

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from the Administrative Law Court  
Administrative Law Judge Crystal M. Rookard

ALC Case No. 23-ALJ-04-0553-AP  
Appellate Case No. 2024-002004

BERNARD JACKSON, #210745,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

APPELLANT'S MOTION TO VOID SETTLEMENT AGREEMENT AND  
REINSTATE APPEAL ON THE MERITS

INTRODUCTION

Appellant Bernard Jackson, pro se, respectfully moves this Court to void the settlement agreement and Stipulation of Dismissal entered on September 9, 2024, and to reinstate this appeal for full briefing and decision on the merits. The settlement is void or voidable on multiple independent grounds: (1) it was procured by fraudulent misrepresentation and undue influence by Respondent's counsel against an unrepresented, incarcerated prisoner; (2) it is unconscionable given the extreme inequality of bargaining power; (3) the settlement

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provision purporting to waive Appellant's long-term savings rights under S.C. Code Ann. § 24-3-40 is void as against public policy; and (4) the substantive wage claims remain governed by mandatory federal law that no state-court settlement can extinguish. The Administrative Law Court further abused its discretion by dismissing the case while Appellant's timely objections alleging fraud and misrepresentation were pending before it and unresolved.

STATEMENT OF FACTS RELEVANT TO THIS MOTION

Appellant Bernard Jackson is an inmate confined at the South Carolina Department of Corrections who was employed in SCDC's Prison Industries program, which participates in the federal Prison Industries Enhancement Certification Program (PIECP) under 18 U.S.C. § 1761(c). Appellant submitted grievances in 2023 asserting that SCDC failed to pay him the prevailing wage rate mandated by S.C. Code Ann. § 24-3-430(D) and by the federal PIECP certification requirements. Those grievances were denied, and Appellant appealed to the Administrative Law Court in November 2023.

Appellant proceeded throughout the administrative and appellate process without legal counsel. He had no access to independent legal advice regarding his rights, the value of his claims, or the legal implications of any proposed settlement.

On September 9, 2024, Respondent's counsel, A. Todd Darwin of Holcombe Bomar, P.A., approached Appellant with a settlement agreement captioned "Final Release of All Claims." Appellant was not represented by counsel at any point during the negotiation. Appellant specifically questioned Respondent's counsel about whether the settlement funds would include all monies owed to him, specifically including the long-term savings deposit required by S.C. Code Ann. § 24-3-40. Respondent's counsel assured Appellant with "certain knowledge" that he would receive all monies owed to him. Relying on that representation, Appellant signed both the Final Release of All Claims and a Stipulation of Dismissal agreeing to dismiss ALC Case No. 23-ALJ-04-0553-AP.

Settlement funds were deposited into Appellant's account on September 25, 2024. Upon receipt of the funds, Appellant discovered that SCDC had deducted from the gross amount for victim restitution and room and board, but had refused to place the required 10% long-term savings deposit into Appellant's escrow account as mandated by S.C. Code Ann. § 24-3-40. Appellant further determined that SCDC had calculated the settlement amount using a deficient wage rate rather than the prevailing wage required by federal PIECP certification standards.

On October 10, 2024, Appellant filed timely objections to the Stipulation of Dismissal with the Administrative Law Court, asserting that the settlement was void or voidable due to fraud, misrepresentation, and undue influence by Respondent's counsel. (ROA Pg. 36-38.) The ALC received those objections before any order of dismissal became final. (ROA Pg. 40.) Appellant also submitted a request to General Counsel for SCDC regarding this dispute, and Respondent agreed to renegotiate the issue via Kiosk Ref. No. 24-03686829 on October 16, 2024. The following day, Appellant moved to stay any further proceedings pending resolution of the dispute. (ROA Pg. 43-45.)

Despite having before it Appellant's unresolved fraud objections, Respondent's agreement to renegotiate, and Appellant's motion to stay, the Administrative Law Court entered its order of dismissal on October 14, 2024, without addressing or ruling upon any of Appellant's pending submissions. (ROA Pg. 40, 46.) This appeal followed.

