course and scope of his employment, and at the direct authority of his superior, Eric Ham. Marshall's act of entering into a contract with Owl Labs was authorized, within the course and scope of his employment, and known to at least five other District employees, including an assistant superintendent (Andress Carter-Sims) and, eventually, Superintendent Foster himself. Marshall's act of contracting with Owl Labs was not, itself,

¹⁷⁸ Motion for Summary Judgment at ¶ 8.

criminal. Therefore, this allegation, which is at the heart of Owl Labs' claims, cannot be ignored. That Marshall, *after contracting*, absconded with the District's money does not change the fact that the District is legally bound by his prior *authorized* actions. Summary judgment should therefore be denied.

III. THERE ARE GENUINE ISSUES OF MATERIAL FACT SUPPORTING OWL LABS' EQUITABLE CLAIMS.

Owl Labs asserts claims in equity for unjust enrichment, quantum meruit, and quasi contract. The District asserts Owl Labs cannot establish the essential elements of any of its claims against the District, including quantum meruit.¹⁷⁹ However, for the reasons already set forth, Owl Labs' equitable claims should also survive summary judgment.

Quantum meruit allows recovery for unjust enrichment. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994). Quantum meruit and quasi contract are equivalent terms for an equitable remedy. *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). To succeed on its claim for quantum meruit, Owl Labs must show: (1) a benefit conferred upon the defendant by the plaintiff (2) realization of that benefit by the defendant (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying its value. *Id.*; *Swanson v. Stratos*, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). The elements are essentially the same as those applied in cases of unjust enrichment. *See, e.g., Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

The District does not and cannot dispute that it received all 875 Devices that it contracted for, that Owl Labs assisted the District in setting up and implementing the Devices in their classrooms, and that the District did use and benefit from the Devices for a period of time¹⁸⁰ after

¹⁷⁹ *Id.* at ¶ 4.

¹⁸⁰ **Exh. 5**, Gist Dep. at 37:20-38:4.

Owl Labs provided them. During November and December 2020, the District knew or should have known that its employee, Marshall, was communicating with Owl Labs regarding the Devices, including payment for the Devices and implementation of the Devices, with Owl Labs' assistance, at the District's schools. Yet, Owl Labs has not been paid. These circumstances mandate a remedy in equity based on the District's unjust enrichment.

CONCLUSION

The District is legally responsible under multiple theories for the contract negotiated and entered into by Marshall, on the District's behalf, with Owl Labs. Even if Marshall is found to lack authority (actual, implied or apparent) to bind the District, the District is responsible to Owl Labs under principles of negligence for its own failures to properly retain, train, and supervise Marshall and other employees who, through their negligence, enabled the fraud to occur. That the District *does not dispute* it received, used, and benefitted from the Devices makes it liable under principles of equity for unjust enrichment, quantum meruit, or quasi contract. The District's negligent payment to Marshall, through Level 8 (instead of Owl Labs), and its own failure to catch the perpetrator who was on its payroll, does not negate its responsibility. Owl Labs respectfully requests that the Court deny the District's Motion for Summary Judgment.

Respectfully submitted,

s/Lyndey R. Z. Bryant

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March 5, 2025.

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) C/A NO: 2022-CP-38-01363
 3
 4 Owl Labs,)
 5 Plaintiff,)
 6 v.)
 7 Orangeburg County School)
 8 District,)
 9 Defendant.)

11 DEPOSITION OF
 12 WILLIAM V. SMITH

13 *****

14 Friday, April 26, 2024

15 11:46 a.m. - 1:08 p.m.

17 The deposition of WILLIAM V. SMITH was taken
 18 before Andrea R. Taylor, a notary public in and for the
 19 State of South Carolina, commencing on Friday, April
 20 26, 2024, via Zoom video conference, pursuant to Notice
 21 of Deposition.

Page 2

1 APPEARANCES

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1 INDEX

2 Stipulations 3
 3 Examination by Ms. Fittipaldi 4
 4 Signature Sheet 5
 5 Certificate 5

8 * * * * *

9 EXHIBITS

10 Defendant's Exhibit Number 1 5
 11 (Products & Services; emails; Purchase Order;
 12 Exemption Certificate; Invoice)

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1 STIPULATIONS

2 It is stipulated by and between counsel
 3 for the respective parties that all objections
 4 are reserved until the time of trial, except as
 5 to the form of the questions.

6 This deposition is being taken pursuant
 7 to the South Carolina Rules of Civil Procedure.

8 - - - -

9 The reading and signing of this
 10 deposition is reserved by the deponent and
 11 counsel for the respective parties.

12 - - - -

13 Whereupon,

14 WILLIAM V. SMITH, being duly sworn and cautioned
 15 to speak the truth, the whole truth, and nothing
 16 but the truth, testified as follows:

17 EXAMINATION

18 BY MS. FITTIPALDI:

19 Q. Good morning, Mr. Smith.

20 A. Morning.

21 Q. I had to check the time to see if we're still
 22 morning or if it was afternoon. My name is
 23 Susan Fittipaldi. I'm an attorney with a law
 24 firm here in Columbia, South Carolina, called
 25 Halligan, Mahoney and Williams. And we

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WILLIAM V. SMITH

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1 deposition?

2 A. Just the ones that were also giving depositions.

3 Q. Who did you talk to?

4 A. Yesterday, Kaylin and I had a call with our

5 attorneys.

6 Q. Okay. Any calls without attorneys present?

7 A. No, no calls.

8 Q. And regarding the lawsuit, again, I don't need

9 to know and I'm not going to ask you any

10 conversations you've had with the attorneys, but

11 regarding the lawsuit that has been filed, who

12 have you spoken to at Owl Labs about the lawsuit

13 itself?

14 A. One of -- one of my colleagues asked if I could

15 be on a call this afternoon, and I just said I

16 had a deposition, but I didn't talk about the

17 specific details of the lawsuit or any details.

18 Q. Okay. What about prior to today? I mean, did

19 you ever discuss the lawsuit with Owl Labs

20 colleagues?

21 A. Not the lawsuit itself. I think there were

22 conversations that took place after the Zoom

23 call, just like the severity of the event, but

24 not specific to the lawsuit.

25 Q. And when you say the Zoom call, you're talking

Page 14

1 about the one that was recorded and involved

2 yourself and the superintendent of the school

3 district as well as another gentleman from --

4 A. Yes.

5 Q. I forget his name, but okay. All right. And

6 that would have been a while ago, correct?

7 A. Correct.

8 Q. Okay. You told me about your current position.

9 Can you tell me what your salary is currently?

10 A. \$75,000.

11 Q. Okay. And is that your base salary plus a

12 commission, or is that your base and then you

13 earn an additional commission?

14 A. That's my base salary.

15 Q. Okay. What about commissions? Do you earn

16 commissions?

17 A. Yes. It's based on an annual targeted number.

18 Q. And what is your annual targeted number for this

19 year?

20 A. I believe it's over -- it's like 2.1 million.

21 Q. So that would be in sales?

22 A. Yeah, to my associated partners that I'm

23 assigned to. So, like, resellers.

24 Q. Explain that to me. You said your associated

25 partners?

Page 5

1 A. Yeah. So I work in channel sales, so my

2 partners that I work with are partners like CDW,

3 SHI, Insight. So my job is to train those sales

4 reps for those partners that sell on our behalf,

5 and when they make sales, that attributes to my

6 total number.

7 Q. Do you do any direct sales to customers yourself

8 in your current position?

9 A. No.

10 Q. Okay.

11 A. I have conversations with customers, but I don't

12 -- I don't -- I'm not involved in any direct

13 sales with Owl Labs.

14 Q. Okay. Going back to when you were first hired,

15 you said you were hired in July of 2020; is that

16 right?

17 A. Uh-huh. Yes.

18 Q. Okay. And you were an account executive; is

19 that right?

20 A. Yes.

21 Q. Who was your supervisor at that time?

22 A. Kaylin McNamara.

23 Q. Okay. And did you work on a team with anyone

24 else?

25 A. At that time, it was a smaller team. I believe

Page 6

1 there was one other gentleman that handled kind

2 of our small business and commercial customers.

3 So it was him, myself, and Kaylin on the inside

4 sales.

5 Q. And can you explain what you mean by inside

6 sales?

7 A. Inside sales, meaning we were directly selling

8 to our customers.

9 Q. All right. So your team consisted of yourself,

10 another gentleman, and your supervisor, Kaylin

11 McNamara?

12 A. Yeah. And there may have been a few other

13 people. I'm not really sure of the timeline on

14 when the others joined. When I started, though,

15 it was myself and Kaylin, and then three months

16 later, Bob joined. So there was three of us for

17 a good six months, five to six months.

18 Q. So Bob joined three months after you?

19 A. Give or take three months, yeah.

20 Q. Was he working with you at the time that you

21 were communicating with David Marshall in

22 October of 2020?

23 A. No, I was handling all of the higher ed and K

24 through 12 deals at that time.

25 Q. Tell me a little bit more about that. You were

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WILLIAM V. SMITH

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1 assigned those types of customers?
 2 A. Yeah, during COVID a lot of our customers were K
 3 through 12 and higher ed. So kind of the
 4 schools that would come in, I would take charge
 5 on those.
 6 Q. Okay. Prior to October of 2020 when you began
 7 communicating with David Marshall, how many K12
 8 public school districts did you work with in
 9 terms of sales?
 10 A. I'm not exactly sure.
 11 Q. Would it have been just a few or ten or 20 or
 12 100? I mean, you'd only been with Owl Labs for
 13 about three months at that point; is that right?
 14 A. In October?
 15 Q. Yeah.
 16 A. Yeah. I would say in the hundreds.
 17 Q. So a lot?
 18 A. Yeah.
 19 Q. Okay. And back then -- we talked a little bit
 20 about your salary now, but back then in October
 21 of 2020, as an account executive, what was your
 22 salary?
 23 A. \$60,000.
 24 Q. Okay. And what was the commission potential
 25 that you had?

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1 A. I mean, can you elaborate?
 2 Q. I guess, can you explain to me how your
 3 commission worked?
 4 A. Yeah. I mean, there was -- if I hit my target
 5 annual goal, there was an additional \$60,000 if
 6 I met my target. And then obviously, you could
 7 exceed your target and there were, you know,
 8 added multipliers, I guess.
 9 Q. And was that assessed quarterly?
 10 A. At the time, it was quarterly, I believe.
 11 Q. Would you have had -- at the point of October of
 12 2020, had you already had one quarterly sort of
 13 commission payment, or had that not happened
 14 yet?
 15 A. I don't remember.
 16 Q. Okay.
 17 A. I know there is a ramp up period. So I'm not
 18 sure.
 19 Q. What does that mean?
 20 A. In sales, like the first, I believe it was the
 21 first month or two, you're still not -- you're
 22 not forced to hit a specific quota.
 23 Q. Yeah. Did you have monthly quotas that you were
 24 supposed to hit?
 25 A. They were quarterly quotas at the time.

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1 Q. Do you have any recollection of what your
 2 quarterly quotas were back in 2020?
 3 A. No.
 4 Q. Would it have been units quota, units of the
 5 product, or would it have been revenue?
 6 A. It's always been revenue, dollar amount.
 7 Q. Okay. Do you know what your -- do you still
 8 have quarterly quotas?
 9 A. No. Well, we have quarterly numbers, but we
 10 have monthly quotas.
 11 Q. Okay. What is your monthly quota now?
 12 A. It varies based on the quarter, but it's
 13 somewhere in the ballpark of anywhere from
 14 800,000 to a million.
 15 Q. To the best of your recollection, would your
 16 quarterly quotas have been less than that when
 17 you first started or during the first quarter of
 18 2020 that you were working?
 19 A. I don't know.
 20 Q. Okay. So your supervisor was Ms. McNamara. Do
 21 you know who supervised her, if you know?
 22 A. Not at the time.
 23 Q. Okay. When you came on board at Owl Labs, what
 24 training did you receive?
 25 A. There was a lot of like -- you know, that was in

Page 20

1 the middle of COVID so it was a lot of like
 2 learn the best by kind of sharing screens on
 3 Zoom and watching what Kaylin was doing,
 4 watching what some other colleagues were doing
 5 and asking them questions as they kind of went
 6 through their day to day, hopping on demos.
 7 Q. So sort of on-the-job training? No pre-
 8 employment training or anything like that?
 9 A. No.
 10 Q. Okay. And since you brought up this was during
 11 the time of COVID, where were you physically
 12 working at the time? Were you working remotely
 13 from your home or at some office building?
 14 A. I was at home.
 15 Q. At any point, did you, I guess, go from working
 16 remotely to working in an office anywhere, or
 17 have you always worked remote?
 18 A. Yeah, I'd go into the office sometimes during
 19 COVID. I would say the majority of time, I was
 20 home.
 21 Q. Where is the office located?
 22 A. In Boston, Massachusetts.
 23 Q. Do you have any recollection at the time in
 24 October of 2020 how many employees worked in
 25 Boston?

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WILLIAM V. SMITH

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1 A. Not in Boston. We're always been a hybrid
2 company, so a lot of our employees are remote.
3 Q. Do you work remotely now, or do you go to work
4 in person at an office?
5 A. I work remotely.
6 Q. Okay. Prior to your interactions with David
7 Marshall, what -- if you recall, what was the
8 largest sale you had had up till that point?
9 A. I don't recall.
10 Q. Was that your largest sale at the time?
11 A. No.
12 Q. What was a typical sale in terms of revenue?
13 A. Like typical, do you mean like average deal size
14 or --
15 Q. Yeah. Yeah.
16 A. I don't know. At that time, it varied. You
17 know, we were processing quite a few orders a
18 day, but anywhere from, you know, one to two to
19 2000. The average I would say was like two, two
20 to five.
21 Q. In revenue 2000 to 5000?
22 A. Two to five units, so.
23 Q. Oh, two to five units?
24 A. Yeah, so around 2000 to \$5,000.
25 Q. Okay. And that's because each unit costs

Page 22

1 approximately \$1,000?
2 A. Correct.
3 Q. Okay. Would you characterize the sale that you
4 negotiated with David Marshall as one of your
5 larger sales?
6 A. Yes.
7 Q. Okay. And you said you, I don't know if this is
8 right, but you were assigned or you handled the
9 educational sales; is that right?
10 A. Yes.
11 Q. What other kinds of customers would you be
12 assigned to respond to?
13 A. That are not schools?
14 Q. Yeah. Or was that your only type of customer?
15 A. Yeah, I mean, at the time, there were so many
16 schools in need and that had funding that that
17 was the only thing I was focused on at the time.
18 Q. Okay. And can you just walk me through your
19 typical purchasing process?
20 A. How do you mean?
21 Q. Back then with your educational clients that you
22 were working with, what would be the typical
23 process for them to purchase some items from
24 you?
25 A. Yeah, it depended how they -- how they came in.

Page 23

1 If it was an email through, you know, our
2 generic sales inbox, I would reach out and set
3 up a call. I would verify the person, entity,
4 and then gather my advancee or budget authority,
5 timing, need and competition, get those notes
6 and -- and then quote them out what they needed
7 based on those notes.
8 Q. What do you mean competition?
9 A. If they were looking at any other competition.
10 Q. Okay. And who was your competition back then?
11 A. Back then, there really wasn't many. There was
12 a company called Swivel that did something
13 similar. We've always been competing against
14 the giants like Logitech and others.
15 Q. Tell me a little bit about the Owl Labs product.
16 And I know that there's a couple of different --
17 how you would describe it, I guess, types of
18 product. There's an Owl Lab Meeting Pro and
19 other ones. Tell me the products.
20 A. The products now or the products then?
21 Q. Back then.
22 A. Back then we had I believe it was just a Meeting
23 Owl Pro.
24 Q. Okay.
25 A. 360 degree camera, speaker, microphone. I'm not

Page 24

1 sure if we had some of the other products out
2 yet. But that was the flagship product and most
3 common.
4 Q. All right. And so when you say there wasn't
5 really a lot of competition, you're talking
6 about for the specific kind of specs that that
7 product would provide; is that right?
8 A. That's right.
9 Q. Okay.
10 A. Webcams -- but not specific to what we do.
11 Q. And in working with the educational entities,
12 would you normally require that they would have
13 to pay in full prior to shipping?
14 A. That was the -- the general practice, although
15 with public schools, we negotiated payment terms
16 often.
17 Q. And why is that?
18 A. Typically, during that time, a lot of schools
19 were using CARES Act funds where, you know, they
20 were granted money from the federal government
21 more than their typical budget. So, you know,
22 it wasn't out of the ordinary for a school
23 district to purchase and ask for half up front
24 or not be able to fulfill a 100 percent
25 prepayment.

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Page 25

1 Q. Would you have needed to gain or request
2 permission from someone else in the company if a
3 customer wanted to not pay in full prior to
4 shipping?
5 A. Yeah, I would typically reach out to someone at
6 the company.
7 Q. Who would that be?
8 A. I would loop in Kaylin and our finance team most
9 likely.
10 Q. And who's the finance team? Or who was the
11 finance team at the time back in October of
12 2020, if you recall?
13 A. Did you freeze?
14 Q. Did I freeze? No. Uh-oh, Bill? Oh, no. Bill's
15 frozen.
16 MS. BRYANT: Let's go off the record for
17 a second.
18 (Off the Record)
19 BY MS. FITTIPALDI:
20 Q. There he is.
21 A. Sorry about that.
22 Q. No problem. Totally understand. But now I'm
23 thrown because you're in a different quadrant of
24 the screen so --
25 A. Everyone is. Yeah, I don't know, somehow it

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1 jumped to the wrong wifi and I lost you.
2 Q. It's okay. Oh, you had said something about the
3 finance team. Do you recall who was the finance
4 team back in October 2020?
5 A. No. I know Kim was likely associated.
6 Q. Kim?
7 A. Yeah, Kim Gaughan.
8 Q. How do you spell that last name?
9 A. G-A-U-G-H-N, I think, something like that.
10 Q. Oh, gotcha. I've seen that name. Okay. So if
11 you were going to offer -- well, I guess, would
12 you offer to a district or would you wait for
13 them to ask you if they could not pay in full
14 prior to shipping?
15 A. That would most likely be brought up by the
16 customer, in most instances. And then I would
17 probably put in a Slack channel with the
18 associated people I mentioned and say, like, can
19 we agree to this terms?
20 Q. Okay. Do you recall, Mr. Smith, any of the
21 other public school districts that you had made
22 sales to between July of 2020 and October of
23 2020?
24 A. Not -- I mean, there were -- there were
25 hundreds.

Page 7

1 Q. Hundreds, okay. Any in South Carolina?
2 A. I don't -- I'm not sure.
3 Q. What about other public entities, had you sold
4 to any other public entities in the state of
5 South Carolina? I'm talking -- when I say a
6 public entity, I mean, like a local government
7 or a state government agency or anything like
8 that?
9 A. I'm not sure.
10 Q. Okay. At the time of your communications with
11 David Marshall in October of 2020, were you
12 aware of school -- generally, school district,
13 public school district's procurement policies
14 and procedures and rules?
15 A. How do you mean?
16 Q. Were you aware of the fact that most public
17 school districts operate under a procurement
18 policy?
19 MS. BRYANT: Object to the form. You can
20 answer if you know.
21 A. Sorry, I didn't hear that.
22 Q. You can answer.
23 MS. BRYANT: Yeah, you can answer. I
24 just objected to the form of the question, but
25 you can answer if you know.

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1 A. I think each public school had a different
2 purchasing process. That was typically, you
3 know, a reason to jump on a call to find out
4 what that process was like.
5 Q. And prior to your dealing with David Marshall,
6 what was your general understanding of
7 procurement policies with regard to public
8 school districts?
9 A. Well, at this time, it was different because of
10 the government funding folks are getting. So a
11 lot of my questions revolved around that.
12 Q. When you say your questions revolved around
13 that, you mean your questions with whoever your
14 contact was at the school district?
15 A. Uh-huh. Yes.
16 Q. Okay. Did you have an understanding or were you
17 aware of the fact that public school districts
18 typically would require a request for proposal
19 or an RFP for purchasing of products?
20 MS. BRYANT: Object to the form. You can
21 answer if you know.
22 A. It wasn't common at Owl Labs to see many RFPs.
23 Q. But you were aware of what an RFP was generally?
24 A. I had dealt with RFPs at my former job. But
25 handling hundreds of schools, I hadn't really

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1 seen any RFPs at the time, even four years in.

2 Q. Were you aware of any school districts that you

3 worked with about vendors generally being on or

4 needing to be on a state-approved vendor list?

5 A. There -- one or two instances.

6 Q. Prior to your dealings with David Marshall?

7 A. I don't know.

8 Q. Okay. And what was your understanding in

9 October of 2020 about whether school districts

10 in general were tax exempt from a purchase such

11 as this?

12 A. Yeah, I would say most of the public school

13 districts that were purchasing from Owl Labs

14 were tax exempt. So that was a common practice

15 to ask if they were tax exempt and if they had a

16 letter of tax exemption.

17 Q. All right. So, and again, I understand that a

18 lot of this was almost four years ago, but to

19 the best of your recollection, you were

20 contacted, or Owl Labs was contacted by David

21 Marshall; is that right?

22 A. I believe so.

23 Q. Okay. Do you recall how that contact first

24 occurred, or how he initiated contact?

25 A. I believe it was through our email sales at

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1 Owlabs.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

Page 1

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.

Page 2

1 that's great.

2 Q. Okay. Mr. Smith, what I'm showing you on the

3 screen is some email exchanges, a chain. The

4 Bates stamp is on the bottom right, it says Owl

5 Labs 76. That's just how we keep track of

6 records that are shared in discovery through the

7 litigation process. And you'll see the bottom

8 of that page that there's a date, Friday,

9 October 23rd, 2020, at 2:02 p.m. And you wrote

10 to David Marshall, Thanks for reaching out to

11 Owl Labs today. I'd love to hop on a call with

12 you. I'm sort of paraphrasing. Time for a

13 quick call today, you ask him.

14 MS. FITTIPALDI: And then if you don't

15 mind, scroll back up, Andie, just a little bit.

16 Okay. That's great.

17 Q. And then he responds that he was available, says

18 howdy. And he gives a telephone number, and

19 there's his signature. Do you see that there?

20 A. Yep. Yes.

21 Q. And his signature is David Marshall,

22 Communications, Business and Community

23 Partnerships; do you see that?

24 A. Yes.

25 Q. Okay. And were you at all concerned seeing his

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1 signature line that he was with that department
2 at the Orangeburg County School District and not
3 in finance or procurement or anything like that?

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

6 A. No, I worked with communication directors
7 before, especially dealing with the schools. I
8 mean, sometimes I'd be talking to teachers. So
9 it wasn't a red flag.

10 Q. But when you were talking to teachers, were they
11 making a purchase with close to a million
12 dollars?

13 MS. BRYANT: Object to the form. You can
14 answer.

15 A. I don't remember. Probably not.

16 Q. Okay. And then a little bit higher in that
17 chain -- thanks, there you go -- he reaches out
18 to you again and asks about a quantity discount;
19 do you see that?

20 A. Yeah.

21 Q. Okay. Did you -- did you respond to him about a
22 quantity discount; do you recall?

23 A. I don't, but that was common.

24 Q. Okay. I guess that was my next question. Would
25 you commonly provide some sort of discount based

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

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Page 6

1 on quantity purchases?

2 A. Yes.

3 Q. Okay.

4 MS. FITTIPALDI: And then, Andie, can you
5 go up to the next page? Thank you. Keep going
6 up. Yeah, we'll, look at the highlighted
7 communication there.

8 Q. Okay. Mr. Smith, can you see what's highlighted
9 there on the screen?

10 A. Yes.

11 Q. All right. And that's an email from David
12 Marshall, again, on October 23rd, 2020. And he
13 asks, "Are you able to facilitate our purchase
14 order process? I know for sure that they won't
15 pay in advance for the products." And was that
16 sort of normal, as you said earlier, with some
17 school districts that they wouldn't pay in full
18 prior to shipping?

19 A. Yes.

20 Q. So that didn't raise any concerns for you that
21 he was asking for that?

22 A. No.

23 Q. Okay. After he reached out to you on October
24 23rd, 2020, you said you looked at his LinkedIn
25 profile?

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

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1 of the sale?

2 A. What do you mean approve?

3 Q. Would your supervisor have to approve of the

4 sale of these items, the 875 units?

5 A. I'm not sure.

6 Q. Would she have to approve of the discount that

7 you offered?

8 A. I'm not sure.

9 Q. Okay. So at that time, do you recall having the

10 authority to discount the price of those units?

11 A. Yeah, up to a certain point. I don't recall

12 exactly what it was.

13 Q. Okay. And David Marshall indicated to you that

14 the District wanted 875 units delivered by

15 December 10th; does that sound about right?

16 A. That sounds about right.

17 Q. Okay. Would that have been out of the ordinary

18 in terms of the turnaround time to deliver that

19 order?

20 A. No, it was pretty consistent with what we were

21 hearing with the CARES Act. I know most folks

22 needed product in hand before the end of

23 December, so it was pretty ordinary.

24 Q. Okay. And do you recall sending him a quote for

25 that purchase?

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1 A. Not the specifics of the quote, but I --

2 Q. Okay. We have a copy of it, so I'm going to

3 show it to you just to refresh your

4 recollection.

5 MS. FITTIPALDI: It's the first couple

6 pages, Andie.

7 Q. Okay. Mr. Smith, this is Bates stamped Owl Labs

8 3 and 4. It's a two-page document. Looks like

9 it was prepared on October 23rd, 2020; do you

10 see that at the top?

11 A. Yes.

12 Q. Would you have prepared this document?

13 A. Likely, yes.

14 Q. Who else would have prepared it?

15 A. This specific document, I -- it was me.

16 Q. Okay. And this indicates that Mr. Marshall

17 inquired about or wanted Meeting Owl Pro, 875

18 units, correct?

19 A. Correct.

20 Q. And there's a strikethrough for the price of

21 999.00, and that's to indicate that there was a

22 discount provided; is that right?

23 A. Correct.

24 Q. Okay. And the discount there is 179.82, I guess

25 that's per unit?

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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

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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

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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.

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1 Q. Would you normally include shipping on a quote

2 like this?

3 A. I don't -- I don't remember, honestly.

4 Q. Okay. All right.

5 MS. FITTIPALDI: Sorry, Andie, can you go

6 back to that email, Owl Labs 35. There we go.

7 Q. Okay. So going back to this email from Ms.

8 McNamara where she says she overlooked the

9 freight charges, she says, "I'm checking with

10 our team to see if there will be any charges."

11 Do you know who she's referring to there when

12 she says, "I'm checking with our team"?

13 MS. BRYANT: Object to the form. You can

14 answer if you know.

15 A. Not sure.

16 Q. Okay.

17 MS. FITTIPALDI: Andie, do you mind

18 scrolling up to the top of that page? Okay.

19 That's good, actually. That's fine.

20 Q. And do you recall this email from David Marshall

21 in response, again, on October 20th, 2020, at

22 6:16 p.m. where, essentially, he complains that

23 he can't, you know, pay any more than what was

24 quoted in terms of shipping; do you see that?

25 A. Yeah.

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1 Q. Do you recall that email coming in?

2 A. Yes.

3 Q. Okay.

4 MS. FITTIPALDI: Andie, can you scroll

5 down? We'll go to Owl Labs 34.

6 Q. Okay. And then Ms. McNamara responds to that

7 complaint email from David Marshall saying, "Hi,

8 David. You're right in that it is unacceptable

9 and I apologize for that. Too many crossed

10 wires on our end and we're moving too quickly to

11 try and meet the impending deadline." Was this

12 sale going through quicker than a normal sale

13 would have been at this time?

14 A. No.

15 Q. Okay. Do you know what she's referring to when

16 she says we're moving too quickly to try to meet

17 the impending deadline?

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

19 answer if you know.

20 A. I think, you know, with CARES Act having a hard

21 deadline, many, many deals were coming in at

22 that time that needed ship -- shipping to be

23 completed by end of the year.

24 Q. Okay. And then it appears that on October 28th,

25 you received from David Marshall a purchase

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1 order.

2 MS. FITTIPALDI: That's the next page,

3 Andie, if you can scroll down.

4 Q. This is Owl Labs Bates stamp number 40. Do you

5 recall receiving this purchase order?

6 A. Yes.

7 Q. Okay. And this would have come to your

8 attention?

9 A. Yes.

10 Q. Okay. And this was from David Marshall?

11 A. I believe so.

12 Q. It was sent to you from David Marshall, is my

13 question, I guess?

14 A. I believe so, yes.

15 Q. Okay.

16 MS. FITTIPALDI: Could you scroll down

17 just a little bit more, Andie? Thanks.

18 Q. And you see that it says approval signatures; do

19 you see that signature there?

20 A. Yes.

21 Q. Okay. Do you know who that is, whose signature

22 that's supposed to represent?

23 A. At the time, did I know?

24 Q. Yeah.

25 A. I don't believe so.

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1 Q. Okay. Do you know who that signature is for?
 2 A. Yes.
 3 Q. Okay. Who is that?
 4 A. Greg Twitty, 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?

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1 A. Yeah.
 2 Q. You would have talked to her after the purchase
 3 was completed; is that right?
 4 A. Yeah, I don't -- I'm not sure.
 5 Q. You don't have any communications with her
 6 regarding the purchase, per se, of the Owl Labs
 7 products, correct?
 8 MS. BRYANT: Object to the form. You can
 9 answer.
 10 A. I'm not sure.
 11 Q. Okay.
 12 MS. FITTIPALDI: Can you scroll down one
 13 page, Andie.
 14 Q. Mr. Smith, I'm going to show you what's been
 15 marked as Owl Labs 199, 200, this first page
 16 here. Did David Marshall send this document to
 17 you, Mr. Smith?
 18 A. I believe so.
 19 Q. Okay. And this is what looks to be a form from
 20 the State of South Carolina Department of
 21 Revenue Exemption Certificate for Sales and Use
 22 Tax; do you see that?
 23 A. Yes, I do.
 24 Q. Okay. And the signature on this document also
 25 looks like Greg Twitty; would you agree?

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1 A. I would, yes.
 2 Q. Okay. And the date of it is October 29th, 2020?
 3 A. Yes.
 4 Q. Okay. Did you in any way sort of investigate or
 5 look into the accuracy of this exemption
 6 certificate?
 7 A. No, that wasn't something I would typically do.
 8 Q. Okay. You would just get the certificate and
 9 take it at face value, and then pass it along to
 10 someone else?
 11 A. I would store it in --
 12 MS. BRYANT: Object to the form. You can
 13 answer.
 14 A. We had a -- I don't even know what it's called
 15 -- Gmail or Google folder hard drive where we
 16 kept and stored our tax exemption forms. And
 17 then we would send that to our operations team.
 18 Q. But you wouldn't scrutinize the form typically?
 19 A. No, that wasn't my job.
 20 Q. Okay. Do you see what he checked off there on
 21 the form in terms of, you know, the exemption
 22 that he was applying to the sale?
 23 A. Yes.
 24 Q. Okay. And what exemption did he check as
 25 applicable?

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1 A. You want me to read it?
 2 Q. Yes, please.
 3 A. "Textbooks, books, magazines, periodicals,
 4 newspapers, and access to online information
 5 systems using a course of study in primary and
 6 secondary schools and institutions of higher
 7 learning for students use in the school library
 8 of these schools and institutions."
 9 Q. And do the Owl Meeting Pros, based on your
 10 understanding of the product and this exemption,
 11 do they fit within that exemption?
 12 MS. BRYANT: Object to the form. You can
 13 answer.
 14 A. I'm not sure.
 15 Q. Okay. Would you have provided this form to your
 16 supervisor or just, as you said, kind of
 17 forwarded it on to wherever it needed to go?
 18 A. I may have cc'd her on the -- any messaging or
 19 email. I'm not sure.
 20 Q. Okay. And then it appears that you sent an
 21 invoice to David Marshall,
 22 MS. FITTIPALDI: And that's, if you
 23 scroll down, Andie, the next two pages.
 24 Q. And these are Bates stamp DEF 102 and 103. Is
 25 this something that you would have emailed to

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Exhibit 2
KAYLIN N. MCNAMARA

Page 1

Page 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) C/A NO: 2022-CP-38-01363
3
4 Owl Labs,)
5 Plaintiff,)
6 v.)
7 Orangeburg County School)
8 District,)
9 Defendant.)

10
11 DEPOSITION OF
12 KAYLIN N. MCNAMARA
13 *****
14 Friday, April 26, 2024
15 10:01 a.m. - 11:20 a.m.
16
17 The deposition of KAYLIN N. MCNAMARA was
18 taken before Andrea R. Taylor, a notary public in and
19 for the State of South Carolina, commencing on Friday,
20 April 26, 2024, via Zoom video conference, pursuant to
21 Notice of Deposition.
22
23
24
25

Page 2

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12 Exemption Certificate; Invoice)
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15
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21
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25

Page 4

1 **STIPULATIONS**
2 **It is stipulated by and between counsel**
3 **for the respective parties that all objections**
4 **are reserved until the time of trial, except as**
5 **to the form of the questions.**
6 **This deposition is being taken pursuant**
7 **to the South Carolina Rules of Civil Procedure**
8 **----**
9 **The reading and signing of this**
10 **deposition is reserved by the deponent and**
11 **counsel for the respective parties.**
12 **----**
13 **Whereupon,**
14 **KAYLIN N. MCNAMARA, being duly sworn and**
15 **cautioned to speak the truth, the whole truth,**
16 **and nothing but the truth, testified as follows:**
17 **EXAMINATION**
18 **BY MS. FITTIPALDI:**
19 **Q. Good morning, Ms. McNamara.**
20 **A. Good morning.**
21 **Q. My name is Susan Fittipaldi. I'm an attorney**
22 **with Halligan Mahoney and Williams. We're in**
23 **Columbia, South Carolina, and we represent**
24 **Orangeburg County School District in a lawsuit**
25 **that Owl Labs has filed against it. I am going**

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KAYLIN N. MCNAMARA

Page 21

1 reported to Josh Allen?
 2 A. Yeah.
 3 Q. Is there someone else you might have reported
 4 to? You seemed kind of hesitant about that.
 5 A. No. So this is how it went. I got hired in
 6 March of that year, and I was working directly
 7 for -- long story short, it's basically a flat
 8 hierarchy and we communicated amongst each other
 9 a lot. And there was not a lot of structure, if
 10 you can sort of understand.
 11 Q. Okay. Yeah.
 12 A. I believe technically my boss when I first
 13 started was Karen Rubin, who was then our CRO.
 14 She left at some point. I don't recall when.
 15 Josh came on board, I want to say, August of
 16 that year, give or take. And I think that's
 17 when I started directly reporting to him.
 18 Q. Was your commission in any way related to sales
 19 that were made by the people that you
 20 supervised, either Bill Smith or Bob Simonton?
 21 A. Yes. Yes.
 22 Q. In what way?
 23 A. My revenue number was their revenue numbers
 24 combined, if I recall correctly.
 25 Q. So is that because they were doing the more

Page 22

1 direct sales with purchasers and you were
 2 supervising them?
 3 A. Well, as a sales leader, you typically do not
 4 sell directly yourself.
 5 Q. Right.
 6 A. You oversee and coach individual contributors,
 7 reps, to do that work.
 8 Q. Okay.
 9 A. And then you do other strategic things as well.
 10 At that time, I probably was still selling
 11 directly myself because of volume. We had so
 12 many leads and people needed so much help that
 13 all three of us were selling. But technically,
 14 I was their boss. I was responsible for their
 15 numbers, and the combination of any of the three
 16 of us selling got us to the revenue number.
 17 Q. And in context, because this is you had a large
 18 number of people interested in your product
 19 because it was COVID?
 20 A. Correct.
 21 Q. And I guess just for the record, Owl Labs
 22 produces -- why don't you explain to me your
 23 main product.
 24 A. Sure. We produce video conferencing hardware,
 25 really intelligent, if you will, video

Page 23

1 conferencing hardware that helps create a better
 2 more immersive experience for hybrid meetings.
 3 Q. When did the company start selling their
 4 products; do you know?
 5 A. I believe the first product was sold in 2017.
 6 Q. Okay. So in October of 2020, it wouldn't have
 7 been your regular duties to be making direct
 8 sales; is that right? Or maybe it was partly
 9 because of the demand for --
 10 A. I believe it was partly.
 11 Q. Okay. Back in October of 2020, what would have
 12 been, like, your largest sale?
 13 A. To date by that point, or in that month?
 14 Q. Well, prior to dealing with David Marshall, what
 15 had been your largest sale?
 16 A. San Jose Unified School District.
 17 Q. And what was the amount of that sale?
 18 A. I don't recall the revenue exactly, but it was
 19 something like 1200 units. So, yeah.
 20 Q. When would that sale have taken place
 21 approximately?
 22 A. June of 2020.
 23 Q. And who was responsible for that sale?
 24 A. Me.
 25 Q. And when you're talking about San Jose, you're

Page 24

1 talking about California, correct?
 2 A. That's correct.
 3 Q. And in the course of negotiating that sale, did
 4 you inquire from that school district about any
 5 of their procurement policies or procedures?
 6 A. What do you mean by inquire?
 7 Q. Did you ask anyone there in that school district
 8 about their procurement rules?
 9 A. Yes.
 10 Q. Okay. And what was your understanding of their
 11 procurement rules?
 12 A. I don't recall.
 13 Q. How many sales prior to San Jose do you think
 14 you were involved with that involved a public
 15 entity such as a school district or a local
 16 government or state government, even a federal
 17 government, for that matter?
 18 A. It would be really hard to give a number based
 19 on my recollection.
 20 Q. Okay. Do you recall how many public school
 21 districts you dealt with prior to October of
 22 2020?
 23 A. I don't recall, and I don't know if this is
 24 helpful, but a lot.
 25 Q. All right. Any in South Carolina?

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1 A. I don't recall specifically.

2 Q. Okay. Were you familiar with, generally, the
3 procurement rules for school districts in
4 purchasing items?

5 MS. BRYANT: Object to the form. You can
6 answer if you know.

7 A. By October of 2020?

8 Q. Prior to October of 2020, did you have an
9 understanding of procurement rules for public
10 school districts?

11 MS. BRYANT: Same objection. Object to
12 the form, but you can answer if you know.

13 A. Generally speaking, yes.

14 Q. And what was your understanding then about
15 procurement rules?

16 A. They typically did not want to purchase with a
17 credit card, or were not authorized to purchase
18 with a credit card. They typically had to raise
19 a purchase order. And they typically asked for
20 or required some sort of net terms.

21 Q. What do you mean by that?

22 A. I mean they did not pay up entirely or 100
23 percent upfront prepayment before we would ship
24 inventory.

25 Q. So typically, school districts would not pay in

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1 full prior to shipping?

2 A. That's correct.

3 Q. And that was normal for school districts?

4 A. That's correct.

5 Q. Okay. Were you cognizant or aware of -- do you
6 know what procurement in a state or public
7 entity context means?

8 MS. BRYANT: Object to the form. Answer
9 if you know.

10 A. I have what I know from talking to prospects and
11 customers.

12 Q. Okay. Tell me what you -- what your
13 understanding is then.

14 A. My understanding based on what our prospects and
15 existing customer base was telling us was that
16 again, generally speaking, public entities,
17 municipalities, state, local education and
18 governments, they had a much more diligent
19 process than commercial entities, including,
20 again, not being able to swipe a credit card
21 with upfront payment terms, needing us to raise
22 a quote so that they could raise a purchase
23 order. Overall procurement from yes, we want to
24 buy to having units in hand took longer because
25 they would have to get things authorized through

Page 7

1 sometimes the school board, sometimes the
2 superintendent, sometimes some other committee
3 or entity before they could actually get funds
4 together to pay us with. And also a lot of
5 these entities, especially schools, were leaning
6 on COVID relief funds or COVID-oriented budget.
7 Sorry if that's too general, but that's what I
8 was told by a lot of these customers and
9 prospects.

10 Q. Were you aware of procurement bidding
11 requirements for purchases by public school
12 districts?

13 A. A little bit.

14 MS. BRYANT: Object to the form. You can
15 answer.

16 A. A little bit.

17 Q. Were you aware that some states have approved
18 vendor lists or contracts with vendors?

19 A. Yes.

20 Q. And in terms of your knowledge of a state's
21 having approved vendor lists, what is your
22 understanding about that process?

23 A. Very little.

24 Q. Okay. Was Owl Labs in October of 2020 in the
25 state of South Carolina on an approved vendor

Page 8

1 list that you're aware of?

2 A. I don't know.

3 Q. Okay. When you were dealing with the San Jose
4 School District, for example, who was your point
5 of contact there? Do you recall their title or
6 who you dealt with?

7 A. I believe his name was Steve. I don't exactly
8 recall his title, somewhere in the IT
9 department, if I recall correctly.

10 Q. Okay. You said that was a large sale. What was
11 your typical sale back in October of 2020 in
12 terms of either revenue or units sold --

13 MS. BRYANT: Object to the form.

14 Q. -- if you can estimate that?

15 MS. BRYANT: Sorry, Susan, I didn't mean
16 to cut you off.

17 MS. FITTIPALDI: It's okay.

18 MS. BRYANT: Object to the form, but you
19 can answer if you know.

20 A. For that month, or from my time starting there
21 until October?

22 Q. Okay. Good point. I would say leading up to
23 October 2020, maybe in the previous few months,
24 what would you estimate your typical sale would
25 be either in terms of the number of devices or

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1 amount of revenue?
 2 A. I don't exactly recall.
 3 Q. Okay.
 4 A. But probably close to \$5,000 average order
 5 value.
 6 Q. And you said you had a number of public school
 7 districts that were customers. I mean, can you
 8 describe your typical customer? Would it have
 9 been a school district or private entity, again,
 10 same time period, you know, the summer of 2020?
 11 A. Typical meaning the most frequent?
 12 Q. Yes.
 13 A. Again, I don't recall exactly, but I would say
 14 50/50 EDU to non-EDU was a very, very strong
 15 vertical for us at that time because of COVID.
 16 Q. And when you say EDU, you're referring to
 17 educational?
 18 A. K through 12 and higher ed, that's right.
 19 Q. And when you say K through 12, are you referring
 20 to both private and public entities?
 21 A. Yes.
 22 Q. Other than San Jose, what other public school
 23 districts did you sell some of your product to?
 24 A. K through 12?
 25 Q. Yeah.

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1 A. I don't recall, but I know there were a lot.
 2 It's just been a long time.
 3 Q. Okay. So was your normal practice in terms of
 4 the sale, that you would require 100 percent
 5 payment prior to shipping other --
 6 A. That's correct.
 7 Q. Okay. And why would you permit some customers
 8 to deviate from that 100 percent upfront payment
 9 prior to shipping?
 10 A. Because some customers, like state entities,
 11 could not do that according to their procurement
 12 policies.
 13 Q. So was that deviation from the requirement that
 14 items be paid for 100 percent prior to shipping,
 15 that allowance for public entities to pay some
 16 lesser amount, was that an approved company
 17 policy, or is that something that an individual
 18 would approve on a case-by-case basis?
 19 A. That was approved at the company level or at the
 20 executive level, if you will.
 21 Q. The less than 100 percent?
 22 A. That's correct.
 23 Q. Okay. So I would assume at some point that was
 24 communicated to you that it was permissible and
 25 you didn't have to get permission every time a

Page 1

1 customer sought to pay less than 50 -- excuse me
 2 -- 100 percent; is that fair?
 3 A. Yes.
 4 Q. Okay. Other than the large sale to San Jose
 5 school district, prior to October 2020, had you
 6 ever been involved in a sale to a public school
 7 district that was in excess of \$10,000?
 8 A. Yes.
 9 Q. Okay. Can you recall how many times?
 10 A. I cannot. Many. Before Bill and Bob were hired
 11 in I believe July and August, respectively, I
 12 was the only person on the inside sales team
 13 selling.
 14 Q. And in any of those instances, did you ever have
 15 to go through, again, with the public school
 16 district procurement bidding process where you
 17 submitted a bid?
 18 A. I don't recall.
 19 Q. Okay. If the company or a customer had required
 20 a bid, would you have been involved with that,
 21 or would someone else in the company have been
 22 involved with that?
 23 A. I would have been involved until or unless I got
 24 a request from the customer and prospect that
 25 they needed some sort of form that I didn't know

Page 2

1 about.
 2 Q. Okay.
 3 A. Typically, I was not -- for bid process, I was
 4 not handed a bunch of paperwork and said from a
 5 customer, hey, can you fill this out for us?
 6 All they needed from us, from my understanding,
 7 was a quote, and I could generate a quote and
 8 send them a quote.
 9 Q. Have you ever been involved with a public school
 10 district that told you they needed a request for
 11 a proposal or something that we refer to as an
 12 RFP?
 13 A. Yes, but again, I never had to produce anything
 14 outside of a quote to help them participate in
 15 the RFP process.
 16 Q. And in participating in an RFP process, would
 17 you have received -- well, the RFP, the request
 18 for proposal, which would have outlined and
 19 given you the specs for what was being bid out?
 20 A. Rarely, if ever. I don't have a recollection of
 21 seeing an RFP.
 22 Q. Okay. Do you recall ever making any sales to
 23 any federal government entities?
 24 A. I don't.
 25 Q. All right. In your experience in selling to

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1 public school districts, what was your
2 understanding, generally, about whether a school
3 district would be tax exempt or not?
4 MS. BRYANT: Object to the form. You can
5 answer if you know.
6 A. My general understanding is that most of them
7 are tax exempt.
8 Q. And regarding the sale that Owl Labs had with
9 David Marshall, were you involved in determining
10 whether or not that would be a tax exempt sale?
11 A. I was not.
12 Q. All right. So I'm going to talk a little bit
13 about his contact with the company and when that
14 began. And it looked like the first contact was
15 possibly around October 23rd of 2020; does that
16 sound right to you?
17 A. That sounds right.
18 Q. Okay. And it might have been something where he
19 reached out to the company through the website.
20 Do you know if that's the case, or if he called
21 someone directly; do you know?
22 A. It's likely that he came through a lead form on
23 our website.
24 Q. Okay. And then how does that process work? If
25 he left, I don't know, like I guess a message or

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1 something, typed it in and said I'm interested
2 in making a purchase with that, how does that
3 process work?
4 A. Now or then?
5 Q. How did it work then?
6 A. If I recall correctly, there would be a form on
7 the website that you fill out that is like your
8 name, your email address, your company name, why
9 you're inquiring, and there's drop-down options.
10 So, for example, submit a PO, order tax exempt,
11 I have a product question, I want a live demo.
12 I think that's basically all of our options, or
13 probably were all of our options then. And then
14 they just click submit. There's no open text
15 field or anything like that. I believe also
16 there was, possibly is a drop-down for number of
17 units you were interested in, perhaps. And then
18 that information flows from our website into our
19 CRM Salesforce, and it shows up as a lead.
20 Q. You said CRM?
21 A. Yep, client relationship management.
22 Q. I haven't seen, and I don't know if they're
23 retained, but I haven't seen any such form or
24 screenshot or anything for this case, do you
25 know if one would exist, or if it does exist?

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1 A. There perhaps would be a record in Salesforce or
2 so -- so let me answer the second half of the
3 process, I guess. That lead form is captured.
4 It's put into Salesforce as a lead of record, as
5 long as we've never seen that email address
6 before. If we've seen the email address before
7 it would show up as a contact record. Anyways,
8 the lead record shows up in a lead queue, a list
9 of other people who are interested in filling
10 out this form. A rep then finds it, takes the
11 email address from that form, goes to their
12 Gmail, sends an email to the prospect and says,
13 hey, I saw that you inquired about X, how can I
14 help? Which is the beginning of all the emails
15 that you see between Bill and this prospect. So
16 there possibly could still be a record and
17 indicate what he inquired about initially on one
18 of those lead forms. I haven't seen it anytime
19 recently.
20 Q. Okay. To the best of your recollection, David
21 Marshall reached out probably that way?
22 A. Probably.
23 Q. Okay. And then Bill would have been the sales,
24 what would have been his title then, sales?
25 A. Account executive.

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1 Q. Account exec. Okay. He's the one who
2 responded?
3 A. That's correct.
4 Q. Did you talk to David Marshall on the phone at
5 any point in the sales process?
6 A. I don't recall. I don't think so.
7 Q. Okay. But you were involved via email to some
8 extent in the purchase; is that right?
9 A. Correct.
10 Q. Okay.
11 MS. FITTIPALDI: So, Andie, can you pull
12 up Owl Labs Bates stamp numbers 34 through 36.
13 This is an email chain. Yeah, okay.
14 COURT REPORTER: 34 through --
15 MS. FITTIPALDI: It kind of probably goes
16 backwards. You can start with 36.
17 Q. Okay. Ms. McNamara, yeah, right there. You're
18 being shown an email chain right now on the
19 screen, and these documents have a Bates stamp
20 at the bottom Owl Labs 36, and then we're going
21 to look at 35 and 34 as well, but the numbers
22 are reversed because I'm trying to get it -- the
23 conversation, you know, as it --
24 A. Like it went.
25 Q. Yeah. Yeah, in time. Okay. So this first

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1 email looks like it's dated October 28th, 2020,
 2 at 5:05, and it was Bill Smith writing to David
 3 Marshall, "Thanks again for taking a few minutes
 4 to meet with us." First, do you know who he's
 5 referring to as the "us," or is he just meaning
 6 like the -- you know, the royal us; us meaning
 7 me, the company?
 8 MS. BRYANT: Object to the form, but you
 9 can answer if you know.
 10 A. I don't know.
 11 Q. Okay. That's fine. All right. "As discussed,
 12 we're going to do our very best to have these
 13 875 units delivered by December 10th." That
 14 amount of units would have been an extremely
 15 large amount at that time; is that right?
 16 MS. BRYANT: Object to the form. You can
 17 answer if you know.
 18 A. No. Extremely, no.
 19 Q. Okay. Larger than your typical sale?
 20 A. Yes.
 21 Q. Okay. How often would you have a sale this size
 22 at that time?
 23 A. Probably between seven and ten times in that
 24 year.
 25 Q. Okay. And you said Bill Smith started in

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1 August?
 2 A. I think he started in July.
 3 Q. Okay. Would this have been his largest sale to
 4 date at that time?
 5 A. I don't know.
 6 Q. Okay.
 7 A. Or I don't recall.
 8 Q. That's fine. Okay. All right. So we're
 9 looking at the email. And again, just I'm not
 10 familiar with the turnaround times, but would
 11 that have been a quick turnaround to get that
 12 many units over the course of, I guess,
 13 November, like, less than two months, about six
 14 weeks?
 15 A. Then, yes.
 16 Q. Okay. And he says, "Once we receive the
 17 purchase order, our team will process it and
 18 send you an email confirmation." That would
 19 have been the normal process; is that right?
 20 A. That's correct.
 21 Q. Okay.
 22 MS. FITTIPALDI: Can you scroll down,
 23 Andie?
 24 Q. Okay. It looks like the next email would have
 25 been from --

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1 MS. FITTIPALDI: Okay. You have to go
 2 down.
 3 Q. The next email looks like is probably the one on
 4 35, and it's this one here from you. Why would
 5 you have jumped in to the email conversation
 6 between Bill Smith and David Marshall, your
 7 email here on October 28th at 5:57? Do you
 8 recall why you would have jumped in to send him
 9 an email?
 10 A. I don't recall exactly, but it was normal for
 11 Bill to cc me on correspondence like this of the
 12 size or scope since he was still sort of ramping
 13 at that time too.
 14 Q. Okay.
 15 A. On the tail end of it really.
 16 Q. Okay. You said, "I am checking with our team to
 17 see if there will be any charges associated with
 18 an order of this size." Who was the team that
 19 you would have been checking with?
 20 A. Operations.
 21 Q. And who was on that team?
 22 A. Then or now?
 23 Q. Then.
 24 A. The person I would have checked with then would
 25 be Danielle Brown.

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1 Q. Is she still with the company?
 2 A. Yes.
 3 Q. Okay. And did you do that?
 4 A. I hope so.
 5 Q. You don't recall talking to her about it?
 6 A. I don't recall specifically, but the email, I
 7 would never say I'm doing something and not
 8 doing -- do it, if that makes sense.
 9 MS. FITTIPALDI: And then, sorry, Andie,
 10 scroll up to see I think the next email in the
 11 chain if you don't mind just above it.
 12 Q. I think David Marshall responds at 6:16 p.m.
 13 again on October 28, 2020, basically complaining
 14 about any additional shipping charges. Do you
 15 recall that?
 16 A. I recall it now that I see it.
 17 Q. Yeah. Okay.
 18 MS. FITTIPALDI: Sorry, Andie, and then
 19 if you don't mind scrolling down, this will be
 20 on page 34.
 21 Q. Your response is then at 6:25 p.m., do you see
 22 that towards the bottom where you say, Hi --
 23 A. I do.
 24 Q. -- David, you are right. Excuse me?
 25 A. I do, yes.

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1 Q. Okay. And what did you tell him there in that
2 email?

3 A. Do you want me to read it?

4 Q. Yes, please.

5 A. Sure. "Hi, David. You are right in that it is
6 unacceptable and I apologize for that. Too many
7 crossed wires on our end and we are moving too
8 quickly to try and meet the impending deadline.
9 We will execute on the PO as outlined. Don't
10 worry about freight or shipping whatsoever.
11 Thank you for your patience and your business."

12 Q. Okay. What did you mean there that there were
13 crossed wires on your end?

14 A. If I recall correctly, we forgot to put freight
15 charges on to the actual quote that we sent him.
16 After the fact, it was made clear when we went
17 to ops and said, hey, we need to get 875 units
18 out the door by December 10th to meet the
19 requirements of this customer, can you do it?
20 It would have been Danielle said sure, it's
21 going to cost this much to move that inventory,
22 because it's physical inventory. It costs money
23 to ship it. Then as you saw, we tried to go
24 back and add that. That's the email where I
25 said, hey, sorry, we made a mistake, but like, I

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1 gotta check out freight charges for this. He
2 obviously got upset. So I asked our team if we
3 could just waive the freight charges, which was
4 approved.

5 Q. And when you asked, what team did you ask?

6 A. It would have been Danielle's team again, ops.

7 Q. Okay. I guess since we're talking about that,
8 and then you said, "We're moving too quickly to
9 try and meet the impending deadline." What did
10 you mean there by we're moving too quickly? Is
11 that where you're referring to issuing the quote
12 that didn't include freight?

13 A. Exactly. And that is really more of a -- I
14 don't have the right word for it. Another way
15 to apologize to a customer -- you know what I'm
16 saying? -- that is surprised that there's
17 another charge that we didn't tell them about
18 upfront.

19 MS. FITTIPALDI: Andie, can you scroll up
20 to the very first document in what I sent you.
21 It's going to be Owl Labs Bates 3 and 4.

22 Q. Okay. And would this have -- is this what I'm
23 showing you on the screen right now, Ms.
24 McNamara, this is Bates stamped Owl Labs 3 and
25 then scroll down to 4. It's a two-page

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1 document. Is this is the quote that would have
2 been sent to David Marshall?

3 A. That's correct.

4 Q. Okay. And Bill Smith was responsible for
5 drafting this quote?

6 A. That's correct.

7 Q. Would he have had to run that by you, or would
8 he have just done that on his own?

9 A. Run what by me?

10 Q. The quote.

11 A. No, he would generate the quote on his own. If
12 there was any exceptions to the common terms, he
13 would have had to run that by me.

14 Q. Okay. And in this quote -- we're on the second
15 page of it right now. It says purchase terms.
16 One is 100 percent prepayment required to ship;
17 do you see that?

18 A. I do.

19 Q. Okay. And was that a purchase term at the time
20 that you provided this quote to David Marshall?

21 A. That's correct.

22 Q. Okay.

23 MS. FITTIPALDI: And, Andie, if you don't
24 mind scrolling back up to the first page.

25 Q. All right. And then we're looking at the

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1 products and services on Bates stamp 3. This
2 would have just been the cost of the units with
3 a discount; do you see that?

4 A. That's correct.

5 Q. And do you know how Bill Smith came to offer a
6 discount to David Marshall? Would that have
7 been discussed with you, or did you have to
8 approve that discount?

9 A. Yes, he would have discussed with me.

10 Q. And did you approve the discount?

11 A. Yes.

12 Q. Okay. Anyone else in the organization approve
13 it?

14 A. I don't think so.

15 Q. Okay.

16 A. Let me think. No, at that time, I would have
17 had the sort of ability to approve discounts up
18 to a certain amount.

19 Q. You had the authority to do that?

20 A. Correct, without having to go to our CFO if it
21 was outside of certain parameters.

22 Q. Okay. So the quote includes the original cost
23 for 875 units, which would have been \$999 per
24 unit, but at a discount of 179.82 taken off the
25 999?

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1 A. Correct.
 2 Q. Okay. For a total amount of 716,782.50; is that
 3 right?
 4 A. That's correct.
 5 Q. Okay. And there's no shipping charges on this
 6 quote?
 7 A. That's correct.
 8 Q. Okay. So is it accurate to say that this quote
 9 without the shipping charges, the company stood
 10 by and didn't issue a second quote or anything
 11 else that would have included shipping; is that
 12 right?
 13 A. That's correct.
 14 Q. Okay.
 15 A. Let me rephrase that. I don't know of any other
 16 quote that was ever sent to Orangeburg or David
 17 Marshall.
 18 Q. Okay. Sorry, I lost my place, give me one sec.
 19 MS. FITTIPALDI: Andie, can you scroll
 20 down, please, to where that email chain was.
 21 Okay. That's fine.
 22 Q. This, we're on Owl Labs 74. That's the Bates
 23 stamp at the bottom there, Ms. McNamara. You
 24 see David Marshall's signature line?
 25 A. I do, yes.

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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

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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 that 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

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1 Smith. Anyone else?
 2 A. The Orangeburg purchase agreement?
 3 Q. Yes.
 4 A. Likely my boss given the size of this
 5 opportunity.
 6 Q. Okay. Sorry, remind me his name at the time.
 7 A. I think it was Josh Allen.
 8 Q. Right, sorry.
 9 MS. FITTIPALDI: Andie, can you go to
 10 Bates 75. I have a quick question about
 11 probably -- yeah, after 74. Sometimes they're
 12 backwards. Okay. There you go. Go back up if
 13 you don't mind.
 14 Q. The area that's highlighted, Ms. McNamara, I was
 15 going to ask you about. This is an email from
 16 David Marshall looks like on the initial date of
 17 contact of October 23rd, and he writes that, "I
 18 know for sure that they won't pay in advance for
 19 the products." Did that -- did you see that
 20 email, or did you have any conversation with
 21 Bill about that statement that he was making in
 22 his email?
 23 A. I don't recall specifically.
 24 Q. Okay.
 25 MS. FITTIPALDI: Andie, can you scroll

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KAYLIN N. MCNAMARA

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1 down. It's going to be Bates 40 and it's after
 2 Bates 34. Keep going. There it is.
 3 Q. Okay. I have some questions, Ms. McNamara,
 4 about this is Bates stamped Owl Labs 40, this
 5 document. This looks like a purchase order from
 6 Orangeburg County School District. Is this --
 7 would you have reviewed this purchase order
 8 yourself, or would this have just gone to Bill
 9 Smith?
 10 A. It would have just gone to Bill Smith.
 11 Q. Okay.
 12 MS. FITTIPALDI: And then, Andie, can you
 13 scroll down next document. Keep going. Yeah,
 14 this is the one.
 15 Q. This is marked Owl Labs 199. This is a State of
 16 South Carolina Department of Revenue Exemption
 17 Certificate. This was something that David
 18 Marshall sent. Again, was this just sent to
 19 Bill Smith, or would you have seen this?
 20 A. I would not have seen this, I don't believe.
 21 Q. Okay. Do you recall if Bill Smith asked you or
 22 inquired whether this -- just about the tax
 23 exemption form that he received from David
 24 Marshall?
 25 A. I do not recall him doing that.

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1 Q. Okay. Do you recall having any other
 2 communication with David Marshall aside from
 3 what we've already looked at?
 4 A. I do not.
 5 Q. Okay. And then as this sale progressed, do you
 6 recall having any conversations with Bill Smith
 7 about the sale?
 8 A. Not specifically, no.
 9 Q. Okay. Would Bill Smith have been required to, I
 10 don't know, keep you apprised of the status --
 11 apprised, excuse me, of the status in terms of
 12 when payments were received or anything like
 13 that?
 14 A. Sort of.
 15 Q. Okay.
 16 A. It -- yeah.
 17 Q. At that time in October 2020, obviously
 18 understanding the context, were you guys working
 19 remotely?
 20 A. Yes.
 21 Q. All right. So you would have been working from
 22 where?
 23 A. My condo in Medford.
 24 Q. Okay. And where was Bill Smith working from?
 25 A. I believe he lived in Dorchester.

Page 1

1 Q. So there was no in-person or office work going
 2 on at that time?
 3 A. No.
 4 Q. Have y'all ever had an office where you worked
 5 together in the same location?
 6 A. We have.
 7 Q. Okay. So there wouldn't have been any, like,
 8 just walking into your office, hey, got this
 9 today or something like that? No?
 10 A. No.
 11 Q. All right. Do you recall when the first payment
 12 came in regarding this sale?
 13 A. I do not recall.
 14 Q. Okay. Do you recall the company shipping the
 15 items in approximately 20 -- excuse me, November
 16 of 2020?
 17 A. No.
 18 Q. Okay.
 19 A. But that would have been -- I would have known
 20 about it at the time because we recognize
 21 revenue when we ship the items. So that means
 22 it would have gone towards mine and Bill's quota
 23 relief.
 24 Q. Were you involved at all in communicating with
 25 either Bill Smith or -- and you said you didn't

Page 2

1 really have any further communication with Mr.
 2 Marshall, but about the outstanding balance that
 3 was owed?
 4 A. I don't recall specifically. Yeah.
 5 Q. Okay. I want to go back to that tax exemption
 6 form. You didn't have any supervisory role over
 7 approving or not approving that tax exemption in
 8 this --
 9 A. No.
 10 Q. -- particular case?
 11 A. Sorry.
 12 Q. Would you normally?
 13 MS. BRYANT: Object to the form.
 14 A. No.
 15 Q. That's something one of the account execs can
 16 decide on their own?
 17 A. No, neither account executives nor I are
 18 responsible or were responsible for validating
 19 tax exempt forms. We were responsible for
 20 getting them and uploading them to a Google
 21 Drive, and then attaching them to the email that
 22 we would send to accounting to process the PO.
 23 Q. So they weren't -- you didn't really scrutinize
 24 tax exempt forms? You just would forward them
 25 on; is that right?

