

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

S.C. Supreme Court

Op. No. 5201
(S.C. Ct. App. filed February 26, 2014)

Phillip D. Grimsley, Sr. and Roger M. Jowers,
on behalf of themselves and other similarly situated , ... Respondents,

v.

South Carolina Law Enforcement Division and the
State of South Carolina, ... Defendants,

Of Whom, South Carolina Law Enforcement Division is Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf
of themselves and others similarly situated, Appellants,

v.

South Carolina Law Enforcement Division and the State
of South Carolina, Defendants,

Of whom South Carolina Law Enforcement Division is
the Respondent.

Appellate Case No. 2012-212815

Appeal From Richland County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 5201
Heard January 8, 2014 – Filed February 26, 2014

REVERSED AND REMANDED

A. Camden Lewis and Ariail E. King, both of Lewis,
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Columbia, for Appellants.

William H. Davidson, II and Kenneth P. Woodington,
both of Davidson & Lindemann, P.A., of Columbia, for
Respondent.

FEW, C.J.: This is an appeal from the circuit court's order granting summary judgment to the South Carolina Law Enforcement Division (SLED). We reverse and remand for trial.

The supreme court set forth the facts of this case and described the appellants' theory of recovery in *Grimsley v. South Carolina Law Enforcement Division*, 396 S.C. 276, 721 S.E.2d 423 (2012) (reversing the circuit court's dismissal of the appellants' claims and remanding). On remand, the parties engaged in discovery and both sides moved for summary judgment. After the appellants dismissed the State, the circuit court granted summary judgment to SLED.

SLED required employees who wished to participate in its "retirement/rehire program" to sign a series of forms. SLED contends (1) the forms unambiguously set each employee's salary upon rehire at 13.6%¹ below the salary paid to the employee before retirement, and (2) it paid the required employer contribution to retirement based on the reduced salary figure. See S.C. Code Ann. § 9-11-90(4)(b) (Supp. 2013) (requiring "[a]n employer [to] pay . . . the employer contribution for active members prescribed by law with respect to any retired member"). The appellants concede SLED paid the employer contribution based on the reduced figure, but contend the reduced figure is not what they agreed their salary would be. Specifically, the appellants argue this sentence in one of the forms—"You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement"—is evidence the parties agreed to the same salary the appellants received before retirement.

We agree the evidence concerning the amount of the appellants' salaries is conflicting, and thus the circuit court should have denied summary judgment. The form quoted above identifies the reduced figure as "a reduction . . . in *your* salary." (emphasis added). If the reduced figure was calculated as a percentage reduction from "your salary," then the salary of each rehired employee was the figure before reduction, not the reduced figure. SLED contends the quoted sentence refers to the pre-retirement salary figure simply for purposes of calculating the reduced post-retirement salary. We understand SLED's argument, but do not agree the evidence supports the argument as a matter of law. Rather, we hold that a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents an illegal requirement that the employee pay the retirement contribution the employer is required to pay under subsection 9-11-90(4)(b).

¹ This percentage varies depending on the date each employee was rehired.

Therefore, the circuit court erred in granting summary judgment. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (stating to overcome summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine"); *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (stating "the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party").

Our finding that the evidence is conflicting as to the amount of salary SLED agreed to pay the rehired employees requires the reversal of summary judgment on all grounds stated in the circuit court's order. On remand, the circuit court shall make the determination required by Rule 23(d)(1), SCRCP, and set the case for trial.

REVERSED and REMANDED.

PIEPER, J., and CURETON, A.J., concur.

The South Carolina Court of Appeals

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf
of themselves and other similarly situated, Appellants,

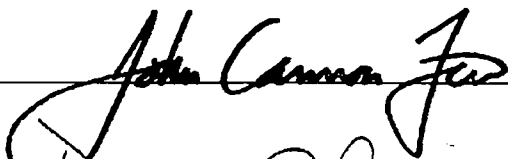
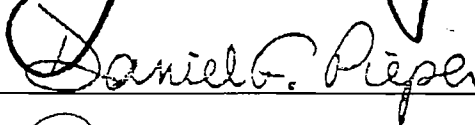
v.

South Carolina Law Enforcement Division and the State
of South Carolina, Respondents.

Appellate Case No. 2012-212815

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

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Ariail Elizabeth King, Esquire

FILED

April 21, 2014

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The Honorable J. Ernest Kinard, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2008-CP-40-8854

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MAR 12 2014

SC Court of Appeals

Phillip D. Grimsley, Sr. and Roger M. Jowers,
on behalf of themselves and other similarly situated , ... Appellants,

v.

South Carolina Law Enforcement Division and the
State of South Carolina, ... Defendants,

Of Whom, South Carolina Law Enforcement Division is Respondent.

PETITION FOR REHEARING

The Respondent South Carolina Law Enforcement Division petitions the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *Grimsley v. South Carolina Law Enforcement Division*, Op. No. 5201 (S.C. Ct. App. filed February 26, 2014).

The grounds for the Respondent South Carolina Law Enforcement Division's petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

This petition for rehearing is based on the Court's decision in *Grimsley v. South Carolina Law Enforcement Division*, Op. No. 5201 (S.C. Ct. App. filed February 26, 2014), the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

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March 12, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2008-CP-40-8854

RECEIVED

MAR 12 2014

SC Court of Appeals

Phillip D. Grimsley, Sr. and Roger M. Jowers,
on behalf of themselves and other similarly situated , ... Appellants,

v.

South Carolina Law Enforcement Division and the
State of South Carolina, ... Defendants,

Of Whom, South Carolina Law Enforcement Division is Respondent.

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

The Respondent South Carolina Law Enforcement Division (SLED) has petitioned this Court for a rehearing of the recent decision in *Grimsley v. South Carolina Law Enforcement Division*, Op. No. 5201 (S.C. Ct. App. filed February 26, 2014). Respondent SLED respectfully submits that the following points were overlooked or misapprehended by this Court:

1. The opinion states that “the appellants argue this sentence in one of the forms—“You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement”—is evidence the parties agreed to the same salary the appellants received before retirement.” Slip op. at 2. The Court then concluded that “[i]f the reduced figure was calculated as a percentage reduction from ‘your salary,’ then the salary of each rehired employee was the figure before reduction, not the reduced figure.” *Id.*

SLED first respectfully submits that the Court overlooked or misapprehended the fact that its holding was not a point that was raised or argued by Appellants, either at the circuit court level or on appeal. Because the issue was not raised before the circuit court, the order of that court did not specifically address the point in the terms that formed the basis of this Court’s opinion.¹ Instead, this Court’s conclusion, quoted above, that there was some evidence to suggest that the rehire salary was the same as the pre-retirement salary, was reached *sua sponte*.

Appellants’ theory of the case was substantially different from the theory that formed the basis of this Court’s decision. Appellants’ original claim was that the employer contribution was “deducted” from their salaries. However, the order of the circuit court held that that claim was “simply not factual,” noting the

¹ Appellants did not file a motion to reconsider under Rule 59(e).

absence of any reasonable dispute that there was no such deduction for the employer contribution from Appellants' salaries at any time. R. 13. The facts supporting the Court's conclusion are found in the order at R. 9-11, in which it is noted, among other things, that "the postretirement pay stubs of the Plaintiffs reflect no deduction at all for retirement. . . , and that "the pay stud would never reflect a deduction for the employer contribution, since that amount was never deducted from salary. . . ." R. 11.

As the case progressed, Appellants virtually abandoned their original claim of an unlawful deduction from salaries, and changed their claim into one of misappropriation of funds.² They argued that funds appropriated for their pre-retirement salaries were wrongfully spent by SLED on the employer contribution to the Police Officers Retirement System. *See, e.g.*, Brief of Appellant at 5, where Appellants argue that "SLED is required to pay the employer contributions from the money allocated to it by the General Assembly for that specific purpose." As discussed in detail in Point 4 below, SLED produced an abundance of uncontroverted evidence demonstrating that the funds were indeed paid from that

² Appellants also argued in the circuit court that "[t]his case is appropriate for summary judgment as the facts are not in dispute. . . ." R. 90. This is the polar opposite of making the requisite showing that "set[s] forth specific facts showing that there is a genuine issue for trial." SCRCP Rule 56(e). On appeal, they contended for the first time that "there is a factual issue," but even then they only claim that such factual issue was "whether SLED has misappropriated the funds allocated to it by the General Assembly and violated S.C. Code 9-11-90." Brief of Appellants at 8. That issue is not the one on which this Court's decision turned.

allocation for the employer contribution. For purposes of Appellants' claims, it was therefore immaterial whether the old salaries and the rehire salaries were the same. Appellants did not claim otherwise.

SLED therefore respectfully submits that the Court overlooked the fact that the basis for its decision was an argument never asserted by Appellants at any stage of this case. Any concept that the rehire salary was the same as the pre-retirement salary was foreign to the case, as far as the arguments in the circuit court and the briefing in this Court were concerned. The Court's consideration of this issue and using it as a basis for reversal violates well-settled appellate principles.

Specifically, this Court has no authority to *reverse* based on an issue not raised below even if the issue may be gleaned from the record. Rule 220(c), SCACR, provides that "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. (Emphasis added). However, there is no authority under Rule 220(c) or otherwise for an appellate court to *reverse* on an issue not raised below or even argued on appeal; yet that is precisely the action this Court has taken. This principle has been recognized in several decisions. For instance, in a dissent, Justice Hearn wrote: "I know of nothing in our precedents that would permit us to reverse on a ground that was not properly argued to us." *Town of Mt. Pleasant v.*

Chimento, 401 S.C. 522, 737 S.E.2d 830, 845 (2012). (J. Hearn dissenting). (Emphasis in original). *See also*, *State v. Fonseca*, 393 S.C. 229, 711 S.E.2d 906 (2011) (majority recognized that Rule 220(c) does not allow for decision on appeal to be reversed for any reason appearing in the record).

Likewise, it is well settled that “[t]he same ground argued on appeal must have been argued to the trial judge.” *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 479 S.E.2d 67, 75 (Ct. App. 1996). *See also*, *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995) (a party may not argue one ground at trial and a different theory on appeal). Thus, if parties cannot change theories on appeal, certainly the appellate court cannot change theories for them and reverse on a theory or argument not made below. Furthermore, it is well settled that appellate courts cannot entertain arguments not presented by the appellant. As Chief Judge Sanders famously wrote, “appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” *Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550, 561 (Ct. App. 1984), *quashed on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985). *See*, *Rutland v. South Carolina Dept. of Transportation*, 400 S.C. 209, 734 S.E.2d 142 (2012) (same). *See also*, *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462, 464 (Ct. App. 2004) (“It is an error of law for a court to decide a case on a ground not before it”).

In sum, the Court's reversal on an issue not raised by the Appellant below or even argued on appeal should therefore be reconsidered. On rehearing, the decision of the circuit court should be affirmed.³

2. Because Appellants never claimed that the new salaries and the old salaries were the same, SLED, like the circuit court, had no occasion to address the point specifically. Nevertheless, there is an abundance of uncontradicted evidence in the record showing that the new salaries, that is, the ones paid to Appellants when they were rehired, were not the same as the old salaries. The new salaries started out at specific dollar figures that were lower than the old, pre-retirement, salaries. Appellants simply were not rehired at the same salaries that had previously been theirs prior to retirement.

This is shown in a number of uncontradicted record references, such as the following deposition testimony of Lynn Hutto, SLED's Human Resources Director at the time:

Q. And you said they [Appellants] came back at a reduced salary?

³ This Court also noted that "a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement and the percentage reduction represents an illegal requirement that the employee pay the retirement contribution the employer is required to pay under subsection 9-11-90(4)(b)." Slip op. at 2. SLED would ask that at a minimum, this statement be modified or deleted, because if the case does proceed to trial, additional evidence might be produced that would require a directed verdict for SLED. Because Appellants did not raise the issue that formed the basis for this Court's opinion, SLED's presentation was not directly focused on that point.

A. They came back at a brand new salary actually. We rehired them at a new salary.

* * *

Q. Were they-- was the new salary 13.6 percent less than their previous salary?

A. Yes.

Q. So if a person wanted to participate in the program and they were eligible and they went and met with the Chief and the Chief said, "Okay. You can do this," and they were making \$50,000 a year at the time, they would have sat out for 15 days and then their new salary would have been 13.6 percent lower than the 50,000?

A. Yes.

R. 294-295 (emphases added). Ms. Hutto reiterated this testimony a few pages later:

Q. The reduction that used to take place, the reduction of the 13 percent, where did that money go?

A. When you say where did the money go?

Q. Yes.

A. There was really no -- there was no deduction of salary. There was an agreement that the salary when they were rehired would be different. So there was no place for the money to go, so to speak.

R. 299-300 (emphasis added). At still another point in her deposition, Ms. Hutto testified by way of example that when one of the Appellants (Jowers) was rehired, the salary that was transmitted to the Comptroller General was the new, or rehire, salary of \$39,828:

Q. When the information regarding Employee 32 [Jowers] was transmitted to the comptroller general the annual salary would have been listed as what? Would it have been 39,828 or--

A. You mean as a new hire?

Q. Uh-huh.

A. As a new hire it would have been 39,828.

Q. That's the amount that would have been sent to the comptroller?

A. Yeah.

R. 368 (emphasis added).⁴

Other similar evidence exists throughout the record. For example, a spreadsheet prepared by SLED in 2009 or earlier referred to the postretirement salary as the "rehire salary" and in that column listed the amounts that reflected the percentage reduction from the preretirement salary. R. 105-106. For Plaintiff Jowers, for example, the "rehire salary" was the specific dollar amount of \$39,828. R. 106 (employee no. 32). This is the same dollar figure to which he agreed when he returned to work as a working retiree. R. 189, 191. There is no suggestion in the record that this individual (or any other one) was rehired at his pre-retirement salary (\$44,755 in Jowers' case) and then had his pre-retirement salary

⁴ Ms. Hutto was also asked preliminarily whether she, as a Rule 30(b)(6) deponent, was "the person most knowledgeable regarding the deductions made from the salaries of the participants in the SLED retirement program at issue in this matter." She replied that "We did not make any deductions to the salaries on [of] the participants." R. 267, lines 17-22.

immediately reduced to \$39,828. Along the same lines, Chief Stewart's affidavit states that "Plaintiffs' new salaries upon rehire were in fact 13.6% lower than their pre-retirement salaries. . . ." R. 174, ¶ 21 (emphases added).

Moreover, there is no reason for SLED to have taken such an action. Appellants have expressly agreed that SLED could have rehired the Appellants at any salary that was mutually agreed on.⁵ SLED also could have declined to rehire the Appellants at all. *Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011). SLED would therefore have had no legal, factual, or logical reason to have gone through the meaningless exercise of rehiring the retirees at their preretirement salaries and then immediately making a percentage cut to those salaries. As the record shows, SLED did not in fact take any such action.⁶

Finally, Appellants agreed to return to work at specific dollar figures, \$45,702 for Grimsley and \$39,828 for Jowers. R. 181, 189. The forms stated that "Your salary will be \$45,702 (Grimsley), or "Your salary will be \$39,828 (Jowers). R. 181, 189. In addition to supporting SLED's contention as to consent (Point 6(b) below), these forms also evidence the terms of each Appellant's agreement to return to work.

⁵ As the Supreme Court held in the appeal from the grant of the State's motion to dismiss, "[Appellants] do not claim they are entitled to a particular salary level." *Grimsley v. South Carolina Law Enforcement Div.*, 396 S.C. 276, 284, 721 S.E.2d 423, 427 (2012)

⁶ Also, if SLED had actually rehired Appellants at the old salary, there would have been tax consequences, but Appellants have not suggested that that happened, any more than they have ever argued that they were actually rehired at the old salaries.

Appellants did not controvert this evidence, although Appellants had ample opportunity to produce contradictory evidence had it existed. Indeed, they did not even seek to controvert this point, because they never claimed that the new salaries were the same as the old salaries. They did not suggest the inference on which the opinion of this Court is based. Specifically, Appellants never showed, nor tried to show, record evidence that they were in fact rehired at the old salary and that SLED thereafter took some action to reduce the rehire salary. They produced no payroll records or other personnel office records reflecting rehire at the old salaries, accompanied by an immediate reduction. As is made clear by the evidence cited above, such events simply never happened.

Even if Appellants had actually argued that they were rehired at the old salaries, and that those salaries were then immediately reduced, the complete absence of evidence to support such a claim would have reduced such an argument to nothing more than the creation of “a metaphysical doubt as to the material facts. . . .” *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 107, 410 S.E.2d 537, 545 (1991)). As *Russell* and other cases hold, and as Rule 56(e) itself provides, a party cannot rely on such metaphysical doubts, but instead “must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* Appellants never came forward with such evidence, nor did they attempt to do so.

For all of the above reasons, it is respectfully submitted that the Court misapprehended or overlooked the abundance of uncontroverted evidence in the record that rehire salary was never the same as the pre-retirement salary, but instead was “a brand new salary,” as Ms. Hutto testified.

3. Even if there had been a rehire at the old salary followed by an immediate reduction, no rights of Appellants would have been violated as a result. In *Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011), cited in the circuit court order, R. 5, 7, 13, 17, the Supreme Court held that the return of a retired employee to the employment from which he retired “was conditioned on whether an employer in the system chose to hire that employee.” 392 S.C. at 351-352, 709 S.E.2d at 60. In addition, S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Appellants from coverage under the state personnel grievance process, which means that they had no legal right to complain of a reduction in salary, in and of itself, as this Court’s opinion appears to hold. As held in *Alston v. City of Camden*, 322 S.C. 38, 49, 471 S.E.2d 174, 179 (1996), “[a]n employer privileged to terminate an employee at any time necessarily enjoys the lesser privilege of imposing prospective changes in the conditions of employment.”

4. SLED also respectfully submits that the Court overlooked or misapprehended the undisputed evidence to the effect that the employer contribution to the Police Officers’ Retirement System was never paid from the

personal services account, the account from which employees' salaries were paid. In other words, even if Appellants had been rehired at their old salaries, which SLED strongly denies, the point is immaterial. There was no "illegal requirement that the employee pay the retirement contribution the employer is required to pay under subsection 9-11-90(4)(b)." Slip op. at 2. The uncontroverted evidence makes it clear that SLED's actions did not amount to the imposition of such a requirement.

The order below discussed in detail the mechanics for the payment of salaries and employer contributions. R. 9-12. The order then discussed those facts and the pertinent statutes, R. 13-17, and held that

[M]oney appropriated for benefits was used at all times to pay benefits, including the employer contribution, and money appropriated for salaries was used at all times to pay salaries. Plaintiffs have not provided any evidence to the contrary

R. 16, citing Royal Affidavit, ¶ 8, R. 206. As indicated in the circuit court order and in the facts and legal authorities cited therein, it is undisputed that there was no factual support for Appellants' claim that the money that had formerly constituted their salaries was later used to pay employer contributions. Salary money stayed in the salary (personal service) account and employer contribution money stayed in the fringe benefit account. *Id.*

5. SLED also respectfully submits that the Court overlooked or misapprehended the absence of standing by Appellants to make their factually-unsupported claim that that SLED “misappropriates monies due the retirement system. . . .” R. 15 (Order, quoting Plaintiffs’ brief in the circuit court). Since it is uncontradicted that the funds from Appellants’ old salaries was never used to pay the employer contribution, Appellants, having unconditionally retired, “no longer had a legally protected right or interest with regard to what SLED did with the money that had funded their former salaries during their original period of employment.” R. 15 (Order). Appellants therefore had no standing to complain about the disposition of their former salaries. *See* R. 15-16 (Order, citing *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012)).

Also, the opinion of this Court did not mention either the existence or the nonexistence of a property right in Appellants. However, SLED would also respectfully point out that no such property right was actually proven under the facts of this case, for the reasons set forth in the order below, R. 16, and in the Brief of Respondent at 26-29. In addition, no “taking” was shown. Brief of Respondent at 26-29.

6. This Court also concluded that its holding concerning the salary amount “requires the reversal of summary judgment on all grounds stated in the circuit court's order.” Slip op. at 3. Respondent respectfully submits that this

conclusion, which was not explained, overlooked or misapprehended the effect of the remaining grounds set forth in the circuit court's order. Even if SLED had agreed to pay the rehired employees the same salaries as originally and then reduced those salaries immediately upon after rehire, there were three different reasons, consent, waiver, and estoppel, set forth in the order of the Circuit Court, that would still bar Plaintiff's claims. In addition, SLED presented two other additional sustaining grounds, the statute of limitations and laches, either or both of which would also operate as a bar.

SLED therefore respectfully submits that the Court overlooked or misapprehended the effect of these five separate affirmative defenses, any one of which would render immaterial the issue of whether a right of Appellants was violated. Each of these five affirmative defenses is briefly discussed below.

a. *Waiver.*

The order below held that "[i]t is axiomatic that constitutional rights may be voluntarily waived, as indicated, for instance, by every case upholding a guilty plea." R. 18. This principle applies with as much or more force to rights that are not of a constitutional nature, such as the alleged statutory right claimed by Appellants.

Appellants' only response on appeal to this holding was a very brief claim that Appellants' agreements were on forms that Appellants did not negotiate, or

that the terms of their rehire violated § 9-11-90. Br. of Appellants 10-11. Their contention about alleged lack of negotiation is without merit, because the actions they took were completely optional and voluntary. As for the alleged statutory violations, to the extent that § 9-11-90 embodies a public policy at all, that policy is only that an employer cannot rehire a retiree and then not make a contribution to the PORS for the salary paid for that position. That did not happen, because SLED made the employer contribution from the funds appropriated for that purpose. As a result, this Court should reconsider this issue and hold that Appellants voluntarily waived any rights they may have had (although SLED maintains that they had none).

b. *Consent.*

The order below also held that “It is axiomatic that consent can serve as a defense to numerous acts that might otherwise be held tortious, such as assault, trespass or invasion of privacy, among many others.” R. 20-21, citing and quoting *Hawkins By and Through Hawkins v. Multimedia, Inc.*, 288 S.C. 569, 571, 344 S.E.2d 145, 146 (1986).

In addition to waiving any rights they conceivably might have had, as noted above, Appellants indisputably consented to accept the salaries they were actually paid upon rehire. Such consent occurred when they agreed to accept the percentage reductions shown on their “Requests to be rehired,” R. 179, 187, and to accept

specific dollar figures for the new salaries shown on the documents entitled “Confirmation of your Request to Rehire,” R. 181, 189. Their return to work, of course, constitutes additional evidence of their consent to be paid those specific dollar amounts.

Appellants barely addressed the consent issue at all, merely reiterating their unavailing arguments pertaining to waiver in a section of the brief containing only four lines of text. Brief of Appellants at 11. In any event, the facts of the case make it clear that Appellants were in no way coerced to do anything. They could have remained in their prior employment at the old salary indefinitely. R. 174 (Stewart Affidavit, ¶ 24. Their decision to retire and be rehired was therefore not only completely voluntary, it was also completely optional. The chance to retire and return to work at over 150% of what they had previously been paid for doing the same job was not a prospect that they were forced to accept. Instead, it was one that they willingly embraced. Most telling of all, Appellants were not, as they try to cast themselves, victims of SLED’s actions. They were major beneficiaries of an optional program to which they voluntarily agreed and which greatly inured to their benefit. They only filed this action after their time as working retirees had run out, seeking now to obtain still more money than they obtained under the already-generous arrangement to which they agreed.

c. Estoppel.

Another alternative reason why relief should be denied to Appellants is the ground of estoppel, discussed in the circuit court order, R. 20. Appellants, having accepted the benefits of the retire/rehire arrangement for four years without ever raising their present claim, should be deemed estopped from attacking that arrangement after SLED more than kept its end of the bargain, keeping both Appellants employed for four full years at the salaries they agreed to accept upon their rehire. *See also*, Brief of Respondent at 32-34.

d. Statute of limitations.

As contended as an additional sustaining ground in the Brief of Respondent at 34-36, the statute of limitations began to run in this case no later than July and August 2004, when each Appellant knew of the terms of his rehire. Based on the authorities cited therein, those dates in 2004 started the running of the statute, because those were the dates when each party knew or should have known, through the exercise of due diligence, that a cause of action might exist. *Anonymous Taxpayer v. South Carolina Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008) (citing *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007)). This action, filed more than four years later in 2008, was filed well after the statute had run. Brief of Respondent 34-36.

e. Laches.

Laches is the fifth and last affirmative defense, and was also raised by SLED as an affirmative defense. This ground is discussed in the Brief of Respondent at 36-37. SLED's laches contention combines the points made in SLED's estoppel argument and in SLED's statute of limitations argument. By accepting the rehire arrangement in 2004, Appellants induced SLED to change its position to its detriment, which occurred when SLED paid them the agreed-upon salaries for four years. Appellants did not raise their present claim until more than four years after the institution of the program of which they now complain (and until they were no longer employed by SLED). Chief Stewart's uncontradicted Reply Affidavit stated that he would never have offered the retire/rehire program in 2004 had either Appellant advised him at the time that "they believed they had a legal claim for the amount of the difference between their old salaries and their new salaries, I would not have offered them the opportunity to participate in the Retirement/Rehire program in 2004, because I would not have wanted SLED to be subject to a later claim for the cumulative amount of the difference." R. 217, ¶ 14.

CONCLUSION

Respondent SLED respectfully requests that the Court rehear its decision and issue an opinion affirming the decision of the circuit court on one or more of the bases set forth above.

Respectfully submitted,

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March 12, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 08-CP-40-8854

Phillip D. Grimsley, Sr., and
Roger M. Jowers, on behalf of
themselves and others similarly situated,

Appellants,

vs.

South Carolina Law Enforcement Division
and the State of South Carolina,

Respondents.

APPELLANTS' RETURN TO
THE PETITION FOR REHEARING

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This case involves a scheme by SLED in which it kept money that should have been paid to Appellant-Retirees, who returned to work for SLED. SLED, *by its own admission*, asked for and was appropriated, as salaries for Appellant-Retirees, the amount Appellant-Retirees had been paid prior to retirement. These salaries were included in the personal service line item of the appropriations bill. (R.p. 209). SLED was also provided with an appropriation for the 13.6% employer contributions for these salaries under the employee benefits line item provision of the appropriations bill. (R.p. 209, 205). However, SLED came up with a scheme that took “13.6%” of [Appellant-Retirees’] appropriated salary to cover the amount it cost SLED to pay the employer portion of retirement. (R.p. 158). By doing this, SLED also profited by keeping the 13.6% appropriated elsewhere for the employer retirement contribution since it took that money from these employees’ salaries. The Supreme Court recognized the illegality of SLED’s actions:

Specifically, Appellants’ takings claim is predicated on their entitled to retain the percentage of their salary --13.6%--that was used to pay the employer portion of the retirement contributions.

Grimsley v. S. Carolina Law Enforcement Div., 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012)(“*Grimsley I*”).

In its Petition for Rehearing, SLED ignores the Court’s clear reasoning, raises issues not relevant to this Court’s opinion, and repeats arguments already rejected by this Court. As set forth in more detail below, the Petition should be denied.

1. Appellant argued throughout this case that SLED had improperly reduced their salaries.

Throughout this case, Appellant-Retirees have consistently argued that SLED could not

reduce¹ their salaries by the percentage of the employer retirement contribution. In fact, this was the argument Appellant-Retirees made in the first appeal, and the South Carolina Supreme Court said:

...Appellants do not claim they are entitled to a particular salary level. Rather, Appellants contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90, regardless of any particular salary level.... Properly construing Appellants' claim, we hold section 9-11-90 provides a basis to assert a property interest.

Grimsley v. S. Carolina Law Enforcement Div., 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012)(“*Grimsley I*”)(emphasis added). The *Grimsley I* opinion recognized that Appellant-Retirees' claim was predicated on their “entitlement to retain the percentage of their salary -- 13.6-- that was used to pay the employer portions of the retirement contributions.” *Id.* After *Grimsley I* was remanded to the lower court, Appellant-Retirees again argued that they had “a statutory right to be paid without a reduction for the 13.6% employer contribution.” (R.p. 93). This Court, recognized, as the Supreme Court did:

[SLED's] form ...identifies the reduced figure as “a reduction...in *your* salary.” (emphasis added). If the reduced figure was calculated a percentage reduction from “your salary”, then the salary of each rehired employee was the figure before reduction, not the reduced figures.

Grimsley Slip Op., p. 2. Before the lower court (and in this appeal), Appellant-Retirees argued

¹SLED tries to recast Appellant-Retirees' theory of the case and argues that Appellant-Retirees asserted monies were wrongly “deducted” from their salaries instead of “reduced.” Resp. Pet. p. 2. This is merely wordplay by SLED in attempt to distract the court from the inescapable truth that SLED has violated the retirement statutes and kept Appellant-Retirees' money for itself. Deduction and reduction have the same meaning, as both mean a lowering or decreasing. In fact, synonyms for “decrease” include **reduction**, lessening, lowering, **deduction** (Roget's Int'l Thesaurus, 3rd Ed. § 39.1). See also, Merriam-Webster Dictionary (“Deduction” is defined as: the act of taking away something from a total. Synonyms: abatement, discount, **reduction**.)

that the General Assembly appropriated Appellant-Retirees' salaries as well as the 13.6% employer retirement contribution, but that SLED then reduced the appropriated salaries and kept that portion for itself in violation of the law on appropriations, which states:

It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated....

S.C.Code Ann. § 11-9-10. Appellant-Retirees argued that SLED's retention of the 13.6% of the salary appropriated for Appellant-Retirees was unlawful. (R.p. 90-91; 93). Appellant-Retirees' argument is not "new" as Respondent suggests.

2. **This Court properly found that "a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents and an illegal requirement that the employee pay the retirement contribution the employer is required to pay" by law.**

Respondent argues that because Lynn Hutto, the 30(b)(6) designee for SLED, referred to Appellant-Retirees' rehire salaries as "new salaries," the court must accept that Appellant-Retirees were not entitled to the salaries they had before. This is merely a play on words. The forms themselves do not state that Appellant-Retirees will be hired at "new" salaries. The forms provided a figure that was identified as "a reduction of 13.6% in *your* salary," thus recognizing that SLED took 13.6% away from Appellants-Retirees to pay the employer contributions. ROA 158 (emphasis added). SLED's argument that the forms referred to the pre-retirement salary simply for purpose of calculating the amount of the post-retirement salary was rejected by this Court, citing the evidence in the record (such as the forms) and finding:

a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents an illegal requirement that the employee pay the retirement contribution that the employer is required to pay under subsection 9-11-90(4)...."

Grimsley Slip. Op. at p. 2.

In other words, the Opinion correctly recognized that the salary amounts (and any reductions) were disputed issues of material fact that should be determined by a jury.²

3. **The cases of *Ahrens* and *Alston* do not apply to this matter.**

SLED claims that even if Appellant-Retirees were rehired at their old salary which was then reduced, there has no violation of their property rights because *Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011), allows an employer to impose new conditions, such as a reduction of salary, when an employee retires and returns to work. SLED also claims that under *Alston v. City of Camden*, 471 S.E.2d 174 (S.C. 1996), it can “impose prospective changes in the conditions of employment.”

This argument is merely a rehash of the arguments made in the Respondent’s Brief to this Court (see Resp. Brief, p. 29) that this Court refused to adopt. The Supreme Court has already recognized that Appellant-Retirees have a “cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90[.]” *Grimsley I*, 396 S.C. at 285, 21 S.E.2d at 428.

In this case, S.C. Code 9-11-90 states:

An employer **shall pay to the system the employer contribution for active members** prescribed by law with respect **to any retired member** engaged to perform services for the employer, regardless of whether the retired member is a full-time or part-time employee or permanent employee.

In other words, SLED must treat Appellant-Retirees the same as any other member. SLED cannot gain by requesting and receiving from the General Assembly salaries appropriated to SLED employees and then reducing those salaries by 13.6% , claiming they really were not

²As a matter of law, it is illegal for SLED to profit from their scheme.

salaries. Such a scheme allowed SLED to profit by not giving the retirement system the contributions for which SLED had been specifically appropriated. The type of mandatory language or “express guarantee”³ of § 9-11-90 requiring SLED to make the employer contribution was not present in the statute in the *Ahrens* case and the court found no right had been violated. Because there is an “express guarantee” in this case (that SLED has violated), *Ahrens* has no application.

The *Alston* case involved a change in the amount of employee vacation and sick days given to city employees. Here, this dispute is over whether SLED can illegally and unconstitutionally reduce Appellant-Retirees’ salaries and require Appellant-Retirees to pay the employer contributions, contrary to the express requirement of the retirement statute -- a very different issue than those present in *Alston*. See, *Layman v. State*, 368 S.C. at 640, 630 S.E.2d at 270 (Recognizing that retirement benefits are different from the “terms of employment” and the fringe benefits that were the subject of *Alston v. City of Camden*). Neither *Ahrens* nor *Alston* provide any justification for SLED’s violation of the mandate in S.C. Code 9-11-90.

4. SLED’s justification that salaries and employer contributions were never commingled has no effect.

SLED argues that the employer contributions were never paid from the “personal service accounts” from which the Appellant-Retirees’ salaries were paid, and were only transmitted from the “benefit account.” Whether that statement is true or not has no bearing. From which pocket SLED withheld money from Appellant-Retirees does not change the fact that they withheld money. Appellants-Retirees were entitled to the 13.6% appropriated to them as salaries, which SLED kept.

³*Ahrens*, 392 S.C. at 352.

As already argued to this Court, SLED admitted that the General Assembly appropriates funds for both the salaries for the agency's employees and for the other employee benefits such as the employer portion of the retirement contribution. In other words, SLED submitted to the General Assembly the amount of the salaries for these employees and was appropriated the requested salaries. However, SLED reduced Appellant-Retirees' salaries by 13.6 percent, keeping that amount for itself. SLED also calculated and was appropriated the 13.6% employer retirement contribution for the appropriated salaries (R. pp. 65-86). Whether or not the personal service account and the benefit account were separate and never commingled has no bearing here. The impropriety of SLED's actions turns on whether SLED, having been appropriated Appellant-Retirees' salaries and the employer retirement contributions, improperly reduced those salaries by 13.6 percent. This is no ministerial act of transferring contributions to the retirement but a scheme to keep money that should have been paid to Appellants-Retirees.

5. Appellant-Retirees have standing to bring this suit and challenge SLED's actions and a property interest affected by SLED's actions.

Respondent claims that this Court misapprehended Appellant-Retirees' standing and also did not address whether Appellant-Retirees had a property right.

With regard to standing, SLED claims that once Appellant-Retirees became fully retired and were no longer working retirees, they had "no legally protected right or interest with regard to what SLED did with the money that had funded their former salaries during the original period of employment." SLED has already made this argument in its argument to this Court, and the argument was implicitly rejected in the February 26, 2014 Opinion, which was decided on substantive, not procedural, issues. Furthermore, Appellant-Retirees contributed to the retirement system, as both regular employees and as working retirees and thus, have standing as

to what SLED did with the money the General Assembly appropriated to that agency for the retirement system. See, *Myers v. Patterson*, 315 S.C. 248, 433 S.E. 2d 841 (1993)(a taxpayer who has contributed to the sum jeopardized, is considered to have sufficient interest for standing).

In addition, the South Carolina Supreme Court already addressed Appellant-Retirees' property rights and held:

Properly construing Appellants' claim, we hold section 9-11-90 provides a basis to assert a property interest. Specifically, Appellants' takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the employer portion of the retirement contributions. It follows that Appellants are able to point to a property interest rooted in state law.

Grimsley I, 396 S.C. at 285, 721 S.E.2d at 428.⁴ In finding that there was a jury question as to whether SLED agreed to pay Appellant-Retirees' salaries and then illegally reduced those salaries by the percentage of the employer retirement contribution, this Court obviously concurred with the Supreme Court that Section 9-11-90 provided the basis for a property interest.

6. Reversal by this Court does not require that the opinion set forth specific findings on Respondent's affirmative defenses.

Respondents claim the Court's opinion is deficient because it reversed the lower court's order but did not address the defenses of consent, waiver or estoppel. However, the Court need not address with all other issues present in the appeal. Cf. *Bramlette v. Charter-Medical-Columbia*, 302 S. C. 68, 393 S. E. 2d 914 (1990) (court reversed the verdict against the hospital for errors related to one employee but did not discuss a second employee's alleged wrongdoing as

⁴In fact, the Supreme Court reiterated this tenet in *Bell v. S. Carolina Dep't of Corr.*, 397 S.C. 320, 337, 724 S.E.2d 675, 684 (2012), in which that Court acknowledged and affirmed that the statutory right in *Bell* and the statutory right in right in *Grimsley*, were the same and that the state could not "through an internal policy, deprive Appellant-Retirees of these interests rooted in state law."