#### ARGUMENT

##### I. THE SETTLEMENT IS VOIDABLE FOR FRAUD IN THE INDUCEMENT.

Under South Carolina law, a release or settlement agreement procured by fraudulent misrepresentation is void or voidable. *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459 (Ct. App. 2003). The elements of fraudulent misrepresentation are: (1) a

representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or reckless disregard for its truth; (5) the speaker's intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon its truth; (8) the hearer's right to rely upon it; and (9) the hearer's consequent and proximate injury. All elements are satisfied here.

First, Respondent's counsel represented to Appellant with "certain knowledge" that he would receive all monies owed to him under the settlement, including the long-term savings portion under § 24-3-40.

Second, that representation was false. The settlement agreement expressly excluded any long-term savings deposit, and SCDC refused to make the § 24-3-40 deposit.

Third, the representation was material. Appellant's entire rationale for signing the settlement was the assurance that he would receive full compensation including all statutory deposits. The long-term savings issue was the very subject Appellant specifically raised with counsel before signing.

Fourth, Respondent's counsel knew or had reckless disregard for the falsity of the representation. He drafted the settlement agreement himself; the written agreement expressly excluded the long-term savings deposit while he was simultaneously representing orally that all monies would be paid. The

simultaneous oral representation and contrary written provision demonstrates either deliberate falsehood or reckless disregard for the truth.

Fifth, parol evidence of the fraudulent misrepresentation is admissible. The parol evidence rule does not bar evidence of fraud in the inducement, even when the written agreement appears complete and unambiguous. The rule excludes prior agreements that contradict a contract; it does not exclude evidence that the contract itself was obtained by fraud. *Redwend, supra*. The fraudulent misrepresentation occurred before and as the inducement for Appellant's signing - that is the classic case for which the fraud-in-the-inducement exception exists.

Sixth, Appellant had a right to rely upon representations made by opposing counsel. South Carolina Rule of Professional Conduct 4.3 imposes heightened obligations on an attorney dealing with an unrepresented person. An attorney may not give legal advice to an unrepresented person that serves the attorney's client's interests against those of the unrepresented person, and must not make false statements of fact. Respondent's counsel's affirmative representation that Appellant would receive "all the monies owed" was precisely the kind of legal assurance Rule 4.3 prohibits when made in the client's interests against the unrepresented party.

## II. THE SETTLEMENT IS VOIDABLE AS UNCONSCIONABLE.

South Carolina courts will not enforce a contract that is both procedurally and substantively unconscionable. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388 (Ct. App. 1998). Both elements are overwhelmingly present here.

Procedural unconscionability examines the circumstances of contract formation, including relative bargaining power, sophistication of parties, and meaningful choice. Here, Appellant is an incarcerated person with no access to independent legal counsel, no legal training equivalent to the opposing attorney, no ability to independently research the legal implications of the settlement language, and no practical ability to reject the settlement without institutional consequences. He was entirely dependent on representations made by SCDC's own private Counsel. His institutional dependency on SCDC — for housing, food, access to work programs, and daily existence — creates an inherently coercive environment that undermines the voluntariness of any agreement SCDC presents for his signature. This is not a commercial negotiation between sophisticated parties of equal means. It is an institution with absolute power over the petitioner's daily life presenting him with documents to sign without counsel.

Substantive unconscionability examines whether the terms are unreasonably one-sided. The settlement here: (a) expressly

waived statutory rights under § 24-3-40 that the legislature enacted for the protection of prisoners; (b) was calculated using a wage rate that may be deficient under the applicable federal PIECP prevailing wage standard; (c) purported to release "any and all claims... including any appellate court" matters with sweeping language an unrepresented layperson could not fully appreciate; and (d) included language specifically designed to avoid the § 24-3-40 deposit obligation — terms that served exclusively SCDC's interests. These terms are substantively one-sided to a degree that shocks the conscience.