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

Page 16 1 procurement department. It's just that we had to do 2 our own keying, you know, of the requisition, and 3 then it went through the approval chain. 4 Q. What was that threshold amount that it 5 would have to go to the superintendent? 6 A. I don't remember that exactly. I know 7 that items that were over \$10,000 had to be -- we 8 had to do three quotes. Any items that were over 9 \$50,000 had to be -- we had to do an RFP, unless it 10 was something that was on South Carolina state 11 contract. And I don't know when the superintendent 12 got involved, but it had to be over that 50 -- let 13 me say this. If it was definitely over \$100,000, 14 the superintendent was going to sign off on it. It 15 might have been at that \$50,000 mark, because, you 16 know, he liked to be, you know, engaged in those 17 large purchases. 18 Q. Who was your direct report? 19 A. Merry Glenne Piccolino. 20 Q. And then did Merry Glenne report directly 21 to the superintendent? 22 A. Yes, she did. 23 Q. And did you have interactions with Dr. 24 Foster? 25 A. Yes.	Page 18 1 "Hey, we need to order this software," or, "We need 2 to purchase this." And we would basically say, 3 "Okay, it needs to go to the bookkeeper. Get them 4 to do the requisition," or whatever else. So they 5 request the direct training. We did training as 6 leadership, but it wasn't the same as like the 7 bookkeepers did, because they managed that on a 8 daily basis. 9 Q. Who were the bookkeepers? 10 A. Like -- it depends. Like in my 11 department, we had a separate bookkeeper, because we 12 had a lot of things to purchase. We had around a \$4 13 million budget, so a lot of things got purchased. 14 We paid for all academic software -- we paid for 15 most of the academic software. We paid for all the 16 hardware. We paid for licensing. We paid phone 17 bills. We paid cell phone bills. We had to do a 18 lot. And we paid for services. We paid 19 contractors. So it wasn't like, you know, at a 20 school, a bookkeeper could actually be like the 21 principal's secretary. But in some departments, 22 because of the amount of purchases, it may not be 23 the same. So it wasn't the same across the 24 district. I actually had an administrative 25 assistant and I had a bookkeeper.
Page 17 1 Q. Was it daily interactions? 2 A. Not daily interactions, because we were 3 not in the same building. But Dr. Foster is a 4 hands-on person and he's the type of superintendent 5 that, you know, if you need anything, you don't have 6 to go through your immediate supervisor. It's best 7 to go through your immediate supervisor, but if you 8 can't reach them, it's like, "Hey, I want to resolve 9 any problems or issues, I want to be a part of it." 10 And if you just had a concern and you wanted to 11 reach out to him, you could always reach out to him. 12 Q. And does the school -- you mentioned the 13 procurement department. Does the school district 14 have a procurement policy? 15 A. Yes, they have a financial manual, and 16 procurement is a part of that manual on how things 17 are procured. 18 Q. Did you receive any kind of training on 19 this procurement policy? 20 A. My assumption on training for that -- our 21 bookkeepers pretty much did the training when it 22 came down to procurement, because they were the ones 23 that actually would keep the items or would help 24 keep directors, like myself, or members who reported 25 to -- you know, like I had staff that would say,	Page 19 1 Q. Who was your specific bookkeeper and 2 administrative assistant? 3 A. That changed a bit after consolidation. 4 The bookkeeper that I had prior to consolidation was 5 Melissa Hampton. And in consolidation, she remained 6 with the district, and then she left. After she 7 left, I don't know if I remember the order, but I 8 can tell you the people, I believe. We had an 9 interim or we had someone that came over from the 10 finance department, whose name was Mark Patwin. He 11 was a former employee of what was Orangeburg 12 Consolidated School District 5 and he was the 13 procurement person. So we thought we had a winner 14 by getting that person, but he didn't stay long. 15 And then Daphne Walley, who was the 16 director of technology in the previous school 17 district, Orangeburg Consolidated School District 3, 18 who came over to help our department, because she 19 was a retiree, and we had already had a director and 20 so she came over and helped. After that, I think we 21 wound up with substitutes that came in. And the 22 pandemic didn't help anything. 23 And then we finally hired -- or we finally 24 acquired my financial assistant to step into that 25 role until we were able to hire someone, and her

Page 20 1 name was Tinisha McDuffie. 2 Q. Okay. Thank you. So were you involved -- 3 if the school district had negotiations with some 4 sort of vendor, would you be involved with the 5 negotiations with the vendor, if it involved IT? 6 A. Usually, it would. Before you start, if 7 we're dealing with anything IT, IT was supposed to 8 be a part of it, although, you know, there are some 9 times that there was something that needed to be 10 purchased and IT wasn't necessarily consulted, but 11 we may have been brought in on the back end to 12 basically say, "Okay. Now, we have to make it 13 work." 14 Q. When a new vendor was being looked at, 15 what was your role to look into that vendor? 16 A. We would look at any information that the 17 vendor provided and what services they provided. 18 And if the vendor provided services or products that 19 the district needed, then, you know, we would have 20 that vendor to fill out a new vendor application, 21 and then go through the process with procurement for 22 getting, you know, registered or validated. 23 Q. Who would check out the form that the 24 vendor filled out? 25 A. All of those were sent to procurement.	Page 22 1 back as -- you know, vendors either call, email, or 2 show up. And if they came by, you know, we 3 basically talked with them, if it was something that 4 we needed. We can't talk with every vendor that 5 calls. We can't talk with every vendor that sends 6 an email. It's like, "Okay, where do you fit in?" 7 We'd had conversations -- my Fridays were 8 pretty much vendor days to -- you know, if they were 9 interested in working or they kind of wanted to talk 10 about their products or stuff like that. We would 11 make an appointment and we would have a conversation 12 with them. But, like I say, for vetting, not that 13 part. 14 Q. And when you say "we," you mean the IT 15 department? 16 A. The IT department. If it was me, I tried 17 to bring in other members of my department. Like 18 Taphnie Sanders, who is currently the director, she 19 was my right hand for many years, even when we were 20 in Orangeburg 5. And so if I had a vendor and I 21 needed some support, she would come in to meet with 22 the vendor, to ask questions about, you know, what 23 it is that they do and try to compare them against 24 vendors that we already had, you know. But once we 25 built relationships with vendors, you know, you kind
Page 21 1 Q. Did you ever check a vendor's address to 2 make sure it was a legitimate address? 3 A. I never did. I never got into the vetting 4 from that standpoint. Honestly, there was a lot of 5 stuff that was already for IT. And I'm not a 6 procurement person, nor am I a finance person, so 7 that wasn't in my wheelhouse. So if we were looking 8 at a vendor, we sent it over to the -- you know, to 9 the finance department so that they could actually 10 look at it and go through whatever process they had. 11 Q. So was it your responsibility at all to 12 look into a vendor to check legitimacy? 13 A. That wasn't my responsibility, not to my 14 knowledge. 15 Q. And did you have -- you kind of touch on 16 this, but did you have any sort of standard 17 operating procedure for confirming a new vendor, 18 especially with state contracts? 19 A. Yes. So if -- like I said, if we were 20 looking for a product or a service, you know, we 21 looked at either vendors that were current or 22 vendors that we had access to, because the district 23 has a vendors' list. And so we would look through 24 the vendors' list and pull from that vendors' list. 25 If not, you know, or if we had a vendor that came	Page 23 1 of go with the relationship that works, you know. 2 And, you know, you would seek other vendors, if you 3 were trying to get a better price. You know, and 4 new vendors are a little more difficult, because you 5 don't know what you're going to get from a new 6 vendor. 7 Q. Did you negotiate contracts with vendors? 8 A. We would negotiate the best we could. But 9 if something was on state contract, that wasn't as 10 much of a negotiation. We would talk with vendors 11 about pricing, to find out if it was the best price. 12 Generally, we asked for a quote. And, basically, 13 we'd say, you know, "We need your best price." 14 There may be other vendors, you know, and that's 15 about the negotiations we did. 16 Q. And what was the general process for 17 placing an order? 18 A. So in order to place an order, you would 19 either reach out to the vendor or you'd put out a 20 solicitation, right. And you reached out to the 21 vendor and say, "Hey, we have a need," you know, 22 "can you supply this need?" If you could supply the 23 need, then we would get the quote. The quote turned 24 into a requisition where you would examine multiple 25 quotes. You get a requisition. After the

Page 28 1 same on every document? It was a saved signature? 2 A. I have a saved signature. 3 Q. Okay. So let's transition and we'll talk 4 a bit about the stuff at hand. So how did you learn 5 about Level 8 as a vendor? 6 A. So I was approached about Level 8, and I'm 7 sad to say, I was approached by David Marshall. He 8 came to me to let me know that he had a state 9 contracted vendor that could provide services to the 10 school district in purchasing AV equipment, things 11 of that nature. And I said, "Okay, so they're on 12 state contract?" He said, "Yes." I said, "Okay. 13 Well, can you provide, you know, their information 14 so that you could get a W-9," because those are 15 always required, "As well as the new vendor 16 contract. Now, because he worked in the district, 17 he knew that part, so that was already -- he had 18 already processed that. But he was the person that 19 I spoke to about it. 20 Q. Around what time did David approach you 21 about Level 8? 22 A. That's hard to remember. It probably was 23 after consolidation, because I think that's when we 24 started using Level 8, after we did the 25 consolidation. So some time either in 2019 --	Page 30 1 and so we had a new person that managed it. And at 2 the time when we consolidated, that would have been 3 Dr. Washington. 4 So I mentioned the building and I think 5 that's -- we were on Ellis Avenue in the technology 6 office, but the folks that were working with public 7 relations were in the new building or the Founders 8 Court, which is the main address, 102 Founders 9 Court. And so that's where David and his colleague, 10 DeJaun Jackson, actually worked. And their office 11 was like right across from the superintendent. 12 Q. Okay. So about how many orders do you 13 think you placed through Level 8? 14 A. More than five. 15 Q. Less than 50? 16 A. Less than 30? What was that? 17 Q. Less than 50? 18 A. Less than 50. 19 Q. More than 10? 20 A. I don't know. It would probably be up in 21 that ten area, five, six, seven, somewhere in that 22 area for our department. I know that there were 23 some of the schools that purchased things from Level 24 8, because they started doing TVs and monitoring out 25 in the schools and some of the schools actually
Page 29 1 because that's when we consolidated, that July. So 2 we would have had purchases after that July with 3 Level 8. 4 Q. Okay. So July 2019 is about the time you 5 started using Level 8? 6 A. Around that time. 7 Q. And David Marshall, he was employed at the 8 IT department at that time? 9 A. So David Marshall was listed as an 10 employee under the IT department. We had -- prior 11 to consolidation, he worked with the IT department 12 part-time, because he was actually working with 13 public relations. That was an interesting thing, 14 because listed on paper, he reported to me, but he 15 had other people that he reported to. Dr. 16 Washington, who was our superintendent, because he 17 was working in public relations, you know, he 18 reported to -- in the previous district, Orangeburg 19 Consolidated School District 5, he reported to Bill 20 Clark. Bill Clark was over public relations or -- 21 everybody got a different name, and I'm sorry if I 22 mess the name up. But anyway, he was over that part 23 right; community relations, public relations, 24 whatever. And then after we consolidated, Bill was 25 a retiree, so they didn't bring the retirees over	Page 31 1 reached out to them. 2 Q. Okay. I'm going to show you a document 3 and share my screen. 4 A. Okay. 5 Q. Can you see this okay? 6 A. I got it now. 7 Q. Okay. This has been premarked Defendant's 8 Exhibit 17 and it's Bates number Defendant's 12658. 9 So this is an email that is from David Marshall and 10 it's dated May 11, 2020. Are you able to read that 11 okay? 12 A. Yes, I can see it. 13 Q. This first email, it looks like somebody, 14 an Audrey Childers, had emailed asking for companies 15 that could livestream the graduation. And David 16 Marshall responded and said, "Level 8 has done 17 incredible work for us the last few years and 18 they're on state contract." Do you see that? 19 A. I do. 20 Q. And so this was on May 11th, 2020. Do you 21 think -- is that accurate, that Level 8 had done 22 work for the district for the last few years at that 23 point? 24 A. Well, I would say I don't know about the 25 last few years, but I don't know how accurate that

Page 32 1 is. And the reason why I say that is because we 2 didn't start until -- with Level 8 until like 2019. 3 It was after consolidation. 4 Q. That's fair. Once you started using Level 5 8, did you frequently connect other school district 6 employees to Level 8? 7 A. If they requested services, they asked 8 about different companies that could work, then I 9 would -- you know, I would tell them that they were 10 a company that we work with. 11 Q. Who were your contacts at Level 8? 12 A. Actually, David was a guy that was on 13 staff that pretty much did contacts. The only 14 person I ever talked to, who I thought I was talking 15 to with Level 8, was Zach Mason. You know, as a 16 contact, Zach Mason. 17 Q. Okay. I'm going to pause and show you 18 another document. This one is marked Defendant's 19 Exhibit 1 and it's Bates labeled Defendant's 12331. 20 So this is an email from Andrea Jamison. And it 21 looks like she has emailed you in September 2020 22 asking for a vendor recommendation? 23 A. Yes. 24 Q. And you responded and told her, "Level 8 25 can assist," and you cc'd Zachary Mason, is that	Page 34 1 involved with Level 8 at all? 2 A. No, I did not. I had a conversation with 3 David. And, like I said, he introduced and said 4 that it was a company that his friends owned that 5 could do some work for the district. 6 Q. Was Zachary Mason the friend? 7 A. That was my assumption, because that's who 8 we always talked about. 9 Q. Did David Marshall primarily do the orders 10 at Level 8, or can you say who -- how the 11 communications with Level 8 occurred with the 12 district? 13 A. Yeah, I got you. So the communications 14 with Level 8 was always -- you know, David was 15 always around or David always kind of showed up. If 16 we had something or a need, like he just asked us, 17 you know, "Hey, what did you get lately?" You know, 18 kind of like IT chat, right. "What you got new?" 19 Or he'd have something new or we'd have something. 20 You know, like monitors, just like you just 21 mentioned or whatever else. And he'd say, "Hey, my 22 buddy over at Level 8 can get these and they can get 23 them at this price," you know, whatever else. I'm 24 like, "Oh, really? We're paying" -- you know, 25 "we're paying \$700 and you guys are getting them for
Page 33 1 correct? 2 A. That's right. 3 Q. And Zachary Mason, that was your main 4 point of contact for Level 8? 5 A. That's correct. 6 Q. Did you ever -- I'm going to stop sharing 7 my screen for a bit. 8 A. Okay. 9 Q. Did you ever speak to Zachary Mason? 10 A. I think we spoke on one occasion. 11 Actually, I was reaching out for some information on 12 a product, to find out if they had that product or 13 if they could get that product. I think I spoke to 14 him on one occasion. 15 Q. Did you ever meet him in person? 16 A. I didn't meet Zach in person until the 17 superintendent called him in to ask him about this 18 issue with Owl. 19 Q. So you did end up meeting Zach Mason? 20 A. I did. 21 Q. Do you know, is he related at all to David 22 Marshall? 23 A. No. He talked about like they are church 24 members or something. 25 Q. Did you know how David Marshall was	Page 35 1 six" or whatever else, you know. "Tell him to give 2 us a call, you know, and we can possibly, you know, 3 order some of these, you know, devices," or 4 whatever. And, you know, he'd be like, "I'll talk 5 with him and find out and I'll let you know." And 6 then I would get an email from Zach, you know. 7 Q. Did you ever look up Level 8? 8 A. No, never really looked them up. 9 Q. Do you know if anyone in the district ever 10 looked them up? 11 A. I'm not sure. My assumption would be that 12 that would come under procurement. But, you know, 13 once they are that authorized district vendor that 14 we know of or they could get on the district list, 15 then the assumption is, you know, that we can use 16 those -- you know, those vendors. 17 Q. Would you check the state vendor number? 18 A. So the only time we checked the state 19 vendor numbers as a department is if we were 20 initially -- you know, initially reaching out and it 21 was somebody we didn't know, you know. But we'd 22 look on that site -- like there's a site that you 23 can look on and it has state-approved vendors or 24 people who are on state contract, and tell you what 25 their contract is and that type of thing.

Page 36 1 If we were looking for someone, we would 2 look that way. But if we had somebody -- like we 3 had preferred cabling, folks that we bought 4 networking equipment, anything. Anything that we 5 purchased, like I say, it was a whole lot easier if 6 you purchased it on state contract. So that kind of 7 got it, you know, folks across the state. 8 And that's usually how people reached out 9 to us about, "Hey do you have a state contract 10 vendor, you know, that you prefer," because if you 11 look on the list, you may see 10 or 15 different 12 companies. Well, I don't know about 10 or 15 13 different companies. Or you'd say, "Well what's 14 your experience with company X or what's your 15 experience with company Y?" And if you had a good 16 experience, then you would share it and now all of a 17 sudden, it's their company. If you didn't have a 18 good experience with them, they probably wouldn't 19 get a chance, unless they were the only ones. 20 Q. Did you believe that when David Marshall 21 approached you about Level 8, was it your 22 understanding that the school district had already 23 purchased from Level 8 before? 24 A. When I first approached him? 25 Q. Yes.	Page 38 1 from Dr. Foster's deposition, do you know? 2 MS. MILLS: I think it might have been 3 another number in Dr. Foster's. 4 MS. FITTIPALDI: Okay. So this is marked 5 as Defendant's Exhibit 16 specifically for Mr. 6 Ham's deposition? 7 MS. MILLS: Correct. 8 MS. FITTIPALDI: Okay. Thank you. 9 MS. MILLS: I believe some of the stickers 10 for that deposition had plaintiff's on it and 11 so I just did new exhibit markings. 12 EXAMINATION RESUMED BY MS. MILLS: 13 Q. So on this document, do you see where it 14 says who the agent for Level 8 is? 15 A. I do. 16 Q. And it's David Marshall, correct? 17 A. I see that, yes. 18 Q. If you had seen this prior to dealings 19 with Level 8, would that have raised any red flags 20 for you? 21 A. Yes. 22 Q. So would you-all be allowed to use a 23 vendor that was associated with an employee? 24 A. No. 25 Q. Okay. I'm going to show you another
Page 37 1 A. That was after we were told he had a state 2 contract and that he was an approved vendor. Once 3 he was in the system, then, you know, we started 4 doing it. 5 Q. What would he have been in the system for? 6 A. Audiovisual. 7 Q. And so if he was in the system, is that -- 8 would you not have known about Level 8 before then? 9 A. Not if it hadn't been brought to me. 10 Q. Who else would have put that in the 11 system? 12 A. Well, we can't put any in. That would 13 have to come through procurement. 14 Q. Okay. I'm going to show you another 15 document. And I think this is from the South 16 Carolina Secretary of State's website. This is 17 premarked as Defendant's Exhibit 16. This is just 18 pulled directly off the Secretary of State. It's 19 the Articles of Organization for Level 8 20 Communications. Have you ever seen this before? 21 A. No, I haven't, but if you could, could you 22 enlarge it a little bit? I'm getting a little 23 older. 24 Q. Absolutely. 25 MS. FITTIPALDI: Kate, is this Exhibit 16	Page 39 1 document. This one has been marked Defendant's 2 Exhibit 15, and this is Bates labeled Defendant's 3 14246. This is an email to you from Zachary Mason 4 and this is in March of 2021. And I believe you 5 previously asked him to verify his state employment 6 contract number, is that correct? If you look right 7 here -- I'm not sure if my mouse moves, but the 8 first email. 9 A. Yes, I can see it. 10 Q. Okay. Do you know if that was the first 11 time on March 4th, 2021, that you had requested 12 Level 8's state contract information? 13 A. That's the first time I requested it. And 14 I asked -- it should have been either in an email or 15 a phone call prior to this. And I believe it was 16 from Greg Twitty, was our procurement director, 17 because he reached out to me, asking if I had the 18 state contract number. And I told him I did not and 19 that we reach out to them, Zachary or at Level 8, in 20 order to get their state contract number. 21 Q. Was it your understanding that Mr. Twitty 22 was responsible for checking the state contract 23 vendors? 24 A. That's my understanding. 25 Q. So attached to this, Mr. Mason attached

Page 40 1 this letter from Flex Technologies. Had you heard 2 of Flex Technologies prior to this date? 3 A. Yes, I've heard of Flex Technologies prior 4 to this date. Flex Technologies was a company that 5 we did some IT work with or purchases with back 6 prior to consolidation. 7 Q. And had you heard of Mark Devincentis? 8 Sorry for mispronouncing his last name. It's 9 spelled D-e-v-i-n-c-e-n-t-i-s. Had you heard of him 10 before? 11 A. No, I haven't. It looks new. 12 Q. I'm going to stop sharing my screen for a 13 second. 14 MS. FITTIPALDI: Actually, Kate. Sorry. 15 Can you go back and show me the Bates number on 16 that email that was attached to that letter? 17 MS. MILLS: Absolutely. It's 14246 and 18 the attachment is 47. 19 MS. FITTIPALDI: Thank you. 20 MS. MILLS: Of course. 21 EXAMINATION RESUMED BY MS. MILLS: 22 Q. When you used Level 8, was it typical that 23 they would provide services for installation? 24 A. They would either have -- well, most of 25 the purchases with Level 8 prior to this was just	Page 42 1 Now, that conversation was prior to the 2 call with Owl. I think it was Dr. Foster trying to 3 -- maybe it was after that we had a bunch of calls, 4 right. He wanted to find out more, especially if it 5 was somebody that was tied to the district. Dr. 6 Foster was upset, and then he started sharing stuff 7 with me. Like, "Do you know that your signature 8 might have been compromised?" You know, it was a 9 whole bunch of stuff. And all of us were completely 10 floored, because we didn't know that these -- you 11 know, that it was going that deep and that it was 12 this kind of thing. 13 David was a colleague and he was -- like I 14 said, he was across the hall from the 15 superintendent. And it's kind of like if you're 16 across the hall from the president of the United 17 States, you're an important person, right. So he 18 was across the hall from the superintendent. And, 19 you know, he resigned and it was like he was going 20 to do stuff personal or whatever else. 21 And then all of a sudden, you know, all 22 this stuff started happening. So when -- like I 23 say, I finally met Zach. I mean, he completely -- 24 he was just as lost as everybody else in the room. 25 I think we knew more, because the documents started
Page 41 1 equipment and that didn't require installation. It 2 was just -- you know, like I think we ordered some 3 cables or something like that. It wasn't anything 4 that we needed for anyone to install. 5 Q. Okay. Sorry. Let's circle back. Earlier 6 that March 2021, was that the first time you 7 realized that Level 8 was not a state contract 8 vendor? 9 A. Yes. 10 Q. To this day, do you know is Zachary Mason 11 a real person, that you've met him? 12 A. Yeah, we met -- like I say, we met him. 13 And he actually came in -- I think it was at 14 Founders Court. That's where the superintendent 15 called him in. And you could tell he didn't know or 16 that he was in the dark about -- I would say about 17 90 percent, maybe even higher than that, of what was 18 going on, right. He told a story to us that I'm not 19 -- I can't tell you if a person is telling a truth 20 or a lie, but he was very convincing. And you could 21 tell if -- I don't know if this is the appropriate 22 place to say it, but he was shaking and you could 23 tell he was completely disheveled. I mean, like 24 somebody hit him with a ton of bricks on something 25 that he was not aware of or whatever else.	Page 43 1 coming in, the request for payment and all of this 2 stuff. And it was like "Where is all of this coming 3 from?" So, yeah, he's a physical person. 4 Q. But do you think he was the Zachary Mason 5 that you were communicating with? 6 A. When he came in the room and started 7 talking, it didn't sound the same. And I know you 8 talk to somebody one time, you know, maybe you 9 understand, but it didn't seem the same. It could 10 have been. You know, I won't -- I can't say no, I 11 definitely know I wasn't talking to this guy. It 12 didn't sound the same and he didn't sound as 13 technically comfortable. 14 Q. Did it seem like David Marshall was 15 pretending to be Zachary Mason? 16 A. David or somebody that David knew. That's 17 about the only thing that I could guess because, 18 you know, you got to know tech stuff or you got to 19 at least be able to talk tech. And so when you hear 20 stuff, it's like I don't know about that, you know. 21 Q. So I'm going to show you another document. 22 Hold on one second. 23 MS. FITTIPALDI: A quick question, Kate. 24 Do you anticipate going for a bit longer or 25 taking a break at some point?

Page 56 1 that correct? 2 A. No, he would send me, "This is the 3 equipment." Generally, that's what he would do. 4 Now, if he got a quote, he would have sent a quote 5 saying, "Hey, this is my recommendation." 6 Q. So it looks like in this email, he says, 7 "Hi, Mr. Leonard, here is your quote for your 8 multipurpose room." 9 A. Uh-huh. 10 Q. And so attached was the quote from Level 11 8, and this is June of 2020. So would David have 12 sent you the quote before sending this to Mr. 13 Leonard? 14 A. Typically, he would, but because he 15 carboned, he probably was -- and I'm guessing at 16 this. He probably was trying to move it, because it 17 is in June and the end of the fiscal year is the end 18 of June, so maybe he was trying to expedite it or 19 something. 20 Q. Okay. And so that didn't -- this would 21 have been a normal course of dealing? It was no 22 cause for worry? 23 A. I mean, it was an employee that was 24 helping to do something. I probably went through 25 this, but I probably didn't go through it thoroughly	Page 58 1 A. No. Well, you take a quote from the 2 vendor, and then whoever is the requester actually 3 completes the requisition or starts the requisition 4 chain. The requisition chain then is by making the 5 requisition a purchase order. 6 Q. So in this case, would Mr. Marshall have 7 been the person making the requisition request? 8 A. No, he wouldn't, because like I said, he 9 didn't have access to funds. That would go to the 10 school and it was Bethune-Bowman. So whoever the 11 bookkeeper or principal at Bethune-Bowman would 12 initiate the process to get a requisition. 13 Q. And do you know if Mr. Marshall ever 14 communicated to whoever the person was that needed 15 to make the requisition, would he sometimes handle 16 these directly himself? 17 A. He might have. 18 Q. Did you have access to David Marshall's 19 email? 20 A. No, I didn't. 21 Q. Okay. Let's talk about Owl Labs. 22 A. Okay. 23 Q. Was the acquisition of -- when I say the 24 Owl devices or the Owl, do you understand what that 25 means?
Page 57 1 enough. And that's something I learned because of 2 this, that I got to look at everything. 3 Q. That's fair enough. I'm going to show you 4 another exhibit. It's Defendant's Exhibit 18. This 5 is Defendant's 18. It's Bates numbered Defendant's 6 14758. So this is another time somebody, Ms. 7 Jamison-Lewis, sent a request -- an IT request for a 8 vendor for some attached items. And you responded 9 and said -- you forwarded it to David Marshall and 10 said, "Can you check if the guys at Level 8 sell 11 these?" Is that correct? 12 A. Yes. 13 Q. And then Mr. Marshall asked Zach at Level 14 8 for a quote for this pen, is that correct? 15 A. That's correct. 16 Q. And then David Marshall sent it directly 17 to Ms. Lewis, the quote, correct? 18 A. Okay. Yes, I see from there. 19 Q. And attached is the quote from Level 8. 20 Is this what a typical Level 8 quote or estimate 21 would look like? 22 A. Yes, that's what they would look like. 23 Q. Can you explain -- so once it's a quote, 24 you said that gets sent and that is what gets signed 25 to be a purchase order?	Page 59 1 A. I understand, yes. 2 Q. Okay. It's the little device that swivels 3 around. Okay. Was the acquisition of the Owl 4 devices from Owl Labs, was that a significant 5 contract? 6 A. It was a very large contract, yes. 7 Q. Who was involved in discussions about 8 acquiring Owl Labs -- or acquiring Owl? 9 A. Requiring Owls. So that started as a 10 conversation -- I wish I could tell you when that 11 conversation started. But it was funds were coming 12 in and -- well, the district was getting funds. I 13 believe they were CARES funds, prior to being 14 changed to ESSER or whatever else. So the funds 15 were coming in and there was discussion on how do we 16 get our teachers and students reconnected. And, 17 you know, there was a lot of talk about, you know, 18 using Zoom, which we had free accounts with Zoom 19 versus Teams, and how do we connect and we create a 20 way that is easy for teachers, but also easy for 21 students. And if I'm not mistaken, this was -- I 22 can't remember if this was when students started 23 coming back or whatever else. But during the time 24 when the pandemic hit, when the students first went 25 home, we had teachers who were home as well, right.

Page 60 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	Page 62 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
Page 61 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.	Page 63 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?

Page 64 1 A. I don't recall having a separate 2 conversation about it. I know that, like I said, 3 they were already a vendor. So I don't recall 4 having a second conversation about it. 5 Q. What was the advantage of ordering the 6 Owls from a third party versus directly from Owl 7 Labs? 8 A. Well, two things. If the company is not 9 on state contract, then you got to go through the 10 RFP process, so timing is a thing. It's better to 11 order direct, if you can order direct, but you do 12 have to go through the process of that company 13 becoming a vendor, and that company doing the W-9, 14 and the procurement people doing whatever it is that 15 they have to do. 16 There are some other methods like 17 emergency purchases. Now, I'm learning this after 18 the fact, of course, because everybody asks why 19 didn't we just do an emergency purchase. I would 20 have preferred doing an emergency purchase, knowing 21 now what it is, but I didn't have that information. 22 But buying off a state contract is really where most 23 of your school districts and government agencies -- 24 here at the university, we buy stuff off of the 25 state contracts, because it's easier to acquire and	Page 66 1 A. No, I think that kind of conversation 2 happened with David, because he would wind up being 3 the person reaching out. And I don't know if that 4 -- like I didn't -- I didn't call Owl to make any 5 arrangements, because he was already making the 6 reach out on -- you know, to find out if they had 7 them, if they had enough, and what the cost would 8 be. 9 Q. So David was sort of handling that, and 10 you took his word for it because that was sort of 11 his realm? 12 A. Right. Like that's that audiovisual 13 stuff. And, you know, I had to order laptops, hot 14 spots, you know, and a bunch of other things and 15 make -- you know, make a daily list of who qualified 16 for hot spots, based upon the federal guidelines and 17 all of those things. So, you know, you typically 18 delegate those things that other people are better 19 at or the things that other people can have. And 20 you just check back in with them to basically say, 21 "Hey, what's the deal? You know, "Give me this 22 information." Taphnie Sanders, you know, was busy 23 trying to ensure that we had like network 24 connectivity, those kind of things. Did we order 25 this, did we have this, and making sure that
Page 65 1 you don't have to go through that process because if 2 they're on state contract, they've already done that 3 vetting. 4 Q. So do you think that it's necessary before 5 purchasing to check the legitimacy of a state 6 contract? 7 A. Now I do. 8 Q. At the time, was that something that was 9 required? 10 A. Not required -- yeah, not required for us. 11 Like I say, our assumption was that came from the 12 procurement office. 13 Q. Who did you communicate with at Level 8 14 about the Owls specifically? 15 A. So I think I -- I think it was an email to 16 Zach, but David was in the conversation afterwards. 17 It was like, "Hey, do you know if your guys" -- kind 18 of like the same thing. "Do you know if your guys 19 can get these Owls? Is that something you guys can 20 get on that state contract as audiovisual?" 21 Q. Did you do anything to determine whether 22 Owl -- whether Level 8 was -- had the Owls available 23 and at the most -- at the cheapest price and at the 24 fastest ability to ship? Did you do any sort of 25 digging for other vendors?	Page 67 1 technicians had the supplies they needed in ordering 2 replacement screens and, you know, additional 3 devices, if somebody had them, or whatever else, so 4 yeah. 5 Q. Is it fair to say that people in the 6 district knew that David Marshall was involved in 7 getting quotes and acquiring certain audio and 8 visual devices with Level 8? 9 MS. FITTIPALDI: Object to the form, but 10 you may answer. 11 THE WITNESS: I think it's safe to say 12 that folks knew that they could ask David 13 Marshall to get or to find out things, not 14 necessarily to acquire from Level 8. 15 EXAMINATION RESUMED BY MS. MILLS: 16 Q. Okay. I'm going to share my screen again. 17 This has been marked Defendant's Exhibit 5, and it's 18 Bates number Defendant's 12851. So this is an email 19 from Maretta Linder dated November 30th, 2020. And 20 she's asked, "Do you know who created purchase order 21 211368? David sent the invoices to me. Thanks." 22 Did I read that correctly? 23 A. Yes. 24 Q. And attached to this is a purchase order 25 from Zachary Mason of Level 8 to David Marshall that

Page 72 1 A. I'm not sure about that question. Could 2 you repeat that again? 3 Q. Sure, I can rephrase it. 4 A. If you can phrase it a little differently. 5 I'm not sure -- 6 Q. Absolutely. In this situation, would you 7 expect for Owl Labs to have a personal interaction 8 with you, or would you anticipate that your 9 communications after ordering would be with Level 8? 10 A. Yeah, I would -- I mean, typically, like I 11 say, when we deal with a third party, we deal with a 12 third party. Basically, here they're ordering -- 13 it's basically saying they are ordering them 14 directly from Owl Labs and they will be shipped to 15 our house, that's typically a middleman thing. They 16 do the order as a third party and they ship them to 17 us, you know, and then we verify. So I don't think 18 that's any different for anybody. 19 Q. That's completely fair. So now, I'm going 20 to show you Defendant's Exhibit 2. This is Bates 21 labeled Defendant's 13156. This is an email from 22 David Marshall to Bill Smith, who is at Owl Labs. 23 He has "attached to purchase order," and here is the 24 attached purchase order. Is this -- I'll give you a 25 second to look at it and see it. Is this what a	Page 74 1 purchase orders as a company. But, yeah, I don't 2 know where this would -- I don't know how to answer 3 that. I don't see anything. But I mean, the 4 purchase order now, knowing what I know, would be 5 problematic because of who it's issued to, but 6 that's not who we issued the purchase order to. But 7 from an Owl Labs' perspective, I think it would be 8 difficult. 9 Q. Yes. So from Owl Labs' perspective, the 10 purchase order was issued to them? 11 A. Yes. 12 Q. Okay. Did you ever have conversations 13 with anyone at Owl Labs? 14 A. I don't recall, prior to them giving me a 15 call requesting payment. 16 Q. Okay. And I'll show you now what's marked 17 Defendant's Exhibit 4. This is Bates labeled 18 Defendant's 12846. This is an email from an 19 individual at Owl Labs to you and Daphne Walley to 20 follow up on the payment status for an invoice. Is 21 that correct? 22 A. That looks correct. 23 Q. And this is June of 2021, correct? 24 A. Right. 25 Q. And so she had attached an invoice dated
Page 73 1 typical purchase order would look like from the 2 school district? 3 A. Typically, yes. 4 Q. Is there anything on this purchase order 5 that would draw a red flag for a third party. And I 6 can rephrase that. 7 Is there anything that -- sorry. You go 8 ahead. 9 A. I mean, I'm looking. If you scroll back 10 down, I look at a different set of purchase orders 11 now, so I'm just trying to revise my -- so I think 12 this is just me. I'm looking at it now. Knowing 13 what I know right now, it says, "Purchase order 14 issued to Owl Labs," but that wasn't -- that wasn't 15 what we -- that wouldn't have been who we issued the 16 purchase order to. 17 Q. So if you were Owl Labs receiving this 18 purchase order, is there anything here that would 19 make you think it was not a legitimate purchase 20 order? 21 A. Yeah, I'm -- if I'm the originating 22 company as Owl Labs, I don't think there's anything 23 on here -- I can't see anything that would throw me, 24 not off of just looking. I mean, I don't really 25 normally receive them, because I don't receive	Page 75 1 October 29th, 2020, correct? 2 A. Yes. 3 Q. Had you ever seen this invoice prior to 4 the email date? 5 A. I don't recall seeing this invoice. I may 6 have, but I don't recall, though. 7 Q. How did Owl Labs know to contact you and 8 Ms. Walley at this point in time? 9 A. Probably because -- 10 MS. FITTIPALDI: Excuse me. I just want 11 to put my objection on the record. Object to 12 the form. You can answer. 13 THE WITNESS: Okay. I'm only guessing 14 because I'm not Owl Labs. But if you scroll 15 back down to the purchase order -- or maybe 16 that was separate. Can you go back to that 17 purchase order? 18 EXAMINATION RESUMED BY MS. MILLS: 19 Q. Sure. I believe that was the previous 20 exhibit right here. 21 A. Yes. So I'm on the purchase order right 22 there on the "ship to," so that would be my 23 assumption. 24 Q. So did you contact Owl Labs directly for 25 help setting up?

Page 76 1 A. No, we didn't -- we didn't do any contacts 2 about setup. 3 Q. How did you get the Owls set up to the 4 system? 5 A. Well, they come with a simple set of 6 instructions. And our team actually sat down with 7 them and went over the instructions, because 8 remember, we had two Owls prior to purchase with OC 9 Tech. And so we knew what to do, but, you know, 10 actually connecting them and doing everything after 11 that, we were able to do that. I think we wound up 12 doing a call in reference to a faster way of 13 connecting them through Bluetooth, because we had 14 had the Bluetooth connect to them, but I don't think 15 I did a call. I think that was part of my staff in 16 trying to get it connected. 17 Q. Okay. And so I'm going to show you 18 Defendant's Exhibit 9. This is Bates labeled 19 Defendant's 13962. And this kind of might refresh 20 your memory. This is on January 5th, 2021. You're 21 emailing support at the owllabs.com asking for help 22 in getting them set up, correct? 23 A. Correct. 24 Q. And then Owl Labs responds -- the font is 25 a bit small, so I apologize. They respond and they	Page 78 1 Q. Okay. I'm going to show you one more 2 exhibit. We're almost done here. 3 A. Sure. 4 Q. First, let's circle back to the purchase 5 order. It was signed by Greg Twitty. Do you 6 remember that? 7 A. I think all of our purchase orders have 8 his signatures on it. It's an electronic, almost 9 like the paycheck signatures. It automatically gets 10 put on the document. 11 Q. Were people, other than Greg Twitty, able 12 to put their signature on documents? 13 A. I'm not sure. 14 Q. Were you able to ever use Mr. Twitty's 15 signature? 16 A. No. 17 Q. Do you know if his staff was? 18 A. I'm not sure if his staff was, because you 19 had to wait until he came back in to approve 20 purchase orders. And even if he was on vacation, 21 like he would log in remotely and keep them going. 22 But I think it's -- I think it was just him, but I'm 23 not sure. 24 Q. Okay. This is the last exhibit that I 25 will show you. This is Defendant's Exhibit 4. This
Page 77 1 thank you for reaching out and say that they have 2 had previous email exchanges with David Marshall to 3 get the Owls registered, is that correct? 4 A. Okay. Yes. 5 Q. And they say, "It looks like your name was 6 given as the contact," correct? 7 A. That's in the email, yes. 8 Q. Did you find it a bit odd that David 9 Marshall had had previous conversations with Owl 10 Labs at this time? 11 A. Like I said, I didn't do the initial 12 conversation, so I wouldn't find it odd that he 13 already had a conversation with them. 14 Q. And so typically, like you said, when you 15 deal with a third-party vendor, you deal with the 16 third-party vendor after you receive the items. And 17 so in this case, dealing with Owl Labs, that was a 18 bit unique, correct? 19 A. Yes. 20 Q. And so -- 21 A. Go ahead. I'm sorry. 22 Q. No, you go ahead. 23 A. No. I mean, it was different. This is 24 the first time we did anything like this to this 25 amount.	Page 79 1 is Bates labeled Defendant's 12846. Oh, sorry. I 2 believe I already showed you this. It's going to be 3 Exhibit 14, not 4. And this is Defendant's Exhibit 4 14, Bates labeled Defendant's 14129. So this email 5 at the top on December 4th, 2020, Taphnie Sanders 6 emailed you a forward of email chains. Is that what 7 this looks to be? I'll kind of let you scroll 8 through it. 9 A. Okay. 10 Q. Okay. And so on this email chain, you can 11 see where David is communicating with Owl Labs 12 support to you, correct? 13 A. Okay. Yes. 14 Q. And then even, I think, on 3-1, so on this 15 page, you can see that right here, Eric Ham opened 16 and viewed your documents on December 3rd, 2020, 17 correct? 18 A. Opened and viewed, I see that. 19 Q. Do you have any recollection of opening 20 and reviewing the registration documents? 21 A. I don't. 22 Q. Who would have been in charge of 23 registering the Owls? 24 A. I'm not sure. And when you say 25 registering the Owls, meaning to state that the

Page 80 1 district has received them and registering them for 2 warranty or something? 3 Q. I'm not sure what the document was, 4 because it was in Docusign. But it just says 5 meeting out, the full registration viewing Docusign. 6 And so this could have been what you put your 7 information in to register the Owls, I believe. 8 A. Okay. 9 Q. So on here, you can see that Mr. Marshall 10 is communicating with Bill Smith of Owl Labs. And 11 Bill saying, "We just got word another payment was 12 received. Let me know if you and your teammates 13 would like to hop on a call some time next week to 14 discuss expectations and go over any questions you 15 may have." Do you know, did you-all ever have a 16 call with Owl Labs? 17 A. I don't remember. And I say that because 18 we met with a whole lot of people. I remember we 19 did a call with them, like I said, about doing the 20 connections and ensuring that they worked at 21 Bluetooth support, but like I don't remember 22 participating in any additional calls. 23 Q. Okay. And so also on this email chain, 24 you see that David Marshall is communicating about 25 we'll go through the same process with the second 50	Page 82 1 October 28th for the order. And they say on this 2 one -- sorry -- says they're talking about the 3 purchase order as outlined and this looks like the 4 purchase was done directly with Owl Labs, correct? 5 A. Yeah, that's the way it looks. 6 Q. And all of these emails -- it's a little 7 faint, but these are lines. Do you see that on your 8 end to the left? There are lines indicating that 9 they're forwarded emails? 10 A. Yes. 11 Q. And so all of these emails were sent -- 12 first they were sent to David Marshall, Address 13 Sims, and Quencenia Dantzler, is that correct? 14 A. Yeah, that's correct. 15 Q. And then this was sent to Taphnie Sanders 16 who then sent it to you on December 4th, 2020, 17 correct? 18 A. That's correct. 19 Q. So if any of these recipients at the 20 school district had received this email as it 21 indicates they did in December of 2020 and read 22 that, it would indicate that the Owls were purchased 23 directly from Owl Labs, correct? 24 A. Yes. 25 MS. FITTIPALDI: Object to the form.
Page 81 1 percent as the first with the \$300,000 and the 2 remainder after that. And he's confirming that the 3 first payment for \$300,000 did come in, correct? 4 A. That's what's on here, yes. 5 Q. And on the next page, they're continuing 6 to talk about how Owl Labs received payment from the 7 district, correct? 8 A. Yes, that looks correct. 9 Q. And down here on November 9th, 2020, David 10 Marshall tells Bill that the district limits us to 11 \$300,000 a day, and so that's why the funds are 12 doing it 50 percent, is that correct? 13 A. Yeah, that's what he said. 14 Q. Is that -- are you aware of a district 15 bank limit? 16 A. I'm not aware of a limit as such. But I 17 also know that the district, they don't get into 18 doing a lot of electronic transfers. Everything is 19 usually a paper check. 20 Q. And so here on November 3rd, he did a 21 test. He says, "We sent a test transaction of \$100 22 to your bank. Can you please confirm receipt?" Do 23 you see that? 24 A. I do. 25 Q. And so all of these emails dating back to	Page 83 1 THE WITNESS: That's correct. 2 EXAMINATION RESUMED BY MS. MILLS: 3 Q. So is it fair to say that on December 4th, 4 2020, the district had notice that the Owls were 5 purchased directly from Owl Labs? 6 A. I wouldn't say it was noticed, because I 7 doubt anybody read past the first lines in the 8 communication. 9 Q. Why do you believe that people would not 10 have read the email that was forwarded? 11 A. And I'm speaking in hypothetical, because 12 I can't tell you somebody did or didn't. But the 13 reason why I'm saying that is because when we look 14 at an email, especially during this time, I don't 15 think everybody read down the complete chain, all 16 right. 17 Q. That's fair. And had it been read, the 18 district would have known that the Owls were 19 purchased directly from Owl Labs, right? 20 MS. FITTIPALDI: Object to the form. 21 THE WITNESS: Yeah. I was about to say, I 22 don't know if you would have known, because you 23 would have to understand the procurement, you 24 know, or understand that when those things are 25 said. It's easy to see now, because it's

Page 84 1 retrospect and it's behind. But like Andress 2 Sims, Dr. Sims was over curriculum and 3 instruction. And Quencenia Dantzler, she was 4 like an instructional coach. Like she would be 5 one of the people that helped teachers to 6 actually use it or not to connect it, that 7 would be my staff, but she would be one of 8 those people that would help teachers in 9 showing them how to connect it to their teams 10 and to manipulate, you know, whatever. So I 11 think that may be why they were on the call or 12 in this email. Maybe they were part of the 13 process, maybe they had questions. But if you 14 read down and if you actually got into it, I 15 could see where some red flags would come up. 16 But reading down through that entire chain, I 17 don't think anybody read down through that 18 entire chain. 19 EXAMINATION RESUMED BY MS. MILLS: 20 Q. And looking now that you've seen the 21 interactions from Owl Labs and David Marshall, can 22 you see that it would be easy for Owl Labs to 23 believe that they had done a direct purchase with 24 the district? 25 MS. FITTIPALDI: Again, I'm going to voice	Page 86 1 because I think he mentioned about a payment plan or 2 something like that. Both were defrauded and both 3 said that they would work together to come to a 4 resolution. 5 The district paid out and Owl Labs 6 delivered a product that in between got messed up, 7 and I think both people got issues and both people 8 had to deal with something. So I think it's 9 important that the district work with Owl to help 10 Owl in the process, because honestly, the Owl's 11 work, they did everything they were supposed to do. 12 The district did everything that it thought it was 13 supposed to do in purchasing. And, you know, when 14 two people are -- or two organizations, you know, 15 can work together to come to a resolution, I think 16 that's something that we should do. And I say "we," 17 because I still feel like I'm a part of the 18 district, although I don't work there. And my kids 19 are out of the district, but it's my county, right. 20 And it still -- this was probably the 21 worst situation, but a learning situation. I've 22 never experienced anything like it. From meeting 23 with the FBI, and the Internal Revenue Service, 24 people with guns and all of that kind of thing, it 25 was a difficult situation. I really think that we
Page 85 1 an objection. You can answer. 2 THE WITNESS: Okay. If I was in their 3 position, I would feel some kind of way about 4 it, right, because I would -- yes. Sorry. 5 EXAMINATION RESUMED BY MS. MILLS: 6 Q. And do you believe that the district owes 7 Owl Labs for the device that they were supplied? 8 A. Now, that's a hard question, because I'm 9 going to have to preface that with some additional, 10 because I was in the meeting when we got on with 11 David. The district was defrauded and lied to. The 12 part that upsets people the most is because it was a 13 person that we trusted to do the right thing or at 14 least to help and aid the district, not to take from 15 the district. 16 And, you know, I listened to the call over 17 again. And I listened to the call because -- I 18 stopped listening to it. I had a recording of the 19 call that we had when all of this was revealed. And 20 I listened to it simply to make my systems better, 21 even here at the university. 22 So in that call, Dr. Foster was just as 23 upset as -- I think it was Bill on the call. And as 24 they were talking, neither one of them said that 25 they wanted to work with Mr. Marshall on repayment,	Page 87 1 could all work together to get everybody whole. 2 Because I remember our conversation. I 3 think it was -- I don't know if it was with Owl or 4 during one of those calls. I think Dr. Foster 5 mentioned that he thought we had a good working 6 relationship. And he thought that as a district, 7 you know, that we could be one of those people to 8 say, "Hey, you can do a case study. You can 9 actually do a video on how we use them," because it 10 is what we needed at the time. So that's hard to 11 answer that question. 12 I think the district should work alongside 13 Owl, because they both said it on the call that, 14 "Hey, let's get together," even I think it was with 15 the bank or something to kind of bring a resolution. 16 Q. And so this, obviously, was an eye opener. 17 Did you or the district -- to your knowledge, did 18 you implement any changes in how you go about your 19 work now? 20 A. I implemented changes in our department, 21 as well as I think the district did. I know talking 22 with Mr. Twitty, like I said, with the FBI and -- 23 you know, when those folks show up, your whole -- 24 you don't even sit the same. Like I felt like at 25 any moment, you know, it was going -- it was going

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 DEPREE 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

Page 5 1 - - - 2 P R O C E E D I N G S 3 - - - 4 THE VIDEOGRAPHER: This is the video 5 deposition of Dr. Shawn Foster in the matter 6 of Owl Labs, Inc., the plaintiff, versus 7 Orangeburg County School District, the 8 defendant. The original case number is 9 2022-CP-38-01363 and revised case number is 10 2024-CP-38-00640 taken on July 16th, 2024. 11 My name is Richard Edmund. The 12 court reporter is Tami Watters with EveryWord. 13 We are going on the record at 10:03 a.m. 14 If counsel would now state their 15 appearance for the record beginning with the 16 noticing attorney. 17 MR. SHEALY: I'm Kirby Shealy 18 appearing today for Owl Labs. 19 MS. FITTIPALDI: Susan Fittipaldi of 20 Halligan Mahoney and Williams on behalf of 21 Orangeburg County School District. 22 THE VIDEOGRAPHER: If the court 23 reporter would swear in the witness. 24 COURT REPORTER: In the testimony 25 you are about to give, do you solemnly swear,	Page 7 1 I use words you don't know or use words you do know 2 but don't understand, please tell me. It is not my 3 intention today to confuse you. And I will tell 4 you right you front, I can ask a bad question from 5 time to time, so just let me know if you don't 6 understand me. 7 If you answer a question that I pose to 8 you, I will assume that you understood it. Is that 9 fair? 10 A Fair enough. 11 Q All right. And as you just did, if 12 you'll provide your answers to my questions both 13 verbally and at sufficient volume for our court 14 reporter to take down your answer and for you to be 15 recorded by our videographer, that will be great. 16 If from time to time you give a nonverbal 17 response, which most people do more often than they 18 realize, I may prompt you to convert your response 19 into a verbal response so that we have a clear 20 record. 21 A Okay. 22 Q All right. Thank you. And if at any 23 point you need to take a break today, feel free to 24 do that. I will try to move through this as 25 expeditiously as I can, but if you need to take a
Page 6 1 or affirm, to tell the truth, the whole truth, 2 and nothing but the truth? 3 THE WITNESS: I do. 4 - - - 5 EXAMINATION 6 - - - 7 BY MR. SHEALY: 8 Q Dr. Foster, we met earlier today. My 9 name is Kirby Shealy. I'm a lawyer from Columbia. 10 I'm substituting in for my law partner, Taylor 11 Stanley, and I'm here today to take your 12 deposition. 13 Have you ever given a deposition before? 14 A I have. 15 Q Okay. Some of what I'm gonna say to you 16 you've probably heard multiple times. 17 You are aware that a deposition is 18 testimony given under oath, the same sort of oath 19 you would be put under if you were testifying in 20 court. 21 A Yes, sir. 22 Q And I'm gonna ask you a little bit about 23 your background and then we'll get into the issues 24 that are at play in this if I ever ask you a 25 question that you find to be vague or confusing or	Page 8 1 break for any reason, just let me know that. This 2 is not an endurance contest of any kind. 3 However, I'm required by rules to tell 4 you that if, during any break, you discuss the 5 substance of your testimony with Ms. Fit or anyone 6 else, I'm allowed under our rules to inquire into 7 the substance of that communication. 8 I have no intention today of asking you 9 about anything that you and Ms. Fit have discussed 10 to this point and don't want to know any of that, 11 but the -- there's sort of a suspension of the 12 attorney-client privilege, if you will, do you 13 think the deposition and I'm required to give you 14 sort of that fair warning. 15 All right. So first, could you just 16 state your full name for the record? 17 A Shawn Depree Foster. 18 Q All right. And I'm gonna refer to you as 19 Dr. Foster. You have a Ph.D.? 20 A An ED.D. 21 Q A doctor of education? 22 A Yes, sir. 23 Q And where are you from originally? 24 A Greensboro, North Carolina. 25 Q And how long have you lived in

Page 9 1 Orangeburg County? 2 A I'm just finished my fourth year as 3 superintendent. I've lived here for three years. 4 Q All right. And you are the -- you came 5 to Orangeburg to serve as the superintendent? 6 A Yes, sir. 7 Q All right. So you're the superintendent 8 of the Orangeburg County School District; is that 9 correct? 10 A Correct. 11 Q All right. Tell me a little bit about 12 your educational background. Where did you get 13 your ED.D? 14 A South Carolina State University in 2005. 15 Q And then your undergraduate? 16 A Undergraduate from Livingstone College. 17 Also have a master's in counseling from Webster 18 University and a second master's in education from 19 Columbia College. 20 Q All right. And have you worked in the 21 field of education throughout your working career? 22 A My entire working career has been 23 education. 24 Q And before you became the superintendent 25 of the Orangeburg County School District, what did	Page 11 1 A Uh-huh. 2 Q So the job as superintendent is the 3 only -- here in Orangeburg County is the only job 4 you've held in Orangeburg County. 5 A Correct. 6 Q Okay. Are you married? 7 A Yes, sir. 8 Q And what is your wife's name? 9 A Tanya Foster. 10 Q And what does Ms. Foster do? 11 A She's a pharmaceutical sales 12 representative. 13 Q And for whom does she work? 14 A Paratek. 15 Q And there's a reason I ask you these 16 questions. Just because this lawsuit being -- 17 pending here in Orangeburg County, the -- it's 18 important that we make sure we don't put anybody 19 from your family or that might know you closely on 20 the jury. 21 A All right. 22 Q All right. Do you have children? 23 A I have two. 24 Q Are either of them over the age of 18? 25 A No, sir.
Page 10 1 you do? 2 A I was the deputy superintendent in 3 Aiken County, South Carolina, Aiken County School 4 District. 5 Q And you did that for about a year? 6 A Five years. 7 Q Five years. Excuse me. Okay. And 8 before that, what did you do? 9 A I was director of student administrative 10 services in Spartanburg School District 7 for three 11 years. 12 Q All right. So I missed -- maybe I 13 misheard you earlier. I thought you moved 14 here from -- 15 No, no. You originally grew up in 16 Greensboro. That's what it is. Okay. 17 All right. And so -- all right. Before 18 the job in Spartanburg? 19 A I was a principal at three schools for 20 eight years, nine years as a principal, and then I 21 was a guidance counselor before that. 22 Q All right. And those schools, were they 23 in South Carolina? 24 A In Spartanburg, yes. 25 Q In Spartanburg.	Page 12 1 Q Tell me what the role of superintendent 2 entails. 3 A The role of superintendent entails a lot. 4 It's the overall operation of the entire school 5 district. Not to exclude the community 6 relationships, business industry, workforce 7 development, but also the education and 8 transitional responsibilities of a school system. 9 Q All right. And how many folks do you 10 directly oversee? We're here in the district 11 office for the school district, correct? 12 A Directly oversee? 13 Q Yes, sir. 14 A Well, I have six assistant 15 superintendents that I directly oversee and those 16 individuals oversee the various departments. 17 Q Okay. And all of the departments are 18 housed here in the district administration office? 19 A No, sir. 20 Q Where are they in the -- 21 A We have multi-district offices. We have 22 one in Cope where clinical administration is but 23 the other assistant superintendents are in this 24 building. 25 Q All right. And the school district

Page 13 1 covers the entire county of Orangeburg? 2 A Yes, sir. 3 Q How many -- how many high schools? 4 A We have seven high schools. 5 Q And then how many middle schools feed 6 into those high schools? 7 A We have, I think, 12 middle schools, but 8 some of our campuses are multilevel campuses. 9 Q I see. 10 A So like brains, and locket K through 12 11 and then Bowman's a K through 12 facility. So some 12 of. North is a 6 through 12th grade facility. So 13 it's sort of -- all of them are not 14 traditional-level schools. 15 Q What about middle schools? 16 A 15. And similar -- same situation. I 17 have a K-12 facility that elementary portion is 18 combined with the middle and high school. 19 Q And what's the total population of 20 students that you serve? I know it varies. 21 A A little over 10,600, roughly. 22 Q And to whom do you report? 23 A The board. 24 Q The -- 25 A School board.	Page 15 1 Q -- sending out a request for bids? 2 A Uh-huh. 3 Q Okay. Is that a yes? 4 A Yes. 5 Q And your -- when you e-mail -- send out 6 e-mails, you have the Orangeburg County School 7 District logo on your e-mail address. 8 A Correct. 9 Q Not on your e-mail address but on your 10 e-mail signature. 11 A I think I do, but I'm not sure if I do. 12 I may have. It may be in my signature. I don't -- 13 Q Okay. But that -- there's some 14 indication when you send out an e-mail that lets 15 the public know that you work for the 16 Orangeburg County School District. 17 A Correct. 18 Q Okay. And, you know, if you are -- if 19 you're in a -- if you're, say, negotiating with 20 somebody or talking with somebody on the -- that's 21 not connected to the school district, it's 22 important for whoever that third party is to know 23 that when you're making representations, you're 24 doing that on behalf of the school district, right? 25 A Could you ask that question a different
Page 14 1 Q The school board for Orangeburg County. 2 A That is correct. 3 Q All right. But you're the -- you're the 4 top administrative official in the school district. 5 A That's correct. Yes, sir. 6 Q Okay. What involvement do you have with 7 procurement? 8 A We have a procurement director, 9 coordinator, Mr. Greg Twitty. He ensures all 10 processes are followed pure the procurement code. 11 Obviously, any bids and things like that, 12 they go out, we review those and then he gives 13 final approval on those. 14 Q Okay. So you -- and Mr. Twitty reports 15 to you? 16 A Yes. 17 Q All right. 18 A Well, he reports directly to Gail Sanders 19 who's our assistant superintendent for finance. 20 Q Okay. And then she reports to you? 21 A Correct. 22 Q So if there's a big -- if you all have a 23 big procurement project, that would -- you would -- 24 would you be the final sign-off on -- 25 A Correct. I would be.	Page 16 1 way? I'm -- 2 Q The identifying markers on your e-mail 3 signature lets the public know that when you are, 4 say, e-mailing some third party that's not a member 5 of the school district, that you're doing that on 6 behalf of the school district, right? 7 A Me? 8 MS. FITTIPALDI: Object to the form. 9 You can answer. 10 MR. SHEALY: Yes. 11 MS. FITTIPALDI: You can answer. 12 THE WITNESS: Yeah. I'm still not 13 understanding that question. That let's them 14 know that I work for the school district. 15 BY MR. SHEALY: 16 Q Right. And that you are -- when you are 17 making statements or communicating via e-mail from 18 your Orangeburg County School District e-mail 19 address, you're doing so on the school district's 20 behalf. 21 MS. FITTIPALDI: Object to the form. 22 You can answer. 23 THE WITNESS: It depends on the 24 content of the actual e-mail and what we're 25 discussing. Some things it's just simply

Page 17 1 information. 2 BY MR. SHEALY: 3 Q But you're doing -- 4 But if you're doing that from your 5 Orangeburg County School District e-mail, you're 6 doing that on behalf of the school district, 7 correct? 8 MS. FITTIPALDI: Object to the form. 9 THE WITNESS: Not always. Sometimes 10 you just use it as information. Sometimes it 11 may not be school related. 12 All my e-mails I send may not 13 necessarily be -- I may send my wife an 14 e-mail. It's not school related, but it's 15 from my district e-mail. 16 BY MR. SHEALY: 17 Q Okay. All right. Fair enough. Do you 18 have a personal e-mail address? 19 A I do. 20 Q Okay. Do you -- do you try to conduct 21 your personal business from your personal e-mail 22 address? 23 A Sometimes. 24 Q Okay. 25 A Uh-huh.	Page 19 1 discussion. 2 Q Right. 3 A Generally, most follow-ups would be via 4 e-mail. I don't know if anybody is effective in 5 negotiating via e-mail. 6 Q Right. 7 A So -- so if that's the case, it would be 8 a follow-up to a face to face and/or phone -- 9 phone-type of contact. 10 Q And I get that. And I'm -- I think the 11 point I'm trying to make is there's a distinction 12 between where you might be negotiating with an 13 individual as Shawn Foster, citizen -- private 14 citizen and Dr. Shawn Foster, the superintendent of 15 the Orangeburg County School District, correct? 16 A Well, that's -- yeah. That's for 17 anybody. 18 Q Yeah. So there are occasions where you 19 need to -- you need to make sure that whoever 20 you're communicating with knows that you're doing 21 so in your official capacity as the superintendent. 22 A And that would probably happen in that 23 verbal conversation, not in a -- in an e-mail 24 exchange in that regard. 25 Q Okay. Would you say that you have
Page 18 1 Q But there are occasions where you are -- 2 A If I have to send my wife an e-mail to 3 say pick my kids up and I'm on my phone, then no. 4 Q Understood. Understood. Okay. Well -- 5 so if, though -- if the school district is, say, in 6 negotiations with some sort of vendor, would you 7 sometimes be involved in those? 8 A Very rarely. 9 Q Okay. Say -- say there is an occasion 10 where you -- you're involved. You -- if you are 11 sending an e-mail to that vendor and participating 12 in that negotiation, you're using your 13 Orangeburg County School District e-mail to let the 14 vendor know that you're representing the school 15 district when you do that. 16 MS. FITTIPALDI: Object to the form. 17 You can answer. 18 THE WITNESS: Typically, if I'm 19 involved in the negotiation and there's an 20 e-mail sent as a follow-up, it's after a 21 verbal conversation that I've had. I don't 22 negotiate via e-mail. 23 BY MR. SHEALY: 24 Q Right. 25 A That's a call or a face-to-face	Page 20 1 ultimate -- the ultimate authority and 2 responsibility with respect to the school district? 3 A I do. 4 Q Okay. And that would logically mean that 5 you have the ultimate authority and responsibility 6 for the school district's procurement. 7 A I do. 8 Q So who -- who within the administration 9 negotiates with vendors on price? 10 A It can -- a variety of people. It could 11 be procurement -- and, again, have I ever sat down 12 and said, oh -- yes, I have, with the procurement. 13 I mean, we've done those things as well. There are 14 various departments and/or assistant 15 superintendents may very well have those 16 conversations and negotiations with the vendors 17 that are aligned to their various department. 18 You know, I don't sit down and negotiate 19 instructional materials or resources for C&I. They 20 do those things and then bring them to the group 21 for a discussion, to myself. 22 So it could be a variety of those 23 assistant superintendents. 24 Q Okay. 25 A And that's pretty much where the level of

Page 21 1 that negotiation stops. We don't negotiate at any 2 other levels below that assistant superintendent 3 and myself level. 4 Q Okay. Is there a -- so is there a 5 distinction -- 6 Say if the amount of the potential 7 contract is over \$50,000, does that trigger a 8 different level of participation? 9 A It triggers a different level of 10 procurement, whether you have to go out for three 11 quotes versus go out for a bid, those types of 12 things. 13 Q What about your role in that process? If 14 it trips that \$50,000 level -- 15 A Procurement then activates what has to 16 happen. So everything goes through procurement. 17 If someone submits something that says 18 this is \$100,000, then Mr. Twitty says, well, this 19 is what we have to do. We have to put it out for 20 bid. And it depends on things that are exempt per 21 the procurement code as well. So there are certain 22 things that are exempt. But those are outlined and 23 Twitty is the one who verifies those things. 24 Q So that's the threshold that invokes the 25 procurement process that Mr. Twitty administer.	Page 23 1 those things. 2 Q Okay. So that's -- to the extent you 3 have any knowledge about it, can you describe that 4 to me? And if you don't and you just think 5 Mr. Twitty is the better person to ask that -- 6 A Mr. Twitty is the better person to ask 7 that question. And I know he verifies the PF 8 procurement code -- 9 Q Okay. 10 A -- and then let's us know that -- the 11 process that we have to follow. 12 Q All right. Does the Orangeburg County 13 School District have any policies regarding vendor 14 selection? 15 A I'm -- I'm not sure. I'm sure -- I mean, 16 I don't know the policy book inside and out. If I 17 had an opportunity to go find the policy -- 18 Q Right. 19 A -- we'd do that. 20 But that's what we'll do. If there's a 21 policy, we'll go through and look and see which 22 group it's in and see if there's a policy that 23 applies to that. 24 Q Okay. But off the top of your head, you 25 just don't know one way or the other?
Page 22 1 A Uh-huh. 2 Q Is that a yes? 3 A Yes. 4 Q Okay. And who -- does Mr. Twitty have 5 direct interaction with vendors about pricing when 6 the contract's over \$50,000? 7 A Yes, through the bid process. He's the 8 one who receives the bids and opens any bids. 9 Q Okay. Does the Orangeburg County School 10 District -- and I may say OCDS -- 11 A That's fine. OCSD. 12 Q I'm sorry. OCSD. I'm not gonna say that 13 because it's written down wrong on this outline so 14 I'll just say Orangeburg County School District. 15 Does it do any due diligence on its 16 vendors? 17 A Yes. Mr. -- that comes through 18 procurement as well. 19 Q So tell me what it does. What is -- what 20 is the -- 21 What's the due diligence process that 22 procurement uses? 23 A Mr. Twitty can probably better answer 24 that question. He verifies the vendors, and 25 whatever the level is, Mr. Twitty goes through	Page 24 1 A No. Mr. Twitty would know. 2 Q Do you know whether the school district 3 would check to see if a vendor has a valid employer 4 identification number? 5 A I'm assuming Mr. Twitty would do that -- 6 Q Okay. 7 A -- as part of his process. 8 Q Do you know what it means for a vendor to 9 have a -- to be on a, quote, state contract? 10 A I'm assuming that it's that the state has 11 already approved them as a vendor for state 12 agencies. 13 Q Okay. But that's an assumption you're 14 making that Mr. Twitty probably knows the answer to 15 that? 16 A Uh-huh. 17 Q Is that a yes? 18 A Yes. 19 Q Okay. Do you know -- 20 Assuming that a vendor is on a, quote, 21 state contract, do you know what the significance 22 of that is? 23 A No. 24 Q Okay. Would -- I mean, does that -- 25 Do you know that if that is the case,

Page 25 1 then the school district doesn't have to do any due 2 diligence? 3 A Oh, yeah. I do know that. So that's 4 what you mean by significance? 5 Q No, that's not necessarily what I mean by 6 significance. I mean, I'm just asking you, in 7 particular, if you -- if a vendor is on a, quote, 8 state contract, does that absolve a local school 9 district from doing any due diligence on that 10 particular vendor? 11 A They've already been vetted by the state 12 so you don't have -- you can forego the bidding 13 process because they've already -- that's the 14 purpose of, I'm assuming, the state contract. 15 Q Okay. But do you need to make sure that 16 that, quote, state contract is valid? 17 A Yes. 18 Q Okay. Do you know -- 19 All right. So is Mr. Twitty the person 20 whose job it is to ensure that the procurement code 21 is followed? 22 A Correct. 23 Q Now, ultimately, that responsibility 24 flows up to you. 25 A Correct.	Page 27 1 Q And you would want that done before you 2 rely on the vendor's representation that they're on 3 a state contract. You'd want somebody to verify 4 that, right? 5 A Correct. 6 Q Okay. The -- who has the authority to 7 authorize purchases that are -- for over \$50,000? 8 A Me. 9 Q Okay. You have to sign that 10 authorization. 11 A I sign all authorizations anyway. 12 Q Okay. 13 A Whether it's below or above, I sign 14 those. 15 Q Okay. If -- I don't know whether this is 16 a question you would defer to Mr. Twitty, but can 17 you just generally describe for me what the school 18 district's -- the Orangeburg County School 19 District's procurement policy is? 20 A I'd defer that to Mr. Twitty. 21 Q Okay. Would you agree that it is a -- 22 it's a set of rules that ensures that you are being 23 fair to potential vendors in the selection of 24 potential vendors and the expenditure of public 25 funds?
Page 26 1 Q Okay. But he's the -- that's like the 2 central part of his job. 3 A That's his job. If the process is not 4 correct -- 5 Even if I request something, Mr. Twitty 6 would say, no, we have to do it this way because 7 this is procurement. 8 Q Okay. 9 A So the ultimate authority when it comes 10 to procurement is Mr. Twitty and we follow his 11 lead -- 12 Q All right. 13 A -- in the procurement process. 14 Q Okay. 15 A As all school districts do. That's why 16 you have them. 17 Q Right. Because it's complicated. 18 A Uh-huh. 19 Q Is that a yes? 20 A Yes. 21 Q Okay. All right. So I would assume, 22 then, it's Mr. Twitty that -- whose job it is to 23 make sure that someone who claims to be on a state 24 contract is actually in fact on a state contract. 25 A He's just over procurement.	Page 28 1 A I would agree. 2 Q Okay. But is it also meant to get the 3 lowest price for the same products? 4 A In some instances, yes, but it doesn't 5 always mean that the lowest price is the price you 6 have to go with. It's about also the quality and 7 service and the product, too. 8 Q Right. You have a bunch of different 9 perhaps competing priorities that the policy is 10 supposed to help you navigate. 11 A Correct. 12 Q All right. Like, for instance, the 13 policy ensures that the vendors you're using are 14 responsible. 15 A Uh-huh. 16 Q Is that a yes? 17 A Correct. 18 Q And presumably, the policy, if it's 19 followed, will allow you to avoid fraud. 20 A Correct. 21 Q And is it -- is that policy supposed to 22 be followed in all instances? 23 A Yes, it is. 24 Q Okay. And Mr. Twitty is the one who's 25 responsible for ensuring the procurement policy's

Page 29 1 followed, right? 2 A Correct. 3 Q And ultimately, though, that -- the buck 4 stops with you about that. 5 A Everything stops with me. 6 Q Okay. And Mr. Twitty, again, is 7 responsible for ensuring that vendors are 8 responsible. 9 A Correct. 10 Q But ultimately, that responsibility falls 11 on you as well. 12 A Correct. 13 Q Okay. All right. So we talked about 14 vendors being on a state contract. Say a vendor's 15 not on a state contract. Do you generally know 16 what steps are taken to perform due diligence on a 17 vendor? 18 A I don't. 19 Q Okay. But Mr. Twitty would. 20 A He would. 21 Q Do you know whether the school district 22 looks at records maintained by the South Carolina 23 Secretary of State when it's checking -- checking 24 out or vetting a vendor? 25 A That's what Mr. Twitty would do. That	Page 31 1 A I mean, nothing other than typical what I 2 would have in my communications department. 3 Q Okay. Was he -- he wasn't a direct 4 report of yours, correct? 5 A No. 6 Q Who did he report to? 7 A He reported to the assistant 8 superintendent for communications business and 9 community partnerships, Merry Glenne Piccolino, 10 who's no longer here. 11 Q And that person reported to you? 12 A Yes. 13 Q So from an org chart standpoint, he was 14 kind of on the same level as Mr. Twitty. 15 A No. He was even below Mr. Twitty. 16 Q Okay. Okay. I thought Mr. Twitty 17 reported to the -- 18 A Mr. Twitty, he's a specialist. He 19 was--there is a number of levels on the org chart. 20 So, no, he's not even close to what Mr. Twitty is. 21 Q All right. Fair enough. Did you -- did 22 you have any kind of a relationship -- 23 When he was working here, did you have 24 any kind of relationship with Mr. Marshall outside 25 of work?
Page 30 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?	Page 32 1 A No. 2 Q Y'all weren't social friends or anything 3 like that? 4 A No. 5 Q You're not related to him or anything 6 like that? 7 A No. 8 Q And do you know how long he'd been here 9 when you became superintendent? 10 A I can't recall how long. 11 Q Okay. But he was a well-established 12 member of the administrative staff when you became 13 superintendent. 14 A He's not part of the administrative 15 staff. 16 Q When you got here, he was a -- he was a 17 part of the administrative staff? 18 A He was never part of the administrative 19 staff. 20 Q Okay. Then I've -- I've used a phrase 21 that has significance to you that it doesn't 22 necessarily to me, so -- 23 A When you say administrative staff, to me, 24 that is my assistant superintendents -- 25 Q Okay.