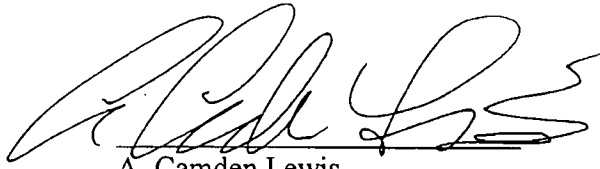
an independent basis for imposing liability on the hospital; as to the first employee, liability was vicarious; as to the second employee, liability was primary, based upon alleged inadequate training by the hospital).

Since SLED's conduct is illegal, Appellant-Retirees could not consent or waive the illegality, and it cannot form the basis for estoppel. Courts have refused to enforce agreements that are illegal, unconstitutional or against public policy. *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, 361 S.C. 544, 555. 606 S.E.2d 752, 758 (2004) (This Court will not enforce an agreement which is violative of public policy, statutory law, or provisions of the Constitution); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002) (An illegal contract is unenforceable); 717A *Am. Jur. 2d Contracts* § 309(an illegal agreement cannot be valid by invoking waiver or estoppel). If the jury finds, as this Court stated, that "the percentage reduction represents an illegal requirement that the employee pay the retirement contribution that the employer is required to pay under 9-11-90(4)(b)," there can be no consent or waiver. In addition, SLED again tries to assert that the matter is barred by the statute of limitations or the doctrine of laches, which the trial court clearly rejected, stating that "it could be held that the statute commences to run anew with each [pay]check presented." R.p. 19.⁵

CONCLUSION

For the reasons set forth above, the Motion for Rehearing should be denied.

⁵See also, *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 42, 508 S.E.2d 16, 20 (1998)("Accordingly, although we find the three year statute of limitations applicable, it begins to run from each payment [in violation of the statute], such that plaintiffs' claims are not barred.").



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2008-CP-40-8854

RECEIVED

MAR 31 2014

SC Court of Appeals

Phillip D. Grimsley, Sr. and Roger M. Jowers,
on behalf of themselves and other similarly situated, ... Appellants,

v.

South Carolina Law Enforcement Division and the
State of South Carolina, ... Defendants,

Of Whom, South Carolina Law Enforcement Division is Respondent.

**REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING**

Respondent SLED submits the following Reply Memorandum in support of
its Petition for Rehearing.

1. Appellants have tried to claim victim status, describing SLED's
generous retire/rehire program as a "scheme." Appellants' Return at 1. The word
"scheme" appears frequently in Appellants' Return, but it is a complete

mischaracterization of the actual events. SLED voluntarily offered Appellants the attractive option to retire, collecting full retirement pay, and return to work at nearly full salary. The arrangement was to the great benefit of Appellants. To view it as a "scheme" that somehow harmed them is completely at odds with the facts.

Appellants were law enforcement agents. Because they were members of the Police Officers' Retirement System, they did not have the opportunity to be "TERI" retirees, as was the case for state employees who were not in the Police Officers' Retirement System. In order to provide them with a similar program, Chief Stewart of his own volition offered Appellants the highly-beneficial, and otherwise unavailable, option of being able to work and collect retirement at the same time.

Had Chief Stewart never offered that option to them, they would have been much worse off financially. They could have continued working as SLED agents indefinitely, but they would have received nothing but their salaries until such time as they decided to retire. At that time they would have received only their retirement pay, which was about 60% or more of their salary at retirement, but nothing more.

Instead, Chief Stewart offered them the option to retire and return to work, collecting their full retirement pay along with a new, but slightly lower, salary (85% or more of their former salary). As discussed in prior filings, there was

nothing that required SLED to rehire its retirees at all, and nothing that required them to be paid the same salary if indeed they were rehired. Appellants and a number of others accepted that option. Upon rehire, they began collecting that slightly lower salary and their full retirement benefit at the same time. Under this arrangement, which was completely optional for the agents, Mr. Grimsley was being paid about 168% of what he had previously been making prior to his retirement. R. 9, citing Stewart Affidavit, R. 174, 193.¹ It was a win-win situation for all concerned. But Appellants still want more.

Once the Appellants left SLED employment four years later, they apparently believed they had nothing to lose by trying to claim (belatedly) that last 13.6%, notwithstanding their unequivocal consent to be rehired at the lower salary. If there is any kind of "scheme" involved in this case at all, it was a scheme by Appellants to (1) consent to the arrangement, (2) collect four years of the agreed-upon salary along with retirement at the same time, and then, (3) once their SLED employment ended four years later, to file this action claiming that the arrangement from which they derived so much benefit was "illegal," and that their unequivocal consent to it was invalid.²

¹ Plaintiff Jowers' situation was similar.

² Chief Stewart averred that he never would have offered them the arrangement in the first place, had he known that they would later seek to collect the amount they agreed not to be paid when they returned to work. R. 217 at ¶ 14.

The entire retire/rehire program was unquestionably a matter of grace that benefited Appellants enormously. This optional program was not a matter of right. Each Plaintiff, so to speak, accepted a gift horse without complaint and rode it for four years. Once the gift was exhausted after four years, they then decided to look it in the mouth, demanded that the giver be ordered to give them a better one, and claimed that the whole gifting process was nothing but a "scheme" to deprive them of something. This Court should not lend any support to this inconsistent course of action by the Appellants.

2. While Appellants now try to assert otherwise, they have never claimed, nor sought to prove, that they were rehired at the same salary they had been receiving at the time they retired. In fact, there was no evidence documenting that Appellants were rehired at their former salaries. Instead, there was an abundance of evidence to the contrary, as set forth in the Memorandum in Support of Petition for Rehearing at pp. 6-11. As was there shown, the uncontroverted evidence showed that Appellants were rehired at new salaries that were listed as

specific dollar amounts, \$45,702 for Grimsley and \$39,828 for Jowers. R. 181, 189.³

Respondent would therefore reiterate that there is no evidentiary support for the Court's conclusion that a trier of fact could conclude that "SLED agreed to pay each rehired employee the same salary it paid before retirement." Slip op. at 2. The Court relied on a document that the Court viewed as describing the rehire salary, but that view of that document is conclusively rebutted by the above-referenced direct evidence, such as the statements in the forms that "Your salary will be \$45,702" (Grimsley), or "Your salary will be \$39,828 (Jowers). R. 181, 189.⁴

3. Appellants have also shown no reason why their claims should not have been held to be precluded by their consent, or their waiver, or through

³ Appellant Jowers' first pay stub after his rehire confirms that rehire salaries were lower at the very outset. That pay stub is in the record at R. 200. It shows a gross salary of \$1,809.50. This includes an addition of \$150.00, which is part of the \$600.00 annual clothing allowance authorized for SLED agents in the 2004-2005 Appropriations Act. Act No. 248 of 2004, Part 1B, Sec. 56DD.13. ("The State Law Enforcement Division is hereby authorized to provide agents and criminalists with an annual clothing allowance (on a pro rata basis) not to exceed \$600 per agent/criminalist for required clothing used in the line of duty"). The bimonthly gross pay without that clothing allowance is \$1,659.50, which multiplied by 24 pay periods equals exactly \$39,828.00. That is the same rehire salary shown for Jowers as appears on two of the forms. R. 189, 191. The rehire salary was therefore never the pre-retirement amount of \$44,755. R. 106, line 32.

⁴ Petitioner's Point 2 seeks to suggest that Ms. Hutto's deposition was the only evidence that the rehire salaries were new salaries. Return at 4. Appellants ignore the rest of the considerable, and uncontradicted, body of evidence cited in SLED's Memorandum in Support of Petition for Rehearing at pp. 6-11.

estoppel. Appellants do not deny that they consented to receive the salaries they received upon rehire. They claim instead that such consent or waiver on their part was “illegal.” Return at 9. However, Appellants’ only basis for the “illegality” claim is their assertion that under the facts of this case, a property interest was created by § 9-11-90. Return at 8. This gets Appellants nowhere, though, because there can be no doubt that one can consent to, or waive, the deprivation of constitutional rights. *See, e.g., Pee Dee Health Care, P.A. v. Sanford*, 509 F.3d 204, 213 (4th Cir. 2007)(“[w]here a party knowingly and willingly enters into an agreement that waives a constitutional right, the agreement is enforceable so long as it does not undermine the public’s interest in protecting the right”). Appellants here have shown no “public[] interest in protecting the right.” No such interest exists, because the only public policy actually expressed by § 9-11-90 is that an employer cannot rehire a retiree and then not make a contribution to the PORS for the salary paid for that position. The undisputed evidence showed that SLED did in fact pay the employer contribution. The payments were made from the funds appropriated for that purpose, and not from funding for salaries, as reiterated in Point 6 below. Accordingly, there is no question that SLED was in full compliance with that expressed policy of the General Assembly.

Appellants cite several cases in which agreements were held to be against public policy and therefore not subject to valid consent. Return at 9. These are

inapposite, however, because in this case, Appellants' agreements did not affect the payment of the employer contribution by SLED. That was the main, if not the only, policy expressed by § 9-11-90. Also, there is no public policy against the non-coerced, voluntary, waiver of a constitutional right, as already discussed.⁵ Finally, as held in the Circuit Court order, the General Assembly has in recent years adopted the same policy as was used in the retire/rehire program, endorsing "the idea of permitting retirees to return to work while collecting full retirement benefits and with a reduction in the amount paid by agencies for salaries." R. 19. Appellants therefore cannot validly claim that their agreements were inconsistent with public policy, nor have they really tried to do so.

4. On almost every page of the Return, Appellants continue to frame their case as one that has something to do with appropriation of funds. Return at 2, 4, 5, 6, 7, 8. This Court did not base its opinion on that ground, and with good reason. It is undisputed that there was no factual support for Appellants' claim that the money that had formerly constituted their salaries was later used to pay

⁵ If the source of the right is based on some other theory of the right created by the statute other than the "property interest" theory, the principles set forth in *Pee Dee Health Care, supra*, still apply, because that case referenced the waiver of statutory rights as well as constitutional rights. 509 F.3d at 212.

employer contributions. Circuit Court order, R. 16, citing Royal Affidavit, ¶ 8, R. 206.⁶

5. Appellants also seek to invoke the “property interest” claim referenced by the Supreme Court in its decision that involved only the sufficiency of the pleadings. Return at 3, 5-6, 7. However, the opinion of this Court did not mention either the existence or the nonexistence of a property interest in Appellants. Even if a property interest existed under the proven acts of this case, which SLED denies, Appellants’ consent to this optional arrangement could and did waive any claim of a property interest.

6. Appellants claim that even if the employer contribution was made from the benefits account, as indeed it was, and not from the personal services account, that issue “has no bearing.” Return at 6. Appellants asserted in the Circuit Court, however, that “the General Assembly’s intent was that the funds it appropriates to SLED be used for the purposes appropriated.” R. 92. SLED proved that its actions were consistent with the General Assembly’s purpose, because

[M]oney appropriated for benefits was used at all times to pay benefits, including the employer contribution, and money appropriated for salaries was used at all times to pay salaries. Plaintiffs have not provided any evidence to the contrary

⁶ Appellants’ arguments pertaining to standing, Return at 7-8, are also without merit. They claim standing on the ground that SLED’s actions reduced the amount in the PORS (the “sum jeopardized”). Return at 8. However, it is undisputed that SLED paid the PORS everything it was due.

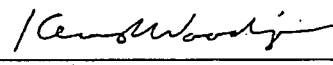
Circuit Court Order, R. 16, citing Royal Affidavit, ¶ 8, R. 206. In other words, now that Appellants' misappropriation claim has been shown to be factually incorrect, they now claim that it does not matter.

CONCLUSION

For the foregoing reasons, Respondent SLED respectfully requests that the Court rehear its decision and issue an opinion affirming the decision of the circuit court on one or more of the bases set forth above and in Respondent's Petition for Rehearing.

Respectfully submitted,

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March 31, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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J. Ernest Kinard, Jr., Circuit Court Judge

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RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2008CP4008854

Phillip D Grimsley

South Carolina Law Enforcement Division

Roger M Jowers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 7 August 2012 to attorneys of record or to parties (when appearing pro se) as follows:

William Jonathan Harling
A. Camden Lewis
James Walter Fayssoux Jr.

Keith M. Babcock
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,

Plaintiffs,

v.

South Carolina Law Enforcement
Division and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 08-CP-40-8854

ORDER

2012 AUG -3 PM 2:22
JEANETTE W. MCGRIDE
C.C.P. & G.S.

This case was heard on June 7, 2012, by this Court on the parties' cross motions for summary judgment. For the reasons set forth herein, the Court grants SLED's Motion for Summary Judgment, and denies Plaintiffs' Motion for Summary Judgment, and dismisses this action.

Introduction and Summary

This action was filed on December 16, 2008, by Plaintiffs Grimsley and Jowers against the South Carolina Law Enforcement Division (SLED) and the State of South Carolina.¹ Plaintiffs, both of whom retired unconditionally from SLED in 2004 and then agreed to be rehired at slightly reduced salaries, claim that § 9-11-90(4)(b) created certain rights in them with respect to the employer contribution to be paid by SLED on their salary upon their rehire. In the parlance of the cases in this area, they came back to work as "working retirees." *See, e.g., Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011). In *Ahrens*, the Supreme Court noted that the return

¹ After the hearing, the State was dismissed without objection. The Court would also note that Plaintiffs filed a motion for class certification on December 1, 2009, but that motion was not before the Court at the June 7, 2012 hearing. Given that the case is being dismissed pursuant to this Order, the motion for class certification has been rendered moot.

SCANNED

of a retired employee to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60.

All parties have filed motions for summary judgment with affidavits and other evidence. The facts are undisputed, and this matter is now in a posture appropriate for resolution on the merits.²

FACTS

The facts of this case are not in dispute, and are as set forth below:

A. Background.

In 2002, several major changes were made to the statutes governing the ability of South Carolina state employees to retire and return to work. The most dramatic of these was the removal of the earnings limitation, or salary cap, that had always been in place in the past to a greater or lesser degree. Act No. 356 of 2002, §12. This removal of the salary caps applied both to members of the Police Officers Retirement System (PORS) such as Plaintiffs and also to non-police officer state employees. It meant that for the first time ever, it was possible for state employees and PORS members to take full retirement, collect full retirement benefits, and also

² This case has been to the Supreme Court on issues raised in a motion to dismiss filed by the State of South Carolina. *Grimsley v. South Carolina Law Enforcement Div.* 396 S.C. 276, 721 S.E.2d 423 (2012). The Supreme Court held, contrary to the State's assertion, that exhaustion of remedies was not required under the South Carolina Retirement Contribution Procedures Act, S.C. Code Ann. §§ 9-21-10, et seq. The Court also held that the Complaint "asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (emphasis added). As discussed in more detail below, the full record now before that Court makes it clear that the facts as proven are substantially different from those alleged in the Complaint, and that Plaintiffs have no property interest in the matters to which they assert a claim.

return to their former state jobs at salaries that could have been, but were not required to be, the same as their salaries when they retired.³

Prior to 2002, there had always been a salary cap or earnings limitation upon the amount that a retired PORS member could earn while still remaining a retiree. Until the late 1990's, the amount that a working retiree could earn was quite low. For instance, from 1989 until 1999, it was only \$9,500 annually. See Act No. 189 of 1989, Part II, §50B. However, in 1999, the earning limitation rose from \$9,500 to \$25,000. Act No. 100, of 1999, Part II, § 27. This was increased to \$50,000 in 2001. Act No. 25 of 2001, § 2. The salary cap was removed altogether in the following year, 2002. See Act No. 356 of 2002, § 12, which is captioned "Earnings limitation removed under certain conditions." (As an aside, the Court would note that in Section 12 of Act No. 278 of 2012, signed by the Governor on July 9, 2012, the General Assembly provided prospectively that there would be an earnings cap of \$10,000 annually for virtually all PORS retirees who retired at an age younger than fifty-seven years of age.)

Until 1999, there had been no requirement that the employer contribution should be paid for working retirees, as is now the case. It can be inferred that until the salary cap was raised in 1999 from \$9,500 to \$25,000, the available salaries were so low that most working retirees

³ There are several significant differences between this "working retiree" program created by § 9-11-40(4) and the well-known Teacher and Employee Retention Incentive ("TERI") program. First, the TERI program has never applied to PORS members. The TERI program instead has always applied only to members of the South Carolina State Retirement System, § 9-1-10, et seq. (hereinafter "State System"). Secondly, the working retiree program does apply to PORS members (as well as others). Thirdly, under the TERI program, there was a contract between the employee and the employer. See *Layman v. State*, 368 S.C. 631, 642, 630 S.E.2d 265, 271 (2006). Fourthly, there is no contractual relationship between working retirees and their employers. *Ahrens v. State*, *supra*. Fifthly, TERI employees do not collect retirement benefits while working, instead receiving them upon termination of employment. *Lyman*, *supra*. Finally, TERI employees retain all grievance rights, § 9-1-2210(E), which in practice means that their postretirement salaries remain unchanged from the time of retirement. As set forth in n.6 below, working retirees do not have grievance rights.

would not have filled a fulltime job when they returned to work. However, once the salary cap was raised from \$9,500 to \$25,000 in 1999, the amount of salary earnable by a working retiree had started to become high enough to cover the salaries of at least some fulltime positions. Accordingly, in 1999, the General Assembly added the requirement in § 9-11-90(4)(b) (and § 9-1-1790(B), for the State system) that employers must pay an employer contribution to the Retirement System on the salaries of working retirees who returned to employment. Without this requirement for the employer to pay the employer contribution on the salaries of working retirees, there would soon have been a fairly sizable number of working retirees in the PORS and in the State system who would be filling fulltime positions, or at least positions with substantial salaries, but with no employer contribution being paid to the PORS or the State Retirement System on the salaries for those positions. Such a development would have been detrimental to those two Systems, and to state retirees generally, by carving out a class of employees who were filling positions that were effectively full-time positions, but for which positions the Retirement Systems would have received no employer contribution.

In practice, the working retiree provisions of the PORS statute, § 9-11-90(4), require that the individual retire fully, and leave state employment for at least fifteen consecutive calendar days prior to returning to work. The ability to return to work was not conferred by § 9-11-90 or any other statute. Instead, as the Supreme Court has held, the ability of a retired employee to return to work "was conditioned on whether an employer in the system chose to hire that employee." *Ahrens v. State, supra*, 392 S.C. at 351-352, 709 S.E.2d at 60 (2011).

Section 9-11-90 likewise contains no provision pertaining to the salary to be paid upon the retiree's return to employment as a working retiree. That section instead simply states that the retiree "may be hired and return to employment covered by this system or any system provided

in this title without affecting the monthly retirement allowance he is receiving from this system.”

(Emphasis added.)

The elimination of the salary caps in 2002, coupled with the absence of a TERI program for PORS members, led then-Chief Stewart to see whether a plan could be created that would make it attractive for SLED employees who had reached retirement age to retire and take “working retiree” status if they so chose. Stewart Aff. Par. 5. As Chief Stewart’s Affidavit also notes, “During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina.” Stewart Aff. Par. 6. Chief Stewart consulted with the Budget and Control Board’s Office of Human Resources and also with Vance Bettis, Esq., among others. *Id.*, Par. 8. The result was that Chief Stewart and SLED created the program known as the Retirement/Rehire program. Chief Stewart and SLED then created a uniform series of forms that could be used by persons who were interested in becoming working retirees. Stewart Aff. Par. 11.⁴

B. The Retirement/Rehire program for SLED working retirees, starting after July 1, 2002.

The Affidavit of former SLED Chief Robert M. Stewart sets forth in detail the entire process under which Plaintiffs retired and rehired. Stewart Aff. Par. 13. In summary, what happened was that starting in the late summer or fall of 2002 (shortly after the salary caps were eliminated), if a SLED agent wished to retire and seek to become a working retiree, he would first advise Chief Stewart that would be retiring on a date specified in the retirement notice form.

⁴ In the prior fiscal year, 2001, the General Assembly had provided for agencies to offer certain voluntary retirement incentives. As discussed below, this option was similar in some ways to the SLED Retirement/Rehire program, but it applied only to persons who applied for it in 2001. Plaintiffs were not among that group.

Exhibit 1 to Stewart Affidavit.⁵ The individual, in signing the form, noted the existence of certain conditions "if I wish to apply to be rehired," and "if I am selected to be rehired. . . ." *Id.* (Emphases added). At that point, the individual was completely retired and separated from employment with SLED, which had no obligation to rehire the individual. Stewart Aff., Par. 22. *Ahrens, supra*. Indeed, Chief Stewart advised each person considering retirement and rehire not to do so "unless they were ready to retire immediately and permanently." Stewart Aff., Par. 15.

If a retired employee sought to be rehired, he would then would fill out a form in which he requested Chief Stewart to rehire him. Exhibit 2 to Stewart Affidavit. The form expressed the agent's understanding that that if rehired,

.... the following provisions apply and I agree to them:

Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).⁶

Accrual of annual and sick leave at current rate.

Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.

Employment not to exceed 48 months.

No lump sum payment for annual leave upon second separation.

Review date: twelve months after date of rehire.

No probationary period.

Must apply to this agency and receive permission to reenter retirement system as an active member.

Exhibit 2 to Stewart Affidavit (emphases added).⁷

⁵ Exhibits 1 through 4 to the Stewart Affidavit are the forms for Plaintiff Grimsley. Exhibits 5 through 8 are the corresponding forms for Plaintiff Jowers.

⁶ S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

The third step in the process was that the SLED Director of Human Resources advised the employee that his request to return to employment had been approved, "based on your written acceptance of the following provisions." Exhibit 3 to Stewart Affidavit. Among the conditions stated in that form was the following:

Your salary will be \$45,702 (previous base salary less 13.6%),
no longevity pay, additional reduction by cost of health insurance
to agency if elected.⁸

(Emphasis added.) As the then-Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary: . . ." Hutto deposition, 43: 12.

The fourth and final form was informational. It was labeled "Employee Orientation for Re-Employment under the PORS Retirement Provisions." Exhibit 4 to Stewart Affidavit. This form contained a statement by SLED to the employee that

As a retiree being re-employed by SLED, items listed below are
being discussed with you so you will be informed of your benefits
and employment status.

Plaintiffs each signed this form at the bottom. *Id.* The form there stated "My signature below indicates that the above checked items were discussed with me during orientation." *Id.* This sentence was followed by a signature line.

The items listed in the informational form were essentially the same as those quoted above. The "Salary" bullet point referenced the same "reduction of 13.6% in your salary," noting that that reduction was "to cover the amount it will cost SLED to pay the employer portion of retirement." (This recitation did not appear in the previous two forms that referenced the salary

⁷ The employer contribution for PORS members had been 10.3% of salary prior to July 1, 2004, at which time it increased to 13.6%.

⁸ The salary figure in the quoted exhibit is the specific number applicable to Plaintiff Grimsley. This figure varied by employee.

reduction of 13.6%, instead only appearing in the fourth form, an informational document.) The employees had already agreed, by executing the second form, to accept a 13.6% salary reduction, with no reason given by SLED for that specific percentage (nor any need for one). Finally, the fourth form mentioned that the employee contribution of 6.5% would no longer be deducted from the salary check. The reason for this was that the employee, as a retiree, was no longer required at the time to pay the employee contribution.⁹

Once all four forms had been executed, the employees returned to work, collecting their both their new salaries (13.6% less than before retiring) from SLED and their full retirement from the PORs. In the case of Plaintiff Grimsley, his pre-retirement salary had been \$52,896. In 2005, the first full year after his retirement, his SLED salary was \$48,318.00, and his PORs retirement benefit was \$33,158.04, for a total of \$81,472.04. Stewart Affidavit, Paragraph 20 and Exhibit 9.¹⁰ In other words, his combined income as a working retiree was more than half again the amount of his preretirement income.

C. Payment Of The Employer Contribution By SLED And Absence Of A Deduction Of The Employer Contribution From The Employees' Salaries.

Because Plaintiffs' claims pertain to the employer contribution, it is appropriate to provide some brief amount of background concerning the nature of the employer contribution and the mechanics of how it operates. This information is found primarily in the Affidavit of Donald R. Royal.

⁹ This changed effective July 1, 2005, when the General Assembly amended §9-11-90(4)(c) to require working retirees to pay the employee contribution even though they were retired. This amendment was upheld in *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006) as to employees generally, and in *Ahrens, supra*, as to certain employees who claimed that the State had created rights in them by contract or estoppel.

¹⁰ Plaintiff Jowers did not produce his tax forms for 2005, but he also unquestionably would also have had a greater total take-home amount after retirement and rehire.

At the outset, it should be reiterated that there is no doubt that SLED did pay the employer contribution for these Plaintiffs, just as it has done for all of its employees at all times.

Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens-Aff. Par. 6 & 7. Plaintiffs do not contend otherwise, nor could they reasonably do so.

The employer contribution, as its name would indicate, is paid by the employer, not by the employee. In fact, the FORS statute requires that it be paid by the employer. Section 9-11-220(1) provides that

(1) Commencing as of July 1, 1974, each employer shall contribute to the System seven and one-half percent of the compensation of Class One members in its employ and ten percent of compensation of Class Two members in its employ. Such rates of contribution shall be subject to adjustment from time to time on the basis of the annual actuarial valuations of the System.¹¹

(Emphasis added.)

The employer contribution is paid periodically in a lump sum that is equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a periodic lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.¹² Royal Aff. Par. 12.

In addition, as set forth in more detail in the Royal Affidavit, the employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not

¹¹ In 2004, when Plaintiffs retired, the rate for the employer contribution had been adjusted upward from the 7.5% in the statute to the 13.6% referenced earlier. As noted earlier, the 13.6% figure took effect on July 1, 2004. Immediately prior to that it had been 10.3%.

¹² At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. See Exhibit 20 to Hutto Dep. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

included within the salary of the employee, and therefore is not deducted from the salary of the employee. Royal Aff. Par. 8. Instead, it is paid from the fringe benefit amount appropriated to the agency.—Royal Aff. Par. 8.—For SLED, the fringe benefit amount for the employees is approximately 35% over and above the employees' salary amounts. *Id.*, Par. 7. The employees never see this amount reflected in their salary information, because it is not part of their salaries. In addition to the employer contribution to the Retirement System, the total amount of fringe benefits includes such things as employer contributions for workers' compensation, health insurance, and for other similar fringe benefits. *Id.*, Par. 9. Most state employees probably have no idea how much is paid by their employers for these various employer contributions, nor are these specific amounts really a matter of concern for the employees, because these amounts are governed by law and are over and above the figure that actually is of concern to the employees, that is, their salaries.

As might be expected from the nature of the employer contribution and the manner in which it is remitted by the employer, there is simply no such thing as "having the employer contribution deducted from [employees'] salaries," as Plaintiffs allege. *See* Royal Aff. Par. 8. In fact, again as might be expected, the postretirement pay stubs of the Plaintiffs reflect no deduction at all for retirement, given that (a) in 2004, retirees did not pay an employee contribution, and (b) the pay stub would never reflect a deduction for the employer contribution, since that amount was never deducted from salary, but rather was paid by the employer as part of benefits over and above salary. *See* Kitchens Aff. Par. 6 and 7. SLED simply decided to use the percentage figure of the preretirement employer contribution as a uniform measure of the salary

reduction and of the amount of cost savings as a result of the rehire process. See Stewart Aff.,

Par. 18.¹³

D. Specific Facts Pertaining to Plaintiffs Grimsley and Jowers.

Plaintiffs Jowers and Grimsley retired on June 1, 2004 and June 30, 2004, respectively.

The financial advantage to them of the terms of their retirement was substantial, as the numbers above for Plaintiff Grimsley would indicate.

While Plaintiffs, after being rehired, were at-will employees who could have been terminated at any time in SLED's sole discretion, both of them were in fact permitted to continue in their employment for the entire 48-month period mentioned in the documents above. Kitchens Aff., Par. 8. (Section 9-11-90(4)(a) provided that the 48-month period was the maximum period for which a working retiree could work without his status changing.) On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they each were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively, that is, at the end of 48 months. Kitchens Aff., Par. 8 and Ex. 2 and 3. They were informed about opportunities for part-time work. *Id.*

In December 2008, four and a half years after they were rehired as working retirees, Plaintiffs Grimsley and Jowers filed the present action.

CONCLUSIONS OF LAW

¹³ By way of illustration, the employer contribution for Plaintiff Grimsley of 13.6% of his preretirement salary of \$52,896 would have been approximately \$7,200. The employer contribution on his reduced salary upon rehire (13.6% of \$48,318) was about \$6,600, just \$600 less than it had been for the preretirement salary. The total salary reduction had been about \$4,600. SLED therefore saved all of the salary reduction of \$4,600, as well as an additional \$600 in benefits, i.e., the amount by which the employer contribution was reduced. The \$4,600 accordingly was available for salaries for other employees. See, Royal Aff. Par. 8; Stewart Aff. Par. 21.

1. Plaintiffs' claims have no basis in fact, because the employer contribution was never deducted from their salaries, as they claim, nor were they required to pay the employer contribution themselves.

In light of the undisputed facts set forth above, it is clear that Plaintiffs' claims are lacking in merit. Their claim that SLED violated § 9-11-90 by "having the employer contribution deducted from [their post-retirement] salaries," Complaint, Par. 27, is simply not factual. There can be no reasonable dispute that there was no salary DEduction for the employer contribution. Plaintiffs instead agreed to a salary REduction. This claim as stated in the Complaint is therefore incorrect as a matter of fact.

The claim of Plaintiffs that SLED violated § 9-11-90 by "having the [Plaintiffs] pay the employer contribution" is also not factual. SLED, and not the Plaintiffs, unquestionably paid the employer contribution. *See, e.g.,* Royal Aff. Par. 16.

Plaintiffs' claim fares no better if viewed as one that the employees were wrongfully required, as a condition of their employment, to have the amount of the employee contribution "deducted" from their salaries. Complaint, Par. 27. They did agree to come back as working retirees at reduced salaries, but the fact that this occurred does not state a legal claim. There is nothing in § 9-11-90 that requires them to be rehired at all. To reiterate once again what was held in *Ahrens, supra*, the return of a working retiree to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60. Given that there was no right at all to return to work after retirement, there was obviously no violation of any right of Plaintiffs by requiring them to agree to a reduction in salary as a condition of returning to work. SLED could have conditioned Plaintiffs' return to work on their taking a salary reduction of between 0% and 100%. If Plaintiffs found the rehire salary unacceptable, which they obviously did not, they could have

declined to return to work. The fact that the relatively small percentage chosen by SLED was 13.6%, the same as the employer contribution on their old salary, was of no significance to any right of the Plaintiffs.¹⁴

Plaintiffs have effectively already conceded this. As the Supreme Court held in the appeal from the grant of the State's motion to dismiss, "[Plaintiffs] do not claim they are entitled to a particular salary level." 396 S.C. at 284, 721 S.E.2d at 427. Instead, the Court held, Plaintiffs "have asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (emphases added). In so holding, the Court cited *Ryde v. Morris*, 381 S.C. 643, 646 675 S.E.2d 431, 431 (2009), which held that in reviewing a dismissal of a case on a Rule 12(b)(6) motion to dismiss, the court is "required to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiffs to relief on any theory of the case." (Emphasis added.) However, as already shown, the "facts alleged" and the actual facts are entirely different. There was no deduction from the Plaintiffs' salaries, only a reduction. As a result, now that the facts have been shown to be substantially different from those alleged in the Complaint, it is apparent that Plaintiffs' claim based on an alleged violation of § 9-11-90 is without merit.

The primary contention of Plaintiffs, set forth at pp. 4-6 of their Memorandum submitted to the Court, is based on a complaint about what they claim SLED did with the money that had

¹⁴ As noted above, Plaintiffs' agreement to accept the 13.6% figure was made in the second of the four documents that were part of the process. Exhibits 2 and 6 to Stewart Affidavit. Those documents did not state a reason for using the 13.6% figure, nor did they need to. Plaintiffs were obviously agreeable to being rehired with a 13.6% salary reduction and full retirement benefits. The only reference to that percentage as covering the employer contribution did not come until the fourth document in the series, which was merely informational. Exhibits 4 and 8 to Stewart Affidavit.

been part of their salary prior to their entirely voluntary retirement. Clearly, however, once Plaintiffs unconditionally retired, they no longer had a legally protected right or interest with regard to what SLED did with the money that had funded their former salaries during their original period of employment. Their post-retirement salaries were completely unrelated, as a matter of law, to their pre-retirement salaries. As the former SLED Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary. . . ." Hutto deposition, 43:12.

Plaintiffs make the factually unsupported claim that SLED "misappropriates monies due the retirement system. . . ." Pl. Br. at 2. While the Court concludes below that SLED properly complied with pertinent provisions of law that govern appropriations, the first reason why Plaintiffs' claim lacks merit is that once they left their SLED employment, their departure eliminated any legal standing they may have had to make claims pertaining to the appropriations process as applied to the disposition of the funds that in the past had paid their salaries and benefits. As the Supreme Court very recently held in *Freemantle v. Preston*, ___ S. C. ___, 2012 WL 2412040 (2012), reiterating general principles pertaining to standing, "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." 2012 WL 2412040 at *2. When Plaintiffs retired, they completely separated themselves from state employment, with no right to be rehired at all. Under these circumstances, Plaintiffs simply no longer had any interest at all in the manner in which SLED spent the funds that had previously been part of their salaries or fringe benefits during their pre-retirement period of employment. In the language of *Freemantle, supra*, they "sustained . . . no prejudice" from any SLED actions

pertaining to their former salaries after they had retired and then voluntarily returned to work with different salaries.

While Plaintiffs clearly have no standing to assert any claims regarding SLED's use of their former salaries, the Court would note that based on the undisputed facts set forth in affidavits and the applicable law, Plaintiff's claims are without factual or legal merit in any event. Plaintiffs assert that "SLED gets money for a specific purpose and then spends it for another purpose." Pl. Br. at 5. Factually, this is incorrect. As set forth in Paragraph 8 of the Royal Affidavit, money appropriated for benefits was used at all times to pay benefits, including the employer contribution, and money appropriated for salaries was used at all times to pay salaries. Plaintiffs have not provided any evidence to the contrary.¹⁵

Even if this claim by Plaintiffs had been factually supported, which it was not, it appears to be based only on *S.C. Code Ann.* § 11-9-10, which provides that

It shall be unlawful for any monies to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.

(Emphasis added.) The short answer to Plaintiffs' conclusory claim in this regard is that the Appropriations Acts in the pertinent fiscal years contained a provision permitting agencies to transfer appropriations. *See, e.g.,* 2004-2005 Appropriations Act., Part 1B, § 72.10 (agencies and authorized to transfer appropriations of up to 20% of program budget within programs and

¹⁵ Plaintiffs assert that § 9-11-90 "requires the employer to 'pay to the system' the employer contribution for active members prescribed by law with respect to any retired member. . . and that "working retirees such as Plaintiffs must be treated the same way as other employees with regard to employer retirement contributions." Pl. Br. at 5. As indicated above, to the extent that this could possibly matter to these Plaintiffs, the answer to it is that SLED paid the employer contribution for them from the appropriation for benefits, just as in the case of employees who are not working retirees.

within the agency). While no such transfers occurred in fact, they would have been authorized had they occurred.

Plaintiffs once again misapprehend the facts when they state that SLED is paying the employer contribution from "the withheld wages of Plaintiff[s]." Pl. Br. at 6. Again, however, as has been made clear above, there simply is not any "withholding of wages" from the Plaintiffs for the employer contribution. There was only a reduction in salaries after rehire.

2. The facts of this case show that Plaintiffs lack a property interest.

In *Grimsley*, the Supreme Court noted that Plaintiffs "assert a violation of S.C. Code Ann. section 9-11-90," 396 S.C. at 284, 721 S.E.2d at 427. The Court then noted that Plaintiffs "contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90." *Id.* The Court concluded that "section 9-11-90 provides a basis to assert a property interest. Specifically, Appellants' takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the employer portion of the retirement contributions. It follows that Appellants are able to point to a property interest rooted in state law." 396 SC at 285, 721 S.E.2d at 428.

As already mentioned above, this discussion by the Court was couched in terms of review of the granting of a motion to dismiss, accepting all factual assertions in the complaint as true. However, as the facts show, no "percentage of their salary was deducted." For the same reason, their salary upon rehire was not "used to pay the employer portion of the retirement contributions." As a result, even if the facts as pled had been sufficient to show that a property interest existed, the facts as proven have shown otherwise. The Court would also reiterate that *Ahrens, supra*, held that there was no right to return to work as a working retiree.