**III. THE SETTLEMENT'S WAIVER OF § 24-3-40 LONG-TERM SAVINGS IS VOID AS AGAINST PUBLIC POLICY AND AS CONTRARY TO A NON-WAIVABLE STATUTORY MANDATE.**

Even if this Court upholds the settlement in all other respects, the specific provision excluding the § 24-3-40 long-term savings deposit is independently void as against public policy and cannot be enforced. Parties may not contract to violate a statute enacted for the protection of a class of persons. Restatement (Second) of Contracts § 178. Where a statute is designed to protect a particular class — here, incarcerated persons earning wages — a member of that class cannot effectively waive the statutory protection, particularly when dealing with the very institutional actor the statute constrains.

S.C. Code Ann. § 24-3-40 mandates how SCDC must handle inmate wages. It is not a permissive statute - it commands specific conduct by SCDC. A settlement agreement in which SCDC persuades an unrepresented prisoner to waive SCDC's statutory obligation to that same prisoner does not extinguish the statutory duty. SCDC cannot negotiate away a legislative mandate it owes as a statutory obligation. The § 24-3-40 long-term savings deposit is due to Appellant as a matter of law, and this Court should order it paid regardless of the settlement's other terms.

**IV. APPELLANT'S UNDERLYING WAGE CLAIMS ARE GOVERNED BY MANDATORY FEDERAL LAW THAT THE SETTLEMENT CANNOT EXTINGUISH.**

This argument presents a pure question of law that this Court must address independent of whether the settlement is otherwise valid, because it goes to whether SCDC lawfully calculated the settlement amount in the first instance.

South Carolina participates in the federal Prison Industries Enhancement Certification Program (PIECP) under the Justice Assistance Act of 1984. As a federally certified PIECP participant, SCDC is bound by BJA certification requirements, including the prevailing wage mandate. The BJA's promulgated guidelines, 64 Fed. Reg. No. 66 (April 7, 1999), expressly state:

"To become eligible for BJA certification, an applicant department of corrections must comply with specified statutory requirements. It must pay participating prisoners wages not less than that paid for work of a similar nature in the locality in which work was performed; and that the qualifying applicant must ensure that paid PIECP inmate employment will not result in the displacement of employed workers."

The BJA guidelines further provide:

"If all eligibility requirements are met and an applicant acquires BJA certification, the agency is thereafter authorized to operate irrespective of Federal prohibition on the market of State prisoner-made goods. Noncompliance with the statutory eligibility requirements could expose an industry to criminal prosecution under the Ashurst-Sumners Act." Title 18 U.S.C. § 1761(c).

These federal prevailing wage requirements are not suggestions; they are conditions of BJA certification – the certification that authorizes SCDC to sell prisoner-made goods in interstate commerce. When South Carolina enacted Act No. 177 § 2 (1987), codified as § 24-3-315, it explicitly conditioned

SCDC's PIECP participation on compliance with prevailing wage requirements. South Carolina became a PIECP certificate holder in 1984 under the Justice Assistance Act of 1984.

On May 21, 2024, the South Carolina General Assembly amended § 24-3-430(D) to provide that inmates in the program "may earn no less than an hourly rate equal to the federal minimum wage for work of similar nature in the private sector." This amendment cannot legally override the federal PIECP prevailing wage requirement as applied to SCDC's federally certified PIECP program. Under the Supremacy Clause, U.S. Const. Art. VI, cl. 2, federal law is the supreme law of the land. A state cannot by legislation authorize a federal certificate holder to pay below the federally mandated wage while retaining the federal certification benefits – including the right to sell prisoner-made goods in interstate commerce – that the federal wage obligation conditions.

The legislature's post-Torrence amendment was enacted transparently in response to the wave of prevailing wage claims that followed *Torrence v. SCDC*, 433 S.C. 533, 861 S.E.2d 36 (2021). Its retroactive practical effect, reducing the applicable wage standard for ongoing PIECP claims, raises serious concerns under equal protection and due process. More fundamentally, it cannot change federal law.