Page 33 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?	Page 35 1 virtually -- 2 A Virtual instruction for students, yes. 3 Q And -- and, in particular, virtual 4 instruction for students. 5 A Uh-huh. 6 Q Is that correct? 7 A Primarily virtual instruction for 8 students. 9 Q Okay. 10 A And as well, can be used for other 11 meetings and things like that. 12 Q Okay. And each one of the devices is 13 called -- it's called an Owl; is that correct? 14 A Correct. 15 Q Okay. And as -- 16 I guess as I'm talking to you, now I 17 understand why it's called an Owl, because I 18 understand that the camera will swivel to whoever 19 happens to be talking; is that right? 20 A It will. 21 Q Okay. 22 A Now, whether that's why they call it an 23 Owl or not -- 24 Yeah. I mean, it turns and follows your 25 voice, yes.
Page 34 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	Page 36 1 Q Okay. I'm gonna go on -- I'm gonna be 2 willing to bet that that's why they call it an Owl. 3 All right. So are you familiar with 4 Level 8 Communications? 5 A Not beyond the knowledge of what I've 6 learned since this investigation. 7 Q Okay. And that was -- when did you -- do 8 you know when you first learned of that entity? 9 A After everything came to a head that 10 Level 8 was -- we were going to purchase the Owls 11 through a third-party vendor. 12 Q Okay. And what was it that you -- 13 Well, how did you first come to learn of 14 Level 8 Communications? 15 A Through my director of technology who we 16 got his feedback on what technology we can use to 17 help serve students during COVID. 18 Q Okay. And who was that person? 19 A Eric Ham at that time. 20 Q And is that Dr. Ham or Mr. Ham? 21 A Mr. Ham. 22 Q Mr. Ham? He -- he had done some 23 investigation about ways of facilitating this 24 virtual instruction. 25 A He gave input on technologies that could

Page 37 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?	Page 39 1 A I'm not a vendor, so I can't tell you 2 what they provide. 3 Q Well, wouldn't -- wouldn't a vendor, 4 to -- to educate a potential purchaser about, you 5 know, what products they could furnish, wouldn't 6 that vendor provide a mock-up or a picture or a 7 photograph or whatever of the potential product to 8 the prospective purchaser? 9 A Oh, yeah. 10 Q Okay. 11 A Uh-huh. 12 Q Do you see that David Marshall in 13 Exhibit 12 was actually doing that in this e-mail 14 thread? 15 A Doing what? 16 Q Providing that -- the mock-up of how 17 things will look. 18 A On the second page? 19 Q Yes, sir. 20 A Yeah. That's not uncommon. 21 Q Okay. It's not uncommon for David 22 Marshall to do it -- 23 A No. It's not uncommon for us to send a 24 vendor the layout of a room and say here's what we 25 want it to look like. Can you give us some
Page 38 1 A No. 2 - - - 3 (E-mail Thread with Attached Estimate, 4 DEF 015094-096, marked Foster Exhibit 5 Number 12, for identification.) 6 - - - 7 BY MR. SHEALY: 8 Q I'll show you what's been marked as 9 Exhibit 12. 10 MS. FITTIPALDI: I need to look at 11 it with you. I'll scooch down. 12 BY MR. SHEALY: 13 Q And that's -- looks like an e-mail 14 thread, correct? 15 A Uh-huh. 16 Q Is that a yes? 17 A Correct. 18 Q Do you see a person named Zach Mason's 19 name anywhere in that e-mail? 20 A At a glance, no, I don't see a Zach Mason 21 anywhere. 22 Q All right. Now, would you agree with me 23 that it's typically vendors -- vendors who provide 24 mock-ups of how things will look with their 25 products, right?	Page 40 1 recommendations. 2 Q Okay. 3 A That's not uncommon. 4 Q Okay. Now, on the last page, I believe, 5 is a Level 8 estimate, is it not? 6 A It is. 7 Q Okay. Now, and did that get forwarded to 8 you? 9 A No. 10 Q So if you look at the front page, the 11 first page of Exhibit 12, doesn't -- doesn't -- the 12 e-mail at the top, isn't that sent to you? 13 A From Merry Glenne Piccolino, yes. 14 Q Okay. And was what was sent to you 15 everything that follows? 16 A I'm not -- I don't recall that. 17 Q Okay. In that e-mail, David Marshall is 18 actually acquiring a desk for his office at the 19 school district from Level 8. 20 Is that what it appears to you? 21 A In the e-mail or the estimate? 22 Q Well, does -- if you look at the whole 23 exhibit, does it appear that what's going on there 24 is David Marshall is acquiring some furniture or a 25 desk for his office and he's actually acquiring

Page 41 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	Page 43 1 And I'm just gonna represent to you that 2 Exhibit 13 is straight from the South Carolina 3 Secretary of State's website, and that's a 4 certified true copy taken from the Secretary of 5 State. 6 And do you see that that's for a company 7 called Level 8 Communications? 8 A That's what it says on here, yes. 9 Q Okay. And I'm just gonna -- I'll just 10 represent to you, that is the first document that 11 is filed with the state government that basically 12 forms an entity with that particular name. 13 Do you see David's -- Marshall's name on 14 Exhibit 13? 15 A It is. 16 Q Okay. But you -- again, you did not know 17 that David Marshall was aware -- was involved with 18 Level 8 Communications at any point prior to this 19 investigation coming to light. 20 A Did not know. 21 Q Okay. Would you agree with me that the 22 school district could have discovered that just by 23 merely checking the Secretary of State's website? 24 MS. FITTIPALDI: Object to the form. 25 THE WITNESS: Could you ask that
Page 42 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 --	Page 44 1 question again? 2 BY MR. SHEALY: 3 Q Would you agree with me that the school 4 district could have discovered that David Marshall 5 was involved with Level 8 Communications merely by 6 checking the Secretary of State's website? 7 A Again, I'm -- I'm not gonna assume that 8 that would be the case because David Marshall was 9 here well before I was a superintendent here, and 10 actually, as a part of a separate school district 11 before consolidation. 12 Q Okay. Do -- 388 Tybee Lane, 13 Orangeburg County, South Carolina, do you see that 14 address -- 15 A Uh-huh. 16 Q -- on Exhibit 13? 17 Do you know who lived there in 18 August 2019? 19 A No. I don't even know where it is. 20 Q Okay. All right. Then I'm gonna show 21 you Exhibit 14. 22 - - - 23 (Secretary of State Change of Registered 24 or Designated Office marked Foster Exhibit 25 Number 14, for identification.)

Page 45 1 BY MR. SHEALY: 2 Q -- and I'll just represent to you this is 3 another typical filing that a company may file with 4 the secretary of state to change its registered or 5 designated office. 6 I assume you're not familiar with that 7 kind of document, are you? 8 A Huh-uh. Nope. 9 Q And you've not seen what I'm showing to 10 you as Exhibit 14. 11 A No. 12 Q Okay. 13 MR. SHEALY: Let's go off the record 14 for just a second. 15 THE VIDEOGRAPHER: The time is 16 10:43. We are off the record. 17 - - - 18 (Discussion held off the record.) 19 - - - 20 THE VIDEOGRAPHER: The time is 21 10:43. We are back on the record. 22 BY MR. SHEALY: 23 Q Dr. Foster, we went off the record to 24 make sure that the document I just showed you had 25 been marked as Exhibit 14.	Page 47 1 Q Okay. So if the school district would 2 have looked into the Level 8 address, it would have 3 learned that, correct? 4 A I don't think the school district knows 5 everybody's address and exactly where every 6 location is in Orangeburg. 7 Q Well, sure. But -- and I'm not asking 8 what the school district knows but I'm asking what 9 it could learn if it had done some due diligence. 10 MS. FITTIPALDI: Object to the form. 11 THE WITNESS: I don't know if I 12 necessarily agree with the question as regards 13 to not doing due diligence. I believe Level 8 14 or whatever this address was was done prior to 15 me getting here as superintendent. They had 16 been a vendor before so I couldn't make any 17 assumptions in that regard. 18 BY MR. SHEALY: 19 Q Okay. So -- all right. Let me make sure 20 I understand that. 21 So your understanding is that Level 8 22 Communications had been a vendor for the school 23 district before you ever got here. 24 A Before the old school districts combined 25 I would assume.
Page 46 1 Do you see David Marshall's name on 2 Exhibit 14? 3 A Yes. 4 Q Okay. Are you familiar with what's 5 located at 1550 Middleton Street? 6 A No. 7 Q Okay. I'm just gonna show you what was 8 previously marked as Exhibit 4. 9 - - - 10 (Post Office Service Hours previously 11 marked Plaintiff's Exhibit Number 4, for 12 identification.) 13 - - - 14 BY MR. SHEALY: 15 Q Does it surprise you to learn that the 16 address Level 8 gave on Exhibit 14 was the post 17 office? 18 A Like I say, I don't know what the address 19 is, so ... 20 Q Okay. But the -- Exhibit 4, it would 21 indicate that 1550 Middleton Street is actually the 22 post office; is that correct? 23 A Where does it say that at? I -- the 24 services -- this service at the post office? Yeah. 25 Okay.	Page 48 1 Q Okay. You assume or do you know that? 2 A I assume, yeah. 3 Q Okay. 4 A It's an assumption. I can't tell you 5 every vendor that we have right off the top of my 6 head. 7 Q Okay. But do you know, as you're sitting 8 here today, when the first time that 9 Orangeburg County School District ever used Level 8 10 Communications as a vendor? 11 A No. 12 Q Okay. But your belief is that it had 13 been using it as a vendor before you ever became 14 the superintendent. 15 A Yeah, that's my assumption. 16 Q And what is that assumption based on? 17 A Because all the vendors rolled over from 18 the -- the old school districts. 19 Q Okay. All right. Go -- if you'll go 20 back to Exhibit 14, do you see Zach -- Zachary 21 Mason's name on that exhibit? 22 A I do. 23 Q Okay. Have you ever met him? 24 A Not to my knowledge. Did I meet Zach -- 25 I don't recall meeting Zach face to face. I talked

Page 49 1 to someone on the phone who said they were 2 Zach Mason. 3 Q So you remember having a conversation 4 with somebody that represented himself as 5 Zachary Mason? 6 A Zachary Mason, uh-huh. 7 Q And when was that? 8 A I don't recall. It's been -- it's been 9 over a year ago. 10 Q Okay. Do you -- 11 To your knowledge, has anyone in the 12 school district physically laid eyes on Zachary 13 Mason? 14 A To my knowledge? I can't recall if 15 anybody physically laid eyes on Zach Mason. I 16 can't remember -- did I meet with Zach or not? I 17 can't -- I can't recall. I know I spoke to him on 18 the phone. 19 Q All right. But if he walked in the room 20 right now, you wouldn't -- 21 A I wouldn't know who he was. 22 Q And do you know whether anyone with the 23 school district spoke with him prior to using 24 Level 8 as a vendor? 25 A Spoke to a Zach Mason?	Page 51 1 Q And is -- if Zachary Mason's voice was on 2 the other end of a phone call today, would you 3 recognize it? 4 A I wouldn't. 5 Q Okay. But your subjective belief is that 6 Zachary Mason and David Marshall are two different 7 people. 8 A I said I would assume. 9 Q All right. So who negotiated with 10 Level 8? 11 A Eric Ham. 12 Q Eric Ham did. And that was the way that 13 was supposed to go because of the size of the -- of 14 the -- 15 When we're talking about purchasing the 16 Owls, that was the -- Mr. Ham was supposed to be 17 the direct line of communication with Level 8. 18 A Yes. Mr. Ham being director of 19 technology did the research and contacted them to 20 see if they were able to get these devices and then 21 brought information back to myself and Mr. Twitty. 22 Q Okay. Now, are you aware that David 23 Marshall came to be the direct -- the contact here 24 at the district that was -- 25 A I wasn't aware.
Page 50 1 Q Yes. 2 A On the phone. We spoke on the phone. 3 Q Prior to using him as a vendor? 4 A I'm trying to remember. I really can't 5 remember if it was . 6 -- I know I spoke to him afterwards. I 7 can't remember. 8 Q Okay. Did you speak to him just one 9 time? 10 A I know -- I actually can't remember how 11 many times I spoke with him. I believe it was 12 maybe -- I believe it was once. 13 The one time I recall is whenever we were 14 investigating this matter, so I'm not sure how 15 Zach's name came to -- came to me. I can't 16 remember that. 17 Q All right. So did you place a call to 18 Zachary Mason? 19 A I don't remember how we got in touch with 20 Zachary, whether it was through Eric Ham or through 21 myself. I'm not sure who placed the actual call. 22 Q Okay. Let me -- let me just ask you 23 this: Is Zachary Mason David Marshall? Are they 24 the same person? 25 A Not to my knowledge.	Page 52 1 Q -- directly contacting -- communicating 2 with Level 8? 3 A Wasn't aware of that. 4 Q Okay. And if that -- if that were true, 5 do you know whether anybody ever questioned that 6 here at the district? 7 A I wasn't aware. I don't think anybody 8 was aware. 9 Q Okay. And was Level 8 an authorized 10 vendor? 11 A Mr. Twitty could verify that. 12 Q Okay. So you don't know one way or the 13 other. Mr. Twitty would. 14 A Mr. Twitty would. 15 Q Okay. And how does one become an 16 authorized vendor? 17 A Mr. Twitty can verify that information 18 and process as well. 19 Q You don't know what a vendor has to do to 20 become authorized. 21 A No. They go through Mr. Twitty and that 22 process. 23 Q Did anyone within the school district 24 confirm that the alleged state contract that 25 Level 8 gave you was valid?

Page 53 1 A Mr. Twitty would be the one that you have 2 to speak to in that regard. 3 Q Do you remember a conversation in 4 June 2020 involving representatives of Owl Labs and 5 David Marshall and representatives of the school 6 district? 7 A A meeting? 8 Q It was a conference call. 9 A Yeah. It was a conference call. Yeah. 10 Q Okay. Who was on that call for the 11 school district? 12 A There was myself, there was 13 Ms. Piccolino, I believe it was Eric Ham. I can't 14 recall. It was some team members. 15 Q Okay. And but -- and Mr. Marshall -- 16 A And Greg Twitty. 17 Q And Mr. Marshall was here in the -- or 18 was in the same room -- 19 A No. You said who was here as part of the 20 school district. Mr. Marshall was terminated. He 21 was not part of the school district -- 22 Q Okay. 23 A -- when that meeting occurred. 24 Q Okay. He was not part of the school 25 district, but was he physically present in the	Page 55 1 Dr. Foster a minute to look at that. 2 MR. SHEALY: Certainly. 3 MS. FITTIPALDI: If you don't mind, 4 can we just go off the record? 5 THE VIDEOGRAPHER: The time is 6 10:53. We are off the record. 7 - - - 8 (Whereupon there was a recess in the 9 proceedings.) 10 - - - 11 THE VIDEOGRAPHER: The time is 12 10:59. We are back on the record. 13 BY MR. SHEALY: 14 Q Okay. Dr. Foster, we took a brief break 15 just as a matter of form. Did you discuss the 16 substance of your testimony with anyone during our 17 break? 18 A No. 19 Q So I showed you Exhibit 6, and that's 20 a -- an e-mail thread with someone purporting to be 21 with Level 8, correct? 22 A Zach Mason and Greg Twitty? 23 Q Right. So Zach Mason was -- was -- 24 The person named Zach Mason or responding 25 to that e-mail address was conversing with
Page 54 1 same -- 2 A He was not. 3 Q Okay. He was, but you all were able to 4 get him on the phone. 5 A He was virtual. 6 Q I see. Do you recall asking Mr. Marshall 7 whether Level 8 had a valid state contract number 8 in that meeting? 9 A I don't recall. 10 Q And you don't recall what he said. 11 A I don't recall, but I believe there's a 12 recording of the meeting. 13 Q All right. Let me show you Exhibit 6. 14 And you really have to have glasses. 15 - - - 16 (E-mail Thread, DEF 014312-323, 17 previously marked Plaintiff's Exhibit 18 Number 6, for identification.) 19 - - - 20 MS. FITTIPALDI: Not only is it 21 small but it's -- 22 MR. SHEALY: It's faint. 23 MS. FITTIPALDI: -- faint. 24 MR. SHEALY: Yes. 25 MS. FITTIPALDI: Maybe give	Page 56 1 Mr. Twitty, correct? 2 A Correct. 3 Q And Mr. Twitty was asking about the state 4 contract. And I think this is in March of 2021; is 5 that right? 6 A Correct. 7 Q Okay. Do you know why that wasn't done 8 before the school district ever purchased from 9 Level 8 in the first place? 10 A I don't. 11 Q Let me see that back real quickly. If 12 you look at Bates label 14314, Mr. Twitty says they 13 have not proved to be on a state contract. This is 14 March 2021. 15 And do you know why there was not a proof 16 of being on a state contract to Mr. Twitty's 17 satisfaction demanded before the school district 18 purchased the Owls? 19 A I don't. 20 Q Okay. And if you turn to Bates label 21 14318, and Mr. Twitty is asking whether the Owls 22 were bought through a company known as Flex 23 Technologies. 24 Do you see that? 25 A Uh-huh.

Page 57 1 Q Is that a yes? 2 A Yes. 3 Q The school district knew in March there 4 was a problem with this -- the -- Level 8's 5 representation that it was on a state contract, 6 correct? 7 A They knew there was a problem with what? 8 Q With Level 8's representation that it was 9 on a state contract. 10 A I'd assume if Mr. Twitty's asking 11 questions. 12 Q All right. Did the school district do 13 anything about that in March of 2021? 14 A I don't -- I'm not sure. 15 Q Okay. Now, in the conversation that we 16 were talking about earlier, the conference call, do 17 you remember saying that the school district never 18 dealt with Owl Labs directly? 19 A I could have said that. 20 Q Okay. But you agree with me that David 21 Marshall was an employee of the school district 22 when he sent a purchase order to Owl Labs, correct? 23 A David Marshall was an employee of the 24 school district, uh-huh. 25 Q All right. Exhibit 11, I think, was	Page 59 1 A Uh-huh. 2 Q Okay. Can you turn to page 9 and look at 3 Section 510 for me? You there? 4 A Uh-huh. 5 Q Does that indicate that you're the person 6 with all responsibility under the procurement code? 7 A Yes. Uh-huh. 8 Q Okay. And Section 540 says that you, the 9 superintendent, are authorized to develop internal 10 operating protocols and procedures and forms. 11 A Uh-huh. 12 Q Is that a yes? 13 A Yep. 14 Q Okay. And do you know, of your own 15 knowledge as you're sitting here, what operating 16 protocols and procedures and forms the school 17 district has with respect to procurement? 18 A Yeah. That's the responsibility of the 19 procurement coordinator. 20 Q Okay. Whatever they are, that's 21 Mr. Twitty's responsibility -- 22 A Uh-huh. 23 Q -- is that correct? 24 All right. Look at Section 20.1.1. Is 25 that on that same page?
Page 58 1 previously marked, but I'll show you -- present 2 that to you. 3 - - - 4 (Procurement Policy, DEF 00001-69, 5 previously marked Plaintiff's Exhibit 6 Number 11, for identification.) 7 - - - 8 BY MR. SHEALY: 9 Q Does that Exhibit 11 look familiar to 10 you? 11 A I hadn't read through the whole thing, 12 so ... 13 Q But does it appear to be, based on your 14 limited review, the procurement code for the school 15 district? 16 A I wouldn't assume. I don't -- this was 17 2019, so -- 18 Q Okay. 19 A I got here in 2020. 20 Q Okay. But what familiarity, if any, do 21 you have with the procurement code for the school 22 district? 23 A This is Mr. Twitty. 24 Q Mr. Twitty is the person that really has 25 that familiarity.	Page 60 1 A It also says -- under here it says the 2 superintendent may delegate his or her authority to 3 the designee to the procurement office. 4 Q Is that what Section 20.1.1 says? 5 A No. That was the page we were just on. 6 Q Okay. 7 A I was referring back to the original 8 question. 9 Q Okay. All right. 10 A Which question are you referring to? 11 Q I'm asking you to look at Section 20.1.1. 12 A Which page are you on? 13 Q Give it back to me. I'll get you there. 14 Okay. And this is page 5. And if you'll 15 just read into the record what 20.1.1 says. 16 A "To provide increased economic (sic) in 17 District procurement activities and to maximize to 18 the fullest extent practicable the purchasing 19 values of funds while ensuring the procurements are 20 the most advantageous to the District." 21 Q Okay. So one of the goals of that 22 procurement code is to maximize the purchasing 23 value of funds; in other words, to get the lowest 24 price. 25 A Uh-huh.

Page 61 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.	Page 63 1 A Yeah. So I wouldn't know what -- what 2 his company's practices were. 3 Q All right. Going back to the procurement 4 code, Exhibit 11, if you go back to -- I think it's 5 on page 5, 20.1.2 -- 6 A Uh-huh. 7 Q -- can you read that section into the 8 record? 9 A "To foster effective broad-based 10 competition for public procurement within the free 11 enterprise system." 12 Q So that's another one of the goals of the 13 procurement code, correct? 14 A Uh-huh. 15 Q Is that a yes? 16 A Goal, yes. 17 Q Okay. 18 A Well, it's a provision. That's not a 19 goal. 20 Q I mean, if you look at it, is that one of 21 the -- is that one of the goals of the procurement 22 code -- 23 A One of the purposes, yeah. 24 Q -- why it's in place. 25 So what competition took place with
Page 62 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 known 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?	Page 64 1 respect to the acquisition of the Owls? 2 A To my knowledge, none. 3 Q Okay. There was no sealed bid or 4 anything like that. 5 A There was no seal bid. If state 6 contract -- if something under state contract, it 7 doesn't require that. 8 Q I see. Okay. But this was a -- this was 9 nearly a million dollar contract, right? 10 A Uh-huh. 11 Q Is that a yes? 12 A Yes. 13 Q And there was no competitive used -- I'm 14 sorry. 15 There was no competitive bid used because 16 the school district was acting on the assumption 17 that Level 8 was under a state contract. 18 A Correct. 19 Q All right. Are you aware, sitting here 20 today, that the state contract number given by 21 Level 8 during this whole debacle with Owl Labs 22 does not actually list Level 8? 23 A After reading this, yes. 24 Q And are you aware that Mr. Twitty was not 25 aware of that until at least March 2021, months

Page 65 1 after the Owls had been ordered, delivered, and 2 used? 3 A According to what the documents say, yes. 4 Q And -- and that's really months before 5 the school district uncovered what it claims is 6 fraud by Mr. Marshall. 7 A I'm not -- the dates and times, I 8 don't -- I don't know. 9 Q Okay. 10 A I can't, you know, give specifics. 11 Q So let me ask you this: When Mr. Twitty 12 discovered that the state contract number given by 13 Level 8 didn't actually list Level 8, did he tell 14 you that? 15 A No. 16 Q If he had, what would you have done about 17 that? 18 A I don't want to make any assumptions. I 19 don't -- you know, I can't process what I would 20 have done right then and there. 21 Q Okay. As -- as -- as you're sitting here 22 today, Mr. Twitty had discovered that in March of 23 2021. 24 Isn't that some indication to you, 25 sitting here today, that there was a potential for	Page 67 1 A I would assume, uh-huh. 2 Q Okay. Do you agree that if the school 3 district was going to rely on an alleged state 4 contract because that -- as we've already talked 5 about, that sort of absolves the school district 6 from having to do its own vetting process, it 7 should have ensured that the state contract was 8 valid. 9 MS. FITTIPALDI: Object to the form. 10 THE WITNESS: Who's to say we 11 didn't? I believe that was the process. 12 BY MR. SHEALY: 13 Q All right. Go back to Exhibit 14 to 14 Section 20.1.4. 15 A Section 14? 16 Q No. Exhibit 14 that's right in front of 17 you. 18 A This is Exhibit 11. 19 Q I'm sorry. You're right. Exhibit 11. 20 Look at Section 20.1.4. 21 A Uh-huh. 22 Q And does it say one of the underlying 23 purposes and policies of the code are to ensure the 24 fair and equitable treatment of all persons who 25 deal with a procurement system of the District
Page 66 1 fraud? 2 A I would -- I don't want to assume. I 3 would have to do more investigation -- 4 Q Okay. 5 A -- just making that that one incident, 6 because it could be very well partnerships and 7 things like that that exist that was mentioned in 8 the e-mail chain as well. 9 Q Okay. If the school district had done 10 the appropriate due diligence on Level 8, it might 11 have been able to prevent the payment of money to 12 Level 8 instead of Owl Labs and prevented -- 13 prevented this fraud. 14 MS. FITTIPALDI: Object to the form. 15 THE WITNESS: The assumption that we 16 didn't do due diligence, I don't know that 17 that's an appropriate question in that regard. 18 BY MR. SHEALY: 19 Q Okay. As we're sitting here today, do 20 you agree with me that Level 8 was not actually on 21 any state contract? 22 A According to the -- the documents you 23 presented. 24 Q Okay. And the school district has the 25 ability to look up state contracts, does it not?	Page 68 1 which will promote increased public confidence in 2 the procedure followed in public procurement? 3 A It does. 4 Q Okay. So is it -- so is it correct, 5 though, that that is one of the purposes and 6 policies of the procurement code, what I just read? 7 A Correct. 8 Q All right. So -- but you're -- you're 9 not willing to say, as you're sitting here today, 10 that the school district did not do any due 11 diligence on Level 8. 12 A Correct. 13 Q All right. But logically speaking, if 14 the school district had looked at the Secretary of 15 State's website on Level 8, it would have seen 16 immediately that David Marshall, its own employee, 17 was involved, would it not? 18 MS. FITTIPALDI: Object to the form. 19 THE WITNESS: I can't say that for a 20 fact at all. 21 BY MR. SHEALY: 22 Q Okay. But the school district does not 23 do -- doesn't -- as a matter of policy, doesn't 24 procure services or products from its own 25 employees.

Page 69 1 A Correct. 2 Q Okay. That would be against the purposes 3 of having a procurement code. 4 A Uh-huh. 5 Q But the school district issued a 1 -- 6 nearly a \$1 million purchase order in this case 7 without ever checking on that state contract 8 number. 9 A That's an assumption that it was not 10 checked. 11 Q Well, tell me, if you can, what the 12 school district did on this procurement process 13 which promoted an increased public confidence in 14 the procedure followed in public procurement? 15 A I wouldn't be the one who could tell you 16 that. 17 Q All right. So, again, going back to 18 Exhibit 11, the next section, if I'm reading 19 correctly, is to provide safeguards for the 20 maintenance of a procurement system of quality and 21 integrity with clearly defined rules for ethical 22 behavior on the part of all persons engaged in the 23 public procurement process. 24 Is that a fair reading of that section? 25 A It is.	Page 71 1 A I don't. 2 Q -- leading to this problem? 3 A I don't. 4 Q After all this came to light, what 5 investigation internally did the school district do 6 about how this process was -- unfolded? 7 A Personally, I believe that the safeguards 8 we have in place is actually what brought it to our 9 attention. 10 Q Okay. 11 A And that's how we recognized the 12 signature on the back of the check was through the 13 safeguards that we put in place once consolidated. 14 And after that is when we conducted obviously the 15 reporting to law enforcement and the meeting that 16 was recorded with David Marshall and Owl Labs. 17 Q Okay. Okay. So that -- those -- the 18 safeguards brought this to light after the fraud 19 had been perpetrated, correct? 20 A Correct. 21 Q Do you know what safeguards were violated 22 to allow the fraud to happen in the first place? 23 A No. 24 Q Do you know how Mr. Marshall was able to 25 make the procurement of Owls using his school
Page 70 1 Q And, again, that's another purpose and 2 policy of the procurement code? 3 A Uh-huh. 4 Q Is that a yes? 5 A Yes. 6 Q And -- and, really, that purpose is 7 supposed to be served by all persons involved in 8 the procurement process, not just school district 9 employees, correct? 10 A Repeat the question. I don't understand 11 the question. 12 Q So that part of the policy is meant to 13 sort of apply to everyone, including vendors 14 making -- you know, bidding for work or -- that 15 this is supposed to ensure that there's ethical 16 behavior all the way around. 17 A I guess. I would assume. I can't say 18 specifically what it means for the vendors. 19 Q Okay. Can you tell me what safeguards 20 are in place from the school district's standpoint 21 to ensure ethical behavior on the part of all 22 persons engaged in the public procurement process? 23 A That's at the procurement office. 24 Q Do you know what safeguards were violated 25 in this instance to --	Page 72 1 district e-mail address? 2 A He's -- he was an employee, so he has 3 access to his e-mail. 4 Q Okay. 5 A So he has the right to, you know, e-mail 6 folks. 7 Q Okay. But earlier you indicated that he 8 has no -- he had no authority to make decisions and 9 no authority in the procurement process whatsoever. 10 A Correct. But he has access to his 11 e-mail. 12 Q What safeguards were in place to keep a 13 rogue employee like David Marshall from doing what 14 he did? 15 A From e-mailing people? 16 Q Well, and -- and securing a -- a contract 17 with his own company. 18 A Well, I don't think any business has any 19 safeguards from preventing individuals to e-mail 20 companies and/or individuals to create/falsify 21 documents and sending them. So I don't know if any 22 company has that -- that safeguard in place. 23 Q Okay. All right. If you'll hand me 24 Exhibit 11 again. 25 Okay. If you'll look with me at

Page 73 1 Section 40.2 of the procurement code, would you 2 agree that the procurement code is applicable to 3 every procurement, not just some of them, correct? 4 A Uh-huh. Correct. 5 Q And so it has to be followed on every 6 procurement of any materials, equipment, anything, 7 right? 8 A Correct. 9 Q And then if you'll turn to Section 45.1. 10 A Well, I guess now I read down further 11 beyond what you have highlighted, that there are 12 exemptions to the code as well, just for clarity, 13 and exceptions in the code in the case did not 14 apply to gifts, insurance gifts, contracts to the 15 public. 16 So that's more -- as you read down this 17 document, that's a lot more than what you have 18 highlighted. 19 Q Okay. But subject to those very narrow 20 exceptions, the procurement code applies to all 21 purchases of -- 22 A With the exception, again, ya'll. So, I 23 mean, it would apply to all of those that are not 24 under the exception. 25 Q Okay. I think we're saying the same	Page 75 1 an exception specified in Section 40.3 which 2 pertains to compliance with federal requirements. 3 If you were spending federal funds, then 4 you've got a whole -- a whole nother set of rules 5 to deal with. 6 A Yeah. I wouldn't -- I wouldn't know. 7 I'm just reading that. 8 Q And then Section 710 is the exemption 9 section. You see that? 10 Is that a yes? 11 A Yes. 12 Q Okay. And the exemptions that are -- can 13 only be designated by the board itself, the school 14 board; is that right? 15 A Correct. Uh-huh. 16 Q Okay. So aside from those circumstances, 17 the procurement code applies in all procurements by 18 the school district. 19 A I would assume. 20 Q Okay. Go back to Section 45.1. I'll 21 turn you to the -- 22 Okay. And this is the time for payment 23 section. Am I correct that the district must pay 24 for all supplies, service, or information 25 technology within 30 work days after the acceptance
Page 74 1 thing. 2 A Okay. 3 Q Okay? Certainly with the respect to the 4 procurement of any materials, equipment, the sort 5 of things that the district needs to run the school 6 system in Orangeburg County, the procurement code 7 applies in all those circumstances. 8 MS. FITTIPALDI: Object to the form. 9 THE WITNESS: Except for those that 10 are allowable under the procurement code. 11 BY MR. SHEALY: 12 Q Okay. Subject to the exceptions that are 13 set forth in that same section, correct? 14 A Uh-huh. 15 Q Is that, again, a yes? 16 A Well, yes. But also 710, all the 17 exceptions are not listed up on here. There's 18 another section that's indicated in the code that's 19 not present -- 20 Q Okay. 21 A -- that -- as I'm reading this. So I 22 don't know what's in 710 at all. 23 Q All right. Well, hand that back to me 24 for just a second. Thank you. 25 Okay. So Section 40.2 has an -- contains	Page 76 1 of the goods or services and proper invoice; is 2 that correct? 3 A That's what it says, yes. 4 Q All right. And the district shall pay an 5 amount established in the late payment charge 6 regulations issued by the South Carolina 7 Comptroller General not to exceed 15 percent per 8 annum on any unpaid balance which exceeds the 30 9 day work day period; is that right? 10 A That's what it says. 11 Q All right. 12 THE VIDEOGRAPHER: Kirby, your mic 13 fell off. Could you -- 14 BY MR. SHEALY: 15 Q Okay. And then we'll turn to 16 Section 1810. All right. Are we within 17 Section 1810? 18 A Uh-huh. 19 Q All right. And this is about the 20 termination of responsibility. And am I correct 21 that the code says: The responsibility of the 22 bidder or offeror shall be ascertained for each 23 contract let by the District based upon full 24 disclosure to the Procurement Officer concerning 25 capacity to meet the terms of the contracts and

Page 77 1 based upon past record of performance for similar 2 contracts? 3 Does it say that? 4 A That's what it says. 5 Q All right. And the procurement officer 6 that is mentioned in that section, that's Greg 7 Twitty in this instance, correct? 8 A Correct. 9 Q So Greg Twitty is supposed to determine 10 the responsibility of the bidder, correct? 11 A Correct. 12 Q In this case, that's Level 8. 13 A I would assume. 14 Q Okay. And so he's supposed to determine 15 Level 8's responsibility to meet the terms of the 16 contracts, right? 17 A Right. Uh-huh. 18 Q Do you know what that involves? 19 A Don't know. 20 Q All right. Now, looking at 21 Section 1810.1.1.1 through 1810.1.1.5. There is 22 a -- sort of a discussion about the availability of 23 the appropriate financial material, equipment, 24 facility, personnel, resources and expertise. 25 Is that all listed there?	Page 79 1 David Marshall, correct? 2 A Well, that's what you said. 3 MS. FITTIPALDI: Object to the form. 4 THE WITNESS: I didn't say that. 5 You said that. 6 BY MR. SHEALY: 7 Q All right. Can you turn -- I'm happy to 8 do it for you. Can you turn to Section 2420? 9 A What page? 10 Q I'll have to do it. All right. Are you 11 there? 12 A Uh-huh. 13 Q And that section has to do with reporting 14 anticompetitive practices, does it not? 15 A That's the headline. That's the title. 16 Q Okay. Do you know whether the district 17 has made any report to the South Carolina Attorney 18 General's Office regarding anticompetitive 19 practices by Level 8? 20 A I believe we did report that. 21 Q Okay. And do you know when that was 22 done? 23 A No. 24 Q Do you know how -- what process was used 25 to do that?
Page 78 1 A Correct. Uh-huh. 2 Q All right. And do you know what the 3 school district did to look into that with respect 4 to Level 8? 5 A I don't. 6 Q All right. Another thing that is 7 supposed to be looked at is whether the bidder is 8 qualified legally to contract with the district and 9 state, correct? 10 A Correct. 11 Q And that would require that the 12 procurement officer look into whether there was 13 actually a state contract, wouldn't it? 14 A I would assume, yeah. 15 Q Okay. And it would also require that the 16 procurement officer know if Level 8 was affiliated 17 with David Marshall. 18 A I don't know if that's -- we can't tell 19 you who all's associated with every single 20 business. I don't know if that's -- I believe it's 21 verifying the business, but the individuals, I'm 22 not -- 23 Q But as we talked about earlier, a simple 24 review of the Secretary of State's website would 25 have revealed that Level 8 was affiliated with	Page 80 1 A I don't know. Mr. Twitty. 2 Q Okay. Mr. Twitty would have -- 3 If that was done, it was done by 4 Mr. Twitty, is that -- 5 A Yes. 6 Q As you're sitting here today, Dr. Foster, 7 do you believe that the school district followed 8 its own procurement code in the acquisition of the 9 Owls? 10 A I do. 11 Q How? 12 A By going through our procurement office. 13 Q Does the school district have any 14 policies regarding the placement of or the use of 15 electronic signatures? 16 A Not that -- not to my knowledge. Not 17 saying we do. Not saying we do and not saying we 18 don't. I don't know that policy. 19 Q Is it something that the school district 20 regularly employs, though? 21 A Some employees have electronic 22 signatures, some don't. It's not a -- it's a 23 preference. 24 Q Do you -- do you use electronic 25 signatures?

Page 81 1 A I do. 2 Q So that's a -- that's not an out of -- 3 that's not an unusual practice with respect to the 4 school district. 5 A With the school district, that's an 6 individual preference, so I can't speak on behalf 7 of the school district. Some people use them, some 8 people don't. 9 Q All right. So but you'd agree that if 10 Greg Twitty's signature is on a purchase order, it 11 would appear to be a legitimate signature of his to 12 a third party, correct? 13 A It could be. 14 Q Do you know whether Mr. Twitty regularly 15 uses electronic signature? 16 A I don't. But what is an electronic 17 signature? Because once I sign something, anybody 18 can scan mine and then it becomes electronic not by 19 my wishes. 20 So I'm not sure what you mean by 21 electronic signature versus a scanned signature. 22 They're distinctly two different things. 23 Q Okay. So -- 24 A He may not use an electronic signature. 25 He may use a regular signature that someone has	Page 83 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
Page 82 1 scanned and duplicated. So does that make it 2 electronic? I don't know. 3 Q Okay. Fair enough. What is -- when you 4 said you use electronic signatures, tell me what 5 you use. 6 A Mine is actually a signature that I put 7 in myself that's electronic. So mine's actually 8 put on myself. 9 Q All right. So what you -- 10 You signed a piece of paper and saved it 11 as a scan? 12 A Uh-huh. 13 Q Is that a yes? 14 A Yes. 15 Q Okay. And so you use the image of your 16 signature to sign documents on behalf of the school 17 district. 18 A Uh-huh. 19 Q Is that a yes? 20 A Correct. 21 Q And do you believe that others' -- other 22 authority -- people in authority at the school 23 district use a similar -- 24 A Some do. 25 Q -- technique as you have?	Page 84 1 is one thing. The verification is another. 2 Q Do you think a vendor is entitled to rely 3 on a purchase order issued by the district? 4 A Yes, for payment. But the validity of 5 it, the vendor has a responsibility at some point 6 to verify those. 7 Q But you want -- 8 I mean, when purchase orders are issued 9 by the district, you want the -- the orders to be 10 filled, right? You want to get or receive the 11 service or product that you order. 12 A Me? 13 Q I mean, the district does. 14 A Oh yeah. Uh-huh. 15 Q Okay. All right. Let's talk about 16 Owl Labs. When's the first time you ever heard of 17 Owl Labs? 18 A Was during the discussion of the pandemic 19 and trying to a way to better serve our students in 20 virtual instruction. 21 Q And that was a conversation you had with 22 Mr. Ham. 23 A Mr. Ham, yes. 24 Q Okay. And an Owl Pro is the -- is the 25 actual camera that we're talking about?

Page 85 1 A Correct. What I understand, that's the 2 name of it. 3 Q And the school district purchased 875 4 Owl Pros, correct? 5 A I would assume, somewhere around there. 6 Q When did you become aware that that 7 purchase had been made? 8 A During the initial discussion that we 9 have a third-party vendor that can get the Owls and 10 then the process will then turn it over to 11 procurement and technology. 12 Q Okay. 13 A And whenever it was done, it will be the 14 person that were waiting for them to ship. 15 Q Okay. You were -- you were made aware, 16 just in the normal course of business, that the 17 purchase had been made. 18 A Uh-huh. 19 Q Is that correct? 20 A Correct. 21 Q But you don't know approximately when 22 that was. 23 A No. 24 Q And we talked about this earlier, but the 25 thing that gave rise to a need for them is the fact	Page 87 1 the purchase of the devices? 2 A Mr. Twitty authorizes all POs and then 3 myself. 4 Q Okay. And yourself? 5 A Uh-huh. 6 Q Is it a dual signature? 7 A No, it's not a dual signature. 8 Q Okay. 9 A It's just -- just -- well, the final 10 authorization comes from procurement and 11 Mr. Twitty. 12 Q Okay. But because it was such a large 13 contract, nearly a million dollars, that change the 14 authorization protocol? 15 A It doesn't. Huh-uh. 16 Q It does not? 17 A Does not. 18 Q Looking at Exhibit 1, which we looked at 19 a minute ago, have you seen that e-mail and its 20 attachment before -- before today? Because I think 21 I showed it to you earlier in this deposition. But 22 had you seen it before today? 23 A No. 24 Q Okay. 25 A Not that I recall.
Page 86 1 that people were on lockdown and couldn't come to 2 school. 3 A Uh-huh. 4 Q Is that yes? 5 A Correct. 6 Q All right. And the Owls -- the hope for 7 the Owls was that they would facilitate virtual 8 instruction. 9 A Correct. 10 Q All right. Okay. And in this particular 11 circumstance -- we may have touched on this 12 earlier -- but what involvement did you have in 13 this procurement of the -- of these Owls? 14 A The discussion of, you know, it was 15 there, technology we could use, and then the 16 conversations with Eric Ham and Mr. Twitty and how 17 can we get this technology to help serve our 18 students. 19 Q Okay. So you were involved in the front 20 end on identifying the fact that there is a need 21 and how do we -- how do we address that need. 22 A Uh-huh. 23 Q Correct? 24 A Correct. 25 Q All right. And who needed to authorize	Page 88 1 Q Does that appear to be an e-mail from 2 David Marshall to Bill Smith? 3 A That's what the from and to and the 4 subject line says, yes. 5 Q Okay. And David Marshall's using his 6 school district e-mail address, correct? 7 A Well, where it comes from -- I don't know 8 what's -- where -- it doesn't show the e-mail 9 address that it came from. 10 Q Well, see the signature block at the 11 bottom? 12 A Yeah, but I can put a different signature 13 and it doesn't necessarily mean it came from that 14 e-mail. 15 Q Okay. Generally speaking, though, does 16 that e-mail have the indicia or sort of indicators 17 that David Marshall is sending that from his 18 Orangeburg County School District address? 19 A Wouldn't assume. The district logo is 20 not even there which is normally in that place 21 where the question mark is. 22 Q Okay. Now, there's been some previous 23 testimony that the phone number in Mr. Marshall's 24 e-mail signature was wrong. 25 Are you aware of that testimony?

Page 89 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 - - -	Page 91 1 this signature block for Exhibit 1 to the phone 2 number on Exhibit 15. 3 A They're the same. 4 Q Okay. So in the fall of 2020, COVID was 5 still very much an issue, correct? 6 A It was, uh-huh. 7 Q All right. And was it unusual for 8 employees to use their cell phones on their e-mail 9 signature? 10 A I don't know if I know it's unusual or 11 not. I don't know if we even paid attention to it. 12 Q Okay. Well, people were not coming into 13 the district office at that time, correct? 14 A Uh-huh. Some people don't use their 15 phone number on their signature at all. So maybe 16 it's the preference of that person. 17 Q Okay. But particularly during the fall 18 of 2020, it was not unusual for employees to use 19 their cell phones in their e-mail signature, 20 correct? 21 A I wouldn't -- I wouldn't know if it's -- 22 I don't even know if my phone number's on my 23 signature -- 24 Q Okay. 25 A -- to be perfectly honest with you.
Page 90 1 BY MR. SHEALY: 2 Q -- and that's an e-mail string on which 3 you're -- you're a part of that e-mail string, 4 correct? 5 A Uh-huh. 6 Q Is that a yes? 7 A Correct. Uh-huh. 8 Q The second e-mail in the string is dated 9 August 4, 2020, and it's an e-mail from 10 David Marshall to you, correct? 11 A Yes. Uh-huh. 12 Q Okay. And in that e-mail string, what 13 phone number is in Mr. Marshall's e-mail signature? 14 A Where is his e-mail signature? 15 Q Well, I'm sorry. If you -- looking at 16 the e-mail that says: Howdy! You did well! Check 17 it out. 18 And then there's a link, and then below 19 that, do you see his contact information? 20 A I do. Uh-huh. 21 Q Okay. And it contains a -- a phone 22 number, does it not? 23 A It does. 24 Q Okay. And then I'm gonna show you 25 Exhibit 1 again, and compare the phone number on	Page 92 1 Q Well, if folks were intending to conduct 2 business on behalf of the district and wanted to 3 make sure that folks could reach them either by 4 e-mail or by telephone, they would put a telephone 5 number that would reach them where they happened to 6 be in the fall of 2020, would they not? 7 A Well, district employees worked. We came 8 into the office. 9 Q Okay. 10 A So what -- teachers were the ones who was 11 doing the work from home. So, you know, we worked 12 here social distancing. It was the schools that 13 were working from home. 14 Q Okay. Well, again, looking at 15 Exhibit 15, you, as the superintendent, were aware, 16 just by virtue of having gotten that -- that e-mail 17 from Mr. Marshall, that he was using his cell phone 18 as his -- for purposes of letting folks know his 19 contact information. 20 A Was I aware? 21 Q Yes. 22 A No. Did he use his cell phone? Yes. 23 But that doesn't mean I was aware that's his cell 24 phone at the bottom of an e-mail. 25 Q Okay.

Page 93 1 A An employee that would take an e-mail 2 would just call my cell phone. I don't know 3 numbers like that. But you're the one saying that. 4 That's fine. 5 Q So going back to Exhibit 1, in that 6 exhibit Mr. Marshall was using his 7 Orangeburg County School District e-mail account to 8 transmit a purchase order to Owl Labs, correct? 9 A I would assume. The e-mail that it came 10 from does not show at the top. So I don't know 11 where it came from when it says David Marshall. 12 Q Okay. But the e-mail signature block -- 13 A Has the school district e-mail. 14 Q Okay. 15 A But I can't assume that it came from 16 that. If it came -- I mean, the gentleman has 17 taken someone's signature and recreated the whole 18 PO, so I can't assume that with this document. 19 Q Fair enough. But if you look at page 2 20 of Exhibit 1, what, if anything, on there would 21 alert a third party that it was in any way -- that 22 that document was in any way not what it purported 23 to be? 24 A I -- I don't see anything. 25 Q Okay. I mean, if you're Owl Labs and you	Page 95 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
Page 94 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	Page 96 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.

Page 97 1 A I don't know what. 2 Q Okay. 3 A I wouldn't -- 4 Q Let me finish that question because I 5 didn't really fully articulate it. 6 From the standpoint of a third party, 7 what on Exhibit 2 would alert the third party, hey, 8 this fella doesn't have authority to do what he's 9 doing? 10 A I'm not sure what would or what wouldn't. 11 Q You don't -- you don't see anything on 12 Exhibit 2 that would alert a third party, do you? 13 A I wouldn't -- I'm not a third party so I 14 don't know what they look for or indicate so I 15 wouldn't know. But I don't see anything that would 16 say, hey, here's what sticks out. But I'm not sure 17 what they -- what they look for. 18 Q Okay. But you'd agree with me that 19 Exhibit 2 purports to be an e-mail from David 20 Marshall on behalf of the school district in which 21 he has provided a purchase order and is now 22 providing a tax-exempt form. 23 A It's an e-mail assumingly from David 24 Marshall. I'm not gonna agree that it's on behalf 25 of the school district, but -- and there is an	Page 99 1 students, correct? 2 A Correct. 3 Q And you're trying to figure out a way to 4 conduct instruction in a way that's never been done 5 before by the public school system, correct? 6 A Correct. 7 Q Okay. So there was some urgency in 8 acquiring these -- these Owls? 9 A Oh, yes. Uh-huh. 10 Q I mean, with every day that goes by with 11 students not being able to be in class, you've got 12 the potential for students not -- not making 13 progress academically. 14 A That's every day. Every day in education 15 is a sense of urgency, so, I mean -- 16 Q Right. 17 A I don't mean to be impractical about it. 18 Q No. And I'm not -- 19 I mean, you and I are, I think, singing 20 from the same hymnal -- 21 A Yeah. 22 Q -- in terms of that. But purchasing 23 these Owls is central to carrying out the mission 24 of the school district in that particular time, is 25 it not?
Page 98 1 attached document here that is an exempt 2 certification as well. 3 Q Okay. And there's nothing in either 4 Exhibit 1 or Exhibit 2 that would alert Owl Labs 5 that David Marshall is not presenting things that 6 are what they purport to be. 7 A Not to my knowledge. 8 Q Okay. And Mr. Ham told you what an Owl 9 was, did he not? 10 A Uh-huh. 11 Q Is that a yes? 12 A That's correct. I mean, I'd seen it 13 before. 14 Q And were you the one that wanted the 15 Owls? 16 A Well, I think, as a team, we wanted to 17 find a way for our teachers to teach, so it wasn't 18 a Mr. Foster/Dr. Foster decision. It was how can 19 we find a way to give our teachers an opportunity 20 to look at doing instruction. But we also looked 21 at a Swivel and we also looked at other options, so 22 this wasn't the only option. It was the actual 23 technology. 24 Q Right. I mean, you're trying to address 25 a global health emergency and its impact on your	Page 100 1 A Giving the resources for the teachers to 2 teach students during a changing time, yes. 3 Q Yeah. So if we look at Exhibit 16 -- 4 MS. FITTIPALDI: Can I see that? 5 - - - 6 (E-mail Thread, DEF 017854-855, marked 7 Foster Exhibit Number 16, for identification.) 8 - - - 9 BY MR. SHEALY: 10 Q If you look at the bottom, it says: How 11 quickly can we get these Owls in? Dr. Foster would 12 like to get them. We need a much faster 13 turnaround. 14 Does it say that? 15 A Yes, it does. 16 Q And was that true? 17 A Yes. 18 Q All right. And we've talked about it. 19 The urgency was, without -- without some 20 enhancement to the hardware capabilities of the 21 district, you were gonna have a loss of 22 instruction. 23 A No. This more so refers to supply and 24 demand because many schools were purchasing 25 technology, so we have to get this because, again,

Page 101 1 with supply and chain -- and chain delays, which 2 was happening during the pandemic, is what this was 3 referring to. 4 Q Okay. 5 A Because sometimes computers were six, 6 seven, eight months out. 7 Q Okay. But ultimately, I mean, the need 8 for the device is because of needing a way to 9 conduct instruction. 10 A Correct. 11 Q In an unprecedented scenario. 12 A Correct. 13 Q All right. What other -- what other -- 14 at what other stage of this process were you 15 involved in acquiring the Owls? 16 A As far as? 17 Q In terms of either negotiating with the 18 vendor or writing the contract, anything like that. 19 A None of that. When they arrived on-site, 20 did I ask were they here? Okay. Well, how do we 21 deploy them, those things. But I think any leader 22 would want to know how we gonna in that hole. 23 - - - 24 (E-mail Thread, DEF 015411-412 marked 25 Foster Exhibit Number 17, for identification.)	Page 103 1 And so you authorized the 50 percent. 2 A I did. 3 Q By that point, you knew the purchase 4 price, correct? 5 A I believe I did. 6 Q And did you know how the Owls were being 7 acquired at that time? 8 A No. 9 Q Well, you knew they were being acquired 10 from Level 8 based on your -- 11 A Oh yeah. 12 Q -- prior communication with Mr. Ham, 13 right? 14 A When you say acquired, that's a term 15 that -- did I know who we were using? Yes, we used 16 Level 8. Uh-huh. 17 Q Okay. And did you know anything about 18 Level 8 other than what Mr. Ham told you that they 19 had -- 20 A No. 21 Q -- they were the source of these -- of 22 this equipment? 23 A Never heard of them before. 24 Q And so you didn't know anything about the 25 Articles of Organization for Level 8 showing
Page 102 1 BY MR. SHEALY: 2 Q All right. I'm gonna show you 3 Exhibit 17. In that e-mail, it appears that you're 4 stating you're aware that there was a 50 percent 5 upfront payment required; is that right? 6 A Uh-huh. 7 Q Is that a yes? 8 A Correct. 9 Q And how did you -- how did you become 10 aware of that? 11 A I believe Mr. Twitty came and asked 12 because that's something we're wanting to do, we'll 13 say this is -- you know, and that's my approval. 14 Q That was a -- that was an unusual 15 request. 16 A Not unusual. We've done it before, so 17 it's not unusual. 18 Q But -- but it requires your approval. 19 A Uh-huh. 20 Q Yes? 21 A Yes. 22 Q And it was Mr. Twitty that brought 23 that -- 24 A Correct -- 25 Q -- up to you.	Page 104 1 Mr. Marshall as an organizer. 2 A None of that. 3 Q And you didn't know the state contract 4 number was a fraud. 5 A Didn't know any of that. 6 Q And did you know whether -- or did you 7 know that no one had looked into the company at 8 all? 9 MS. FITTIPALDI: Object to the form. 10 THE WITNESS: I wouldn't be -- I 11 wouldn't assume they didn't look into the 12 company. 13 BY MR. SHEALY: 14 Q Okay. Did you know, as of the point -- 15 the time of the e-mail exchange that is indicated 16 on Exhibit 17, that Greg Twitty didn't know about 17 the fraudulent state contract number? 18 A I wouldn't have known. 19 Q Did you know at that time that the school 20 district -- 21 Did you know whether or not the school 22 district had breached its own procurement policies 23 at the time of the e-mail exchange depicted on 24 Exhibit 17? 25 A The assumption that we breached our own

Page 105 1 procurement policy? Well, I don't know that that's 2 necessarily the case. 3 Q Well, the question was did you know 4 whether or not -- 5 A Oh no. 6 Q -- that there had been a breach. You 7 didn't know. 8 And did you know at that time that David 9 Marshall was regularly involved in procurement with 10 Level 8? 11 A No idea. 12 Q Did you -- 13 Other than Mr. Ham bringing Level 8 to 14 your attention as a source of these Owls, did you 15 know anything else about it? 16 A No. 17 Q Did you ask any questions about it? 18 A No. 19 Q Okay. Was this a regular practice where 20 you would allow an expenditure of, you know, up to 21 a million dollars with a vendor that you didn't 22 know anything about? 23 A That's why I have procurement -- a 24 procurement officer. I don't know every single 25 vendor that we use in this school district, no. No	Page 107 1 A -- source to get that from. 2 Q Okay. I'm gonna show you Exhibit 18. 3 - - - 4 (E-mail Thread, DEF 013614-619, marked 5 Foster Exhibit Number 18, for identification.) 6 - - - 7 BY MR. SHEALY: 8 Q And I'll represent to you that's another 9 e-mail chain. 10 Have you seen that e-mail chain before? 11 A I don't recall. 12 Q Okay. The top e-mail has Address Sims 13 copied on it. Do you see that? 14 A I see that, uh-huh. 15 Q Who is Address Sims? 16 A She was the assistant superintendent for 17 curriculum and instruction. 18 Q She was obviously an employee of the 19 district -- 20 A Correct. 21 Q -- at that time. 22 And she was Mr. Marshall's boss? 23 A No. She was over curriculum and 24 instruction. 25 Q I'm sorry. Okay. And she's no longer
Page 106 1 superintendent does. 2 Q Okay. But, nonetheless, you're in the -- 3 in the position of all of those procurement 4 decisions -- 5 A Exactly. 6 Q -- are ultimately your responsibility? 7 A Intra-jewel-ee-ah-bow-nin (ph.) 8 Q Yeah. Now, previously you stated that no 9 one within the school district was aware of 10 Mr. Marshall acquiring the Owls from Owl Labs. 11 Do you recall that? 12 A I don't. 13 Q Do -- do you recall saying that in the 14 June -- and I was -- said June 2020 earlier. 15 June 2021 is when that -- 16 A I don't remember when the meeting was, to 17 be honest with you. 18 Q I'm gonna represent to you that I think 19 it was June 2021 when that conference call took 20 place, not June 2020. 21 But you don't remember saying that in 22 that -- during that conference call, do you? 23 A I don't know. There's a -- like I said, 24 there's a recording. That's probably the best -- 25 Q Okay.	Page 108 1 with the district? 2 A She's not. 3 Q Okay. If you look back in that chain for 4 me, please, if you look at Defendant's -- the page 5 that's labeled at the bottom DEF 013617 -- 6 A Uh-huh. 7 Q Do you see the e-mail from Bill Smith to 8 David Marshall talking about the 875 Owls? 9 A Is that at the bottom of the page? 10 Q I think so. Do you see that? You see 11 that -- it's from Bill Smith to -- 12 A I see it. 13 Q -- to David Marshall. 14 A I see it. Uh-huh. 15 Q And the next one up with Kaylin McNamara 16 talking about the freight charges? 17 A Okay. 18 Q And then the next one up is from David 19 Marshall talking about the use of the CARES Act 20 funds and the, quote, "every resource has been used 21 to fund these devices for our teachers." 22 Do you see that? 23 A Uh-huh. 24 Q Is that a yes? 25 A Yes.