3. Even if § 9-11-90 created a property interest in Plaintiffs in the amount of the employer contribution, Plaintiffs voluntarily waived and relinquished any such interests when they voluntarily returned to work at reduced salaries.

It is axiomatic that constitutional rights may be voluntarily waived, as indicated, for instance, by every case upholding a guilty plea. *See, e.g., Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375, 379 (2012) (by pleading guilty, "accused . . . waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions"). The permissibility of a waiver applies all the more strongly in a situation involving the lesser alleged right to a fraction of a public salary.

The documents submitted to the Court show that Plaintiffs freely, and one may assume, enthusiastically, agreed to retire and be rehired at a salary that was 13.6% less than their pre-retirement salary. Again, the "Request to be Rehired" form stated in part as follows:

I understand that if [rehire] does occur, the following provisions apply and I agree to them:

* * *

Salary: 13.6% less than previous base salary. . . .

Exhibits 2, 6 (Emphases added). It is difficult to see how one could more clearly agree to be rehired at a reduced salary. Accordingly, even assuming Plaintiffs had some kind of property interest, it was waived, and as already indicated above, the waiver was to their great advantage.

Plaintiffs attempt to argue that their voluntary retirement and subsequent rehire at a different salary constituted an agreement "in violation of statutory or constitutional law." Pl. Br. at 9. Again, however, even if a constitutionally-protected property interest had been present, Plaintiffs have suggested no reason why such interest could not be validly waived by them, especially when the resultant change in total money received after retirement was so clearly to their benefit. Nor is there any violation of statutory law. As shown repeatedly above, the employer contribution was paid by SLED and not deducted or withheld from the postretirement

salaries. Plaintiffs also contend that their agreements were unenforceable "illegal contracts" that violate public policy. *Id.* To the contrary, the General Assembly has in recent years endorsed the idea of permitting retirees to return to work while collecting full retirement benefits and with a reduction in the amount paid by agencies for salaries.¹⁶ See, for instance, Act No. 291 of 2010, Part 1B, Section 89.144 (GP: Cost Savings When Filling Vacancies Created by Retirements). The most recent reiteration of this proviso is found in the 2012-2013 Appropriations Act, Part 1B, Section 89.89. In those annual provisos, the General Assembly has mandated that whenever classified FTE positions become vacant because of employee retirements, the vacant positions must be managed so that in the aggregate, there should be a cost savings of 25% when managing those positions. This is the same general cost savings approach that was part of the Retirement/Rehire program, except that now, the mandated percentage reduction for managing the filling of the vacancies is 25%, instead of the 13.6% reduction that was applied to Plaintiffs Grimsley and Jowers.

4. The statute of limitations issue

While the foregoing discussion has centered on the merits of Plaintiffs' claims, it is argued by SLED that it is actually not necessary for the Court even to consider the merits. As Plaintiffs' claims if meritorious or not, were brought well over three years after their accrual and therefore could be barred by the applicable statute of limitations. However, I do not reach that conclusion as it could be held that the statute commences to run anew with each check presented.

¹⁶ As noted above, however, the General Assembly by the enactment of Act No. 278 of 2012 has restored an earnings cap of \$10,000 on most PORS members who retire prior to the age of fifty-seven. While this does not affect these plaintiffs, they would not even have been eligible to retire and be rehired at their former salaries if they were younger than 57 when they retired in 2004.

SLED argues the Doctrine of Laches bars Plaintiffs' claims; however, I feel that if the case were to go forward this issue should be presented at trial as a factual dispute exist.

6. For the reasons already cited, Plaintiffs are now estopped from asserting their present claims.

The facts presented to me support the affirmative defense that Plaintiffs are now estopped from asserting their present claims. Having accepted four years of benefits pursuant to the program that permitted them to retire and return to work, Plaintiffs cannot now claim that SLED's actions harmed them. Instead, such a late assertion of alleged rights to their old salaries would harm SLED if permitted, because SLED would be required to find funding to pay Plaintiffs' salary differentials for the entire four-year period in which Plaintiffs uncomplainingly participated in the program. The general rule pertaining to estoppel in South Carolina has been stated as follows:

The principle of estoppel in equity stands upon the very foundations of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other, and gives that effect ... to their actions which ... justice dictate[s]. It arises when a person, in reliance on what another has done or said, changes position to his detriment and the other person then attempts to repudiate or evade the consequences of his action or speech.

Russell v. Drivers Leasing Services, Inc., 282 S.C. 358, 361, 318 S.E.2d 579, 581 (Ct. App. 1984). This is a fair description of Plaintiffs' actions in this case, and as a result, they should be held to be estopped from asserting their present claims, in addition to the other reasons stated herein as to why those claims should fail.

7. Plaintiffs' consent to the terms of the Retirement/Rehire program bars their present claims.

Still another reason why Plaintiffs' claims are barred is the simple reason that Plaintiffs unequivocally consented to the arrangement under which they were rehired. It is axiomatic that consent can serve as a defense to numerous acts that might otherwise be held tortious, such as

assault, trespass or invasion of privacy, among many others. See, e.g., *Hawkins By and Through Hawkins v. Multimedia, Inc.*, 288 S.C. 569, 571, 344 S.E.2d 145, 146 (1986) ("Consent may be found where the evidence shows a voluntary agreement to do something proposed by another, and the party consenting possesses sufficient information and ability to make an intelligent choice"). Here there can be no question that Plaintiffs freely and readily agreed to participate in the Retirement/Rehire program, with no suggestion of lack of information or ability to make an intelligent choice. The choice Plaintiffs made was a very intelligent one, and no doubt one that they would make again if they had been given the opportunity to do so. Their consent bars this action.

8. Matters raised in the affidavits of Plaintiffs.

Plaintiffs' respective Affidavits dated May 22, 2012, contain several inaccuracies or other matters not specifically discussed above. First, they appear to suggest that their retirement and rehiring took place pursuant to a 2001 program referenced in Exhibit A to both affidavits. However, and as shown in detail in the Reply Affidavit of Robert Stewart, that program was completely different from the program under which Plaintiffs retired and were rehired. Among other things, the 2001 program required employees to elect to participate in that program by September 15, 2001, which clearly did not occur for these Plaintiffs, who retired in 2004.

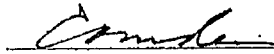
Both Plaintiffs refer to the fact that a year after they retired, certain cost of living raises they received starting on July 1, 2005 were reduced by the same approximate percentage of 13.6% (or 13.55%) as had been applied when they were rehired a year earlier. SLED points out however, that (a) this happened only in mid-2005, and not in the remaining years of Plaintiffs' four years of service as working retirees (Kitchens Reply Affidavit), and (b) it occurred more than three years before this action was brought, and therefore that issue is time-barred.

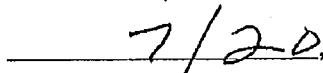
CONCLUSION

For the foregoing reasons, the Court concludes that SLED's Motion for Summary Judgment should be granted, Plaintiffs' Motion for Summary Judgment should be denied, and that this action should be, and hereby is, dismissed with prejudice in all respects.

AND IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Circuit Court Judge,
Fifth Judicial Circuit

 _____, South Carolina

 _____, 2012

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action Number: _____

) Civil Action Number: _____

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C.C.C. & G.S.

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THE PARTIES

- 1

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in the instant case under Article V, § 11, of the South Carolina Constitution and South Carolina Code Annotated § 14-1-80.

PLAINTIFF CLASS

6. Plaintiffs Phillip D. Grimsley, Sr., and Roger M. Jowers (hereinafter "SLED Retiree Plaintiffs") bring this action on behalf of themselves and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, as representatives of a class defined as follows:

All persons currently or previously employed by the South Carolina Law Enforcement Division who participated in an internally created retirement plan who retired and returned to employment and had the amount SLED was statutorily obligated to pay to the state retirement system (employer portion) deducted from their salary.

7. Individually named SLED Retiree Plaintiffs are all state employees who retired and returned to work for SLED pursuant to the SLED Retirement Program.

8. Upon retiring and returning to work, the SLED Retiree Plaintiffs and the Plaintiff class had the amount it cost SLED to pay the employer portion of retirement deducted from their salaries. See Attachment A.

9. Members of the plaintiff class are so numerous as to make joinder of all members impracticable.

10. There are questions of law and fact that are common to SLED Retiree Plaintiffs and to all members of the Plaintiff Class; and these questions predominate over questions, if any, that may affect only individual plaintiffs or individual members of Plaintiff Class inasmuch as the unlawful and unconstitutional activity alleged herein is of a character that is generally applicable to the SLED Retiree Plaintiffs and Plaintiff Class members. Among the questions of law and

fact common to SLED Retiree Plaintiffs and the Class they represent are:

- (a) Whether the SLED Retirement Program violates S.C. Code Ann. §9-11-90;
- (b) Whether the SLED Retirement Program is an unconstitutional taking of SLED Retiree's property or an unconstitutional taxing of SLED Retirees;
- (c) Whether the SLED Retirement Program violates SLED Retiree Plaintiffs' due process rights under the South Carolina and United States Constitutions.

11. SLED Retiree Plaintiffs' claims are typical of the claims of the members of the Plaintiff Class that they represent, as SLED Retiree Plaintiffs and members of the Plaintiff Class will lose clearly ascertainable amounts of money in excess of One Hundred Dollars (\$100.00) each by having their salaries reduced to pay the employer's portion of their retirement.

12. SLED Retiree Plaintiffs will fairly and adequately protect the interest of the Plaintiff Class that they seek to represent. The interests of the SLED Retiree Plaintiffs are coincident with, and not antagonistic to, those of the Plaintiff Class. SLED Retiree Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

13. Class action treatment of the matters at issue in this controversy is superior to the alternatives, if any, for the fair and efficient adjudication of such issues, because such treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would entail. Class action treatment in this case will have the added virtue of permitting the adjudication of what may be relatively small claims by certain members of the Plaintiff Class, for whom it would otherwise not be financially feasible to litigate their claims as individual actions against the Defendants.

14. As to each class member, the amount in controversy exceeds One Hundred Dollars (\$100.00), and/or the action is one for declaring a state action unconstitutional.
15. SLED Retiree Plaintiffs are aware of no difficulty in the management of this action that would preclude it from being maintained as a class action.

GENERAL ALLEGATIONS

16. SLED Retiree Plaintiffs are all current or former employees of the State Law Enforcement Division and were not participants in the TERI program.
17. SLED Retiree Plaintiffs all retired from the State Law Enforcement Division and returned to work for the State Law Enforcement Division pursuant to the SLED Retirement Program.
18. SLED Retiree Plaintiffs were members of the Police Officers Retirement System. The employer's contribution to the Police Officer Retirement System is established by S.C. Code Ann. §9-11-220.
19. SLED's obligation to pay the employer's contribution to the retirement system when a member of the Police Officers Retirement System retires and returns to employment is established by S.C. Code Ann. §9-11-90:
- "An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee."
20. SLED Retiree Plaintiffs were advised SLED had created an internal program that would allow them to retire and return to employment.
21. In order to participate in the program, SLED Retiree Plaintiffs had to retire from SLED and separate from employment for a period of time equal to their annual leave payout, but not less than fifteen days. SLED Retiree Plaintiffs then had to request to be rehired by SLED as a

full time employee with no grievance rights or reduction in force rights and the term of employment could not exceed forty-eight months.

22. SLED Retiree Plaintiffs were advised by SLED that they would "have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement." See Attachment A.

23. In order to participate in the SLED Retirement Program, SLED Retiree Plaintiffs were required to pay the employer contribution to the retirement system from their own salary.

FOR A FIRST CAUSE OF ACTION
(Violation of S.C. Code Ann. §9-11-90)

24. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

25. S.C. Code Ann. §9-11-90 allows a retired member of the Police Officers Retirement System to retire for 15 days and be rehired to employment without affecting the monthly retirement allowance the member receives from the System.

26. Pursuant to this statute, SLED was required to pay to the retirement system the employer contribution for active members for any retired member engaged to perform services for SLED.

27. SLED violated this statute by having the employer contribution deducted from SLED Retiree Plaintiffs' salaries as a condition of being rehired and having the SLED Retiree Plaintiffs pay the employer contribution.

28. SLED Retiree Plaintiffs have suffered damages as a direct and proximate result of the Defendants violation of this statute.

FOR A SECOND CAUSE OF ACTION
(Unlawful Taking or Unconstitutional Taxing)

29. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

30. The SLED Retirement Program required SLED Retiree Plaintiffs to pay the employer's portion of retirement to the retirement system.

31. The SLED Retirement Program oppressively, arbitrarily, capriciously and unreasonably deprives SLED Retiree Plaintiffs of their property and/or vested entitlement.

32. The SLED Retirement Program violates the protections afforded all citizens against unlawful takings or taxings contained in both the United States and South Carolina Constitutions.

33. The unlawful takings or unconstitutional taxings violated the due process rights of the SLED Retiree Plaintiffs.

34. The application of the SLED Retirement Program to SLED Retiree Plaintiffs constitutes a violation of SLED Retiree Plaintiffs' due process rights, an unconstitutional taking, an unconstitutional taxing, and Defendants should be estopped and/or enjoined from applying the SLED Retirement Program to SLED Retiree Plaintiffs.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

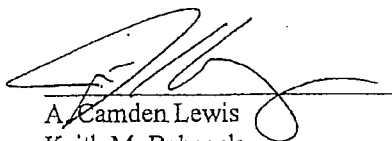
35. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

36. This cause of action seeks a declaratory judgment pursuant to S.C. Code Ann. §15-53-10 *et. seq.* and Rule 57, South Carolina Rules of Civil Procedure, for the purposes of determining a question of actual controversy between the parties.

37. There exists an actual dispute within the parties as to the validity of the conduct of Defendants in forcing the SLED Retiree Plaintiffs to pay the employer contribution to the retirement system.

38. A declaratory judgment defining the rights, privileges and duties of and between the parties is appropriate pursuant to South Carolina Code § 15-53-10, *et seq.* It is specifically requested that the Court declare the Defendants' actions a violation of the statutory and common law of South Carolina; that this Court declare Defendants must disgorge to Plaintiffs and the Plaintiff Class wages wrongfully withheld; and that this Court declare Plaintiffs and Plaintiff Class are entitled to interest on all such wages.

WHEREFORE, SLED Retiree Plaintiffs pray for an Order from this Court certifying the Class; declaring the actions of Defendants are a violation of the rights of SLED Retiree Plaintiffs and the Class; requiring Defendants to disgorge the wages wrongfully withheld with interest; and estopping and/or enjoining Defendants from requiring SLED Retiree Plaintiffs from paying the employer portion of retirement; together with attorneys' fees and costs of this action, and such further relief as the Court deems just and appropriate.



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Attorneys for the Plaintiffs

December 16, 2008

Columbia, South Carolina

Exhibit A

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check \$39,828
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on _____.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[Signature]
Employee Signature

[Redacted]
Social Security Number

07-19-2004
Date



An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041

009

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

South Carolina Law Enforcement
Division and the State of South Carolina,)

Plaintiffs,)

v.)

South Carolina Law Enforcement
Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

ANSWER OF DEFENDANT
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION

Defendant South Carolina Law Enforcement Division, answering the Complaint herein,
alleges the following:

FOR A FIRST DEFENSE

1. Defendant South Carolina Law Enforcement Division denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraphs 1 and 2 are admitted on information and belief.
3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."
4. Paragraph 4 is admitted.
5. The allegations of Paragraph 5 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied as stated.

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied for lack of information.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if class certification were appropriate, but this Defendant denies that class certification is appropriate, particularly in view of the small number of individuals who might seek the relief sought by Plaintiffs in this action. It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 16 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 have any relevance to the voluntary employment program in which Plaintiffs have participated.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

FOR A SECOND DEFENSE

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

FOR A THIRD DEFENSE

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

FOR A FOURTH DEFENSE

36. This action is barred by the Doctrine of Sovereign Immunity.

FOR A FIFTH DEFENSE

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

FOR A SIXTH DEFENSE

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this actions.

FOR A SEVENTH DEFENSE

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

FOR AN EIGHTH DEFENSE

40. This case does not meet the requirements for class certification as set forth in SCRCF Rule 23.

FOR A NINTH DEFENSE

41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

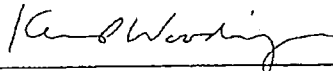
FOR A TENTH DEFENSE

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY:



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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

February 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,

Plaintiffs,

v.

South Carolina Law Enforcement
Division and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**AMENDED ANSWER OF DEFENDANT
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION**

Defendant South Carolina Law Enforcement Division, answering the Complaint herein,
alleges the following:

FOR A FIRST DEFENSE

1. Defendant South Carolina Law Enforcement Division denies each and every
allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

2. Paragraphs 1 and 2 are admitted on information and belief.

3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED,
retired from that employment, and then voluntarily returned to work for SLED as at-will
employees under terms and conditions set forth in documents executed by each of them in 2004
entitled "Request to be Rehired."

4. Paragraph 4 is admitted.

5. The allegations of Paragraph 5 set forth legal conclusions which can neither be
admitted or denied. Insofar as such allegations attempt to establish liability on the part of this
Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied as stated.

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied for lack of information.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if class certification were appropriate, but this Defendant denies that class certification is appropriate, particularly in view of the small number of individuals who might seek the relief sought by Plaintiffs in this action. It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 16 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 have any relevance to the voluntary employment program in which Plaintiffs have participated.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

FOR A SECOND DEFENSE

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

FOR A THIRD DEFENSE

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

FOR A FOURTH DEFENSE

36. This action is barred by the Doctrine of Sovereign Immunity.

FOR A FIFTH DEFENSE

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

FOR A SIXTH DEFENSE

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this actions.

FOR A SEVENTH DEFENSE

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

FOR AN EIGHTH DEFENSE

40. This case does not meet the requirements for class certification as set forth in SCRCF Rule 23.

FOR A NINTH DEFENSE

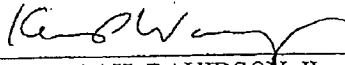
41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

FOR A TENTH DEFENSE

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

February 23, 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action Number: 08-CP-40-8854

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

CERTIFICATE OF SERVICE

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Amended Answer of Defendant South Carolina Law Enforcement Division** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 23rd day of February, 2009, addressed as follows:

A. Camden Lewis, Esquire
Keith M. Babcock, Esquire
W. Jonathan Harling, Esquire
Lewis & Babcock, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211

Richard Harpootlian, Esquire
1410 Laurel Street
Columbia, South Carolina 29201

John A. O'Leary
James Walter Fayssoux, Jr.
O'Leary & Associates, P.A.
714 Calhoun Street
Columbia, South Carolina 29201

J. Emory Smith, Esquire
Assistant Attorney General
1000 Assembly Street
Post Office Box 11549
Columbia, South Carolina 29211

Shelley E. Stafford

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,

Plaintiffs,

v.

South Carolina Law Enforcement Division and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AMENDED ANSWER OF DEFENDANT
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION

Defendant South Carolina Law Enforcement Division, answering the Complaint herein, alleges the following:

FOR A FIRST DEFENSE

1. Defendant South Carolina Law Enforcement Division denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraphs 1 and 2 are admitted on information and belief.
3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED, and retired from that employment. This Defendant would further show that Plaintiffs then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 3 are denied.
4. Paragraph 4 is admitted.

5. The allegations of Paragraph 5 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, it is denied that there is anyone in the proposed class as described, because no deductions were made from their salaries as therein set forth. Finally, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied..

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied, because there are no members of the class, as described, that Plaintiffs seek to represent. Even if the class were to be defined differently, there are

substantial differences in the situations of the individual class members that would make class certification inappropriate. Any remaining allegations of Paragraph 11 are denied.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if such a class existed and class certification were appropriate, but this Defendant denies that such a class exists and that class certification is appropriate. Moreover, the number of individuals who might seek the relief sought by Plaintiffs in this action is relatively small (probably around 75 individuals at most). It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 17 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 created any duty to the Plaintiffs.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this

Defendant would deny same and demand strict proof thereof, except that this Defendant would show that it did pay to the Retirement System all employee contributions as required by law.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

FOR A SECOND DEFENSE

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

FOR A THIRD DEFENSE

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

FOR A FOURTH DEFENSE

36. This action is barred by the Doctrine of Sovereign Immunity.

FOR A FIFTH DEFENSE

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

FOR A SIXTH DEFENSE

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

FOR A SEVENTH DEFENSE

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

FOR AN EIGHTH DEFENSE

40. This case does not meet the requirements for class certification as set forth in SCRCP Rule 23.

FOR A NINTH DEFENSE

41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

FOR A TENTH DEFENSE

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

FOR AN ELEVENTH DEFENSE

43. Plaintiffs' claims are barred, in whole or in part, by the public duty rule.

FOR A TWELFTH DEFENSE

44. Plaintiffs' claims are barred by the consent of the Plaintiffs.

FOR A THIRTEENTH DEFENSE

45. Plaintiffs' claims are barred by the doctrines of release, waiver and estoppel, or any one or more of them.

FOR A FOURTEENTH DEFENSE

46. Even if this Defendant is liable to Plaintiffs for some amount of money, which this Defendant denies, any such amounts are subject to being offset by increases in their take-home pay as a result of decreased taxes, the discontinuance of the 6.5 employee contribution for at least part of the applicable time period, and other factors.

FOR A FIFTEENTH DEFENSE

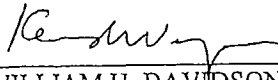
47. Plaintiffs lack standing to assert one or more of their claims and/or those of some or all of the members of the putative class.

FOR A SIXTEENTH DEFENSE

48. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

April 19, 2012

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action Number: 2008-CP-40-08854

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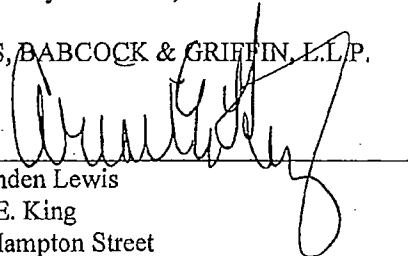
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Respectfully submitted,

LEWIS, BABCOCK & GRIFFIN, L.L.P.



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Attorneys for the Plaintiffs

March 28, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement
Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**MOTION FOR SUMMARY JUDGMENT OF
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION**

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN
A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant South Carolina Law Enforcement Division will move at such time and place as may be set by the Court, for an Order granting summary judgment on the ground that there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

1. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.

2. The Complaint fails to set forth facts sufficient to constitute a cause of action.

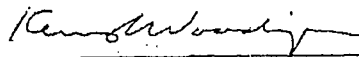
3. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

4. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

This motion is based upon the pleadings filed in this case; and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 
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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

March 30, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement
Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**AMENDED
MOTION FOR SUMMARY JUDGMENT OF
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION**

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN
A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant South Carolina Law Enforcement Division will move at such time and place as may be set by the Court, for an Order granting summary judgment on the ground that there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

1. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.
2. The Complaint fails to set forth facts sufficient to constitute a cause of action.
3. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

4. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

5. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work.

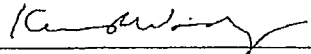
6. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations and/or by the doctrine of laches.

7. Some or all of Plaintiffs' claims are additionally barred by one or more of the affirmative defenses set forth in the original pleadings or in the proposed Amended Complaint that is being filed herewith.

This motion is based upon all pleadings filed in this case, including the proposed Amended Complaint which is being filed herewith, depositions, affidavits, and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina
April 19, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,

Plaintiffs,

v.

South Carolina Law Enforcement
Division and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**SECOND AMENDED
MOTION FOR SUMMARY JUDGMENT OF
SOUTH CAROLINA LAW ENFORCEMENT
DIVISION**

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN
A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant
South Carolina Law Enforcement Division will move at such time and place as may
be set by the Court, for an Order granting summary judgment on the ground that there is no
genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

1. Plaintiffs' claims have no basis in fact, because the employer contribution was
never deducted from their salaries, as they claim, nor were Plaintiffs required to pay the
employer contribution themselves.

2. SLED at all times complied with S.C. Code Ann. § 9-11-90(4)(b), because it paid
to the Police Officers' Retirement System the employer contribution for the salaries of the
Plaintiffs after they retired and returned to employment.

3. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.

4. The Complaint fails to set forth facts sufficient to constitute a cause of action.

5. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

6. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

7. Even if Plaintiffs had a property interest in any of the matters in issue in this action, which SLED denies, there was no taking of such property interest.

8. Even if Plaintiffs had a property interest in any of the matters in issue in this action, which SLED denies, Plaintiffs voluntarily relinquished any such interest when they voluntarily returned to work at reduced salaries.

9. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work.

10. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations and/or by the doctrine of laches.

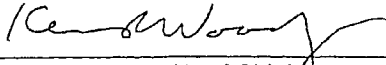
11. Some or all of Plaintiffs' claims are additionally barred by one or more of the affirmative defenses set forth in the original pleadings or in the proposed Amended Complaint that is being filed herewith.

This motion is based upon all pleadings filed in this case; including the proposed Amended Complaint previously filed, depositions, affidavits, documents produced by any party

in discovery, and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

May 24, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,

Plaintiffs,

v.

South Carolina Law Enforcement
Division and the State of South Carolina,

Defendants.

) IN THE COURT OF COMMON PLEAS

) Civil Action Number:08-CP-40-8854

) MEMORANDUM OF
) SOUTH CAROLINA LAW ENFORCEMENT
) DIVISION IN SUPPORT OF ITS SECOND
) AMENDED MOTION FOR SUMMARY
) JUDGMENT
) AND
) IN OPPOSITION TO PLAINTIFFS'
) MOTION FOR SUMMARY JUDGMENT

Introduction and Summary

This action was filed on December 16, 2008, by Plaintiffs Grimsley and Jowers against the South Carolina Law Enforcement Division (SLED) and the State of South Carolina. Plaintiffs, both of whom retired unconditionally from SLED in 2004 and then agreed to be rehired at slightly reduced salaries, claim that § 9-11-90(4)(b) created certain rights in them with respect to the employer contribution to be paid by SLED on their salary upon their rehire. In the parlance of the cases in this area, they came back to work as "working retirees." *See, e.g., Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011). In *Ahrens*, the Supreme Court noted that the return of a retired employee to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60.

SLED paid the employer contribution for Plaintiffs to the Police Officers' Retirement System ("PORS"), as it did for all of its employees. Moreover, § 9-11-90(4)(b) did not create rights of any kind in Plaintiffs, as opposed to creating a duty on the part of employers to the PORS. Nor were any rights of Plaintiffs denied by SLED even if such rights had existed.

The program under which Plaintiffs retired and were rehired, far from depriving them of anything, was one that worked to their enormous and immediate benefit. As *Ahrens, supra*, holds, there was no requirement that SLED rehire retirees at all. Instead, however, SLED did rehire Plaintiffs shortly after their retirement, permitting them to collect their full retirement pay as well as almost all of their prior salary as employees. For Plaintiff Grimsley, for example, this meant that he went from making about \$53,000 per year in 2004 from his salary alone, to making about \$81,500 in 2005, the combined amount of his slightly reduced state salary and his Police Officers' Retirement System benefit. *Stewart Aff. Par. 20 and Ex 9*.

Plaintiffs' claims rest on an incorrect characterization of the facts. They claim that SLED "had the amount it cost SLED to pay the employer portion of retirement deducted from their [post-retirement] salaries," Complaint, Par. 8 (Emphasis added). However, there is simply no such thing as a deduction of the employer contribution from the salary of an individual. *Royal Aff. Par. 8 & 9; Kitchens Aff. Par. 6 & 7*. Instead, Plaintiffs were simply rehired at lower salaries. *Stewart Aff. Par. 16*. To this they voluntarily and readily agreed, as might be expected in light of the kind of financial benefit illustrated above.

Plaintiffs' claims also rest on a misconception of the rights and duties created by the retirement statutes. The statute on which they rely, § 9-11-90(4)(b), provides that when persons are rehired by the State as working retirees, "An employer shall pay to the [Police Officers' Retirement] system the employer contribution" for those working retirees. As the affidavits filed by SLED in this case show, there is no genuine issue of fact that SLED did indeed pay the employer contributions for the salaries of Plaintiffs, just as it has always done for all of its employees, whether working retirees or otherwise. *Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens Aff. Par. 6 & 7*. Had SLED not paid the employer contribution, the same statute (§ 9-

11-90(4)(b)) provides that the State would have been required to deduct the amount of the employer contribution from funds provided by the State to SLED. However, a failure by a state agency to pay the employer contribution would probably have been unprecedented.¹

As will be shown below, the requirement that an employer pay the employer contribution for working retirees is a requirement that was intended to protect, and did protect, the Retirement System from not receiving an employer contribution for working retirees who were filling positions that otherwise would have been subject to the payment of an employer contribution. This provision did not create any rights in the Plaintiffs. Moreover, even if the statute did create rights or property interests in the Plaintiffs, which SLED denies, such interests were not "taken," but were voluntarily waived and abandoned by Plaintiffs when they elected to return to work under the highly favorable terms under which they returned to work.

SLED further asserts that even if Plaintiffs' claims are meritorious, which SLED denies, such claims are completely or partially barred by applicable three-year statutes of limitations as well as by the doctrine of laches, in this case seeking the equitable remedy of disgorgement. Plaintiffs entered into the agreements of which they complain in mid-2004, but did not file this action until December 2008, four and a half years later. SLED also asserts other additional affirmative defenses as set forth herein including waiver, estoppel, and consent.

All parties have filed motions for summary judgment with affidavits and other evidence. The facts are undisputed, and this matter is now in a posture appropriate for resolution on the merits.²

¹ *Royal Aff. Par. 17*. For cases in which the employer is a political subdivision, as opposed to a state agency, it would probably be rare, but not unprecedented for the employer to fall behind on paying the employer contribution. This seems implicit in the remedy that § 9-11-90(4)(b) creates for such nonpayment, that is, the withholding of State funds from the delinquent employer. See also, §9-11-230 (Budget and Control Board shall certify to each employer other than the State the amount of employer contribution due the System.).

FACTS

A. Background.

In 2002, several major changes were made to the statutes governing the ability of South Carolina state employees to retire and return to work. The most dramatic of these was the removal of the earnings limitation, or salary cap, that had always been in place in the past to a greater or lesser degree. Act No. 356 of 2002, §12 (copy attached). This removal of the salary caps, which applied both to members of the Police Officers' Retirement System such as Plaintiffs and also to non-police officer state employees, meant that for the first time ever, it was possible for state employees and PORS members to take full retirement, collect full retirement benefits, and also return to their former state jobs at salaries that could have been, but were not required to be, the same as their salaries when they retired.³

² This case has been to the Supreme Court on issues raised in a motion to dismiss filed by SLED's co-defendant, the State of South Carolina. *Grimsley v. South Carolina Law Enforcement Div.* 396 S.C. 276, 721 S.E.2d 423 (2012). The Supreme Court held, contrary to the State's assertion, that exhaustion of remedies was not required under the South Carolina Retirement Contribution Procedures Act, S.C. Code Ann. §§ 9-21-10, et seq. The Court also held that the Complaint "asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (*emphasis added*). As discussed in more detail below, the full record now before that Court makes it clear that the facts as proven are substantially different from those alleged in the Complaint, and that Plaintiffs have no property interest in the matters to which they assert a claim.

³ There are several significant differences between this "working retiree" program created by § 9-11-40(4) and the well-known Teacher and Employee Retention Incentive ("TERI") program. First, the TERI program has never applied to PORS members. The TERI programs instead has always applied only to members of the South Carolina State Retirement System, § 9-1-10, et seq. (hereinafter "State System"). Secondly, the working retiree program does apply to PORS members (as well as others). Thirdly, under the TERI program, there was a contract between the employee and the employer. See *Layman v. State*, 368 S.C. 631, 642, 630 S.E.2d 265, 271 (2006). Fourthly, TERI employees do not collect retirement benefits while working, instead receiving them upon termination of employment. *Id.* Finally, TERI employees retain all grievance rights, § 9-1-2210(E), which in practice means that their postretirement salaries remain unchanged from the time of retirement.

Prior to 2002, there had always been a salary cap or earnings limitation upon the amount that a retired PORS member could earn while still remaining a retiree. Until the late 1990's, the amount that a working retiree could earn was quite low. For instance, from 1989 until 1999, it was only \$9,500 annually. *See* Act No. 189 of 1989, Part II, §50B. However, in 1999, the earning limitation rose from \$9,500 to \$25,000. Act No. 100, of 1999, Part II, § 27. This was increased to \$50,000 in 2001. Act No. 25 of 2001, § 2. The salary cap was removed altogether in 2002. *See* Act No. 356 of 2002, § 12, which is captioned "Earnings limitation removed under certain conditions."

Until 1999, there had been no requirement that the employer contribution should be paid for working retirees, as is now the case. Presumably, until the salary cap was raised in 1999 from \$9,500 to \$25,000, the available salaries were so low that most working retirees would not have filled a fulltime job when they returned to work. However, once the salary cap was raised from \$9,500 to \$25,000 in 1999, the amount of salary earnable by a working retiree had started to become high enough to cover the salaries of at least some fulltime positions. Accordingly, in 1999, the General Assembly added the requirement in § 9-11-90(4)(b) (and § 9-1-1790(B), for the State system) that employers must pay an employer contribution to the Retirement System on the salaries of working retirees who returned to employment. Without this requirement for the employer to pay the employer contribution on the salaries of working retirees, there would soon have been a fairly sizable number of working retirees in the PORS and in the State system who would be filling fulltime positions, or at least positions with substantial salaries, but with no employer contribution being paid to the PORS or the State Retirement System on the salaries for those positions. Such a development would have been detrimental to those two Systems, and to state retirees generally, by carving out a class of employees who were filling positions that were

effectively full-time positions, but for which positions the Retirement Systems would have received no employer contribution.

In practice, the working retiree provisions of the PORS, § 9-11-90(4), require that the individual retire fully, and leave state employment for at least fifteen consecutive calendar days prior to returning to work. The ability to return to work was not conferred by § 9-11-90 or any other statute. Instead, as the Supreme Court has held, the ability of a retired employee to return to work "was conditioned on whether an employer in the system chose to hire that employee." *Ahrens v. State*, *supra*, 392 S.C. at 351-352, 709 S.E.2d at 60 (2011).

Section 9-11-90 likewise contains no provision pertaining to the salary to be paid upon the retiree's return to employment. That section instead simply states that the retiree "may be hired and return to employment covered by this system or any system provided in this title without affecting the monthly retirement allowance he is receiving from this system." (Emphasis added.)

The elimination of the salary caps in 2002, coupled with the absence of a TERI program for PORS members, led then-Chief Stewart to see whether a plan could be created that would make it attractive for SLED employees who had reached retirement age to retire and take "working retiree" status if they so chose. *Stewart Aff.* Par. 5. As Chief Stewart's Affidavit also notes, "During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina." *Stewart Aff.* Par. 6. Chief Stewart consulted with the Budget and Control Board's Office of Human Resources and also with Vance Bettis, Esq., among others. *Id.* Par. 8. The result was that Chief Stewart and SLED created the program known as the Retirement/Rehire program.

Chief Stewart and SLED then created a uniform series of forms that could be used by persons who were interested in becoming working retirees. *Stewart Aff. Par. 11.*⁴

B. The Retirement/Rehire program for SLED working retirees, starting after July 1, 2002.

The Affidavit of former SLED Chief Robert M. Stewart sets forth in detail the entire process under which Plaintiffs retired and rehired. *Stewart Aff. Par. 13.* In summary, what happened was that starting in the late summer or fall of 2002 (shortly after the salary caps were eliminated), if a SLED agent wished to retire and seek to become a working retiree, he would first advise Chief Stewart that would be retiring on a date specified in the retirement notice form. Exhibit 1 to Stewart Affidavit.⁵ The individual, in signing the form, noted the existence of certain conditions “if I wish to apply to be rehired,” and “if I am selected to be rehired. . . .” *Id.* (Emphases added). At that point, the individual was completely retired and separated from employment with SLED, which had no obligation to rehire the individual. *Stewart Aff. Par. 22. Ahrens, supra.* Indeed, Chief Stewart advised each person considering retirement and rehire not to do so “unless they were ready to retire immediately and permanently.” *Stewart Aff. Par. 15.*

⁴ In the prior fiscal year, 2001, the General Assembly had provided for agencies to offer certain voluntary retirement incentives. As discussed below, this option was similar in some ways to the SLED Retirement/Rehire program, but it applied only to persons who applied for in 2001. Plaintiffs were not among that group.