Because SCDC calculated Appellant's wages - and thus the settlement amount - using a deficient wage rate below what federal PIECP law requires, the settlement amount itself was based on a false foundation. A settlement of an amount that is itself the product of statutory violation does not make the underlying violation disappear; it simply locks in the fruits of the violation.

V. THE ADMINISTRATIVE LAW COURT ABUSED ITS DISCRETION BY DISMISSING THE CASE WHILE FRAUD OBJECTIONS WERE PENDING AND UNRESOLVED.

The ALC's dismissal order is independently reversible as an abuse of discretion because the ALC entered dismissal after receiving - but without ruling upon - Appellant's timely objections asserting fraud and misrepresentation in the procurement of the very Stipulation of Dismissal that served as the basis for the order.

The chronology of the record demonstrates the abuse:

1. October 10, 2024: Appellant filed objections to the Stipulation of Dismissal alleging fraud and misrepresentation by Respondent's counsel. (ROA Pg. 36-38.)
2. October 14, 2024: The ALC entered its order of dismissal - the ALC had received the fraud objections before the order became final. (ROA Pg. 40.)

3. October 16, 2024: Respondent agreed to renegotiate the contested issue via Kiosk Ref. No. 24-03686829. (ROA Pg. 43-45.)
4. October 17, 2024: Appellant filed a motion to stay further proceedings pending resolution. (ROA Pg. 43-45.)

A court that dismisses a case based on a stipulation while fraud objections to that same stipulation are pending and unresolved – without even acknowledging those objections – has not exercised judicial discretion. It has abandoned the judicial function. The standard of review under S.C. Code Ann. § 1-23-610(B) requires reversal when the ALC's decision is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Dismissing a case while pending before the court is a motion asserting that the dismissal instrument was obtained by fraud, without addressing that motion, meets every one of those standards.

Moreover, Respondent's own conduct following the dismissal – agreeing on October 16 to renegotiate the very issue Appellant had identified as fraudulent – constitutes a judicial admission that the settlement's terms were not as Respondent's counsel had represented them to Appellant. Having agreed to renegotiate, Respondent cannot now argue before this Court that the settlement was unambiguous and complete.

VI. THE FAIR LABOR STANDARDS ACT PROVIDES AN INDEPENDENT AVENUE OF RELIEF.

Under the federal Fair Labor Standards Act, 29 U.S.C.A. § 216(b), an employer who violates the wage provisions of § 215(c)(3) or § 218(d) shall be liable for such legal or equitable relief as may be appropriate to effectuate the purpose of the Act, including without limitation employment, reinstatement, promotion, and the wages lost and an additional equal amount as liquidated damages. To the extent SCDC's PIECP wage violations constitute violations of applicable federal wage law, Appellant reserves the right to pursue those claims in an appropriate federal forum, and notes that no state-court settlement can waive federal statutory claims unless made knowingly and with full disclosure of the rights being waived – a standard that was manifestly not met here given the absence of counsel and the affirmative misrepresentations made to Appellant.

RELIEF REQUESTED

For the foregoing reasons, Appellant respectfully prays this Court:

1. VOID the settlement agreement captioned "Final Release of All Claims" and the Stipulation of Dismissal dated September 9, 2024, as procured by fraud, misrepresentation,

unconscionability, and undue influence by Respondent's counsel against an unrepresented prisoner, and in violation of South Carolina Rule of Professional Conduct 4.3.

2. In the ALTERNATIVE, VOID the specific provision of the settlement purporting to waive Appellant's rights under S.C. Code Ann. § 24-3-40, as void against public policy and as contrary to a non-waivable statutory mandate, and ORDER SCDC to immediately deposit the required 10% long-term savings amount into Appellant's escrow account.

3. REVERSE the ALC's Order of Dismissal as an abuse of discretion entered while fraud objections to the dismissal instrument were pending and unresolved before the ALC.