Page 109 1 Q The "our," it refers to the school 2 district, right? 3 A On what -- which -- which line are you 4 referring? 5 Q I'm saying in the -- where Mr. Marshall 6 says "every resource has been used to fund these 7 devices for our teachers." 8 "Our" refers to the school district, the 9 school district's teachers. 10 A And what exchange are you looking at? 11 Q Sure. I'll help you. 12 So on page DEF 013617, it's this e-mail 13 from David Marshall that's right above the e-mail 14 from Kaylin McNamara. 15 Do you see David Marshall talking about 16 the use of the CARES Acts funds -- CARES Act funds? 17 A Uh-huh. I do. 18 Q Okay. And do you see him say "every 19 resource has been used to fund these devices for 20 our teacher -- teachers"? 21 A Uh-huh. 22 Q Okay. And what -- the point is, when he 23 says "our teachers," he's talking about the school 24 district's teachers, correct? 25 MS. FITTIPALDI: Object to the form.	Page 111 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, Address Sims 25 has access to all this information on December 3,
Page 110 1 THE WITNESS: I don't know what he's 2 talking about. I mean -- 3 BY MR. SHEALY: 4 Q Okay. All right. So if we keep moving 5 on -- on up on the page that's labeled 13616, can 6 you see the discussion of the tax exempt form? 7 A I do. That's at the bottom of the page? 8 Uh-huh. 9 Q Yes. Okay. And then you see where there 10 was a test payment of a hundred dollars going to 11 Owl Labs and David Marshall's asking them to 12 confirm receipt? 13 A I do. Uh-huh. 14 Q All right. And then Bill Smith at the 15 top says: The test payment came through, right? 16 A Uh-huh. 17 Q Is that a yes? 18 A Correct. Yep. 19 Q Okay. And then on the page labeled 20 13615, Mr. Marshall is talking about sending the 21 first 50 percent payment, right? 22 A Yep. 23 Q Okay. And then you say where it says: 24 The first shipment of Owls are going out in two to 25 three weeks, right?	Page 112 1 2020, right? 2 A I don't see that. 3 Q Well, if we go back to the top of the 4 whole string is what I'm pretty much saying. 5 Address Sims is copied and she has access 6 to that entire string as of December 3, 2020, 7 correct? 8 A I would assume. I don't -- 9 Q Okay. So -- and she was at that time an 10 assistant superintendent? 11 A Correct. 12 Q To your knowledge, did she do anything 13 with the information that was provided to her on 14 December 3, 2020 concerning this transaction that 15 is -- that Mr. Marshall is facilitating? 16 A Not to my knowledge. 17 Q Okay. All right. And, again, Eric Ham's 18 title is what? 19 A He was director of technology at the 20 time. 21 Q And he's not with the district any 22 longer? 23 A He's not. 24 Q And as director of technology, he 25 reported directly to you.

Page 113 1 A No. He reported to Merry Glenne 2 Piccolino, the assistant superintendent for 3 communications. 4 Q Yes. And you told me that earlier. 5 All right. Taphnie Sanders, who is she? 6 A She is now the director of technology. 7 Q Okay. What was she then? 8 A She was a coordinator. She reported to 9 David -- to Eric Ham. 10 Q And what were their roles in this whole 11 process? 12 A They're technology. So any technology 13 purpose -- purchase, they assist with the making 14 sure our regular technology department with the 15 network, hardware, software. 16 Q Okay. All right. So at the time that 17 all of this is going on that we've been talking 18 about, Taphnie Sanders is reporting to Eric -- 19 A Ham. 20 Q -- Ham, but now she's in his position? 21 A She is. 22 Q Okay. All right. So if we go to 23 Exhibit 19 -- 24 - - - 25	Page 115 1 A Uh-huh. 2 Q Would you agree with me that there's a 3 discussion of freight, payment, our teachers, the 4 district bank, all that stuff going up through 5 14135? 6 A I would assume. 7 Q Okay. These all look similar to what we 8 just looked at in Exhibit 18, correct? 9 A Uh-huh. 10 Q Yes? 11 A Aside from the layout, yeah. The 12 content. 13 Q Now, if we look at the first page, you 14 see there are a number of Orangeburg County School 15 District e-mail addresses, right? 16 A What's the first page? The very first 17 page? 18 Q Yes, sir. 19 A Okay. Uh-huh. 20 Q Do you see that? Do you see that? 21 A See what? The support -- these e-mail 22 addresses here? 23 Q There are a number of e-mail addresses 24 for Orangeburg County School District employees, 25 correct?
Page 114 1 - - - 2 (E-mail Thread, DEF 014129-145, marked 3 Foster Exhibit Number 19, for identification.) 4 - - - 5 BY MR. SHEALY: 6 Q You'll be happy to see that my stack is 7 getting smaller. 8 Okay. And I want you to flip to 9 page 14141. 10 A 14 -- 11 Q 141. 12 A Okay. 13 Q We see -- we saw that in the prior e-mail 14 chain we just looked at, correct, in Exhibit 18? 15 A It looks -- I'm assuming. It looks -- 16 it's not -- it's printed in a different format. So 17 I'm guessing it's the same. 18 Q But it appears to be the same substance. 19 A Uh-huh. 20 Q Same e-mail. Okay. Now, if you go up 21 and see those -- that the -- you know, with e-mail 22 chains, you have to always read backyards. 23 If you go up and see those e-mails are 24 all the same that we just looked at in Exhibit 18 25 if you go up in reverse order.	Page 116 1 A I see David Marshall, Andress Sims, and 2 Quencenia Dantzler. That's it. 3 Q Okay. Let me see. Now, you see -- 4 All right. Do you see also Taphnie 5 Sanders? 6 A I see the name but I don't see the 7 e-mail. 8 Q Okay. At the top? 9 A Yeah. It's just her name. It's not an 10 e-mail. 11 Q That doesn't appear to be an e-mail from 12 Taphnie Sanders -- 13 You don't see an e-mail address written 14 out, but does that appear to be an e-mail from 15 Taphnie Sanders to David -- 16 A It's an e-mail. It says Taphnie Sanders. 17 Q To Eric Ham? 18 A It says e-mail -- it says -- it doesn't 19 say e-mail. It says from Taphnie Sanders but no 20 e-mail address, and it says Eric Ham -- 21 Q Okay. 22 A -- but no e-mail address. 23 Q Okay. Taphnie Sanders was employed by 24 the school district at that time, correct? 25 A Correct. Uh-huh.

Page 117 1 Q And Eric ham is her supervisor at that 2 time, correct? 3 A Correct. Uh-huh. 4 Q And he's the one -- we talked about this 5 earlier -- that brought Level 8 to your attention 6 as being a source of the Owls, correct? 7 A Correct. 8 Q Now, based on the chain -- the way that 9 this chain's organized, you can see that Eric Ham 10 could see the very e-mails where David Marshall was 11 acquiring the Owls directly from Owl Labs, right? 12 A I don't know if that's -- I don't know if 13 that's clear but -- I mean, I don't -- 14 Q Well, if we assume that this is one chain 15 and -- then Eric Ham, if he read through the whole 16 chain, could see right there that David Marshall is 17 acquiring the Owls directly from Owl Labs. 18 A I don't -- it's not clear to me to say 19 that with any level of -- 20 Q Okay. But Mr. Ham -- Mr. Ham said 21 nothing to you at that time about David Marshall -- 22 A -- exactly. 23 Q -- being involved. 24 A Uh-huh. 25 Q Correct?	Page 119 1 Owl Labs. 2 Q Okay. But -- 3 A Owl Labs only dealt with -- from what you 4 showing, only dealt with David. It wasn't cc'd -- 5 no one was ever cc'd from the school district other 6 than David Marshall if I'm reading these e-mails 7 correctly. 8 Q Okay. But even if -- say Owl Labs had 9 gotten that e-mail string. Everything about that 10 would have confirmed to Owl Labs that everything 11 was happening like it should have. 12 A Well, I would assume if they got them. 13 But they only got one from David Marshall. They 14 never got anything to where Andress, Quencenia or 15 anyone else. They only got an e-mail from David 16 Marshall. I mean, I'm assuming if I'm reading this 17 correct. 18 Q Okay. So the statement that you made 19 during that June 2021 conference calling that no 20 one with the school district knew about this was 21 incorrect if you -- if you look at Exhibit 19, 22 correct? 23 A No. It was correct. No one knew that 24 David Marshall was doing what he was doing, so it 25 was absolutely correct.
Page 118 1 A Correct. 2 Q Now, do we see Ms. Sims's -- 3 A We do. E-mail? 4 Q -- e-mail down a little further? 5 A We do. 6 Q And Quencenia Dantzler? 7 A Correct. 8 Q Who's that? 9 A Quencenia, she was the director of 10 distance learning at the time of the pandemic. Of 11 virtual learning. 12 Q So we have no less than five Orangeburg 13 County School District employees who have full 14 access to this e-mail string where David Marshall 15 is acquiring the Owls directly from Owl Labs, do we 16 not? 17 A We have three e-mail addresses, David 18 Marshall, Andress, and Quencenia, and it appears 19 Taphnie and Eric's name are at the top. 20 Q Okay. How was Owl Labs supposed to know 21 this wasn't allowed if there are numerous employees 22 of the school district that have the information? 23 A But it doesn't appear that Owl Labs got 24 this e-mail. This was a forward. So the 25 individuals that were added on were not included in	Page 120 1 Q No one bothered to read the e-mail 2 string. 3 A No -- 4 MS. FITTIPALDI: Object to the form. 5 THE WITNESS: -- no one knew that 6 David was doing what he was doing. 7 BY MR. SHEALY: 8 Q Right. 9 A Was absolutely correct. 10 Q All right. I'm gonna show you 11 Exhibit 20. 12 - - - 13 (E-mail Thread, DEF 015436-438, marked 14 Foster Exhibit Number 20, for identification.) 15 - - - 16 BY MR. SHEALY: 17 Q Did you have any idea that David Marshall 18 was involved at all with Owl Labs? 19 A No. 20 MS. FITTIPALDI: Let me see that 21 copy. 22 MR. SHEALY: I'll wait until 23 Ms. Fittipaldi's had a chance to read it. 24 MS. FITTIPALDI: Give me one sec. 25 Thanks.

Page 121 1 BY MR. SHEALY: 2 Q Exhibit 20 is an e-mail that you're 3 actually copied on, isn't it? 4 A Uh-huh. Correct. 5 Q Okay. Look at the second page. Do you 6 see that David Marshall is conversing directly with 7 Owl Labs on the second page of Exhibit 20. 8 A I do. Uh-huh. 9 Q Okay. And he's saying the Owls are 10 coming next week. 11 A Uh-huh. 12 Q Is that a yes? 13 A Correct. Yep. 14 Q Okay. But you though thought Eric Ham 15 was getting them from Level 8, didn't you? 16 A Yeah, I did. Uh-huh. 17 Q So why didn't it raise alarms with you 18 when you see David Marshall, not Eric ham, is 19 conversing directly with Owl Labs, not Level 8? 20 A I didn't realize that he was directly 21 conversing with him. 22 Q Okay. You just didn't -- didn't read the 23 e-mail string, did you? 24 A No, I read it. When things arrive in the 25 school district, they have to be deployed, so	Page 123 1 you. 2 A No. 3 Q We have people in the chains we've looked 4 at in Exhibits 19, 20 that are directly involved in 5 the procurement process that whose understanding is 6 that these devices are being purchased from 7 Level 8, right? 8 A Mr. Twitty is the procurement process, so 9 I don't want to intertwine procurement process with 10 the receiving, tagging, and distribution of goods. 11 Procurement is done through the 12 procurement office, and once approved through the 13 procurement office, go to technology for tagging, 14 distribution, training. So that's not the 15 procurement process. That's the distribution 16 process. 17 Q Right. Well, from the very beginning, 18 from the first time you heard about this from 19 Mr. Ham, Mr. Ham told you that they were going to 20 be getting these devices from an outfit known as 21 Level 8. 22 A Correct. 23 Q And what we've seen in Exhibit 20 is the 24 devices are not coming from an outfit known as 25 Level 8. They're coming from Owl Labs.
Page 122 1 procuring them and deploying them are totally two 2 different things. 3 So there's a team of folks that could 4 have been there to deploy. That's why C&I is 5 actually involved, because they have to train 6 teachers on how to use the technology devices. So 7 that's why you see some of these other names in 8 there in preparation. 9 Q But earlier you testified that 10 Mr. Marshall had no authority, no part in the 11 procurement process, correct? 12 A Correct. 13 Q But here on Exhibit 20, you see 14 Mr. Marshall directly involved in communications 15 with a vendor that, to your knowledge, you're not 16 getting the equipment from. 17 A No, sir. Let's not mistake the 18 procurement process with the receiving and 19 distributing of goods. 20 Procurement is the purchasing and 21 authorizing those goods. So I want to make sure 22 we're clear -- 23 Q Okay. 24 A -- in that record. 25 Q All right. So no alarm bells go off for	Page 124 1 A Well, all devices come from Owl Labs. 2 They can go through Level 8 as a third party. We 3 knew we were dealing with a third-party vendor. So 4 it would make sense that Owl Labs sends them to the 5 third-party vendor to the actual final owner. 6 Q But -- so why in the world would the -- 7 would David Marshall be communicating with Owl 8 Labs -- 9 A I can't answer that question for you. 10 Q -- and -- well -- 11 But why doesn't that -- why doesn't 12 anybody see that communication and say this is -- 13 this is out of -- out of the ordinary? 14 A I can't answer that. 15 Q Don't know. 16 MS. FITTIPALDI: How much longer, 17 Kirby? We might need a break soon. 18 MR. SHEALY: I have about two pages 19 left. 20 MS. FITTIPALDI: Just a short break 21 if you don't mind. 22 MR. SHEALY: Yeah, let's take a 23 short break. 24 THE VIDEOGRAPHER: The time is 25 12:20. We are off the record.

Page 125 1 - - - 2 (Whereupon there was a recess in the 3 proceedings.) 4 - - - 5 THE VIDEOGRAPHER: The time is 6 12:25. We are back on the record. 7 - - - 8 (E-mail Chain with Attachments, DEF 9 00095-105, previously marked Plaintiff's 10 Exhibit Number 3, for identification.) 11 - - - 12 BY MR. SHEALY: 13 Q Okay. Dr. Foster, I'm going to show you 14 what was previously marked as Plaintiff's 15 Exhibit 3, and I just want to ask if you've ever 16 seen that packet of documents before. 17 A I don't recall seeing these. Yeah. 18 These are the documents from -- 19 I think I saw these documents after 20 everything -- some of these documents I recall but 21 not all of them. But, yeah, I do. These are 22 the -- 23 Q These all came to light during the 24 investigation of this whole incident, correct? 25 A Yeah.	Page 127 1 Q Okay. So -- 2 A It just says your outstanding balance is 3 past due. That's all it says. 4 Q All right. So you understand that 5 Owl Labs is seeking to recover over \$300,000 in 6 this lawsuit, correct? 7 A Correct. 8 Q For monies that it was not paid by 9 Orangeburg -- 10 A By Level 8. 11 MS. FITTIPALDI: By -- 12 MR. SHEALY: Well, the witness just 13 said Level 8. 14 BY MR. SHEALY: 15 Q And that's the subject of contention here 16 is that Orangeburg County School District has taken 17 the position that its contract was with Level 8, 18 correct? 19 A It was. 20 Q And that Level 8 failed to pay Owl Labs, 21 right? 22 A Correct. 23 Q And Owl Labs believes that its contract 24 was with the school district directly. 25 A I don't -- I don't know what they assume,
Page 126 1 Q If you look at the document on DEF 97, 2 you see a bunch of acquisitions from Level 8, 3 correct? 4 A Yeah. Yeah, I would -- yep. Uh-huh. 5 Q And nobody ever checked the state 6 contract, did they? 7 A Well, I don't know. 8 Q There are even more on DEF 98, are 9 they -- are there not? 10 A Uh-huh. Yeah. 11 Q Is that a yes? 12 A Yep. 13 Q Let me see -- 14 A Some of those were before I became 15 superintendent. I know some of those purchases 16 were before I even became superintendent. 17 Q Right. And then the e-mail from Fleur 18 Radovan that's on DEF 95 dated May 21, 2021, what 19 was done in response to that e-mail? 20 A I don't know what was done. I mean -- 21 Q Okay. But by that point, the harm had 22 been done to Owl Labs, correct? 23 A What harm -- what are you referring to? 24 I don't -- you say what was done. I don't know 25 what was done.	Page 128 1 so ... 2 Q Okay. But -- but by May of 2021, the -- 3 the Owls had been shipped, the -- had been -- were 4 in use by the school district. 5 A Uh-huh. 6 Q Correct? 7 A Correct. 8 Q And the fraud perpetuated by Mr. Marshall 9 had been -- had already taken place. 10 A I would -- I would assume. 11 Q Okay. 12 A And you mean by fraud, the payment that 13 we made to Level 8 had also been fulfilled as well. 14 Q But we've already -- I mean, we've been 15 talking about purchase orders that Mr. Marshall 16 fabricated, right? 17 A Correct. 18 Q I mean, he admitted doing that in that -- 19 in the phone call that you all had in June of 2021, 20 correct? 21 A Correct. 22 Q Okay. So there's no -- there's no -- 23 we're not -- 24 There's no dispute as between us that a 25 fraud was committed here, correct?

Page 129 1 A Correct. 2 Q Okay. Do you know -- I think you said 3 earlier you didn't know when -- exactly when 4 Mr. Marshall had been hired. 5 A Huh-uh. Don't know. 6 Q Okay. Do you know what his job 7 responsibilities were when he was with the school 8 district? 9 A When I was here or prior to? No. But 10 when I was here, he was the -- like a 11 communication -- I don't know his exact title -- 12 specialist. 13 Q Communications and media production 14 specialist? 15 A Specialist, yeah. So he would do our 16 videos and things like that as you saw in one of 17 the links that -- when he videoed me. And there's 18 some stuff with our installation of our 19 technologies. 20 Q Okay. All right. I'm gonna show you 21 Exhibit 21. 22 - - - 23 (OCSD Job Description, DEF 019673-677, 24 marked Foster Exhibit Number 21, for 25 identification.)	Page 131 1 allowed to be in contact with Level 8 on a regular 2 basis? 3 A I don't. 4 Q In fact, why he appears to have been the 5 point person for Level 8? 6 A I don't. 7 Q And there's nothing in that job 8 description that you're looking at in Exhibit 21 9 that is related to purchasing, correct? 10 A Correct. 11 Q Job descriptions that are promulgated by 12 the school district are not publicly available, are 13 they? In other words -- 14 A I'm not sure. I'm not -- some may be 15 public. I don't know. They're posted. But -- 16 well, they are -- when we post a position, the 17 public has to see the job that they're applying 18 for. 19 Q Certainly when you post positions. But 20 you don't have like a section of the school 21 district website that has the job descriptions for, 22 you know, everybody that works for the district. 23 A Not to my knowledge. 24 Q Okay. So a third party like Owl Labs has 25 no clue what Mr. Marshall's job duties were and
Page 130 1 BY MR. SHEALY: 2 Q I'd just ask if you can identify that. 3 A It looks like a job description for 4 communication and media production specialist. 5 Q All right. Is that a job description for 6 that job as defined by the Orangeburg County School 7 District? 8 A I would assume it is. I don't know if it 9 was one that rolled over from the consolidation or 10 not. 11 Q Okay. But the -- assuming that that's 12 what that is, does that set forth Mr. Marshall's 13 job responsibilities as the -- what's his job title 14 again? 15 A Communication and media production 16 specialist. 17 Q Okay. Does that job description set 18 forth in Exhibit 21 describe Mr. Marshall's 19 responsibilities? 20 A From a glance, yes, sir. 21 Q Okay. And like you said earlier, those 22 job responsibilities don't have anything to do with 23 procurement, correct? 24 A Correct. 25 Q All right. So do you know why he was	Page 132 1 were not at the time that they were communicating 2 with him, correct? 3 MS. FITTIPALDI: Object to the form. 4 THE WITNESS: I wouldn't know. 5 BY MR. SHEALY: 6 Q When the district's doing -- is looking 7 to hire somebody, does it do a background check? 8 A We do. 9 Q What other due diligence does it do on an 10 individual before he's hired? 11 A References and interview. 12 Q Okay. What kind of -- what kind of 13 things are you concerned with on a background 14 check? 15 A Obviously, any criminal background, any 16 negative affiliation with children, those kind of 17 things. 18 Q Okay. I mean, any employee of the school 19 district could conceivably have come into contact 20 with children, right? 21 A Could. 22 Q Particularly someone whose job duties 23 involve filming, editing, and producing 24 production-quality videos, some of those would have 25 children in them, wouldn't they?

Page 133 1 A They could. I hope they would. 2 Q And you wouldn't want a person with those 3 responsibilities to have violent crimes on their 4 record, would you? 5 A Correct. 6 Q Okay. Or crimes related to sexual 7 offenses. 8 A Correct. 9 Q Do you know whether the school district 10 ran a background check on David Marshall before he 11 was hired? 12 A I wasn't the superintendent at the time. 13 Q Right. I know you weren't, but do you 14 know nonetheless whether -- 15 A I would assume they -- I would assume 16 they did. 17 Q Okay. And are you aware of his -- of his 18 rap sheet? 19 A Uh-huh. Now. I'm familiar with one 20 situation that occurred. 21 Q Okay. I'm just gonna show you 22 Exhibit 22. 23 - - - 24 (Document Titled SLED CATCH marked Foster 25 Exhibit Number 22, for identification.)	Page 135 1 Q You see an arrest date of January 20? 2 A Where is it at? 3 Q Let me see if I can help you. 4 A The 29th or the 30th? 5 Q No. No. Actually, it's January 30th. 6 A 30th. 7 Q Yeah. Forgive me, of 2017. 8 And the charge was for criminal sexual 9 conduct with a minor aged 11 to 14 years? 10 A Uh-huh. 11 Q Is that a yes? 12 A Correct. Yep. 13 Q And that's an age range you'd expect to 14 be served by children within the Orangeburg County 15 School District's jurisdiction, correct? 16 A That's correct. Correct. 17 Q And you'd agree with me that criminal 18 sexual conduct with a minor is a serious offense. 19 A Very. 20 Q But it appears -- 21 So we talked earlier that you wouldn't 22 want the school district to have an employee with 23 this kind of offense on their record, correct? 24 A Correct. 25 Q But it appears that the school district,
Page 134 1 MS. FITTIPALDI: Can you also make a 2 note for them to provide that? 3 MR. SHEALY: Send that to you? 4 MS. FITTIPALDI: Yes, please. 5 MR. SHEALY: So it's the two 6 Secretary of State -- 7 MS. FITTIPALDI: Yeah. 8 MR. SHEALY: -- things and that. 9 MS. FITTIPALDI: Correct. 10 BY MR. SHEALY: 11 Q All right. So I've shown you Exhibit 22. 12 And you're familiar with that sort of document 13 generally, are you not? 14 A I am. 15 Q Okay. That's a SLED report from the 16 South Carolina Law Enforcement Division showing 17 whether or not someone has an arrest record? 18 A Correct. 19 Q Okay. And does that appear to be the rap 20 sheet for David Marshall? 21 A It does. 22 Q Okay. If you look at page 2, do you see 23 an arrest date of January 20, 2017 for 24 Mr. Marshall? 25 A January 29th or January 30th?	Page 136 1 before your time, hired someone with this very sort 2 of offense on their record. 3 MS. FITTIPALDI: Object to the form. 4 BY MR. SHEALY: 5 Q Do you know why that is? 6 A I wasn't here. I didn't hire him. 7 Q Okay. But -- I mean, since all this came 8 to light, did you do any kind of an investigation 9 into -- 10 A Into this? 11 Q -- you know, looking back in history and 12 how this person came to be in the position he was 13 in? 14 A No. Because he wasn't an employee 15 anymore. 16 Q All right. But if he became an employee 17 at one time and had this sort of offense on his 18 record, is that some indication that there's some 19 sort of problem in the processes or procedures that 20 the school district's following? 21 MS. FITTIPALDI: Object to the form. 22 THE WITNESS: That wasn't our -- 23 our school district didn't hire him. 24 BY MR. SHEALY: 25 Q The hiring took place before the

Page 137 1 consolidation of the school district. 2 A Correct. 3 Q All right. So just to recap, as I 4 understand it -- 5 Oh, now, let's -- before I start 6 recapping, there's a second offense on Exhibit 22 7 of an assault and battery, correct? 8 MS. FITTIPALDI: Object to the form. 9 THE WITNESS: That's what it says 10 here. 11 BY MR. SHEALY: 12 Q And that's a violent offense, to your 13 knowledge, correct? 14 A To my knowledge, yeah. Uh-huh. 15 Q Okay. And just like with the criminal 16 sexual conduct, you wouldn't want someone with a 17 violent offense on their record, would you, to be 18 employed by the school district? 19 A No. 20 Q Okay. And both of those offenses are 21 listed on the -- on his rap sheet as occurring in 22 2017, correct? 23 MS. FITTIPALDI: Object to the form. 24 THE WITNESS: That's what it says 25 here.	Page 139 1 district is actually following the procurement 2 code, does it not? 3 A I disagree. I was here for six months. 4 Actually, less than six months. 5 Q No -- well, I mean -- 6 A So -- 7 Q No. I recognize that your, you know, 8 time on the job was limited. But in terms of what 9 you've seen about Mr. Marshall and the period of 10 time over which he was negotiating purchases 11 with -- with Level 8, seemingly on behalf of the 12 district, that -- that in and of itself gives rise 13 to the question of was the district following the 14 procurement code if this behavior was allowed to 15 take place over that period of time? 16 A I don't necessarily agree with that. 17 Q Well, would you agree with me that the 18 procurement code, part of what -- part of what it 19 does is segregate duties so to -- as a means of 20 mitigating the risk of fraud? 21 A I believe that that's the intent or the 22 attempt to do so. 23 Q Okay. And so the person -- 24 I mean, generally speaking, the person 25 that's in charge of issuing a purchase order is not
Page 138 1 BY MR. SHEALY: 2 Q Okay. All right. So, now, just to 3 recap, your interaction with David Marshall while 4 he was an employee here was how often? 5 A Not very often. Only if I happen to 6 record a video. Most of his direct communication 7 was through the assistant superintendent. 8 Q Okay. And at the time that you became 9 superintendent and throughout the time that 10 Mr. Marshall was employed by the school district 11 during your tenure as superintendent, your 12 testimony is that you were not aware that he was 13 making purchases with Level 8. 14 A Right. 15 Q You're not aware that he was exercising 16 authority to do that on a regular basis. 17 A Correct. 18 Q And you're not aware that he was 19 negotiating with Level 8. 20 A Correct. 21 Q You're not aware that he was negotiating 22 contract terms on behalf of the school district. 23 A Correct. 24 Q But that occurred over a period of time 25 that calls into question whether or not the	Page 140 1 the same person that is in charge of issuing 2 payment, right? 3 A Correct. 4 Q Because if you had those two duties all 5 on the same person, that person could do anything 6 they wanted to, right? 7 A Correct. 8 Q Okay. So part of that -- part of the way 9 the procurement code is supposed to work is there's 10 a series of checks and balances, right? 11 A Correct. 12 Q Okay. And if the checks and balances are 13 working appropriately, and this sort of behavior, 14 particularly repeated behavior over a period of 15 time, shouldn't be allowed to happen, right? 16 A I believe that would be the theory behind 17 the code, correct. 18 Q Okay. 19 A But that would be the theory behind any 20 process, that we would hope that it works 21 perfectly. But I don't know if that's the actual 22 reality of a -- 23 Q All right. Just a couple more things and 24 I'll be finished. 25 Is the school district using the Owls

Page 141 1 today? 2 A We have them in our schools, yes. 3 Q Okay. Do you like them; you personally? 4 A Yeah. They work great. 5 Q Okay. And have you used them? 6 A I've used them, uh-huh. 7 Q Have you ever spoken with anyone at -- 8 with Owl Labs yourself? 9 A Aside from the meetings we've had, I made 10 a phone call with some folks. It's been awhile 11 ago, but -- 12 Q And the meetings you're talking about, 13 that conference call where all of this -- the fraud 14 came to light. 15 A Yeah. We had a few other meetings -- 16 phone calls, but I can't remember who I spoke to. 17 Q Okay. You personally, do you believe 18 that the school district owes Owl Labs for the Owl 19 Pro that are in the school district's possession? 20 A I believe the school district paid the 21 individual that we had the contract with. 22 Q What do you believe Owl Labs could have 23 done differently to avoid this situation? 24 A I'm not an employee of Owl Labs so, you 25 know, I don't want to assume anything they could	Page 143 1 to individuals' e-mail. 2 Q Right. I mean, you would need 3 assistance, but you have the authority as the 4 superintendent to direct the IT department -- 5 A To pull e-mails. 6 Q -- to pull it. 7 A Uh-huh. 8 Q All right. I appreciate your patience 9 with me, and I do not have any further questions. 10 Please answer any questions Ms. Fittipaldi may 11 have. 12 MS. FITTIPALDI: I have no questions 13 for you, Dr. Foster. Thank you so much for 14 your time this afternoon. 15 THE WITNESS: I could have provided 16 lunch if I knew it was gonna -- 17 MS. FITTIPALDI: That's okay. 18 THE VIDEOGRAPHER: The time is 19 12:46. This concludes the deposition. 20 COURT REPORTER: Would you like a 21 copy of the transcript? 22 MS. FITTIPALDI: E-trans. 23 - - - 24 (Witness Excused.) 25
Page 142 1 have done differently, and I don't know their 2 processes or procedures similar to the procurement 3 codes you're referring to. 4 Q And the school district has not paid 5 Owl Labs for the devices, correct? 6 A We didn't have a contract with Owl Labs 7 to pay Owl Labs. Our contract was with Level 8. 8 Q Right. And the school district paid 9 Level 8. 10 A We paid Level 8. 11 Q Do you know of your own knowledge whether 12 Owl Labs was paid for the devices that the school 13 district currently possesses? 14 A My assumption is they haven't received 15 full payment. If they did, we wouldn't be -- we 16 wouldn't be here. But I do know that we paid 17 Owl -- that we paid Level 8. 18 Q When Mr. Marshall was employed here, did 19 you have access to his e-mail? 20 A Well, I have access to everybody's 21 e-mail. Well, technology does, upon request. 22 Q Okay. So you could get into his e-mail 23 if you needed to. 24 A I could go through technology to say 25 could you pull e-mails. I don't have direct access	

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

Page 12 1 Q. Was your staff as well? 2 A. Yes. 3 Q. And how did you-all communicate? How did 4 you communicate primarily with your staff? 5 A. Define methods. So face-to-face, e-mail 6 communication. It just depended on what the issue 7 was or what the question was. 8 Q. Did you-all ever use personal cell phones 9 to communicate? 10 A. Potentially, yes, because our staff didn't 11 have a district phone, I did, and Ms. Sanders did, I 12 believe, and maybe Mr. Twitty, I'm not 100 percent 13 sure. But the other staff definitely wouldn't have 14 had a district phone. 15 Q. Okay. So when you were in that position, 16 were you involved in procurement? 17 A. That was a part of my department, but we 18 had Mr. Twitty as the procurement officer. 19 Q. Did you oversee Mr. Twitty? 20 A. He was part of the finance department. So 21 either he reported directly to Gail if he had 22 issues, or if they couldn't get it resolved, they 23 came to me. 24 Q. Okay. Did you ever deal with vendors? 25 A. Primarily, Mr. Twitty handled all that.	Page 14 1 credit card for school districts, we call them P 2 cards. Those are posted monthly, and it's 3 essentially the bank statement from the credit card 4 that was used. And then the transparency report 5 would be the check register from the financial 6 software. It would show the vendor, the dollar 7 amount, the check date, the account number. I think 8 that's it. 9 Q. Were purchases made with the credit card 10 sometimes? 11 A. Yes. 12 Q. In 2020, who were some of the top vendors 13 that the district used? 14 A. That, I would not know, off the top of my 15 head. 16 Q. Would that be a question for Mr. Twitty? 17 A. Yes, if he would know. I don't know if he 18 would know it, off the top of his head, but he 19 handled approving all the purchase orders that came 20 through. Again, those come through daily from 21 different schools, different departments. So 22 singling out, he may be able to do that, I just 23 can't do that for you. 24 Q. Okay. That's fair. Does Orangeburg 25 County have a procurement policy?
Page 13 1 That was a day-to-day process. 2 Q. Okay. And so Mr. Twitty did the 3 day-to-day and you oversaw the larger operation? 4 A. I just stepped in, if there was a question 5 or an issue that he had as support. But we hired 6 Mr. Twitty -- well, he was already there before I 7 retired. But he was the procurement officer, so he 8 handled everything related to the procurement, 9 unless there was an issue, or concern, or question, 10 and we were there to support. 11 Q. Okay. Did you keep track of how much was 12 being spent with various vendors? 13 A. I don't know how to answer that question, 14 because we paid several vendors on every check run 15 every week. We do have a monthly transparency 16 report that we post to the website that's required 17 by the state. We do, of course, report our 18 expenditures quarterly. If it's federal funds, we 19 do report annually what our expenditures are. But 20 as far as individual vendors and looking at what we 21 spent per vendor, I had no reason to do that, unless 22 a question was asked. 23 Q. Okay. On these monthly transparency 24 reports, what would be included on those? 25 A. So there's two. There's a P card, like a	Page 15 1 A. Yes. 2 Q. Did you receive any training on the 3 procurement policy? 4 A. So not directly. Our procurement officer 5 went through training sessions, and quarterly 6 meetings, and annual conferences regarding 7 procurement. But, again, we have a person in that 8 position that handles procurement, so they attended 9 all those trainings. 10 Q. Do you remember who the procurement 11 officer was? 12 A. Greg Twitty. 13 Q. Okay. And so, generally speaking, do you 14 know what the procurement policy required? 15 A. Yes. So, generally, if you're spending 16 over a certain threshold, you have to do certain 17 things to get competitive pricing. And back then, 18 I'm not sure what the threshold was. But -- I don't 19 know if -- I'm not sure what the threshold was. But 20 if it's a certain threshold, you have to get three 21 quotes. If it exceeds another threshold, you have 22 to publicly advertise and request bids or proposals. 23 But the dollars levels are different, depending on 24 what district you're in. And so at this time, I 25 cannot remember what Orangeburg limits were back in

Page 16 1 2020. 2 Q. And so does \$50,000, would that have been 3 a threshold that you would have had to do a public 4 bid on? 5 A. Yes. 6 Q. Okay. And did you always have to do -- 7 A. So there are some other parts of the code, 8 if there's a district exemption for a particular 9 item. For instance, if it's legal services or if 10 it's items purchased with people activity funds, 11 there are certain things that can get exempt from 12 the procurement code where you don't have to do a 13 bid proposal or get quotes. 14 And then there is also the state contract, 15 where the state submits requests for bids and they 16 sign contracts with vendors that allow us to exempt 17 the procurement process. Then there's sole source. 18 If you have a vendor that is the only vendor that 19 can provide that supply or service, you can exempt 20 procurement by using a sole source. Or if there's 21 an emergency, there's an exemption for that where 22 you can bypass the procurement code. 23 Q. Okay. Is Orangeburg County School 24 District tax exempt? 25 A. The entity itself is not tax exempt.	Page 18 1 separate form, if I remember correctly, that asks a 2 little more details regarding if they're a minority 3 vendor, what type of product do they provide or what 4 type of service are they providing, because the 5 vendor W-9 does not include that detail, so that we 6 can easily track our vendors. They should be 7 checking the debarment list from sam.gov, as that 8 vendor is added -- before that vendor is added in 9 our system. We have -- well, they had vendor fairs 10 periodically that helped the vendors learn how to 11 register as a minority or a small business in South 12 Carolina and to educate them on how they can do 13 business with school districts. So we -- those are 14 some of the sorts of things that we did with our 15 vendors or did for our vendors. 16 Q. What system did you have the list of 17 vendors in? 18 A. Infinite Visions. 19 Q. Okay. And would that include vendors that 20 every vendor the state has ever used, or what is 21 kind of in there? 22 A. That would include vendors that the school 23 district has used. 24 Q. And that includes ones that are not on 25 state contract?
Page 17 1 There are certain purchases that are tax exempt that 2 the state Department of Revenue publishes. 3 Q. Okay. Did you speak directly to vendors 4 from time to time? 5 A. Not necessarily. We have vendor fairs at 6 our annual business officials conference where they 7 would have, of course, a vendor hall, but I would 8 only get involved if there is an issue that Mr. 9 Twitty couldn't handle. He's our primary contact 10 for vendors -- or was our primary contact for 11 vendors. 12 Q. So what sort of involvement did you have 13 with procurement? 14 A. I didn't have any, unless there was an 15 issue or concern. Again, Mr. Twitty was the 16 procurement officer, so he handled everything unless 17 there was something that needed to be escalated to 18 my level. 19 Q. Okay. Do you know, does Orangeburg County 20 do any -- and when I say Orangeburg County, I mean 21 Orangeburg County School District. Do they do any 22 due diligence on its vendors? 23 A. We require a W-9 form for the vendor to be 24 added as a vendor in our system, financial system or 25 in their financial system. They also have a	Page 19 1 A. In the Infinite Visions? 2 Q. Yes. 3 A. Yes, it's all vendors that we have 4 potentially purchased something from or have written 5 a check to. 6 Q. Okay. Do you know if Level 8 7 Communications was in Infinite Visions? 8 A. I'm assuming so, because that's who we 9 paid for those devices. 10 Q. Did you ever look to see if they were in 11 Infinite Visions? 12 A. They would have to be, if a purchase order 13 was created or if a check was written. If they're 14 not in the vendor maintenance database, then we're 15 not able to create a purchase order or write a 16 check. 17 Q. Whose role was it to check the vendor? 18 A. Check the vendor meaning? 19 Q. To make sure that they are an approved 20 vendor. 21 A. So when they complete the W-9 form, they 22 submit that information to Mr. Twitty, and then he 23 checks the sam.gov to see if they're debarred or 24 not, and then they're added to the system. 25 Q. Did you ever check to make sure a vendor

Page 20 1 has a valid EIN number? 2 A. I didn't personally. If it appears on 3 their W-9 form, that's the document that we use. 4 Now, at the end of the year when we file our 1099 or 5 for employees who are W-2, if we received an error 6 file back, then we ask for proof or verification 7 that that tax ID number is valid. 8 Q. And so that only comes after it's already 9 been issued? 10 A. Yes. 11 Q. What does it mean for a vendor to be on a 12 state contract? 13 A. So the state -- my understanding. I don't 14 work for the state and have not worked for the 15 state. But my understanding is that the state 16 issues a request for bids for particular items, and 17 then the vendors are allowed to present a bid that 18 says: I will sell this particular item at this 19 price, at this cost. And then the state -- I'm not 20 sure of their evaluation process -- but they come up 21 with the listing of state contract vendors that 22 offer the specific items at this rate. And then 23 we're allowed to use those vendors without having to 24 do an invitation for bid or a request for proposal 25 at the school level.	Page 22 1 of say, somebody that manages those funds, and then 2 it would flow to procurement. 3 But if it's just local funds, they would 4 go from the bookkeeper, to the principal, directly 5 to the procurement officer. Or if it was 6 technology, it might be routed to technology before 7 it gets to the procurement officer. It just depends 8 on that approval flow and the funding source on what 9 they're purchasing. 10 Q. Is there any sort of limit of what the 11 procurement officer can sign off on without getting 12 additional authority? 13 A. Not that I'm aware of. 14 Q. And so Greg Twitty is that procurement 15 officer? 16 A. Yes. 17 Q. So as far as you're aware, he could sign 18 any dollar amount of a purchase order? 19 A. As far as I'm aware, yes. 20 Q. Did you have authority to sign purchase 21 orders? 22 A. Yes, I could, if I needed to, or if Mr. 23 Twitty was out, but he is the procurement officer, 24 so he would have approved all purchase orders. The 25 only time I would need to or if Gail Sanders would
Page 21 1 Q. So how do you check to make sure somebody 2 is on a state contract? 3 A. That listing is available on their 4 website. 5 Q. And would that be something that would be 6 checked before a check is issued? 7 A. That would be something that should be 8 checked before the purchase order is issued. 9 Q. Okay. Who had the authority to issue 10 purchase orders? 11 A. So the requisition -- it starts out as a 12 requisition. The school puts in a request of the 13 department or the person puts in a request to 14 purchase something. It goes through several levels 15 of approval. And then the final approval is the 16 procurement officer, and it turns from a requisition 17 into a purchase order at that point. 18 Q. Can you talk some on the levels of 19 approval in between the purchase of the request and 20 the purchase order? 21 A. So it depends on what's being purchased 22 and what funding is being used. So the bookkeeper 23 typically would enter an acquisition, and it would 24 flow through the principal. And then if it was 25 federal funds, it would flow to a grant manager sort	Page 23 1 need to is if he were to go out on medical leave or 2 he was not able to access the system like that, we 3 could step in. But with the software that we had, 4 if we're out of the office, you could still access 5 it from your device. And he did not go on leave any 6 time while I was at Orangeburg. 7 Q. So when you're signing a purchase order, 8 what do you do? 9 A. The system actually applies the signature. 10 Once you click "approved," it becomes a purchase 11 order, and the signature is applied to that purchase 12 order. 13 Q. And so you wouldn't be signing a physical 14 piece of paper? 15 A. No. 16 Q. What, if anything, did you do or did the 17 district do to safeguard those electronic 18 signatures? 19 A. The electronic signature module or page in 20 the software was only accessible by certain people, 21 depending on your role in that software. And to 22 safeguard it, you only had certain people that had 23 the right to approve purchase orders or to process 24 checks. So like my payroll person can go in and 25 print a check and apply signatures. It wouldn't be

Page 28 1 up things whenever we had meetings or whenever we 2 needed some technical assistance. 3 Q. Okay. So around what time -- I guess what 4 time of year did you find out that David Marshall 5 was involved with the purchasing of this? 6 A. I don't know if it was around May or June 7 when all of this came about. I'm not 100 percent 8 sure. 9 Q. Okay. When was the first time that you 10 heard of Owl Labs? 11 A. I heard of Owl -- or not Owl computer, Owl 12 cameras when Mr. Ham -- of course, during COVID, 13 we're all in a pandemic. We're trying to figure out 14 how to educate our students the best way possible. 15 And Mr. Ham said that, "Here is a device that we can 16 use. Here is a demo. Let's show you how it can be 17 used." And, of course, we are in the middle of a 18 pandemic, still trying to make sure our students are 19 educated, and that was one of the solutions that was 20 presented and provided. 21 Q. And, ultimately, the school district ended 22 up purchasing 875 Owl Pros, is that correct? 23 A. We purchased some. I don't know how many. 24 I don't know exactly the number, but we did purchase 25 some and we did use them. And I don't remember	Page 30 1 acquisition, which says here is the item or the 2 service I want to purchase, here is the account I 3 want to purchase it from, here is the amount it is 4 going to cost. And then that goes through different 5 approval flows. It would be go to the principal to 6 say, yes, I approve this purchase for the school. 7 It would go to a grant manager to say yes, this was 8 written in the federal plan for this grant and it is 9 approved. Then it would go through procurement to 10 say, yes, this is a valid purchase, there is no need 11 for quotes. Or if there is a need for quotes or 12 there is a need for a bid, he checks for procurement 13 purposes, and then it gets approved at that point 14 and turned into a purchase order. 15 Q. Okay. Do you expect that those entities 16 that are on contract with the school district to 17 rely on the purchase orders? 18 A. Yes. 19 Q. I'm going to share my screen for a bit. 20 Are you able to see that? 21 A. I should have brought my glasses. Can you 22 zoom in? 23 Q. I'll zoom in. And this is Defendant's 24 Exhibit 2. It's marked Exhibit 2 for purposes of 25 your deposition.
Page 29 1 exactly what month we rolled those out. I'm not 2 sure of the timeline on that. 3 Q. Were you involved at all in the 4 procurement of the Owl devices? 5 A. I would have set up the budget, because 6 this was at the time we thought one-time money. We 7 thought the pandemic was going to be a couple months 8 and we were done. So we thought it was one-time 9 money. Typically, if it's federal funds, we assign 10 a grant manager. But with this just being one-time 11 funding at the time, finance managed that budget, 12 that allocation from the federal government as a 13 pass-through for the state Department of Education 14 and we would have set up the budget for anything 15 relating to COVID purchases. 16 Q. Who would have been in charge of that 17 COVID budget? 18 A. Myself and Gail Sanders would have managed 19 that. 20 Q. You kind of already explained this a 21 little bit, but can you explain what is a purchase 22 order? 23 A. So you start out any person in the school 24 district -- and this is probably the case for most 25 school districts. You start out by entering an	Page 31 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

Page 36 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	Page 38 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
Page 37 1 communicating they are able to be tax exempt for 2 certain purchases. Do you see that? 3 A. Yes. 4 Q. And attached to the document is an 5 exemption certificate. Is this -- do you recognize 6 this document? 7 A. Yes, I know what that document is for. 8 Q. Whose signature is on this document? 9 A. I'm not sure if that's Mr. Twitty's 10 signature, but it's supposedly his name. 11 Q. Is there anything -- I'll scroll so you 12 can see the whole thing. Is there anything on this 13 document that would alert a third person that it is 14 a fraudulent document? 15 A. Not that I'm aware of. 16 Q. Okay. I will stop sharing the screen for 17 a moment. Do you know, is Orangeburg County School 18 District still using the Owl devices? 19 A. I'm not aware. I'm not sure. 20 Q. When you left your employment there, were 21 they still using it? 22 A. Yes. 23 Q. Did the Owls work as they were supposed 24 to? 25 A. Yes, so far as I know. I know that they	Page 39 1 using this one-time funding. So that's when I was 2 involved in the meetings on the demos of the 3 product, how much it would cost, and how the budget 4 needed to be set up for those funds to be used. 5 Q. About how many orders do you think the 6 school district placed through Level 8? 7 A. That, I'm not aware of. I'm not sure. 8 Q. Okay. I'm going to show you another 9 exhibit. I'll share my screen and I'll zoom in. 10 This is Defendant's Exhibit 3, Bates label 11 Defendant's 12658. In this email, David Marshall is 12 responding, it looks like it's a Google Group of 13 Orangeburg County School District employees perhaps? 14 A. A Google Group? 15 Q. It says to scnspra@googlegroup.com. Do 16 you know what that would have been? 17 A. I have no idea. 18 Q. Okay. So it looks like it started from an 19 individual, Audrey Childers' email, saying they're 20 looking for companies that can livestream 21 graduation. And it kind of looks like it was put 22 out as a public Google Groups for people to respond 23 to. Are you aware of the school district having any 24 public Google Group? 25 A. No, I've never been a part of Google Group

Page 48 1 A. But not out of the ordinary. I'm not one 2 to say that it's not my job to send it on. If you 3 can help, I'll help. If not, then I, of course, 4 include my team or my staff. So I wouldn't respond 5 to any vendor and say, "This is not my job. You 6 need to speak with such and such." If it's a small 7 task, I send it on, or I may just go ahead and 8 forward the question, so I just provided a response 9 to Mr. Mason at that time. 10 Q. And on this same email, Zach tells you, 11 "The folks at Owl Labs were fantastic with getting 12 the units in on time." 13 A. Uh-huh. 14 Q. Did that lead you to believe that the 15 devices were being purchased directly from Owl Labs? 16 A. No, the purchase order from -- what I was 17 aware, the purchase order was issued to Level 8. 18 The Owl cameras are Owl cameras, but the purchase 19 order was authorized and issued to Level 8. 20 Q. What do you believe he meant by "The folks 21 at Owl Labs were fantastic with getting the units in 22 on time"? 23 A. That they supplied the Owl cameras to 24 Level 8 for us to purchase. 25 Q. Why not go directly to Owl Labs versus a	Page 50 1 delivering mail to a particular address. No, we 2 obtain a W-9 from all of our vendors that needed to 3 be added into the system and we use the information 4 on that form, on that document. 5 Q. Okay. I'm going to show you what's been 6 marked as Defendant's Exhibit 7. This is Bates 7 number Defendant's 12599. So this is, again, an 8 email where Zachary Mason is emailing Eric Ham about 9 the Owl devices and Eric Ham forwards that on to 10 you? 11 A. Okay. 12 Q. Why would he forward -- and I'll show you 13 the attachment so you can have the whole view of the 14 document. Why would he -- Mr. Ham have forwarded 15 this to you? 16 A. Because, again, it was the one-time 17 federal money that wasn't assigned to a grant 18 manager, because we thought it was just a quick 19 pandemic for the summer or for the fall. So I was 20 in charge of setting up that budget for whatever the 21 plan or the purchase was going to be, using those 22 funds. 23 Q. Did Mr. Ham ever ask you if there was room 24 in the budget for this? 25 A. Well, as a finance person, I am
Page 49 1 third party? 2 A. Well, that would be for any purchase. We 3 wouldn't go directly to the manufacturer, we'd go to 4 the retailer. And so I wouldn't think this would be 5 any different than not going to Michelin to buy 6 tires, but going to Walmart to buy Michelin tires, 7 something of that nature. So that wouldn't be out 8 of the ordinary for me. 9 Q. Okay. What due diligence was done into 10 Level 8 before finance cut the first check to Level 11 8 on this Owl Labs purchase? 12 A. Due diligence? So the requisition came 13 through, and it was reviewed and approved. Of 14 course, they were checked to see if they were 15 debarred. So I'm not sure -- W-9 was received. I'm 16 not sure what other due diligence you may be 17 referring to. 18 Q. Did you ever look up the address where a 19 check was going to be mailed? 20 A. No, I would have no reason to look up an 21 address. 22 Q. Would anybody in the finance department 23 have a reason to look up an address? 24 A. Not unless an item was returned in the 25 mail for whatever reason or we had problems issuing,	Page 51 1 forthcoming with that information. So as a team, as 2 a cabinet, we discuss here is the funding -- of 3 course, we discussed all the issues that came along 4 with the pandemic. And then when we were issuing 5 funding for that should be used to address the 6 issues caused by the pandemic, the leadership team 7 met regularly on how much funding we had, what are 8 the needs that we have, and how do we meet those 9 needs with the limited funding that we received. 10 Q. And I feel like I've asked you this 100 11 times. And I am not a finance person so I'm 12 probably just confused on the structure of it all, 13 so I apologize if I'm being repetitive on your end. 14 Who ultimately had to sign off on this purchase? 15 A. The final approval is Mr. Twitty for all 16 purchase orders. 17 Q. So Mr. Twitty did not have to get approval 18 from you to use these funds? 19 A. He didn't use these funds. Mr. Twitty 20 wouldn't have entered or created that requisition. 21 I guess you're asking who decided to use the money 22 for Owl cameras? 23 Q. Right. 24 A. So, again, the technology department or 25 Mr. Ham and his team presented the Owl cameras as a

Page 52 1 solution to the pandemic and the issues we were 2 having with educating our students. And from there 3 collectively, the leadership team met about the 4 different needs that we all had. Of course, finance 5 wouldn't have many years. But HR might have many 6 needs of staff being out because they had the virus, 7 or there was instruction the teachers need, tools 8 and equipment to be able to teach the students from 9 home. Collectively, we discussed here is the 10 pandemic that we're in, here are the needs that we 11 have, here is the money that's available, here is 12 the plan to spend that money. 13 Q. And so if IT decided to make this purchase 14 of Owl devices, nobody in finance has to give a 15 sign-off, correct? 16 A. Say that one more time. 17 Q. The IT department decides to purchase the 18 Owl Labs devices. Nobody in finance has to give a 19 sign-off on the use of funds, correct? 20 A. Well, the purchase order flows through 21 finance -- Mr. Twitty -- so he creates the purchase 22 order by approving that requisition. As far as does 23 Mr. Ham have to get permission from me to purchase a 24 certain item? No. He reports to -- actually, I 25 think he reported to Merry Glenne Piccolino, and	Page 54 1 consolidation, because we had many needs going from 2 three districts to one that we didn't receive any 3 additional funding to help meet those needs. 4 So in that email where I said, "Hopefully 5 we will get the allocation from the Office of 6 Regulatory Services," which we did not, but that was 7 some of the funding that we were trying to receive 8 to help us recover from the cost that it took to 9 consolidate the school district. 10 Q. So at that point with COVID going on, was 11 it kind of -- the attitude was, "We'll buy what we 12 need and we'll figure out the funds later, we need 13 the supplies now"? 14 A. No, ma'am. As a finance person, that's 15 not how to operate. We have to have funds available 16 first. But the ultimate goal was to educate our 17 students and not to have interruption in their 18 education that they desperately needed. And so, no, 19 we have to have the funding available. At this 20 time, we had CRF funding available to purchase the 21 Owl cameras. It would have just been icing on the 22 cake had the state provided additional funding that 23 we could have used to recover from the cost of 24 consolidation, and then the CRF funds could have 25 been used for something else. But the Owl cameras
Page 53 1 then she reported to the superintendent, but they 2 don't report to me or anybody in my department. 3 Q. And so in this email, Mr. Ham sends it to 4 you and you send it to Gail Sanders. And you ask, 5 "Do you mind entering the requisition for the 6 attached quote? This will come out of the \$1.5 7 million CRF allocation for now. Hopefully, we'll 8 get the allocation from the Office of Regulatory 9 Services to move these expenditures to." 10 A. Uh-huh. 11 Q. Can you explain what you're saying there? 12 A. We had CRF. I think it stood for 13 coronavirus relief funds. I'm not 100 percent sure. 14 We have so many acronyms in education, but we had 15 that funding. We were also asking the state to 16 provide funding to help us as a school district. 17 Again, they just consolidated in 2020, and several 18 districts that went through consolidation were able 19 to get funding from the state to help them through 20 that consolidation. Orangeburg County School 21 District did not. 22 And so at the time and during my tenure 23 there at Orangeburg County School District, we were 24 trying to have access to funding that other school 25 districts received when they went through	Page 55 1 qualified for CRF funding and we had the funding 2 available. 3 Q. Okay. And so then you asked Gail to 4 approve those. Do you mean the expenditures or what 5 is she approving? 6 A. She is entering the requisition. 7 Q. And then for Greg to email the POs to Dr. 8 Foster and Eric Ham when he gets back from lunch, 9 correct? 10 A. Yes. 11 Q. And that was -- what were you needing Dr. 12 Foster and Eric Ham to do on these? 13 A. Dr. Foster is a superintendent. And 14 collectively as a leadership team, of course he has 15 the ultimate decision. But we discussed the Owl 16 cameras. We were ready to move forward with those 17 Owl cameras. And so both he and Mr. Ham were to be 18 copied on the POs. 19 Q. So they were just getting looped in? They 20 weren't having an authorizing role? 21 A. Right. 22 Q. Okay. I'm going to show you the next 23 exhibit, Defendant's Exhibit 8, and it's Bates 24 labeled Defendant's 12631. Okay. These are e-mails 25 between you and Rebecca Huggins. Who is Rebecca

Page 60 1 through him for approval. 2 Q. Did this one go through Dr. Foster for 3 approval? 4 A. I'm not sure if that's after the emails to 5 Mr. Ham. Can you scroll down and let's see what 6 Janice said to Mr. Ham? Okay. "We will need you to 7 sign for payment." So then -- I don't know. 8 Q. Yes, it's the same day. It all kind of 9 started at 8:00 a.m. The one earlier that we looked 10 at -- I'll go ahead and scroll up to that previous 11 one -- around 8:30 a.m., where she's asking, "Who do 12 I send it to for approval?" 13 A. And then she sent it to Mr. Ham. 14 Q. Mr. Ham was originally the one on the 15 email. 16 A. So I'm not sure why it would have needed 17 to be approved by Dr. Foster at that time. 18 Typically, Mr. Ham would approve it, once he 19 received all the devices. I don't know if there was 20 an issue with the devices, if Mr. Ham was saying we 21 didn't have all the devices. I'm not sure what the 22 situation would have been for it to have to go 23 through Dr. Foster. 24 Q. Do you know who ultimately ended up 25 signing off on the purchase of the Owl devices?	Page 62 1 was my responsibility. However, the director of 2 finance was the first line of defense. So then it 3 came up to me, if they couldn't get the issues 4 resolved. 5 Q. Okay. Are you aware if Mr. Twitty has 6 ever been disciplined? 7 A. Not that I'm aware of. 8 Q. What procedures were put in place in 2020 9 to make sure that a purchase order is valid? 10 A. That a purchase order is valid? 11 Q. Yes. 12 A. Once we created the purchase order, it's a 13 purchase order. So, again, the requisition starts 14 out by the person wanting to purchase something. 15 They put it in the system, it flows through the 16 different approval process, and then it becomes an 17 actual purchase order. 18 Q. How did Mr. Twitty confirm if that 19 purchase order was a valid submission from an 20 individual in the district? 21 MS. FITTIPALDI: Object to form. Sorry. 22 If I can just put my objection on the record. 23 You can answer. 24 THE WITNESS: So if a vendor would have 25 called and asked, is that what you're saying?
Page 61 1 A. I do not. Is it on the invoice, signature 2 on the invoice or the purchase order? The purchase 3 order would have been approved by Mr. Twitty, but 4 then the payment of the invoice, I'm not sure whose 5 signature ended up on that invoice. 6 Q. And the invoice is saying, "We received 7 these items." 8 A. Yes, and it's ready for payment. 9 Q. Okay. I'm going to stop sharing my screen 10 now. So Mr. Twitty, can you explain his role, as 11 you understood it? 12 A. He's the procurement -- I don't remember 13 his exact title -- but procurement director or 14 coordinator of procurement. And so he manages -- he 15 managed our vendors relationships. He reviewed all 16 requests for purchases. He reviewed purchasing 17 card, credit card transactions. So handling 18 anything related to the district purchasing items or 19 services for our students and our staff. 20 Q. And did he have staff that worked for him? 21 A. I'm trying to remember. I don't think he 22 had -- I think at some point, we hired someone to 23 assist. I don't 100 percent remember. 24 Q. And he reported to you, correct? 25 A. Sort of, kind of. The finance department	Page 63 1 EXAMINATION RESUMED BY MS. MILLS: 2 Q. So let's say somebody in one of the school 3 district submits a purchase order or a requisition, 4 a request for it and that eventually goes to Mr. 5 Twitty, correct? 6 A. Yes. 7 Q. And Mr. Twitty signs off on it, correct? 8 A. Yes. 9 Q. How does Mr. Twitty know that that is a 10 valid request -- 11 MS. FITTIPALDI: Object to the form. 12 EXAMINATION RESUMED BY MS. MILLS: 13 Q. -- that you are aware of? 14 A. So there is only certain individuals that 15 had access to Infinite Visions to even be able to 16 enter a requisition. And, typically, it's the 17 bookkeeper and the principal at the school level 18 within the district office or different departments. 19 They also had a bookkeeper and then the director. 20 Only those individuals were able to access Infinite 21 Visions in order to enter a requisition. So any of 22 those that flowed through Infinite Visions would 23 have come from one of those individuals. And there 24 is an approval log that shows who submitted it, who 25 approved it so far, and then where it is right now.

Page 68 1 purchased from Level 8, knowing what you know now? 2 A. Yes. 3 Q. Can you explain why? 4 A. We had an authorized purchase order with 5 an invoice for payment. So I'm not sure -- 6 Q. Knowing now that Level 8 is not under a 7 state contract? 8 A. Okay. Yes. So we should have procured 9 that through an invitation for bid at that point. 10 But, of course, at that point, we did not know that 11 they were not on state contract. 12 Q. Do you believe it was important to check 13 that an entity was on state contract before issuing 14 funds to them? 15 A. So typically the vendors that are on state 16 contract provides that state contract number. Of 17 course, you don't think that anyone is going to 18 commit fraud and falsely document that information, 19 but yes. 20 Q. Do you think it's important to check that 21 number that's provided? 22 A. Yes. 23 Q. Do you believe that Orangeburg County 24 School District owes Owl Labs for the devices that 25 are in Orangeburg County School District's	Page 70 1 representative of the district? 2 A. I would say yes. Anybody could reach out 3 to a vendor and say, "I'd like to purchase this" or 4 "Can you give me a quote for this?" That's not out 5 of the norm. 6 Q. And what could a vendor do to make sure 7 that David Marshall had the authority to enter into 8 a purchase order with them? 9 A. Again, I'm not sure. I haven't been on 10 the vendor side. I don't know the -- I don't own a 11 company, so I don't know the do's and don'ts, as far 12 as when you're ready to purchase or when you're 13 ready to do business with someone, so it would be 14 hard for me to make any suggestions for vendors. 15 Q. Sure. From the school district's side, 16 are you aware of anything that the school district 17 put out that helps third parties determine? 18 A. We do our -- I'm not sure if this is 19 answering your question, but like I said, we hold 20 some vendor fairs, and we communicate with vendors 21 on how to do business with school districts in the 22 state of South Carolina, and how to receive their 23 certificate as a small business or minority 24 business. So we share information that way with our 25 vendors, but, of course, that's voluntary, it's
Page 69 1 possession? 2 A. I don't, because we had an authorized 3 purchase order with Level 8 and we made the payments 4 to Level 8. So Orangeburg has fulfilled their 5 commitment, in my opinion. 6 Q. So what is it that Owl Labs could have 7 done differently to avoid this situation? 8 A. I'm not sure, from their perspective. I 9 don't know what they did or didn't do. So I can't 10 make any suggestions, just because I hadn't been 11 involved in their day-to-day communications, or 12 transactions, or inquiries. 13 Q. Are you aware if David Marshall ever 14 communicated with vendors? 15 A. I don't know. I'm not sure. I guess as a 16 technology person, he may have communicated with 17 vendors, if we were having issues with items that we 18 purchased from them, but I wouldn't have a way of 19 knowing who he has spoken to and who he hasn't. 20 Q. Would that have raised any red flags for 21 you if you saw that David Marshall was communicating 22 with vendors in order to make a purchase? 23 A. No, not necessarily. 24 Q. And David Marshall, he had authority, as a 25 district employee, to communicate as a	Page 71 1 publicized, and they can attend or not. Most of it 2 is small vendors that haven't done business and want 3 to do business with school districts, so we do 4 provide that information. I think there was a page 5 on our website on how to do business with Orangeburg 6 County School District, that that's information 7 that's published. And, of course, they can always 8 call, if they need further assistance. 9 Q. Is there any sort of publication of 10 approved individuals to communicate with about 11 purchases from Orangeburg County? 12 A. So is there a published listing of 13 vendors? 14 Q. No, a published listing of agents from 15 Orangeburg County for vendors to communicate with. 16 A. On our finance page, it would show the 17 folks that worked in the finance department and what 18 their roles were. 19 Q. And the finance department would be who a 20 vendor would be speaking to? 21 A. It depends on the question that they 22 needed. If they wanted to request information about 23 a check or if they wanted to see how to do business 24 with the school district, they could reach out to 25 finance and the procurement office. If it was

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

Page 12 1 A. I'm going to say -- I'm pausing because I'm 2 going to say we all reported to the assistant 3 superintendent for finance, but I'm going to also say 4 that I guess I was like the middle person. So, yes, 5 they would report to me as well. 6 Q. Okay. And who was in procurement that 7 reported to you at that time? 8 A. Greg Twitty. 9 Q. And he's still in procurement? 10 A. Yes, he is. 11 Q. Have you ever dealt with vendors directly? 12 A. Just sometimes when they may call in. But 13 other than one-on-one vendors, that's mainly they'll 14 talk to the procurement person. 15 Q. So you're not really involved in 16 negotiating contracts or anything like that? 17 A. No. 18 Q. Do you keep track of how much money is 19 being spent with various vendors? 20 A. We do keep track. Periodically, we may 21 run -- we may run a report just to see basically 22 what's being paid out to vendors because that 23 information is -- especially minority vendors, we 24 report that to the board. 25 Q. Do you remember any of the top vendors in	Page 14 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
Page 13 1 2020? 2 A. Not off the top of my head. 3 Q. That's fine. 4 Does the school district have a procurement 5 policy? 6 A. We do. 7 Q. And since Greg reported to you, were you 8 kind of helping oversee that that was being complied 9 with? 10 A. The procurement policy? Yes, periodically, 11 we look at it and we talk about it. 12 Q. What do you talk about? 13 A. Basically if there are any changes with 14 currently what's on there, whether or not there are 15 changes with the state as it relates to our board 16 policy and of our procurement codes. 17 Q. So you're familiar with the policy, 18 generally speaking? 19 A. Just generally, yes. 20 Q. Can you tell me -- I know this is a really 21 broad question, but can you tell me generally what 22 the procurement policy requires? 23 A. Of course we have to secure bids if it's 24 over -- I think it's 10,000 and 1. \$10,000 and 1 25 cent. And then there are certain exceptions if it's	Page 15 1 an affidavit saying that that ND was not my 2 signature. 3 Q. It was just some employee that just signed 4 your name basically? 5 A. Yeah. 6 Q. Okay. As far as you know, they just used a 7 pen and signed your name? 8 A. Yes. Yes. 9 Q. Okay. Because of that experience, do you 10 do anything to safeguard your signature now? 11 A. Most definitely. 12 Q. What do you do? 13 A. Basically, I keep a -- of course, you know, 14 I keep a copy of everything that I sign basically. 15 And I try to sign it in blue so if you come see 16 something in a black pen, you definitely know 17 it's ... 18 Q. I do the same thing. 19 Does the school district do any due 20 diligence on its vendors? 21 MR. FITTIPALDI: I object to the form, but 22 you can answer that question. 23 THE WITNESS: Ma'am? 24 MR. FITTIPALDI: You can answer. 25 THE WITNESS: Yes.