⁵ Exhibits 1 through 4 to the Stewart Affidavit are the forms for Plaintiff Grimsley. Exhibits 5 through 8 are the corresponding forms for Plaintiff Jowers.

If a retired employee sought to be rehired, he would then would fill out a form in which he requested Chief Stewart to rehire him. Exhibit 2 to Stewart Affidavit. The form expressed the agent's understanding that that if rehired,

... the following provisions apply and I agree to them:

Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).⁶

Accrual of annual and sick leave at current rate.

Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.

Employment not to exceed 48 months.

No lump sum payment for annual leave upon second separation.

Review date: twelve months after date of rehire.

No probationary period.

Must apply to this agency and receive permission to reenter retirement system as an active member.

Exhibit 2 to Stewart Affidavit (emphases added).⁷

The third step in the process was that the SLED Director of Human Resources advised the employee that his request to return to employment had been approved, "based on your written acceptance of the following provisions." Exhibit 3 to Stewart Affidavit. Among the conditions stated in that form was the following:

Your salary will be \$45,702 (previous base salary less 13.6%), no longevity pay, additional reduction by cost of health insurance to agency if elected.⁸

⁶ S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

⁷ The employer contribution for PORS members had been 10.3% of salary prior to July 1, 2004, at which time it increased to 13.6%.

(Emphasis added.) As the then-Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary. . . ." Hutto deposition, 43: 12.

The fourth and final form was informational. It was labeled "Employee Orientation for Re-Employment under the PORS Retirement Provisions." Exhibit 4 to Stewart Affidavit. This form contained a statement by SLED to the employee that

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed of your benefits and employment status.

Plaintiffs each signed this form at the bottom. *Id.* The form there stated "My signature below indicates that the above checked items were discussed with me during orientation." *Id.* This sentence was followed by a signature line.

The items listed in the informational form were essentially the same as those quoted above. The "Salary" bullet point referenced the same "reduction of 13.6% in your salary," noting that that reduction was "to cover the amount it will cost SLED to pay the employer portion of retirement." (This recitation did not appear in the previous two forms that referenced the salary reduction of 13.6%, instead only appearing in the fourth form, an informational document.) The employees had already agreed, by executing the second form, to accept a 13.6% salary reduction, with no reason given by SLED for that specific percentage (nor any need for one). Finally, the fourth form mentioned that the employee contribution of 6.5% would no longer be deducted from the salary check. The reason for this was that the employee, as a retiree, was no longer required at the time to pay the employee contribution.⁹

⁸ The salary figure in the quoted exhibit is the specific number applicable to Plaintiff Grimsley. This figure varied by employee.

⁹ This changed effective July 1, 2005, when the General Assembly amended §9-11-90(4)(c) to require working retirees to pay the employee contribution even though they were retired. This amendment was upheld in *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006) as to

Once all four forms had been executed, the employees returned to work, collecting their both their new salaries (13.6% less than before retiring) from SLED and their full retirement from the PORS. In the case of Plaintiff Grimsley, his pre-retirement salary had been \$52,896. In 2005, the first full year after his retirement, his SLED salary was \$48,318.00, and his PORS retirement benefit was \$33,158.04, for a total of \$81,472.04. Stewart Affidavit, Paragraph 20 and Exhibit 9.¹⁰ In other words, his combined income as a working retiree was more than half again the amount of his preretirement income.

C. Payment Of The Employer Contribution By SLED And Absence Of A Deduction Of The Employer Contribution From The Employees' Salaries.

Because Plaintiffs' claims pertain to the employer contribution, it is appropriate to provide some brief amount of background concerning the nature of the employer contribution and the mechanics of how it operates. This information is found primarily in the Affidavit of Donald R. Royal.

At the outset, it should be reiterated that there is no doubt that SLED did pay the employer contribution for these Plaintiffs, just as it has done for all of its employees at all times. *Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens Aff. Par. 6 & 7.* As far as SLED is aware, Plaintiffs do not contend otherwise, nor could they reasonably do so.

The employer contribution, as its name would indicate, is paid by the employer, not by the employee. In fact, the PORS statute requires that it be paid by the employer. Section 9-11-220(1) provides that

employees generally, and in *Ahrens, supra*, as to certain employees who claimed that the State had created rights in them by contract or estoppel.

¹⁰ Plaintiff Jowers has not yet produced his tax forms for 2005, but the numbers would presumably be comparable.

(1) Commencing as of July 1, 1974, each employer shall contribute to the System seven and one-half percent of the compensation of Class One members in its employ and ten percent of compensation of Class Two members in its employ. Such rates of contribution shall be subject to adjustment from time to time on the basis of the annual actuarial valuations of the System.¹¹

(Emphasis added.)

The employer contribution is paid periodically in a lump sum that is equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a periodic lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.¹² *Royal Aff. Par. 12.*

In addition, as set forth in more detail in the Royal Affidavit, the employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not included within the salary of the employee, and therefore is not deducted from the salary of the employee. *Royal Aff. Par. 8.* Instead, it is paid from the fringe benefit amount appropriated to the agency. *Royal Aff. Par. 8.* For SLED, the fringe benefit amount for the employees is approximately 35% over and above the employees' salary amounts. *Id., Par. 7.* The employees never see this amount reflected in their salary information, because it is not part of their salaries. In addition to the employer contribution to the Retirement System, the total amount of fringe benefits includes such things as employer contributions for workers' compensation, health

¹¹ In 2004, when Plaintiffs retired, the rate for the employer contribution had been adjusted upward from the 7.5% in the statute to the 13.6% referenced earlier. As noted earlier, the 13.6% figure took effect on July 1, 2004. Immediately prior to that it had been 10.3%.

¹² At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. See Exhibit 20 to Hutto Dep. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

insurance, and for other similar fringe benefits. *Id.*, Par. 9. Most state employees probably have no idea how much is paid by their employers for these various employer contributions, nor are these specific amounts really a matter of concern for the employees, because these amounts are governed by law and are over and above the figure that actually is of concern to the employees, that is, their salaries.

As might be expected from the nature of the employer contribution and the manner in which it is remitted by the employer, there is simply no such thing as "having the employer contribution deducted from [employees'] salaries," as Plaintiffs allege. See *Royal Aff.* Par. 8. In fact, again as might be expected, the postretirement pay stubs of the Plaintiffs reflect no deduction at all for retirement, given that (a) in 2004, retirees did not pay an employee contribution, and (b) the pay stub would never reflect a deduction for the employer contribution, since that amount was never deducted from salary, but rather was paid by the employer as part of benefits over and above salary. See *Kitchens Aff.* Par. 6 and 7. SLED simply decided to use the percentage figure of the preretirement employer contribution as a uniform measure of the salary reduction and of the amount of cost savings as a result of the rehire process. See *Stewart Aff.* Par. 18.¹³

¹³ By way of illustration, the employer contribution for Plaintiff Grimsley of 13.6% of his preretirement salary of \$52,896 would have been approximately \$7,200. The employer contribution on his reduced salary upon rehire (13.6% of \$48,318) was about \$6,600, just \$600 less than it had been for the preretirement salary. The total salary reduction had been about \$4,600. SLED therefore saved all of the salary reduction of \$4,600, as well as an additional \$600 in benefits, i.e., the amount by which the employer contribution was reduced. The \$4,600 accordingly was available for salaries for other employees. See, *Royal Aff.* Par. 8; *Stewart Aff.* Par. 21.

D. Specific Facts Pertaining to Plaintiffs Grimsley and Jowers.

Plaintiffs Jowers and Grimsley retired on June 1, 2004 and June 30, 2004, respectively. The financial advantage to them of the terms of their retirement was substantial, as the numbers above for Plaintiff Grimsley would indicate.

While Plaintiffs, after being rehired, were at-will employees who could have been terminated at any time in SLED's sole discretion, both of them were in fact permitted to continue in their employment for the entire 48-month period mentioned in the documents above. (Section 9-11-90(4)(a) provided that the 48-month period was the maximum period for which a working retiree could work without his status changing.) On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they each were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively, that is, at the end of 48 months. *Aff. Kitchens, Par. 8 and Ex. 2 and 3.* They were informed about opportunities for part-time work. *Id.*

In December 2008, four and a half years after they were rehired, Plaintiffs Grimsley and Jowers filed the present action.

ARGUMENT

- 1. Plaintiffs' claims have no basis in fact, because the employer contribution was never deducted from their salaries, as they claim, nor were they required to pay the employer contribution themselves.**

SLED submits that in light of the facts as explained above, it is obvious that Plaintiffs' claims are completely lacking in merit. Their claim that SLED violated § 9-11-90 by "having the employer contribution deducted from [their post-retirement] salaries," Complaint, Par. 27, is simply not factual. There was no salary DEduction for the employer contribution. Plaintiffs

instead agreed to a salary REduction. This claim as stated in the Complaint is therefore incorrect as a matter of fact.

The claim of Plaintiffs that SLED violated § 9-11-90 by "having the [Plaintiffs] pay the employer contribution" is also not factual. SLED, and not the Plaintiffs, unquestionably paid the employer contribution. *See e.g. Royal Aff. Par. 16.*

Plaintiffs' claim fares no better if viewed as one that the employees were wrongfully required, as a condition of their employment, to have the amount of the employee contribution "deducted" from their salaries. *Complaint, Par. 27.* They did agree to come back as working retirees at reduced salaries, but the fact that this occurred does not state a legal claim. There is nothing in § 9-11-90 that requires them to be rehired at all. To reiterate once again what was held in *Ahrens, supra*, the return of a working retiree to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60. Given that there was no right at all to return to work after retirement, there was obviously no violation of any right of Plaintiffs by requiring them to agree to a reduction in salary as a condition of returning to work. SLED could have conditioned Plaintiffs' return to work on their taking a salary reduction of between 0% and 100%. If Plaintiffs found the rehire salary unacceptable, which they obviously did not, they could have declined to return to work. The fact that the relatively small percentage chosen by SLED was 13.6%, the same as the employer contribution on their old salary, was of no significance to any right of the Plaintiffs.¹⁴

¹⁴ As noted above, Plaintiffs' agreement to accept the 13.6% figure was made in the second of the four documents that were part of the process. Exhibits 2 and 6 to Stewart Affidavit. Those documents did not state a reason for using the 13.6% figure, nor did they need to. Plaintiffs were obviously agreeable to being rehired with a 13.6% salary reduction and full retirement benefits. The only reference to that percentage as covering the employer contribution did not come until

Plaintiffs have effectively already conceded this. As the Supreme Court held in the appeal from the grant of the State's motion to dismiss, "[Plaintiffs] do not claim they are entitled to a particular salary level." 396 S.C. at 284, 721 S.E.2d at 427. Instead, the Court held, Plaintiffs "have asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428. (*Emphases added*.) In so holding, the Court cited *Rydde v. Morris*, 381 S.C. 643, 646 675 S.E.2d 431, 431 (2009), which held that in reviewing a dismissal of a case on a Rule 12(b)(6) motion to dismiss, the court is "required] to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiffs to relief on any theory of the case." (*Emphasis added*.) However, as already shown, the "fact alleged" and the actual facts are entirely different. There was no deduction from the Plaintiffs' salaries, only a reduction. As a result, now that the facts have been shown to be substantially different from those alleged in the Complaint, it is apparent that Plaintiffs' claim based on an alleged violation of § 9-11-90 is without merit.

2. The facts of this case show that Plaintiffs lack a property interest.

In *Grimsley*, the Supreme Court noted that Plaintiffs "assert a violation of S.C. Code Ann. section 9-11-90." 396 S.C. at 284, 721 S.E.2d at 427. The Court then noted that Plaintiffs "contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90." *Id.* The Court concluded that "section 9-11-90 provides a basis to assert a property interest. Specifically, Appellants' takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the

the fourth document in the series, which was merely informational. Exhibits 4 and 8 to Stewart Affidavit.

employer portion of the retirement contributions. It follows that Appellants are able to point to a property interest rooted in state law.” 396 SC at 285, 721 S.E.2d at 428.

As has already been discussed, this discussion by the Court was couched in terms of review of the granting of a motion to dismiss, accepting all factual assertions in the complaint as true. However, as the facts show, no “percentage of their salary was deducted.” For the same reason, their salary upon rehire was not “used to pay the employer portion of the retirement contributions.” As a result, even if the facts as pled had been sufficient to show that a property interest existed, the facts as proven show otherwise.

3. **Even if § 9-11-90 created a property interest in Plaintiffs in the amount of the employer contribution, which SLED denies, Plaintiffs voluntarily waived and relinquished any such interests when they voluntarily returned to work at reduced salaries.**

As indicated, for instance, by every case upholding a guilty plea, it is axiomatic that constitutional rights may be voluntarily waived. *See, e.g., Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375, 379 (2012)(by pleading guilty, “accused . . . waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions”). The permissibility of a waiver applies all the more strongly in a situation involving the lesser alleged right to a fraction of a public salary.

The documents show that Plaintiffs freely, and one may assume, enthusiastically, agreed to retire and be rehired at a salary that was 13.6% less than their pre-retirement salary. Again, the "Request to be Rehired" form stated in part as follows:

I understand that if [rehire] does occur, the following provisions apply and I agree to them:

* * *

Salary: 13.6% less than previous base salary. . . .

Exhibits 2, 6 (Emphases added). It is difficult to see how one could more clearly agree to be rehired at a reduced salary. Accordingly, even assuming Plaintiffs had some kind of property interest, it was waived, and the waiver was to their great advantage.

4. The statute of limitations bars Plaintiffs' claims.

While the foregoing discussion has centered on the merits of Plaintiffs' claims, it is actually not necessary for the Court even to consider the merits. Whether Plaintiffs' claims are meritorious or not, they were brought well over three years after their accrual and therefore are barred by the applicable statute of limitations.

As discussed above, by July and August 2004, when the two Plaintiffs returned to work as working retirees, they had agreed to all of the terms on which their rehiring was based. This action was filed in December 2008, four and a half years later. This was well outside the applicable three-year statute of limitations Plaintiffs' claims are therefore time-barred.¹⁵

Plaintiff's first cause of action, which is based upon an alleged violation of §9-11-90,, is governed by *S.C. Code Ann.* § 15-3-530(2), which provides "an action upon a liability created by statute other than a penalty or forfeiture" must be brought within three years. Even assuming

¹⁵ The same is true for Plaintiffs' claims based on a reduction in June 2005 to the cost of living allowances for 2005-2006. That action took place three and a half years before this action was filed. (COLA's were not reduced in subsequent years. *Kitchens Reply Aff.*)

that Plaintiffs had a meritorious claim based upon §9-11-90, which SLED denies, the claim is barred by the three year statute of limitations period.

Plaintiff's second cause of action, the alleged "takings" claim, is based upon an alleged unlawful taking or unconstitutional taxing, is subject to the separate three year statute of limitations set forth in *S.C. Code Ann.* § 15-3-530(4). That section provides that "an action for taking, detaining, or injuring any goods or chattels" must be brought within three years. Its counterpart for real property takings is *S.C. Code Ann.* § 15-3-530(3).

The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist. *Anonymous Taxpayer v. South Carolina Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008) (citing *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007)). In the present case, the statute on which Plaintiffs rely, §9-11-90(4)(b), has not changed since its enactment in 1999. Moreover, the terms of Plaintiffs' rehire were set in mid-2004. They accordingly knew or should have known that their causes of action existed at the time they were rehired.¹⁶

In *Harvey v. South Carolina Dep't of Corrections*, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000), a 1993 lawsuit by certain state employees was held to be time-barred because the acts of which they complained occurred in 1983. The fact that the effects of those actions would not have been felt by the plaintiffs until much later was held not to matter, because it was in 1983 that the employees knew of their claim. *Id.* at 508, 527 S.E.2d at 769-70. Quoting *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991), the Court in *Harvey* held that "a particular cause of action accrues 'at the moment when the plaintiff has a legal right to sue on

¹⁶ Since all acts alleged in the Complaint occurred well over three years before this action was brought, the specific dates relating to each Plaintiff or each act in 2004 are not material to this action.

it.” 338 S.C. at 508, 527 S.E.2d at 769. *Accord, Anonymous Taxpayer v. South Carolina Dept of Revenue*, 377 S.C. 425, 661 S.E.2d 73(2008) (1997 action challenging 1989 changes in state tax exemptions for retired state employees was time-barred even though plaintiff did not retire until 1997).

In the present case, the “moment when the plaintiff [had] a legal right to sue,” *Harvey*, *supra*, occurred in mid-2004 when Plaintiffs executed all of the documents of which they now complain. As a result, their claims are clearly barred by the applicable statutes of limitations.

5. The doctrine of laches also bars Plaintiffs’ claims.

In this action, Plaintiffs have sought disgorgement of “the wages wrongfully withheld.” Complaint, p. 7 (prayer for relief). Disgorgement is an equitable remedy. *Verenes v. Alvanos*, 387 S.C. 11, 18, 690 S.E.2d 771, 774 (2010). As a result, the doctrine of laches applies to this case as well. It adds the element of detrimental change of position by the other party, in this case, SLED:

Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.

Chambers of South Carolina, Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Here, unreasonable delay is shown by the fact that this action was brought well beyond the expiration of the three-year statute of limitations. In addition, there can be no question as to the detriment to SLED that has resulted from the Plaintiffs’ not filing this action until they had obtained all the benefits of four years of retirement salary plus retirement benefits. It is obvious that SLED would never have rehired Plaintiffs in 2004 at reduced salaries had SLED known at the time that Plaintiffs would later file suit claiming an entitlement to the difference between their old and new salaries.

6. For the reasons already cited, Plaintiffs are now estopped from asserting their present claims.

The facts set forth above also support the affirmative defense that Plaintiffs are now estopped from asserting their present claims. Having accepted four years of benefits pursuant to the program that permitted them to retire and return to work, Plaintiffs cannot now claim that SLED's actions harmed them. Instead, such a late assertion of alleged rights to their old salaries would harm SLED if permitted, because SLED would be required to find funding to pay Plaintiffs' salary differentials for the entire four-year period in which Plaintiffs uncomplainingly participated in the program. The general rule pertaining to estoppel in South Carolina has been stated as follows:

The principle of estoppel in equity stands upon the very foundations of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other, and gives that effect ... to their actions which ... justice dictate[s].” It arises when a person, in reliance on what another has done or said, changes position to his detriment and the other person then attempts to repudiate or evade the consequences of his action or speech.

Russell v. Drivers Leasing Services, Inc., 282 S.C. 358, 361, 318 S.E.2d 579, 581 (Ct. App. 1984). This is a fair description of Plaintiffs' actions in this case, and as a result, they should be held to be estopped from asserting their present claims, in addition to the other reasons stated herein as to why those claims should fail.

7. Plaintiffs' consent to the terms of the Retirement/Rehire program bars their present claims.

Still another reason why Plaintiffs' claims are barred is the simple reason that they unequivocally consented to the arrangement under which they were rehired. It is axiomatic that consent can serve as a defense to numerous acts that might otherwise be held tortious, such as assault, trespass or invasion of privacy, among many others. *See, e.g., Hawkins By and Through Hawkins v. Multimedia, Inc.*, 288 S.C. 569, 571, 344 S.E.2d 145, 146 (1986) (“Consent may be

found where the evidence shows a voluntary agreement to do something proposed by another, and the party consenting possesses sufficient information and ability to make an intelligent choice"). Here there can be no question that Plaintiffs freely and readily agreed to participate in the Retirement/Rehire program, with no suggestion of lack of information or ability to make an intelligent choice. The choice Plaintiffs made was a very intelligent one, and no doubt one that they would make again if they had been given the opportunity to do so. Their consent bars this action.

8. Matters raised in the affidavits of Plaintiffs.

Plaintiffs' respective Affidavits dated May 22, 2012, contain several inaccuracies or other matters not specifically discussed above. First, they appear to suggest that their retirement and rehiring took place pursuant to a 2001 program referenced in Exhibit A to both affidavits. However, and as shown in detail in the Reply Affidavit of Robert Stewart, that program was completely different from the program under which Plaintiffs retired and were rehired. Among other things, the 2001 program required employees to elect to participate in that program by September 15, 2001, which clearly did not occur for these Plaintiffs, who retired in 2004.

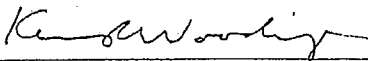
Both Plaintiffs refer to the fact that a year after they retired, certain cost of living raises they received starting on July 1, 2005 were reduced by the same approximate percentage of 13.6% (or 13.55%) as had been applied when they were rehired a year earlier. SLED would point out however, that (a) this happened only in mid-2005, and not in the remaining years of Plaintiffs' four years of service as working retirees (Kitchens Reply Affidavit), and (b) it occurred more than three years before this action was brought, and therefore is time-barred for the same reasons discussed earlier.

CONCLUSION

For the foregoing reasons, SLED respectfully submits that its Motion for Summary Judgment should be granted, Plaintiffs' Motion for Summary Judgment should be denied, and this action should be dismissed.

Respectfully submitted,

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LAW ENFORCEMENT DIVISION

Columbia, South Carolina

May 30, 2012

Defendants.

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

DEFENDANT'S
 SUMMARY
 T. W. BRIDGES
 & G.S.

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words, Plaintiffs were responsible for the employer contribution to the retirement system through the reduction of their own salary.

SLED's obligation to pay the employer's contribution to the retirement system when a member of the Police Officers Retirement System retires and returns to employment is established by S.C. Code Ann. § 9-11-90:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part-time employee or permanent employee.

SLED receives appropriations from the General Assembly, including the monies to pay the employer portion of the retirement contribution. Under SLED's retirement program, SLED, in effect, misappropriates monies due the retirement system and hides the misappropriation by taking money from the retirees' wages.

UNDISPUTED FACTS

1. SLED created a retirement/rehire program for its employees in 2002. (Stewart Aff.)
2. The terms of the program required that employees return to work at 13.6% less than their salary at the time of retirement in order to "cover the amount it will cost SLED to pay the employer portion of retirement." (Ex. D to Jowers Aff; Ex. 8 to Stewart Aff.).
3. S.C. Code Ann. §9-11-90 fixes the obligation for SLED to pay employer contributions:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee.

S.C. Code 9-11-90

4. SLED receives specific appropriations from the General Assembly, including the monies to pay the employer portion of the retirement contribution. (Royal Aff.).

5. SLED, is, in effect, keeping the specific appropriations for the employer contributions by reducing Plaintiffs' salary in order to "cover the amount it will cost SLED to pay the employer portion of retirement." (Ex. 8 to Stewart Aff.)

ARGUMENTS
Standard of Review

Summary judgment is a very well recognized vehicle to secure the "just, speedy and inexpensive determination of every action." *Celotex Corp. V. Catrett*, 477 U.S. 317 (1986). The United States Supreme Court interpreting the identically phrased Fed.R.Civ.P. 56, held that the party opposing the motion for summary judgment was required "to go beyond the pleadings . . . and designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting Fed.R.Civ.P. 56(e)).

The party opposing the motion, not the Court, bears the burden of identifying specific facts in the record that establishes a genuine issue of material fact. "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot rely on the mere allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or proof." *Shupe v. Settle*, 315 S.C. 524, 445 S.E.2d 651, 655 (Ct.App. 1994). Rule 56(e), SCRCP, requires that affidavits supporting or opposing summary judgment shall be made on personal knowledge and shall set forth facts admissible in evidence.

"Summary judgment serves the useful purpose of disposing of meretricious, pretended claims before the court and parties become 'entrenched in a frivolous and costly trial. The courts, therefore, should not be reluctant to grant summary judgment in appropriate cases; indeed, summary judgment is mandated where

appropriate." *Myrtle Beach Pipeline Co. v. Emerson Electric Co.*, 843 F. Supp. 1027, 1035 (D.S.C. 1993); *see also*, *Trico Surveying, Inc. v. Godley Auction, Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993).

"Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder." *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 226 S.E.2d 703 (1976). This case is appropriate for summary judgment as the facts are not in dispute and Plaintiff should be granted summary judgment on its causes of action for violation of a statute, unconstitutional taking, and declaratory judgment.

I. ARGUMENTS AS TO PLAINTIFF'S MOTIONS FOR SUMMARY JUDGEMENT

A. Defendants have violated S.C. Code § 9-11-90.

As already noted, S.C. Code Ann. §9-11-90 requires the obligation for SLED to pay employer contributions:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee.

Furthermore, the General Assembly specifically appropriates money for agency costs and those funds must be used as directed:

The General Assembly has, beyond question, the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent. This the Assembly traditionally does by way of the annual State Appropriations Bill. In writing the appropriations bill, it attempts as best it can to predict the needs of the various departments of state government.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 313-14, 295 S.E.2d 633, 637 (1982). S.C.Code

Ann. § 11-9-10 states that:

It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided

for in the annual appropriation act.

Defendants admit to reducing the Plaintiffs' salaries, but claims Section 9-11-90 is not violated because employer retirement contributions are not actually deducted from the paychecks that Plaintiffs receive¹. Defendants argue that the pay stubs reveal that no retirement contributions were actually deducted from Plaintiffs' checks to pay for the employer contribution. Furthermore, SLED admits that the annual appropriations acts contain a section designated "Employee Benefits," which includes a line item designated "State Employer Contributions." (Royal Aff.). However, SLED reduces the salaries of Plaintiff (and other retirees that return to work) by 13.6% to "cover the amount it will cost SLED to pay the employer portion of retirement." SLED further asserts that because SLED did transmit the money, in periodic lump sum remittances, it "paid" the employer contribution as required by statute. The fact is SLED gets money for a specific purpose and thereafter uses the money for another purpose.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). The statute is very clear as to retirement contributions. It requires the employer to **"pay to the system the employer contribution for active members prescribed by law with respect to any retired member...."** (emphasis added) In other words, working retirees such as Plaintiffs must be treated the same way as other employees with regard to employer retirement contributions. The statute's intent is that Defendants will make the required employer contributions for all employees from

¹SLED also apparently contends that it can retain "unspent general funds" from one year to the next. (Royal Aff., ¶ 15 and Ex. 2). However, the Act upon which SLED relies also states "Agencies shall not withhold services in order to carry forward general funds." Likewise, SLED cannot reduce Plaintiffs' salary to "cover the amount it will cost SLED to pay the employer portion of retirement" just so that it can carry forward unspent general funds

its appropriations.

Defendants attempt to evade that requirement by claiming that as long as SLED engaged in the ministerial act of transferring the money to the Retirement Systems, regardless of whether SLED is paying the contribution from its appropriated funds or the withheld wages of Plaintiff, the statute has not been violated. If Defendants' interpretation is accepted, the intent of the General Assembly has will be frustrated and spirit of the statute would be eviscerated.² It is clear that the General Assembly's intent was that the funds it appropriates to SLED be used for the purposes appropriated. There is simply no foundation in law for SLED to reduce Plaintiffs' salaries to try to recoup or offset expenses that have been specifically appropriated by the legislature.

B. Defendants have taken Plaintiffs' property in violation of the constitution.

Defendants' actions, in reducing Plaintiffs' salary by the amount needed to pay employer retirement contributions constitute a taking of Plaintiff's property in violation of the state and federal constitutions. U.S. Const. 5th Am.; S.C. Const. Art. I, Sec. 3. The Takings Clause provides that private property shall not be taken for public use without just compensation. *Rick's Amusement, Inc. v. State*, 351 S.C. 352, 357, 570 S.E.2d 155, 157 (2001). Similarly, to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Worsley Co. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000).

The United States Supreme Court case on the prejudgment garnishment of wages has

²In addition, if that interpretation is accepted, all agencies could then reduce any employee's salary, whether the employee was an active member or working retiree, and use those funds for its own use.

clearly held that wages constituted property:

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.

Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 342 (1969). Justice Harlan's concurring opinion stated:

The "property" of which petitioner has been deprived is the use of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit. Since this deprivation cannot be characterized as de minimis, she must be accorded the usual requisites of procedural due process: notice and a prior hearing.

Sniadach at 342.

Defendants do not dispute that Plaintiffs' salary is reduced in order to "cover the amount it will cost SLED to pay the employer portion of retirement" but have argued that Plaintiffs have no claim for a taking because they have no property interest in a particular salary level.

However, South Carolina Supreme Court has already rejected this argument stating:

...Appellants do not claim they are entitled to a particular salary level. Rather, Appellants contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90, regardless of any particular salary level.... Properly construing Appellants' claim, we hold section 9-11-90 provides a basis to assert a property interest.

Grimsley v. S. Carolina Law Enforcement Div., 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012).

Here, state laws set forth the amounts that can be deducted from wages for retirement contributions, as well as the contributions that must be paid by the employer. In addition, the General Assembly considers the costs to the agency for employer contributions in making appropriations. In other words, the State has created a statutory right to be paid without a reduction for the 13.6 % employer contribution. The reduction of wages is contrary to the

specific statutory requirements and constitutes a taking of the property interest created by statute. See, e.g., *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) ("We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Here, as recognized our Supreme Court, Plaintiffs have a "statutory right" like that recognized in *Wicker* -- that is, Section 9-11-90 specifically provides Plaintiffs with "a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-1-90, regardless of any particular salary level." *Grimsley v. S. Carolina Law Enforcement Div.*, 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012). Plaintiffs are entitled to summary judgment on their claim that Defendants have unconstitutionally taken their wages.

C. Plaintiffs are entitled to a declaratory judgment.

Under S. C. Code § 15-53-10, et seq., a party can seek a declaratory judgment defining the rights, privileges and duties of and between the parties. As set forth above, Defendants have violated the statutory laws of the State of South Carolina and has acted unconstitutionally. Plaintiffs are therefore entitled to a declaration that Defendants' actions are illegal and that Defendants must disgorge all of the wages wrongfully withheld and declare the Plaintiffs (and the class) are entitled to interest on those withheld wages.³

³The amount of money that Plaintiffs and the class have been deprived is significant. For the years 2005 to 2008, Plaintiff Grimsley was paid approximately \$28,000 less than he should have been. *Grimsley. Aff.* Plaintiff Jowers received approximately \$24,500 less than he should have. In addition, according to SLED's own spreadsheet for showing the salary at retirement and the rehire salary for 71 working retirees, show that wages of thousands of dollars were withheld under SLED's program. See, SLED's discovery responses, attached hereto, as Exhibit A.

II. ARGUMENTS IN OPPOSITION TO SLED'S MOTION FOR SUMMARY JUDGEMENT.

Plaintiffs have addressed most of SLED's grounds for summary judgment in the arguments above. However, two of the grounds in the SLED's Second Amended Motion for Summary Judgment merit separate sections.

A. Plaintiffs did not relinquish any interest by agreeing to return to work at a reduced salary.

Defendants argue that Plaintiffs signed documents entitled "Request to be Rehired" in which they "agreed" to be rehired a reduced salary in order to "cover the amount it will cost SLED to pay the employer portion of retirement." First, the "agreements" were forms created by SLED, and do not contain language upon which the parties negotiated. If Plaintiffs did not sign the form, they could not be rehired. Secondly, agreements in violation of statutory or constitutional law will not be enforced. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002) (An illegal contract is unenforceable); *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, 361 S.C. 544, 555. 606 S.E.2d 752, 758 (2004) (This Court will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.). SLED is attempting to enforce an agreement that violates Section 9-11-90 and which constitutes an unconstitutional taking. These "agreements" cannot be enforced.

B. The Statute of Limitations does not bar Plaintiffs' case.

Defendants argue that the Plaintiffs entered the program in 2004, but did not bring this lawsuit in 2008, and thus, their action is barred by the statute of limitations. However, the statute of limitations began to run anew every time Defendants issued a paycheck to Plaintiffs that was 13.6% less than it should have been, due to SLED's improper withholding of that amount to pay the employer retirement contribution for Plaintiffs. *See, e.g. Tilley v. Pacesetter Corp.*, 333 S.C.

33, 42, 508 S.E.2d 16, 20 (1998)("Accordingly, although we find the three year statute of limitations applicable, it begins to run from each payment [in violation of the statute], such that plaintiffs' claims are not barred."),⁴ Thus, Plaintiffs can recover for the three years prior to the filing of the Complaint through the current date.

III. ARGUMENTS AS TO THE STATE'S MOTION FOR SUMMARY JUDGMENT

The State argues that a) it is not a proper defendant because there is not cause of action against it; 2) the claims are barred by sovereign immunity. These arguments are addressed below.

A. The State is a necessary party because Plaintiffs have asserted a declaratory judgment.

One of Plaintiffs' causes of action is a declaratory judgment, asking this Court to declare that SLED and the State have violated South Carolina statutory and common law, and to require disgorgement. The South Carolina Declaratory Judgment Act, provides :

When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

S.C. Code § 15-53-80 (emphasis added). Because the Respondent is a party who would be affected by the declaratory judgment, it must be included as a party.

⁴See also, *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 358, 559 S.E.2d 327, 337 (Ct. App. 2001)(A new statute of limitations begins to run after each separate invasion of property.)

The State relies *Hardwick v. Liberty Mut. Ins. Co.*, 243 S.C. 162, 133 S.E.2d 71 (1963) for the proposition that it does not need to be joined as party because there is no justiciable controversy between Appellant and Respondent. However, the State's reliance is misplaced. That case simply recognized that there was justiciable controversy between the driver of a car and an insurance company on the duty to defend under the policy.⁵ In fact, the court did not even consider whether the various parties should have been added under the Declaratory Judgment Statute:

We do not here or now decide whether Surety Indemnity Company and/or various claimants should have been or should be joined as parties pursuant to the provisions of Section 10-2008,⁶ as that issue is not before us. We simply hold that the failure to so join any of them did not render the complaint subject to demurrer.

Hardwick, 243 S.C. at 170, 133 S.E.2d at 74. Thus, *Hardwick* offers no guidance here.

Pursuant to the Declaratory Judgment Act, the State must be included as a party who would be affected by the judgment. Furthermore, the State is a necessary party in that Plaintiffs have alleged that SLED is misappropriating funds that the State has appropriated for the specific purpose of employer retirement contributions. Finally, Plaintiffs seek disgorgement of the monies taken and those monies are within the control of the State. Thus, the State's request for summary judgment must be denied.

B. Sovereign immunity does not apply.

The government has never been immune from an action alleging a taking of private

⁵In the lower court, the insurance company sought a demurrer on the grounds that other parties should have been named as parties. After the lower court found the complaint was not demurrable, and the insurance company appealed.

⁶Section 10-2008 of the 1962 Code was the precursor to S.C. Code § 15-53-80.

property or for a declaratory judgment. In fact, before the Tort Claims Act was enacted, the State and its subdivisions were not liable for any action **except** for the taking of property:

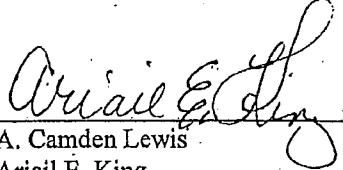
In this jurisdiction neither the State nor any of its political subdivisions is liable in an action ex delicto unless by express enactment of the General Assembly, except where the acts complained of, in effect, constitute a taking of private property for public use without just compensation.

Graham v. Charleston County School Bd., 262 S.C. 314, 317, 204 S.E.2d 384, 386 (S.C. 1974) (overruled by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). Furthermore, the Declaratory Judgment Act specifically provides that a party "may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code 15-53-30.

After *McCall* abolished the doctrine of sovereign immunity, the General Assembly enacted the Tort Claims Act, S.C. Code § 15-78-10, et seq., which does provide for certain exemptions whereby the State is exempted from liability. However, none of those exceptions relieve the State from liability from an unconstitutional taking or a declaratory judgment.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully submit that this Court should grant Plaintiffs' Motion for Summary Judgment and deny the Defendants' Motions for Summary Judgment.


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June 4, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,

Civil Action Number: 08-CP-40-8854

Plaintiffs,

v.

DEFENDANT SLED'S RESPONSES TO
PLAINTIFFS' FOURTH SET OF
INTERROGATORIES

South Carolina Law Enforcement
Division and the State of South Carolina,

Defendants.

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

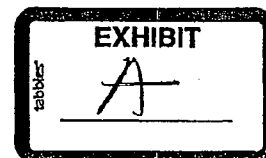
Pursuant to Rule 33, SCRCF, Defendant South Carolina Law Enforcement Division responds to Plaintiff's Fourth Set of Interrogatories as follows:

GENERAL OBJECTIONS

This Defendant makes the following general objections, which are incorporated by reference into each of these responses.

1. This Defendant objects to the production of any information or documents referenced in these requests that are subject to the attorney-client privilege or the attorney work product privilege.