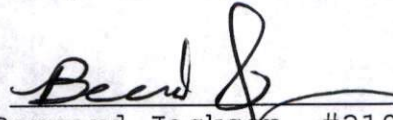
4. REINSTATE the appeal for full briefing and decision on the merits, including: (a) the federal PIECP prevailing wage preemption question; (b) the legality of the May 21, 2024 amendment to § 24-3-430(D) as applied to PIECP-certified prison industry programs; and (c) whether SCDC's wage calculations complied with the Department of Employment Workforce (D.E.W.) prevailing wage rates applicable during Appellant's employment.

5. ORDER the Agency to produce the complete record of calculations and deductions applied to Appellant's wages to permit this Court to determine whether SCDC's calculations reflect the statutory and federal mandates applicable during the period of Appellant's employment.

6. ALLOW oral argument on the merits; and

7. GRANT such other and further relief as this Court deems just and proper.

Respectfully Submitted,

/s/   
Bernard Jackson, #210745  
Pro Se Litigant  
Tyger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335

Dated: February 24, 2026

CERTIFICATE OF SERVICE

I, Bernard Jackson, #210745, hereby certify that on the 26 day of February, 2026, I served a true and correct copy of the foregoing Motion to Void Settlement Agreement and Reinstate Appeal on the Merits upon the following by placing the same in the United States Mail, postage prepaid, addressed as follows:

Christina C. Bigelow  
Deputy General Counsel  
Office of General Counsel  
South Carolina Dept. of Corrections  
P.O. Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221


AND

Clerk of Court  
South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29201

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SC Court of Appeals

/s/   
Bernard Jackson, #210745  
Pro Se Litigant

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February 26, 2026

Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29201

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RE: Status Inquiry - Appellate Case No. 2024-002004  
Bernard Jackson, #210745 v. S.C. Dept. of Corrections  
ALC Case No. 23-ALJ-04-0553-AP

Dear Clerk of Court:

I am the Appellant in the above-captioned matter, proceeding pro se from Tyger River Correctional Institution. I write to respectfully request a status update on the above-referenced appeal.

This appeal has been pending since late 2024. The Initial Brief of Appellant, the Final Brief of Respondent, and Appellant's Reply Brief have all been filed and served. Briefing is complete. The appeal has now been under submission for a significant period of time, April 14, 2025, and I have received

no communication from the Court regarding a scheduled date for oral argument, a date for submission on the briefs, or any other indication of the current status of the case.

I am an incarcerated, pro se litigant with limited access to legal resources and no ability to access the Court's electronic docketing system. I am unable to independently determine the current status of the case or whether any additional action is required of me.

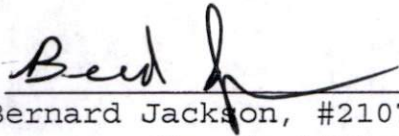
Accordingly, I respectfully request that the Clerk's Office advise me of the following:

1. The current status of Appellate Case No. 2024-002004;
2. Whether briefing is considered complete by the Court;
3. Whether the matter has been scheduled for oral argument or submission on the briefs, and if so, the scheduled date;
4. Whether any additional filings or actions are required by Appellant; and
5. Whether the Court has received Appellant's Motion to Void Settlement Agreement, and Reinstate Appeal, Motion for Declaratory Relief: Challenge to Constitutionality of S.C. Code Amend. § 24-3-430(D) as amended May 21, 2024, on grounds of Federal Supremacy Clause, Preemption and Unconstitutional Retroactive Deprivation and Appellant's Motion to Expedite, filed concurrently herewith.

I understand that the Court operates under heavy caseload demands, and I respectfully appreciate the Clerk's attention to this inquiry. Given my incarcerated status and the ongoing nature of the wage deprivation at issue in this appeal, I respectfully urge that any information available regarding the timeline for disposition be provided at the Court's earliest convenience.

I thank the Court for its consideration of this matter and for its service to the citizens of South Carolina, including those who must seek justice from behind prison walls.

Respectfully Submitted,

/s/ 

Bernard Jackson, #210745  
Pro Se Litigant  
Tyger River Correctional Institution  
200 Prison Road  
Enoree, South Carolina 29335

cc: Christina C. Bigelow, Deputy General Counsel, SCDC (by U.S. Mail)

Bernard Jackson, #210745  
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