Page 16 1 BY MR. STANLEY: 2 Q. What do you do? 3 A. Again, that's -- that's what Greg does. It 4 just basically makes sure that there's no -- what you 5 call it? Because he goes into like sam.gov just to 6 make sure there is no -- what you call it -- the -- I 7 don't know if I'm nervous or just my thoughts are 8 leaving me this morning. 9 Q. That's okay. 10 A. What is it? What is that form? 11 Q. That's all right. 12 A. It's on the tip of my tongue, but I just 13 can't think of what it is. But anyway, he goes out 14 just to check to make sure that that is a legitimate 15 vendor and to make sure there's no legal issues or 16 whatever with that vendor. 17 Q. Does he do that in 2020? 18 A. That, I'm not absolutely sure. But I do 19 know we have that -- that's a process. 20 Q. Was he supposed to do it in 2020? 21 A. It should have been an ongoing requirement. 22 It should be still an ongoing requirement. So I'm 23 not absolutely sure. 24 Q. What does it mean for a vendor to be on the 25 state list or the state contract? What does that	Page 18 1 meetings and things like that so just like any other 2 employee. 3 Q. Was he at that director level? 4 A. He was not. 5 Q. What was his role? 6 A. He worked under technology, something to do 7 with technology and communications. And he was 8 responsible -- I know he did like recording and -- 9 I'm trying to think of what all. As far as I know, 10 he did like -- I know he did recording. He worked 11 with different electronic devices. 12 Q. When you say recordings, do you mean like 13 videos? Or what do you mean when you say recordings? 14 A. Like he was one of the ones that worked 15 with like the board meetings, we'd have to record 16 those. 17 Q. Okay. 18 A. And that was mainly the time when I would 19 see him. 20 Q. Have you ever heard of an entity called 21 Level 8 Communications? 22 A. I've heard of it. 23 Q. Have you ever spoken with anybody 24 affiliated with Level 8? 25 A. I don't recall speaking to anyone.
Page 17 1 mean? 2 A. It's pretty much there's a group of vendors 3 that have already been vented through the state, 4 they've already been cleared for school districts to 5 use, so if we use those, then it doesn't require -- 6 my understanding, it doesn't require we have to get 7 that -- what is it -- the three quotes. 8 Q. Who has authority to purchase items over 9 \$50,000? 10 A. Normally, it would be -- it would have to 11 be division people that are over divisions. But, of 12 course, anything that's over a certain threshold, it 13 is approved by superintendent. 14 Q. And who negotiates those contracts for 15 those procurements that are over 50,000? 16 A. Procurement coordinator, so Twitty. 17 Q. Who is David Marshall? 18 A. As far as -- David Marshall was a former 19 employee of the district. 20 Q. Did you ever talk with him? 21 A. Yes, I've spoken to him. We've talked with 22 him. Not dealing with any type of financial but just 23 regular employee speaking of whatever because he 24 worked up here in communications, so we did have, you 25 know, interactions, board meeting. They record board	Page 19 1 Q. Are you aware of how much money the 2 District spent with Level 8? 3 A. Just for the purchasing of those Owls, I 4 would think. That's the only thing I can think of. 5 Q. Okay. 6 A. Yeah. 7 Q. So the only procurement from Level 8 that 8 you're aware of is the Owls? 9 A. Yes, without going to actually looking. 10 Q. Sure. Are you aware that Mr. Marshall was 11 heavily involved in purchasing through Level 8? 12 A. I learned that, yes. 13 Q. When did you learn that? 14 A. Actually, it was after all of this. It was 15 a conversation I think I -- someone called from the 16 technology department inquiring, saying that they 17 were contacted about payment and they didn't receive 18 their payment. 19 So I think at that time we went back and we 20 looked to see whether or not there were checks that 21 were cut, and we saw where the district did cut those 22 checks. We did process those checks. 23 Also, we took a copy of the -- went out to 24 the bank and got copies of a check and saw that 25 David Marshall was the person that endorsed the

Page 20 1 checks. 2 Q. And the checks were made out to whom? 3 A. If memory serve me right, they were made 4 out to Level 8. I think it was Level 8. 5 Q. When is the first time you heard of Owl 6 Labs? 7 A. It was during that time. During the time 8 when the invoices and all of that came up, yeah. 9 Q. Were you involved with either acquiring or 10 setting up the Owls? 11 A. No, not setting up. 12 Q. When I say the Owls, do you understand that 13 I mean the videoconferencing system? 14 A. I wasn't involved in setting it up. As I 15 said before, I do recall of the requisition, and I 16 have to even go back -- I would need to go back. I 17 didn't look at anything to prepare for this. I would 18 have to go back and look to see exactly whose -- 19 which vendor is actually on the requisition. But I 20 do recall of making sure that the account code was 21 correct. 22 Q. Okay. Are you aware that the school 23 district purchased 875 Owl devices? 24 A. Yes. 25 Q. When did you become aware of that purchase?	Page 22 1 want to order these devices. And then, of course, 2 this is saying that, yes, we are ordering these 3 devices and then, of course, when they are received, 4 then, of course, payment will be submitted. 5 Q. Do you expect those with whom you're 6 contracting to rely on purchase orders? 7 A. Yes. 8 Q. And the district when it issues a PO, they 9 want it to be fulfilled? 10 A. Yes. 11 - - - 12 (PLAINTIFF EXHIBIT NUMBER 1, Emails, DEF 13 013156 through 013157, was marked for 14 identification.) 15 - - - 16 MR. STANLEY: I'm showing you what I've 17 just marked as Exhibit 1. 18 MR. FITTIPALDI: Thank you. 19 THE WITNESS: Okay. 20 BY MR. STANLEY: 21 Q. Have you seen that email before? 22 A. I don't -- I can't recall whether or not 23 I've seen this before or not. 24 Q. And just for the record, down in the bottom 25 right it says DEF 013156. If I refer to a Bates
Page 21 1 Did you know -- like when they arrived, did you know 2 they arrived? Did you not learn about it until 3 sometime after that? 4 A. I'm not sure if I knew exactly when they 5 arrived, but I do know that when the requisition came 6 through the queue to be processed as a purchase 7 order. But it as far as the actual date that they 8 were actually arrived in the district, I'm not sure. 9 Q. Okay. What was the need for those devices, 10 do you know? 11 A. That was the time when COVID and, you know, 12 we were -- kids were -- couldn't come to school, so 13 we needed to get online instructions, so that was 14 mainly to facilitate that during that time. 15 Q. Do you know where they were placed? 16 A. Where they were what now? 17 Q. Where the devices were actually physically 18 located, were they in classrooms? 19 A. They were in classrooms. It should have 20 been in classrooms, yes. 21 Q. What's a purchase order? 22 A. It's a legal document saying that -- for 23 instance, it would be a legal document saying that we 24 are -- and it basically is kind of like a little 25 commitment saying that, you know, we are ordering, we	Page 23 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

Page 32 1 BY MR. STANLEY: 2 Q. A million dollars is a good amount of 3 money, isn't it? 4 A. It's a lot of money. 5 Q. You want to make sure that when you're 6 spending that much money, that you're working with 7 somebody that's got the responsibility and the 8 wherewithal to fulfill those orders? 9 A. Yes. 10 Q. And is ethical? 11 A. Yes. 12 Q. Do you think Level 8 was ethical? 13 A. Now, when you're looking at all of this, 14 I'm not -- not really sure because if they were -- if 15 this -- they were allowing them to do this under 16 their -- under their business, I wouldn't consider 17 that so ethical. 18 Q. Do you know who Zack Mason is or Zachary 19 Mason? 20 A. I heard of that name during that same time. 21 That's the only time. 22 Q. Did you ever talk to him? 23 A. I don't recall. 24 Q. Ever emailed with him? 25 A. Not -- I don't recall email with him. It's	Page 34 1 Labs? 2 A. It would be for the purchase for these 3 invoices. 4 Q. If you'll look -- 5 A. Here it is. About nine -- probably about 6 900,000. It's showing these two invoices here. 7 Q. You're looking at the one that's 8 Bates-labeled 100, is that what you're looking at? 9 A. Basically what? I'm sorry. 10 Q. Bates-labeled I guess 99 and 100 in the 11 bottom right-hand corner. 12 A. Yes, 00099. 13 Q. And those are invoices with Level 8, right? 14 A. Uh-huh. 15 Q. And that's an invoice from Level 8 to 16 Orangeburg County School District? 17 A. Uh-huh. 18 Q. Down there at the bottom, on 99, do you see 19 that it says "Level 8 Communications is a 20 South Carolina statewide term contract vendor," and 21 it's got a solicitation number? 22 A. Uh-huh. 23 Q. And it says, "This contract is valid from 24 7-22-19 until 5-2-24." And that's got a 25 South Carolina vendor number; is that right?
Page 33 1 just everything has been so long, so cloudy, I don't 2 recall of having any direct contact with any of them. 3 Q. Do you know if David Marshall was 4 affiliated with Level 8? 5 A. Not personally, I wouldn't have known. 6 - - - 7 (PLAINTIFF EXHIBIT NUMBER 3, Email with 8 Attached Invoice, DEF 00095 through 00105, was 9 marked for identification.) 10 - - - 11 BY MR. STANLEY: 12 Q. I'm showing you what's been marked as 13 Exhibit 3. It's an email dated June 10th, 2021. 14 It's got DEF 00095. 15 A. Right. 16 Q. And that's through 105. 17 A. Okay. Yes, this came from the technology 18 department. 19 Q. Is that Daphne -- I'm going to say her last 20 name wrong -- Walley? 21 A. Daphne Walley. 22 Q. She's in the technology department? 23 A. She was at that time. She was actually the 24 bookkeeper that was assigned. 25 Q. Do you know how much money is owed to Owl	Page 35 1 A. Uh-huh. 2 Q. Do you know if anyone within the school 3 district checked to see if those were valid 4 solicitation numbers or vendor numbers? 5 A. I don't. That would be a question for 6 Mr. Twitty. 7 Q. Will you turn to the page that has 102 on 8 it. It looks like this. 9 A. 102? 10 Q. Yes, ma'am. That's an invoice from Owl 11 Labs to Orangeburg County School District; is that 12 right? 13 A. Uh-huh. 14 Q. Do you have any reason to doubt that Owl 15 Labs is owed \$358,391.25? 16 MR. FITTIPALDI: Object to the form. 17 You can answer the question. 18 THE WITNESS: If we owe Owl Labs? 19 BY MR. STANLEY: 20 Q. Yes, ma'am. 21 A. I would say no because we -- clearly our 22 invoice, our records -- the appeal that was 23 actually -- if you look at the -- based on the 24 invoice, it's saying we owe, but, however, I was 25 looking to see if the copy of the checks was

Page 36 1 attached, but it's not. 2 Q. I'm not sure I have that, honestly. 3 A. Oh okay. 4 Q. We have a lot of documents, so I might. 5 But I don't know. 6 A. Okay. Okay. 7 Q. Do you see on the invoice where there was a 8 \$157,000 discount applied? 9 A. Yes. 10 Q. Do you know why that was? 11 A. No. 12 Q. And if you back up to 99 and 100, those 13 Level 8 Communications' invoices, the first one, 99, 14 is for the same amount as the second one, right? 15 A. Uh-huh. 16 Q. Do you know why that was? 17 A. No, I don't. But they look like identical 18 same items. 19 Q. If I told you that the reason was that the 20 vendor required 50 percent down payment, and then the 21 subsequent 50 percent upon receipt, does that refresh 22 your recollection any? 23 If it doesn't, that's fine. If that 24 doesn't sound familiar to you, that's fine. I just 25 want to know what you can remember.	Page 38 1 A. 97 and 98? This is actually from our 2 software. 3 Q. And what is that a record of? What does 4 that show? 5 A. Payments, check numbers. So it's two 6 payments, like I said. 7 Q. And there's a number of payments being made 8 to Level 8; is that what this reflects? 9 A. Uh-huh. 10 Q. Is each line a separate payment? 11 A. Yes, each line has a separate check number. 12 Q. And you mentioned earlier when we were 13 looking at Exhibit 1, that you thought the PO had too 14 many numbers. Do you remember telling me that? 15 A. Yeah, it looks like ... 16 Q. So if we look at the PO numbers on this, I 17 guess it's the screenshot of your system? 18 A. Uh-huh. 19 Q. How many numbers are there? 20 A. Six. 21 Q. Okay. I'm following you now. A third 22 party wouldn't be able to know how many numbers in 23 your PO, would they? That's not something you all 24 broadcast? 25 A. Well, it's just in our disclosure
Page 37 1 A. It makes sense. Seems like it was two 2 payments. We did do two payments. I think I recall 3 two payments being made, two checks. Yes. 4 Q. The first line of that invoice, the one 5 that's got 99 on it, \$425,250, right? 6 A. Uh-huh. 7 Q. And then the next page, Defendant's 100, 8 that's again \$425,250, right? 9 A. Yes. 10 Q. So just for the Owls alone, if you add 11 those two together, that would be the total purchase 12 price for the Owls alone; is that right? 13 A. Uh-huh. 14 Q. And that amount is 850,500? 15 A. Uh-huh. 16 Q. And that's more than that 716- we looked at 17 earlier? 18 A. Uh-huh. 19 Q. And, again, when you're doing procurement, 20 you're trying to get the cheapest price for the same 21 thing, right? 22 A. Right. 23 Q. If you'll back up with me to 97, 98 in that 24 same Exhibit 3. 25 What is that?	Page 39 1 information that we have on -- you know, because we 2 post check registers and stuff. But I don't know if 3 they would know. Especially if they have never dealt 4 with us before, yeah. 5 Q. You may have answered this already and if 6 you did, I'm sorry. Do you know what due diligence 7 was done on Level 8 before finance cut them the first 8 check they ever wrote to Level 8? 9 A. I don't off the top. 10 Q. That would be Mr. Twitty's responsibility? 11 A. Uh-huh. 12 Q. Back in Exhibit 3, if you'll look at those 13 invoices again. Defendant's 99. Level 8 14 Communications' address. Do you see that's 1550 15 Middleton Street, Suite 2671, Orangeburg, 16 South Carolina? 17 A. Uh-huh. 18 Q. Do you know what's at 1550 Middleton Street 19 in Orangeburg? 20 A. I don't know what it is. 21 Q. Do you know where Middleton Street is? 22 A. I know it's in downtown. It's a street 23 downtown. 24 MR. STANLEY: Let's mark it. 25 - - -

Page 40 1 (PLAINTIFF EXHIBIT NUMBER 4, Orangeburg 2 Post Office Address, was marked for 3 identification.) 4 - - - 5 MR. FITTIPALDI: Thank you. 6 BY MR. STANLEY: 7 Q. This is a printout from the post office 8 website. Are you aware that there's a post office at 9 1550 Middleton Street in Orangeburg? 10 A. The post office? 11 Q. Yes, ma'am. 12 A. That's the post office address? 13 Q. Yes, ma'am. 14 A. Honestly, I didn't know what the post 15 office address was. I'm sorry. 16 Q. That's fine. When you're looking into 17 vendors, do you usually look up what their address 18 is? 19 A. Yeah. When they -- when you check the 20 vendors, that's what you should do, yes. 21 Q. And might it send off some red flags if 22 their address is the post office? 23 A. Yes, I would say so. 24 Q. Especially if it says Suite 2671, not 25 PO Box?	Page 42 1 paid Level 8, I believe, for the payments. 2 Q. So that top email, it looks like it's an 3 email from you to Mr. Twitty and Ms. Walley; is that 4 right? 5 A. Right. 6 Q. And you say "Let's discuss it in the 7 morning." 8 A. Uh-huh. 9 Q. What did you discuss the next morning? 10 A. Basically asking them about this. Because, 11 of course, like I said, I was new in this role. If 12 memory serve me right, I think I took over this role 13 like the first of May. 14 Q. Of '21? 15 A. Uh-huh. And, of course, this email was 16 like in June, so I was kind of trying to figure out 17 what was going on and up to speed. 18 Q. Yeah. 19 A. So we just -- if memory serve me right, he 20 just talked about it, and, of course, you know, 21 because he was the procurement guy, he pretty much 22 handled this. 23 Q. What did you -- do you remember any of the 24 conversation specifics? 25 A. No more than -- no more than them saying
Page 41 1 A. Yeah. 2 - - - 3 (PLAINTIFF EXHIBIT NUMBER 5, Emails, DEF 4 012890 through 012896, was marked for 5 identification.) 6 - - - 7 BY MR. STANLEY: 8 Q. I show you Exhibit 5. 9 A. Okay. 10 Q. This is an email Defendant 012890 through 11 896. If you will just let me know after you've had a 12 chance to review it. 13 A. Yeah, I'm trying to. 14 Q. I'm sorry, that's just the way it came. 15 A. I'm wearing glasses. 16 Okay. 17 Q. Have you seen that email before? 18 A. I do remember because it came over from -- 19 I think it was sent probably from technology, and I 20 did -- that's when I started asking -- I did ask 21 Twitty about this. 22 Q. What did you ask him? 23 A. I wanted to discuss -- find out about this. 24 And of course he said that, you know, yes, we had 25 already paid. We did not do any business that we	Page 43 1 that David -- well, technology ordered these -- 2 ordered these Owls, and basically the company is 3 saying that they never -- they didn't receive the 4 funding. And so just to kind of check to see whether 5 or not checks were actually processed and that we did 6 process the checks here basically. So that was kind 7 of basically all I could pretty much remember from 8 the conversation. 9 Q. So you -- a minute ago you said David, then 10 technology ordered. 11 A. Right. 12 Q. Who -- 13 A. He was working, I guess, with the 14 technology. 15 Q. David was? David Marshall? 16 A. Yeah. He and Mr. Ham. 17 Q. What did you do after you spoke with 18 Mr. Twitty with regard to the issues that arose out 19 of this email? 20 A. I'm trying to remember. I don't know if 21 this is the time when I called. I remember calling 22 the superintendent -- he was out -- about to let him 23 know what was going on with us being contacted about 24 these Owls and the company saying they were not paid 25 for the Owls.

Page 48 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.	Page 50 1 BY MR. STANLEY: 2 Q. Okay. Have you ever seen the email -- 3 A. I can't say if I've seen this email. 4 Q. At the bottom of 014312, do you see the 5 email where Mr. Twitty says, "Trying to find your 6 South Carolina state contract number. I notice 7 you're using 4400013022, but this belonged to a 8 company named Camcor." 9 A. Uh-huh. 10 Q. Do you think he checked it before making 11 the first payment to Level 8? 12 A. I can't confirm that, but I will say the 13 policy that we currently -- we are doing now since 14 I've been in this leadership role is we're checking 15 sam.gov and we're actually checking state contract. 16 Q. You just don't know if that was done before 17 the purchase of the Owls? 18 A. Right. I can't confirm that. 19 Q. Have you ever heard of Flex Technologies? 20 A. I heard of it during -- during this ordeal, 21 seem like that name came up. 22 Q. What do you know about Flex Technologies, 23 if anything? 24 A. Actually, I don't know of any -- I don't 25 know. Just heard the name Flex Services, what they
Page 49 1 Q. What procedures are in place to make sure 2 that a purchase order is valid? 3 A. He goes on and checks sam.gov to make sure 4 that the -- for disbarment and that type thing for a 5 vendor. 6 Q. Was that in place -- I'm sorry. 7 A. And then he'll also check, as well, to see 8 if they're on a state contract. 9 Q. And you would expect that he did that 10 before purchasing from Level 8; is that right? 11 A. Yes. 12 - - - 13 (PLAINTIFF EXHIBIT NUMBER 6, Emails, DEF 14 014312 through 014323, was marked for 15 identification.) 16 - - - 17 BY MR. STANLEY: 18 Q. This is an email dated March 4th, 2021, 19 Defendant 014312 through 323. 20 Ms. Sanders, have you ever seen that email 21 before? 22 A. Between Mr. Twitty and -- 23 MR. FITTIPALDI: Object to the form. 24 There's lots of emails in this entire document, 25 so I don't ...	Page 51 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

questions I have for you. I really appreciate
your time.

THE WITNESS: Thank you.

MR. FITTIPALDI: I have no questions.

- - -

(The deposition concluded at 10:28 a.m.)

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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

Page 16 1 you sometimes be involved in those conversations? 2 A. No, not necessarily. No. 3 Q. And so when a new vendor was being looked 4 at, did you have any role in looking at them? 5 A. No. No, not that I recall. No. 6 Q. Are you aware of any policies regarding 7 vendors with the school district? 8 A. I know they do have a procurement policy 9 that we're expected to follow. I do know that. 10 Q. Did they give you any sort of training on 11 the procurement policy? 12 A. There's a manual. It was up to the 13 individual, I'm assuming. When I came in, it was in 14 the middle of the year, so the year had already 15 started when I came in into my position, like I 16 said. And my background, based on my prior job, I 17 had, you know, the basics. So I never really -- I 18 wasn't involved in that meeting, no. 19 Q. Sure. So they just transitioned you to 20 your new role and you weren't required to do any 21 sort of additional training because of your 22 experience? 23 A. No. Yes, ma'am. 24 Q. What was the general process for placing 25 an order, particularly in the IT department with Mr.	Page 18 1 Q. Are you aware if there was any sort of 2 dollar amount that could get signed off without 3 needing additional authority? 4 A. No, I wasn't aware of that. 5 Q. Once you received a signed-off quote and 6 you keyed it in the system, was there another level 7 of approval for funds to be dispersed? 8 A. Then it went through the process of -- I 9 think -- I know whoever his supervisor was -- 10 because he would also have to approve electronically 11 in the system so it would go to him. And then 12 whoever his supervisor was would have to approve it. 13 Then somebody in finance had to approve it. When I 14 say finance, I mean procurement, everybody. And 15 then the final approver, Mr. Twitty, I think, was 16 the final approver on the purchase order. 17 Q. So Mr. Twitty, what was your understanding 18 of his role for the school district at that time? 19 A. He was the procurement officer. And if 20 something had to be purchased, there were procedures 21 that we were expected to follow. And we would have 22 to -- and if there was something that we didn't 23 have, then he would notify you that you needed this 24 and you had to have this. With the total price of 25 what the purchase was, I do know we had to get more
Page 17 1 Ham? 2 A. All right. The school, or entity, whoever 3 requested an item, or whatever, or requested to get 4 quotes and they would get quotes. And then once it 5 had to be approved -- it had to be signed off and 6 approved before it was actually put into the system. 7 So any requisitions that I generated were done based 8 on a signed -- something that was already approved 9 by somebody else. And it was just a matter of the 10 decision was made to purchase it and I would just 11 enter it. 12 Q. Who had to approve the quotes? 13 A. Well, everything had to -- while I was in 14 the technology department, everything had to go 15 through the director of technology. And I believe 16 his supervisor who supervised -- there was a 17 superintendent over that area, but that's as far as 18 I know. 19 Q. So was Mr. Ham who would approve these 20 quotes generally? 21 A. Yeah, I'm not sure he had the time, 22 because I'm not sure of the workflow for the vendor 23 -- for the approval of the purchase requisition, but 24 I do know that any technology purchase would have 25 had to have had his approval.	Page 19 1 than one quote, so you had to go out and get 2 additional quotes. And if there was only that 3 particular vendor that sold that particular item, 4 then you had to get a sole source documentation, 5 whatever, from that person in order to proceed with 6 the purchase. 7 Q. Who was responsible for checking the 8 vendor to make sure that they were an approved 9 vendor? 10 A. That, I do not know. 11 Q. And so in your role, you never looked into 12 a vendor? 13 A. No, we only used what was in the system. 14 If it wasn't in there, I could not use them and did 15 not use them. 16 Q. And what was the system called? 17 Envisions? 18 A. It was called iVisions. 19 Q. Did you have access to iVisions? 20 A. Yes. I was required to do the purchase 21 requisitions and make the payments. Yes, ma'am. 22 Q. Did Mr. Ham have an iVisions account? 23 A. Yes, because he was a working approver, so 24 he had an iVisions account. Yes. 25 Q. Would you have had access to Mr. Ham's

Page 20 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	Page 22 1 David Marshall? 2 A. David Marshall was an employee in the 3 technology department. 4 Q. Did you have any interactions with him 5 when you were in the IT role? 6 A. He worked in the same department is all. 7 And sometimes when we had to do deployment, we had 8 to work together. But other than that, you know -- 9 not physically together, but like we were always 10 part of a team that might have done something, but 11 that's it. 12 Q. Were you-all in the same building? 13 A. My office was on -- I don't think he had 14 an office in the building I was in. I don't 15 remember him being there. 16 Q. What were his job responsibilities when he 17 was with the school district, if you know? 18 A. I can't tell you that. I don't know. 19 Q. Do you know what his responsibilities were 20 from 2019 to 2020? 21 A. I know his area of specialty was video and 22 stuff like that. I know he used to do a lot of 23 that, but that's all I know as far as that. 24 Q. Are you aware of the entity called Level 8 25 Communications?
Page 21 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	Page 23 1 A. I know the vendor, because I've done a 2 couple purchase orders to them. 3 Q. Were you aware that David Marshall was 4 involved with Level 8? 5 A. No, not at the time. 6 Q. When did you become aware of that? 7 A. When it hit the papers with the lawsuit. 8 Q. Fair. Were you aware that David Marshall 9 helped do purchases for the district for audio and 10 visual purposes? 11 A. I mean, I know he did recommendations to 12 people, but like I said, I would only put them in 13 when it was an approved purchase to make. But other 14 than he probably made recommendations, because I 15 know people probably asked him, you know, "What do 16 you recommend?" That's just nature, people asking 17 stuff. So I'm assuming people might have asked him 18 for recommendations. 19 Q. Did Mr. Marshall ever send any orders for 20 you to key in? 21 A. No. 22 Q. Who would he send them to, if you needed 23 an order keyed in? 24 A. I don't know who he would send them to. 25 But I know I did not -- I've never taken anything

Page 24 1 directly from him and entered it as a purchase 2 order. So any purchase order I did from Level 8 3 would have come from, like I said, Mr. Ham. It 4 would have come from him or -- yeah. Basically, 5 yes, or somebody, you know, in the technology 6 department or somebody that says, "Hey, you need to 7 put this order in," but not from David Marshall, no. 8 Q. Did you ever see Mr. Marshall on emails 9 with Mr. Ham involving Level 8? 10 A. I am not privy to that. I was not privy 11 to Mr. Ham's emails, no. 12 Q. When is the first time that you heard of 13 Owl Labs? 14 A. It was during COVID, when I took over the 15 position as bookkeeper, because all these purchases 16 were made about the time I got there. 17 Q. And you're aware of what an Owl Pro is? 18 A. Yes. 19 Q. So when I say the Owl devices or the Owls, 20 you know I'm talking about the swivel camera? 21 A. Yes, ma'am. 22 Q. Okay. Did Orangeburg County School 23 District purchase 875 Owl Pros? Does that sound 24 correct? 25 A. It was a huge number, I do know that.	Page 26 1 A. Yes. 2 Q. Okay. And this is from Bill Smith at Owl 3 Labs. And he's reaching out to you on June 9th, 4 2021 and he says, "Thank you for speaking with me 5 today." Do you think this was the phone call you 6 were referring to earlier? 7 A. I think so possibly, yes. 8 Q. And so you said, "Obviously, there's some 9 confusion where this money has gone. We did not 10 work with Level 8 on this," and he forwards some 11 transcripts from David Marshall and the team paying 12 Owl Labs directly. I'm going to scroll down so you 13 can see the attached purchase order. Does this look 14 familiar to you? 15 A. I think this is what gave it away right 16 here, this purchase order number. When I saw that, 17 I realized that that was not a district PO. 18 Q. And can you explain why that's not a 19 district PO? 20 A. The number is too long and we don't -- 21 there was no reason for a purchase order to have 22 that many numbers. 21 would have been possible, but 23 the rest of that was not -- something was added in. 24 Q. Is there anything else on this purchase 25 order?
Page 25 1 Yeah, I do know that. Yes, ma'am. 2 Q. When did you become aware of the purchase 3 of the Owl Pros? 4 A. I'm not sure if I actually paid an invoice 5 for that or not. But I do know I became aware of it 6 when I got -- I was transferred a call from the 7 receptionist asking -- the person wanted to speak to 8 Mr. Ham and he wasn't available. I guess it was 9 something about a bill, so they transferred him to 10 me. 11 Q. Around what date was that, do you 12 remember? 13 A. I don't remember the exact date, no, 14 ma'am. 15 Q. Was that the first time you had ever 16 spoken with anybody at Owl Labs? 17 A. As far as I'm aware, yes, ma'am. 18 Q. Were you involved at all in the purchase 19 of the Owl devices? 20 A. No, ma'am. 21 Q. I'm going to share my screen with you. 22 Bear with me one second. And I'll zoom to make sure 23 you can see everything. This has been marked 24 Defendant's Exhibit 1 and this is Bates labeled 25 Defendant's 12696. Do you recognize this email?	Page 27 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?

Page 28 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	Page 30 1 A. It looks that way, yes, ma'am. 2 Q. Do you know what came of this when you 3 passed it on? 4 A. No. 5 Q. Did Ms. Sanders or Mr. Twitty indicate to 6 you whether the school district was going to take 7 care of this outstanding balance? 8 A. I didn't ask and they didn't volunteer. 9 Q. So you never followed up on this? 10 A. No, because I knew it was nothing -- I 11 mean based on what I had, like I said, I didn't know 12 what to do with it. I passed it on to somebody else 13 to deal with it, because once the bill was paid on 14 my end, that was all I could do. I mean, I could 15 look in the system and that's all I could do and 16 just continue it on to someone else to decide what 17 to do. 18 Q. And the invoice that was attached to that 19 email, it's right here, and it's dated October 29th, 20 2020. It says 50 percent was paid up front. Are 21 you -- was this the first time that you had seen 22 this invoice, was when you received it in 2021? 23 A. Yes. Like I said, I didn't come on board 24 until that November. So all of the Owls were 25 already purchased, and they were either being
Page 29 1 would give you pause, if you were a third party that 2 was not aware if the district was tax exempt? 3 A. Usually these, I would think, because it's 4 -- the signature pages, where this is pasted up 5 here, I usually try to make sure it lines up on that 6 line. So even though it's a digital signature, in 7 the place on the file, you can place it in the 8 correct place. So I would not have put it that far 9 up, so I would be concerned was that a stamp or 10 what. I would question that. 11 Q. And so if it was a stamp, would that be 12 improper? 13 A. It may not be improper by law, but I 14 always question stuff with a stamp. I like to make 15 sure that that person actually did it, if it is 16 legitimate. 17 Q. Okay. I'm going to show you what's been 18 marked as Defendant's Exhibit 2 and this is Bates 19 labeled Defendant's 14289. So in this, it's an 20 email from you to Ms. Sanders and Mr. Twitty and 21 you're forwarding a requested balance invoice, 22 correct? 23 A. Uh-huh. 24 Q. And this is the balance that an individual 25 from Owl Labs has forwarded to you, correct?	Page 31 1 installed or in the process of being installed at 2 that time. 3 Q. Okay. And so this is part of the same 4 email chain, and this is from Gail Sanders. She's 5 got the invoice and you're not sure whether this 6 invoice outstanding balance was ever paid, the 7 \$358,000? 8 A. No, other than when I passed it on. No, I 9 didn't ask and I didn't follow up on it. 10 Q. And here is Defendant's Exhibit 4. It's 11 Bates labeled Defendant's 12846. This is from an 12 individual, again, Owl Labs following up on it, June 13 11th, 2021. Is this the email that you then 14 forwarded or was this following up again? 15 A. I am not sure. I don't remember. 16 Q. Do you know how did Owl Labs get your 17 contact and Mr. Ham's contact? 18 A. I believe they called the district. I 19 know they got my information, because I believe I 20 gave them my email address and he got my name -- 21 when they transferred, I gave him my name when I 22 transferred the call to answer. You know, like I 23 say, the vendors would call, if there was an issue 24 or if there was a question about something, because 25 I was a bookkeeper, the person who was supposed to

Page 32 1 pay the bills, then I was the person at that time to 2 ask the question of. And I did the best I could. 3 Like I said, based on looking at everything, the 4 documentation that was in the system, we paid for 5 the Owls. Now, that's all I know. And, like I 6 said, I did not know what the relationship was 7 between Level 8, who we purchased them from, and 8 Owl, because we didn't know it was through a third 9 party. I didn't know. I actually thought it was -- 10 they actually sold it. I didn't know. 11 Q. That's absolutely fair. What is Level 8 12 Communications, so far as you understand? 13 A. I think it was supposed to be a technology 14 company. 15 Q. How did you learn about Level 8? 16 A. I was given requisitions to enter in to 17 that particular company, through that vendor, with 18 the name and with items that we purchased and that 19 was it. 20 Q. And in the district, who all gave you 21 requisitions with Level 8? 22 A. I would say most of the requisitions that 23 I entered, period, came from Mr. Ham or somebody 24 within the technology department, be it his 25 assistant or whoever. It did not come from outside.	Page 34 1 Q. Have you ever heard of an individual, 2 Zachary Mason? 3 A. Yes. I think some of the -- his name was 4 on something. Maybe on a quote or something that I 5 did for Level 8 -- I mean, that I had to enter in. 6 I remember seeing that name. 7 Q. And so to key in a requisition from Level 8 8, did you have to look up Level 8 on the system? 9 A. Yeah, I mean you go and type it in. You 10 start typing l-e-v and you get some choices, and you 11 select the right vendor that you want. 12 Q. And Mr. Twitty, I believe you said, is the 13 individual that puts the entities into the system 14 for you to choose from? 15 A. Those that weren't already in there, yes, 16 ma'am, because the district is a consolidation, so 17 some vendors would possibly be in there before. 18 Q. Okay. I'm going to share my screen with 19 you again and show you what has been marked 20 Defendant's Exhibit 5. This is Bates labeled 21 Defendant's 12851. This is an email from Eric Ham 22 that he has forwarded to you, it looks like, and 23 it's an invoice for a purchase order and the 24 purchase order is from David Marshall? 25 A. Uh-huh.
Page 33 1 Q. Who else within the technology department 2 would send you? 3 A. Taphnie Sanders, like I say, was the next 4 person up under Mr. Ham, but I don't remember her 5 giving me anything from Level 8. 6 Q. About how many orders do you think were 7 keyed in with Level 8 at your time with the 8 district? 9 A. I don't rightly know afterhand. I will 10 have to look back and see. 11 Q. Would you say less than 50? 12 A. I would say less than 50 probably, yes. 13 Q. Less than 20? 14 A. That, I can't say for sure. 15 Q. Okay. Are you aware that Orangeburg 16 County School District spent millions of dollars 17 with Level 8? 18 A. I understand that, because that's a 19 possibility, because the Owls themselves were almost 20 a million-dollar purchase, so yes. 21 Q. Did you ever speak with anyone at Level 8? 22 A. Not that I'm aware of. 23 Q. Have you ever? 24 A. Not that I remember anyway, I'll say it 25 like that. I don't recall.	Page 35 1 Q. And he's just forwarded it to you, is that 2 correct? 3 A. Yeah, it looks like he forwarded it to me. 4 Q. Why would Mr. Ham have forwarded this to 5 you? 6 A. Because I can look -- because I was a 7 bookkeeper. I could see in the system the 8 originator of a purchase order. 9 Q. And so what would you have done with this? 10 A. I would have looked up the PO number and 11 possibly answered him, if I saw who it was, who the 12 originator of the PO was. 13 Q. And so David Marshall is the one who sent 14 the individuals. If you looked it up and you found 15 that he was the one that created the purchase order, 16 would you have shared that information? 17 A. Yes, I would have shared whoever was the 18 person who created the PO. 19 Q. Would that raise any red flags to you at 20 all about David Marshall creating a purchase order? 21 A. Yes, it would have. 22 Q. Can you explain why? 23 A. Because as far as I know, he would not 24 have had -- his position did not entitle him to have 25 access to create -- the right to create a PO in

Page 44 1 A. I have no clue. So I don't know if he was 2 referring to the account for the district or what, 3 but I don't know. 4 Q. And so when you're communicating with your 5 Orangeburg County School District email, you 6 understand that you're representing Orangeburg 7 County, is that correct? 8 A. Right, that's how I see it. That's not my 9 personal account, no. So I'm thinking it must be a 10 district account somewhere. 11 Q. And so from the third party, the vendor's 12 point of view, when they're communicating with you, 13 they're communicating with the district, correct? 14 A. That should be the perception. 15 Q. Okay. And on this purchase order, there 16 is an invoice, so it has already gone through the 17 purchase order sign-off at this point? 18 A. Yes. 19 Q. Okay. And down here it says, "Note, 20 attention, Level 8 communications is a South 21 Carolina statewide term contract vendor," and it 22 gives their number and it says their vendor number. 23 Again, the vendor number isn't something that you 24 would ever key in or look up? 25 A. No.	Page 46 1 whether Level 8 was a state contractor until March 2 2021? 3 A. No, I was not aware of that. 4 Q. Are you aware that Level 8 is not a state 5 vendor? 6 A. No, I wasn't aware of that. 7 Q. Do you think that it's important for the 8 district to have checked to make sure a vendor is a 9 state vendor before signing off for a purchase? 10 A. Yeah, that's reasonable, but like I said, 11 we were in consolidation, so some of these vendors 12 were in. And if another district was using it -- 13 another one of the merged districts was using it, 14 the rest of us probably assumed that those were 15 legitimate vetted vendors already. 16 Q. And as far as you know, that was part of 17 the policy, was to check and make sure that a 18 contract was legitimate before making a purchase, 19 correct? 20 A. Right. 21 Q. Now, knowing that Level 8 was not a 22 licensed state contractor, what process should have 23 occurred to purchase the Owl devices? 24 A. They should have been bought from Owl 25 itself, the company itself or one of their certified
Page 45 1 Q. Did you have the capability to key it in 2 and look it up? 3 A. I never thought about doing it, because I 4 just assumed it was a vendor -- that they were 5 legitimately an approved vendor. 6 Q. I'm going to stop sharing my screen for 7 now. So what did you understand was Greg Twitty's 8 role? 9 A. He was the -- to me, he's -- you know, he 10 makes sure the district is making purchases with 11 valid vendors. And that if they're on a state 12 contract, they're true state contract vendors is 13 what a procurement person would do. That's it. 14 They're the person you would go to if you had a 15 question about the legality of a vendor, or a price, 16 or something. 17 Q. Did you ever have interactions with him? 18 A. Probably. Doing POs, and having to do 19 amendments and stuff like that, yes, ma'am. 20 Q. What was your experience working with him? 21 A. I didn't have a problem with him. 22 Q. Was he responsive? 23 A. Yes. 24 Q. Are you aware that Orangeburg County 25 School District did not have any documentation on	Page 47 1 resellers. 2 Q. And since Owl Labs is the entity that did 3 provide the Owl devices that are in Orangeburg 4 County's possession -- are you aware of that? 5 A. Yes. 6 Q. Do you believe that Orangeburg County 7 School District owes Owl Labs for the devices that 8 are in their possession? 9 A. In my opinion, no, because they paid a 10 vendor, not knowing the relationship between that 11 vendor and Owl. 12 Q. Even though it was easy to figure out that 13 they were not a licensed vendor, had somebody 14 checked? 15 A. Well, that goes both ways. You know, did 16 Owl do its due diligence to see we were actually -- 17 like I say, I know during that time with COVID, 18 everything was a little difficult. Just look at 19 that purchase order. When I saw that number that 20 was a little different, I was like why would the 21 number be -- and usually if there is a bold number, 22 either it's the first set of numbers or the last set 23 of numbers because those would signify the year or 24 whatever in a series. But I was like, no, that's in 25 the middle, there's something wrong with that. And

Page 48 1 then I did -- like I said, I did some research and 2 looking at that and I was like, uh-uh, that doesn't 3 look right. 4 Q. But a third party that had never dealt 5 with the school district before, they would have no 6 way to know that that purchase order -- what the 7 numbers should look like, right? 8 A. No, but then that's a large amount of 9 money. And to let go of that number of devices for 10 that much money and not know that the person you're 11 sending them to can really pay for them, that's a 12 little on their side, too, because, you know, think 13 about it. You're not going to give away something 14 to somebody that you're not sure is going to be able 15 to pay it, because once they get it, what is to say 16 you'll get them back. They both are -- I think 17 there's some liability on their side, too. That's 18 just my opinion. 19 Q. And so if Owl Labs had called people at 20 the district and spoken to people at the district, 21 that would be due diligence? 22 A. Yes, to confirm, you know, and making sure 23 that we actually originated that purchase request 24 instead of, you know, it looked like it came from 25 us, but we thought we were buying it from Level 8	Page 50 1 district could have done to avoid this situation? 2 A. I guess we should have made sure that all 3 of our vendors were actually in the vendor file, 4 were actually vetted as bona fide vendors. And like 5 I said, we're in the process of changing the 6 accommodations. So like I say, there's equal blame 7 on both sides for not doing everything correctly, in 8 my opinion. 9 MS. MILLS: Okay. Thank you, Ms. Walley. 10 That's all the questions that I have for you. 11 I ended up going a little longer than I thought 12 with you, so I really appreciate you being 13 patient and answering all my questions. 14 THE WITNESS: Yes, ma'am. 15 MS. FITTIPALDI: Ms. Walley, I have no 16 questions for you. Thank you for your time 17 today. I appreciate it. She will waive 18 signature. And I will take an e-tran. 19 MS. MILLS: And I'll take an e-tran of all 20 three. 21 - - - 22 (Witness excused.) 23 - - - 24 (Deposition was concluded at 4:00 p.m.) 25 - - -
Page 49 1 evidently. 2 Q. And so when somebody is using -- I mean, 3 if Owl Labs communicated with at least two 4 individuals with an Orangeburg County School 5 District email address and is communicating with 6 them, would that not indicate that it was Orangeburg 7 County School District? 8 A. No, it depends on the position these 9 people have, because they could be a regular 10 employee. You could have a janitor doing something 11 like that. No, you need to speak to people who are 12 the heads of the district, not a worker bee. 13 Q. What about Eric Ham? 14 A. Yeah, I would have contacted him. He 15 would have been one of my contacts. If I was Owl, I 16 would have contacted the director of technology. 17 Then I would have contacted finance or the 18 superintendent to make sure that they are willing to 19 pay this much money for my devices. 20 Q. And so what is it that you believe Owl 21 Labs could have done differently to avoid this 22 situation? 23 A. I don't know. It's a tragic situation for 24 everybody involved. 25 Q. What do you believe that the school	

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

Page 8 1 A. January 2020. 2 Q. What did you do before that? Did you have 3 any experience with procurement? 4 A. Yes. I was the procurement coordinator for 5 Fairfield County School District for nine years. 6 Q. What brought you to Orangeburg? 7 A. I live here. 8 Q. All right. So you got tired of commuting? 9 A. No. There was an opportunity when they 10 consolidated and, you know, they asked me to put in 11 for the job and I did. 12 Q. What is your official title with 13 Orangeburg? 14 A. Procurement coordinator. 15 Q. And what does that role entail? 16 A. My responsibility, I -- all the procurement 17 aspect as far as training bookkeepers, processing and 18 approving requisitions that come through the system 19 to create a PO. I do all the bids, solicitations for 20 the district. I communicate with vendors and things 21 of that nature. I may do some cost analysis on 22 different things. I have to look at our sam.gov on 23 different things. So it's a variety of things 24 pertaining to procurement, yes. 25 Q. Do you speak directly with vendors from	Page 10 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
Page 9 1 time to time? 2 A. Yes, I do. 3 Q. What do you speak with them about? 4 A. Well, a lot of times when they're calling 5 our schools, they'll direct them to me. And I just 6 find out what products they pushing and things of 7 that nature. Just go from there. And I add all the 8 vendors in the system, in our financial system. 9 Q. Do you have anyone that reports to you? 10 A. No, I don't. 11 Q. Who do you report to? 12 A. The assistant superintendent of finance -- 13 business and finance. 14 Q. What's her name? 15 A. Gail Sanders. 16 Q. And have you always reported to her? 17 A. As long as she's been in the job. But 18 prior to her, we had another person in that position. 19 Q. Who was that? 20 A. The person hired me when I came was Michael 21 Thom and then we had Brandi Gist. 22 Q. Do you know who some of the top vendors 23 were in 2020 in terms of dollars spend? 24 A. Our big box stores like Amazon, Staple 25 Advantage. We may have some book vendors like some	Page 11 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

Page 12 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	Page 14 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?
Page 13 1 7. 2 - - - 3 (PLAINTIFF EXHIBIT NUMBER 7, Emails, DEF 4 014246 through 014247, was marked for 5 identification.) 6 - - - 7 BY MR. STANLEY: 8 Q. Do you know when they provided that letter? 9 A. I think whenever we got the invoice and we 10 realized something wasn't right, and so that's when 11 we started inquiring -- I started inquiring about 12 that. 13 Q. Exhibit 7 is an email from Zachary Mason to 14 Eric Ham. Do you see that? 15 A. Yes. 16 Q. And attached to it is a letter purportedly 17 from Flex Technologies. Is that the letter that 18 you're referring to? 19 A. Yes. 20 Q. And that letter is dated March 4th, 2021, 21 right? 22 A. Yes. 23 Q. Do you recall when the acquisition of the 24 Owls occurred? 25 A. It was prior to that. I don't recall the	Page 15 1 A. Can you kind of expound on that a little 2 bit? 3 Q. Sure. Part of the procurement code, and 4 you can correct me if I'm wrong, says that you want 5 to have responsible vendors. 6 A. Yes. 7 Q. What did you do to determine whether or not 8 they were a responsible vendor? 9 A. Well, as far as my standpoint, when it came 10 through the system with the state contract number 11 that they had identified, you know, we had no reason 12 to deem that it was -- you know, it was any issues. 13 Because our standard is it comes from the end user, 14 come through the system for approval. 15 So I didn't do anything any different 16 unless we have an issue with the vendor and then, you 17 know. But I had no reason at that time because the 18 director of technology would have, you know, vetted 19 and talked to the vendor. 20 Because the vendor -- that vendor was -- 21 when we consolidated in 19, July of '19, that vendor, 22 if I'm not mistaken, came over with our -- in our 23 financial system as a vendor. So I don't know what 24 transpired with them as far as buying or purchasing 25 before consolidation, but it was just a normal

Page 16 1 practice coming from the end user. 2 - - - 3 (PLAINTIFF EXHIBIT NUMBER 8, Emails, DEF 4 013009 through 013011, was marked for 5 identification.) 6 - - - 7 BY MR. STANLEY: 8 Q. I'll show you what's been marked as Exhibit 9 8. That's Defendant 013009 through -- I'm sorry -- 10 11. 11 Mr. Twitty, have you seen Exhibit 8 before? 12 A. No, I haven't. The W-9, yeah, that's -- 13 that's -- if we -- if I looked in the system and 14 there was a tax number, yeah, a W-9 would have been 15 on hand in order to get that. But I have not seen 16 those letters. 17 Q. Okay. So you think you have seen the W-9 18 that's at the last page of Exhibit 8? 19 A. If we have -- I say this: If we have a tax 20 number in the system, we would have had to see the 21 W-9. 22 Q. And that W-9 is dated September 10th, 2019? 23 A. Yes. I came here in January 2020, so 24 whoever put it in the system, you know, if a tax 25 number is there, they would have seen the W-9.	Page 18 1 Q. Well, it's with Level 8, is it not? 2 A. Yes, but ... 3 Q. I'm going to ask you about things that 4 don't necessarily involve Owl Labs. 5 A. Okay. Got you. 6 Q. So if -- did you do anything to determine 7 whether or not Level 8 had the available and 8 appropriate financial material, equipment, facility, 9 and personnel resources and expertise or the ability 10 to obtain them? 11 A. No, sir. I didn't go through that process 12 to that in-depth. 13 Q. Did you determine whether they had a 14 satisfactory record of performance? 15 A. I had no recollection that it was any 16 problem with Level 8 from the end user. 17 Q. Did you determine whether Level 8 had a 18 satisfactory record of integrity? 19 A. Evidently they did business with them prior 20 to me, so it was known what -- I had no record that 21 they provided a bad service when they was using -- if 22 they was ever used before. 23 Q. Well, performance is different than 24 integrity, right? 25 A. Well, the end user never turrlicated
Page 17 1 Q. Who held the procurement position prior to 2 you? 3 A. Prior to me, they -- when they 4 consolidated, I don't know who had the position, but 5 I think they had a hard time, you know, trying to 6 figure out who was going to be in the position. I 7 don't know who was in the position, to be honest with 8 you, sir. 9 And for the record now, this first 10 Exhibit 8, this got HSHP in there. I don't know what 11 that is in reference to. If you're talking about 12 these are our cameras, that was the charter school. 13 Q. Okay. The Owls were not acquired under any 14 emergency provisions of the procurement code, were 15 they? 16 A. No, we did not have to use any emergency 17 process. 18 Sir, what's your name again? 19 Q. Taylor Stanley. 20 A. Taylor, on Exhibit 8, I'm a little 21 concerned about this because this is her profession. 22 And it is a -- the invoice is addressed to them and 23 things of that nature. I was just wondering was this 24 just for the W-9? I was just wondering because this 25 will seem like it was for health professions school.	Page 19 1 anything to me that it was a problem with Level 8, 2 yeah, that I know of. 3 Q. Did you do any due diligence on Level 8? 4 A. I had no reason to at that time until we 5 start getting fake documents and that's when, you 6 know, we checked back. 7 Q. Was Level 8 prequalified in any way? 8 A. No, we didn't go through a prequalification 9 with them. That's -- you know, with vendors, we 10 don't prequalify every vendor. We normally do that 11 through a solicitation process. 12 Q. What was the procurement process that was 13 followed -- strike that. 14 There are different processes in the 15 procurement code, right? 16 A. That's right. 17 Q. What was the process that was followed with 18 regard to the purchase of the Owls? 19 A. It was standard. When they provided a 20 state contract, you know, we said, okay, they've been 21 vetted by way of the state. And then when the 22 fictitious documents start coming through and we 23 started doing the research, then I realized they was 24 using, you know, an valid number that they were not a 25 reseller for. And that's when everything else start,

Page 20 1 you know, falling in place that something was wrong. 2 I mean, I think at that time we had the 3 cameras so it would have been a different story if we 4 did not have the cameras, but we had the cameras. 5 Q. You had the cameras, but you didn't do 6 anything to look into them prior to contracting with 7 Level 8? 8 A. We had no official contract. We just 9 provided a PO. And that's customarily how, you know, 10 a lot of procurement is done. We issue a PO, which 11 is a legal document. 12 Q. So there were no competitive bids on the 13 purchase of the Owl? 14 A. It didn't need to be. They provided a 15 state contract, and some technology items fall under 16 our exemption. So when it's tied to curriculum, 17 that's part of our exemptions. And the exemptions is 18 a local thing, that it would be something board 19 approved. It's a list. There's a list prior to me 20 being here. It's just a standard list that's tied to 21 South Carolina procurement code for our area. 22 Q. If I showed you the procurement code, could 23 you show me where that is? 24 A. The list wouldn't be in the procurement 25 code.	Page 22 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
Page 21 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	Page 23 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

Page 24 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	Page 26 1 Q. What else is different about this PO than 2 what -- the way the Orangeburg County School District 3 PO would look? Anything? 4 A. Is this a number down here that you all -- 5 because that number wouldn't be there. That's a 6 number you all put on there? 7 Q. That's what we call a Bates label, yeah. 8 A. That number wouldn't be on there, so yeah. 9 From my recollection, the only thing I see 10 wrong on this is the PO number. Anything else I'm 11 not -- normally, I would have a system to look at to 12 make sure because it wouldn't even pull up if I put 13 that number in. It wouldn't even pull up in my 14 system. 15 Q. Okay. 16 A. If I tried to put that number in, it 17 wouldn't even come up. So -- and I don't remember 18 what the PO total was, so I don't even know if that 19 amount is right. I don't know. Because with that 20 being different, I don't know what else is being 21 different without me looking in the system. 22 Q. Sure. 23 A. Yeah. 24 Q. One of the goals of procurement for the 25 school district is to get the lowest price, right?
Page 25 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.	Page 27 1 A. Yes, that's it. Going through a process, 2 yes. 3 Q. Do you remember the payment terms of the 4 Owls? 5 A. I don't recall. 6 Q. Look at Exhibit 3. 7 First, do you remember the email that's on 8 top of Exhibit 3? 9 A. No, I don't. 10 Q. Do you have any reason to question whether 11 or not that email was legitimately sent by Ms. Walley 12 to you and Ms. Sanders? 13 A. I don't recall the email, but it could have 14 been. What's the date on this? Yeah, this would 15 have probably been the time when we was doing the 16 investigation because we probably when we got these 17 fictitious documents in, we really start doing an 18 investigation. And I think Ms. Walley was in 19 technology then, so we probably was just trying to 20 make sure accountability of the Owl cameras and 21 things of that nature. 22 Q. If you'll turn to -- you see in the bottom 23 right it says DEF and then some numbers. If you will 24 turn to the one that says DEF 99 and 100, please. 25 A. DEF 99.

Page 28 1 Q. And 99 is an invoice from Level 8 2 Communications; is that right? 3 A. Seems to be, yes. 4 Q. And 100 is as well; is that right? 5 A. Yes. 6 Q. And they're for the same amount. Do you 7 see that? 8 A. Yes. 9 Q. And the Meeting Owl Pros, it says you're 10 paying \$425,250. Do you see that? 11 A. On which exhibit? 12 Q. On both -- both invoices. 13 A. Okay. 14 Q. Do you see that? 15 A. Yes. 16 Q. Okay. If you add that up, will you agree 17 with me that's \$850,500? 18 A. I'm not -- I don't -- I hadn't added it but 19 whatever the numbers added come to, I'm assuming that 20 will be the number. 21 Q. Okay. 22 A. Yeah. 23 Q. So 425 plus 425 is 850, right? 24 A. If that's what it comes up to. I'm not 25 doing any calculation.	Page 30 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
Page 29 1 Q. Okay. And that's more than the PO that was 2 in Exhibit 1, right? 3 A. Yeah. Based on the exhibit that you had, 4 yes. 5 Q. Is there a reason why the school district 6 didn't go directly to Owl labs? 7 A. That would be a question for the director 8 of technology. I wouldn't know. I mean, because 9 that's something that the end user would have worked 10 on. I don't know. And now for the invoicing 11 purposes, I have nothing to do with invoicing. 12 Q. Okay. 13 A. The way we set up, we have a separation of 14 duties, you know. I process the PO. Payments go 15 through another department. So all I would have seen 16 was a quote. 17 When payment come in, and I think that's 18 what really started this because, you know, different 19 kind of documents start coming and that's when the 20 questions arose. So I don't pay -- I don't cut any 21 checks. That's another department. Falls under 22 somebody else. 23 Q. When you issue a purchase order, do you 24 expect vendors to rely on them? 25 A. Rely on the purchase order?	Page 31 1 that the vendor can meet the needs, that's when, you 2 know, they'll send -- they'll go through the process 3 of filling out the vendor packet that we have to get 4 in our vendor system. 5 There's no reason to think anything 6 different unless we have a problem with getting 7 merchandise. We normally process payment when we get 8 our merchandise. That's how that works. 9 Q. So it's the end user's responsibility to 10 look into whether or not a vendor is responsible? 11 A. They're talking to the vendor. So when I 12 get a vendor packet, I'm making sure there's a tax 13 ID, they've signed a document saying this is valid 14 information and things of that nature. And we go 15 from there. 16 If it's federal funds, we go to our 17 sam.gov. We have to make sure they're excluded from 18 sam.gov. They're not banned or anything, disbarred. 19 And that's something they sign for saying they're, 20 you know, not on the debarment list. 21 Q. Do you check to make sure the EIN is valid? 22 A. I don't recall doing that, checking the 23 EIN, no, because normally they sign a document saying 24 this is valid. 25 Q. Do you check to see if their address is

Page 32 1 legitimate? 2 A. We've had some occasions where that's been 3 done because of the miss -- you know, they way they 4 write and type and stuff like that. Some stuff may 5 not be correct, but a hundred percent check, no, sir. 6 Q. Do you go on to the Secretary of State's 7 website to see if the documents tell you anything 8 about the company? 9 A. That's not a routine, but I have done that. 10 Q. Do you do any Google searches on the 11 principals? When I say principals, I don't mean like 12 principal of a school. I mean like the owners or the 13 operators of a business. 14 A. I don't, but normally the end users would 15 have communicated with a representative of, you know, 16 a vendor representative. They would have been 17 communicating with them. We do that with our box 18 stores and all of that. We have a representative 19 that we communicate with. 20 Q. Do you expect the end users to speak with 21 the vendor on the phone or in person? 22 A. Normally our stuff is going to be phone or 23 email, you know. That's normally how the 24 communication take place. 25 Q. Did you ever speak with Zachary Mason?	Page 34 1 A. Normally, that's how that's done. The end 2 user would have communicated, yeah, with them on what 3 was needed. 4 Q. Do you know how it is that David Marshall 5 came to be in direct communication with Level 8? 6 A. I don't -- I don't recall. I don't have a 7 clue. 8 Q. When did you first become aware that Owl 9 Labs was making a claim to payment? 10 A. I think whenever we received the -- 11 whenever we received the invoicing, we knew something 12 wasn't right. Then, you know, we start moving 13 forward on saying, hey, something is wrong here. So 14 we didn't -- we didn't make any more payments and 15 that's when we found out that Owl Labs was coming for 16 payment. And I don't remember the dates on when that 17 was. 18 Q. The email that's on Exhibit 3, does that 19 refresh your recollection any? 20 A. Exhibit 3? 21 Q. Yes, sir. 22 A. Okay. 23 Q. Do you see from Ms. Walley it's 24 June 10th -- 25 A. Yeah.
Page 33 1 A. I did when we were trying to -- when we 2 identified that they were not a reseller for that 3 state contract number they were using. I think I 4 talked to him once on the phone and maybe an email 5 whenever we was trying to track down David Marshall 6 when we realized, you know, what had happened. Yeah. 7 So ... 8 Q. Is Zack Mason David Marshall? 9 A. I don't know. I don't -- I don't -- I have 10 no recollection that who's who, you know. 11 Q. When you spoke with -- you've spoken with 12 Mr. Marshall before, correct? 13 A. Yeah. He was here working when I came to 14 work here. Yeah. 15 Q. Did Mr. Mason sound like Mr. Marshall? 16 A. I don't recall, sir. 17 Q. Prior to the purchase of the Owls, did you 18 ever speak with Mr. Mason? 19 A. Prior to? 20 Q. Yes, sir. 21 A. No, I had no reason to. No, sir. 22 Q. And you relied on Mr. Ham to look into the 23 legitimacy of Level 8 before you signed the Owl Labs 24 PO; is that right? I'm sorry, before you signed the 25 Level 8 PO?	Page 35 1 Q. -- '21. Is that around the time that you 2 first learned that Owl Labs was making a claim to 3 payment? 4 A. Yeah, based on this Exhibit 3, yeah, it 5 would have been June 10th, 2021. But and that's what 6 I'm saying, we never dealt with Owl Lab directly 7 until we realized something wasn't right. That's 8 when they start submitting this for payment. Because 9 when we got that -- when we got an invoice -- see, 10 our system identified when payments been made, so we 11 know we had made payments to Level 8. So we know we 12 didn't owe anything, you know, especially to Owl Labs 13 because we didn't -- they were not even in our vendor 14 system, so ... 15 Q. David Marshall worked for the school 16 district at the time of the acquisition of the Owls, 17 correct? 18 A. I don't recall a date when he worked here. 19 I don't know if it was during that time. I don't 20 know if he was still here or not. I just know he 21 wasn't still here anymore. I don't know when. I 22 don't -- that's an HR thing. 23 Q. Have you ever learned that David Marshall 24 was communicating directly with Owl Labs using a 25 Orangeburg County School District email address?