2. This Defendant also objects to the production of information or documents from the personnel files of individuals who are not parties in this presently-uncertified class action. Such information is personal to those nonparty individuals and would be inappropriate for disclosure by this Defendant in the absence of an order from the Court.



1. Identify each SLED employee who entered into "re-employment under the PORS Retirement Provisions" (as shown on Ex. A hereto) and who had "a reduction of 13.6% in [their] salary to cover the amount it will cost SLED to pay the employer portion of retirement."

RESPONSE:

This Defendant objects to this Interrogatory for the reasons set forth in General Objection No. 2 above. Notwithstanding this objection, and without waiving same, this Defendant would respond as set forth below.

Notwithstanding the above objections, and pursuant to oral discussions regarding this Interrogatory, this Interrogatory is regarded as seeking information concerning each SLED employee who signed an "Employee Orientation" form such as that shown on Ex. A to the Fourth Interrogatories, or its predecessor (used from 2002 through June 2004), which referred to a 10.3% amount. A sample of the latter is attached hereto as Doc. No. 8022-C-0001. Approximately 54 employees who signed one version of that form or the other were rehired at their previous salary less 10.3% and approximately 22 others, starting in July 2004, were rehired at their previous salary less 13.6%.

All information provided in this interrogatory response is based on information about the employees referenced in the attached spreadsheet (see response to Interrogatory 2). Information about any relevant events that occurred after the date of that spreadsheet will be provided shortly, but it is believed that few if any rehires of retired employees that occurred after those referenced in the spreadsheet involved a salary reduction of 10.3% or 13.6%.

2. For each person identified in the Answer to Interrogatory No. 1, state the dollar amount for the "employer contribution" withheld from the employee's check for retirement from the date of re-employment to the present.

RESPONSE:

This Defendant objects to this Interrogatory for the reasons set forth in General Objection No. 2 above. In addition, this Defendant denies that there was an "employer contribution" that was "withheld from the employee's check for retirement," and therefore objects to this Interrogatory on the ground that the information described by this Interrogatory does not exist as described.

Notwithstanding these objections, and without waiving same, this Defendant would refer Plaintiffs to the attached spreadsheet (Doc. No. 8022-C-0002) for information concerning the comparison between the dollar amounts paid to these employees before they retired and after they were rehired at salaries that were reduced by percentage reductions of either 10.3% or 13.6%, and who in the course of being rehired at reduced salaries, signed "Employee Orientation" forms that referenced a reduction in salary of 10.3% or 13.6%.

This Defendant further objects to this Interrogatory on the ground that the burden of computing dollar amount information pertaining to salary reductions upon rehire is substantially the same for both parties. That information can be obtained by making computations from the information on the attached spreadsheet.

The forms used in rehires after the first rehire also provided that the 6.5% employee contribution would be deducted from the employees' checks, unlike the initial rehire forms, which in most cases indicated that that employee contribution was no longer being withheld.

The initial four-year terms of employment of all of the employees on the spreadsheet except one (Employee No. 20) expired no later than 2008, so unless this Defendant's presently-ongoing review indicates that someone signed an "Employee Orientation" form that referenced a reduction in salary of 10.3% or 13.6% after 2008, this Defendant objects to the production of any information about information "through the present" that extends beyond each employee's initial re-hiring, on the ground that such evidence is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

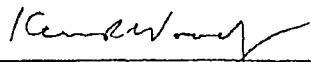
3. For each person identified in the Answer to Interrogatory No. 1, state the dollar amount for the "employee contribution" from the employee's check for retirement from the date of re-employment to the present.

RESPONSE:

This Defendant objects to this Interrogatory on the following grounds: To the extent that the Interrogatory requests information about actual withholding of the 6.5% employee contribution, such information would raise an issue not presented in this case. This Defendant would show, however, that since all of the employees on the attached spreadsheet became retired employees at the time of their initial termination of employment, their salaries upon rehire were not subject to the employee contribution, at least prior to July 1, 2005.

This Defendant further objects to this Interrogatory on the ground that the burden of computing dollar amount information pertaining to employee contributions upon rehire is substantially the same for both parties. That information can be obtained by making computations from the information on the attached spreadsheet.

DAVIDSON & LINDEMANN, P.A.

BY: 
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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

April 17, 2012

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JAMES H. HODGES
Governor



ROBERT M. STEWART
Chief

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 10.3% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check # 42,255
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was [REDACTED]. You will begin accruing in the month of [REDACTED]. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on [REDACTED].
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

Employee [REDACTED]

Social Security Number [REDACTED]

Date 1-17-03

Employee 64



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7047

8022-C-001

NAME	REDUCTION % FROM FORM	SALARY AT RETIREMENT	REHIRE DATE	REHIRE SALARY	DATE OF TERMINATION OF INITIAL REHIRE PD.	SALARY AT TERMINATION OF INITIAL REHIRE PD.	6.5% EMPLOYEE CONTRIBUTION AT TIME OF REHIRE?
85	10.3	\$45,959	09/17/02	\$41,225	08/16/06	\$45,706	NO
84	10.3	\$63,327	09/17/02	\$56,804	09/16/06	\$62,978	NO
86	10.3	\$45,732	09/17/02	\$41,021	09/16/06	\$45,480	NO
87	10.3	\$42,536	09/17/02	\$38,154	09/16/06	\$42,302	NO
83	10.3	\$56,592	10/02/02	\$50,763	01/16/04	\$50,763	NO
80	10.3	\$42,250	10/17/02	\$37,898	10/16/06	\$42,016	NO
81	10.3	\$62,108	10/17/02	\$55,710	10/16/06	\$61,766	NO
82	10.3	\$32,109	10/17/02	\$28,801	10/16/06	\$30,358	NO
78	10.3	\$56,207	11/04/02	\$50,418	10/01/06	\$55,898	NO
77	10.3	\$51,181	11/04/02	\$45,909	11/01/06	\$50,899	NO
79	10.3	\$63,220	11/04/02	\$56,708	11/01/06	\$62,872	NO
74	10.3	\$51,226	11/18/02	\$45,950	08/09/04	\$45,450	NO
71	10.3	\$51,976	11/18/02	\$46,622	07/01/05	\$50,184	NO
70	10.3	\$47,227	11/18/02	\$42,363	11/17/06	\$46,965	NO
72	10.3	\$52,892	11/18/02	\$47,444	11/17/06	\$52,600	NO
73	10.3	\$45,507	11/18/02	\$40,820	11/17/06	\$45,256	NO
75	10.3	\$49,183	11/18/02	\$44,117	11/17/06	\$48,912	NO
76	10.3	\$42,192	11/18/02	\$37,846	11/17/06	\$41,959	NO
69	10.3	\$63,325	12/02/02	\$56,803	01/15/04	\$56,803	NO
68	10.3	\$59,820	12/02/02	\$53,659	07/27/06	\$59,490	NO
67	10.3	\$56,942	01/02/03	\$51,076	01/16/03	\$51,076	NO
66	10.3	\$81,956	01/02/03	\$73,515	01/01/07	\$81,504	NO
62	10.3	\$68,008	01/17/03	\$61,003	03/22/04	\$61,003	NO
63	10.3	\$55,211	01/17/03	\$49,524	02/18/05	\$53,235	NO
64	10.3	\$47,108	01/17/03	\$42,256	01/15/07	\$46,849	NO
65	10.3	\$66,056	01/17/03	\$59,252	01/15/07	\$65,692	NO
59	10.3	\$62,108	02/03/03	\$55,711	02/01/07	\$61,766	NO
60	10.3	\$65,048	02/03/03	\$58,348	02/01/07	\$64,690	NO
61	10.3	\$58,754	02/03/03	\$52,702	02/01/07	\$58,430	NO
56	10.3	\$42,476	02/18/03	\$38,101	02/01/07	\$45,621	NO
57	10.3	\$72,254	02/18/03	\$64,812	02/16/07	\$71,855	NO
58	10.3	\$81,956	02/18/03	\$73,515	02/16/07	\$81,504	NO
55	10.3	\$51,523	03/03/03	\$46,216	02/14/06	\$51,239	NO
54	10.3	\$63,220	03/17/03	\$56,708	03/01/07	\$62,872	NO
53	10.3	\$69,541	04/02/03	\$62,378	03/16/07	\$69,158	NO
52	10.3	\$78,032	05/02/03	\$69,995	04/16/07	\$77,603	NO
51	10.3	\$36,720	06/17/03	\$32,938	06/01/07	\$36,517	NO
50	10.3	\$52,218	08/04/03	\$46,840	07/16/07	\$53,487	NO
49	10.3	\$47,227	08/18/03	\$42,363	08/10/07	\$48,373	NO
9	10.3	\$19.99ph	09/02/03	\$39,033	04/01/05	\$40,203	NO
48	10.3	\$61,130	09/17/03	\$54,834	09/01/07	\$62,616	NO

8022-C-002

NAME	REDUCTION % FROM FORM	SALARY AT RETIREMENT	REHIRE DATE	REHIRE SALARY	DATE OF TERMINATION OF INITIAL REHIRE PD.	SALARY AT TERMINATION OF INITIAL REHIRE PD.	6.5% EMPLOYEE CONTRIBUTION AT TIME OF REHIRE?
46	10.3	\$28,849	10/17/03	\$25,878	10/01/07	\$29,778	NO
47	10.3	\$47,812	10/17/03	\$42,887	10/01/07	\$48,973	NO
45	10.3	\$55,211	11/03/03	\$49,524	10/16/07	\$56,553	NO
44	10.3	\$54,162	12/02/03	\$48,583	11/16/07	\$51,552	NO
42	10.3	\$68,015	01/20/04	\$61,009	05/19/06	\$65,670	NO
43	10.3	\$47,106	01/20/04	\$42,254	10/19/06	\$46,846	NO
41	10.3	\$54,323	02/17/04	\$48,728	11/02/06	\$54,023	NO
40	10.3	\$55,575	02/17/04	\$49,851	02/01/08	\$56,927	NO
39	10.3	\$45,618	03/17/04	\$40,920	02/29/08	\$46,728	NO
38	10.3	\$63,220	04/02/04	\$56,708	03/14/08	\$70,260	NO
36	10.3	\$42,868	05/17/04	\$38,453	08/15/04	\$38,035	NO
37	10.3	\$53,821	05/17/04	\$48,277	05/01/08	\$55,129	NO
35	10.3	\$44,547	06/17/04	\$41,157	01/21/05	\$39,524	NO
34	13.6	\$43,323	07/02/04	\$38,554	06/16/08	\$44,955	NO
32	13.6	\$44,755	07/19/04	\$39,828	07/01/08	\$46,440	NO
33	13.6	\$43,117	07/19/04	\$38,371	07/01/08	\$44,740	NO
31	13.6	\$52,896	08/17/04	\$45,702	06/16/08	\$53,289	NO
30	13.6	\$45,674	09/17/04	\$39,462	09/01/08	\$46,012	NO
29	13.6	\$44,622	10/18/04	\$38,553	01/01/05	\$38,553	NO
28	13.6	\$43,812	02/02/05	\$37,854	06/16/08	\$44,137	NO
27	13.6	\$49,190	08/17/05	\$42,500	09/15/06	\$43,775	YES
26	13.6	\$49,029	10/17/05	\$42,361	06/16/08	\$45,388	YES
25	13.6	\$63,307	02/17/06	\$54,697	12/01/08	\$58,607	YES
24	13.6	\$47,897	03/19/07	\$42,820	12/01/08	\$44,545	YES
23	13.6	\$55,880	06/04/07	\$48,728	06/02/08	\$49,728	YES
21	13.6	\$65,211	08/17/07	\$56,342	06/16/08	\$56,905	YES
22	13.6	\$51,732	08/17/07	\$44,696	06/16/08	\$45,142	YES
12	13.6	\$98,723	08/17/07	\$85,297	08/01/08	\$86,149	YES
15	13.6	\$74,949	07/17/08	\$64,756	12/01/08	\$64,756	YES
16	13.6	\$78,808	07/17/08	\$68,090	12/01/08	\$68,090	YES
17	13.6	\$64,966	07/17/08	\$56,130	12/01/08	\$56,130	YES
18	13.6	\$63,979	07/17/08	\$55,277	12/01/08	\$55,277	YES
19	13.6	\$81,828	07/17/08	\$70,699	12/01/08	\$70,699	YES
20	13.6	\$80,740	07/17/08	\$69,760	To be supplied	To be supplied	YES
14	13.6	\$82,236	10/02/08	\$71,052	12/01/08	\$71,052	YES

our salaries even more. On June 21, 2004, I signed the new request, which stated that my salary would be 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized." (Exhibit C).

4. On July 27, 2004, I received confirmation of my rehiring which stated:

Your salary will be \$45,702 (previous base salary less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.

(Exhibit D, emphasis in original).

5. On June 13, 2005, I received a letter from Lynn Hutto, Director of Human Resources for SLED. While I cannot locate my letter, it is identical to the one received by Plaintiff Jowers, which is attached hereto. (Exhibit E). This letter stated that the General Assembly had given a 4% pay increase for all classified employees in permanent full time equivalent position and a 6% increase as a result of a the 2004 Law Enforcement Pay Study." However, both my raises were reduced by SLED: *"Please note that both the 4% and the 6% have been adjusted by 13.55%."*

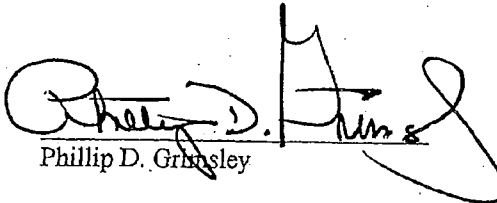
(Exhibit E, italics in original).

6. For the years I was in the SLED retirement program, I lost 13.6% of my salary annually, which translates to thousands of dollars. For example, in 2005, which was the first full year of my re-employment, my gross salary according to my W2 was \$46,971.02. (Exhibit F). If SLED had not reduced it by 13.5% for employer retirement contributions, it would have been \$54,301.76. Thus, in 2005, I lost \$7,330.74.

7. In 2006, my gross salary was \$51,079.92 (Exhibit G). However, without the 13.5% reduction, my salary would have been \$59,051.93. For that year, I lost \$7,972.01.

8. In 2007, my gross salary was \$52,593.84 (Exhibit H). Without the 13.5% reduction, my salary would have been \$60,802.13, which means I lost \$8,208.29 in 2007.

9. I did not work a full year in 2008 (Exhibit I). However, my gross salary for the time I was employed was \$28,901.29 (Exhibit J). Had it not been cut 13.5%, my salary would have been \$33,411.90. Thus, I lost \$4,510.61 that year. I filed this lawsuit shortly thereafter leaving my employment with SLED.


Phillip D. Groomsley

SWORN to before me this

22nd day of May, 2012,

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 10/26/19

TAB A

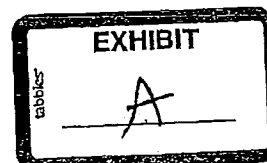
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM HODGES
Governor



ROBERT M. STEWART
Chief

MEMORANDUM



TO: SLED Personnel
FROM: Robert M. Stewart *MS*
SUBJECT: SLED Voluntary Retirement Incentive Program
DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



053

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P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

NOTICE OF THE
2001
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)
VOLUNTARY RETIREMENT INCENTIVE PROGRAM

PURPOSE

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

- G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).
- H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this _____ day of _____, 2001, by and between _____ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. Employee's Voluntary Retirement. The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on _____, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. Incentive. SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. Release. The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. Adequate Consideration. The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. Confidentiality. SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. Voluntary Waiver. The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. Forty-Five Day Period. The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. Revocation Period. The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. Governing Law. This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this _____ day of _____, 2001.

FOR THE EMPLOYEE:

FOR SLED:

Employee Name (signature)

Lynn Hutto
Human Resources Director
S.C. Law Enforcement Division

Employee Name (print)

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Notary Public

Notary Public

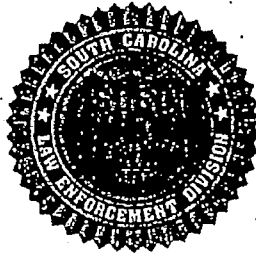
My commission expires:

My commission expires:

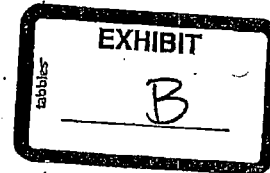
TAB B

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief



TO: Chief Robert M. Stewart
FROM: Lt. Phil Grimsley
SUBJECT: REQUEST TO BE REHIRED
DATE: May 20, 2004

043

I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- ☐ Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- ☐ Accrual of annual and sick leave at current rate.
- ☐ Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- ☐ Employment not to exceed 48 months.
- ☐ No lump sum payment for annual leave upon second separation.
- ☐ Review date: twelve months after date of rehire.
- ☐ No probationary period.
- ☐ Must apply to this agency and receive permission to reenter retirement system as an active member.

5-20-04
DATE

Phil Grimsley
SIGNATURE

Approved for rehire:

RMS/g

SWORN TO BEFORE ME THIS 20th DAY OF May, 2004.

Gerard D. Booth
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB C

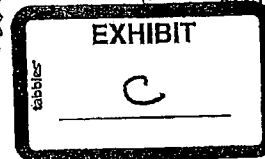
UKR

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

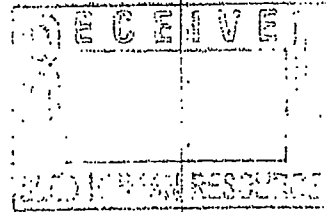
MARK SANFORD
Governor



ROBERT M. STEWART
Chief



TO: Chief Robert M. Stewart
FROM: Lt. Phil Grimsley
SUBJECT: REQUEST TO BE REHIRED
DATE: June 21, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- ☐ Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- ☐ Accrual of annual and sick leave at current rate.
- ☐ Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- ☐ Employment not to exceed 48 months.
- ☐ No lump sum payment for annual leave upon second separation.
- ☐ Review date: twelve months after date of rehire.
- ☐ No probationary period.
- ☐ Must apply to this agency and receive permission to reenter retirement system as an active member.

6/21/04
DATE

Robert M. Stewart
SIGNATURE

Approved for rehire:
RMS/gdw

SWORN TO BEFORE ME THIS 21st DAY OF
June, 2004.

Gerald Booth
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB D

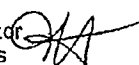
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

TO: Phillip Grimsley
FROM: Lynn Hutto, Director of Human Resources 
SUBJECT: Confirmation of Your Request to Rehire
DATE: July 27, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- > Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- > Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- > Your salary will be \$45,702 (previous base salary less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- > Employment not to exceed 48 months.
- > Review date: twelve months after date of rehire.
- > No probationary period.
- > Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 30, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be August 17, 2004.

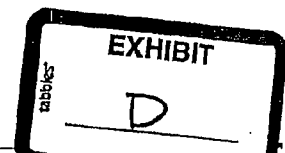
Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Capt. Drakeford
HR file



045

An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041



TAB E

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

MEMORANDUM

TO: Jowers, Roger
Dept: 54

FROM: Lynn Hutto, Director
Human Resources

DATE: June 13, 2005

SUBJECT: 2005-2006 General Increase and LEO Study Pay - Retiree

This is to inform you that the 2005-2006 General Appropriation Act provided for a 4% general base pay increase for all classified employees in permanent full time equivalent positions effective 6/2/05. In addition to the general increase you will receive another 6% increase as a result of the 2004 Law Enforcement Pay Study. *Please note that both the 4% and the 6% have been adjusted by 13.55%.* These increases will be paid on the pay date of July 1, 2005 and will increase your annual salary to \$43,342.

Thank you for your dedicated work on behalf of the State Law Enforcement Division. Should you have questions concerning the information provided, please contact the Human Resource Office at 896-7199.

Previous Salary:	\$39,828
4% General Increase (-13.55%):	\$41,205
6% LEO Study (-13.55%):	\$43,342 (Salary on July 1, 2005)

Cc: HR File



012



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB F

OMB No. 1545-0047

a Control number	1 Wages, tips, other compensation 46,971.02	2 Federal income tax withheld 4,555.23
	3 Social security wages 48,318.00	4 Social security tax withheld 2,995.72
	5 Medicare wages and tips 48,318.00	6 Medicare tax withheld 700.61

c Employer's name, address, and ZIP code
COMPTROLLER GENERAL
STATE OF SOUTH CAROLINA
1200 SENATE STREET ROOM 305
COLUMBIA, SC 29201
69-0570801-008

7 Social security tips	8 Allocated tips	9 Advance EIC payment 0.00
10 Dependent care benefits 0.00	11 Nonqualified plans	

b Employer identification number
~~46-0000000~~

d Employee's social security number
~~46-0000000~~

12a See instructions for box 12 C 0.00	12d 0.00
12b D 0.00	12e T 0.00
12c E 0.00	12f W 0.00

13 ☐ Statutory employee ☒ Retirement plan ☐ Third-party sick pay ☐ 14 Other

e Employee's name, address, and ZIP code
PHILLIP D GRIMSLEY
~~46-0000000~~
LAKE CITY SC 29568-2140

2005 15 State Employer's state I.D. No. SC ~~0000000000~~ 16 State wages, tips, etc. 46,971.02

W-2 Wage and Tax Statement 17 State income tax 2,607.34 18 Local wages, tips, etc.

Copy For EMPLOYEE'S State, City, or Local Income Tax Return 19 Local income tax 20 Locality name

Department of the Treasury-Internal Revenue Service

Form 1099-R CORRECTED (If checked) OMB No. 1545-0119 **2005**

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

1 Gross distribution 33,168.04	2a Taxable amount 33,056.16
2b Taxable amount not determined	Total distribution

PAYER'S name, street address, city, state, and ZIP code
S. C. POLICE OFFICERS
RETIREMENT SYSTEM
PO BOX 11960
COLUMBIA, SC 29211-1960

PAYER'S Federal identification number ~~46-0000000~~	RECIPIENT'S identification number ~~46-0000000~~
3 Capital gain (Included in box 2a)	4 Federal income tax withheld 2,614.00
5 Employee contributions or insurance premiums 101.88	6 Not unrealized appreciation in employer's securities
7 Distribution code 7	8 Other %
9a Your percentage of total distribution %	9b Total employee contributions

RECIPIENT'S name, street address (incl. apt. no.), city, state, and ZIP code
PHILLIP D GRIMSLEY
~~46-0000000~~
LAKE CITY SC 29568

Account number (see instructions)	10 State tax withheld 1,350.00
11 State/Payer's state number SC 25254192-2	12 State distribution
13 Local tax withheld	14 Name of locality LAKE CITY
	15 Local distribution

Copy C For Recipient's Records
 This information is being furnished to the Internal Revenue Service
 Department of the Treasury
 Internal Revenue Service



TAB G



Richard Eckstrom Comptroller General

1200 Senate Street Room 305
Columbia, South Carolina 29201

The taxable wages included in Blocks 1 & 18 were compiled using the following year-to-date information:

GROSS WAGES (SEE NOTE)	51,079.92
LESS:	
RETIREMENT CONTRIBUTIONS	3,201.19
DEFERRED COMPENSATION	0.00
MONEYPLUS DEDUCTIONS	0.00
TAXABLE WAGES	47,798.73

NOTE: For Optional Life Participants in the Moneyplus Program, the amount in box 12a(C) is included in gross wages. This amount reflects imputed income based on IRS Guidelines for coverage exceeding \$50,000.

Central State Audit Division 803-734-2124



State Budget and Control Board SOUTH CAROLINA RETIREMENT SYSTEMS

Post Office Box 11960
Columbia, SC 29211-1960

Instructions for Recipient (Continued)

- N - Recharacterized IRA contribution made for 2006 and recharacterized in 2006.
- P - Excess contributions plus earnings/excess deferrals taxable in 2006.
- Q - Qualified distribution from a Roth IRA.
- R - Recharacterized IRA contribution made in 2005 and recharacterized in 2006.
- S - Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 59 1/2).
- T - Roth IRA distribution, exception applies.

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.

Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972).

Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b. For a life annuity from a qualified plan or from a tax-sheltered annuity (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

OMB No. 1545-0046

a Control number	1 Wages, tips, other compensation 47,798.73	2 Federal income tax withheld 6,738.88
	3 Social security wages 51,079.92	4 Social security tax withheld 3,166.96
	5 Medicare wages and tips 51,079.92	6 Medicare tax withheld 740.66

c Employer's name, address, and ZIP code

COMPTROLLER GENERAL
STATE OF SOUTH CAROLINA
1200 SENATE STREET ROOM 305
COLUMBIA, SC 29201
69-0570001-000

7 Social security tips	8 Allocated tips	9 Advance EIG payment 0.00
10 Dependent care benefits 0.00	11 Nonqualified plans	
b Employer's identification number 57-6000286	d Employee's social security number	
12a See instructions for box 12 C 0.00	12d	
12b D 0.00	12e T 0.00	
12c E 0.00	12f W 0.00	
13	14 Other	
13a ☐ Statutory employee	13b ☒ Retirement plan	13c ☐ Third-party sick pay

e Employer's name, address, and ZIP code

PHILLIP D GRIMSLEY
LAKE CITY SC 29560-2140

2006	15 State Employer's state I.D. No. SC 25030665-4	16 State wages, tips, etc. 47,798.73
W-2	17 State income tax 2,703.00	18 Local wages, tips, etc.
Copy B To Be Filed With Employee's FEDERAL Tax Return	19 Local income tax	20 Locality name

Department of the Treasury-Internal Revenue Service

OMB No. 1545-0119 2001

2a Taxable amount 34,200.42

2b Taxable amount not determined

2c Total distribution

PAYER'S name, street address, city, state, and ZIP code

S. C. POLICE OFFICERS
RETIREMENT SYSTEM
PO BOX 11960
COLUMBIA, SC 29211-1960

PAYER'S federal identification number 57-6041552

RECIPIENT'S identification number

3 Capital gain (included in box 2a)

4 Federal income tax withheld 2,880.00

5 Employee contributions/ Designated Roth contribution or insurance premiums 101.88

6 Net unrealized appreciation in employer's securities

7 Distribution code(s) IRA/SEP/SIMPLE

8 Other %

9a Your percentage of total distribution %

9b Total employee contributions %

RECIPIENT'S name, street address (incl apt. no.), city, state and ZIP code

PHILLIP D GRIMSLEY

tabbles

EXHIBIT

6

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TAB H

State Budget and Control Board
SOUTH CAROLINA RETIREMENT SYSTEMS

Post Office Box 11960
Columbia, SC 29211-1960

Instructions for Recipient (Continued)

- N - Rercharacterized IRA contribution made for 2007 and rercharacterized in 2007.
P - Excess contributions plus earnings/excess deferrals/taxable in 2008.
Q - Qualified distribution from a Roth IRA.
R - Rercharacterized IRA contribution made in 2008 and rercharacterized in 2007.
S - Early distribution from a SIMPLE IRA in less than 2 years, no known exception (under age 59 1/2).
T - Roth IRA distribution, exception applies.

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.

Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4072).

Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b. For a life annuity from a qualified plan or from a 403(b) Plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

Boxes 10-16. If state or local income tax was withheld from the distribution, boxes 12 and 15 may show the part of the distribution subject to state and/or local tax.

Additional Information. You may want to see:

- W-4P, Withholding Certificate for Pension or Annuity Payments
- Form 4872, Tax on Lump-Sum Distributions
- Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- Form 8609, Nondeductible IRAs
- Pub. 560, Rollover Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- Pub. 571, Tax-Sheltered Annuity Plans (403(b) Plans)
- Pub. 578, Pension and Annuity Income
- Pub. 590, Individual Rollover Arrangements (IRAs)
- Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits
- Pub. 939, General Rule for Pensions and Annuities
- Pub. 089, Health Savings Account and Other Tax-Favored Health Plans

Form 1099-R		CORRECTED (If checked) OMB No. 1545-0019	2007
1 Gross distribution	2a Taxable amount		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
35,310.86	35,209.08		
2b Taxable amount not determined	Total distribution		

**Distributions From
Pensions, Annuities,
Retirement o
Profit-Sharing
Plans, IRAs
Insurance
Contracts, etc**

PAYER'S name, street address, city, state, and ZIP code U.S. POLICE OFFICERS RETIREMENT SYSTEM PO BOX 1980 COLUMBIA, SC 29211-1980			
PAYER'S Federal Identification number 57-6041552		RECIPIENT'S Identification number [REDACTED]	
3 Capital gain (included in box 2a)	4 Federal income tax withheld 2,700.00	5 Employee contributions/ Designated Roth contributor or insurance premiums 101.68	
6 Net unrealized appreciation in employer's securities	7 Distribution code(s) 7	8 Other SIMPLE	9a %
9a Your percentage of total distribution %		9b Total employee contributions	
RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code PHILLIP D GRIMSLEY [REDACTED] LAKE CITY SC 29560			

Account number (see instructions)		1st year of desig. Roth contrib.
		10 State tax withheld 1,368.00
11 State/Payer's state no. 6C 26254192-2	12 State distribution	
13 Local tax withheld	14 Name of locality	15 Local distribution

Copy G For Recipient's Records

This information is being furnished to the Internal Revenue Service (Keep for your records)

Department of the Treasury
Internal Revenue Service



Richard Eckstrom
Comptroller General

1200 Senate Street Room 305
Columbia, South Carolina 29201
Statewide Payroll Division 803 734-2124

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

The data in box 1 & 16 were compiled using the following information:

GROSS WAGES (See Note)	52,595.84
LESS:	
RETIREMENT CONTRIBUTIONS	3,379.60
DEFERRED COMPENSATION	0.00
MONEYPLUS DEDUCTIONS	0.00
TAXABLE WAGES	49,216.24

NOTE: For Optional Life participants in the MoneyPlus program, the amount in box 12a (C) is included in gross wages. This amount reflects imputed income based on IRS guidelines for coverage exceeding \$50,000.

Department of the Treasury-Internal Revenue Service

EXHIBIT

4

TAB I

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
GovernorREGINALD I. LLOYD
Director

June 2, 2008

Phillip D. Grimsley
[REDACTED]
Lake City, SC 29560

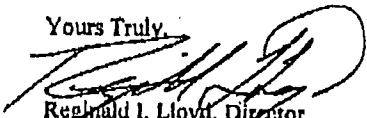
Re: Law Enforcement Retirement/Retention Status

Dear Lt. Grimsley:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and for the many years in which you served the citizens of the State of South Carolina. In accordance with your signed agreement your at will status as an employee of the SC Law Enforcement Division will terminate June 16, 2008.

Please contact Lynn Hutto in the Office of Human Resources if you wish to work sequestered juries, conduct background investigations or other special projects in retiree status.

Yours Truly,


Reginald I. Lloyd, Director
S.C. Law Enforcement DivisionCc: Lynn Hutto
Deputy Chief Neal Dolan
Assistant Chief Timothy James
Inspector Richard Hunton

003



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB J



State Budget and Control Board
SOUTH CAROLINA RETIREMENT SYSTEMS

Post Office Box 11960
Columbia, SC 29211-1960

Instructions for Recipient (Continued)

- L - Loans treated as distributions.
N - Rercharacterized IRA contribution made for 2008 and rercharacterized in 2008.
P - Excess contributions plus earnings/excess deferrals taxable in 2007.
Q - Qualified distribution from a Roth IRA.
R - Rercharacterized IRA contribution made for 2007 and rercharacterized in 2008.
S - Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 59 1/2).
T - Roth IRA distribution, exception applies.
If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.
Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972).
Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.
Box 9b. For a life annuity from a qualified plan or from section 403 (b) plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 675.
Boxes 10-15. If state or local income tax was withheld from the distribution, boxes 12 and 15 may show the part of the distribution subject to state and/or local tax.

Additional Information. You may want to see:

- W-4P, Withholding Certificate for Pension or Annuity Payments.
Form 4972, Tax on Lump-Sum Distributions.
Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
Form 8806, Nondeductible IRAs.
Pub. 660, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).
Pub. 671, Tax-Sheltered Annuity Plans (403(b) Plans).
Pub. 675, Pension and Annuity Income.
Pub. 690, Individual Retirement Arrangements (IRAs).
Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits.
Pub. 939, General Rule for Pensions and Annuities.
Pub. 969, Health Savings Account and other Tax-Favored Health Plans.

Form 1099-R OMB No. 1545-0019		☐ CORRECTED (If checked)		2008
1 Gross distribution 35,086.94		2a Taxable amount 35,086.06		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2b Taxable amount not determined		Total distribution		
PAYER'S name, street address, city, state, and ZIP code S. C. POLICE OFFICERS RETIREMENT SYSTEM PO BOX 11960 COLUMBIA, SC 29211-1960				
PAYER'S Federal Identification number 67-6041562		RECIPIENT'S Identification number [REDACTED]		
3 Capital gain (included in box 2a)	4 Federal income tax withheld 3,042.00	5 Employee contributions/Designated Roth contributions or insurance premiums 101.88		
6 Not realized appreciation in employer's securities	7 Distribution code(s) 7	8 IRA/SEP/SIMPLE ☐	9 Other ☐	%
9a Your percentage of total distribution		9b Total employee contributions		
		%		
RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code PHILLIP D GRIMSLEY [REDACTED] LAKE CITY SC 29560				
Account number (see Instructions)		1st year of distribution, Roth contributions		
11 State/Payer's state no. SC 25264192-2		10 State tax withheld 1,554.00		
13 Local tax withheld		12 State distribution		
14 Name of locality		15 Local distribution		
Copy C For Recipient's Records This information is being furnished to the Internal Revenue Service. (Keep for your records.)				



Richard Eckstrom
Comptroller General

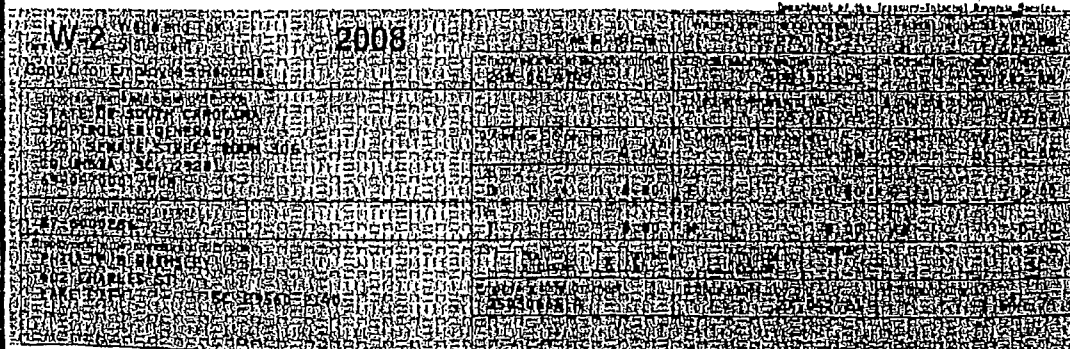
1200 Senate Street Room 305
Columbia, South Carolina 29201
Statewide Payroll Division 803 734-2124

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

The taxable wages in box 1 & 18 were computed using the following information:

GROSS WAGES (See Note)	28,901.29
LESS:	
RETIREMENT CONTRIBUTIONS	1,859.08
DEFERRED COMPENSATION	0.00
MONEYPLUS DEDUCTIONS	0.00
TAXABLE WAGES	27,042.21

NOTE: For Optional Life participants in the MoneyPlus program, the amount in box 12a (C) is included in gross wages. This amount reflects imputed income based on IRS guidelines for coverage exceeding \$50,000.



EXHIBIT

tabbies

J

Defendant.

AFFIDAVIT OF ROGER M. JOWERS

JEANETTE W. FISBERGE
C.C.P. & G.S.

2012 MAY 25 FRI 10:17

RICHLAND COUNTY
FILED

adjustment, less 13.6%), no longevity pay, additional reduction by cost of health insurance to agency if elected.

(Exhibit C, emphasis in original).

4. On July 19, 2004, I signed the agreement to retire and be rehired by SLED. (Exhibit D).

The agreement expressly stated that I would pay the employer retirement contribution:

SALARY: You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5% employee portion of retirement will no longer be deducted from your check.

(Exhibit D). Handwritten beside the paragraph is the amount "\$39,828".

5. On June 13, 2005, I received a letter from Lynn Hutto, Director of Human Resources for SLED. (Exhibit E). This letter stated that the General Assembly had given a 4% pay increase for all classified employees in permanent full time equivalent position and a 6% increase as a result of a the 2004 Law Enforcement Pay Study." However, both my raises were reduced by SLED: *"Please note that both the 4% and the 6% have been adjusted by 13.55%."* (Exhibit E, italics in original).