Page 48 1 Q. Do you know if he was authorized to 2 contract on behalf of the school district? 3 A. No employee is authorized to contract with 4 any vendor outside of me and my boss and the 5 superintendent. I can authorize contracts, but 6 normally our contracts are signed by the 7 superintendent whenever we do contracts. 8 Q. Okay. We're talking past each other. 9 A. Okay. 10 Q. Do you know if he was authorized to 11 negotiate for the acquisition of products or services 12 on behalf of the school district? 13 A. No, he wasn't, unless that was delegated to 14 him, you know, to go get pricing as an employee. 15 That's when he was an employee. 16 Q. Yes, sir. 17 A. If that was delegated to him and his 18 department. But as far as having authorization to 19 close the deal, that would have been by way of 20 dealing with Mr. Ham and then they would have started 21 the process, if we're talking about the Owl Labs. 22 Q. And there are occasions where employees at 23 Mr. Marshall's level do the negotiations with 24 vendors? 25 A. Well, they'll get pricing. They'll get	Page 50 1 contract number, so we move forward. That's standard 2 with state contract vendors. We just move -- we move 3 forward because the vetting has been done. If it's 4 not over the threshold, they just normally get a 5 quote and we move forward. 6 Q. What was the scope of whatever state 7 contract Level 8 claims to be authorized on, what was 8 that? What was the scope of that? 9 A. As far as what they're on state contract 10 for? 11 Q. Yes, sir. 12 A. When we look -- well, when I looked it was 13 like a technology consultant service. Now, I don't 14 know what that entails on the technology side. 15 Q. Would that include things like putting 16 together a TV studio? 17 A. Oh, I mean, I don't -- I don't know the 18 scope of what that entail on what they were doing. 19 Yeah. 20 Q. That includes like TVs? 21 A. As far as buying TVs? 22 Q. Yes, sir. 23 A. From the technology stand, it could have 24 been. I -- I don't recall what all was purchased 25 from Level 8.
Page 49 1 pricing. They're the one that know what's needed, 2 and they'll get pricing, and that would -- he would 3 communicate that with the -- with his supervisor. 4 Then they -- because someone else will enter the 5 stuff in the system. That's just now how it is with 6 any department, school, you know, a school location. 7 They get quotes and we move forward, yeah. 8 Q. So, for instance, like an admin at a 9 school, are they authorized to negotiate prices with 10 a vendor? 11 A. Negotiate price? They just get a quote. 12 They get a quote. It's nothing -- I mean, they don't 13 submit a quote to the end user and then they come 14 forward. As far as him negotiating a price, all he 15 was doing, if he was delegated that right from 16 technology, it was to get pricing. As far as 17 negotiating, that's -- there's nothing to negotiate. 18 When you say, hey, here's my price, there's nothing 19 to negotiate. 20 Q. Well, you can negotiate price, right? 21 A. Our standard is for them not to get into 22 that kind of match with vendors. If it got to that, 23 then we'll get quotes. In this case with Owl, we 24 didn't need quotes because they provided a state 25 contract number, which we know was not the state	Page 51 1 Q. Well, my question is would the scope of 2 their state contract include purchase of TV? 3 A. With me not looking at the -- what the 4 scope is from that standpoint, I don't recall at this 5 point. 6 Q. We looked at it earlier and it said the 7 description was audio-visual products and services. 8 Do you remember that? 9 A. Yes. 10 Q. What other information do you get other 11 than what we looked at earlier? What else would you 12 need to look at to determine the scope of their 13 contract? 14 A. Normally on a quote they're -- you're going 15 to have the -- if it's not Owl Labs, just anything -- 16 Q. Sure. 17 A. -- it's going to have the merchandise we're 18 getting. If there's going to be installation, it 19 will be included on the quote and things of that 20 nature. 21 Q. So once you see the quote and you see 22 what's on there -- 23 A. Yes. 24 Q. -- how do you determine if it's within the 25 scope of the state contract that a vendor has?

Page 60 1 district to going through a middleman or a wholesaler 2 or whatever we want to categorize Level 8 as? What 3 was the advantage to the school district to doing 4 that versus going straight to Owl Labs? 5 A. As far as the advantage, I don't -- repeat 6 that question again. Maybe I'm -- 7 Q. Was there any advantage to the school 8 district to using Level 8, who I'll refer to as a 9 middleman, as opposed to going directly to Owl Labs 10 to acquire the Owls? 11 A. Again, they provided a state contract 12 number so that was efficient in the way to go without 13 going through a procurement process. So that's why 14 Level 8 was used based on what they presented. 15 And during that time, you know, we were 16 dealing with COVID. The supply chain was slow. So 17 evidently that must have been somebody at Level 8 18 identified that they could get these cameras from. 19 And with Owl being the patent owner or whatever, you 20 know, maybe that's why they went. I'm just assuming 21 they's why they went there. I don't know what the 22 discussion was, why the Owl Labs was the camera to 23 have. I know they kind of zero around the room 24 because that's what we were doing then during COVID, 25 so I'm assuming that's why they went that direction.	Page 62 1 out by you? 2 A. Say that again. 3 Q. Is there anything on this form that would 4 alert a third party that it was not actually filled 5 out by you? 6 A. My name is on it. Since they was dealing 7 with Mr. Marshall, his name wasn't on it. Seemed 8 like they could have, you know, followed suit on that 9 to see if that was the case about this exemption. 10 Q. Anything else? 11 A. I see Owl Labs' name on there. 12 Q. Yes, sir. That was transmitted to Owl 13 Labs. 14 A. Yeah. I really don't understand the 15 question you're asking by looking at the form because 16 this form is something I don't fill out so I don't -- 17 I really don't understand your question on ... 18 Q. I'm just asking if a third party received 19 this form as it's currently filled out? 20 A. Yes. 21 Q. Is there anything on here that you think 22 should alert that third party that this is not 23 legitimate? And if the answer is no, that's fine. 24 A. Yeah. I don't have no recollection on what 25 a third party would think on the form.
Page 61 1 Q. Do you know who shipped the Owls to the 2 school district? 3 A. Say that again. 4 Q. Do you know who shipped the Owls to the 5 school district? 6 A. Do I know? I'm assuming it would have been 7 Level 8. I'm out of the loop then. When I send the 8 PO, then the end user is responsible from that 9 standpoint. See, when I do a PO, it goes back to the 10 end user. I don't send anything to a vendor. All 11 the POs go back to the end user. 12 Q. Look at Exhibit 2 for me, please. 13 A. Exhibit 2? 14 Q. Yes, sir. 15 A. A certain page? 16 Q. Yes, sir. If you'll flip to the page 17 013178. 18 A. Yes. 19 Q. Have you seen that before? 20 A. I've seen the form, but this form here, I 21 don't fill this form out. That's one reason I knew 22 something was wrong because I don't fill it out 23 because we're not tax exempt. 24 Q. Is there anything on this form that would 25 alert a third party that it was not actually filled	Page 63 1 Q. I'm not asking you -- 2 A. Yeah. 3 Q. -- to look for your recollection. 4 A. Yeah. 5 Q. I'm asking you to look at it right now and 6 if you could please tell me if there's anything on 7 here that you believe would alert a third party to 8 the fact that this is not legitimate as you say? 9 A. No, I don't know of anything on here that 10 would alert them. No. 11 Q. Thank you. 12 A. Yeah. 13 Q. The school district still has the Owls? 14 A. I'm assuming so. I think we do, yes. 15 Q. Have you ever used one? 16 A. I haven't. I never used one. 17 Q. Have you spoken to anyone that's used them? 18 A. As far as -- well, we've done 19 presentations, you know, whenever they got installed. 20 They done presentations. My wife is a school 21 teacher, so I knew Owl Labs were, you know, vital in 22 what they would do, yeah. So ... 23 Q. Does she like them? 24 A. I think it served the purpose. You know, 25 they served the purpose.

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HARRY MELTZER

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) C/A NO: 2022-CP-38-01363
 3
 4 Owl Labs,)
 5 Plaintiff,)
 6 v.)
 7 Orangeburg County School)
 8 District,)
 9 Defendant.)

11 DEPOSITION OF
 12 HARRY MELTZER

13 *****

14 Monday, April 29, 2024

15 11:39 a.m. - 12:26 p.m.

17 The deposition of HARRY MELTZER was taken

18 before Andrea R. Taylor, a notary public in and for the
 19 State of South Carolina, commencing on Monday, April
 20 29, 2024, via Zoom video conference, pursuant to Notice
 21 of Deposition.

Page 2

APPEARANCES

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2 Stipulations 3
 3 Examination by Ms. Fittipaldi 4
 4 Signature Sheet 3
 5 Certificate 3

8 * * * * *

EXHIBITS

10 Defendant's Exhibit Number 1 3
 11 (Products & Services; emails; Purchase Order;
 12 Exemption Certificate; Invoice)

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STIPULATIONS

2 It is stipulated by and between counsel
 3 for the respective parties that all objections
 4 are reserved until the time of trial, except as
 5 to the form of the questions.

6 This deposition is being taken pursuant
 7 to the South Carolina Rules of Civil Procedure.

9 The reading and signing of this
 10 deposition is reserved by the deponent and
 11 counsel for the respective parties.

13 Whereupon,
 14 HARRY MELTZER, being duly sworn and cautioned to
 15 speak the truth, the whole truth, and nothing
 16 but the truth, testified as follows:

EXAMINATION

18 BY MS. FITTIPALDI:

19 Q. Good morning, Mr. Meltzer.

20 A. Good morning.

21 Q. My name is Susan Fittipaldi. I'm an attorney
 22 with the law firm of Halligan, Mahoney and
 23 Williams. We're located here in Columbia, South
 24 Carolina, and we represent Orangeburg County
 25 School District in a lawsuit filed by Owl Labs.

Cola City Reporting

(803)210-5487 / cola.city.reporting2@gmail.com

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1 schools.

2 Q. Okay. In the fall of 2020, do you have any

3 recollection of how many public school districts

4 Owl Labs had sold products to?

5 A. I do not have a number.

6 Q. Okay. Was it normal procedure prior to shipping

7 an order to require the customer to pay 100

8 percent upfront?

9 A. That was normal procedure; however, in order to

10 win the deals, we did plenty of deal making that

11 would affect the terms of payment.

12 Q. Do you recall prior to October 2020 how many

13 times you were involved in a purchase where a

14 customer was permitted to not pay the 100

15 percent prepayment prior to shipping?

16 A. I don't know how many times.

17 Q. Would it have been just a handful, or would it

18 have been multiples of tens or twenties or

19 hundreds?

20 A. I would -- I would guess multiples of tens;

21 however, I do not recall.

22 Q. Okay. And I'm not sure if I asked this already,

23 but if someone -- if a sales rep was negotiating

24 some sort of deviation from the 100 percent

25 prepayment prior to shipping, would that have to

Page 18

1 be approved above the sales rep by anyone else

2 in Owl Labs, to your knowledge?

3 A. I don't know.

4 Q. Okay. Do you know what other public school

5 districts other than Orangeburg County School

6 District and David Marshall Owl Labs had sold

7 products to prior to October of 2020?

8 A. I don't recall specific school districts.

9 Q. Okay. Do you know if any of them were in the

10 state of South Carolina?

11 A. I don't recall.

12 Q. Okay. Do you know if Owl Labs had done any

13 business or any sales in the state of South

14 Carolina prior to October of 2020?

15 A. I don't recall.

16 Q. Okay. In the fall of 2020, did you have any

17 sort of awareness of public entity, government

18 entity procurement procedures or requirements?

19 A. Only those that affected the day-to-day

20 logistics of my job, that is to say those that

21 governed things like invoice delivery to

22 particular emails or departments or delivery

23 windows or other details like that.

24 Q. How would you become familiar with those

25 procurement requirements of a public entity?

Page 19

1 A. Normally, just in the course of of business, we

2 would deliver an invoice to an email address and

3 receive a message back asking us to please

4 redeliver to a different email address. Or

5 there would be a specific note in the order that

6 delivery times would -- would have to be between

7 certain times.

8 Q. Did you have any knowledge or understanding

9 about public entity procurement requirements in

10 terms of negotiating paying for purchased items?

11 A. I know that often public entities were unable to

12 provide any sort of prepayment or couldn't

13 provide full prepayment based on public

14 purchasing rules. And so I know that we were

15 more often making deals, making exceptions to

16 our 100 percent prepayment policy for public

17 institutions in order to accommodate their

18 needs.

19 Q. Were you aware back in the fall of 2020 that,

20 for example, school districts typically would

21 have a finance department?

22 A. Abstractly, yes, I'm aware that school districts

23 would have a finance department.

24 Q. And would you be aware back in the fall of 2020

25 about districts having a procurement officer or

Page 20

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

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HARRY MELTZER

Page 21

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

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1 process for a company such as Owl Labs to be on
 2 a state-approved vendor list?
 3 A. Vaguely aware of the process. As part of my
 4 role, I had sometimes filled out vendor forms or
 5 other paperwork that vendors required.
 6 Q. Okay. And what was your understanding of why
 7 Owl Labs or any vendor would need to be on a
 8 state-approved vendor list?
 9 A. My understanding was because -- my understanding
 10 of that is that states have procurement policies
 11 and -- and I don't know the specifics of those
 12 policies, except that we would be on the list as
 13 somebody who was allowed to be purchased from.
 14 Q. Okay. Do you know if Owl Labs was on a state-
 15 approved vendor list in the state of South
 16 Carolina in the fall of 2020?
 17 A. I do not know.
 18 Q. Okay. Do you know if they are now?
 19 A. I do not.
 20 Q. Okay. Is it your understanding, or what is your
 21 understanding about whether or not a school
 22 district generally is considered a tax exempt
 23 entity?
 24 A. Public entities are often tax exempt, but not
 25 always, depending on the states that they are

Page 23

1 in.
 2 Q. Okay. All right. I'm going to talk to you a
 3 little bit now about the actual allegations in
 4 the -- in the lawsuit.
 5 A. Okay.
 6 Q. Did you ever have any communication with David
 7 Marshall?
 8 A. Yes. After the purchase was complete, I
 9 communicated with David on payment logistics.
 10 Q. Do you recall what those communications
 11 involved, what y'all talked about?
 12 A. We had emailed them to remind them of the
 13 payment due date, if I recall correctly, and
 14 David had responded that there was some hold up
 15 with the payment and that he was working on it
 16 and that we would continue to be in touch. And
 17 I don't remember how many times we -- we
 18 communicated after that, but we touched base
 19 back and forth on that.
 20 Q. All right. So your only communications with
 21 David Marshall would have taken place once the
 22 purchase was finalized?
 23 A. Yes.
 24 Q. Okay. Do you know or do you recall whether you
 25 communicated with anyone else at Orangeburg

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1 County School District?
 2 A. I do not recall.
 3 Q. Okay. Would that be normal for a purchase of
 4 this size for Owl Labs to communicate with only
 5 one person within the school district?
 6 A. I won't speak for Owl Labs. I can say that it
 7 would be fairly normal for me to only have
 8 communicated with one person. As you said,
 9 there are people whose title is procurement. So
 10 when I'm communicating with one person, it's
 11 usually that person.
 12 Q. Okay. I had asked you whether you had recalled
 13 or if you had any communications with David
 14 Marshall prior to the finalization of the
 15 purchase and you said no. Did you have any
 16 conversations with Bill Smith about this
 17 purchase that David Marshall was making prior to
 18 it being finalized?
 19 A. Not that I recall.
 20 Q. Okay. At the time that you sort of became
 21 involved and were communicating with David
 22 Marshall, did you reach out to anyone else in
 23 the district; like, for example, someone in the
 24 finance department or in the procurement
 25 department?

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HARRY MELTZER

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- 1 A. I do not believe so.
- 2 Q. Okay. Do you recall ever looking at Orangeburg
- 3 County School District's procurement policy or
- 4 procedures?
- 5 A. I don't recall.
- 6 Q. Okay. Mr. Meltzer, there's a packet of records
- 7 that have been admitted in the other
- 8 depositions. They're all being marked as
- 9 Exhibit 1. I'm going to ask you about a couple
- 10 of these documents that you may or may not have
- 11 seen before. Okay.
- 12 MS. FITTIPALDI: The first one, Andie, is
- 13 about halfway through. It's that purchase
- 14 order. Yeah, it's right -- there we go. I
- 15 don't know if you can make it -- yeah. If you
- 16 can go to the top. Okay. No, no, down a
- 17 little.
- 18 Q. Just want to talk about this. Mr. Meltzer, this
- 19 is a document that has been identified by Owl
- 20 Labs as Owl Labs 40. There's a Bates stamp on
- 21 the bottom. And this is a purchase order. Have
- 22 you ever seen this before, this particular
- 23 purchase order?
- 24 A. Yes, I think so. I think that's the purchase
- 25 order for Orangeburg.

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- 1 MS. FITTIPALDI: Andie, can you scroll
- 2 down a little bit? Okay. That's good.
- 3 Q. You see the signature there, Mr. Meltzer?
- 4 A. I do.
- 5 Q. Okay. And do you know who that signature
- 6 belongs to?
- 7 A. I do not.
- 8 Q. Okay. Is it -- does it look like it says David
- 9 Marshall?
- 10 A. Maybe. It's a signature. It's difficult to
- 11 tell.
- 12 Q. I'll represent to you that it's the name Greg
- 13 Twitty. He's the procurement director for the
- 14 school district.
- 15 A. Okay.
- 16 Q. Okay. When would you have seen this purchase
- 17 order?
- 18 A. I would have seen this purchase order after the
- 19 sales team had completed the deal and had
- 20 forwarded the deal to us for shipping.
- 21 Q. Okay. So you would have gotten this purchase
- 22 order, and then I believe you said earlier you
- 23 would have also gotten what's next.
- 24 MS. FITTIPALDI: If you don't mind
- 25 scrolling down, Andie.

Page 7

- 1 Q. This has been marked Owl Labs 199 and 200. This
- 2 is the certificate of exemption from the State
- 3 of South Carolina.
- 4 MS. FITTIPALDI: Andie, can you make that
- 5 any bigger?
- 6 Q. Is this what you would have been sent by Bill
- 7 Smith or someone in the sales department for
- 8 this order from Orangeburg County School
- 9 District?
- 10 A. Ostensibly, yes, if the purchase were tax
- 11 exempt, then we would require a tax exempt
- 12 certificate. And this looks like the one from
- 13 Orangeburg.
- 14 Q. And would you have, you know, scrutinized this
- 15 form in any way to determine whether or not the
- 16 exemption that was being claimed was applicable
- 17 to the sale?
- 18 A. I would not.
- 19 Q. Okay. Once you received those documents, what
- 20 would you have done, or what did you do, if you
- 21 recall, in this case?
- 22 A. I would have taken the information from the
- 23 purchase order and put it into our systems for
- 24 -- for shipping logistics information, such as
- 25 the billing address and shipping address, the

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- 1 order quantities, the price that we were
- 2 offering, the purchase order number, and then
- 3 sent that through our platforms to the logistics
- 4 partner who would ship it.
- 5 Q. And then what, if any, document would be, I
- 6 guess, generated by Owl Labs or provided to
- 7 David Marshall to finalize the purchase or the
- 8 payment?
- 9 A. We would have sent an invoice.
- 10 Q. And invoice. Okay.
- 11 MS. FITTIPALDI: Andie, can you scroll
- 12 all the way to the last two pages. Actually,
- 13 it's just the next, yeah, scroll down.
- 14 Q. Mr. Meltzer, I'm going to show you what's been
- 15 Bates stamped Defendant 102 and 103.
- 16 MS. FITTIPALDI: Go down a little bit
- 17 more, Andie, if you don't mind.
- 18 Q. Okay. Does this look like the invoice that
- 19 would have been generated to David Marshall or
- 20 for this purchase?
- 21 A. Yes.
- 22 Q. Okay. And who would have generated this
- 23 invoice?
- 24 A. It would have been either myself or my
- 25 colleague, Kim.

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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.

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1 Q. And when you say they, who are you referring to?
 2 A. Whomever the contact was. I believe David
 3 Marshall, but I'm not positive.
 4 Q. And have you been asked in the course of this
 5 litigation to turn over all email communications
 6 that you've had with David Marshall or anyone at
 7 Orangeburg County School District?
 8 A. No, I've not been specifically asked.
 9 Q. Okay. Have you turned over all your email
 10 communications that you've had regarding this
 11 purchase, either with David Marshall or someone
 12 else at Orangeburg County School District or
 13 someone within Owl Labs?
 14 A. All my communications happened through the Owl
 15 Labs Google accounts, so I believe all my
 16 communications are accessible to the company.
 17 Q. If you had had any email communications with
 18 anyone outside of David Marshall, the company
 19 would have those; is that accurate?
 20 A. Yes.
 21 Q. Okay. All right. So after he said their --
 22 David Marshall is the one who communicated with
 23 you about a cyber attack. Did you reach out to
 24 anyone other than him about the cyber attack?
 25 A. Externally no, I -- I believe, if I remember

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1 correctly, I just told my boss about it.
 2 Q. And then what did you do next? What was the
 3 next thing you recall chronologically happening
 4 with this purchase or overdue payment?
 5 A. That's all I remember. I don't think I touched
 6 it after that.
 7 Q. Okay.
 8 MS. FITTIPALDI: Andie, do you mind
 9 scrolling up to the very top. Okay. And then
 10 go down to the third page if you don't mind.
 11 Q. Mr. Meltzer, I'm going to show you what looks
 12 like an email chain. And this is some
 13 communications between Bill Smith and David
 14 Marshall; do you see that?
 15 A. I do, yes.
 16 Q. Okay. I just want to ask you about David
 17 Marshall's --
 18 MS. FITTIPALDI: Andie, can you scroll
 19 down just a tiny bit like one line? Yeah,
 20 that's good.
 21 Q. I want to ask you about David Marshall's
 22 signature line. Do you see his signature there
 23 on that email which is Bates --
 24 A. I do.
 25 Q. -- stamped Owl Labs 74? Yeah. His signature

Page 2

1 line is his name, David Marshall, and then
 2 underneath it Communications, Business and
 3 Community Partnerships, a phone number, his
 4 email address, and then Orangeburg County School
 5 District. Is that title of communications,
 6 business and community partners, is that the
 7 kind of person that normally Owl Labs would be
 8 dealing with for such a large purchase of items?
 9 A. We deal with all sorts of different people.
 10 Q. Okay.
 11 A. So there is no normal or typical title.
 12 Q. Okay. And for a purchase of that size, 875
 13 units, would Owl Labs typically just communicate
 14 with one person in an organization such as the
 15 school district, or would you try to communicate
 16 with additional people?
 17 A. At the point that I receive the purchase order,
 18 I am not communicating with additional people.
 19 What happens before that, I don't know.
 20 Q. Okay. All right. Again, this might be above
 21 your pay grade but, Mr. Meltzer, do you know if
 22 the company Owl Labs has any business or
 23 commercial crime insurance?
 24 A. That is indeed above my pay grade.
 25 Q. Okay. All right. I don't have it in that

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) C/A NO: 2022-CP-38-01363
 3
 4 Owl Labs,)
 5 Plaintiff,)
 6 v.)
 7 Orangeburg County School)
 8 District,)
 9 Defendant.)

DEPOSITION OF

KIMBERLY M. GAUGHAN

Monday, April 29, 2024

10:32 a.m. - 11:31 a.m.

The deposition of KIMBERLY M. GAUGHAN was

18 taken before Andrea R. Taylor, a notary public in and
 19 for the State of South Carolina, commencing on Monday,
 20 April 29, 2024, via Zoom video conference, pursuant to
 21 Notice of Deposition.

Page 2

APPEARANCES

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2 Stipulations
 3 Examination by Ms. Fittipaldi
 4 Signature Sheet
 5 Certificate

EXHIBITS

10 Defendant's Exhibit Number 1
 11 (Products & Services; emails; Purchase Order;
 12 Exemption Certificate; Invoice)

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STIPULATIONS

2 It is stipulated by and between counsel
 3 for the respective parties that all objections
 4 are reserved until the time of trial, except as
 5 to the form of the questions.

6 This deposition is being taken pursuant
 7 to the South Carolina Rules of Civil Procedure.

9 The reading and signing of this
 10 deposition is reserved by the deponent and
 11 counsel for the respective parties.

Whereupon,

14 KIMBERLY M. GAUGHAN, being duly sworn and
 15 cautioned to speak the truth, the whole truth,
 16 and nothing but the truth, testified as follows:

EXAMINATION

BY MS. FITTIPALDI:

19 Q. Good morning, Ms. Gaughan. My name is Susan
 20 Fittipaldi. I'm an attorney with the firm
 21 Halligan, Mahoney and Williams here in Columbia,
 22 South Carolina. And we represent Orangeburg
 23 County School District in a lawsuit that's been
 24 filed against them by Owl Labs. You're here
 25 this morning because you've been named and

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KIMBERLY M. GAUGHAN

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1 just going to our website.
 2 Q. Okay. And how long were you in the customer
 3 care position?
 4 A. I believe it was about six months.
 5 Q. Okay. When you -- when you were hired by Owl
 6 Labs, did you have any training in the purchase
 7 order process that the company used?
 8 A. Yes, I was trained by my colleagues.
 9 Q. Who trained you?
 10 A. Jenette Wiley and Courtney Spencer-Mastone.
 11 Q. Sorry, can you say that first name again?
 12 A. Jenette Wiley.
 13 Q. Jenette. And what positions did they hold with
 14 the company? We'll start with Jenette Wiley.
 15 A. She was also a customer care representative.
 16 And Courtney was a senior customer care
 17 representative.
 18 Q. Do you recall what that training sort of
 19 consisted of?
 20 A. It was about two weeks of going over the
 21 different needs of customers, how order
 22 processing worked through our systems, who point
 23 people were. General training.
 24 Q. Can you walk me through how an order would work
 25 for products through the website? Like if

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1 someone inquired through the website about a
 2 direct purchase, how would that work?
 3 A. At the time, we had a website chat that
 4 customers could chat into the website and ask
 5 for help purchasing. Customers can also just
 6 purchase direct from the website.
 7 Q. Okay. And that's -- I'm glad you mentioned that
 8 at the time, and we're talking about back in
 9 the, I guess, the fall of 2020 is -- is that at
 10 the time what you're referring to?
 11 A. Yes.
 12 Q. Okay. So back in that time period, if someone
 13 inquired about a purchase, it would be that way,
 14 typically, through a chat?
 15 A. There are multiple avenues for customers to
 16 inquire about purchasing. Chat was not the only
 17 way.
 18 Q. Right. Okay. And then what -- I guess, for
 19 example, if someone inquired about a purchase,
 20 and would -- would a purchase of 875 units be
 21 considered a large purchase by the company?
 22 A. Yes.
 23 Q. Okay. What was the typical purchase amount in
 24 -- well, either in revenue or units?
 25 A. In the fall of 2020?

Page 5

1 Q. Yeah.
 2 A. It varied.
 3 Q. Okay.
 4 A. So it could be a one to two order, one to two
 5 units. We did see some larger orders come in.
 6 It varied.
 7 Q. What would a typical order be back in the fall
 8 of 2020?
 9 A. I can't recall an exact number.
 10 Q. Okay. But I think, as you said, an order for
 11 875 would be atypical or would be large?
 12 A. It would be considered large. It was not
 13 atypical in the fall of 2020.
 14 Q. And if an inquiry came through the website about
 15 such a purchase back in the fall of 2020, who
 16 would handle that inquiry at Owl Labs?
 17 A. Our sales team would have handled it.
 18 Q. And what would your responsibility have been
 19 with regard to that sale?
 20 A. I would have processed the order in our systems.
 21 It would have been myself or my colleague, Harry
 22 Meltzer. And I would have followed up for
 23 collection of the funds when the time arrived.
 24 Q. When you say processing the sale, what do you
 25 mean by that? Like making sure the units are

Page 6

1 shipped or --
 2 A. I enter the order and address details into our
 3 systems, and then communicate with our logistics
 4 and shipping team on sending the units out.
 5 Q. And what was your salary back in the fall of
 6 2020, if you recall?
 7 A. I believe it was \$50,000 a year.
 8 Q. And was that like a salary, and did that include
 9 commissions? Did you -- did you operate on
 10 commissions at all?
 11 A. When I was hired as a customer care
 12 representative, there was a bonus structure. So
 13 in 2020, as I was hired in that year, I did
 14 receive a bonus at the end of the year. But
 15 once I converted full time to operations
 16 associate, I was put on a salary without
 17 commission.
 18 Q. When did you leave that customer care rep
 19 position?
 20 A. It was in the spring of 2020.
 21 Q. So by the time David Marshall had placed his
 22 order in the fall of 2020, you were no longer in
 23 that customer care position?
 24 MR. STANLEY: Object to the form.
 25 A. No, I wasn't.

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1 Q. Okay. I should have warned you. Sorry, Ms.
 2 Gaughan. From time to time, I'm going to ask a
 3 question that counsel may voice an objection to.
 4 So best if you can kind of pause before you
 5 provide an answer to see if he's going to
 6 object, and then you'll be directed by him to
 7 either answer the question or to not. And one
 8 of the other instructions I failed to give is
 9 that it's really important that none of us speak
 10 over the other. And there are times when you're
 11 going to anticipate where my question is going
 12 probably correctly and you'll want to jump in
 13 and answer, but just for the sake of the court
 14 reporter and to have a clean record, it's best
 15 if you can just wait. First, you know, let me
 16 finish my question. Also, see if Mr. Stanley is
 17 going to voice an objection. Okay. And I think
 18 he did voice an objection and --
 19 MR. STANLEY: You can answer unless --
 20 Q. I don't remember what the question was. I think
 21 the question was at the time in the fall of
 22 2020, you were already in the position of an
 23 operations associate; is that right?
 24 A. That is correct.
 25 Q. Okay. And what department -- I guess, I don't

Page 18

1 know, did you guys have departments or units?
 2 What department were you in in the fall of 2020?
 3 A. Business operations.
 4 Q. Business ops. Who was your supervisor, Ms.
 5 Gaughan?
 6 A. Danielle Brown.
 7 Q. And what was her title or position?
 8 A. I can't remember what her title was at that
 9 time.
 10 Q. Okay. Would Bill Smith have also been in the
 11 business operations department at that time?
 12 A. No.
 13 Q. Okay. He was in sales?
 14 A. Yes.
 15 Q. Is that its own department, the sales
 16 department?
 17 A. Yes.
 18 Q. Okay. Back in the fall of 2020, can you tell me
 19 what your sort of typical customer was for the
 20 sale of the Owl Meeting Pros or the Owl devices?
 21 A. It was mainly small business, school systems,
 22 non-profits, government entities.
 23 Q. Did you say public school districts, or just
 24 schools, educational?
 25 A. I said -- I said educational.

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1 Q. Okay. And did the educational entities include
 2 some public school districts?
 3 A. Yes.
 4 Q. Okay. Can you tell me today or estimate back in
 5 the fall of 2020 how many public school
 6 districts the company had sold devices to?
 7 A. I can't recall an exact number.
 8 Q. Okay. Could you estimate was it between like
 9 one and ten or ten and 50 or a much higher
 10 number like in the hundreds or thousands?
 11 A. I can't remember.
 12 Q. Okay. The governmental entities that the
 13 company sold product to, would that have been
 14 local governments, state governments, federal
 15 governments, all of those?
 16 A. All of those.
 17 Q. Okay. And in dealing with the public entities,
 18 which would include public school districts or
 19 governmental entities, not private educational
 20 entities, but just public, were you familiar
 21 with any sort of procurement rules or
 22 regulations that they needed to follow in making
 23 a purchase?
 24 A. Yes.
 25 Q. Okay. Tell me what you knew about public entity

Page 20

1 procurement roles back in the fall of 2020.
 2 A. Every entity is different. Generally speaking,
 3 they provided their rules and regulations at the
 4 point of purchase with a purchase order. For
 5 the most part, school systems and government
 6 entities included that information in their
 7 correspondence.
 8 Q. What do you mean they provided that? They would
 9 send you a copy of their procurement policy or
 10 procedures?
 11 A. Generally, most public entities include that
 12 with purchase orders, but it's not necessary.
 13 Q. What do you mean it was not necessary?
 14 A. Can you rephrase the question?
 15 Q. You said generally that public entities would
 16 provide copies of their procurement rules and
 17 regulations or policies when they submitted
 18 their purchase order, but it was not necessary.
 19 What do you mean that it was not necessary?
 20 A. A school didn't necessarily need to provide that
 21 to make a purchase.
 22 Q. And why is that?
 23 A. Because a purchase order is a binding agreement
 24 between an organization and another
 25 organization.

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1 Q. There wasn't a company policy that public
2 entities needed to provide their procurement
3 policy procedure during the course of purchasing
4 negotiations?
5 A. They were required to sign a quote and to
6 provide a purchase order.
7 Q. When you say they were required to provide a
8 quote, do you mean the public entity or the
9 school district?
10 A. No, I'm sorry. They're -- they signed a quote
11 from Owl Labs.
12 Q. And what do you mean they would sign a quote?
13 A. A quote would be provided from the sales team,
14 and they would sign that quote.
15 Q. When you say they would sign the quote, who's
16 they?
17 A. The representative at the organization
18 coordinating the purchase.
19 Q. Okay. And was there any consideration by Owl
20 Labs as to how that -- or excuse me, who the
21 person who signed the quote needed to be?
22 A. Not to my knowledge.
23 Q. So there wasn't a company policy at Owl Labs
24 that it needed to be someone in the finance
25 department or the procurement officer or

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1 director?
2 A. Not to my knowledge.
3 Q. Okay. How would a purchaser sign the quote?
4 You would provide it via email typically, the
5 quote?
6 A. I was not a sales team member, so I don't know
7 the details.
8 Q. Okay. In your experience, though, would you
9 ever see a signed quote come back from a
10 purchaser?
11 A. Sometimes.
12 Q. Okay. And was it an actual, like, signature or
13 E sig, or was it just a confirmation email when
14 you say there needed to be -- it needed to be
15 signed, the quote?
16 A. Signatures varied between real signatures on pen
17 and paper and E signatures.
18 Q. But it wasn't just like a confirmatory email,
19 there would actually have to be a signature; is
20 that right?
21 A. Again, I wasn't on the sales team, so I don't
22 know all the details.
23 Q. Okay. So a quote would be provided, the
24 purchaser would respond by signing the quote; is
25 that right, generally?

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1 A. I was not on the sales team, and I do not know
2 the details.
3 Q. Okay. But you told me earlier that that was the
4 process, that you would -- Owl Labs would send a
5 quote and then they, the purchaser, would sign
6 the quote. That was the general procedure?
7 A. To my knowledge generally that was the
8 procedure, but I am no expert in that.
9 Q. Okay. And then, again, generally, did you have
10 an understanding about whether a purchaser would
11 be required to pay in full upfront or if there
12 could be a discount prior to shipping?
13 A. Each order varied.
14 Q. Okay.
15 A. The sales team negotiated different terms for
16 different orders.
17 Q. Would you say that it was not out of the
18 ordinary to allow a customer to pay only 50
19 percent upfront prior to shipping?
20 A. That was a practice at the time.
21 Q. Okay. Is it still allowed practice at Owl Labs
22 to pay just 50 percent prior to shipping?
23 A. Occasionally.
24 Q. Okay. And again, this might be a little bit out
25 of your job responsibilities back in the fall of

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1 2020, but do you know if at that time Owl Labs
2 had made any sales in excess of \$10,000 to a
3 public school district?
4 A. I believe we had.
5 Q. Okay. Do you know if Owl Labs had ever done
6 business with the State of South Carolina or
7 with any public entity in the state of South
8 Carolina prior to the sale with David Marshall
9 in the fall of 2020?
10 A. I can't recall.
11 Q. Okay. Were you at all familiar with
12 requirements that many states have for a vendor
13 to be on a state-approved vendor list back in
14 the fall of 2020?
15 A. We had gone through vendor approvals with some
16 states.
17 Q. Do you recall what states that you had done that
18 with by the fall of 2020?
19 A. I don't recall.
20 Q. Okay. Do you know if you had done it with the
21 State of South Carolina?
22 A. I don't recall.
23 Q. Okay. Do you know if currently Owl Labs is on a
24 state-approved vendor list in the state of South
25 Carolina?

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- 1 A. I don't recall.
- 2 Q. Okay. And what is your understanding, or what
- 3 was your understanding in the fall of 2020 about
- 4 school districts and whether or not they're
- 5 generally tax exempt from purchases?
- 6 A. It depends on each state whether or not a
- 7 organization is tax exempt.
- 8 Q. Okay. And whose obligation would it be at Owl
- 9 Labs to make that determination as to whether or
- 10 not they're tax exempt?
- 11 A. It wouldn't -- excuse me. The organization
- 12 would provide tax exempt status in the form of a
- 13 document, and that would suffice for the team,
- 14 the business operations team, deeming it as tax
- 15 exempt.
- 16 Q. Did anyone at Owl Labs ever scrutinize the tax
- 17 exempt document provided by --
- 18 A. I can't --
- 19 Q. -- excuse me -- by a state entity or a school
- 20 district to determine whether it was, in fact,
- 21 tax exempt, or do you just sort of take it at
- 22 face value?
- 23 A. It varied from order to order.
- 24 Q. And, again, who would look at that tax exempt --
- 25 A. It would have -- it would have been myself or my

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- 1 colleague, Harry Meltzer, the sales team and the
- 2 accounting team.
- 3 Q. Who's on the accounting team, or who was on the
- 4 accounting team back in the fall of 2020, if you
- 5 recall?
- 6 A. Lauren Rogers.
- 7 Q. Okay. And what was her position?
- 8 A. I can't remember.
- 9 Q. Okay. I'm going to kind of get into the
- 10 specifics of the lawsuit. David Marshall first
- 11 contacted Owl Labs, it appears from email
- 12 communication, October 23rd of 2020; does that
- 13 sound about right to you?
- 14 A. I can't remember.
- 15 Q. Okay. Do you recall if you had any direct
- 16 communication with David Marshall regarding the
- 17 order that he placed with Owl Labs?
- 18 A. I reached out to him via email for collections.
- 19 Q. So that would have been after the order had been
- 20 fulfilled; is that right?
- 21 A. I can't remember in this particular instance.
- 22 Q. Do you recall ever discussing the order that he
- 23 was negotiating with Bill Smith? Did you
- 24 discuss that order with anyone at Owl Labs?
- 25 A. I can't remember.

Page 7

- 1 Q. Okay. So this might be the same answer, but do
- 2 you recall at any point inquiring into who was
- 3 making the purchase or -- well, just that
- 4 question. Do you recall ever inquiring into who
- 5 David Marshall was and who he worked for or
- 6 anything like that?
- 7 A. I don't recall.
- 8 Q. Okay. Do you have any recollection of ever
- 9 looking at the District's website prior to
- 10 fulfilling the order that David Marshall placed?
- 11 A. I don't remember.
- 12 Q. Okay. Do you recall ever inquiring into
- 13 Orangeburg County School District's procurement
- 14 policy or procedure?
- 15 A. I don't remember.
- 16 Q. Okay. Would anyone -- so if Bill Smith, was the
- 17 salesperson negotiating the sale of these units,
- 18 would anyone have to approve a sale of 875
- 19 units?
- 20 A. Yes.
- 21 Q. And why is that?
- 22 A. It's a lot of inventory to move, so an order of
- 23 that size would be discussed.
- 24 Q. And who would he have discussed that with, if
- 25 you know?

Page 8

- 1 A. From an inventory perspective, it would have
- 2 been my manager, Danielle Brown.
- 3 Q. Do you recall him coming to you or having any
- 4 conversations with you about filling this large
- 5 order?
- 6 A. We discussed the payments.
- 7 Q. Okay. The initial payment or the one that
- 8 ostensibly was, you know, due and owing?
- 9 A. Both.
- 10 Q. Okay. So is it fair to say that you really
- 11 weren't involved in the conversations about the
- 12 purchase until the payment issue came up; is
- 13 that right?
- 14 A. That is correct.
- 15 Q. And would you have been involved in
- 16 conversations about splitting the payment 50/50
- 17 or, you know, only requiring 50 percent upfront
- 18 payment?
- 19 A. I would have been privy to them but not a
- 20 decision-maker.
- 21 Q. And do you recall being a part of those
- 22 conversations?
- 23 A. I do not.
- 24 Q. Okay. And when you said you wouldn't have been
- 25 a decision-maker, would someone have to -- back

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KIMBERLY M. GAUGHAN

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Page 1

1 then, would someone have approved the 50 percent
 2 prepayment as opposed to 100 percent prepayment
 3 before shipping?
 4 A. I believe so.
 5 Q. Who would that have been?
 6 A. John Stevens.
 7 Q. Okay. And John Stevens, what was his position
 8 at that time?
 9 A. I believe he was still the chief financial
 10 officer, but I can't remember specifically.
 11 Q. Okay.
 12 MS. FITTIPALDI: Andie, if you don't mind
 13 pulling up the exhibit.
 14 Q. Ms. Gaughan, we took depositions on Friday with
 15 Bill Smith and Kaylin McNamara, and we entered
 16 as an exhibit a package of about 14 pages. Do
 17 you recall -- I mean, have you seen any
 18 documents in the preparation for your
 19 deposition?
 20 A. No, I have not.
 21 Q. Okay. So this first page --
 22 MS. FITTIPALDI: And then Andie, if you
 23 don't mind just scrolling down a little bit so
 24 she can see page -- the second page which is --
 25 Q. There's a Bates stamp at the bottom, Ms.

Page 30

1 Gaughan, and the first one is Owl Labs 3 and Owl
 2 Labs 4. You can go back up. So the first thing
 3 I'm showing you is what's been Bates stamped as
 4 Owl Labs 3 and 4.
 5 MS. FITTIPALDI: And if you don't mind
 6 going back to the top, Andie.
 7 Q. Okay. Can you see that on your screen?
 8 A. I can.
 9 Q. Okay. And can you identify what that document
 10 is?
 11 A. This looks like an Owl Labs quote.
 12 Q. Okay. And what's the date that it was prepared
 13 at the very top --
 14 A. October 23rd, 2020.
 15 Q. Okay. And who would have prepared this, to the
 16 best of your knowledge?
 17 A. A sales team member.
 18 Q. Okay.
 19 MS. FITTIPALDI: And then, Andie, if you
 20 don't mind scrolling down to Bates stamp 4, the
 21 second page of this quote. Okay. That's great.
 22 If you don't mind going back up to the terms.
 23 Q. There's some purchase terms on page four of this
 24 quote. Were those pretty standard purchase
 25 terms? The first one is 100 percent prepayment

1 required to ship; do you see that?
 2 A. I do.
 3 Q. Okay. And so was that just sort of the default
 4 purchase terms quote kind of document that a
 5 sales team member would use?
 6 A. I believe so.
 7 Q. Okay. And when you say -- you testified earlier
 8 that it is your understanding that the purchaser
 9 would send back a signed quote. Would they sign
 10 -- they would sign this document and send it
 11 back to Owl Labs?
 12 A. I believe they would sign something like this or
 13 send written confirmation. Again, I'm not privy
 14 to the details as I am not a sales team member.
 15 Q. Okay. How many, I guess, clients or purchasers
 16 would you say Owl Labs extended that courtesy of
 17 the 50 percent pre purchase as opposed to the
 18 100 percent pre purchase prior to shipping?
 19 A. I can't recall an exact number.
 20 Q. And I guess my question should have been in the
 21 fall of 2020, do you have any recollection as to
 22 how many customers would get that courtesy?
 23 A. I can't recall.
 24 Q. Okay.
 25 MS. FITTIPALDI: Andie, can you scroll

Page 2

1 down. I'm trying to get to the Owl Labs 40
 2 document. I think keep going. It's the
 3 purchase order. Okay. There we go.
 4 Q. Sorry, this isn't that big on your screen, you
 5 can go back down a little bit. Ms. Gaughan, do
 6 you see the purchase order on the screen?
 7 A. I do.
 8 Q. Okay. And I'll just say for the record at the
 9 bottom of it it's marked as Owl Labs the Bates
 10 stamp number 40. It's just how we keep track of
 11 records in litigation.
 12 MS. FITTIPALDI: Can you scroll down a
 13 little bit more, Andie. There's a signature at
 14 the bottom I want to ask her about. Okay.
 15 That's good.
 16 Q. Okay. Are you familiar with the purchase order,
 17 something like this that Owl Labs would receive?
 18 A. Yes.
 19 Q. Okay. And do you see the approval signature at
 20 the bottom?
 21 A. Yes.
 22 Q. Okay. And can you read that signature? I mean,
 23 do you know who it is?
 24 A. No.
 25 Q. Okay. Well, I'll just represent to you that

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KIMBERLY M. GAUGHAN

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1 Q. Okay. Do you recall the first time that this,
2 you know, order or payment came to your
3 attention?
4 A. I don't remember.
5 Q. Okay. Do you recall in whatever the context was
6 that it was brought to your attention?
7 A. Can you rephrase that question?
8 Q. Yeah. So do you recall how it came to your
9 attention? Meaning, did someone say, hey, we're
10 having trouble collecting the 50 percent
11 balance, or we want to ship these with just the
12 upfront 50 percent payment? Do you recall how
13 it first came to your attention?
14 A. I don't remember. It would have been under my
15 radar as it was an open balance.
16 Q. And so at that point when it came to your
17 attention that way because there was a balance
18 that was unpaid; is that right?
19 A. I was involved in the initial payment as well.
20 Q. Okay. Tell me about that.
21 A. The school system sent test payments of, I
22 believe, \$100 to make sure that it was entering
23 our account properly. And then they sent the
24 initial 50 percent upfront. I can't remember
25 that exact amount.

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1 Q. When you say the school district sent it, you're
2 talking about David Marshall specifically,
3 correct?
4 MR. STANLEY: Object to form. You can
5 answer.
6 A. I don't know who specifically sent the payments.
7 Q. And there was a test payment you said of \$100
8 just to see if it went through?
9 A. Correct.
10 Q. All right. And would you have been
11 communicating with anyone else within Owl Labs
12 about that test payment other than the sales
13 rep?
14 A. I would have talked with the accounting team.
15 Q. Okay. And then after the test payment came
16 through, what happened after that?
17 A. Then I believe the initial 50 percent upfront
18 came through.
19 Q. Okay. And did you have to respond in any way
20 about that 50 percent --
21 A. I -- I believe I confirmed with Bill Smith that
22 we received the 50 percent upfront.
23 Q. Meaning you saw that the company had received
24 the funds and you advised Mr. Smith that it had
25 been received?

Page 39

1 A. I can't remember if the accounting team
2 confirmed it to me or if I saw the funds. I
3 can't remember. But I then -- I received some
4 sort of confirmation and notified Bill Smith.
5 Q. So once you had the first payment which would
6 have been about 50 percent of the total purchase
7 order price, do you recall what your next
8 involvement would have been in terms of any
9 dealings regarding this purchase?
10 A. I would have followed up for the 50 percent
11 remainder.
12 Q. Do you recall who you would have followed up
13 with?
14 A. I believe I followed up with David Marshall.
15 Q. Do you recall what his response was?
16 A. He said there was a delay due to the school
17 shutting down again for COVID or something along
18 those lines.
19 Q. Okay. And then what was your next communication
20 with him about paying the balance due?
21 A. I followed up with him again, and I can't
22 remember exactly where in the correspondence he
23 said that the school had been hacked or
24 something, which I found to be unusual, and I
25 brought that to my manager's attention.

Page 40

1 Q. And who was that?
2 A. Danielle Brown.
3 Q. And did you all investigate whether or not the
4 District had been hacked?
5 A. I can't remember.
6 Q. Did you ever ask to speak with David Marshall's
7 supervisor regarding the balance due on the
8 purchase?
9 A. I can't remember.
10 Q. Do you recall speaking with anyone or
11 communicating with anyone other than David
12 Marshall regarding the actual purchase of the
13 875 units?
14 A. I believe I spoke with someone in accounts
15 payable at one point, but I can't remember the
16 details. And I can't remember if I spoke with
17 anyone else at the school system.
18 Q. The person that you think you might have spoken
19 to in accounts payable, would that have been
20 when the money was -- when I say money, I mean
21 the balance, when it was due or overdue?
22 A. Yes.
23 Q. Okay. So after the items had been shipped; is
24 that right?
25 A. Correct.

Page 1

1 STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG } C/A NO: 2022-CP-38-01363
 3
 4 Owl Labs, }
 5 Plaintiff, }
 6 v. }
 7 Orangeburg County School }
 8 District, }
 9 Defendant. }

DEPOSITION OF

FLEUR RADOVAN

Thursday, May 16, 2024

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

17 The deposition of FLEUR RADOVAN was taken
 18 before Andrea R. Taylor, a notary public in and for the
 19 State of South Carolina, commencing on Thursday, May
 20 16, 2024, via Zoom video conference, pursuant to Notice
 21 of Deposition.

Page 2

APPEARANCES

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 11 sfittipaldi@hnmwlegal.com

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2 Stipulations
 3 Examination by Ms. Fittipaldi
 4 Signature Sheet
 5 Certificate

EXHIBITS

10 (There were no exhibits marked during the deposition.)

Page 4

STIPULATIONS

2 It is stipulated by and between counsel
 3 for the respective parties that all objections
 4 are reserved until the time of trial, except as
 5 to the form of the questions.

6 This deposition is being taken pursuant
 7 to the South Carolina Rules of Civil Procedure.

9 The reading and signing of this
 10 deposition is reserved by the deponent and
 11 counsel for the respective parties.

13 Whereupon,

14 FLEUR RADOVAN, being duly sworn and cautioned to
 15 speak the truth, the whole truth, and nothing
 16 but the truth, testified as follows:

EXAMINATION

18 BY MS. FITTIPALDI:

19 Q. Hi. Good afternoon, Ms. Radovan. My name is
 20 Susan Fittipaldi. I'm an attorney in Columbia,
 21 South Carolina, with the firm Halligan Mahoney
 22 and Williams. And we represent Orangeburg
 23 County School District in a lawsuit filed
 24 against it by Owl Labs. You have been listed as
 25 a witness for this lawsuit, and I'm here today

5/16/2024

FLEUR RADOVAN

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1 arrangement with David Marshall and Owl Labs?
 2 MS. BRYANT: And I'm just going to object
 3 to the form of the question. Fleur, you can
 4 answer if you know.
 5 A. I'm sorry, I didn't catch the last part.
 6 Q. Sure. When you came on board in April of 2021,
 7 how did you first become aware of this issue
 8 between the sale between David Marshall and Owl
 9 Labs?
 10 MS. BRYANT: Object to the form. You can
 11 answer if you know.
 12 A. I was managing the accounts receivable so I see
 13 the open balances. And I saw that there was an
 14 open balance. So that's how I learned that
 15 there was like something open and past due.
 16 Q. Okay. And when you saw that, I guess like in
 17 your system, would that be fair to say, it's
 18 somewhere in your computer system?
 19 A. (Nods head.)
 20 Q. Is that a yes?
 21 A. Yes.
 22 Q. Okay. Did you bring that to someone's
 23 attention?
 24 A. I talked to Narayan with it -- about it.
 25 Q. Can you recall any of the conversation that you

Page 18

1 had with him?
 2 A. I don't remember.
 3 Q. Okay. And that's perfectly acceptable. I
 4 should have told you at the beginning that a lot
 5 of the questions I will ask you are about
 6 circumstances that were from a long time ago.
 7 So just everything is to the best of your
 8 recollection. If you don't recall something,
 9 that's understandable. So after you brought it
 10 to Narayan's attention, do you recall what
 11 happened after that?
 12 A. I sent them a collection email.
 13 Q. And when you say them, who are you referring to?
 14 A. Orangeburg, the email that we have on the
 15 system.
 16 Q. Okay. Do you recall who you sent that to?
 17 A. I am not certain.
 18 Q. Okay. Do you recall if you got a response?
 19 A. I think the first email did not have any
 20 response. And so I sent a follow-up email in
 21 June.
 22 Q. Did you have any communication with David
 23 Marshall?
 24 A. Other than the video, no.
 25 Q. And when you say video, you're talking about the

Page 19

1 Zoom video call?
 2 A. Yes.
 3 Q. Okay. Do you recall when that was?
 4 A. When?
 5 Q. Approximately? Was it June of 2021?
 6 A. I believe it was in June, yes.
 7 Q. Okay. That was the first time you had spoken
 8 with David Marshall or been a part of a
 9 conversation that included him?
 10 A. I believe so.
 11 Q. And do you think that's the first time you spoke
 12 with anyone at Orangeburg County School
 13 District?
 14 A. After setting up, because they asked for a
 15 meeting, and the Zoom meeting happened. And
 16 that was it.
 17 Q. When you say they asked for a meeting, are you
 18 talking about people from the school district?
 19 A. That is correct.
 20 Q. Okay. And that was the last time you were part
 21 of a conversation with anyone from Orangeburg
 22 County School District?
 23 A. Yes.
 24 Q. Okay. I think during that call or an earlier
 25 one, Narayan might have asked you about the

Page 20

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

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FLEUR RADOVAN

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Page 3

1 for the purchase of devices from Orangeburg
 2 County School District, and a payment was
 3 received from Orangeburg County purchasing,
 4 would that raise any questions in your mind?
 5 MS. BRYANT: Object to the form. You can
 6 answer if you know.
 7 A. In my opinion, no.
 8 Q. In your experience regarding the sales of the
 9 Owl Labs devices, is it common to receive
 10 payment from an organization with a different
 11 name than the organization that's receiving the
 12 devices?
 13 MS. BRYANT: Object to the form. You can
 14 answer if you know.
 15 Q. Just in your experience.
 16 A. In my experience, there are some institutions
 17 that pay like under a different name where we
 18 have to follow up with a bank to give us more
 19 information to so that we can trace back
 20 transactions.
 21 Q. But would you say that typically the same name
 22 is used for the purchaser and the entity making
 23 a payment?
 24 A. I wouldn't --
 25 MS. BRYANT: Object to the form.

1 to purchase that many?
 2 A. I believe so.
 3 Q. And so I just want to make sure, the only time
 4 that you were involved in a conversation with
 5 people from Orangeburg County School District
 6 was the Zoom call in June of 2021; is that
 7 right?
 8 A. I believe so.
 9 Q. Okay. I have no further questions for you.
 10 Your attorney might have a few follow up;
 11 otherwise, I appreciate your time. Thank you.
 12 MS. BRYANT: I have no questions for this
 13 witness. Thank you for your time. We
 14 appreciate it.
 15 (There being nothing further, the deposition was
 16 concluded at 2:31 p.m.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 22

Page 4

1 A. I'm sorry.
 2 Q. Okay. You can answer.
 3 A. I wouldn't say exactly the same, so --
 4 Q. When you look in the system, are there records
 5 relating to the purchase that you are able to
 6 review when you -- for example, you said you saw
 7 there was an open balance. Are there documents
 8 that you can access and review?
 9 A. Other than the invoice, I don't think I have
 10 any.
 11 Q. Okay. All right. Do you recall the amount of
 12 units that were in this invoice?
 13 A. I do not recall.
 14 Q. Okay. I think it was 875. We'll let the record
 15 speak for itself on that. But in your -- when
 16 you came to Owl Labs, would you say, in your
 17 experience, was that on the larger side of
 18 orders that were placed or in the range of low
 19 or --
 20 A. I would say that is normal.
 21 Q. 875 units --
 22 A. Yeah.
 23 Q. -- was a normal purchase?
 24 A. (Nods head.)
 25 Q. And was that normal for a public school district

1 SIGNATURE
 2
 3 I have read the foregoing deposition, and
 4 confirm that it is a true and accurate transcript of
 5 testimony. Any errors I may have noticed have been
 6 listed below and returned to the court reporter.
 7

Fleur Radovan

Date: _____

Page	Line	Correction	Reason for Change
10			
11			
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5/16/2024

NARAYAN KRISHNAN

Page 1

1 STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG } C/A NO: 2022-CP-38-01363
 3
 4 Owl Labs, }
 5 Plaintiff, }
 6 v. }
 7 Orangeburg County School }
 8 District, }
 9 Defendant. }

11 DEPOSITION OF
 12 NARAYAN KRISHNAN

13 *****

14 Thursday, May 16, 2024

15 2:39 p.m. - 3:19 p.m.

17 The deposition of NARAYAN KRISHNAN was taken
 18 before Andrea R. Taylor, a notary public in and for the
 19 State of South Carolina, commencing on Thursday, May
 20 16, 2024, via Zoom video conference, pursuant to Notice
 21 of Deposition.

Page 2

1 APPEARANCES

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1 INDEX

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 4 Signature Sheet 3
 5 Certificate 3

8 * * * * *

9 EXHIBITS

10 Defendant's Exhibit Number 1 3
 11 (Emails)

Page 4

1 STIPULATIONS

2 It is stipulated by and between counsel
 3 for the respective parties that all objections
 4 are reserved until the time of trial, except as
 5 to the form of the questions.

6 This deposition is being taken pursuant
 7 to the South Carolina Rules of Civil Procedure.

8 - - - -

9 The reading and signing of this
 10 deposition is reserved by the deponent and
 11 counsel for the respective parties.

12 - - - -

13 Whereupon,

14 NARAYAN KRISHNAN, being duly sworn and cautioned
 15 to speak the truth, the whole truth, and nothing
 16 but the truth, testified as follows:

17 EXAMINATION

18 BY MS. FITTIPALDI:

19 Q. Hi, Mr. Krishnan. Am I pronouncing that
 20 correctly?

21 A. Yes, you are.

22 Q. Krishnan. My name is Susan Fittipaldi. I'm an
 23 attorney in Columbia, South Carolina, with the
 24 law firm Halligan Mahoney and Williams. And we
 25 represent Orangeburg County School District in a

5/16/2024

NARAYAN KRISHNAN

Page 13

1 supervisor?

2 A. John Stevens.

3 Q. And what was his title?

4 A. He was the CFO.

5 Q. Is that Stevens with a V or a P-H?

6 A. With a V.

7 Q. Okay. And do you know who Mr. Stevens reported

8 to?

9 A. He reported to the CEO.

10 Q. And who was that at the time that you were with

11 Owl Labs?

12 A. I can't recall.

13 Q. Okay. How many directors, if you know or if you

14 recall, did Owl Labs have at the time that you

15 were there?

16 A. I'm sorry, I can't recall.

17 Q. Okay. And it's perfectly fine because I know a

18 lot of questions I'm asking you are from years

19 ago. Everything I ask just speak to the best of

20 your recollection, okay? When you started with

21 Owl Labs in -- do you recall what month it was

22 that you started with them?

23 A. I don't. Sometime in 2021.

24 Q. Okay. Did you receive any training from anyone

25 when you were first hired?

Page 14

1 A. I received some training related to the product,

2 but that is -- that's about it.

3 Q. Okay. During the time that you were there, did

4 Owl Labs conduct training for its sales staff

5 that you're aware of?

6 A. I can't recall.

7 Q. What was your involvement with the sales

8 department, or I don't -- is it a -- was it a

9 division, a department?

10 A. My involvement was limited to looking at drafts

11 of contracts or looking at sales orders after

12 they were consummated.

13 Q. You would look at draft contracts?

14 A. I would look at some draft contracts, yes.

15 Q. Did you ever review a draft contract involving a

16 public school district?

17 A. I did.

18 Q. Okay. And do you recall how many times you

19 might have reviewed draft contracts that

20 involved public school districts?

21 A. I don't recall.

22 Q. Okay. And under what circumstances would a

23 school district have a contract versus a

24 purchase order to order devices from Owl Labs?

25 A. It depends. Essentially what I'm referencing as

Page 5

1 a contract could take many forms. It could be a

2 purchase order. It could be an actual contract.

3 It could be, you know, letter of agreement. So

4 I'm referencing all of those as a contract.

5 Anything that would formalize the terms of the

6 sale.

7 Q. For your role as director of revenue with Owl

8 Labs, were you required to have any sort of

9 knowledge about procurement policies,

10 procedures, requirements of public school

11 districts or other public entities?

12 A. No.

13 Q. At the time that you were with Owl Labs, can you

14 tell me what your experience was in terms of an

15 average sale to a public school district?

16 A. I can't recall. I think it varied.

17 Q. Do you recall what kind of entity was a typical

18 customer when you were there?

19 A. I recall the customer set was very diverse, but

20 not past that.

21 Q. Were you familiar in your role as director of

22 revenue the purchasing process that was employed

23 by Owl Labs?

24 A. No.

25 Q. Okay. Did you have any knowledge as to the

Page 6

1 process by which the sales team would use to

2 finalize the sale?

3 A. No.

4 Q. Okay. Did you have any knowledge in your

5 position as director of revenue as to the

6 process by which a customer could be allowed a

7 discount in the purchase price of the devices

8 sold by Owl Labs?

9 A. No.

10 Q. Okay. Did anyone ever seek your permission for

11 a reduction or a discount in sale price?

12 A. No.

13 Q. Okay. Would anyone need to seek permission from

14 you to deviate from the 100 percent payment

15 upfront prior to shipping for devices?

16 A. No.

17 Q. Do you know who would be required to give that

18 kind of permission?

19 A. The CFO.

20 Q. Okay. Do you know if Owl Labs conducted

21 business in South Carolina with any entity

22 outside of the sale that we're talking about in

23 this lawsuit?

24 A. I can't recall.

25 Q. Okay. In your position as the director of

5/16/2024

NARAYAN KRISHNAN

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1 revenue, were you required to have any knowledge
2 about public entity procurement processes? I
3 might have already asked you this, but was that
4 part of your job responsibilities?

5 A. No.

6 Q. Okay. What about Owl Labs applications either
7 to states or other public entities to be on a
8 registered or approved vendor list, had you ever
9 been involved in that process for Owl Labs?

10 A. No.

11 Q. Okay. Do you know if Owl Labs had ever sought
12 to be an approved vendor or registered vendor
13 for any sale to either a state or federal or
14 other public entity?

15 A. I can't recall.

16 Q. Okay. Who would know something like that? Who
17 would be responsible for having the company on
18 an approved vendor list or filling out an
19 application for something like that?

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

22 Q. You can answer if you know.

23 A. Somebody on the sales side.

24 Q. On the sales side, okay. Did you have any
25 involvement in reviewing purchaser tax exempt

1 A. As part of my role as director of revenue, I was
2 monitoring our accounts receivable aging. This
3 would be the report that tells us which
4 customers are past due. And as part of that
5 review, I would look at either the ones that are
6 most past due or the largest dollar amounts that
7 are past due. And in that review process, this
8 account was there.

9 Q. And do you recall which category this past due
10 amount fell into, either the longest past or
11 largest amount past due?

12 A. I would say the largest amount past due
13 possibly, but I don't recall the specifics.

14 Q. Okay.

15 A. It was -- it was one of the items that I -- that
16 was recording on my -- on my report.

17 Q. Okay. And when you saw that on the report, what
18 did you do?

19 A. I checked in on the status of collections, have
20 we reached out; is there any dialogue? And I'm
21 asking all these questions from the perspective
22 of do we need to book a reserve collectability,
23 those types of accounting questions.

24 Q. You're going to have to explain some of those to
25 me. Or let me go back a little bit. You said

Page 18

Page 10

1 forms?

2 A. No.

3 Q. Okay.

4 A. Not that I can recall.

5 Q. Okay.

6 A. I saw them after the fact.

7 Q. After the fact, okay. And if a purchaser
8 provided a tax exempt form, that would simply
9 mean that Owl Labs would not charge them for
10 tax; is that right?

11 A. That would be my understanding.

12 Q. Okay. So, you know, the allegations that form
13 the basis of the claims in this case begin prior
14 to you being hired at Owl Labs, and they involve
15 David Marshall and a purchase order that was
16 entered into in approximately October of 2020;
17 does that sound familiar to you?

18 A. Sounds about right.

19 Q. And that, again, just to be sure, that was
20 before you started with Owl Labs, correct?

21 A. Yes.

22 Q. Okay. When did you first become aware that
23 there was an issue regarding this sale involving
24 David Marshall and Orangeburg County School
25 District?

1 you would have reached out about collections,
2 who would you have reached out to?

3 A. So there's a collections team that I was working
4 with a couple of folks on. I don't remember
5 their names. But typically, they are
6 responsible for sending follow ups to customers,
7 past due letters and such. And so my dialogue
8 would have been with those folks saying, hey,
9 did you follow up with these customers? Do they
10 know they owe? Have they received the latest
11 invoice, those types of things.

12 Q. Okay. And then you said something that I didn't
13 even write down. You said something about we
14 need to book something, book a reserve?

15 A. Well, typically, if you consider an invoice to
16 be uncollectible, then you would book a reserve
17 against it. But we did not. We considered this
18 amount to be collectible, there was dialogue
19 with the customer. So there there was no reason
20 for us to go beyond that, other than continue to
21 monitor.