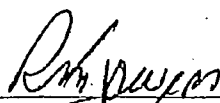
6. For the years I was in the SLED retirement program, I lost 13.6% of my salary annually, which translates to thousands of dollars. For example, according to December 1, 2005, Earnings Statement, my gross salary earned as of that date was \$40,895.46. (Exhibit F). However, without the 13.5% reduction, my salary would have been \$47,277.99. For that year, I lost at least \$6,382.53.

7. As of December 1, 2006, my gross salary to date was \$43,068.53 (Exhibit G). However, without the 13.5% reduction, my gross salary would have been \$49,790.21. For that year, I lost at least \$6,721.68.

8. As of December 14, 2007, my gross salary to date was \$45,911.40 (Exhibit H).

However, without the 13.5% reduction, my gross salary would have been \$53,076.76. For that year, I lost at least \$7,165.36.

9. I did not work a full year in 2008. However, my gross salary for the time I was employed was \$27,310.44 (Exhibit I). Had it not been cut 13.5%, my salary would have been \$31,572.76. Thus, I lost \$4,262.32 that year. I filed this lawsuit shortly thereafter leaving my employment with SLED.



Roger M. Jowers

SWORN to before me this

22nd day of May, 2012,



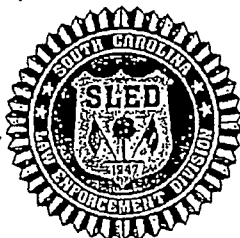
(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 10/26/19

TAB A

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM HODGES
Governor



ROBERT M. STEWART
Chief

MEMORANDUM

TO: SLED Personnel

FROM: Robert M. Stewart *MS*

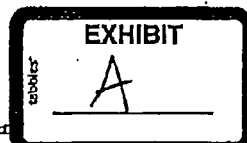
SUBJECT: SLED Voluntary Retirement Incentive Program

DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



053

An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9663 / Fax (803) 896-7041

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

NOTICE OF THE
2001
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)
VOLUNTARY RETIREMENT INCENTIVE PROGRAM

PURPOSE

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

- G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).
- H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this _____ day of _____, 2001, by and between _____ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. Employee's Voluntary Retirement. The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on _____, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. Incentive. SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. Release. The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. Adequate Consideration. The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. Confidentiality. SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. Voluntary Waiver. The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. Forty-Five Day Period. The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. Revocation Period. The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. Governing Law. This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this _____ day of _____, 2001.

FOR THE EMPLOYEE:

FOR SLED:

Employee Name (signature)

Lynn Hutto
Human Resources Director
S.C. Law Enforcement Division

Employee Name (print)

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Notary Public

Notary Public

My commission expires:

My commission expires:

TAB B

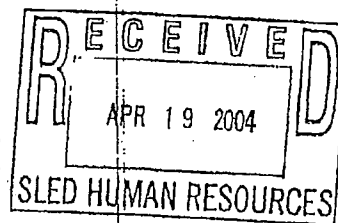
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK LANFORD
Governor



ROBERT M. STEWART
Chief

TO: Chief Robert M. Stewart
FROM: SA Roger Jowers
SUBJECT: REQUEST TO BE REHIRED
DATE: April 19, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- ☐ Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- ☐ Accrual of annual and sick leave at current rate.
- ☐ Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- ☐ Employment not to exceed 18 months.
- ☐ No lump sum payment for annual leave upon second separation.
- ☐ Review date: twelve months after date of rehire.
- ☐ No probationary period.
- ☐ Must apply to this agency and receive permission to reenter retirement system as an active member.

04-19-04
DATE

Rm Jowers
SIGNATURE

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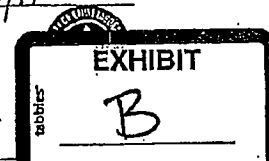
Approved for rehire:
RMS/gab

SWORN TO BEFORE ME THIS 19th DAY OF
April, 2004.

Glenda D. Peck
My Commission Expires: 3/18/11



An Accredited Law Enforcement Agency
P.O. Box 21209 / Columbia, South Carolina 29221-1209 / (803) 737-0000



TAB C

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

TO: Roger Jowers
FROM: Lynn Hutto, Director
Human Resources *[Signature]*
SUBJECT: Confirmation of Your Request to Rehire
DATE: June 29, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$39,828 (previous base salary plus 3% cost of living adjustment, less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 1, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be July 19, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Lt. Grimsley
HR file

* The adjustment amount changed effective July 2, 2004 due to an increase in the Retirement Systems surcharge.



An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041



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TAB D

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5% employee portion of retirement will no longer be deducted from your check. \$39,828
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 51.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on _____.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[Signature]
Employee Signature

[Redacted]
Social Security Number

07-19-2004
Date



An Accredited Law Enforcement Agency.
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041

EXHIBIT

D

009

TAB E

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

MEMORANDUM

TO: Jowers, Roger
Dept: 54

FROM: Lynn Hutto, Director
Human Resources

DATE: June 13, 2005

SUBJECT: 2005-2006 General Increase and LEO Study Pay - Retiree

This is to inform you that the 2005-2006 General Appropriation Act provided for a 4% general base pay increase for all classified employees in permanent full time equivalent positions effective 6/2/05. In addition to the general increase you will receive another 6% increase as a result of the 2004 Law Enforcement Pay Study. *Please note that both the 4% and the 6% have been adjusted by 13.55%.* These increases will be paid on the pay date of July 1, 2005 and will increase your annual salary to \$43,342.

Thank you for your dedicated work on behalf of the State Law Enforcement Division. Should you have questions concerning the information provided, please contact the Human Resource Office at 896-7199.

Previous Salary:	\$39,828
4% General Increase (-13.55%):	\$41,205
6% LEO Study (-13.55%):	\$43,342 (Salary on July 1, 2005)

Cc: HR File



012



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB F

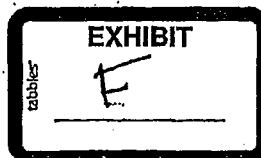
PURSUANT TO WARRANT OF
RICHARD ECKSTROM
COMPTROLLER GENERAL

STATE OF SOUTH CAROLINA
Office Of State Treasurer
GRADY L. PATTERSON, JR.

STATE OF SOUTH CAROLINA EMPLOYEE'S EARNINGS STATEMENT									
DATE PAID 12/01/05				DOCUMENT NUMBER 933501166					
NAME ROGER M JOWERS				AGENCY D10		NET PAY 735.30			
SOC SEC	FED INC TAX	STATE INC TAX	FED RET	STATE RET	UNEMP	DISABILITY	HEALTH	DENTAL	OTHER
1,805.91	000	128.13	000	61.95	138.15	117.38			
AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
399	625.00								
AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
40,895.46	3,035.55	1,462.21	3,128.50	1,056.45	14,375.00	17,837.75			
AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT

VOLUNTARY DEDUCTIONS

399 STATE STREET BANK-457 PLAN



TAB G

STATE OF SOUTH CAROLINA
Office Of State Treasurer
GRADY L. PATTERSON, JR.

STATE OF SOUTH CAROLINA EMPLOYEE'S EARNINGS STATEMENT									
DATE PAID		12/01/06		DOCUMENT NUMBER		633501232			
NAME		ROGER M JOWERS		AGENCY		D10		NET PAY	
								1,218.98	
NO. 1	LESS: FICA	AMOUNT	0.00	NO. 2	LESS: STATE TAX	AMOUNT	0.00	NO. 3	LESS: LOCAL TAX
NO. 4	LESS: MEDICAL	AMOUNT	0.00	NO. 5	LESS: DEDUCTIONS	AMOUNT	0.00	NO. 6	LESS: OTHER
NO. 7	LESS: RETIREMENT	AMOUNT	0.00	NO. 8	LESS: UNEMPLOYMENT	AMOUNT	0.00	NO. 9	LESS: OTHER
NO. 10	LESS: OTHER	AMOUNT	0.00	NO. 11	LESS: OTHER	AMOUNT	0.00	NO. 12	LESS: OTHER
NO. 13	LESS: OTHER	AMOUNT	0.00	NO. 14	LESS: OTHER	AMOUNT	0.00	NO. 15	LESS: OTHER
NO. 16	LESS: OTHER	AMOUNT	0.00	NO. 17	LESS: OTHER	AMOUNT	0.00	NO. 18	LESS: OTHER
NO. 19	LESS: OTHER	AMOUNT	0.00	NO. 20	LESS: OTHER	AMOUNT	0.00	NO. 21	LESS: OTHER
NO. 22	LESS: OTHER	AMOUNT	0.00	NO. 23	LESS: OTHER	AMOUNT	0.00	NO. 24	LESS: OTHER
NO. 25	LESS: OTHER	AMOUNT	0.00	NO. 26	LESS: OTHER	AMOUNT	0.00	NO. 27	LESS: OTHER
NO. 28	LESS: OTHER	AMOUNT	0.00	NO. 29	LESS: OTHER	AMOUNT	0.00	NO. 30	LESS: OTHER
NO. 31	LESS: OTHER	AMOUNT	0.00	NO. 32	LESS: OTHER	AMOUNT	0.00	NO. 33	LESS: OTHER
NO. 34	LESS: OTHER	AMOUNT	0.00	NO. 35	LESS: OTHER	AMOUNT	0.00	NO. 36	LESS: OTHER
NO. 37	LESS: OTHER	AMOUNT	0.00	NO. 38	LESS: OTHER	AMOUNT	0.00	NO. 39	LESS: OTHER
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NO. 43	LESS: OTHER	AMOUNT	0.00	NO. 44	LESS: OTHER	AMOUNT	0.00	NO. 45	LESS: OTHER
NO. 46	LESS: OTHER	AMOUNT	0.00	NO. 47	LESS: OTHER	AMOUNT	0.00	NO. 48	LESS: OTHER
NO. 49	LESS: OTHER	AMOUNT	0.00	NO. 50	LESS: OTHER	AMOUNT	0.00	NO. 51	LESS: OTHER
NO. 52	LESS: OTHER	AMOUNT	0.00	NO. 53	LESS: OTHER	AMOUNT	0.00	NO. 54	LESS: OTHER
NO. 55	LESS: OTHER	AMOUNT	0.00	NO. 56	LESS: OTHER	AMOUNT	0.00	NO. 57	LESS: OTHER
NO. 58	LESS: OTHER	AMOUNT	0.00	NO. 59	LESS: OTHER	AMOUNT	0.00	NO. 60	LESS: OTHER
NO. 61	LESS: OTHER	AMOUNT	0.00	NO. 62	LESS: OTHER	AMOUNT	0.00	NO. 63	LESS: OTHER
NO. 64	LESS: OTHER	AMOUNT	0.00	NO. 65	LESS: OTHER	AMOUNT	0.00	NO. 66	LESS: OTHER
NO. 67	LESS: OTHER	AMOUNT	0.00	NO. 68	LESS: OTHER	AMOUNT	0.00	NO. 69	LESS: OTHER
NO. 70	LESS: OTHER	AMOUNT	0.00	NO. 71	LESS: OTHER	AMOUNT	0.00	NO. 72	LESS: OTHER
NO. 73	LESS: OTHER	AMOUNT	0.00	NO. 74	LESS: OTHER	AMOUNT	0.00	NO. 75	LESS: OTHER
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NO. 82	LESS: OTHER	AMOUNT	0.00	NO. 83	LESS: OTHER	AMOUNT	0.00	NO. 84	LESS: OTHER
NO. 85	LESS: OTHER	AMOUNT	0.00	NO. 86	LESS: OTHER	AMOUNT	0.00	NO. 87	LESS: OTHER
NO. 88	LESS: OTHER	AMOUNT	0.00	NO. 89	LESS: OTHER	AMOUNT	0.00	NO. 90	LESS: OTHER
NO. 91	LESS: OTHER	AMOUNT	0.00	NO. 92	LESS: OTHER	AMOUNT	0.00	NO. 93	LESS: OTHER
NO. 94	LESS: OTHER	AMOUNT	0.00	NO. 95	LESS: OTHER	AMOUNT	0.00	NO. 96	LESS: OTHER
NO. 97	LESS: OTHER	AMOUNT	0.00	NO. 98	LESS: OTHER	AMOUNT	0.00	NO. 99	LESS: OTHER
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NO. 103	LESS: OTHER	AMOUNT	0.00	NO. 104	LESS: OTHER	AMOUNT	0.00	NO. 105	LESS: OTHER
NO. 106	LESS: OTHER	AMOUNT	0.00	NO. 107	LESS: OTHER	AMOUNT	0.00	NO. 108	LESS: OTHER
NO. 109	LESS: OTHER	AMOUNT	0.00	NO. 110	LESS: OTHER	AMOUNT	0.00	NO. 111	LESS: OTHER
NO. 112	LESS: OTHER	AMOUNT	0.						

VOLUNTARY DEDUCTIONS



TAB H

STATE OF SOUTH CAROLINA
Office Of State Treasurer
CONVERSE A. CHELLIS III, CPA

[illegible]**VOLUNTARY DEDUCTIONS:**

THE FOLLOWING PAYMENT(S) HAVE BEEN DEPOSITED IN YOUR PRIMARY BANK ACCOUNT WITHIN TWO BANKING DAYS OF THE DATE INDICATED BELOW:

12/10/07	DI00712036002015	0002382	\$4.00	12/10/07	DI00712036002016	0002383	\$8.00

TOTAL AMOUNT DEPOSITED FOR THIS PAY PERIOD: \$12.00

TAB I

STATE OF SOUTH CAROLINA
Office Of State Treasurer
CONVERSE A. CHELLIS III, CPA

STATE OF SOUTH CAROLINA EMPLOYEE'S EARNINGS STATEMENT									
DATE PAID		07/16/08		DOCUMENT NUMBER		819801347			
NAME				ROGER M. JOWERS		AGENCY		DLO NET PAY	
								1,359.21	
REG. BASIC AMOUNT	PROG. PAY	PROG. INC. TAX	SO	RET. INC. TAXES	FECA	RET. INC. TAXES	FECA	RET. INC. TAXES	FECA
	2,085.00	000	315.86	000	124.65	159.50	125.78		
REG. OTS AMOUNT	OT P. 1 AMOUNT	OT P. 2 AMOUNT	OT P. 3 AMOUNT	OT P. 4 AMOUNT	OT P. 5 AMOUNT	OT P. 6 AMOUNT	OT P. 7 AMOUNT	OT P. 8 AMOUNT	OT P. 9 AMOUNT
REG. STIP. AMOUNT	STIP. 1 AMOUNT	STIP. 2 AMOUNT	STIP. 3 AMOUNT	STIP. 4 AMOUNT	STIP. 5 AMOUNT	STIP. 6 AMOUNT	STIP. 7 AMOUNT	STIP. 8 AMOUNT	STIP. 9 AMOUNT
REG. BONUS AMOUNT	BONUS 1 AMOUNT	BONUS 2 AMOUNT	BONUS 3 AMOUNT	BONUS 4 AMOUNT	BONUS 5 AMOUNT	BONUS 6 AMOUNT	BONUS 7 AMOUNT	BONUS 8 AMOUNT	BONUS 9 AMOUNT
REG. VAC. AMOUNT	VAC. 1 AMOUNT	VAC. 2 AMOUNT	VAC. 3 AMOUNT	VAC. 4 AMOUNT	VAC. 5 AMOUNT	VAC. 6 AMOUNT	VAC. 7 AMOUNT	VAC. 8 AMOUNT	VAC. 9 AMOUNT
REG. SICK AMOUNT	SICK 1 AMOUNT	SICK 2 AMOUNT	SICK 3 AMOUNT	SICK 4 AMOUNT	SICK 5 AMOUNT	SICK 6 AMOUNT	SICK 7 AMOUNT	SICK 8 AMOUNT	SICK 9 AMOUNT
REG. RET. AMOUNT	RET. 1 AMOUNT	RET. 2 AMOUNT	RET. 3 AMOUNT	RET. 4 AMOUNT	RET. 5 AMOUNT	RET. 6 AMOUNT	RET. 7 AMOUNT	RET. 8 AMOUNT	RET. 9 AMOUNT
REG. PENSION AMOUNT	PEN. 1 AMOUNT	PEN. 2 AMOUNT	PEN. 3 AMOUNT	PEN. 4 AMOUNT	PEN. 5 AMOUNT	PEN. 6 AMOUNT	PEN. 7 AMOUNT	PEN. 8 AMOUNT	PEN. 9 AMOUNT
REG. YTD GROSS PAY	YTD GROSS PAY	YTD RET. TAXES	YTD INC. TAX	YTD FECA	YTD RET.	YTD OTHER DED.	YTD NET		
	27,310.44	3,955.88	1,614.60	2,089.25	1,745.93	0.00	17,904.78		

VOLUNTARY DEDUCTIONS



AD.52

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

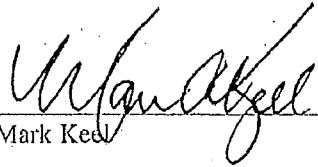
Civil Action Number:08-CP-40-8854

AFFIDAVIT OF MARK KEEL

Personally appeared before me, Mark Keel, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am currently employed as the Chief of the South Carolina Law Enforcement Division, and have held that position since June 2011.
3. From December 2001 until November 2007, I served as Chief of Staff to Chief Robert Stewart, holding the rank of Major. From November 2007 until March 2008, I served as Interim Chief of SLED.
4. While I was Chief of Staff, I was generally familiar with the Retirement/Rehire program that was established by Chief Stewart in 2002 and under which Plaintiffs Grimsley and Jowers, among others, retired and were rehired by SLED.
5. I have reviewed the Affidavit of former Chief Stewart, to be submitted in this case. My recollection of the events described in that Affidavit is in accord with Chief Stewart's account of those events.
6. As a matter of policy, it is as true today as it was in 2002 that SLED derives great benefit from being able to rehire agents who have retired. As set forth in Chief Stewart's Affidavit, this practice offers the opportunity for the newer agents to continue to learn from the more experienced agents. The need to rehire SLED employees who have retired continues to this day.

FURTHER AFFIANT SAYETH NOT.


Mark Keel

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:
My Commission Expires July 5, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M.
Jowers, on behalf of themselves and other
similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement
Division and the State of South Carolina,)

Defendants.)

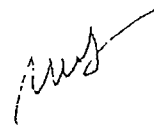
IN THE COURT OF COMMON PLEAS

Civil Action Number: 08-CP-40-8854

AFFIDAVIT OF ROBERT M. STEWART

Personally appeared before me, Robert M. Stewart, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I served as Chief of the South Carolina Law Enforcement Division from January 1988 until my retirement on November 30, 2007.
3. The present lawsuit was brought by two retired SLED agents who were members of the Police Officers Retirement System (PORS).
4. The TERI program, enacted in 2001 for state employees who were members of the State Retirement System, was never extended to PORS members, such as the Plaintiffs in this case.
5. In part as a result of there being no TERI program for PORS members such as SLED agents, and in part as a result of the General Assembly's lifting of salary caps (earnings limitations) for working retirees effective July 1, 2002, I decided to consider establishing a method that would permit some SLED employees who were eligible to retire to come back to work as working retirees.
6. During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina.
7. I began to look into the possibility of initiating the Retirement/Rehire program starting in the summer of 2002. The General Assembly, in Section 12 of Act No. 356 of 2002, which took effect on July 1, 2002, had amended *S.C. Code Ann.* §9-11-90 by removing the salary cap (earnings limitation) for PORS members who retired and then returned to employment after a separation of at least 15 calendar days.



8. In the course of considering whether to offer certain SLED employees the opportunity to return to work with SLED shortly after retiring, I consulted with certain staff of the Budget and Control Board, including Steven C. Osborne (then Chief of Staff of the Board and formerly its Human Resources Director), and Vance J. Bettis, Esq., an attorney who has often provided legal advice both to SLED and to the Board.

9. Following those consultations, I decided to offer to PORS members who were eligible for retirement an opportunity to retire and, at my option, be rehired as working retirees. This arrangement was internally described at times as the Retirement/Rehire program.

10. The Retirement/Rehire program served the important purpose of permitting more experienced employees to remain in service after they were eligible to retire, working alongside those agents with less experience. This in turn benefitted SLED and the public as well, because it offered the opportunity for the newer agents to continue to learn from the more experienced agents. At the same time, the retired agents also benefitted from having the ability to retire and return to work at salaries that were close to their pre-retirement salaries while collecting their retirement benefits at the same time. Finally, as already mentioned in Paragraph 6, the cost savings would assist SLED in avoiding layoffs and in maintaining a basic level of law enforcement services to the citizens of South Carolina.

11. Upon deciding to offer employees the option to retire and, at SLED's option, to be rehired, I then prepared the language regarding the conditions that would pertain to the rehiring of those employees who elected to retire, and who I elected to rehire. I instructed Lynn Hutto, then Director of Human Resources at SLED, to develop a series of forms that would be used for the Retirement/Rehire program.

12. The first persons to participate in the Retirement/Rehire program retired beginning in September, 2002, shortly after the salary cap (earnings limitation) for retirees was removed by the General Assembly effective on July 1, 2002.

13. The series of forms for Plaintiff Grimsley, attached hereto as Exhibits 1 through 4, are as follows:

- a. The first form in the sequence was one in which the agent would advise me that he planned to retire on a specific date. The agent also acknowledged that "if I wish to apply be rehired, by [SLED], I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this [separation] period." Exhibit 1, attached.
- b. The second form was one directed to me in which the agent advised that he was "requesting to be rehired." Exhibit 2, attached. The form was executed under oath. In it, the retired agent acknowledged that the return to employment would be subject to a number of conditions. These included an acknowledgement that if rehired, the retiree would, among other things,

- i. Serve as a full-time (FTE) employee with no grievance rights¹
 - ii. Continue to accrue annual and sick leave at the agent's current rate
 - iii. Return to work at a salary that was 13.6% less than the salary at the time of retirement
 - iv. Serve as a rehired employee for no longer than 48 months
- c. For those employees such as Plaintiffs who were offered the opportunity to return to work, the third form was a confirmation from the SLED Director of Human Resources that the individual would be rehired, subject to the terms therein listed. Exhibit 3. Those terms were the same as the ones in Exhibit 2, except that specific numbers applicable to salary and leave accrual rate for each employee were shown
 - d. The fourth and final form in the series was a document referenced as an employee orientation form. Exhibit 4. It contained the same conditions and specific information set forth in Exhibits 2 and 3. This form also stated that the percentage reduction in rehire salary was "a reduction of 13.6% of your salary, to cover the amount it will cost SLED to pay the employer portion of retirement." (Emphases added.)

14. The forms for Plaintiff Jowers are attached as Exhibits 5 through 8. They are identical to those for Plaintiff Grimsley, except for the different salary amounts and other information specific to Plaintiff Jowers.

15. In practice, if a PORS employee expressed an interest in the Retirement/Rehire program, he or she would discuss the effects of possible retirement with me prior to deciding whether to retire. I advised each employee that in light of future uncertainties, they should not choose to participate in the program unless they were ready to retire immediately and permanently.

16. As the forms referenced above indicate, the Plaintiffs' salaries upon their rehire to their previous positions were reduced by an amount equivalent to the amount of the employer contribution paid by SLED to the PORS, that is, 13.6% at the time in 2004 when Plaintiffs Grimsley and Jowers retired.

17. SLED has always paid the employer contributions for Plaintiffs and other rehired employees, both in connection with the pre-retirement salaries and in connection with the new salaries upon retirement.

18. I elected to reduce the retired employees' salaries upon rehire by the amount of the previous employer contributions to the Retirement System in order to reflect some degree of

¹ S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

savings to taxpayers as a result of rehiring retired agents. In addition, a reduction in the rehire salary by that amount reflected a uniform reduction percentage for participants in the Retirement/Rehire program.

19. The reduction of 13.6% in the new salary upon rehire after retirement was specifically shown on the forms attached as Exhibits 3 and 7. For example, Plaintiff Grimsley's salary was \$52,896 at the time of his retirement on June 30, 2004. Exhibit 3 specifically provided that his salary upon rehire on August 17, 2004 would be \$45,702.

20. I have reviewed Plaintiff Grimsley's W-2 and 1099-R forms for 2005, the first full year after his retirement. Those forms, Exhibit 9, attached, show that in 2005 his SLED salary was \$48,318.00, and his PORS retirement benefit was \$33,158.04. His combined salary and retirement income for 2005 therefore totaled \$81,472.04 in the first year after he retired. Had he not retired and been rehired, instead simply continuing as an existing employee, his total 2005 income from the State would have been approximately \$55,000 (2004 salary plus COLA increase), rather than \$81,472.04. This information simply illustrates the extent to which working retirees benefitted from this optional Retirement/Rehire program that SLED was not required to offer.

21. There were no "deductions" for the employer contribution from the rehired employees' new salaries upon rehire, or at any other time. Plaintiffs' new salaries upon rehire were in fact 13.6% lower than their pre-retirement salaries, but the employer contribution has never been deducted from their paychecks. As set forth in the Affidavits of Don Royal and Teresa Kitchens, there is no such thing as a payroll deduction for the employer contribution to the PORS, because the employer contribution is paid from the amount appropriated to the agency for benefits funding, and not from the amount appropriated and used for employees' salaries.

22. There has never been a provision of law that required SLED to rehire agents who had retired. Nor has there ever been a requirement that SLED create a program such as the Retirement/Rehire program. If I had so chosen, I could have declined to take any steps to make arrangements for retired SLED agents to return to work as working retirees. I also could have elected, funds permitting, to rehire many retired agents, or only a few, or none at all.

23. I was not and am not aware of any legal requirement that any person who retires and is rehired as a working retiree under *S.C. Code Ann. § 9-11-90(4)* must be paid at the same salary they were earning prior to retirement. I could have elected to offer Plaintiffs rehire salaries that were reduced by more than 13.6%. They, of course, could have chosen to return to work at such additionally reduced salaries, or not, as they saw fit.

24. I did not require any employee who participated in the Retirement/Rehire program to retire. In other words, had any of those employees decided not to retire and be rehired, but instead chosen simply to continue as regular, non-retired, employees, they were permitted to do so. However, non-retired employees obviously did not obtain the benefit of drawing retirement and at the same time collecting a salary as a working retiree.

25. I was not aware that any rehired employee was dissatisfied with the percentage reduction of his rehire salary until the present case was filed, more than six years after the first employees retired and were rehired in September 2002, and more than four years after Plaintiff Grimsley

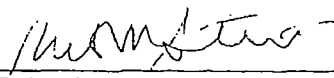
and Jowers retired and were rehired in 2004. No dissatisfaction with the terms of re-employment was ever expressed to me by Plaintiffs or any other employees who retired and were rehired. Nor would I have expected them to express dissatisfaction, in light of the advantage to them in participating in the Retirement/Rehire program, as opposed to continuing to work as non-retired employees.

26. On May 2, 2006, I sent a memorandum, written by me personally, to all employees participating in the Retirement/Rehire program. That memorandum was sent at the time when the first rehired employees were approaching the end of their four-year period of employment under the program. In the memorandum, I advised that "a few" of the rehired employees would be given the opportunity to return a second time, based on "the unique and special needs of the Division at the time." Exhibit 10, attached. Plaintiffs Grimsley and Jowers were among those who received that letter.

27. I understand that Plaintiffs Grimsley and Jowers did not return to SLED employment in mid-2008, when their original 48-month period of employment expired, but I was not Chief of SLED at that time. As a result, I am not personally familiar with what occurred with respect to those individuals in mid-2008, other than the fact that they did not return to SLED employment at that time.

28. Finally, I would call attention to certain provisos in Appropriations Acts starting in 2010. See, for instance, Act No. 291 of 2010, Part 1B, Section 89.144 (GP: Cost Savings When Filling Vacancies Created by Retirements). In those annual provisos, the General Assembly has mandated that whenever classified FTE positions become vacant because of employee retirements, the vacant positions must be managed so that in the aggregate, there should be a cost savings of 25% when managing those positions. This is the same general cost savings approach that was part of the Retirement/Rehire program, except that now, the mandated percentage reduction for managing the filling of the vacancies is 25%, instead of the 13.6% reduction that was applied to Plaintiffs Grimsley and Jowers.

FURTHER AFFIANT SAYETH NOT.


Robert M. Stewart

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

Shelley E. Stafford (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 6-13-15

Exhibit 1 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



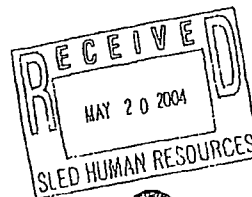
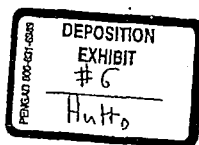
ROBERT M. STEWART
Chief

TO: Chief Robert M. Stewart
FROM: Lt. Phil Grimsley
REFERENCE: RETIREMENT
DATE: May 20, 2004

I am writing to notify you that I plan to enter retirement status effective June 30, 2004. I understand that if I wish to apply to be rehired by the South Carolina State Law Enforcement Division, I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen (15) days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this period.

5-20-4
DATE

SIGNATURE



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7043

8022-A-001

Exhibit 2 to Affidavit of Robert F. Stewart

UHK

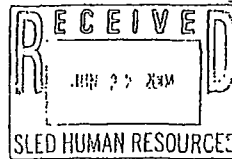
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

TO: Chief Robert M. Stewart
FROM: Lt. Phil Grimsley
SUBJECT: REQUEST TO BE REHIRED
DATE: June 21, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- o Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- o Accrual of annual and sick leave at current rate.
- o Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- o Employment not to exceed 48 months.
- o No lump sum payment for annual leave upon second separation.
- o Review date: twelve months after date of rehire.
- o No probationary period.
- o Must apply to this agency and receive permission to reenter retirement system as an active member.

6/21/04
DATE

SIGNATURE

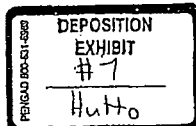
Approved for rehire:

SWORN TO BEFORE ME THIS 21st DAY OF
June, 2004.

My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041



8022-A-002

Exhibit 3 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

TO: Phillip Grimsley
FROM: Lynn Hutto, Director
Human Resources
SUBJECT: Confirmation of Your Request to Rehire
DATE: July 27, 2004

COPY

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.60 hours a month. Accrual of sick leave will be at 10.76 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$45,702 (previous base salary less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

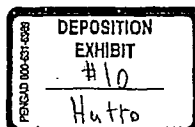
Because your last day of employment was June 30, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be August 17, 2004.

Please contact Margie Coker at 803-898-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Capt. Orskoford
HR file



An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041



8022-A-003

Exhibit 4 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



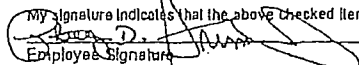
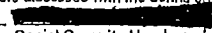
ROBERT M. STEWART
Chief

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EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT
UNDER THE PORS RETIREMENT PROVISIONS

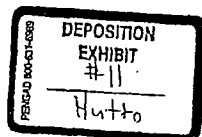
As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check.
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of September. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on _____.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.
 Social Security Number  Date 8/18/4



An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-9001 Fax (803)
896-7041



8022-A-004

Exhibit 5 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

TO: Chief Robert M. Stewart
FROM: SA Roger Jowers
REFERENCE: RETIREMENT
DATE: April 19, 2004

I am writing to notify you that I plan to enter retirement status effective June 1, 2004. I understand that if I wish to apply to be rehired by the South Carolina State Law Enforcement Division, I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen (15) days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this period.

04-19-04
DATE


SIGNATURE

013

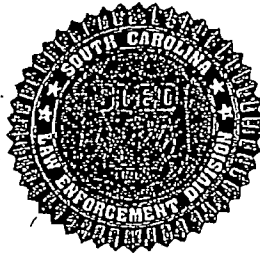


An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Exhibit 6 to Affidavit of Robert F. Stewart

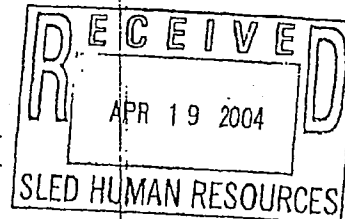
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK LANFORD
Governor



ROBERT M. STEWART
Chief

TO: Chief Robert M. Stewart
FROM: SA Roger Jowers
SUBJECT: REQUEST TO BE REHIRED
DATE: April 19, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- ☐ Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- ☐ Accrual of annual and sick leave at current rate.
- ☐ Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- ☐ Employment not to exceed 18 months.
- ☐ No lump sum payment for annual leave upon second separation.
- ☐ Review date: five (5) months after date of rehire.
- ☐ No probationary period.
- ☐ Must apply to this agency and receive permission to reenter retirement system as an active member.

04-19-04
DATE

R. Jowers
SIGNATURE

011

Approved for rehire:
RMS/gab

SWORN TO BEFORE ME THIS 19th DAY OF
April, 2004.

Joyla D. Poole
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency
P.O. Box 21208 / Columbia, South Carolina 29221-1208 / (803) 733-0000 / Fax: (803) 896-7061

Exhibit 7 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

TO: Roger Jowers

FROM: Lynn Hutto, Director
Human Resources *[Signature]*

SUBJECT: Confirmation of Your Request to Rehire

DATE: June 29, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$39,828 (previous base salary plus 3% cost of living adjustment, less 13.6% no longevity pay, additional reduction by cost of health insurance to agency if elected).
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 1, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be July 19, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Lt. Grimsley
HR file

* The adjustment amount changed effective July 2, 2004 due to an increase in the Retirement Systems surcharge.



An Accredited Law Enforcement Agency
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041

010

Exhibit 8 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

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EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check. \$39,828
- **INSURANCE:** You have the election to enroll in the Insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 31.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on _____.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[Signature]
Employee Signature

[Redacted]
Social Security Number

07-19-2004
Date



An Accredited Law Enforcement Agency.
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)
896-7041

009

Exhibit 9 to Affidavit of Robert F. Stewart

OMB No. 1545-0048

a Control number	1 Wages, tips, other compensation 46,971.02	2 Federal income tax withheld 4,555.23
	3 Social security wages 46,971.00	4 Social security tax withheld 2,995.72
	5 Medicare wages and tips 46,971.00	6 Medicare tax withheld 700.61

b Employer's name, address, and ZIP code
**COMPTROLLER GENERAL
 STATE OF SOUTH CAROLINA
 1200 SENATE STREET ROOM 305
 COLUMBIA, SC 29201
 69-0570001-008**

7 Social security tips	8 Allocated tips	9 Advance EIO payment 0.00
10 Dependent care benefits 0.00	11 Nonqualified plans	

c Employer's identification number
57-6000286

d Employee's social security number
 [REDACTED]

12a See instructions for box 12 C 0.00	12b Q 0.00
12c D 0.00	12d T 0.00
12e E 0.00	12f H 0.00

13 ☐ Statutory employee ☒ Retirement plan ☐ Third-party sick pay ☐ 14 Other

e Employee's name, address, and ZIP code
**PHILLIP D GRIMSLEY
 [REDACTED]
 LAKE CITY SC 29560-2140**

2005	15 State Employer's state I.D. No. SC 25030665-4	16 State wages, tips, etc. 46,971.02
W-2 Wage and Tax Statement Copy For EMPLOYEE'S State, City, or Local Income Tax Return	17 State income tax 2,607.34	18 Local wages, tips, etc.
	19 Local income tax	20 Locality name

Department of the Treasury-Internal Revenue Service

Form 1099-R ☐ CORRECTED (if checked) OMB No. 1545-0119 **2005**

1 Gross distribution 33,169.04	2a Taxable amount 33,056.16	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2b Taxable amount not determined	Total distribution	

PAYER'S name, street address, city, state, and ZIP code
**S. C. POLICE OFFICERS
 RETIREMENT SYSTEM
 PO BOX 11990
 COLUMBIA, SC 29211-1990**

PAYER'S Federal identification number 57-6041552	RECIPIENT'S identification number [REDACTED]	
3 Capital gains (included in box 2a)	4 Federal income tax withheld 2,614.00	5 Employee contributions or insurance premiums 101.88
6 Net unrealized appreciation in employer's securities	7 Distribution code 7	8 Other % %
9a Your percentage of total distribution %	9b Total employee contributions %	

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code
**PHILLIP D GRIMSLEY
 [REDACTED]
 LAKE CITY SC 29560**

Account number (see instructions)	10 State tax withheld 1,350.00
11 State/Payer's state number SC 25264192-2	12 State distribution
13 Local tax withheld	14 Name of locality
	15 Local distribution

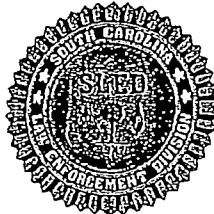
Copy C For Recipient's Records
 This information is being furnished to the Internal Revenue Service

Department of the Treasury
 Internal Revenue Service

Exhibit 10 to Affidavit of Robert F. Stewart

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

MEMORANDUM

TO: Agents Participating in Retirement / Rehire Program

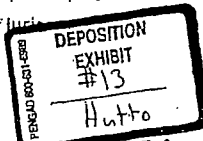
FROM: Robert M. Stewart *ms*

SUBJECT: Continued Employment

DATE: May 2, 2006

I would like to thank everyone who is participating in the Law enforcement retirement plan. Keeping experienced agents for up to an additional four years is of great advantage to the Division and the citizens of South Carolina. We are realizing that time passes very quickly. Some agents who took advantage of the 48 month program are nearing the end of this time period. Several issues have been raised which I will try to address in this letter.

As to the question of continued employment, a few agents will be offered the opportunity to return after a brief break in service. The decision will be based entirely on the unique and special needs of the Division at the time. No one will return with rank in a supervisory position. At the inception of the program everyone was told not to participate unless they were ready to retire immediately. All participants are advised to be prepared to leave full time employment at the end of the 48 month period unless they have been notified otherwise by me. This notification will be made as soon as practicable, but not less than sixty days before the date of separation. Others may be able to work by the hour on special projects to train replacements, conduct background investigations, or sequester funds.



007



An Affiliated Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

As to accrued leave, the law does not permit a second annual leave payout. Annual leave should be taken throughout the year to avoid loss if so desired. Toward the end of the 48 month period, those with accrued annual leave remaining, as a general rule, will be required to work at least two days per week so that the agency's day to day operations are not impeded. Naturally, sick leave can only be taken for illness and a doctor's excuse may be required for extended periods or if otherwise necessitated.

Retired agent's commissions and credentials are available and it is hoped that all members of the SLED family will remain close to the Division and participate in appropriate training and other functions. If there are any questions please feel free to call.

008

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AFFIDAVIT OF TERESA C. KITCHENS

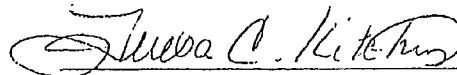
Personally appeared before me, Teresa C. Kitchens, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am currently employed as the Director of Human Resources at the South Carolina Law Enforcement Division, and have held that position since January 2012.
3. Prior to my employment with SLED, I served as Director of Human Resources at the Department of Public Safety from 2005 through 2012.
4. I have reviewed the personnel and payroll records pertaining to Plaintiffs Grimsley and Jowers.
5. Exhibit 1, attached, is a pay stub (earnings statement) for Plaintiff Jowers dated August 16, 2004. This was his first pay stub upon his return to employment. As can be seen, the amount for the "Retirement" deduction was \$0.00. This reflected the fact that at the time, there was no deduction even for an employee contribution of a working retiree.
6. While there is a deduction category for "Retirement" on the pay stub of every actively employed State employee, including Plaintiffs Grimsley and Jowers and as shown on Exhibit 1, the only deductions that are ever made using that category are deductions of the employee contribution to the PORs of 6.5% of gross salary, at such times as those deductions were made.
7. There is no deduction category on the pay stub that would show a deduction from the employee's salary for the employer contribution to the PORs, because the employer contribution is never deducted from the gross salary of the employees. Instead, and as

shown in more detail in the Royal Affidavit, the employer contribution is paid to the PORS as a lump sum amount and is not broken down by specific employee.

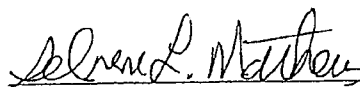
8. On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively. Exhibits 2 and 3, attached.

FURTHER AFFIANT SAYETH NOT.


Teresa C. Kitchens

SWORN TO BEFORE ME THIS 22nd

DAY OF 22nd, 2008.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:
My Commission Expires July 5, 2010

Exhibit 1 to Affidavit of Teresa C. Kitchens

STATE OF SOUTH CAROLINA
Office Of State Treasurer
GRADY L. PATTERSON, JR.

[illegible]

VOLUNTARY DEDUCTIONS

399 STATE STREET DANK-457 PLAN

Exhibit 2 to Affidavit of Teresa C. Kitchens

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

April 29, 2008

S/A Roger W. Jowers
[REDACTED]
Summerton, SC 29148-0627

Re: Law Enforcement Retirement/Retention Plan

Dear S/A Jowers:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and your many years of service to SLED. Your 48 month period ends on July 1, 2008. Please contact Lynn Hutto in the office of Human Resources concerning your availability to work by the hour on special projects or to train replacements, conduct background investigations, or sequester jury.

Yours very truly,

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

RIL:mc

Cc: Lynn Hutto
Lynn Rollin
Major Stacey Drakeford

COPY



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-2622

Exhibit 3 to Affidavit of Teresa C. Kitchens

7

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

June 2, 2008

Phillip D. Grimsley
[REDACTED]
Lake City, SC 29560

Re: Law Enforcement Retirement/Retention Status

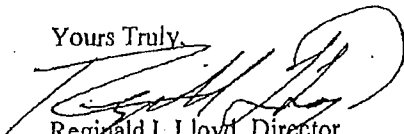
COPY
COPY

Dear Lt. Grimsley:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and for the many years in which you served the citizens of the State of South Carolina. In accordance with your signed agreement your at will status as an employee of the SC Law Enforcement Division will terminate June 16, 2008.

Please contact Lynn Hutto in the Office of Human Resources if you wish to work sequestered juries, conduct background investigations or other special projects in retiree status.

Yours Truly,


Reginald I. Lloyd, Director
S.C. Law Enforcement Division

Cc: Lynn Hutto
Deputy Chief Neal Dolan
Assistant Chief Timothy James
Inspector Richard Hunton



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 08-CP-40-8854

AFFIDAVIT OF DONALD R. ROYAL

Personally appeared before me, Donald R. Royal, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am presently employed as the Director of Administration at SLED, and have held that position since October 2011.
3. Prior to coming to SLED, I served as Chief Financial Officer for the Department of Public Safety from 2001 until 2011.
4. In the course of my employment, I have become familiar with the state appropriations process, including the matters set forth herein.
5. For a number of years, extending at least as far back as the 2001-2002 fiscal year, the annual Appropriations Acts have contained a line in each agency's appropriations generally described as "Employee Benefits." Under that is a line designated "State Employer Contributions." See, for instance, the 2001-2002 Appropriations Act, Part IA, Section 56B. Exhibit 1, attached.
6. The "total funds" amount set forth in that line item is a single figure that combines the total appropriation for all employee fringe benefits. For SLED, the approximate amount of fringe benefits for each employee's salary is 35% of the employee's salary. It includes such items as health insurance, workers' compensation, and the employer contribution to the Police Officers' Retirement System.
7. The 35% total approximate fringe benefit figure, including the employer contribution to the Police Officers' Retirement System, is not part of the employee's

DR

salary. Instead, it represents an amount that is appropriated to the agency over and above the salary paid to the employee. In other words, using round figures, if an agency has an employee with a salary of \$100,000, the fringe benefits for the employee would be approximately an additional \$35,000, so that the total cost to the agency for that employee would be \$135,000.

8. The employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not included within the salary of the employee, and therefore is not deducted from the salary of the employee. Instead, it is paid from the fringe benefit amount appropriated to the agency.

9. To put it another way, the employee never sees the employer contribution in his or her paycheck or reflected in the amount of his or her salary, because it is not in fact a part of the salary. Instead, the employer contribution to the Police Officers' Retirement System, like employer contributions for workers' compensation, health insurance, and other fringe benefits, is completely separate from, and in addition to, the amount of the employee's salary.

10. In July and August 2004, when Plaintiffs Grimsley and Jowers returned to work as working retirees, the employer contribution to the Police Officers' Retirement System was 13.6% of the individual's salary, that is, slightly more than one-third of all employer-paid fringe benefits.

11. The amounts appropriated for fringe benefits are based on estimates by the agencies as to the agencies' needs for the next fiscal year. Those estimates do not attempt to be so precise as to try to make the amount appropriated for the employer contribution to the PORS equal to the employer contribution percentage (13.6% in 2004) of the salary base for the next year.

12. The method for remitting the employer contribution is that the employer contribution of SLED, like other agencies, is periodically transferred to the PORS in an amount equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.¹

13. In the course of a given fiscal year, there are a number of events that could cause some portion of the amounts budgeted for fringe benefits to remain unexpended. For instance, a position might remain vacant for several months or longer. In addition, a position could be vacated and then re-filled at a lower salary, which is precisely what occurred in the situations of Plaintiffs Grimsley and Jowers.

¹ At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

Don

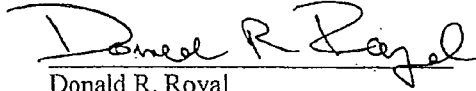
14. The disposition of agency funds of any kind that are unexpended at the end of a fiscal year is governed by the provisions of each year's Appropriations Act. Those provisions have varied from year to year and are normally found in the General Provisos of Part 1B of each year's Appropriations Act.

15. For instance, the 2004-2005 Appropriations Act, Act No. 248 of 2004, Part 1B, Section 72.30 (GP: Carry Forward), Exhibit 2 attached, provided that agencies could carry forward up to ten percent of unspent general fund appropriations from the prior fiscal year into the current fiscal year, up to a maximum of ten percent of their original general fund appropriations less any appropriation reductions for the current fiscal year.

16. SLED has always duly paid, as part of its periodic lump sum remittances, the employer contributions to the PORs for the salaries of Plaintiffs Grimsley and Jowers, both in connection with their original pre-retirement salaries, and in connection with their new salaries upon rehire. With respect to remittances for Plaintiffs' rehire salaries as working retirees, SLED has therefore complied with S.C. Code Ann. 9-11-90(4)(b), which requires that "An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer. . . ."

17. Had SLED not made the employer contribution for the salaries of those employees, an event that is essentially unheard of when the employer is a state agency, another provision of §9-11-90(4)(b) would have required the amount of the employer contribution to be deducted from any funds payable to the employer by the State. Again, however, there was no nonpayment by SLED that would have triggered that provision.

FURTHER AFFIANT SAYETH NOT.


Donald R. Royal

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

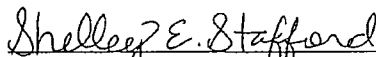
 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 05-13-15

Exhibit 1 to Affidavit of Donald R. Royal

South Carolina General Assembly

General Appropriations Bill H. 4878 for the fiscal year beginning July 1, 2002

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION		TOTAL FUNDS	GENERAL FUNDS
I. ADMINISTRATION			
PERSONAL SERVICE:			
CHIEF		122,765	122,765
		(1.00)	(1.00)
CLASSIFIED POSITIONS		1,620,878	1,620,878
		(45.62)	(45.62)
OTHER PERSONAL SERVICES		42,187	42,187
TOTAL PERSONAL SERVICE		1,785,830	1,785,830
		(46.62)	(46.62)
OTHER OPERATING EXPENSES		759,079	759,079
TOTAL ADMINISTRATION		2,544,909	2,544,909
		(46.62)	(46.62)
II. PROGRAMS AND SERVICES:			
A. ENFORCEMENT AND INVESTIGATION			
1. REGIONS			
PERSONAL SERVICE:			
CLASSIFIED POSITIONS		3,237,507	3,237,507
		(95.00)	(95.00)
OTHER PERSONAL SERVICES		127,342	127,342
TOTAL PERSONAL SERVICE		3,364,849	3,364,849
		(95.00)	(95.00)
OTHER OPERATING EXPENSES		209,527	209,527
TOTAL REGIONS		3,574,376	3,574,376
		(95.00)	(95.00)
2. DRUG ENFORCEMENT			
PERSONAL SERVICE:			
CLASSIFIED POSITIONS		1,163,766	1,163,766
		(35.00)	(35.00)
OTHER PERSONAL SERVICES		32,612	32,612
TOTAL PERSONAL SERVICE		1,196,378	1,196,378
		(35.00)	(35.00)
OTHER OPERATING EXPENSES		94,503	94,503
TOTAL DRUG ENFORCEMENTS		1,290,881	1,290,881
		(35.00)	(35.00)
3. ARSON/BOMB			
PERSONAL SERVICE:			
CLASSIFIED POSITIONS		972,659	972,659
		(24.00)	(24.00)

PAGE: 236

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION		TOTAL FUNDS	GENERAL FUNDS
OTHER PERSONAL SERVICES		19,329	19,329
TOTAL PERSONAL SERVICE		991,988	991,988
		(24.00)	(24.00)
OTHER OPERATING EXPENSES		103,508	103,508
TOTAL ARSON/BOMB		1,095,496	1,095,496
		(24.00)	(24.00)
4. VEHICLE THEFT			
PERSONAL SERVICE:			
CLASSIFIED POSITIONS		627,341	579,341
		(18.00)	(17.00)

OTHER PERSONAL SERVICES	23,704	23,704
TOTAL PERSONAL SERVICE	651,045	603,045
	(18.00)	(17.00)
OTHER OPERATING EXPENSES	33,775	33,775
TOTAL VEHICLE THEFT	684,820	636,820
	(18.00)	(17.00)
=====		
5. STATE GRAND JURY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	467,831	467,831
	(9.00)	(9.00)
OTHER PERSONAL SERVICES	9,756	9,756
TOTAL PERSONAL SERVICE	477,587	477,587
	(9.00)	(9.00)
OTHER OPERATING EXPENSES	20,385	20,385
TOTAL STATE GRAND JURY	497,972	497,972
	(9.00)	(9.00)
=====		
6. CHILD FATALITY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	105,851	105,851
	(3.00)	(3.00)
OTHER PERSONAL SERVICES	835	835
TOTAL PERSONAL SERVICE	106,686	106,686
	(3.00)	(3.00)
OTHER OPERATING EXPENSES	4,466	4,466
TOTAL CHILD FATALITY	111,152	111,152
	(3.00)	(3.00)
=====		
7. ALCOHOL ENFORCEMENT		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	1,454,121	1,365,121
	(57.00)	(46.00)

PAGE: 237

SEC. 56B	GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	
	TOTAL FUNDS	GENERAL FUNDS
OTHER PERSONAL SERVICES	8,310	7,310
TOTAL PERSONAL SERVICE	1,462,431	1,372,431
	(57.00)	(46.00)
OTHER OPERATING EXPENSES	528	528
TOTAL ALCOHOL ENFORCEMENT	1,462,959	1,372,959
	(57.00)	(46.00)
=====		
8. PROTECTIVE SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	404,335	404,335
	(10.00)	(10.00)
OTHER PERSONAL SERVICES	9,646	9,646
TOTAL PERSONAL SERVICE	413,981	413,981
	(10.00)	(10.00)
OTHER OPERATING EXPENSES	34,512	34,512
TOTAL PROTECTIVE SERVICES	448,493	448,493
	(10.00)	(10.00)
=====		
9. MISSING PERSONS		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	294,886	294,886
	(8.00)	(8.00)
OTHER PERSONAL SERVICES	8,633	8,633
TOTAL PERSONAL SERVICE	303,519	303,519
	(8.00)	(8.00)
OTHER OPERATING EXPENSES	8,376	8,376
TOTAL MISSING PERSONS	311,895	311,895

	(8.00)	(8.00)
=====		
10. SUPPORT SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	2,597,325	2,597,325
	(57.87)	(51.87)
OTHER PERSONAL SERVICES	573,322	204,322
TOTAL PERSONAL SERVICE	3,170,647	2,801,647
	(57.87)	(51.87)
OTHER OPERATING EXPENSES	3,202,722	345,192
SPECIAL ITEMS:		
AGENTS OPERATIONS	92,625	92,625
IMPLIED CONSENT	89,855	89,855
SUPERVISED HEALTH	48,750	48,750
DNA DATABASE PROGRAM	301,301	1

PAGE: 238

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION

	TOTAL FUNDS	GENERAL FUNDS

BREATHTESTING SITE VIDEOTAPING	210,000	
TOTAL SPECIAL ITEMS	742,531	231,231
TOTAL SUPPORT SERVICES	7,115,900	3,378,070
	(57.87)	(51.87)
=====		
TOTAL ENFORCEMENT AND INVESTIGATIONS	16,593,944	12,718,114
	(316.87)	(298.87)
=====		
B. FORENSIC SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	3,694,749	3,694,749
	(118.00)	(118.00)
OTHER PERSONAL SERVICES	104,035	104,035
TOTAL PERSONAL SERVICE	3,798,784	3,798,784
	(118.00)	(118.00)
OTHER OPERATING EXPENSES	1,693,332	499,474
CASE SRVC/PUBLIC ASSISTANCE		
PUBLIC ASSISTANCE PAYMENTS:		
HOSPITAL SERVICES	3,173	3,173
TOTAL CASE SRVC/PUB ASST	3,173	3,173
TOTAL FORENSIC SERVICES	5,495,289	4,301,431
	(118.00)	(118.00)
=====		
C. CRIME INFORMATION		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	2,608,425	2,608,425
	(107.00)	(107.00)
OTHER PERSONAL SERVICES	45,340	45,340
TOTAL PERSONAL SERVICE	2,653,765	2,653,765
	(107.00)	(107.00)
OTHER OPERATING EXPENSES	5,497,614	2,139,319
TOTAL CRIME INFORMATION	8,151,379	4,793,084
	(107.00)	(107.00)
=====		
D. REGULATORY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	1,119,684	1,119,684
	(31.00)	(31.00)
OTHER PERSONAL SERVICES	38,328	38,328
TOTAL PERSONAL SERVICE	1,158,012	1,158,012
	(31.00)	(31.00)

PAGE: 239

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION		
	TOTAL FUNDS	GENERAL FUNDS
OTHER OPERATING EXPENSES	383,136	43,136
TOTAL REGULATORY	1,541,148	1,201,148
	(31.00)	(31.00)
TOTAL PROGRAMS AND SERVICES	31,781,760	23,013,777
	(572.87)	(554.87)
III. EMPLOYEE BENEFITS		
C. STATE EMPLOYER CONTRIBUTIONS		
EMPLOYER CONTRIBUTIONS	7,128,966	6,990,093
TOTAL FRINGE BENEFITS	7,128,966	6,990,093
TOTAL EMPLOYEE BENEFITS	7,128,966	6,990,093
GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION		
TOTAL FUNDS AVAILABLE	41,455,635	32,548,779
TOTAL AUTHORIZED FTE POSITIONS	(619.49)	(601.49)

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This web page was last updated on Thursday, June 25, 2009 at 11:17 A.M.

Exhibit 2 to Affidavit of Donald R. Royal

Act No. 248 of 2004 (Appropriations Act), Part 1B, Section 72.30

72.30.(GP: Carry Forward) Each agency is authorized to carry forward unspent general fund appropriations from the prior fiscal year into the current fiscal year, up to a maximum of ten percent of its original general fund appropriations less any appropriation reductions for the current fiscal year. Agencies shall not withhold services in order to carry forward general funds.

This provision shall be suspended if necessary to avoid a fiscal year-end general fund deficit. For purposes of this proviso, the amount of the general fund surplus/deficit must be considered after all appropriations from the Capital Reserve Fund have been allowed and before any transfers from the General Reserve. The amount of general funds needed to avoid a year-end deficit shall be reduced proportionately from each agency's carry forward amount.

Agencies which have separate general fund carry forward authority must exclude the amount carried forward by such separate authority from their base for purposes of calculating the ten percent carry forward authorized herein. Any funds that are carried forward as a result of this provision are not considered part of the base of appropriations for any succeeding years. State agencies and institutions are allowed to provide selected employees a one-time lump sum bonus, not to exceed two thousand dollars, based on objective guidelines established by the Budget and Control Board. This payment is not a part of the employee's base salary and is not earnable compensation for purposes of employee and employer contributions to respective retirement systems.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

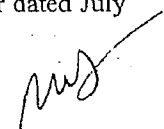
IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

REPLY AFFIDAVIT OF ROBERT M. STEWART

Personally appeared before me, Robert M. Stewart, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. My previous affidavit in this case, dated May 23, 2012, is incorporated herein by reference.
3. I have reviewed the affidavits dated May 22, 2012, of the two Plaintiffs in this case
4. Paragraph 1 of each Plaintiff's affidavit is factually incorrect to the extent it suggests that the 2001 program referenced in Exhibit A to each Plaintiff's affidavit was the program under which each Plaintiff retired in 2004.
5. Instead, Exhibit A to each Plaintiff's affidavit pertained to a completely different program that was in effect only for Fiscal Year 2001-2002. That program was known as the "Voluntary Retirement Incentive" program. It represented the implementation of an option that the General Assembly had made available for that fiscal year in the 2001-2002 General Appropriations Act (H. 3687), Part 1B, Sec. 72.75. (Exhibit 1, attached.)
6. The General Assembly in that proviso required Budget and Control Board approval for "Voluntary Retirement Incentive" programs for those agencies that chose to implement such programs.
7. The 2001 "Voluntary Retirement Incentive" program pre-dated by a year the removal of salary caps or earnings limitations that was one factor in the creation of the Retirement/Rehire program first offered to SLED personnel in 2002.
8. The Board approved SLED's request for a Retirement Incentive Plan by letter dated July 26, 2001. Exhibit 2, attached.



9. As indicated on the first page of the Board-approved July 31, 2001 Memorandum that I sent to certain SLED personnel (Exhibit A to Plaintiffs' affidavits and part of Exhibit 2, attached), an individual who wanted to participate in the 2001-2002 "Voluntary Retirement Incentive" program was required to sign the "Agreement and Release" for that program on or before September 15, 2001. Plaintiffs retired in 2004 under a different program, the Retirement/Rehire program that took effect in 2002, as described in my previous affidavit in this case.

10. A number of SLED employees did retire pursuant to the 2001-2002 "Voluntary Retirement Incentive" program. I elected to rehire approximately ten of those retirees in temporary hourly positions in which they were paid upon rehire at a rate that was 70% of their prior salaries.

11. With respect to Paragraphs 2 and 3 of the affidavit of each Plaintiff, asserting that their "cost to return to work was being increased," I would note that Plaintiffs were paid to return to work, not charged a cost to return to work.

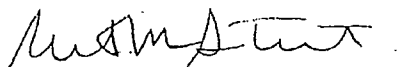
12. The reason for the change in the salary reduction between May 2004, when Plaintiffs requested to be rehired, and the dates after July 1, 2004 when Plaintiffs returned to work, was that on July 1, 2004, the percentage figure for the PORS employer contribution changed from 10.3% to 13.6%. (This was the percentage figure I used to create cost savings due to budget cuts.)

13. The document referenced in Paragraph 4 of the Jowers affidavit (Exhibit D thereto) was not an "agreement" to be rehired by SLED, as Plaintiff Jowers states, but instead was simply a confirmation that the items referenced in that form had been discussed with Mr. Jowers during his orientation.

14. If Plaintiffs, or either of them, had advised me in 2004 that they believed they had a legal claim for the amount of the difference between their old salaries and their new salaries, I would not have offered them the opportunity to participate in the Retirement/Rehire program in 2004, because I would not have wanted SLED to be subject to a later claim for the cumulative amount of the difference.

15. Plaintiffs did not "lose" a percentage of their former salaries annually, as they assert. They were free to continue working at their former salaries, without reduction, as long as they chose not to retire or be rehired.

FURTHER AFFIANT SAYETH NOT.


Robert M. Stewart

SWORN TO BEFORE ME THIS 30th
DAY OF May, 2012.

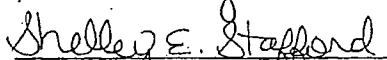
 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-13-15

Exhibit 1 to Reply Affidavit of Robert M. Stewart

2001-2002 General Appropriations Act (H. 3687), Part 1B, Sec. 72.75.

72.75. (GP: Downsizing/Realigning Resources) State agencies may implement, in consultation with the Office of Human Resources of the Budget and Control Board, a program to realign resources to include provisions for a separation incentive payment for employees which may include the employer portion of health and dental benefits not to exceed one year. Positions that become vacant due to an employee exercising a separation incentive may not be refilled and must be deleted. Employees participating in such program shall not be eligible to participate in the Teacher and Employee Retention Incentive (TERI) program or the LEORI program for employees in the Police Officer Retirement System. Any program developed under this provision will involve voluntary participation from employees and will be funded within existing appropriations. The program must be approved by the agency head and the Director of the Division of Budget and Analyses based on ability to demonstrate recurring cost savings for realignment and/or permanent downsizing. State agencies shall report the results to the Budget and Control Board by August 15, 2002. The Budget and Control Board shall report to the Senate Finance Committee and the House Ways and Means Committee on these results.

Exhibit 2 to Reply Affidavit of Robert M. Stewart

STATE OF SOUTH CAROLINA
State Budget and Control Board
DIVISION OF BUDGET AND ANALYSES
OFFICE OF HUMAN RESOURCES

JIM HODGES, CHAIRMAN
GOVERNOR
GRADY L. PATTERSON, JR.
STATE TREASURER
JAMES A. LANDER
COMPTROLLER GENERAL



1201 MAIN STREET, SUITE 1000
COLUMBIA, SOUTH CAROLINA 29201
(803) 737-0900

DONNA G. TRAYWICK
DIRECTOR

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE
ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE
FRANK FUSCO
EXECUTIVE DIRECTOR

July 26, 2001

Chief Robert M. Stewart, Director
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Stewart:

The Division of Budget and Analyses has approved the South Carolina Law Enforcement Division's request for a Retirement Incentive Plan. This approval is based on the authority delegated to the Division of Budget and Analyses on June 12, 2001, by the Budget and Control Board. This authority allows the Division of Budget and Analyses to approve retirement incentive plans within the guidelines approved by the Budget and Control Board. We have enclosed a copy of the approved Plan.

Please let me know if I can be of any further assistance.

Sincerely,

Donna G. Traywick

Donna G. Traywick
Director

Enclosure

DGT/tmb

FAX (803) 737-0968

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM HODGES
Governor



ROBERT M. STEWART
Chief

MEMORANDUM

TO: SLED Personnel

FROM: Robert M. Stewart */gds*

SUBJECT: SLED Voluntary Retirement Incentive Program

DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

**NOTICE OF THE
2001
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

PURPOSE

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

- G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).
- H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this _____ day of _____, 2001, by and between _____ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. Employee's Voluntary Retirement. The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on _____, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. Incentive. SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. **Release.** The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. **Adequate Consideration.** The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. **Confidentiality.** SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. **Voluntary Waiver.** The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. Forty-Five Day Period. The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. Revocation Period. The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. Governing Law. This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this _____ day of _____, 2001.

FOR THE EMPLOYEE:

FOR SLED:

Employee Name (signature)

Lynn Hutto
Human Resources Director
S.C. Law Enforcement Division

Employee Name (print)

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Sworn to and Subscribed to before me
this _____ day of _____, 2001

Notary Public

Notary Public

My commission expires:

My commission expires:

**ACKNOWLEDGEMENT OF RECEIPT
OF THE
2001
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

I, the undersigned, have received the Notice and "Agreement and Release" explaining the provisions of the South Carolina Law Enforcement Division's (SLED) Voluntary Retirement Incentive Program, and I understand its contents. I understand that my participation in the Retirement Incentive Program is voluntary, and signing this "Acknowledgement of Receipt" form only indicates I have received notification of the Retirement Incentive Program.

Printed Name _____

Signature _____

Dept/Office _____

Date _____

***RETURN THIS ACKNOWLEDGEMENT TO LYNN HUTTO IN THE OFFICE OF
HUMAN RESOURCES IMMEDIATELY.***

South Carolina Law Enforcement Division (SLED)

Voluntary Retirement Incentive Program Report

Please provide the following information:

	<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
A ~ Total salaries and fringe benefits of participating employees:	<u>\$1,257,600</u>	<u>\$1,257,600</u>
B ~ Total costs of Retirement Incentive Plan: (Total cost of service credit purchased + Total cost of annual leave payout)	<u>871,384</u>	
Total cost of service credit purchased <u>\$672,000</u> (Total Qualified + Total Non-qualified service credit)		
Total cost of annual leave pay out <u>199,384</u>		
C ~ Total costs of other expenditures:		
Total salaries and fringe benefits (paid through retirement date)	<u>314,400</u>	
Cost of re-filling positions (e.g., salaries and fringe benefits)	<u>235,200</u>	<u>470,400</u>
D ~ Cost Savings:		
Current Fiscal Year Savings (A - B - C = D1)	<u>(163,384)</u>	
Next Fiscal Year Savings (A - C = D2)		<u>787,200</u>
Total Cost Savings (current and next fiscal years: D1 + D2)		<u>\$623,816</u>
▪ Number of employees who applied for the plan	<u>118 eligible</u>	
▪ Number of employees approved to participate	<u>118 eligible</u>	
▪ Number of employees re-hired into a temporary position	<u>*16.52</u>	
▪ Number of affected FTEs to be re-filled	<u>*16.52</u>	
*(Cost analysis based upon approximately 118 eligible: re-hire rate estimated at 70%: assuming 20% participation = approx. 16.52 rehired)		

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated,)

Plaintiffs,)

v.)

South Carolina Law Enforcement Division and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

REPLY AFFIDAVIT OF TERESA C. KITCHENS

Personally appeared before me, Teresa C. Kitchens, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am familiar with the payroll records for Plaintiffs Grimsley and Jowers for the years set forth below.
3. The payroll records for those two individuals reflect that in Fiscal Years 2005-2006, 2006-2007, and 2007-2008, those individuals received the same cost of living increases that were applicable to state employees generally in those fiscal years.
4. The generally-applicable increases for state employees were 3% in FY 2005-2006, 3% in FY 2006-2007 and 1% in 2007-2008.
5. The salary increases for Plaintiffs Grimsley and Jowers in those years were not reduced in any way or by any percentage amount, such as 13.6%. Instead, those individuals received the full amount of the cost of living increases in those years.

FURTHER AFFIANT SAYETH NOT.


Teresa C. Kitchens

SWORN TO BEFORE ME THIS 30th

DAY OF May, 20 12.

Debra L. Matthew (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

My Commission Expires July 5, 2015

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of Richland	)	2008-CP-40-08854
	)	
Phillip D. Grimsley, Sr.,	)	
et al,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
South Carolina Law Enforcement	)	
Division and the State of	)	
South Carolina,	)	
	)	
Defendants ,	)	
	)	

June 7, 2012
Columbia, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

A. CAMDEN LEWIS, ESQ.
Attorney for the Plaintiff

KENNETH P. WOODINGTON, ESQ.
Attorney for the Defendant SLED

EMORY SMITH, ESQ.
Attorney for the State of South Carolina

AMINAH R. HARDY, RPR
Official Court Reporter

EXHIBITS

No.	Description	Page
D-1	Amended memorandum	10

P R O C E E D I N G S

MR. WOODINGTON: Your Honor, I'm Kevin Woodington for SLED. This is Emory Smith for the State, and you know the other characters, I suppose.

THE COURT: Yeah, I've had a lot of dealings with the whole cast of characters.

MR. WOODINGTON: We have before you a couple of cross-motions for summary judgment, and also a motion to amend by both party. Mr. Lewis has advised that he doesn't oppose the motions to amend the answer, so that's out of the case.

THE COURT: All right.

MR. WOODINGTON: And we just discussed it, and he said I could first, so I'm happy to go first, if that's all right with Your Honor.

THE COURT: Suits me.

MR. WOODINGTON: We did get the brief to Your Honor, I hope late last week in Camden.

THE COURT: That's fine. But I'm a speed reader. But I got 75 of these things that come in like this, you know.

MR. WOODINGTON: I under --

THE COURT: But I read yours this morning.

MR. WOODINGTON: Okay. Well, I understand.

THE COURT: But I haven't seen anything.

1 MR. WOODINGTON: They did file one the other day with
2 the clerk.

3 THE COURT: Well, it would be in the file.

4 MR. WOODINGTON: I'm sure it is.

5 Well, I read my own brief yesterday getting ready for
6 this, and I have a feeling I probably posed a challenge to
7 your speed reading skills because it doesn't exactly read
8 like a novel, I have to say. Nevertheless --

9 THE COURT: I even read affidavits from Robert
10 Stewart, who used to be someone.

11 MR. LEWIS: He's here, Your Honor. This is
12 Mr. Stewart.

13 THE COURT: I see him over there. That's why I said
14 that.

15 MR. WOODINGTON: Chief Keel is still somebody under
16 that analysis.

17 THE COURT: I know, I know.

18 MR. WOODINGTON: But he's interested -- they're both
19 interested in this because it affects the way law
20 enforcement can operate in the state.

21 THE COURT: I read the -- I looked at the pay stubs.
22 I mean, I'm up with you, and I haven't read anything that
23 Mr. Lewis has filed.

24 MR. WOODINGTON: Your Honor, I would propose to do
25 this and kind of give you the short version of my argument

1 since you have read what we have. And I would like to
2 address his in advance, if I may, or I can do it in reply.
3 Either one.

4 Basically, I mean -- what's SLED position is, we
5 provided a lot of information in those files, and there's
6 no question about it. But this is -- it's -- sort of to
7 cover the record, but it's really a very simple case.
8 These people didn't get a raw deal; like I said, they got
9 a great deal.

10 THE COURT: Looks like that got 48 months, didn't
11 they?

12 MR. WOODINGTON: They got 48 months and --

13 THE COURT: I'm just saying that so you know I read
14 it.

15 MR. WOODINGTON: I'm sorry, Your Honor.

16 THE COURT: No problem.

17 MR. WOODINGTON: I get a little serious sometimes.
18 The -- they got a great deal for 48 months, and basically
19 they came back at roughly 150 percent what they had been
20 making previously. And basically, I mean, this was a
21 triple win situation for everybody, basically. The
22 plaintiffs, the agents who retired and elected to come
23 back were making a lot more money during that four-year
24 period or whatever period they came back for.

25 SLED, of course, had some savings involved that it

1 could use for the benefit of the taxpayers to enhance law
2 enforcement with layoffs, and the retirement system,
3 police officers' retirement system and everybody that
4 was -- that's subject to being a beneficiary of the
5 retirement system also got a benefit by statute in effect,
6 because SLED did, in fact, pay the employer contribution
7 on everybody. Always did, always has, always will, I
8 assume.

9 So the essence of the complaint as presented -- well,
10 in the complaint was that there had been a deduction from
11 the salaries of these individuals for the employer
12 contribution. We would just simply say there was not a
13 deduction but rather a reduction of the salaries. And,
14 you know, we cited -- like I said, I'm going to give you
15 the short version, but basically what it is, there was no
16 deduction of a salary. They quit at one salary; they came
17 back at another one. There was no deduction.

18 If they had -- the Supreme Court did offer the
19 opinion that the complaint stated a cause of action as it
20 was phrased by the complaint really didn't facts
21 correctly, because it alleged that there had been a
22 deduction from their salary, when in fact, as I said it
23 was a reduction, not a deduction.

24 Things might have been different, might have been
25 different if these agents had come back at a salary of

1 let's say \$50,000, and after they came back, SLED came up
2 to them, tapped them on the shoulder so to speak and said,
3 "Okay, your new salary is \$50,000. And by the way, we
4 want to take 13 percent out of that new salary, the rehire
5 salary and apply it to the employer contribution. That's
6 not what happened. It didn't happen at all. There was
7 simply nothing deducted from their new salary, not even
8 the employee contribution for the first year or two until
9 the general assembly changed the law.

10 As I say, there was certainly -- the Supreme Court
11 held in the Aarons case (phonetic) that we cited that
12 there's no right to come back, and basically at the option
13 of the employer to come back at all. So if you have no
14 right to come back, you certainly have no right to come
15 back at your old salary or any other particular salary.

16 We raised a bunch of other affirmative defenses, such
17 as waiver, estoppel, consent, et cetera.

18 THE COURT: Basically you're moving that there was no
19 deduction --

20 MR. WOODINGTON: There was no deduction.

21 THE COURT: -- from whatever salary they were paid,
22 and they were at-will employees once they came back.

23 MR. WOODINGTON: You got it. That's it. Basically
24 that's it.

25 THE COURT: All right. That's your position.

1 MR. WOODINGTON: And, you know, if you get farther
2 than that, if there was a property interest created, which
3 we deny, they waived it. They basically abandon it.

4 THE COURT: All right.

5 MR. WOODINGTON: And it's old and it's barred by the
6 statute, and that's basically -- I can go into the --
7 basically their argument is that the SLED took, quote,
8 unquote their money and did something else with it. But
9 all that argument is is a claim that they have an interest
10 in what happens to the salary that they used to have
11 before they quit and got rehired. They don't have any
12 interest in that. They don't have any standing to address
13 that. If there was a problem with that, it was for the
14 general assembly, and not for them, to address. So
15 they --

16 THE COURT: All right.

17 MR. WOODINGTON: So I'll keep it short. I think you
18 understand the position, but...

19 THE COURT: I understand the position, but I'm not
20 ruling.

21 MR. WOODINGTON: I understand.

22 THE COURT: I just understand the position, but I
23 hadn't heard anything from Mr. Lewis, who works on
24 contingency. So, you know, he usually doesn't bring
25 things unless he thinks he's going to win, so I'll listen

1 to him.