22 Q. What does that mean to book a reserve?

23 A. So when you have an invoice, it is considered an
24 asset, meaning you have delivered product and
25 you are expecting the customer to pay. So when

5/16/2024

NARAYAN KRISHNAN

Page 25

- 1 Q. -- Wednesday, June 16th, 2021, at 11:30 a.m.,
 2 you wrote looks like to Bill Smith, "Thanks,
 3 Bill. Are you able to provide a bulleted
 4 timeline of the relationship? Fill out what you
 5 can ... starting with the initial lead and I
 6 will fill in the back end from this week.
 7 Thanks again." And your name is there, Narayan.
 8 Do you recall why you had asked Bill for a
 9 bulleted timeline?
- 10 A. I can't recall. Typically, it had to do
 11 something -- something to do with trying to
 12 understand the nature of the order and what
 13 happened, maybe the conversation with the
 14 customer led to some confusion as to kind of
 15 what was going on. I think this was an attempt
 16 to try to understand it.
- 17 Q. Okay.
- 18 MS. FITTIPALDI: And then, Andie, and if
 19 you don't mind scrolling up.
- 20 Q. It looks like Bill Smith provided you with a
 21 timeline of communications; do you see that? Do
 22 you recall getting that email from him?
- 23 A. Yes, I do.
- 24 Q. Okay. And did you share this timeline with
 25 anyone else at Owl Labs?

Page 26

- 1 A. I can't recall.
- 2 Q. Okay. And then do you think that this was
 3 probably generated before or after that Zoom
 4 call that you referenced earlier? That Zoom
 5 call this with district officials, correct?
- 6 A. That is correct. And I don't remember the
 7 timing.
- 8 Q. Okay. Okay. And do you recall the conversation
 9 with the district -- the district officials?
- 10 A. At a high level, I remember having a call and I
 11 remember having it recorded. I remember Mr.
 12 Marshall acknowledging that he stole the money
 13 and, you know, I -- the high level. I don't
 14 recall the specifics.
- 15 Q. Okay. Actually, do you recall that there was
 16 like a recorded telephone call maybe the day
 17 before the Zoom call; does that sound familiar?
- 18 A. I don't recall. I'm sorry.
- 19 Q. Okay. At one point, I'll just represent to you
 20 --
- 21 MS. FITTIPALDI: Andie, you can take that
 22 down.
- 23 Q. At one point in a recorded call, and I think
 24 this was the day or two before the Zoom thing,
 25 you had asked about -- you had asked Fleur

Page 7

- 1 Radovan who the initial payment came from; do
 2 you recall talking to her about that?
- 3 A. I don't. I'm sorry.
- 4 Q. Okay. At some point, I think she confirmed that
 5 there was a payment from Orangeburg County
 6 purchasing; does that sound familiar?
- 7 A. She might have. I don't recall specifically.
 8 I'm sorry.
- 9 Q. And in your experience as director of revenue,
 10 would that be typical to have a purchase from
 11 one entity, say for example, Orangeburg County
 12 School District, but the payment come from an
 13 entity titled Orangeburg County purchasing?
- 14 MS. BRYANT: Object to the form. You can
 15 answer if you know.
- 16 A. I don't. I don't know. Ultimately, these
 17 orders, typically the orders that I've dealt
 18 with at my experience at various companies you
 19 have, you know, a purchase order coming and if
 20 there are other tiers involved, the payment
 21 could come from various sources. That is not
 22 unusual. But I don't recall the specifics here.
- 23 Q. Okay. And do you recall the district
 24 superintendent, Dr. Foster, being on that Zoom
 25 call?

Page 8

- 1 A. I vaguely recall that, yes.
- 2 Q. Okay. And I think you referenced earlier that
 3 it was at during that call that David Marshall
 4 sort of admitted having committed fraud in this
 5 --
- 6 A. Yes.
- 7 Q. -- deal? Yeah. Okay. Was it at that point
 8 that you learned that Orangeburg County School
 9 District had paid a company or an entity called
 10 Level Eight for the purchase of the Owl devices?
- 11 A. I don't recall the specifics.
- 12 Q. Had you heard of Level Eight before that Zoom
 13 call?
- 14 A. I am afraid I don't remember.
- 15 Q. Okay. Do you recall Dr. Foster explaining
 16 during that Zoom call that there were two
 17 purchase orders for the Owl devices?
- 18 A. I don't recall the level of specificity beyond
 19 the fact that there was a Zoom call and Dr.
 20 Foster was on it.
- 21 Q. Do you recall saying to Dr. Foster that
 22 Orangeburg County School District was defrauded
 23 by David Marshall?
- 24 MS. BRYANT: Object to the form. You can
 25 answer.

Exhibit 13

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

From: Bill Smith <bill@owllabs.com>
To: David Marshall <david.marshall@ocsdsc.org>
Bcc: 2799205@bcc.hubspot.com
Subject: Re: Bill Smith -- Owl Labs
Date: Fri, 23 Oct 2020 15:26:43 -0400

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

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--
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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

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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 06 4:56 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

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

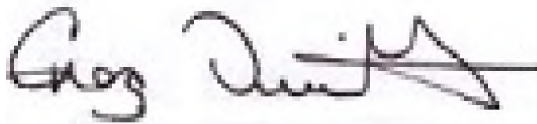
Req# 64593

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_409

OWL_LABS_000007

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

----- Forwarded message -----

From: **David Marshall** <david.marshall@ocsdsc.org>

Date: Thu, Oct 29, 2020 at 8:47 AM

Subject: Re: Orange County School District -- Owl Labs Follow up

To: Bill Smith <bill@owlabs.com>

Hi Bill,

I found out that we're not tax exempt, as an organization, but finance is not often wrong with their documents. They told me that we're able to be exempt for this specific purchase under form ST-8 under the South Carolina DOR. I've attached it below.



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 5:16 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Hi Bill,

Thank you for the update. Attached is the PO.



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 5:05 PM Bill Smith <bill@owlabs.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

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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 *[Signature]* (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)]

Owl Labs, Inc
33-1/2 Union Square
Somerville, MA 02143
(857) 214-4341
business-ops@owllabs.com
www.owllabs.com



INVOICE

BILL TO

Accounts Payable
Orangeburg County School
District, Technology
102 Founder's Court
PO# 21045633
Orangeburg SC 29115
United States
(803) 534-5454

SHIP TO

Attn: Eric Ham
OCSD Warehouse
473 Fair Street
PO# 21045633
Orangeburg SC 29115
United States
(803) 534-5454

INVOICE # 19327

DATE 10/29/2020

DUE DATE 10/29/2020

TERMS 50% Upfront

ACTIVITY	QTY	RATE	AMOUNT
Meeting Owl Pro	875	999.00	874,125.00T
Meeting Owl Pro			
Discount	1	-157,342.50	-157,342.50T

Payment Terms: 50% Upfront, 50% Net 30
from receipt

Orders will be processed upon proof of
payment.

Please send receipt of remittance (ACH/Bank
Transfer) or check number with date sent to
business-ops@owllabs.com.

Electronic invoices for card payment available
upon request.

Please reference your Owl Labs Order on
payment.

Remittance Address:
Owl Labs Inc
DEPT 0557
PO BOX 120557
DALLAS TX 75312-0557

SUBTOTAL	716,782.50
TAX	0.00
TOTAL	716,782.50
PAYMENT	358,391.25
BALANCE DUE	

USD 358,391.25

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Courier Deposits:
Dallas Regional Lockbox
Owl Labs Inc
890557
1501 NORTH PLANO RD STE 100
RICHARDSON TX 75081

----- Forwarded message -----

From: **Bill Smith** <bill@owllabs.com>

Date: Mon, Nov 23, 2020 at 12:58 PM

Subject: Re: [External] Re: Owl Labs Introduction

To: Kaylin McNamara <kaylin@owllabs.com>

Cc: Andress Sims <Andress.Sims@ocsdsc.org>, Shawn Foster <Shawn.Foster@ocsdsc.org>, David Marshall <David.Marshall@ocsdsc.org>

Additionally,

A few of our team members have put together a great EDU Training presentation. I wanted to reach out and see if you had the availability to move our call for a full hour to ensure we have enough time for followup questions, comments, etc. Let me know if that works for you and your team and I can make the necessary changes to the invitation.

Thank you!
Bill

On Fri, Nov 20, 2020 at 1:54 PM Bill Smith <bill@owllabs.com> wrote:

Hi Andress,

Looking forward to speaking with you and your team Tuesday morning. I was hoping you may be able to [fill out this quick 4 question survey](#) to help our team best prepare for our call Tuesday morning. Please feel free to reach out with any questions before then!

Thank you and have a great weekend!
Bill



Bill Smith

Account Executive at **Owl Labs**

+1 857-214-4341, ext. 022

[Book a Meeting on My Calendar](#)

On Thu, Nov 19, 2020 at 4:52 PM Kaylin McNamara <kaylin@owllabs.com> wrote:

That sounds great! Thank you for giving us an agenda to work off of. Bill will schedule some time for us to meet and we'll loop in others on our end.

To prepare our tech team, would you [mind filling out this survey](#)? For reference, I believe David, Bill and I spoke a bit about pre-registration a few weeks ago. It essentially allows you to skip a step during the unboxing/ registration process of each individual Owl. It takes probably 3-5 minutes per Owl to get it fully up and running for the first time and it will be done on a mobile device or tablet via our Meeting Owl App. If you'd like us to help with pre-registration, please indicate so in the survey.

Thank you so much!

Best,

Kaylin



Kaylin McNamara

Inside Sales Manager | Owl Labs, Inc.

+1 857-214-4341, ext. 018

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--

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On Thu, Nov 19, 2020 at 4:43 PM Andress Sims <Andress.Sims@ocsdsc.org> wrote:

Greetings,

Is it possible for us to meet Tuesday at 9:00 a.m. or 1:00 p.m.? The topics we would like to discuss are: 1.) troubleshooting
2.) options for set-up
3.) compatibility to laptops
4.) can this be a standalone set-up
5.) implementation recommendations
6.) professional learning
7.) are virtual platforms required (google hangout, teams, etc.)

I hope these few items are helpful!

I look forward to your response.

Andress



Andress Carter-Sims

Assistant Superintendent for Curriculum and Instruction

Phone 803-206-0355

Email andress.sims@ocsdsc.org

Orangeburg County School District

At Orangeburg County School District, we believe our primary purpose is to serve our community through effective teaching and learning for all students. In everything we do, our goal is to create a learning environment built for academic success. Visit us online at ocsdsc.org

From: Kaylin McNamara <kaylin@owllabs.com>

Sent: Thursday, November 19, 2020 3:39 PM

To: Andress Sims <Andress.Sims@ocsdsc.org>

Cc: David Marshall <David.Marshall@ocsdsc.org>; Bill Smith <bill@owllabs.com>

Subject: [External] Re: Owl Labs Introduction

***** 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 Andress,

Happy to meet you as well! We'd love to schedule a call with you. What would be your primary goal for this call specifically? Once we know that, we'll be sure to gather the right stakeholders on our end.

Thank you!

Best,

Kaylin



Kaylin McNamara

Inside Sales Manager | Owl Labs, Inc.

+1 857-214-4341, ext. 018

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--

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On Thu, Nov 19, 2020 at 3:33 PM Andress Sims <Andress.Sims@ocsdsc.org> wrote:

Greetings,

Thank you so very much for the introduction. I would love to schedule a call Tuesday, November 24th if possible. Please suggest some time frames that would work for you. We are very much looking forward to the collaboration.

With appreciation,
Andress



Andress Carter-Sims

Assistant Superintendent for Curriculum and Instruction

Phone 803-206-0355

Email andress.sims@ocsdsc.org

Orangeburg County School District

At Orangeburg County School District, we believe our primary purpose is to serve our community through effective teaching and learning for all students. In everything we do, our goal is to create a learning environment built for academic success. Visit us online at ocsdsc.org

From: David Marshall <David.Marshall@ocsdsc.org>

Sent: Thursday, November 19, 2020 2:26 PM

To: Bill Smith <bill@owllabs.com>; Kaylin McNamara <kaylin@owllabs.com>

Cc: Andress Sims <Andress.Sims@ocsdsc.org>

Subject: Owl Labs Introduction

Hi Bill and Kaylin,

Thanks for the shipping notification. I'm excited that our Owls will arrive next week.

I'd like to introduce you to Andress Carter-Sims, our assistant superintendent of curriculum and instruction at the district. She would love to chat with you two about implementation and training.

Mrs. Sims, this is Bill and Kaylin, and they'd be happy to hop in a call with you and the team to talk about all things Owl.

Cheers!

--



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

The Orangeburg County School District is introducing new Owl cameras at local schools.
COURTESY OWL LABS

The Orangeburg County School District is introducing new Owl cameras at local schools.
COURTESY OWL LABS

Gene Zaleski

The Orangeburg County School District is introducing new technology designed to help teachers during the coronavirus pandemic.

"This device is going to be a game changer in our hybrid environment," Assistant Superintendent for Curriculum and Instruction Dr. Address Carter-Sims told trustees on Tuesday.

"What this will allow teachers to do is to engage in a much more effective manner and enhance that virtual simultaneous instruction for both the students at home as well as the students at school," Carter-Sims said.

The technology is called an Owl, which is a thermos-shaped, robotic video camera that captures a 360-degree view of a meeting space and automatically shifts to focus on whoever is talking during a meeting.

The robotic shifting is supposed to replace the remote controls or awkward manual turning of cameras that happens sometimes during video conference meetings.

People are also reading...

"As the teacher walks around the room, the Owl will follow that voice," Carter-Sims said. "It has the capability of knowing who is in the room and zooming in on that student.

"This will be the primary camera in our classrooms."

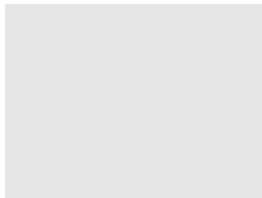
The devices are being rolled out in a systematic fashion to ensure all technological glitches or challenges are addressed.

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said. It has the capability of knowing who is in the room and zooming in on that student.

“This will be the primary camera in our classrooms.”

The devices are being rolled out in a systematic fashion to ensure all technological glitches or challenges are lessened upon a full roll out, Carter-Sims said.



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She said the devices will be rolled out to all schools and classrooms as soon as possible.

Teachers will receive training on the devices.

Superintendent Dr. Shawn Foster said the district listens to teachers and the Owls are designed to address their needs.

“We know that simultaneous instruction is tough,” Foster said. “But it can be done and research says it can be done if teachers have the proper resources to do it. It is tough on teachers. This is a tough role regardless of how you look at it.”

Trustee Betty Pelzer asked both Foster and Carter-Sims to ensure the district is “filling in the gaps” that are coming about due to virtual instruction.

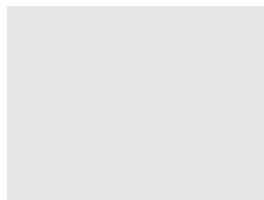
She says she has seen the challenges her grandson has had with the instruction models in place.

“How are we going to fill these gaps with these children?” she said. “Let’s start working on that plan. I want it to be a really meaningful plan where kids are really going to grow as a result of what we are trying to do.”



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Everything you need to know about COVID-19 vaccination

In other matters:

- OCSD Assistant Superintendent of Finance Brandi A. Gist said the total revenue collected through Dec. 31, 2020 is \$39.6 million. Of that, \$3.5 million is local revenue and \$34 million is state revenue.

Property tax bills went out in November and were due Jan. 15. Gist said the next financial report will see an increase in local revenues as a result.

General fund expenditures through Dec. 31, 2020 were \$52.3 million. Of that, \$44 million was personnel costs. About 85% of the district’s budget is staff and employee costs.

- Trustees were informed that mileage reimbursement for board members was raised to 56 cents a mile, effective Jan. 1. The increase is federally mandated.
- Trustees gave first reading to a policy that will allow retired or at-will employees to get 12 days a year for sick leave, but sick leave will not accumulate on an annual basis.
- Trustees were told about a district marketing campaign, "The Signs of Outstanding Students," designed to promote student excellence.

The campaign will aim to influence students’ perceptions of themselves and the traits common an

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basis.

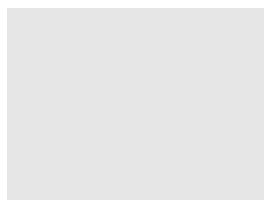
- Trustees were told about a district marketing campaign, "The Signs of Outstanding Students," designed to promote student excellence.

The campaign will aim to influence students' perceptions of themselves and the traits common among successful students. Traits that will be highlighted include perseverance, engagement and self-discipline.

- Trustees approved a student/staff recognition protocol to be implemented during board meetings.
- The board approved five teacher recommendations.

They include, for 2020-2021, one special education teacher for W.J. Clark Middle School, one English teacher for Carver-Edisto Middle School and one mathematics teacher for Orangeburg-Wilkinson High School.

For the 2021-2022 school year, the trustees approved one elementary teacher for Marshall Elementary School and one Spanish teacher for Orangeburg-Wilkinson High School.



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- The next board meeting is scheduled for 6:30 p.m. Tuesday, Feb. 9. The meeting will be livestreamed on the district's website at **www.ocsdsc.org**.

By Gene Zaleski

Staff Writer

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basis.

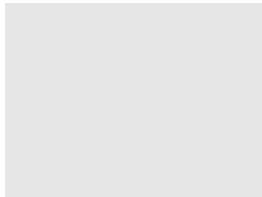
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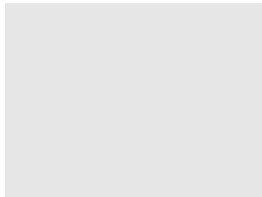
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By Gene Zaleski

Staff Writer

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From: Narayan Krishnan <narayan.krishnan@owllabs.com>

To: Fleur Radovan <fleur.radovan@owllabs.com>

Subject: Fwd: Orangeburg County School District -- Owl Labs Follow up

Date: Wed, 9 Jun 2021 16:31:22 -0700

Attachments: ST8--OCSD_PO_21045633.pdf; Purchase_Order_from_397418.gtwitty_(2)_(2).PDF;
Screen_Shot_2020-11-03_at_10.13.56_AM.png

----- Forwarded message -----

From: **Bill Smith** <bill@owllabs.com>

Date: Wed, Jun 9, 2021 at 3:29 PM

Subject: Fwd: Orangeburg County School District -- Owl Labs Follow up

To: Narayan Krishnan <narayan.krishnan@owllabs.com>

----- Forwarded message -----

From: **Bill Smith** <bill@owllabs.com>

Date: Wed, Jun 9, 2021 at 3:53 PM

Subject: Fwd: Orangeburg County School District -- Owl Labs Follow up

To: <daphne.walley@ocsdsc.org>

Hi Daphne,

Thanks for speaking with me today. Obviously there is some confusion where this money has gone. We did not work with Level 8 on this, below are the direct transcripts from David and Team paying Owl Labs directly the first 50% of the amount that is associated with the attached PO.

Please let me know if you dig up more on your end as soon as possible. Let's plan to regroup either later this afternoon or tomorrow.

Thank you!

Bill



Bill Smith

Account Executive at **Owl Labs**

+1 857-214-4341, ext. 022

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----- Forwarded message -----

From: **David Marshall** <david.marshall@ocsdsc.org>

Date: Fri, Nov 13, 2020 at 9:45 AM

Subject: Re: Orangeburg County School District -- Owl Labs Follow up

To: Bill Smith <bill@owllabs.com>

Cc: Kaylin McNamara <kaylin@owllabs.com>

That's absolutely incredible news. Super pumped, thank you!

Also, we'll go through the same process for the second 50% as the first, with the \$300,000, and the remainder after that.

On Fri, Nov 13, 2020 at 9:43 AM Bill Smith <bill@owllabs.com> wrote:

Hi David,

The payment for \$300,000 did come in. Our finance team is looking into the additional payment, it will likely be shown today if it's processed. and I will update you as soon as I hear back.

The Owls will be shipped out next week and it looks like all 875 Owls will be shipped. Please let me know if you have any questions, and I will update you as soon as the payment information is received.

Thanks,
Bill

On Thu, Nov 12, 2020 at 5:33 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Hi Bill,

Can you check to see if the payments have come through? One for \$300,000, and another for the remainder.

Also, can you reply in writing stating that the 50% amount has been satisfied in full if you've received the funds?

Last thing: do you have any shipping dates and quantities available for us?

Thanks,
David

On Mon, Nov 9, 2020 at 9:21 AM Bill Smith <bill@owllabs.com> wrote:

Great David,

Thanks for the update. I will coordinate with our finance team and let them know.

Thanks,
Bill

On Mon, Nov 9, 2020 at 9:15 AM David Marshall <david.marshall@ocsdsc.org> wrote:

Hi Bill,

Our district's bank limits us to \$300,000 of EFT payments per day, so we sent the first \$300,000 today, and we'll follow up with the balance tomorrow. So all the funds (the first 50% of the total invoice) should be in your account by the end of the week, or Monday at the latest.



David Marshall

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Email david.marshall@ocsdsc.org

Orangeburg County School District

On Thu, Nov 5, 2020 at 4:18 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Great, thanks for the update!



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Thu, Nov 5, 2020 at 3:27 PM Bill Smith <bill@owllabs.com> wrote:
Hi David,

It looks like the first shipment of Owls are set to be shipped in approximately 2-3 weeks. Once we get a little closer to the ship date I will update you accordingly and send out tracking information.

Thank you. Please let me know if you have any questions.

Bill

On Thu, Nov 5, 2020 at 2:10 PM David Marshall <david.marshall@ocsdsc.org> wrote:
Great! So the first 50%, minus this \$100 should be there by the following Thursday.

Do you have any indication of when we'll get our first shipment? We're willing to take any quantity, even if it's like 5 or 10 units.

On Thu, Nov 5, 2020 at 1:52 PM Bill Smith <bill@owllabs.com> wrote:
Hi David,

The test payment came through.

Thank you!
Bill

On Tue, Nov 3, 2020 at 11:00 AM David Marshall <david.marshall@ocsdsc.org> wrote:
Hi Bill,

We sent out a test transaction of \$100 to your bank. Can you please confirm receipt? I've attached the screenshot that finance sent over. We'll send over the 50% payment, minus the

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

test \$100 once you confirm that we're sending to the right place.

 Screen Shot 2020-11-03 at 10.13.56 AM.png



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

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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

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--

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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

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--

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Orangeburg County School District



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Orangeburg County School District

Confirm Payment



This payment cannot be cancelled once it's initiated

\$100.00

Details

To	OWL LABS INC
Routing #	*0399
Account #	*0159
Send on	Tuesday November 3, 2020
Deliver by	Thursday November 5, 2020
Note	OWL LABS INC. TEST

Send

Cancel

This note will not be sent to recipient

RE: Owl Labs Outstanding Invoice

2 messages

Fleur Radovan <fleur.radovan@owllabs.com>

Wed, Jun 9, 2021 at 1:01 PM

Reply-To: Fleur Radovan <messages.4525852.6175.437eb85f8d@4525852.email.netsuite.com>

To: fleur.radovan@owllabs.com, david.marshall@ocsdsc.org

Cc: fleur.radovan@owllabs.com, narayan.krishnan@owllabs.com, john.stevens@owllabs.com

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

 **Invoice 19327.pdf**
23K

Fleur Radovan <fleur.radovan@owllabs.com>

Thu, Jun 10, 2021 at 10:27 AM

Reply-To: Fleur Radovan <messages.4525852.6177.fd3cd4cdf8@4525852.email.netsuite.com>

To: Daphne.Walley@ocsdsc.org

Cc: fleur.radovan@owllabs.com, narayan.krishnan@owllabs.com

[Quoted text hidden]

 **Invoice 19327.pdf**
23K

From: Bill Smith <bill@owllabs.com>

To: Narayan Krishnan <narayan.krishnan@owllabs.com>

Subject: Fwd: Bill Smith -- Owl Labs update

Date: Wed, 16 Jun 2021 15:17:40 -0400

Importance: Normal

Last set of emails I have not sent to you.

Will have the timeline of events sent to you by EOD.

Thanks,

Bill

----- Forwarded message -----

From: **Bill Smith** <bill@owllabs.com>

Date: Wed, Oct 28, 2020 at 4:05 PM

Subject: Re: Bill Smith -- Owl Labs update

To: David Marshall <david.marshall@ocsdsc.org>

David,

It sounds like we should be able to get this done. I'm wrapping up some final information to be able to give you something concrete. I should be able to get that by the time of our call in 25 minutes.

Thanks,

Bill

On Wed, Oct 28, 2020 at 3:12 PM Bill Smith <bill@owllabs.com> wrote:

Great news, I will get with my team now and hopefully have an answer for you shortly.

Thanks,

Bill

On Wed, Oct 28, 2020 at 1:14 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Hey Bill,

I've was able to get our deadline extended just a bit to December 10.

We can do partial shipments (50, then 200, then 15, etc. as an example) as well.

Can you provide a loose shipping schedule? We'll literally take them like 10 at a time.

David

On Wed, Oct 28, 2020 at 12:41 PM David Marshall <david.marshall@ocsdsc.org> wrote:

Hey Bill,

We would absolutely need this in by 12/02, or we risk losing that funding for these devices. We would have to split a partial order between another vendor that has them in stock, like B&H, but I would prefer

to get them directly from you.

If we put in a purchase order today, how many can we get by 12/02?

David



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 12:23 PM Bill Smith <bill@owllabs.com> wrote:

Hi David,

We are juggling a few large orders at the moment so I want to be 100% transparent. We are triple checking to see if we can get 100% of these out by 12/02.

I wanted to see if getting half of these out in that time frame would that be enough information to show as a shipping receipt? The last thing we want is to commit to a date and things out of our control affect shipping times.

What I may suggest is sending in the PO, we will not process it. If we can agree on some sort of shipping delivery we will make sure the order goes in ASAP.

Let me know what you think. I am having an internal meeting later today to discuss this further and get more specific from our team.

Thanks,
Bill



Bill Smith

Account Executive at **Owl Labs**

+1 857-214-4341, ext. 022

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David Marshall

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Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

Fwd: [External] Re: Owl Labs- Please Complete Payment- Order# 19327

5 messages

Bill Smith <bill@owllabs.com>
To: Fleur Radovan <fleur.radovan@owllabs.com>, Narayan Krishnan <narayan.krishnan@owllabs.com>

Wed, Jun 16, 2021 at 10:23 AM

Good Morning,

Here are the rest of the emails with David Marshall. These are specifically regarding the "hack" that prevented their first payment. I am unable to make tomorrow's meeting, so if you need anything from me please let me know and I will get you over whatever you need.

Thanks,
Bill

----- Forwarded message -----

From: **Harry Meltzer** <harry.meltzer@owllabs.com>
Date: Wed, Jan 27, 2021 at 4:47 PM
Subject: Re: [External] Re: Owl Labs- Please Complete Payment- Order# 19327
To: David Marshall <David.Marshall@ocsdsc.org>
Cc: Kim Gaughan <kim@owllabs.com>, Bill Smith <bill@owllabs.com>, Brian Walrath <brian.walrath@owllabs.com>

Hi David,

Sorry to hear about all of this - sounds like a nightmare.

Attached, please find the request documents.

Let us know if there is anything further we can do to help.

Best,

Harry Meltzer

On Wed, Jan 27, 2021 at 4:19 PM David Marshall <David.Marshall@ocsdsc.org> wrote:

Hi Kim,

Thanks for your patience. Please note that this is confidential information.

In short, our district has suffered from a cryptocurrency attack, and our superintendent is consulting with our district lawyers to determine whether to pay the ransom to decrypt all of our essential servers, including our financial software that we use for processing budgets and payments.

Our superintendent is leaning towards not paying the ransom and letting our insurance make payouts to our vendors. If that's the case, we can expect checks to be sent out directly from Allianz Global, our cyber insurance provider, by the end of March / beginning of April (they've given us a two-month timeline for the investigation).

Allianz has requested that we provide invoices and proof of settlement for the funds at each vendor.

If you could please provide email to me:

- a PDF invoice with your company name, remittance address, and invoice number included, (I've already attached this), and
- a PDF letter to Allianz Global stating that the {\$358,391.25} amount will be applied to invoice {19327}, and that no further balance is being carried with your company after this has been paid.

...that would be great. I'll fill out the necessary paperwork on my end, combine it with your documents, and get it submitted. This is one of our largest balances that we have so we'd like to get it paid as soon as possible.

Thank You,
David



David Marshall
Communications, Business & Community Partnerships
Phone (816) 830-0064
Email david.marshall@ocsdsc.org
Orangeburg County School District

From: Kim Gaughan <kim@owllabs.com>
Sent: Wednesday, January 27, 2021 9:43 AM
To: David Marshall <David.Marshall@ocsdsc.org>
Cc: Harry Meltzer <harry.meltzer@owllabs.com>; Bill Smith <bill@owllabs.com>; Brian Walrath <brian.walrath@owllabs.com>
Subject: [External] Re: Owl Labs- Please Complete Payment- Order# 19327

*** 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 David!

I spoke with Bill yesterday and he mentioned you had some updated information regarding your upcoming payment. Would you mind sending that along at your earliest convenience?

Best,
Kim Gaughan
Operations
Owl Labs

ROA_440

OWL_LABS_000105

On Mon, Jan 25, 2021 at 8:52 AM Kim Gaughan <kim@owlabs.com> wrote:
Hi David!

I hope you are doing well and that you and yours are staying safe! I'm following up on your remaining balance. We have not yet seen the payment come through. Could you give us an update?

Best,
Kim

On Thu, Dec 31, 2020 at 8:51 AM David Marshall <david.marshall@ocsdsc.org> wrote:

We really appreciate it. IF it's an emergency, I'm sure we can get someone in there, but if it's okay to wait a few weeks, it'd be the safer route.

Thank you!

On Thu, Dec 31, 2020 at 8:48 AM Harry Meltzer <harry.meltzer@owlabs.com> wrote:

David,

Thanks for this update - we totally understand! The safety of you and your staff is paramount. Can't wait to hear how the deployment goes!

I'll check in again in a couple of weeks. How does that sound?

Happy new year!

Best,

Harry

On Thu, Dec 31, 2020 at 8:45 AM David Marshall <david.marshall@ocsdsc.org> wrote:

All,

Our school district was slated to come back from winter break right after the new year, but now we're being told that our departments are being phased back into the buildings (see our website and the attached). I expect that we'll be able to send the payment in under three weeks.

Our ACH transfers can only be initiated from our district's IP address, so we're having to wait to make vendor payments.

Thank you for your patience. I will keep you updated on the payment.

Also, THANK YOU for fulfilling the order so quickly. We're so excited to deploy the Owls!

On Wed, Dec 30, 2020 at 1:16 PM Kim Gaughan <kim@owlabs.com> wrote:

Hello,

This is a reminder that the remaining balance on your Owl Labs invoice is due. Please submit payment as soon as possible.

Attached, please find Wire/ACH instructions for submitting payment.

Use the following for remittance:

Remittance Address:

Owl Labs Inc
DEPT 0557
PO BOX 120557
DALLAS TX 75312-0557

Courier Deposits:

Dallas Regional Lockbox
Owl Labs Inc
890557
[1501 NORTH PLANO RD STE 100](#)
[RICHARDSON TX 75081](#)

Please reach out if you need any assistance!

Best,
Kim Gaughan
Operations
Owl Labs



**David
Marshall**

Communications, Business & Community
Partnerships

Phone

(816) 830-0064

Email

david.marshall@ocsdsc.org

**Orangeburg County School
District**

--
Harry Meltzer
Operations Associate
Owl Labs
he/him/his



**David
Marshall**

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Phone

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david.marshall@ocsdsc.org

**Orangeburg County School
District**

--
Harry Meltzer
Operations Associate
Owl Labs
he/him/his

2 attachments

Allianz Global_Owl Labs.pdf
55K

Invoice 19327 50% Remainder.pdf
23K

Narayan Krishnan <narayan.krishnan@owllabs.com>
To: Bill Smith <bill@owllabs.com>
Cc: Fleur Radovan <fleur.radovan@owllabs.com>

Wed, Jun 16, 2021 at 11:02 AM

Thanks Bill. Are you also able to provide a bulleted timeline of the relationship? Fill out what you can...starting with the initial lead and I will fill in the back end from this week.

Thanks again.

Narayan
[Quoted text hidden]

Bill Smith <bill@owllabs.com>
To: Narayan Krishnan <narayan.krishnan@owllabs.com>, Kaylin McNamara <kaylin@owllabs.com>
Cc: Fleur Radovan <fleur.radovan@owllabs.com>

Wed, Jun 16, 2021 at 3:32 PM

Orangeburg County School District Timeline

10/23 — David reached out to sales@owllabs.com about the potential to order 800+ Owls

10/23 - spoke on the phone to which David said he'd prefer to purchase direct and would let me know

10/23 - "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
"

10/23 — sent quote and booked time for demo on 10/26.

10/26 - Had meeting and they already gotten a demo unit (ordered online)

10/28 — got approval from "his team" but had a hard deadline bc of CARES act

"We would absolutely need this in by 12/02, or we risk losing that funding for these devices. We would have to split a partial order between another vendor that has them in stock, like B&H, but I would prefer to get them directly from you.

If we put in a purchase order today, how many can we get by 12/02?

David
"

10/29 - PO Sent to us.

11/10 — First payment of \$300,00 was received

11/29 — David introduced us to Andress Carter-Simms assistant superintendent of curriculum

Training info sent over to Shawn Foster, Andress and David

12/31 "All,

Our school district was slated to come back from winter break right after the new year, but now we're being told that our departments are being phased back into the buildings (see our website and the attached). I expect that we'll be able to send the payment in under three weeks.

Our ACH transfers can only be initiated from our district's IP address, so we're having to wait to make vendor payments.

Thank you for your patience. I will keep you updated on the payment.

Also, THANK YOU for fulfilling the order so quickly. We're so excited to deploy the Owls! "

1/27 : David Says School district was hacked

Hi Kim,

ROA_442

OWL_LABS_000107

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Thanks for your patience. Please note that this is confidential information.

In short, our district has suffered from a cryptocurrency attack, and our superintendent is consulting with our district lawyers to determine whether to pay the ransom to decrypt all of our essential servers, including our financial software that we use for processing budgets and payments.

Our superintendent is leaning towards not paying the ransom and letting our insurance make payouts to our vendors. If that's the case, we can expect checks to be sent out directly from Allianz Global, our cyber insurance provider, by the end of March / beginning of April (they've given us a two-month timeline for the investigation).

Allianz has requested that we provide invoices and proof of settlement for the funds at each vendor.

If you could please provide email to me:

- a PDF invoice with your company name, remittance address, and invoice number included, (I've already attached this), and
- a PDF letter to Allianz Global stating that the {\$358,391.25} amount will be applied to invoice {19327}, and that no further balance is being carried with your company after this has been paid.

...that would be great. I'll fill out the necessary paperwork on my end, combine it with your documents, and get it submitted. This is one of our largest balances that we have so we'd like to get it paid as soon as possible.

Thank You,
David
“

Rest of correspondence was lead by Kim, Harry, John Stevens and other folks trying to get the second payment
[Quoted text hidden]

Narayan Krishnan <narayan.krishnan@owllabs.com>
To: Bill Smith <bill@owllabs.com>
Cc: Kaylin McNamara <kaylin@owllabs.com>, Fleur Radovan <fleur.radovan@owllabs.com>

Thanks Bill

10/23 — David Marshall reached out to sales@owllabs.com about the potential to order 800+ Owls from an OCSD email address

10/23 - spoke on the phone to which David said he'd prefer to purchase direct and would let me know

10/23 - "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
“

10/23 — sent the quote and booked time for a demo on 10/26.

10/26 - Had a meeting and they already got a demo unit (ordered online)

10/28 — got approval from “his team” but had a hard deadline bc of the CARES act

“We would absolutely need this in by 12/02, or we risk losing that funding for these devices. We would have to split a partial order between another vendor that has them in stock, like B&H, but I would prefer to

If we put in a purchase order today, how many can we get by 12/02?

David
“

10/29 - OCSD PO signed by Gary Twittie sent to us.

11/10 — Received 50% of the PO via ACH from OCSD to Owl Labs Silicon Valley Bank (no mention of Level 8)
- 11/4 - \$100.00
- 11/10 - \$300,000.00
- 11/13 - \$58,291.25

11/29 — David introduced us to Andress Carter-Simms assistant superintendent of curriculum

Training info sent over to Shawn Foster, Andress, and David

12/31 - email from David advising Owl Labs on the status of the 2nd payment (no other OCDS people were included)

“All,

Our school district was slated to come back from winter break right after the new year, but now we're being told that our departments are being phased back into the buildings (see our website and the attached letter) to send the payment in under three weeks.

Our ACH transfers can only be initiated from our district's IP address, so we're having to wait to make vendor payments.

Thank you for your patience. I will keep you updated on the payment.

Also, THANK YOU for fulfilling the order so quickly. We're so excited to deploy the Owls! “

1/27 : In response to a collection email from Owl Labs, David Says School district was hacked

Hi Kim,

Thanks for your patience. Please note that this is confidential information.

In short, our district has suffered from a cryptocurrency attack, and our superintendent is consulting with our district lawyers to determine whether to pay the ransom to decrypt all of our essential servers, including our financial software that we use for processing budgets and payments.

Our superintendent is leaning towards not paying the ransom and letting our insurance make payouts to our vendors. If that's the case, we can expect checks to be sent out directly from Allianz Global, our cyber insurance provider, by the end of March / beginning of April (they've given us a two-month timeline for the investigation).

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- a PDF letter to Allianz Global stating that the {\$358,391.25} amount will be applied to invoice {19327}, and that no further balance is being carried with your company after this has been paid.

...that would be great. I'll fill out the necessary paperwork on my end, combine it with your documents, and get it submitted. This is one of our largest balances that we have so we'd like to get it paid as soon as possible.

ROA_443

OWL_LABS_000108

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Thank You,
David
"

Rest of correspondence was lead by Kim, Harry, John Stevens and other folks trying to get the second payment

[Quoted text hidden]

Narayan Krishnan <narayan.krishnan@owllabs.com>
To: Bill Smith <bill@owllabs.com>, Fleur Radovan <fleur.radovan@owllabs.com>

Mon, Dec 20, 2021 at 12:54 PM

[Quoted text hidden]

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Bank Name:
BBVA USA

City, State:
Birmingham, AL

ABA:
062001186

Phone:
205-297-6866

Transaction_ID	Company_Name	Company_Entry_Description	Company_ID	Sending_DFI	Receiving_DFI	Trace_Number	Effective_Date	Settlement_Date	Transmission_Date	Item_Description	Receiver_Name	Receiver_Identification	Amount	DFIAccountNumber	Violation	Type
18656-47894-18602	ORANGEBURG COUNT	FUNDS XFER	9100049513	62001186	121140399	062001185736653	11/4/2020	11/4/2020	11/3/2020	22 - CCD Entry	OWL LABS INC	ORANGEBURG COUN	\$100.00	3301230159	None	
18692-12716-90472	ORANGEBURG COUNT	FUNDS XFER	9100049513	62001186	121140399	062001180847428	11/10/2020	11/10/2020	11/9/2020	22 - CCD Entry	OWL LABS INC	ORANGEBURG COUN	\$300,000.00	3301230159	None	
18714-03151-01854	ORANGEBURG COUNT	FUNDS XFER	9100049513	62001186	121140399	062001183381896	11/12/2020	11/13/2020	11/12/2020	22 - CCD Entry	OWL LABS INC	ORANGEBURG COUN	\$58,291.25	3301230159	None	
Reason_Code	Reason_Code_Description															
Sec_Code	Sec_Code_Description															
CCD	Corporate credit or debit															
Transaction_Type	Transaction_Type_Description															
	22 Demand credit automated deposit															

Form submission

Oct 23, 2020 at 10:48 AM EDT

David Marshall submitted [Support | Contact Support Page](#) on [Contact Owl Labs Support](#).

Updated 5 properties

Email	david.marshall@ocsdsc.org
First name	David
Last name	Marshall
Phone number	8168300064
support_request_description	Hello, we'd like to purchase 875 of these, but they need to be delivered by December 2. Is this possible? Can we purchase through B&H?

Apr 11 2024

REFERENCE ID: 1596451

STATE OF SOUTH CAROLINA
SECRETARY OF STATE


SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws Section 33-44-202 and Section 33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Level 8 Communications LLC

*Note: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is
388 Tybee Lane

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

3. The initial agent for service of process is

David Marshall

(Name)

(Signature of Agent)

And the street address in South Carolina for this initial agent for service of process is:

388 Tybee Lane

(Street Address)

Orangeburg South Carolina 29115

(City) (Zip Code)

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

(a)

David Marshall

(Name)

388 Tybee Lane

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 11 2024

REFERENCE ID: 1596451


SECRETARY OF STATE OF SOUTH CAROLINA

Level 8 Communications LLC

Name of Limited Liability Company

(b)

(Name)

(Street Address)

(City, State, Zip Code)

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.

(a)

(Name)

(Street Address)

(City, State, Zip Code)

(b)

(Name)

(Street Address)

(City, State, Zip Code)

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time _____.

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 11 2024

REFERENCE ID: 1596451


SECRETARY OF STATE OF SOUTH CAROLINA

Level 8 Communications LLC

Name of Limited Liability Company

9. Any other provisions not consistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.

10. Each organizer listed under number 4 must sign.

David Marshall

Signature of Organizer

Date: 08/31/2019

Signature of Organizer

Date: _____

Apr 11 2024

REFERENCE ID: 1596451

STATE OF SOUTH CAROLINA
SECRETARY OF STATE


SECRETARY OF STATE OF SOUTH CAROLINA

OF CHANGE OF (1) DESIGNATED OFFICE, (2) AGENT FOR SERVICE OF
PROCESS, OR (3) ADDRESS OF AGENT
LIMITED LIABILITY COMPANY – DOMESTIC AND FOREIGN

Pursuant to the 1976 S.C. Code of Laws, as amended, §33-44-109, the limited liability company submits the following statement of change.

1. The name of the limited liability company is:

Level 8 Communications LLC

2. The limited liability company is (check either "a" or "b", whichever is applicable):

- ☒ a. A South Carolina limited liability company.
☐ b. A foreign limited liability company authorized to transact business in South Carolina.

3. a. The South Carolina street address of the current designated office for the limited liability company is:
1550 Middleton Street, Suite 903

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

- b. The name of the company's current agent for service of process is:

David Marshall

(Name)

- c. The South Carolina street address of the current registered agent's office is:
388 Tybee Lane

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

4. Check and complete all boxes (a-c) that apply.

- ☒ a. The company is changing the address of its designated office.

The new South Carolina address of the designated office of the limited liability company is:
1550 Middleton Street, Suite 903

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 11 2024

REFERENCE ID: 1596451


SECRETARY OF STATE OF SOUTH CAROLINA

Level 8 Communications LLC

Name of Limited Liability Company

- ☒ b. The company is changing its agent for service of process.

The name of the company's new agent for service of process is:

Zachary Mason

(Name)

I hereby consent to the appointment as registered agent.

Zachary Mason

(Agent's Signature)

- ☒ c. The company is changing the street address of the agent for service of process.

The new South Carolina street address of the registered agent's office is:

1550 Middleton Street, Suite 903

(Street Address)

Orangeburg, South Carolina 29115

(City, State, Zip Code)

5. Unless otherwise specified, these articles are effective when endorsed for filing by the Secretary of State. Specify the time and date of any delayed effective date _____
(Date)

Date: 09/19/2019

Signed as Authorized Signature: Zachary Mason

(Signature)

Zachary Mason

(Print Name)

Capacity/Position of Person Signing (You must check one box.)

☐ Manager ☐ Member ☐ Organizer

☒ Fiduciary ☐ Attorney-in-Fact

Form Revised by South Carolina Secretary of State, August 2016
F0080/F0086

ROA_452

OWL_LABS_000325

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640



Results

Name **DAVID MARSHALL**
DOB
Gender **Male**
Maiden Name
SSN
Transaction **424135866U**
Date of Check **April 24, 2024 at 13:58**

The record is based on a search using **Last Name, First Initial, Gender, and Date of Birth Only**. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
***** CRIMINAL HISTORY RECORD *****

Data As Of 2024-04-24

***** Introduction *****

This rap sheet was produced in response to the following request:

Subject Name(s) MARSHALL, DAVID
Date of Birth
Sex M
Race U

Purpose Code E
Attention WEB, ACCOUNT

The information in this rap sheet is subject to the following caveats:

REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE (SC)

INQUIRY FORWARDED TO INTERSTATE IDENTIFICATION INDEX (SC)

AUTHORIZED USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE (SC)

THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED (SC)

CONTACT SREC IN ORDER TO OBTAIN COMPLETE SOUTH CAROLINA CRIMINAL HISTORY RECORD INFORMATION (SC)

***** IDENTIFICATION *****

Subject Name(s)

MARSHALL, DAVID CORTEZ
MARSHALL, DAVID (AKA)
MARSHALL, DAVID CORTEZ (AKA)

Subject Description

State Id Number
(SC)

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

Sex

Male

Race

Black

Height

5'11"

Weight

160

Date of Birth

Hair Color

Black

Eye Color

Brown

Place of Birth
SC

Palmprint Images
Palmprint Image Available Unknown
(No Palmprint Image Transmitted)

Photo Images
Photo Image Available Unknown
(No Photo Image Transmitted)

Caution Information

Notice

INDIVIDUAL PROHIBITED FROM POSSESSING OR
ACQUIRING FIREARM OR AMMUNITION PURSUANT TO
FEDERAL GUN CONTROL ACT OF 1968. INDIVIDUAL
PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM
OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL
ACT OF 1968. INFORMATION SUBMITTED TO SLED CCH
INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF
A MISDEMEANOR IN WHICH AN OFFENDER COULD
RECEIVE IN EXCESS OF TWO (2) YEARS OF
CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA
CODE OF LAWS. THEREFORE, THIS PERSON IS
INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE
OR FOREIGN COMMERCE AS DEFINED BY THE GUN
CONTROL ACT OF 1968 (18.U.S.C. 922(G)).
(SCIII0000; 2024-04-24)

***** CRIMINAL HISTORY *****

===== Cycle 1 =====

Tracking Number

0001

Earliest Event Date

2017-01-30

Incident Date

2017-01-29

Arrest Date

2017-01-30

Arrest Case Number

32332

Arresting Agency

SC0380000 ORANGEBURG CNTY SO

Subject's Name

MARSHALL, DAVID CORTEZ

Offender Id Number

32332

Comment(s)

Palmprints Available

Comment(s)

Photograph Available

Charge

01

Charge Tracking Number

2017A3810700072

Statute

CRIM SEX CONDUCT W/MINOR(11-14YRS) 2ND DEGREE
(16-3-655(B) (1) SC)

State Offense Code

0396

Severity

Felony

Court Disposition

(Cycle 1)

Court Case Number

17GS3800458

Subject's Name

MARSHALL, DAVID CORTEZ

Charge

01

Charge Tracking Number

2017A3810700072

Statute

ASSAULT AND BATTERY 2ND DEGREE (16-3-600(D) (2)
SC)

NCIC Offense Code

1399

State Offense Code 0341
Severity Misdemeanor
Disposition (2017-12-13; CONVICTED)
Court Comment Court Provision: SCDC 3 YRS SS TO 18 MOS
PROB;CTS.
===== Cycle 2 =====
Tracking Number 0002
Earliest Event Date 2017-12-13-----

Court Disposition (Cycle 2)
Subject's Name MARSHALL, DAVID CORTEZ
Charge 01
Statute ASSAULT AND BATTERY 2ND DEGREE (16-3-600 (D) (2)
SC)
NCIC Offense Code 1399
State Offense Code 3413
Severity Misdemeanor
Disposition (CONVICTED)
Court Comment Court Provision: 3 YRS SS 18 MONTHS PROBATION

Corrections (Cycle 2)
Corrections Agency SC038015G ORANGEBURG PPP

Supervision Case Number SC0380
Correction Action PROBATION

===== Cycle 3 =====
Tracking Number 0003
Earliest Event Date 2022-06-06 Incident Date 2019-12-31

Arrest Date 2022-06-06
Arrest Case Number 76950
Arresting Agency SC0400900 SC TAX COMMISSION
Subject's Name MARSHALL, DAVID
Offender Id Number 76950
Comment(s) Palmprints Available
Comment(s) Photograph Available
Charge 01
Charge Tracking Number 2022A3810700433
Statute EVASION OF TAX OR PROP ASSESSMENT OR PAYMENT
(12-54-44 (B) (1) SC)
State Offense Code 2757
Severity Felony
Charge 02
Charge Tracking Number 2022A3810700434
Statute EVASION OF TAX OR PROP ASSESSMENT OR PAYMENT
(12-54-44 (B) (1) SC)
State Offense Code 2757
Severity Felony
Charge 03
Charge Tracking Number 2022A3810700435
Statute EVASION OF TAX OR PROP ASSESSMENT OR PAYMENT
(12-54-44 (B) (1) SC)
State Offense Code 2757
Severity Felony

***** INDEX OF AGENCIES *****

Agency ORANGEBURG CNTY SO; SC0380000;

Agency SC TAX COMMISSION; SC0400900;

Agency ORANGEBURG PPP; SC038015G;

* * * END OF RECORD * * *

PERSONNEL ORDER

PERSONNEL ACTION

WHEN COMPLETING THIS FORM, PLEASE PRESS FIRMLY WITH PEN OR TYPE

NEW HIRE

TRANSFER

TERMINATION

CHANGE

RETURN

LEAVE OF ABSENCE

VACANCY: YES ☐ NO ☐
(HR OFFICE ONLY)

INSURANCE:

ADD

DELETE

CHANGE

NO CHANGE

DATE: 10-31-17

SOCIAL SECURITY NO.

ID#:

14057

LAST Marshall

FIRST David

MI

SUFFIX

POSITION: Media Comm. Specialist

EFFECTIVE START DATE: 10-31-17

POSITION INFORMATION
(FOR USE BY THE HR OFFICE ONLY)

ADDRESS

CITY

STATE

ZIP

TELEPHONE NO.

RACE:

SEX:

DATE OF BIRTH:

HOURS PER WEEK:

TIME FROM:

TO:

FOR LUNCH)

CERTIFICATE #:

LOCATION #:

CONTRACT DAYS:

STANDARD DAYS:

CURRENT DAYS:

BP YRS OF EXP/STEP:

CATEGORY:

SALARY CLASS:

CONTRACT LEVEL:

TYPE OF EMPLOYEE:

PAY PERIOD:

SALARIED PAY RATE:

ANNUALIZED TAX SALARY:

BUDGETED SALARY:

DAILY RATE:

NEW POSITION OR SUPPLEMENT / POSITION CHANGE

ADD:

DELETE:

POSITION:

FUNCTION:

FTE:

PERSON REPLACED:

ADD:

DELETE:

POSITION:

FUNCTION:

FTE:

PERSON REPLACED:

(FOR DISTRICT OFFICE USE ONLY)

ACCOUNT NUMBER(S)

FTE(S)

From:

To:

LAST DAY WORKED:

EFFECTIVE DATE OF RESIGNATION:

TRANSFERRING TO ANOTHER STATE AGENCY: (Y/N)

COMMENTS: Placed on unpaid leave effective 10-31-17

PRINCIPAL / SUPERVISOR: (SIGNATURE)

HUMAN RESOURCES OFFICER:

FINANCE SIGNATURE:

DATE:

DATE:

DATE:

10/26/17

10/31/17

WHITE - HUMAN RESOURCES GOLD - SCHOOL / DEPARTMENT PINK - FINANCE YELLOW - EMPLOYEE



Division of Human Resources

578 Ellis Avenue
Orangeburg, SC 29115

May 8, 2018

VIA CERTIFIED AND U.S. MAIL

David C. Marshall, Jr.
733 Bramble Lane
Orangeburg, SC 29115

Dear Mr. Marshall:

The purpose of this letter is to notify you in writing that your placement Administrative Leave is concluded as of Friday, May 4, 2018. As you were notified by your supervisor, Bill Clark, you were allowed to return to active status, with pay and benefits, beginning Monday, May 7, 2018

On January 31, 2017, you notified The District that you had been arrested and charged with second degree criminal sexual conduct with a minor. As you are aware, your arrest has been in the newspaper and has received publicity. Consistent with District's practice, I placed you on administrative leave. Following the legal process, the charges were changed to assault and battery, second degree. Your conviction imposed a period of probation that had specific terms and treatment that were to be met. As of April 4, 2018, the terms of probation were met and you were discharged from probation. Pursuant to our agreement, and in conjunction with having all terms and conditions of your probation discharged, we have allowed you to return to active work status.

While we are very concerned about the circumstances which led up to your arrest in this matter, we are willing to allow you to return to your job responsibilities at this time under the following circumstances. Please understand, in matters of this nature, the District must evaluate both the status of the criminal charges as well as the impact of the facts and circumstances surrounding your arrest may have on your ability to be an effective employee. We will continue to monitor the situation and will expect you to keep us apprised of the status of the criminal charges against you if they arise in the future.

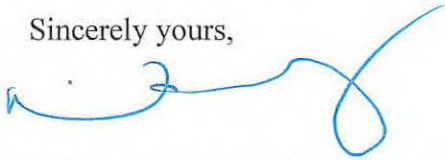
In closing, the administration must insist that you exhibit sound judgment at all times. You are also expected to conduct your personal life in a manner that does not impair your ability to be an effective employee in the District. If, upon your return, it is determined that your conduct and the facts and circumstances that resulted in your arrest have impaired your ability to be an effective employee, should additional facts and circumstances arise regarding this matter, should the criminal charges be reinstated, or if you demonstrate any further unprofessional conduct, we

Mr. Marshall
May 8, 2018
Page 2

reserve the right to take further action against you, including recommending that your employment be terminated.

If you have questions or concerns about this correspondence, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in blue ink, appearing to be "Robert C. Grant Jr.", written over a horizontal line.

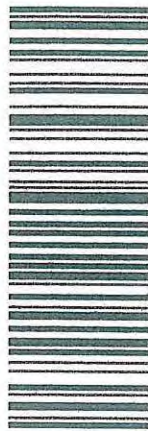
Robert C. Grant Jr., Ed.S.
Chief Human Resource Services Officer

c: Personnel File
Bill Clark, Supervisor
Dr. Jesse Washington III, Superintendent

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640



Division of Human Resour
578 Ellis Avenue
Orangeburg, SC 29115



7013 2250 0000 9769 8173

Mr. David C. Marshall, Jr.
733 Bramble Lane
Orangeburg, SC 29115

Hasler
05/08/2018
FIRST-CLASS MAIL
US POSTAGE \$006.67
ZIP 29115
011E11674105

R10
5.10.18

RECEIVED

JUN 13 2018

By YK/69
Orangeburg Con. School Dist. 5





Division of Human Resources

578 Ellis Avenue
Orangeburg, SC 29115

October 25, 2017

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED,
AND REGULAR U.S. MAIL**

David Marshall, Jr.
733 Bramble Lane
Orangeburg, South Carolina 29115

Dear Mr. Marshall:

The purpose of this letter is to follow up our discussions on September 1, 2017 and October 9, 2017, in which we discussed the allegations which led to your being placed on paid administrative leave on January 31, 2017, after your arrest on January 31, 2017, for second degree criminal sexual conduct.

During your discussion of the charges pending against you, you told us the hearing scheduled for October 2, 2017, had been again postponed. You said the matter will likely be heard on November 6, 2017. However, you were unsure if this court date would be used to request additional time before your trial is set to begin or to set the trial date.

At the conclusion of our discussions, I advised you that regardless of how the criminal charges in this matter are resolved, the District views these allegations very seriously. Further, although a final determination regarding your employment status has not been made, it has been decided that you should now be placed on **unpaid administrative leave**, effective October 31, 2017, and will be allowed to remain on unpaid administrative leave while you work to resolve these charges against you. If, however, the charges are not resolved within a reasonable period of time, a decision will be made with the information we have available. Please be aware that as a condition of being on unpaid leave, you will not be allowed to be on any district property without permission of Superintendent Dr. Jesse Washington, III or myself.

In closing, I will need you to keep me informed of the status of the criminal charge, particularly with respect to any significant development(s) that may occur. In the meantime, if you have any questions or concerns, please feel free to contact me.

Under separate cover, the Benefits Office will forward information to you regarding your right to continue your health insurance coverage, at your own expense through COBRA. Should you have any questions regarding health insurance, please contact Bonnie Bizzell, Benefits Administrator at 803-533-7955.

DEF 00138

Sincerely,



Bob Grant, Ed.S.
Chief Human Resource Services Officer

c: Bill Clark, Public Relation, Marketing, & Telecommunications Director
Bonnie Bizzell, Benefits Administrator
Personnel File



Division of Human Resources
578 Ellis Avenue
Orangeburg, SC 29115

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☐ Adult Signature Restricted Delivery	\$

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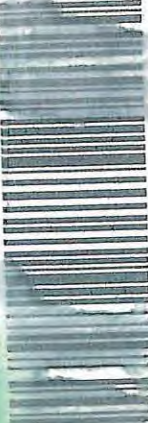
Street a

City, St

PS Form 3800, April 2010

David Marshall, Jr.
733 Bramble Lane
Orangeburg, South Carolina 29115

CERTIFIED MAIL



7016 3560 0000 2991 5819

Hasler

10/26/2017

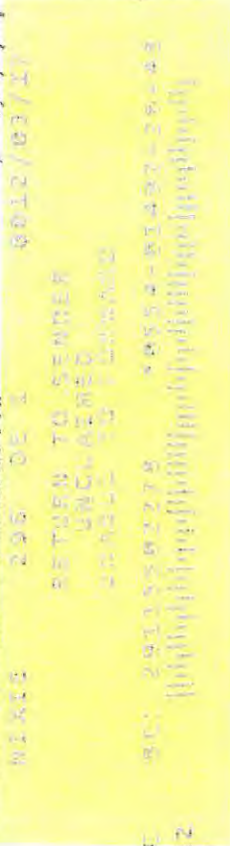
US POSTAGE \$006.56



ZIP 29115

011E11674105

David Marshall, Jr.
733 Bramble Lane
Orangeburg, South Carolina 29115





FILE COPY

Division of Human Resources

578 Ellis Avenue
Orangeburg, SC 29115

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

CERTIFIED AND REGULAR U.S. MAIL

September 6, 2017

David C. Marshall, Jr.
733 Bramble Lane
Orangeburg, SC 29115

Dear Mr. Marshall:

The purpose of this letter is to follow up our discussion on September 5, 2017, in which we discussed the status of the charges pending against you.

As you know, you have been on paid administrative leave since January 31, 2017. At that time, you were advised of my expectation that you keep me apprised of the status of the criminal charges pending against you. I have been informed that you are represented by Thomas Sims, Esq., and a Discovery Hearing was scheduled in this matter in June 2017; however, your attorney requested a motion for additional time for discovery and your next appearance was postponed until October 2, 2017. At that time, you have a court appearance, but are not sure of the next step from that appearance.

During our meeting, I explained that we had hoped that the charges against you would have been resolved by now. Unfortunately, you were not able to give us any indication that the criminal charges will be resolved in the near future. I trust you understand that we are not willing to allow you to remain on paid leave indefinitely. We will, however, give you until October 2, 2017, to make every effort to resolve the pending charges.

Thus, please be advised that regardless of how the criminal charges in this matter are resolved, you will not remain on paid administrative leave beyond **October 2, 2017**. You will be expected to contact me on **October 3, 2017**, regarding the status of this case. We will then make a decision regarding your continued employment in the District.

If you have any questions regarding the contents of this letter, please feel free to contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bob Grant', with a stylized flourish at the end.

Bob Grant
Chief Human Resource Services Officer

c: Bill Clark
Personnel File ✓

DEF 00141

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Total Postage & Fees	\$

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Postmark Here

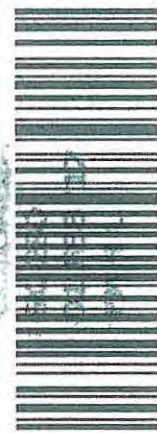
Sent To
Mr. David C. Marshall, Jr.
733 Bramble Lane
Orangeburg, South Carolina 29115

PS Form 38
Use reverse for instructions

CERTIFIED MAIL™



Office of Human Resource Services
578 Ellis Avenue
Orangeburg, SC 29115



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02/01/2017
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US POSTAGE \$006.56
ZIP 29115
01E11674105

Handwritten: 2/11/17
R10
5-2-17

RECEIVED

FEB 22 2017

By *Handwritten:* Hela
Orangeburg Con. School Dist. 5

RECEIVED
FEB 22 2017
By *Handwritten:* Hela
Orangeburg Con. School Dist. 5

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RETURN TO SENDER
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UNABLE TO FORWARD

BC: 29115502278 * 2017-07461-01-32

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UNC

291155022

ELECTRONIC MAIL FEB 20 2017 4:56 PM - ORANGEBURG - COMMON PLEAS CASE# 2024CP3800640

From: [Eric Ham](#)
To: support@owllabs.com
Subject: Need enterprise support
Date: Tuesday, January 5, 2021 4:23:01 PM
Attachments: [Outlook-gtram00c.png](#)

Please let me know who can assist us with get our 875 Owls setup quickly.



Eric Ham

Director of Technology

Phone 803-534-5454

Email eric.ham@ocsdsc.org

Orangeburg County School District

At Orangeburg County School District, we believe our primary purpose is to serve our community through effective teaching and learning for all students. In everything we do, our goal is to create a learning environment built for academic success. Visit us online at ocsdsc.org.

From: [Eric Ham](#)
To: [Owl Labs Customer Support](#)
Subject: Re: [External] Re: Need enterprise support
Date: Wednesday, January 6, 2021 8:17:35 AM

Is there a way to do this in mass. We have 875 of these and we need a rapid deployment with a small IT team?

From: support.106276.d9cc8bf78acc1aae@helpscout.net <support.106276.d9cc8bf78acc1aae@helpscout.net> on behalf of Owl Labs Customer Support <support@owllabs.com>
Sent: Wednesday, January 6, 2021 8:04 AM
To: Eric Ham <eric.ham@ocsdsc.org>
Subject: [External] Re: Need enterprise support

*** 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 Eric,

Thanks for reaching out! I did have a previous email exchange with David Marshall and we did get your Owls all registered in our system. Looks like your name was given as the contact for the bulk registration process. Is this what you are referring to in getting set up? If needed, the final step now that they are all registered is to "unlock" them, which can be done via the app. This step is a bit manual, but it's necessary so the Owl acknowledges that it's registered. You'll also have the opportunity to connect your Owls to Wi-Fi so they stay up to date with the latest software automatically.

Follow [these](#) steps to do the final unlocking.

If you are referring to another piece of setting up or if you have any other questions or concerns, please let me know.

Thanks,

--

Sean Gillis

Have an idea for a new Product feature? We want to hear it! Submit your ideas [here](#).

If you're interested in becoming a beta tester for upcoming products and features, fill out [this form](#) and we'll reach out when we have a matching opportunity!

Overall, how easy was it to get the help you needed?

[Easy](#) [Neutral](#) [Difficult](#)



On Tue, Jan 5, 2021 at 4:23 PM EST, <eric.ham@ocsdsc.org> wrote:

Please let me know who can assist us with get our 875 Owls setup quickly.

Eric Ham
Director of
Technology
Phone 803-534-5454
Email
eric.ham@ocsdsc.org
Orangeburg
County
School
District

At Orangeburg County School District, we believe our primary purpose is to serve our community through effective teaching and learning for all students. In everything we do, our goal is to create a learning environment built for academic success. Visit us online at ocsdsc.org

From: [Taphnie Sanders](#)
To: [Eric Ham](#)
Subject: FW: Bulk registering Owls
Date: Friday, December 4, 2020 8:40:03 AM

Taphnie Berry Sanders, Technology Coordinator

Information Technology

Orangeburg County School District

(803) 533-7975-Office

From: Andress Sims <Andress.Sims@ocsdsc.org>
Sent: Thursday, December 3, 2020 3:31 PM
To: Taphnie Sanders <Taphnie.Sanders@ocsdsc.org>
Subject: Bulk registering Owls

I noticed your name was not included so I wanted to share.

From: support.106276.d9cc8bf78acc1aae@helpscout.net
<support.106276.d9cc8bf78acc1aae@helpscout.net> **On Behalf Of** Owl Labs Customer Support
Sent: Thursday, December 3, 2020 3:24 PM
To: David Marshall <David.Marshall@ocsdsc.org>
Cc: Andress Sims <Andress.Sims@ocsdsc.org>; Quencenia Dantzler <quencenia.dantzler@ocsdsc.org>
Subject: [External] Re: Bulk registering Owls

***** 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 All,

Thanks for sharing that info and accepting our terms. Your Owls are registered. The final step is to "unlock" them, which can be done via the app. This step is a bit manual, but it's necessary so the Owl acknowledges that it's registered. You'll also have the opportunity to connect your Owls to Wi-Fi so they stay up to date with the latest software automatically.

Follow [these](#) steps to do the final unlocking.

Please let me know if you have any other questions.

Thanks,

--

Sean Gillis

Have an idea for a new Product feature? We want to hear it! Submit your ideas [here](#).

If you're interested in becoming a beta tester for upcoming products and features, fill out [this form](#) and we'll reach out when we have a matching opportunity!

Overall, how easy was it to get the help you needed?

[Easy](#) [Neutral](#) [Difficult](#)



On Thu, Dec 3, 2020 at 12:04 PM EST, DocuSign <no-reply@docusign.com> wrote:

DocuSign



Your document has been completed.

[VIEW COMPLETED DOCUMENTS](#)

All signers completed Meeting Owl Bulk Registration DocuSign

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On Thu, Dec 3, 2020 at 12:02 PM EST, DocuSign <no-reply@docuSign.com> wrote:

DocuSign



Eric Ham viewed Meeting Owl Bulk Registration DocuSign.

REVIEW DOCUMENTS

At 12/3/2020 9:02:37 AM PST, Eric Ham opened and viewed your documents, Bulk Registration DocuSign Template.docx, OrangeburgSchoolDistrictSerialNumbers.pdf.

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On Thu, Dec 3, 2020 at 10:17 AM EST, Owl Labs Customer Support
<support@owllabs.com> wrote:

Hi David,

Thank you for providing this information. I just sent a DocuSign to Eric at owlcamera@ocsdsc.org in which he will need to sign and send back to us since his name will be registered to the Owls. Once I receive the signed document, I will go ahead register your devices.

Thanks,

--

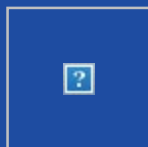
Sean Gillis

Have an idea for a new Product feature? We want to hear it! Submit your ideas [here](#).

If you're interested in becoming a beta tester for upcoming products and features, fill out [this form](#) and we'll reach out when we have a matching opportunity!

On Thu, Dec 3, 2020 at 10:15 AM EST, Owl Labs Support <support@owllabs.com> wrote:

DocuSign



CX Shared Docusign sent you a document to review and sign.

REVIEW DOCUMENT

CX Shared Docusign

support@owllabs.com

Hello,

Please complete this Docusign indicating your acknowledgment of the Owl Labs End User License Agreement (EULA) and Terms of Service (TOS). Once this is completed and returned, we'll begin registering your Meeting Owls.

Best,

The Owl Labs Team

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On Thu, Dec 3, 2020 at 10:12 AM EST, Accounts Payable
<david.marshall@ocsdsc.org> wrote:

Email Address: owlcamera@ocsdsc.org
Contact Name: Eric Ham
Company name: Orangeburg County School District

Thank you!



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Thu, Dec 3, 2020 at 10:11 AM EST, Bill Smith <bill@owllabs.com> wrote:

Hi David,

I have copied Sean and our support team on this email because they need a few more bits of information as they begin Registering the Owls.

We need:

Email Address:
Contact Name:

Company name:

- Sean if I missed anything feel free to reply to this thread. Thanks David. Let me know if you need anything else before then!

Bill

On Thu, Dec 3, 2020 at 8:54 AM David Marshall <david.marshall@ocsdsc.org> wrote:

Howdy! Can you please register our batch of Owls under the owlcamera@ocsdsc.org email address?



David Marshall

Communications, Business & Community Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Fri, Nov 13, 2020 at 3:50 PM Bill Smith <bill@owllabs.com> wrote:

Of course!

We just got word the other payment was received. Please let me know if you have any other questions. Additionally, our team would love to set up a call and answer any questions you may have regarding unboxing/shipping/installing.

Let me know if you or any teammates would like to hop on a call sometime next week to discuss expectations and go over any questions you may have.

Thank you, have a great weekend!

Bill

On Fri, Nov 13, 2020 at 9:45 AM David Marshall <david.marshall@ocsdsc.org> wrote:

That's absolutely incredible news. Super pumped, thank you!

Also, we'll go through the same process for the second 50% as the first, with the \$300,000, and the remainder after that.

On Fri, Nov 13, 2020 at 9:43 AM Bill Smith <bill@owllabs.com> wrote:

Hi David,

The payment for \$300,000 did come in. Our finance team is looking into

the additional payment, it will likely be shown today if it's processed. and I will update you as soon as I hear back.

The Owls will be shipped out next week and it looks like all 875 Owls will be shipped. Please let me know if you have any questions, and I will update you as soon as the payment information is received.

Thanks,
Bill

On Thu, Nov 12, 2020 at 5:33 PM David Marshall
<david.marshall@ocsdsc.org> wrote:

Hi Bill,

Can you check to see if the payments have come through? One for \$300,000, and another for the remainder.

Also, can you reply in writing stating that the 50% amount has been satisfied in full if you've received the funds?

Last thing: do you have any shipping dates and quantities available for us?

Thanks,
David

On Mon, Nov 9, 2020 at 9:21 AM Bill Smith <bill@owllabs.com> wrote:

Great David,

Thanks for the update. I will coordinate with our finance team and let them know.

Thanks,
Bill

On Mon, Nov 9, 2020 at 9:15 AM David Marshall
<david.marshall@ocsdsc.org> wrote:

Hi Bill,

Our district's bank limits us to \$300,000 of EFT payments per day, so we sent the first \$300,000 today, and we'll follow up with the balance tomorrow. So all the funds (the first 50% of the total invoice) should be in your account by the end of the week, or Monday at the latest.

David Marshall

Communications, Business & Community
Partnerships



Phone (816) 830-0064

Email david.marshall@ocsdsc.org

Orangeburg County School District

On Thu, Nov 5, 2020 at 4:18 PM David Marshall

<david.marshall@ocsdsc.org> wrote:

Great, thanks for the update!



David Marshall

Communications, Business & Community
Partnerships

Phone (816) 830-0064

Email david.marshall@ocsdsc.org

**Orangeburg County School
District**

On Thu, Nov 5, 2020 at 3:27 PM Bill Smith

<bill@owllabs.com> wrote:

Hi David,

It looks like the first shipment of Owls are set to be shipped in approximately 2-3 weeks. Once we get a little closer to the ship date I will update you accordingly and send out tracking information.

Thank you. Please let me know if you have any questions.

Bill

On Thu, Nov 5, 2020 at 2:10 PM David Marshall

<david.marshall@ocsdsc.org> wrote:

Great! So the first 50%, minus this \$100 should be there by the following Thursday.

Do you have any indication of when we'll get our first shipment? We're willing to take any quantity, even if it's like 5 or 10 units.

On Thu, Nov 5, 2020 at 1:52 PM Bill Smith

<bill@owllabs.com> wrote:

Hi David,

The test payment came through.

Thank you!
Bill

On Tue, Nov 3, 2020 at 11:00 AM David Marshall
<david.marshall@ocsdsc.org> wrote:

Hi Bill,

We sent out a test transaction of \$100 to your bank. Can you please confirm receipt? I've attached the screenshot that finance sent over. We'll send over the 50% payment, minus the test \$100 once you confirm that we're sending to the right place.



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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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

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

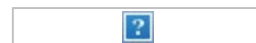
David,

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

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--
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Orangeburg County School District

On Wed, Dec 2, 2020 at 9:58 AM EST, Owl Labs Customer Support
<support@owlabs.com> wrote:

Hi Quencenia,

Perfect, thank you! Once I have that info, we can get the bulk registration process started.

Thanks,

--

Sean Gillis

Have an idea for a new Product feature? We want to hear it! Submit your ideas [here](#).

If you're interested in becoming a beta tester for upcoming products and features, fill out [this form](#) and we'll reach out when we have a matching

opportunity!

On Wed, Dec 2, 2020 at 9:35 AM EST, Quencenia Dantzler

<quencenia.dantzler@ocsdsc.org> wrote:

Hello,

We will be conferring with our Technology Department today and will share the requested details by Monday, December 7, 2020.

Kindest regards,



Quencenia Dantzler

Director of Virtual School Education

Phone 803-534-5454

Email quencenia.dantzler@ocsdsc.org

Orangeburg County School District

At Orangeburg County School District, we believe our primary purpose is to serve our community through effective teaching and learning for all students. In everything we do, our goal is to create a learning environment built for academic success. Visit us online at ocsdsc.org

On Tue, Dec 1, 2020 at 1:26 PM EST, Owl Labs Customer Support

<support@owllabs.com> wrote:

Hi All,

Hope you all are having a great day! This is Sean from Owl Labs support. I wanted to reach out to begin the bulk registration process on your 875 Owls. What I need from you in order to register your Owls is:

- The name, email, and company name you'd like the Owls registered to.

After I receive this info, you'll receive a Docusign that you'll need to complete indicating that you agree to our [End User License Agreement](#) and [Terms of Service](#), and opt-in or out of our email updates. The process we will follow will skip this step in the Meeting Owl app so it is important that we capture this agreement from you in the Docusign.

Please let me know if you have any other questions.

Thanks,

--

Sean Gillis

Have an idea for a new Product feature? We want to hear it! Submit your ideas [here](#).

If you're interested in becoming a beta tester for upcoming products and features, fill out [this form](#) and we'll reach out when we have a matching opportunity!

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

United States of America,)
)
Plaintiff,)
)
-versus-) 5:21-CR-00841
) June 7, 2022
David Cortez Marshall,) Columbia, SC
)
Defendant.)
-----)

BEFORE THE HONORABLE MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE, PRESIDING
Sentencing Hearing

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

For the Government: Brook Andrews, AUSA
United States Attorney's Office
1441 Main Street, Suite 500
Columbia, SC 29201

For the Defendant: Jonathan Harvey, Esq.
Jonathan Harvey Law Office
1701 Richland Street
Columbia, SC 29201

Court Reporter: Kathleen Richardson, RMR, CRR
United States Court Reporter
901 Richland Street
Columbia, SC 29201

STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

*** **

1 crime with a college degree. He was a scholarship student
2 and he had a good job as a public servant working in IT. He
3 had a good future ahead of him. He had a wife and a child.
4 There was no need or obvious reason for him to commit a crime
5 of fraud and of theft, and yet he decided to do so any way.

6 I should point out, too, the background of this offense
7 happened in the middle of the pandemic. Mr. Marshall was
8 tasked with finding the Orangeburg School District cameras
9 with which they could use to onboard into remote education so
10 that every teacher in a classroom could communicate remotely
11 with all of her students who were at home around the country.

12 Schools received federal funds to purchase products like
13 this so they could facilitate distance learning. And so they
14 asked Mr. Marshall to do that. And in doing that, he saw an
15 opportunity to enrich himself.

16 He created a sophisticated scheme with a number of
17 different shell companies through which he used to purchase
18 these cameras and then sell them back to the school district
19 at a substantial markup with neither the seller nor the buyer
20 knowing that he was the intermediary that they were
21 communicating with.

22 He used false identities, he created false e-mail
23 accounts, he went through extravagant lengths to deceive both
24 the seller and the buyer and would have gotten away with the
25 scheme had one of his accounts not gotten frozen and the

Exhibit 16

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

STATE OF NEVADA)
)
COUNTY OF Washoe) AFFIDAVIT

Personally appeared before me John Stevens and, having being duly sworn, deposes and states as follows:

1. My name is John Stevens. I currently serve as Owl Labs Inc.'s Chief Financial Officer. I have personal knowledge of the facts contained in this affidavit.

2. On December 3, 2020, Orangeburg County School District employee Eric Ham, agreed to Owl Labs' terms of service by registering the devices the District received from Owl Labs.

3. A true and correct copy of the version of Owl Labs' terms of service that were effective from September 2020 through December 2020 are attached as **Exhibit 1**

4. By registering the devices and agreeing to the terms of service, the District agreed to pay Owl Labs' attorneys' fees and costs in the event of a dispute between the parties.

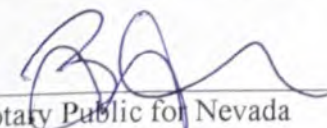
Further affiant sayeth naught.



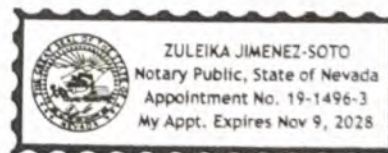
John Stevens

Sworn to and subscribed before me

this 4th day of March, 2025



Notary Public for Nevada



My Commission Expires: NOV. 9 2028

Exhibit 1

ELECTRONICALLY FILED - 2025 Mar 06 4:56 PM - ORANGEBURG - COMMON PLEAS - CASE#2024CP3800640

We are pleased to offer you access to the Services conditioned on your acceptance without modification of the following Terms of Service.

PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE WEBSITE OR ANY SERVICES, SOFTWARE, APPS OR DEVICES PROVIDED BY OWL LABS (THE "OWL PRODUCTS"). YOUR USE OF OWL PRODUCTS CONFIRMS YOUR UNCONDITIONAL ACCEPTANCE OF THE FOLLOWING TERMS, THE OWL END-USER LICENSE AGREEMENT LOCATED HERE:

<https://www.owllabs.com/end-user-license-agreement>, THE OWL PRIVACY POLICY LOCATED HERE <https://www.owllabs.com/privacy-policy> , THE OWL SOFTWARE LICENSE LOCATED HERE:

<https://www.owllabs.com/software-licenses>. IF YOU DO NOT ACCEPT THESE TERMS, DO NOT USE THIS WEBSITE OR ANY SERVICES, SOFTWARE, APPS OR DEVICES PROVIDED BY OWL LABS.

1) Eligibility.

You affirm that you are of legal age, authorized by your employer (if applicable) and that you are otherwise fully able and competent to enter into these Terms and to abide by and comply with these Terms. You represent that you are over 18 years of age.

2) Use of Services.

a. Configuration. The OWL Devices and the App work together, and the Devices may be configured via the App. When you configure your Device, you will be able to assign a name to the Device.

b. Accurate Information. You agree that the information you provide to Owl Labs at all times will be true, accurate, current, and complete. To use the App, and register your Device, you will be asked to provide your name and email address, which is the only personally identifiable information collected by Owl. To use the Services, you may be asked to enter a user ID or password that has been provided to you. You are solely responsible for maintaining the confidentiality of your Product portal, user ID, and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur on your device or with your Product. Owl Labs currently makes the Services available over the Internet. You shall provide at your own expense, all necessary telephone lines, Internet connections, equipment, software (including a compatible web browser), and services for you to effectively access the Services. You are responsible for upgrading and configuring your internal systems (e.g. network settings,

Internet routing, fire walls, and web browsers) to be and remain compatible with and optimize the performance of the Services.

c. Prohibited Conduct. BY USING THE SERVICES YOU REPRESENT AND WARRANT THAT YOU WILL NOT: (a) stream or otherwise make available copyrighted material that is not your own or that you do not have the legal right to distribute, display and otherwise make available to others; (b) harass, threaten, or defraud other Services users; (c) stream or otherwise make available content that is threatening, embarrassing, hateful, racially or ethnically insulting, defamatory, pornographic, violates the intellectual property rights, privacy rights or other legal rights of third parties or is otherwise inappropriate; (d) impersonate another person or access another user's PIN or Product without that person's permission; (e) share passwords issued by Owl Labs or PINs with any third party or encourage any other user to do so (except when providing PINs to third parties you authorize to access your Streaming Content (as defined below); (f) misrepresent the source, identity, or content of information transmitted in connection with your use of the Services; (g) use the Services for any unlawful purpose or in violation of any applicable law or regulation; (h) upload material that is damaging to computer systems or data of Owl Labs or other users of the Services (e.g. a virus, Trojan horse, or other malicious code); or (i) use the Services to advertise any product or service that is prohibited or regulated by applicable laws or regulations, or to engage in any false or misleading or otherwise unlawful or objectionable advertising practice.

You may not use the Services in any manner that in our sole discretion could damage, disable, overburden, or impair them or interfere with any other party's use and enjoyment of the Services. You may not attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, or any part of them, through hacking, password mining or any other means or interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. The Services may contain systems designed to restrict or regulate access to the Services. You agree that you will not bypass any measures we may use to prevent or restrict access to the Services.

d. Streaming Content. For users of the Product, the Services provide certain features which may enable you to share video, by streaming

such video live over the Internet. You understand that all Streaming Content is the sole responsibility of the person from whom such content originated. This means that you, and not Owl Labs, are entirely responsible for all content that you stream or otherwise make available through the Internet. You acknowledge that Owl Labs does not pre-screen, monitor or approve Streaming Content and that Owl Labs makes no representations and has no liability with respect to the content or availability of any Streaming Content.

Although Owl Labs has no obligation to do so, Owl Labs reserves the right, in its sole discretion, to deactivate a Device, if, for example, it deems such content to be in violation of these terms.

e. No Endorsement. You understand that Owl Labs does not endorse and is not responsible for the appropriateness, accuracy, usefulness, safety, or intellectual property rights of or relating to such Streaming Content. You further understand and acknowledge that you may be exposed to Streaming Content that is inaccurate, offensive, indecent, or objectionable. YOU AGREE TO WAIVE, AND HEREBY DO WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES YOU HAVE OR MAY HAVE AGAINST OWL LABS WITH RESPECT THERETO.

f. Location-Based Services. The Services may provide features that enable Owl Labs to tailor your experience based on the Device's location. For example, the Device may use its Internet Protocol address ("IP Address") to ensure that content is delivered to you, or bandwidth information to improve the speed and quality of your Streaming Content. In order to use Location-based Services, you must allow Owl Labs access to your localized position, which Owl Labs may access through a variety of means, including, if available, GPS, IP address, cellular tower, and/or other location identifiers now known or later developed, none of which are transmitted to Owl by the Owl Device. If you choose to disable Location-based services on your Device, you will not be able to utilize certain features of the Services. You agree and acknowledge that: (i) Owl Labs may collect device data from your Owl Device, none of which contains personally identifiable information, in connection with the Services and your use of the App, and (ii) if enabled, your Owl Device may provide Location-based Services related to your then-current location for the duration of your session. You acknowledge and agree that Owl Labs does not guarantee the accuracy of any location information, and your use of any Location-based Services is at your sole risk.

g. No Guarantee of Services. Owl Labs cannot guarantee that the Services will always function without disruptions, delay or errors.

A number of factors may impact the quality of your communications and use of the Services, and may result in the failure of your communications, including but not limited to: your local network, firewall, your Internet service provider, the public Internet, the public switched telephone network and your power supply. Owl Labs takes no responsibility for any disruption, interruption or delay caused by any failure of or inadequacy in any of these items or any other items over which we have no control.

h. Your Indemnity. You agree to indemnify, defend, and hold Owl Labs, its affiliates, contractors, employees, agents and its affiliates, suppliers, licensors, and partners harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Apps or Services, your communications, transactions, or dealings with third parties initiated through the Services, your violation of these Terms or any law or regulation, or any breach of the representations, warranties, and covenants made by you in the Terms. Owl Labs reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Owl Labs, and you agree to cooperate with our defense of these claims. Owl Labs will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

i. Fees. For any Services for which Owl Labs charges a fee, you agree that Owl Labs may charge to your credit card or other payment mechanism selected by you and approved by Owl Labs, all amounts due and owing for the Services, including Service fees, set up fees, subscription fees, or any other fee or charge associated with your Account. Owl Labs may change prices at any time, including changing from a free service to a paid service and charging for Services that were previously offered free of charge; provided, however, that Owl Labs will provide you with prior notice and an opportunity to terminate your Account if Owl Labs changes the price of Services to which you are subscribed and will not charge you for previously free Services unless you have been notified of the applicable fees and agreed to pay such fees. You agree that in the event Owl Labs is unable to collect the fees owed to Owl Labs for the Services through your Account, Owl Labs may take any other steps it deems necessary to collect such fees from you and that you will be responsible for all costs and expenses incurred by Owl Labs in connection with such collection activity, including collection fees, court costs and attorney fees.

You further agree that Owl Labs may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.

You understand and acknowledge that third party fees may apply to your use of the Services, including without limitation fees charged by your mobile service provider or Internet provider for network access, data transmission, or other similar fees. You are solely responsible for all such fees.

3) App Use.

a. License. The App is licensed, not sold or otherwise transferred, to you. Subject to your acceptance of, and ongoing compliance with, the Terms (including payment of any applicable license fees and compliance with all license restrictions) and all applicable laws, Owl Labs hereby grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to install and use one copy of the App in object code format, solely for your personal use, on only one iOS or Android device that you own or control. You may not use the App on any device that you do not own or control, and you may not distribute or make the App available over a network where they could be used by multiple devices at the same time. You may not rent, lease, lend, sell, reproduce, redistribute or sublicense the App. You may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the App, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law).

The Terms, together with Owl Labs Privacy Policy, will govern any upgrades provided by Owl Labs that replace and/or supplement the original App, unless such upgrade is accompanied by a separate license in which case that license will govern.

b. Consent to Use of Data. You agree that Owl Labs may collect and use technical data and related information, including, but not limited to, technical information about your handset, device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of the Services, including software updates, product support and other services to you (if any) related to the App or Services; but not any personally identifiable information other than name and email address. Owl Labs may use this and other information you provide for a variety of purposes. To learn more about our policies with respect to the collection, use and disclosure of information, please review our Privacy Policy.

c. Notice Regarding Apple and Google: You acknowledge that the Terms are between you and Owl Labs only, not with Apple or Google, and neither Apple nor Google is responsible for the App and the content thereof. Neither Apple nor Google has no obligation whatsoever to furnish any maintenance and support services with respect to the App. Neither Apple nor Google has no other warranty obligation whatsoever with respect to the App, and neither is responsible for addressing any claims by you or any third party relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Neither Apple nor Google is responsible for the investigation, defense, settlement and discharge of any third party claim that the App or your possession and use of the App infringes that third party's intellectual property rights. You agree to comply with any applicable third party terms, when using the App. Apple, Google and their subsidiaries, are third party beneficiaries of these Terms, and upon your acceptance of the Terms, Apple and Google will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third party beneficiary of the Terms. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. This license is subject to applicable Apple and Google Store Terms and Conditions.

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If you are a corporation, non-profit organization, public entity, educational institution or other type of organization, Owl Labs may use your name and logo to identify you as a customer of Owl Labs on our website and on presentations, marketing materials and other documents identifying or listing our customers. If you do not wish to be identified as a customer of Owl Labs, you may send an email to Marketing (support@owllabs.com) to request to be removed from publicly available customer lists and we will remove you from such list.

5) Revisions to these Terms.

These Terms may be revised at any time by us by updating this posting. You should visit this page from time to time to review the then current Terms because they are binding on you. Certain

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16) submissions.

Owl Labs company policy does not allow it to accept or consider creative ideas, suggestions, or materials other than those it has specifically requested. Accordingly, we must request that no

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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,	)	PLAINTIFF’S MOTION FOR
	)	RECONSIDERATION OF SUMMARY
v.	)	JUDGMENT ORDER
	)	
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
Defendant.	)	

Pursuant to Rule 59(e), SCRCP, Plaintiff Owl Labs Inc. (“Owl Labs”) respectfully requests reconsideration of the Court’s order, dated June 6, 2025 (“Summary Judgment Order”).

In dismissing Owl Labs’ negligence and negligent hiring, retention, and supervision claims, the Summary Judgment Order misconstrues, or fails to apply, applicable law; disregards, or overlooks, genuine issues of material fact; and improperly construes inferences in Defendant’s favor. To the contrary of the Summary Judgment Order, the record evidence establishes:

(i) The District knew Marshall was an accused criminal before the misconduct in question and failed to supervise him in his ongoing job duties with the District.

(ii) The District knew or should have known about Marshall’s involvement with other prior transactions between the District and Level 8, an unauthorized third-party vendor.

(iii) The District acted unreasonably in retaining Marshall after knowing of both his criminal history and his involvement with transactions involving significant expenditures of tax payer dollars with third party vendors, and failing to supervise Marshall in the performance of his job duties despite this knowledge.

(iv) The District’s own knowledge of Marshall and his background and ongoing job duties with the District made it foreseeable to the District that Marshall’s ongoing involvement with these types of purchases, and the transaction in issue, could happen again, and could harm third-parties, such as Owl Labs.

(v) The District owes a duty to the public, third-party vendors, and the taxpayers of the State of South Carolina under the terms of both the State Procurement Code and the District’s own procurement policy.

(vi) The District failed to train or supervise multiple employees regarding the State Procurement Code and the District's own procurement policies, fostering the conditions the enabled Marshall's scheme.

(vii) The District knew Marshall was negotiating with a third party to contract for the purchase of the Owl Devices in issue and, further, the District was aware of Owl Labs' involvement in the transaction in question before Marshall took the District's money and injured Owl Labs.

The Summary Judgment Order found that the only legal duty owed by the District to Owl Labs arose from the alleged contract. *See* Order at p. 5. Respectfully, this conclusion overlooks the independent legal duties asserted by Owl Labs—duties that arise not from contract, but from obligations imposed by law. These duties are owed to the public at large, such as tax payers and current and prospective third-party vendors, including Owl Labs, and exist separate and apart from any contractual relationship between the District and Owl Labs. These duties arose *before* the contract in issue was ever consummated. These duties are owed even if the jury finds no contract was created between the parties in this case.

The Court failed to acknowledge binding legal authority regarding the existence and enforceability of these obligations and the factual disputes that support such claims. Accordingly, Owl Labs respectfully requests that the Court reconsider its ruling and reinstate the claims for negligence and negligent hiring, retention, and supervision for resolution by the trier of fact.

LEGAL STANDARD

Summary Judgment

“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). In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable

to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). “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 should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 325-26, 608 S.E.2d at 159 (citations omitted).

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), SCRPC. The Court is not to weigh the evidence. *See S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “[W]here further inquiry into the facts of the case is desirable to clarify the application of law,” summary judgment is not appropriate. *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) (citation omitted).

Reconsideration

“It is proper to view a Rule 59(e) motion as not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. South Carolina Dept of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). “A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision[.]” *Id.* (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)).

“There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument It is inherently unfair to disallow such an opportunity.” *Id.* Motions for reconsideration can afford a court the

opportunity to consider implications of an order not fully examined in the prior motion's briefing and argument. *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998).

ARGUMENTS

I. THERE ARE GENUINE ISSUES OF MATERIAL FACT SUPPORTING OWL LABS' CLAIMS FOR NEGLIGENT HIRING, RETENTION, AND SUPERVISION.

Despite acknowledging that Owl Labs' claims are based on its allegations that "Defendant *failed to supervise* one or more employees and *failed to train* its employees and [*failed to*] *enforce its policies regarding procurement*, which resulted in Plaintiff's damages," Summary Judgment Order at p. 2 (emphasis added), the Court nevertheless concluded that Owl Labs' claims arose solely out of the alleged contract between the parties. *Id.* at pp. 5-6. In doing so, the Court failed to address Owl Labs' core contention—and the supporting evidence—that the District owed separate legal duties to the public, which includes Owl Labs, arising from its role as both an employer and a public entity, independent of any contractual relationship between them.

The record establishes that the District's own actions (and inactions) are what created the conditions that enabled Marshall to commit the act in question—before any contract was finalized. It is undisputed the District was aware of Marshall's prior criminal history¹ and it nevertheless failed to implement reasonable supervision over his conduct. In fact, the District—through Marshall's immediate supervisor (Eric Ham)—authorized Marshall to communicate with third party vendors regarding the Owl Devices that the District sought to purchase. The District cannot dispute that it then failed to oversee or supervise Marshall's communications, including the ones that other employees received directly. This combination of known risk, lack of oversight, and

¹ See Owl Labs' Memorandum in Opposition to District's Motion for Summary Judgment at Exh. 13 (OWL_LABS_000330-332), SLED Report.

failure to exercise reasonable care gives rise to actionable legal duties that arose before and are distinct from the contract Marshall later bound the District to with Owl Labs.

Additionally, the Court found that the District had procurement policies in place, as required by the State Procurement Code, which Owl Labs alleges the District repeatedly failed to follow. *See* Summary Judgment Order at p. 2. Specifically, Owl Labs contends that the District failed to train numerous employees on the State Procurement Code and the District's own procurement policy, failed to supervise those employees in the performance of their duties, and failed to enforce the State Procurement Code and the District's own procurement policy at various levels. These institutional oversights and failures created multiple opportunities for Marshall to engage in misconduct involving his sham company, Level 8, and not just the single transaction at issue. The Court overlooked that the District's own behavior, independent of any contractual terms, legally supports separate negligent supervision theories of liability.

The South Carolina Supreme Court has long recognized that legal duties may arise independently of contractual privity. In *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495, 496 (1992), the Court held:

An employer also may have a legal duty arising out of a contract which flows to a plaintiff with whom he is not in privity of contract. This occurs when an employer, by entering into a contract with an employee, places himself in such a relation with the plaintiff that the law imposes upon the employer an obligation, **sounding in tort and not in contract**, to act in such a way that the plaintiff will not be injured.

(emphasis added). This principle is reinforced in *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 598 S.E.2d 717, 723 n.1 (2004), which further clarified that such a duty may render the employer liable for torts committed by the employee in the scope of employment.

In short, the District's legal duties arise from its public responsibilities under the State Procurement Code and the District's own procurement policy as well as its employment obligations and decisions—not merely from the contract. By failing to apply controlling legal authority and by overlooking the genuine issues of material fact concerning the District's broader legal duties, the Summary Judgment Order was issued in error and should be reconsidered.

A. The District owes legal duties as an employer and there are genuine issues of material fact of the District's negligent retention of Marshall.

South Carolina law imposes duties on employers to exercise reasonable care in hiring, retaining, and supervising employees. As explained in *James v. Kelly Trucking Co.*:

[W]here an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring . . . the employee.

377 S.C. 628, 661 S.E.2d 329, 330 (2008). To state a claim for negligent retention, the plaintiff must allege that the employer had actual or constructive knowledge of the employee's prior misconduct and, despite the foreseeability of harm to third parties, failed to act. *See Doe v. ATC, Inc.*, 367 S.C. 199, 205–06, 624 S.E.2d 447, 450–51 (Ct. App. 2005); *see also Callum v. CVS Health Corp.*, 137 F. Supp.3d 817, 860-61 (D.S.C. 2015) (denying motions to dismiss claims of negligent retention and supervision against CVS for intentional torts of its employees on its property).

As *Doe* makes clear: “The standard . . . is whether the employer knew the offending employee was in the habit of misconducting [himself] in a manner dangerous to others.” 367 S.C. at 206, 624 S.E.2d at 450–51. Even “a single isolated incident of prior misconduct,” as long as the employer knew or should have known of it “may support a negligent retention claim, “provided the prior misconduct has a sufficient nexus to the ultimate harm.” *Id.* at 208, 624 S.E.2d at 451. In *Webb v. Lott*, No. 3:19-2031-JMC-SVH, 2020 WL 11613552 (D.S.C. Dec. 16, 2020),

the federal court, citing *Doe*, recognized “Plaintiff’s burden [in making a claim for negligent supervision and retention] is not heavy and that such considerations are generally in the province of the jury.” *Id.* at *21.

Here, the District acted negligently by continuing to employ Marshall, despite knowing he had been charged with a serious criminal offense.² The record is undisputed that the District retained Marshall in the role of Media Communications Specialist,³ entrusted him with media production and external communications with third-party vendors who sold media-related products, like the Owl Devices in issue, and later allowed him to participate in substantial financial transactions, with little or no oversight. Marshall’s facilitation of transactions between the District and Level 8 extended beyond the single incident at issue,⁴ including an array of prior unauthorized and improper transactions between Level 8 and the District, suggesting a broader pattern of misconduct, and improper expenditure of public funds, that the District unreasonably failed to detect or prevent. The District knew or should have known of Marshall’s criminal propensity as well as his involvement in prior inappropriate and unauthorized transactions between the District and Level 8. These facts make it such that the District knew or should have known that his misconduct created a foreseeable risk to third-parties, such as Owl Labs.

This conduct satisfies both prongs of the *Doe* analysis: (1) the District’s knowledge of Marshall’s serious criminal history as well as its knowledge of Marshall’s involvement in prior unauthorized transactions between the District and Level 8, and (2) a clear nexus between that history and the foreseeable harm that occurred. Indeed, the misuse of public funds through

² See Owl Labs’ Mem. in Opp. to Mot. for Summary Judgment at Exh. 14 (DEF 00141).

³ *Id.* at Exh. 4, Foster Dep. at 120:11-16.

⁴ *Id.* at Exh. 8, Twitty Dep. at 11:11-24 (testifying Level 8 was already in the system, because the District had other transactions with Level 8, so Twitty did not check the contract number provided; which turned out to be a contract number for a different entity).

procurement—by an employee (Marshall) known to be facing serious criminal allegations—presents precisely the type of risk that negligent retention doctrines are intended to guard against.

At a minimum, the facts in the record clearly create genuine issues of material fact for trial as to the scope of the District’s knowledge of Marshall’s wrongdoing and the foreseeability of future misconduct. The *Doe* court emphasized that the elements of a negligent retention claim are typically factual matters best resolved by a jury—not by summary judgment:

From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. **Such factual considerations—especially questions related to proximate cause inherent in the concept of foreseeability—will ordinarily be determined by the factfinder, and not as a matter of law.**

367 S.C. at 208, 624 S.E.2d at 450 (citations omitted) (emphasis added).

Despite this authority, the Court’s Summary Judgment Order summarily concluded that Owl Labs’ negligent retention claim arose solely out of the alleged contract. This conclusion overlooks the independent legal duty owed by the District as an employer before Marshall bound the District to the contract in issue. The District’s legal duty as an employer exists even if the contract that Marshall entered into with Owl Labs is found not to be binding against the District. Because genuine issues of material fact exist—and because the foreseeability of harm and causation are quintessentially jury questions—Owl Labs submits that this Court should reconsider its Summary Judgment Order and reinstate Owl Labs’ claim for negligent hiring and retention.

B. The District owes the public (including Owl Labs) legal duties as an employer and there are genuine issues of material fact of the District’s negligent supervision of Marshall.

The District also breached its independent legal duty as an employer to supervise Marshall in the performance of his job responsibilities as Media Communications Specialist. The Summary

Judgment Order failed to consider this separate and distinct legal duty and the genuine issues of material fact in the record which support Owl Labs' claim for negligent supervision.

It is blackletter law in South Carolina that an employer owes a legal duty to supervise employees: "In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in . . . supervising[] or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public." *James*, 377 S.C. at 631, 661 S.E.2d at 330. Our courts recognize that a negligent supervision claim is a distinct and independent cause of action, separate from negligent hiring or retention. *Doe*, 367 S.C. at 205, 624 S.E.2d at 450.

An employer may be liable for negligent supervision where its employee, even if acting outside of the scope of employment, intentionally (or just carelessly) harms another while using the employer's tools or resources—provided that the employer knew or should have known of its ability to control the employee and the need and opportunity to exercise such control. *Degenhart*, 309 S.C. at 116-17, 420 S.E.2d at 496 (citing Restatement (2d) of Torts § 317 (1965)). This claim "requires the court to focus specifically on what the employer knew or should have known about the specific conduct of the employee in question." *Hoskins v. King*, 676 F. Supp. 2d 441, 448 (D.S.C. 2009) (discussing *James*, and collecting cases); *see also Callum*, 137 F. Supp. 3d at 860.

The Summary Judgment Order omits any analysis of these principles or the extensive record of evidence showing the District's awareness of Marshall's (and others') lack of training as to the State Procurement Code and the District's procurement policies and of Marshall's prior involvement in unauthorized transactions between the District and Level 8. In these circumstances, there is evidence that the District knew or should have known of the foreseeable risk Marshall

posed to other third-party vendors, such as Owl Labs. As established in *Rickborn v. Liberty Life Ins. Co.*, “[a]n employer owes a duty of care to a third party when the possible harm resulting to the third party by the employee could have been reasonably anticipated by the employer.” 321 S.C. 291, 468 S.E.2d 292, 299 (1996).

In *Rickborn*, the employer was held liable for negligent supervision based on its knowledge of an agent’s poor performance, which ultimately resulted in harm to a third party. *Id.* at 305, 468 S.E.2d at 301. There, the Court considered acts of wrongdoing on the part of the employee that were known to the company, such as the knowledge an application for insurance was incomplete, failure to determine a corrected application was submitted, and evidence the company knew the employee had “mishandled the preparation of other applications and was considered by [the company] to be a below average sales agent.” *Id.* at 303, 468 S.E.2d at 299. The Court found that these facts proved the company “was alerted to the fact that [the employee’s] carelessness could cause harm and, therefore, it breached a duty of care owed to [the applicant] by failing to properly supervise [the employee].” *Id.*

Similarly, in this case, Marshall’s known criminal history and the District’s knowledge of Marshall’s involvement in other, prior transactions between the District and Level 8, together with the District’s failure to supervise him, are the facts and circumstances that give rise to the District’s duty. It is the District’s failure to supervise Marshall before the transaction, and not just its failure to supervise him as to his creation of this contract, that gives rise to the District’s legal duty to Owl Labs. The Summary Judgment Order erroneously concludes otherwise, failing to address the relevant facts and controlling law regarding this claim for negligent supervision. *See also Beneficial Financial I, Inc. v. Windham*, 431 S.C. 256, 278-79, 847 S.E.2d 793, 805 (Ct. App. 2020) (reversing award of summary judgment on a claim for negligent and reckless training and

supervision, finding there were genuine issues of material fact for trial as to Beneficial's training and supervision of employees regarding the transaction in dispute).

Despite the District's assertion that it should not be liable because Marshall concealed his dealing with Owl Labs, the record demonstrates otherwise. The District's employees, including assistant superintendents, were copied on emails between Marshall and Owl Labs in November and December 2020, in which Marshall, while using his District-issued email,⁵ negotiated payment terms and instructed Owl Labs to deliver the Owl Devices to the District's warehouse.⁶ These communications also involved the registration of the Owl Devices under the name of Marshall's supervisor, Ham. Even more, the communications revealed to the District (had District employees only read the emails that they undisputedly received), that Marshall agreed, on the District's behalf, to pay Owl Labs directly for the Owl Devices,⁷ not Level 8, as the District wrongfully contends. Accordingly, multiple of the District's employees, including supervisory-level and superintendent-level employees were aware or reasonably should have been aware of Owl Labs' involvement in the transaction and Marshall's communications with Owl Labs before the District's second and final payment for the Devices was made to Level 8 (and thereby, to Marshall).

The District had both the right and ability to control Marshall's conduct. The District does not even attempt to argue this point. Marshall was undisputedly the District's employee and, after becoming aware of his criminal charges, the District put him on administrative leave, demonstrating its undisputed right and ability to control Marshall. As clarified in *Paschal v. Price*,

⁵ Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 13 (OWL_LABS_00001, 00008-00009, 00020, 00031, 00035, 00069-00070).

⁶ *Id.* at OWL_LABS_000007. Twitty testified it was "customar[y]" for the District to transact using a purchase order, admitting a purchase order "is a legal document." Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 8, Twitty Dep. 20:8-11.

⁷ *Id.* at Exh. 14 (DEF 014129-014145).

392 S.C. 128, 132, 708 S.E.2d 771, 773 (2011), the test for employment control is not whether actual control was exercised, but whether the employer had the right and authority to direct the work. Yet, the District, here, failed to exercise even minimal oversight over Marshall's performance of his job duties and responsibilities, despite its clear ability to do so. Instead, the District permitted Marshall to be involved in multiple transactions with Level 8 before the transaction at issue in this case occurred. Ham authorized Marshall to negotiate with a third-party vendor regarding the Owl Devices in issue, which led to the damage to Owl Labs.

The evidence further shows that the District's employees failed to read or act upon not just Marshall's own communications with third parties, but also the communications Marshall had with third parties that were specifically brought to their attention. These communications revealed Marshall's involvement in procurement activity related to the Owl Devices. Ham, Marshall's supervisor, admitted that had anyone read the emails they would have discovered that Owl Labs—not Level 8—was the source of the Owl Devices.⁸ Ham also testified that he believed none of the five District employees read beyond the first few lines.⁹ This admission proves that the District failed to supervise Marshall and others, thereby creating the foreseeable risk that the District's employees would cause harm to a third party like Owl Labs. This inaction further exemplifies a breakdown in the chain of command within the District's organization.

The mere fact that Marshall was communicating with Owl Labs about anything (and not just payment) should have raised alarms within the District's system, but it did not. Ham testified that in "typical" transactions, the District would communicate with a third-party approved vendor

⁸ Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 3, Ham Dep., 82:19-24 ("Yes."); *id.* at 83:17-85:4.

⁹ *Id.* at 83:3-8; *id.* at 83:17-85:4.

(like Level 8, *if* it was approved) rather than with the ultimate seller (like Owl Labs).¹⁰ However, when Ham was shown the communications between Marshall and Owl Labs using the District's email server and on which District employees, including himself, were copied,¹¹ he acknowledged this was atypical.¹² These facts lead to a reasonable inference that someone at the District knew, or reasonably should have known, Marshall was negotiating with Owl Labs, which should have caused the District to investigate further before sending payment to Level 8.

These failures of training and supervision by the District—and not just the eventual formation of the contract in issue—are what give rise to the legal duties owed by the District to Owl Labs. Even if no contract had ever been executed, the District would still be liable for negligently supervising an employee whose foreseeable misconduct caused harm to Owl Labs. Indeed, it cannot be disputed that the misconduct did harm the public: taxpayers whose dollars were spent on this and other allegedly unauthorized transactions with Level 8.

Accordingly, the Summary Judgment Order should be reconsidered. Owl Labs' negligent supervision claim is grounded in law and supported by substantial evidence in the record that creates genuine issues of material fact for trial; it should proceed to resolution by the trier of fact.

C. The District owes the public (including Owl Labs) legal duties as an employer and there are genuine issues of material fact of the District's negligent supervision and training of employees beyond just Marshall.

Separate and apart from the District's failure to reasonably retain Marshall and failure to supervise Marshall, in general, the District also owed (and breached) a broader duty to the public—including Owl Labs—to properly train, supervise, and enforce its procurement policies at multiple

¹⁰ *Id.* at 72:6-18 (“[T]ypically ... when we deal with a third party, we deal with a third party.”); *id.* at 77:14-19 (“[S]o in this case, dealing with Owl Labs, that was a bit unique, correct? A: Yes.”).

¹¹ *Id.* at 80:23-83:8.

¹² *See id.*

levels. Marshall's actions were not executed in a vacuum; rather, they were made possible by systemic and widespread failures at nearly every level of the District's procurement process.

The record demonstrates a pervasive failure of the District to train employees regarding important obligations arising out of the State's Procurement Code and the District's procurement policies. The evidence reveals a complete breakdown in the District's compliance with the State's Procurement Code and its own procurement policies and procedures. Multiple witnesses testified there was little to no training regarding those procedures. According to all witnesses, Greg Twitty, the District's Procurement Coordinator, was responsible for compliance with the Procurement Code.¹³ Twitty, however, testified that he delegated responsibility for vendor verification to the transaction's "end user," in this case, Ham.¹⁴ Yet Ham testified he was provided with little or no training¹⁵ and he did not understand himself to be responsible for vetting vendors.¹⁶

The pattern of deflection continues. Other key employees involved in the District's procurement transactions—including Brandi Gist, the District's Assistant Superintendent for Finance,¹⁷ Daphne Walley, the District's bookkeeper in the IT department,¹⁸ and Gail Sanders, the

¹³ Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 5, Gist Dep. at 13:4-10 (testifying Twitty "was the procurement officer, so he handled everything related to procurement, unless there was an issue, or concern, or question, and we were there to support."); *id.* at 17:14-18; 61:9-19; *Id.* at Exh. 7, Walley Dep. at 18:17-19:6 ("[Twitty] was the procurement officer. And if something had to be purchased, there were procedures that we were expected to follow."); *id.* at 45:6-16 ("[H]e makes sure the district is making purchases with valid vendors. And that if they're on a state contract, they're true state contract vendor[s].... [He's] the person you would go to if you had a question about the legality of a vendor, or a price or something.").

¹⁴ *Id.* at Exh. 8, Twitty Dep. at 14:9-17; 15:7-16:1; 30:20-31:20; 33:22-34: ("Q: And you relied on Mr. Ham to look into the legitimacy of Level 8 before you signed the ... Level 8 [purchase order]? A: Normally, that's how it's done. The end user would have communicated, yeah, with them on what was needed.").

¹⁵ *See id.* at Exh. 3, Ham Dep. 17:18-18:8.

¹⁶ *Id.* at Exh. 3, Ham Dep. at 20:23-14 ("Q: So was it your responsibility at all to look into a vendor to check legitimacy? A: That wasn't my responsibility, not to my knowledge.").

¹⁷ *Id.* at Exh. 5, Gist Dep. at 15:2-9.

¹⁸ *Id.* at Exh. 7, Walley Dep. at 16:10-23.

District's Director of Finance¹⁹—also testified to a lack of training and oversight with respect to the procurement process. Despite their involvement in processing a nearly \$1 million transaction for the Owl Devices, not a single employee verified whether Level 8 was an authorized vendor. No one checked public records, such as those maintained by the South Carolina Secretary of State, which would have revealed Level 8's Articles of Organization listing Marshall as the organizer.²⁰

The District's Motion essentially admits it transacted with an unauthorized third-party, a separate basis of proving the District's negligence, and therefore, liability in this case. The State's Procurement Code and the District's procurement policies required the District to confirm a vendor is legally qualified to contract with the governmental entity before contracting and sending payment.²¹ While Twitty was repeatedly identified as the individual responsible for due diligence,²² Twitty did not check whether Level 8 was on the state contract list or possessed a valid

¹⁹ Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 6, Sanders Dep. at 13:10-11 (testifying she would "periodically . . . look at [the procurement policy] and talk about it."); *id.* at 13:17-19 (testifying she was "[j]ust generally" familiar with the policy).

²⁰ Foster testified that reviewing records with the South Carolina Secretary of State's office to vet a vendor was "what Mr. Twitty would do. That would be in his office as well." *Id.* at Exh. 4, Foster Dep. at 29:21-30:1. Foster also testified that he did not typically look at or see a business's articles of incorporation during the vetting process. *Id.* at 42:18-24.

Foster testified it would have been inappropriate for the District to do business with a company owned by an employee. *Id.* at Exh. 4, Foster Dep. at 68:22-69:4; *see also id.* at Exh. 3, Ham Dep. at 38:18-24 ("Q: If you had seen this [Level 8 Articles of Incorporation], would that have raised any red flags for you? A: Yes. Q: So would you all be allowed to use a vendor that was associated with an employee? A: No.").

See also id. at Exh. 13 (OWL_LABS_000321-323), Level 8 Articles of Incorporation; *Id.* at OWL_LABS_000324-325, Level 8's registered agent (David Marshall), filed September 19, 2019. *See also id.* at Exh. 4, Foster Dep. at 43:9-20 (did not know Marshall was listed in Level 8's articles of incorporation).

²¹ *See id.* at Exh. 4, Foster Dep. 78:6-14.

²² *Id.* at Exh. 6, Sanders Dep. at 16:2-8 ("that's what Greg [Twitty] does."); *id.* at 16:20-23 (further testifying that performing due diligence on a vendor "should have been an ongoing requirement. It should still be an ongoing requirement."); *id.* at 39:5-11; *id.* at 40:16-23 (testifying that had someone looked at Level 8's address and determined it was a post office, it might have sent off some flags within District's system; "I would say so."). *Id.* at Exh. 4, Foster Dep. 25:5-26:27:5. Other District employees also affirmed it was Twitty's responsibility, including Gail Sanders, District's Director of Finance. *Id.* at Exh. 6, Sanders Dep. at 49:1-11 ("Q: What procedures are in place to make sure that a purchase order is valid? A: He [Twitty] goes on and checks sam.gov to make sure that the – for disbarment and that type of thing for a

employer identification number.²³ He simply relied on Ham.²⁴ Ham testified that he did not confirm whether Level 8 was an approved vendor and conceded that had he known of Marshall's connection to Level 8, the District would not have transacted with it.²⁵

The District's convenient, post-hoc statement that its internal safeguards detected the erroneous transaction in this case²⁶ is flatly contradicted by the record. This transaction with Owl Labs only came to light after Owl Labs contacted the District to inquire about its overdue payment. Only then did Gail Sanders check the District's payments to Level 8 and discover "Marshall was the person that endorsed the checks."²⁷ Only then did the District dig deeper into its prior transactional history to determine the full scope of Marshall's misdeeds through Level 8. By then, the taxpayers' money was gone and Marshall had spent it. Daphne Walley candidly admitted this could have been prevented had the District ensured "that all of [its] vendors were actually in the vendor file, were actually vetted as bona fide vendors."²⁸ It did not.

The fact that the District engaged in *multiple* transactions with Level 8,²⁹ not just the one at issue, all under the misinformed (and uninformed) belief that Level 8 was an authorized vendor, is what gives rise to the District's legal duty to Owl Labs before the contract at issue ever arose

vendor. ... And then he'll also check, as well, to see if they're on a state contract. Q: And you would expect that he [Twitty] did that right before purchasing from Level 8; is that right? A: Yes.").

²³ *Id.* at Exh. 8, Twitty Dep. at 18:6-19:11 ("Q: [D]id you do anything to determine whether or not Level 8 had the available and appropriate financial material, equipment, facility, and personnel resources and expertise or the ability to obtain them? A: No, sir. I didn't go through that process to that in-depth. Q: Did you determine whether they had a satisfactory record of performance? A: I had no recollection that it was any problem with Level 8 from the end user. ... Q: Did you do any due diligence on Level 8? A: I had no reason to at that time[.]").

²⁴ *Id.* at Exh. 8, Twitty Dep. at 14:9-17.

²⁵ *Id.* at 29:22-24.

²⁶ *Id.* at, Foster Dep. at Exh. 4, 71:7-9.

²⁷ *Id.* at Exh. 6, Sanders Dep. at 19:23-20:1.

²⁸ *Id.* at Exh. 7, Walley Dep. at 49:25-50:4.

²⁹ *Id.* at Exh. 3, Ham Dep. at 29:1-6; *id.* at 30:12-31:1.

and even if the contract in issue is unenforceable. The multiple failures across various departments—training, supervision, verification, and enforcement of the procurement code—reflect a pattern of negligence within District’s operation that created an obvious and foreseeable future risk to third parties, such as vendors like Owl Labs. Yet, the District failed to act to detect or prevent such foreseeable risk. As the Supreme Court has held, “[a]n employer owes a duty of care to a third party when the possible harm resulting to the third party by the employee could have been reasonably anticipated by the employer.” *Rickborn*, 321 S.C. at 303, 468 S.E.2d at 299.

Proper application of South Carolina law, alongside a full and fair review of the factual record, reveals the existence of legal duties owed by the District to Owl Labs beyond just the contractual obligation arising from the District’s Purchase Order with Owl Labs. The multiple genuine issues of material fact as to these claims are inappropriate for resolution at summary judgment. The Court should therefore reconsider its Summary Judgment Order and reinstate Plaintiff’s claims for negligent hiring, retention, and supervision.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT SUPPORTING OWL LABS’ CLAIM FOR NEGLIGENCE

For similar, but distinct, reasons from Owl Labs’ claims for negligent hiring, retention, and supervision, there is overwhelming evidence in the record to support Owl Labs’ negligence claim, and the Court’s order granting summary judgment against this claim should be reconsidered.

To establish a claim for negligence, Owl Labs must show: (1) a duty of care, (2) a breach of that duty by a negligent act or omission, and (3) damages proximately resulting from the breach. *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011); *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). Negligence is the failure to exercise the level of care that a person of ordinary prudence and reason would exercise under the same

circumstances. *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011); *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014).

The District owed Owl Labs legal duties beyond those arising in contract. These tort duties exist independently and arise from the District's conduct, the foreseeable harm resulting from its actions, and its control (or lack of control) of its employees. South Carolina law is clear that duties in tort may coexist with or arise from contractual relationships. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) ("If [the defendant] acts in a way as to violate a legal duty ... his liability is **both** in contract and in tort.") (emphasis added); *McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 46, 644 S.E.2d 43, 47–48 (2007) (affirming that a contractual relationship can create an affirmative legal duty in tort).

The District's arguments—and the Court's acceptance of those arguments—mistakenly assume that Marshall's misconduct falls entirely outside of the District's scope of responsibility. However, under the doctrines of agency and respondeat superior, the District remains legally responsible for the tortious conduct of its employees while they are acting in the scope of their employment—even if that conduct was contrary to internal policy or express instructions.³⁰ *See S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 184, 348 S.E.2d 617, 624 (Ct. App. 1986); *Wade v. Berkeley County*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998).

As long as the employee's conduct was in furtherance of the employer's business and reasonably necessary to accomplish its objectives, liability attaches. *Wade*, 330 S.C. at 319, 498 S.E.2d at 688; *James C. Greene & Co.*, 290 S.C. at 179, 348 S.E.2d at 621 ("*respondeat superior* makes a master liable to a third party for injuries caused by the tort of his servant committed within

³⁰ *See* District's Motion for Summary Judgment at ¶¶ 1, 2, 5 (asserting the District never had a contract with Owl Labs, the Purchase Order was "fraudulent[ly] . . . issued without authority," and Marshall's conduct was "unauthorized.").

the scope of the servant's employment.”). Even where facts are in dispute, the question of whether the employee was acting within the scope of employment is generally a question for the jury. *Wade* at 319, 498 S.E.2d at 688 (“Any doubt as to whether the servant was acting within the scope of his authority when he injured a third person must be resolved against the master, at least to the extent of requiring that the question be submitted to the jury.”) (citing *Adams v. South Carolina Power Co.*, 200 S.C. 438, 21 S.E.2d 17 (1942)).

In *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (Ct. App. 2013), the Court reversed a grant of summary judgment as to the existence of an agency relationship as well as the scope of employment. *Id.* at 54, 748 S.E.2d at 633. Instead, as to employment, the Court found that “the proper question for the circuit court was whether Mrs. Smith’s acts facilitating her husband’s investment scheme were: (1) in furtherance of Euro’s business and (2) reasonably necessary to accomplish the purpose of her employment” *Id.* at 53, 748 S.E.2d at 633. The Court found there were genuine issues of material fact on these points.

Here, too, there are genuine issues of material fact as to whether Marshall’s conduct in contacting Owl Labs (after Ham’s authorization), negotiating the sale of the Owl Devices (which was known or should have been known to the District if its employees had simply read their own emails), and transmitting the purchase order using his District-issued email address to Owl Labs, were all taken in furtherance of the District’s legitimate educational operations—namely, acquiring necessary video/audio conferencing devices to enable remote learning during the COVID-19 Pandemic. These actions, in Owl Labs’ view, were clearly within the scope of Marshall’s role as Media Communications Specialist, as confirmed by the testimony from Ham, Marshall’s supervisor, that he authorized Marshall to pursue the acquisition of the Owl Devices

through a third-party vendor.³¹ In fact, the District received and used all 875 Owl Devices in its classrooms, directly benefitting from Marshall's actions.

These facts support the conclusion that Marshall's actions, even if ultimately improper, occurred within the course and scope of his employment and therefore subject the District to tort liability under respondeat superior. Because there are genuine issues of material fact regarding the existence of the legal obligation between the District and Owl Labs, there is a genuine issue of material fact for trial regarding Owl Labs' negligence claim.

CONCLUSION

The Court's Summary Judgment Order should be reconsidered pursuant to Rule 59(e), SCRPC. The District owes legal duties to Owl Labs outside of the alleged contract under well-established legal principles. The District breached its multiple duties as an employer to reasonably retain, train, and supervise its employees, and it breached its duties as a public entity in failing to train, supervise, and enforce the State's Procurement Code and its own procurement policies in ways that directly and foreseeably resulted in Owl Labs' damages.

Specifically, the record reflects that the District:

- Retained Marshall as an employee despite knowing of his serious criminal misconduct, which created a foreseeable risk of future harm to third parties. This failure led to multiple transactions between the District and Level 8, including, but not limited to, the transaction at issue in this case with Owl Labs.

³¹ *Id.* Owl Labs' Mem. in Opp. to Mot. for Summary Judgment at Exh. 3, Ham Dep. at 28:4-19; *see also* 34:13-35:6 (testifying "[Marshall] was always around or ... always kind of showed up. ... And he'd say, 'Hey, my buddy over at Level 8 can get these and they can get them at this price,' you know, whatever else. ... And, you know, he'd be like, 'I'll talk with him and find out and I'll let you know.' And then we would get an email from Zach [Mason].").

See also Id. at Exh. 15, Sentencing Hearing Transcript (June 7, 2022) at 6:7-15 ("Marshall was tasked with finding the Orangeburg School District cameras with which they could use to onboard into remote education so that every teacher in a classroom could communicate remotely with all of her students who were at home around the country. Schools received federal funds to purchase products like this so they could facilitate distance learning. And so *the[] [District] asked Mr. Marshall to do that.* And in doing that, he saw an opportunity to enrich himself.") (emphasis added).

- Failed to supervise or exercise reasonable control over Marshall, including a failure to conduct even minimal due diligence into Level 8. The District did not review the very emails between Marshall and Owl Labs that Ham authorized him to have and on which multiple employees were copied. This oversight occurred prior to the District's sending a second payment to Level 8 for the transaction at issue, evidencing that the second payment could have (and should have been) stopped and redirected to Owl Labs.
- Failed to train and enforce the State's Procurement Code and its own procurement policies, thereby enabling Marshall's misconduct. The widespread disregard for those policies throughout the District's organization was a proximate cause of the conduct that harmed Owl Labs.
- Failing to reasonably ensure the performance of its contractual obligations, giving rise to a parallel duty of care in tort and contract under South Carolina law.

These failures were not just isolated missteps or a product of Marshall's own criminal conduct. Rather, they reflect the systemic negligence that a jury is entitled to evaluate. Under South Carolina law, where genuine issues of material fact exist regarding the existence and breach of legal duties, the scope of employment, and causation, summary judgment is inappropriate.

Therefore, Owl Labs respectfully requests the Court reconsider its Summary Judgment Order and reinstate the negligence and negligent hiring, retention, and supervision claims. The District's Motion for Summary Judgment should have been denied as to these claims in light of the binding legal authority and substantial disputed issues of material fact in the record.

Respectfully submitted,

s/Lyndey R. Z. Bryant

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Attorneys for Plaintiff Owl Labs, Inc.

June 16, 2025.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
Owl Labs,	)	C.A. No. 2024-CP-38-00640
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S RULE 59(e)
	)	MOTION TO RECONSIDER
Orangeburg County School District,	)	
	)	
Defendant.	)	

Defendant, Orangeburg County School District ("District"), by and through its undersigned counsel, hereby moves this Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 59(e), SCRCF, granting the District's Rule 59(e) Motion to Reconsider the Court's Order dated June 6, 2025, and altering the prior ruling to grant summary judgment to the District on all of the Plaintiff's claims, on the following grounds:

1. The undisputed evidence establishes that the District never had a lawful or enforceable contract with Owl Labs and, therefore, summary judgment should be entered for the District on this claim.
2. The uncontradicted evidence demonstrates that Owl Labs, as a matter of law, cannot establish the essential elements of a *quantum meruit* claim; thus, summary judgment should be entered for the District on this cause of action.

The grounds for the Defendant's Rule 59(e) Motion to Reconsider will be more fully set forth in its memorandum of law to be provided prior to a hearing on this motion. The District also relies on the pleadings, records, files, depositions, its prior memorandum of law, and other discovery in this matter, as well as the applicable statutory and case law and the South Carolina

Rules of Civil Procedure.

Respectfully submitted,

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June 16, 2025
Columbia, South Carolina

RECEIVED

Aug 14 2025

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

Owl Labs, Inc., ...Appellant,

v.

Orangeburg County School District.....Respondent.

NOTICE OF APPEAL

Owl Labs, Inc. (“Appellant”), by and through its undersigned counsel, hereby appeals the order of the Honorable Charles J. McCutchen (the “Lower Court”), filed June 6, 2025, granting Respondent Orangeburg County School District’s (“Respondent”) Motion for Summary Judgment on the claims of negligence, negligent supervision and retention and Appellant’s request for attorney’s fees. Appellant also appeals the Lower Court’s Order, filed July 15, 2025, denying Appellant’s Motion for Reconsideration of Summary Judgment Order (collectively, the “Orders on Appeal”).

Copies of the Orders on Appeal are provided as Exhibits A and B. Appellant is providing a copy of this Notice to the Clerk of Court of the Orangeburg County Court of Common Pleas, the Honorable Charles J. McCutchen, and all counsel of record.

Respectfully submitted,



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August 14, 2025.

Exhibit A

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.	)	
	)	
ORANGEBURG COUNTY SCHOOL	)	
DISTRICT,	)	
	)	
Defendant.	)	
	)	

ORDER**RECEIVED****Aug 14 2025****SC Court of Appeals**

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

Electronically signed on 2025-06-06 10:27:20 page 8 of 8

Exhibit B

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
OWL LABS, INC.,)
)
Plaintiff,)
)
v.)
)
ORANGEBURG COUNTY SCHOOL)
DISTRICT,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2024-CP-38-00640

RECEIVED

Aug 14 2025

SC Court of Appeals

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF SUMMARY
JUDGMENT ORDER**

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.

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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), 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

Electronically signed on 2025-07-15 15:49:27 page 3 of 3

Aug 14 2025

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

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

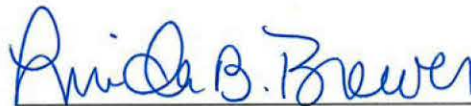
v.

Orangeburg County School District.....Respondent.

PROOF OF SERVICE

I certify that I have the Notice of Appeal on Respondent, Orangeburg County School District, by depositing a copy of it in the United States Mail, postage prepaid, on August 14, 2025, addressed to its attorneys of record, with a courtesy copy sent electronically, as follows:

Allen D. Smith
Susan M. Fittipaldi
Halligan Mahoney Williams Smith Fawley & Reagle PA
PO Box 11367
Columbia, SC 29211
asmith@hmwlegal.com
sfittipaldi@hmwlegal.com



Linda B. Brewer – Paralegal

August 14, 2025



LYNDEY R. Z. BRYANT
Partner

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August 14, 2025

Via Electronic Mail (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

Aug 14 2025

SC Court of Appeals

Re: *Owl Labs, Inc. v. Orangeburg County School District*
C.A. No.: 2024-CP-38-00640
A&R File No. 032454-000001

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal, Exhibits A and B, and a Proof of Service in the referenced civil action. We are mailing to the Court today our check in the amount of \$250.00 to cover the filing fee.

Thank you for your assistance. Please let us know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Bryant". The signature is fluid and cursive, with the first letter "L" being large and prominent.

Lyndey R. Z. Bryant

LRZB/lbb

Enclosures

cc: Owl Labs, Inc.
Allen D. Smith
Susan M. Fittipaldi