2 MR. WOODINGTON: Well, I'll just say this. He's
3 brought a lot of retirement cases, and he had success in
4 some and not in others.

5 THE COURT: I know.

6 MR. WOODINGTON: This one, we submit is a bridge too
7 far. This one is not -- shouldn't be a winner for him.
8 He and I both used to represent the retirement system; him
9 first and then me in the '70s in the Attorney General's
10 office, for what it's worth.

11 THE COURT: You know, he had a big hit on the over 85
12 case. I know that. One percent sales tax.

13 MR. WOODINGTON: You win some; you lose some.
14 Mr. Smith is for the State too.

15 MR. SMITH: Your Honor, I think -- I hadn't asked
16 Mr. Lewis and Ms. King, but I think it would probably be
17 more logical for the State to go on ahead and put up its
18 motion also as far as concurrence to Mr. Woodington's
19 motion. But I've got just two short additional points to
20 address. If Your Honor would see my memorandum in support
21 of the State's motion for summary judgment.

22 THE COURT: I do.

23 MR. SMITH: I made a -- I've got an amended
24 memorandum to it. I noticed in reading it this morning
25 that I had been putting it together and inadvertently

1 deleted a footnote, which appears at Number 2 on page 3,
2 and I added a sentence about the Harleysville case. I
3 have -- I'm going to hand the original over here to Madam
4 Court Reporter, if this may be received as an exhibit for
5 the state, Your Honor, since I haven't file it with the
6 Clerk of the Court.

7 First of all, as to taking that last argument first,
8 Your Honor, the State concurs in the legal arguments set
9 forth by Mr. Woodington on behalf of SLED and his argument
10 and in his memorandum. The State's position goes beyond
11 that, Your Honor. The State does not need to be a party.
12 It's typical, as Your Honor probably knows from other
13 litigation, for a dispute between plaintiff and a public
14 official or a plaintiff and a -- in this case, a State
15 agency in some of those cases for the plaintiffs to add on
16 the State as a defendant. It's not only redundant, Your
17 Honor, and unnecessary, there's a failure to state a cause
18 of action against the State.

19 This is not a suit like involving the
20 constitutionality of a state statute that's been enacted
21 by the general assembly, signed into law by the governor,
22 has a statewide effect. In fact, they allege not that
23 there's an unconstitutional statute, they allege that SLED
24 has failed to follow a state statute.

25 (Defendant's Exhibit 1 was marked.)

1 MR. LEWIS: Excuse me, Your Honor, I think we can
2 shorten this. If he -- Mr. Emory Smith says it is
3 redundant to have the State in there, then I don't need
4 the State. Because they're saying it's the same --
5 they're going to -- the State adds nothing, no money is
6 necessary, they're just redundant, then I'm happy to have
7 him gone.

8 THE COURT: All right.

9 MR. SMITH: Well, I'm not sure I -- I like the part
10 about happy to have the State gone. By redundancy, I
11 didn't mean that an award against SLED in this case would
12 automatically be one against the State. If the State is
13 not a party, the State is not liable in any ruling in this
14 action, Your Honor. By redundancy, I meant that there was
15 no need to bring in the State as a party. And there's
16 failure to state a cause of action against the State.

17 THE COURT: Mr. Lewis just says if he wins against
18 SLED, he'll be happy. So why don't you just sit down?

19 MR. SMITH: If he's happy with that, but I just want
20 the Court to be clear that a ruling against SLED does not
21 pose an obligation beyond that against SLED in this case.
22 If Mr. Lewis is satisfied with that and is willing to
23 consent to summary judgment for the State, then I'll
24 certainly be happy to sit down.

25 MR. LEWIS: I consent to dismissing them because if

1 they're -- if he says they're not a necessary party, the
2 State's been tricked. And if the State doesn't care and
3 he -- they're not a necessary party and so they're
4 redundant, I don't care that they're gone.

5 THE COURT: Just prepare an order.

6 ATTORNEY3: I will, Your Honor. Thank you.

7 THE COURT: Okay. Who is opposed? Are you opposed
8 to anything?

9 MR. LEWIS: I'm opposing it.

10 THE COURT: All right.

11 MR. LEWIS: And we have a memo. Did you hand it up?

12 THE COURT: She just handed it up.

13 MR. LEWIS: And Your Honor, this case has already
14 been to the Supreme Court.

15 THE COURT: Yeah.

16 MR. LEWIS: And the Supreme Court found that there
17 was a cause of action for a taking. And he found -- they
18 found that the cause of action was for a taking for
19 failure to follow 9-11-90 which says, "An employer shall
20 pay to the system the employer contribution for active
21 members prescribed by law."

22 Now, in this case, they want to rest on deduction
23 versus reduction. Well, that has nothing -- what your pay
24 stub is the end result of what you do. It is not whether
25 you -- it -- all it shows is what you're going to get FICA

1 withholding and different things like that on. What you
2 do to the salary of the employee before the pay stub is a
3 different story. And let me explain that, because it's
4 very clear in their memorandum at footnote Number 13 that
5 what they do is they get from the appropriations bill
6 the -- under employee money and under contributions for
7 the employer to the retirement system, they get money
8 based upon the pre-13.6 deduction or reduction. They get
9 that money. It comes to them. It comes to them to pay
10 the employee the full amount. It comes to them to pay the
11 retirement system the employer contribution for the full
12 amount. So we have in the record the fact that our
13 employers, our SLED agents, have been given by the
14 appropriations their full salary and the contributions to
15 the retirement system.

16 After that's done, the -- SLED comes in under this --
17 I think it's a -- I don't know what you call it. A kind
18 of a program outside of any retirement or system or
19 anything else. It's a SLED program. They come in and
20 they snitch 13.6 percent, and then they use the reduced
21 salary to pay the retirement system. If you look at that
22 footnote, it says that by doing that for this particular
23 individual, they say they get to save \$4,600 on the
24 salary, and they have \$600 off the benefits. So \$5,200
25 SLED ends up to the profit that the State gave them, which

1 \$4,600 should have gone to my client and \$600 to the
2 retirement system.

3 And we're saying -- and to say reduction/deduction,
4 it doesn't matter. The fact is we have the right to have
5 the money that was appropriated for our position when
6 we're in that position, and we can find that in the law,
7 and when we look at the different statutes that cover what
8 you can do with appropriations. When appropriations come
9 for a specific purpose, you can't change that purpose.
10 You can't snatch it and send it over here and --

11 THE COURT: All right. So what you're basically
12 saying is they called it a reduction, but they took the
13 reduction to them and then paid the 13.6.

14 MR. LEWIS: That's correct.

15 THE COURT: I'm with you.

16 MR. LEWIS: And they can't do that, and the Supreme
17 Court says I have a cause of action.

18 THE COURT: Maybe, maybe not. So y'all just prepare
19 me two orders, and I got to read all this stuff. I mean,
20 I don't know.

21 MR. LEWIS: All right.

22 THE COURT: I do understand the issues, I think,
23 don't I?

24 MR. LEWIS: Yes, you do. You always do.

25 MR. WOODINGTON: Your Honor, could I just hand up a

1 couple legal things for you?

2 THE COURT: Why don't you just send them to me when
3 you send the proposed order?

4 MR. WOODINGTON: Okay. It's just basically some
5 provisos and appropriations --

6 THE COURT: I understand. I will read everything
7 because, you know, if I rule for you, he's going to
8 appeal, you know.

9 MR. WOODINGTON: We're fine.

10 THE COURT: If I rule against you, he goes forward.

11 MR. WOODINGTON: Is there any chance we could go
12 to -- I'm kind of all tied up next week, on vacation the
13 following week. Could we go to the end of the --
14 basically the end of this month for proposed orders?

15 MR. LEWIS: Your Honor, I think he should have to
16 work through his vacation.

17 THE COURT: Here is -- I'm in Camden next week
18 holding court. Friday, I'm taking my grandchild to San
19 Diego. I always take them after they finish third grade
20 so they can go to the zoo and all, and that makes them
21 happy. So I'll be gone the next week. So just get it to
22 me July 10th, something like that.

23 MR. WOODINGTON: Thank you, Your Honor.

24 MR. LEWIS: Thank you, Your Honor.

25 (Whereupon, the proceedings were concluded.)

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF RICHLAND)
4
5

6 I, Aminah R. Hardy, RPR, Official Court Reporter
7 for the 16th Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a true,
9 accurate and complete Transcript of Record of the
10 proceedings had and evidence introduced in the hearing of
11 the captioned case, relative to appeal, in the Court of
12 Common Pleas for Richland County, South Carolina, on the 7
13 day of June, 2012.
14
15

16 October 26th, 2012
17

18 *Aminah R. Hardy*
19 _____
20

21 Aminah R. Hardy, RPR
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State of South Carolina) Court of Common Pleas
County of Richland) No.: 2008-CP-40-08854

Phillip D. Grimsley, Sr.,)
and Roger M. Jowers, on)
behalf of themselves and)
others similarly situated,)

Plaintiffs,)

vs.)

South Carolina Law)
Enforcement Division and)
The State of South)
Carolina,)

Defendants.)

) Deposition of
) 30(B)(6) Witness
) LYNN HUTTO

) October 26, 2009

Deposition on oral examination of LYNN HUTTO,
reported by Brad H. Thomas, Certified Realtime
Reporter and Notary Public in and for the State of
South Carolina; said deposition taken pursuant to
agreement and in accordance with the South Carolina
Rules of Civil Procedure, at the Offices of Lewis &
Babcock, LLP, 1513 Hampton Street, Columbia, South
Carolina, on October 26, 2009, at the hour of 1:10
p.m.

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1 This deposition is taken in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 It is agreed and stipulated by the
5 Deponent and respective counsel that the reading and
6 signing of the deposition by the Deponent is
7 expressly waived.

8 WHEREUPON:

9 LYNN HUTTO, being duly sworn and
10 cautioned to speak the truth, the whole truth and
11 nothing but the truth, testifies as follows:

12 EXAMINATION

13 BY MR. HARLING:

14 Q. Would you state your full name for the
15 record?

16 A. My name is Lynn Iris Hutto.

17 Q. Is Iris with one N or two N's?

18 A. You mean Lynn?

19 Q. Yes. What did I say? Iris?

20 A. Yeah.

21 Q. I apologize.

22 A. Two N's.

23 Q. L-y-n-n?

24 A. Yes.

25 Q. Iris like the flower, I-r-i-s?

1 A. Yes. I use the middle initial I.

2 Q. Okay. H-u-t-t-o?

3 A. Yes.

4 Q. Okay. Ms. Hutto, my name is Jonathan
5 Harling. We met a few minutes earlier when you
6 walked in. I represent Phillip D. Grimsley, Sr. and
7 Roger M. Jowers in a lawsuit they brought against
8 South Carolina Law Enforcement Division and the
9 State of South Carolina.

10 You have been identified by SLED,
11 Defendant SLED, as a 30(B)(6) designee to offer
12 testimony on some various issues. In a couple of
13 minutes I'm going to mark the 30(B)(6) deposition
14 notice as a exhibit to it and then just go through
15 the areas. I'm just going to ask you if you are the
16 most qualified person to answer questions on those
17 topics.

18 Basically a 30(B)(6) deposition is an
19 entity nominates someone to offer testimony on some
20 specific issues. We'll get to that in a second. I
21 just want to get a little bit of background
22 information from you before we get going. Okay?

23 A. Okay.

24 MR. WOODINGTON: Off the record for a
25 second.

1 (Off-the-record discussion.)

2 BY MR. HARLING:

3 Q. Let me run through a few ground rules with
4 you. Brad went through a few with you before we got
5 started, but first and foremost if you need to take
6 a break for any reason, let me know and we'll stop.
7 This isn't an endurance test. We're getting started
8 right around 1:00. I hope we can get everything
9 taken care of this afternoon, but if you need a
10 break for any reason, please let me know and we'll
11 stop and accommodate whatever you need to do.

12 A. I will.

13 Q. Okay. The second thing is, as Brad said,
14 please answer the questions I'm asking you out loud.
15 Try and stay away from uh-huh's and huh-uh's. I'll
16 know what you mean because I'll see your head going
17 up and down or sideways, but on the record we want
18 to have yeses and nos so it will be clear on the
19 record.

20 And finally if you -- please make sure you
21 understand the question I'm asking you. If you
22 don't understand it for any reason, stop me and ask
23 me to rephrase it. I'll be more than happy to do
24 that. If you answer a question, I'm going to assume
25 you understood it. Does that sound fair?

1 A. That's fair.

2 Q. All right. What is your date of birth?

3 A. My date of birth is January 12, 1960.

4 Q. Where do you live?

5 A. I live in Columbia. Do you need my
6 address?

7 Q. Yeah, that's fine.

8 A. I just recently moved. So let me
9 remember. I think I'm 155 River Hill Circle,
10 Apartment 124.

11 Q. And you said you just moved. How long
12 have you lived there?

13 A. I've lived there about three weeks now.

14 Q. Okay. How long have you --

15 A. But I've been in Columbia all my life.

16 Q. Okay. Where did you go to high school?

17 A. I went to W. J. Keenan High School.

18 Q. Since we're on the subject, what's your
19 educational background?

20 A. My educational background is, of course, I
21 completed high school. I went to the University of
22 South Carolina and majored in journalism,
23 advertising, public relations, and I've had several,
24 you know, different courses in HR and related issues
25 over the years.

1 Q. Okay. Did you -- excuse me. Did you
2 graduate from USC?

3 A. I graduated from USC with a bachelor's in
4 1985.

5 Q. And you said you've taken various courses
6 in human resources?

7 A. Yes.

8 Q. Do you hold any certifications of any
9 type?

10 A. No, not at this time.

11 Q. Have you ever held any certifications?

12 A. Yes. I've been a certified purchasing
13 officer with the State. There's been several things
14 over the years. I can't recall. I'm sorry.

15 Q. That's fine. And let me stop you --

16 A. I didn't come prepared to do that.

17 Q. I understand. And when I ask you
18 questions, it's just to the best of your ability.

19 A. Okay.

20 Q. Okay. Let's run through your employment
21 history. How long have you been employed at SLED?

22 A. I've been employed at SLED since April 2,
23 1998. Prior to SLED I was employed as an assistant
24 director of human resources at the Department of
25 Education.

1 Q. Is that the South Carolina --

2 A. South Carolina Department of Education.

3 Q. How long were you there?

4 A. I was there approximately five years. I
5 started in 1992 and left in '98 to go to SLED.

6 Q. Okay.

7 A. Prior to the Department of Education I
8 worked for the South Carolina Land Resources
9 Commission, which has now merged with the Department
10 of Natural Resources.

11 Q. Okay. How long were you at the Land
12 Resources Commission?

13 A. I was at Land Resources for seven years.

14 Q. What did you do there?

15 A. I was -- when I left I was the director of
16 administration, which encompassed human resources as
17 well.

18 Q. Okay.

19 A. Prior to Land Resources I was with the
20 Department of Health and Human Services Finance
21 Commission.

22 Q. How long were you with the Department --

23 A. I was with them -- I went with them when
24 they first started in 1983. Left them -- gosh, I
25 can't remember. I don't quite remember, but I was

1 there for probably about three years maybe.

2 Q. Okay.

3 A. Prior to Health and Human Services I was
4 with the South Carolina Budget and Control Board.

5 Q. Okay. How long were you there?

6 A. I was there maybe about two -- two to
7 three years.

8 Q. What did you do for them?

9 A. I was just administrative support there
10 and human resources, office of human resources.

11 Q. Okay.

12 A. Prior to that I was with the South
13 Carolina Employment Security Commission. I started
14 there in 1979.

15 Q. And what did you do at the Employment
16 Security Commission?

17 A. I was clerical.

18 Q. Okay. And that takes us back to when you
19 first started working full-time?

20 A. Exactly.

21 Q. Okay.

22 A. Well, that was state government. Prior to
23 that I was with Allstate Insurance Company.

24 Q. Okay. How long were you with Allstate?

25 A. A little less than a year.

1 Q. What did you do there?

2 A. Clerical.

3 Q. Let's talk about what you do currently at
4 SLED. You said you were -- you're the director of
5 human resources?

6 A. I'm the director of human resources, yes.

7 Q. And as director of human resources --
8 first of all, how long have you been a director of
9 human resources?

10 A. Since I started in 1998.

11 Q. Okay. What does that include? What do
12 your job duties entail?

13 A. I am responsible for the hiring and
14 recruiting of all SLED employees. I'm responsible
15 for the maintenance of all -- and administration of
16 all benefits and insurance, retirement. I'm
17 responsible for classification and compensation.

18 Q. When you say classification, what does
19 that mean?

20 A. That's making sure employees are properly
21 classified within the State system and that pay --
22 dealing with pay equities and making sure people are
23 brought in and paid according to their competencies.

24 Q. What are the different classifications
25 that you deal with?

1 A. Several of them. With law enforcement the
2 primary ones are a law enforcement officer
3 classification.

4 Q. Okay.

5 A. Those are the primary ones. And
6 criminalist.

7 Q. Okay.

8 A. The other various functional support
9 classifications.

10 Q. Okay. What else do your duties involve?

11 A. Employee relations, benefits. There's so
12 many different things. I'll tell you those are the
13 primary functions.

14 Q. Got it. If you remember something else
15 that you do, just let me know. I think I've got a
16 good feel for what you do.

17 A. I'll put it like this. Whatever nobody
18 else wants to do sometime, that's my job.

19 Q. That's kind of like me. Whenever they
20 tell me to do something I do. The primary -- the
21 primary area I want to talk to you about today
22 involves a retirement program that is -- that is at
23 SLED. And I want to make sure that we're talking
24 about the same thing. When I say that we're here
25 talking about the retirement program, I mean the

1 retirement program that Mr. Grimsley and Mr. Jowers
2 participated in that is the subject of this
3 litigation. Are you familiar with that -- with what
4 I'm talking about?

5 MR. WOODINGTON: Let me interpose.
6 Every time you use that phrase, the SLED retirement
7 program or something like that, in every discovery
8 thing I've objected and said, "Well, it's not really
9 a retirement program. It's the program that was
10 created and that they are under or whatever, the
11 system, whatever you want to call it."

12 Just so I don't have to pop up like a
13 jaybird throughout this thing I would just like to
14 object to the use of that term, to the form of the
15 question and use of the term SLED retirement
16 program, running throughout the deposition, if
17 that's okay with you.

18 MR. HARLING: That's fine.

19 MR. WOODINGTON: And/or just agree
20 that we are using that informally and not as a term
21 of art.

22 MR. HARLING: Yeah.

23 BY MR. HARLING:

24 Q. And I guess what I'm trying to do is
25 figure out what you would call it. Does it have a

1 name?

2 A. There's not a formal name for it. It's
3 just a method in which we processed and allowed SLED
4 employees to return after retirement to work.

5 Q. If I used -- if I referred to it as the
6 program informally, would you understand what I'm
7 talking about? Throughout this deposition is it
8 okay for me to call it the program?

9 A. Yes.

10 MR. WOODINGTON: Subject to that
11 objection.

12 MR. HARLING: I understand.

13 BY MR. HARLING:

14 Q. And you described it as a method of
15 bringing back SLED employees after they retired?

16 A. Yes.

17 Q. Does that method -- does that just apply
18 to law enforcement or does it apply to law
19 enforcement and non-law enforcement employees?

20 A. Well, where Grimsley and Jowers are
21 concerned it just refers to the law enforcement
22 because the TERI program is the way we've handled
23 other non-sworn, as we call it, employees. These
24 are law enforcement employees in which we treated
25 this way.

1 Q. Okay.

2 (Exhibit No. 1 was marked for
3 identification.)

4 BY MR. HARLING:

5 Q. Ms. Hutto, I'm going to hand you what's
6 been marked as Deposition Exhibit No. 1. I'm going
7 to ask you to take a look at that document and,
8 first of all, ask you have you ever seen that
9 before?

10 MR. WOODINGTON: Off the record
11 again.

12 (Off-the-record discussion.)

13 THE WITNESS: I can't say
14 specifically that I've actually seen it.

15 BY MR. HARLING:

16 Q. Are you familiar with it?

17 A. Let me see what it says. Yes.

18 Q. Okay. On the first two pages of that is
19 the notice of 30(B)(6) deposition. On Page 2 of
20 that document there are five areas that are listed.

21 Are you the person at SLED that's most
22 knowledgeable regarding the creation of the SLED
23 retirement program at issue in this matter?

24 A. The person at SLED left most
25 knowledgeable.

1 Q. Okay. I was going to ask you is there a
2 former employee that would be -- that would have
3 more knowledge regarding that?

4 A. Probably not more knowledgeable, but as
5 knowledgeable.

6 Q. Who would that be?

7 A. Chief Robert Stewart.

8 Q. Okay.

9 A. Cindy Konduros and Margie Coker.

10 Q. Margie Coker. I'll tell you what. I'll
11 run through each of these things and then we'll come
12 back and talk about the former employees.

13 Are you the person most knowledgeable of
14 the administration of the SLED retirement program at
15 issue in this matter?

16 A. Yes.

17 Q. Are you the person most knowledgeable
18 regarding the deductions made from the salaries of
19 the participants in the SLED retirement program at
20 issue in this matter?

21 A. We did not make any deductions to any
22 salaries on the participants.

23 Q. Okay. Are you the person most
24 knowledgeable regarding the number of SLED employees
25 participating in the program at issue in this

1 matter?

2 A. Yes.

3 Q. Are you the person most knowledgeable
4 regarding amounts paid to the Retirement System on
5 behalf of the SLED employees participating in the
6 retirement program at issue in this matter?

7 A. Yes.

8 Q. Going back to No. 1, the creation of the
9 program/method, you said that Chief Robert Stewart,
10 Cindy Konduros, and Margie Coker were as
11 knowledgeable regarding the creation of it as you?

12 A. Now, as far as the creation, it would be
13 Cindy Konduros and Chief Stewart, Robert Stewart.

14 Q. And what would Ms. Coker have knowledge
15 of?

16 A. Ms. Coker was our retirement benefits
17 counselor at the time and, of course, she was
18 responsible for actually the administrative
19 processing of all the retirees.

20 Q. Is there a person in that position now or
21 is that you?

22 A. You're looking at them. It's me.

23 Q. Okay. And Chief Stewart is retired now?

24 A. Chief Stewart is retired, yes.

25 Q. And Ms. Konduros, did she retire?

1 A. She actually resigned.

2 Q. Do you know when she resigned?

3 A. She resigned around the time that Chief
4 left. It would have been between November of '08
5 and December of '08.

6 Q. Do you know where she's presently
7 employed?

8 A. I do not.

9 Q. And Ms. Coker, did she resign or did
10 she --

11 A. She retired.

12 Q. Retired. A couple of pages back into that
13 there is a subpoena attached to it that talks
14 about -- it's requesting that you bring any
15 documents with you today -- first of all, did you
16 bring any documents with you today?

17 A. No, I did not bring any documents.

18 Q. Okay. Page 5 of that. Throughout this
19 litigation we've been requesting documents from
20 SLED. And what I'm just trying to do is make sure
21 that we've got all the documents that are related to
22 this matter.

23 What I want to do is I'm just going to run
24 through this list and just ask you if it's your
25 understanding that all the documents related to

1 these requests have been provided through your
2 attorney. Okay. The first one is all documents
3 related to the retirement program at issue in this
4 matter?

5 A. Yes.

6 Q. Okay. All documents related --

7 MR. WOODINGTON: Excuse me. Before
8 we got on the record we mentioned subject to that
9 objection we're not giving you every piece of
10 personnel file information on every non-certified
11 class member.

12 MR. HARLING: Right. Right.

13 MR. WOODINGTON: You understand that?

14 MR. HARLING: Right.

15 MR. WOODINGTON: Okay. Sorry. Okay.

16 BY MR. HARLING:

17 Q. Second one is all documents related to the
18 administration of the retirement program at issue in
19 this matter?

20 A. Yes.

21 Q. All documents related to the salaries paid
22 to the SLED employees participating in the
23 retirement program at issue in this matter?

24 A. Yes.

25 Q. All documented related to the deductions

1 made from the salaries paid to the SLED employees
2 participating in the retirement program at issue in
3 this matter?

4 A. I'll go back and I'll say there were no
5 deductions made to the salaries.

6 Q. Okay. If there were, would all the
7 documents related to that --

8 A. Yes.

9 Q. Okay. All documents related to the
10 creation of the retirement program at issue in this
11 matter?

12 A. Yes.

13 Q. All documents related to the amounts paid
14 to the Retirement System on behalf of the
15 participants in the retirement program at issue in
16 this matter?

17 A. Yes.

18 Q. All documents provided to or received from
19 the South Carolina Budget and Control Board related
20 to the retirement program at issue in this matter?

21 A. Yes.

22 Q. It's your understanding that all
23 responsive documents have been provided through your
24 counsel to us during this litigation?

25 A. Yes. To the best of my understanding.

1 Q. Right. Right. Right.

2 MR. HARLING: And subject to the
3 exception that the individual employee files of the
4 non-certified class members have not been provided
5 to us?

6 MR. WOODINGTON: Right.

7 MR. HARLING: But everything else has
8 been?

9 MR. WOODINGTON: Yeah. I mean, and
10 now that I think about it, there may be some papers
11 in the files of the two named plaintiffs that we
12 haven't given you, but I'm not sure. I guess I need
13 to ask her to look through that.

14 MR. HARLING: Yeah.

15 MR. WOODINGTON: But we've given you
16 most of it, if not all of it.

17 MR. HARLING: We need to get all of
18 it.

19 MR. WOODINGTON: Yeah. Let's make a
20 note. I'll make a note to do that and make sure we
21 get that. Two named plaintiffs.

22 MR. HARLING: And subject to that we
23 may need to hold the deposition open if there are
24 additional documents in there.

25 MR. WOODINGTON: Sure.

1 BY MR. HARLING:

2 Q. Let me ask you did you keep a file on this
3 method, this program, that was yours individually?

4 A. Yes.

5 Q. Can you tell me what the contents of that
6 file were?

7 A. It wasn't very much. Some of the
8 information we were dealing with was primarily what
9 the Budget and Control Board had on their Web site
10 where retirees are concerned because a lot of what
11 we were dealing with was primarily driven by the
12 rules, regulations, and policies and procedures of
13 the Budget and Control Board Retirement System as
14 well as the office of human resources.

15 Q. What else was in that file?

16 A. There were -- there was a memo from Chief
17 Stewart in '06, May of '06, regarding the employees
18 nearing -- some of the employees nearing the
19 termination of the four-year period in which we --
20 they agreed to work upon.

21 There was a couple of documents where we
22 did drafts of the notices that we would give the
23 employees when they signed on to the program. And
24 that's just so we would have something, you know,
25 kind of a prototype type of format.

1 Q. And the drafts of the notices, what was --
2 what information was contained in those notices?

3 A. It was just the same thing that we gave --
4 we had them to sign that basically -- when they
5 first signed on when they went to go talk to Chief
6 Stewart about the program.

7 Q. Okay. Blank documents?

8 A. Blank. Exactly.

9 Q. Okay.

10 A. That was primarily it. It wasn't very
11 much in there. Just maybe some duplicate copies of
12 the same.

13 Q. Okay. And did you provide that file to
14 your attorney and to provide to us?

15 A. I provided everything, yes.

16 Q. Did anyone else maintain a file that was
17 at SLED on this method/program?

18 A. Margie Coker did. And it was primarily
19 the same thing. She actually sent me what she had.

20 Q. Okay. And that was given to your attorney
21 and given to us?

22 A. Exactly.

23 Q. Okay. Anyone else have a file?

24 A. Not to my knowledge. I don't know if
25 Chief or Cindy actually kept a file.

1 MR. HARLING: Ken, can you check and
2 see if Chief Stewart maintained a file and
3 Ms. Konduros?

4 MR. WOODINGTON: Off the record.
5 (Off-the-record discussion.)

6 BY MR. HARLING:

7 Q. Mr. Woodington and I discussed this
8 earlier. There are no documents that are being
9 withheld pursuant to the attorney/client privilege
10 that predate this litigation; is that correct?

11 A. No.

12 Q. No, that's correct or, no, that's not
13 correct? I'm sorry.

14 A. That's correct.

15 Q. Okay.

16 A. No documents withheld.

17 Q. Thank you. How many employees does SLED
18 have right now?

19 A. SLED has approximately -- permanent
20 employees that would be subject to this or just
21 total?

22 Q. Total?

23 A. Approximately 550.

24 Q. That's a lot. That's a lot to keep up
25 with, isn't it?

1 A. It really is.

2 Q. Approximately 550 total employees
3 statewide?

4 A. Yes.

5 Q. How many of those are law enforcement and
6 how many of those are just regular?

7 A. There's approximately 280 that are
8 permanent law enforcement officers. There may be
9 another five or six of them that may be temporary
10 law enforcement officers. So we're looking at maybe
11 about 290 that are law enforcement officers.

12 Q. Okay. And the remainder would be?

13 A. Technical, IT, administrative support,
14 program manager type positions.

15 Q. Got it. What is the primary function out
16 at SLED?

17 A. Primary function is to provide law
18 enforcement services to the state of South Carolina.

19 Q. You said that this method/program that
20 we're talking about today was a way to bring back
21 retired law enforcement so they could come back to
22 SLED and work?

23 A. Well, the purpose was to -- SLED had a
24 population of employees that were starting to age
25 out of the work force. Many of them were nearing

1 retirement and, like other state agencies, we had
2 not prepared for them all to be gone. So there was
3 several specialty type employees who, of course, had
4 years of experience that would be aging out of the
5 system, so to speak.

6 So this was a method where we could bring
7 these employees -- instead of them retiring and
8 going on to work other places, which many of them
9 would often do because they were still young even
10 though they were actually eligible for retirement,
11 this gave us an opportunity to bring them back and
12 have them work with some of the younger employees
13 and hopefully impart some of the knowledge that they
14 had.

15 Q. For an employee that had not retired from
16 SLED that was law enforcement can you explain to me
17 how the retirement contributions worked from the
18 standpoint of what the employee was responsible for
19 paying and what the employer was responsible for
20 paying?

21 A. You said for an employee that did not
22 retire?

23 Q. Right. Right. For an employee -- just
24 say a law enforcement guy who had been there five
25 years who was just a regular member of the Police

1 Officer Retirement System?

2 A. There was no difference in the two. The
3 retirees' and the employees' retirement was handled
4 the same.

5 Q. Tell me how the -- just the regular
6 employees' retirement was handled.

7 A. Now, when you say how it was handled, tell
8 me exactly what you mean in terms of handling.

9 Q. How was -- take me through the process
10 where the employee paid in his contribution to the
11 Retirement System and the employer paid its
12 contribution to the Retirement System. How did that
13 work?

14 A. When an employee starts to work for the
15 State of South Carolina it's understood and we
16 counsel them upon their employment that there will
17 be a six percent reduction or contribution to the
18 Retirement System. And that's a mandatory
19 contribution. And I say that because many of the
20 employees want to opt out, but they can't. That's
21 something that's mandated by the State. They have
22 to contribute.

23 On the other hand, the employer has a
24 contribution that they must make to the Retirement
25 System as well. And that percentage for a law

1 enforcement officer is different than from a non-law
2 enforcement officer. There's two different systems.
3 As a law enforcement officer they go into the police
4 officers' retirement. And as a non-law enforcement
5 they would go into what we call the State
6 retirement, which is SCRS.

7 Q. Right.

8 A. They have a contribution made from -- the
9 State pays according to its payroll. So if -- they
10 don't do it on an individual like basis. What
11 happens is the State has a rate. Well, they have a
12 contribution rate that's kind of broken into three
13 different tiers.

14 You have the basic contribution rate for
15 the retirement. Then you have an accidental death
16 percentage, a small percentage. And then there's a
17 group life percentage that's grouped together to
18 come up with a total percentage. I think right now
19 it's ranging about 14 plus percent. And that's the
20 employer contribution. That's handled the same way
21 for both the retirees, whether they are retired or
22 not retired. Did that answer your question?

23 Q. Well, close, but I'll have a few
24 follow-ups. You said it was 14 percent that's the
25 employer contribution?

1 A. It's approximately 14 -- total 14 plus
2 percent. And that rate is revisited every July 1 of
3 each year. So it could change.

4 Q. And is the -- is the employer
5 contribution, is that made on a monthly basis, a
6 yearly basis?

7 A. It's made based -- I think it's paid
8 quarterly. It is paid quarterly.

9 Q. Who is that paid to?

10 A. It's paid to the State Retirement System.

11 Q. State or -- is it -- is there one payment
12 to the State and another payment to the Police
13 Officers System or is it --

14 A. When I say the State, it's the State
15 Retirement System handles both the police officers
16 as well as the non-police officer programs.

17 Q. Got it. And it's paid quarterly to the
18 Retirement System?

19 A. Yes.

20 Q. Okay.

21 A. And it's based on the total payroll for
22 those particular segments of employees.

23 Q. Okay. What is the -- what's the mechanism
24 for making that payment? Is there a check that is
25 written or is it --

1 A. It's an IDT process. They send us a
2 report and we just process it through our finance
3 and then we reflect -- they reflect the total
4 payroll that it would be based on. And, of course,
5 it's just a transfer among State agencies.

6 Q. Okay. SLED would transfer it to the
7 Retirement System?

8 A. Yes. And let me be fair. Because I'm not
9 in finance I can't tell you exactly how that actual
10 financial transaction takes place, but as far as the
11 documentation is concerned, that's the way it works.

12 Q. Okay. Who at the -- who at -- I
13 apologize. For some reason I've lost the ability to
14 speak this afternoon. I'm sorry.

15 A. No problem.

16 Q. Who at SLED -- or, first of all, is there
17 a SLED finance division?

18 A. There is a SLED finance division.

19 Q. Who is the person at SLED Finance that
20 would be most knowledgeable regarding that transfer
21 of funds you talked about?

22 A. Let's see. Let me just say Steve Birnie.
23 He's our director of administration.

24 Q. Steve Birnie?

25 A. Birnie, B-i-r-n-i-e.

1 Q. B-i-r-n-i-e. Okay. So for a police
2 officer who is not retired who is with SLED, he
3 would have a six percent reduction in his salary for
4 his contribution to the Retirement System; is that
5 correct?

6 A. That's correct.

7 Q. And then SLED would make its contribution
8 for the employer part of 14 plus percent to the
9 Retirement System; is that correct?

10 A. Yes. And let me just say that it's a
11 quarterly -- it's a total -- it's not broken down
12 into specific employees. It's based on a total
13 payroll.

14 Q. Okay.

15 A. So there's no differentiation between
16 employees.

17 Q. Got it. The six percent that is the
18 employee's share, where does that figure come from?
19 Who is -- who tells SLED that that's the amount?

20 A. It's dictated by the law as far as the
21 Retirement System.

22 Q. And is the same true for the employer's
23 share as well?

24 A. Yes. That's legislated.

25 Q. Okay. The employees' share, that is

1 deducted from their paychecks?

2 A. Yes.

3 Q. And they are paid on a biweekly basis?

4 A. Yes.

5 Q. What paperwork is generated to document
6 the deduction or -- I guess, the deduction or
7 reduction in the employee's paycheck? Is it just on
8 the stub that they get?

9 A. Yes. It's on the stub. Because it's
10 mandated by the State that's all handled through the
11 comptroller general's office and the treasurer's
12 office.

13 Q. Okay.

14 A. So there's no transactional paperwork on
15 our part.

16 Q. Okay. Are you aware of any paperwork or
17 documentation generated showing the payment of the
18 employer's share?

19 A. Am I aware of any?

20 Q. Yes, ma'am.

21 A. Yes.

22 Q. Tell me about that.

23 A. It's a report that's generated, I think,
24 by the treasurer's office, either the treasurer or
25 the comptroller general's office, I'm not sure, but

1 it's basically almost like a receipt to show us
2 what's actually been transferred or transacted where
3 those funds are concerned.

4 Q. Okay. Is there anything generated by SLED
5 that shows that?

6 A. No, there's not.

7 Q. Okay.

8 A. We get it on a quarterly basis. We review
9 it and we keep it in a file for future reference.

10 Q. Does SLED have a -- does SLED have an
11 operating budget?

12 A. Yes, SLED has an operating budget.

13 Q. Does that budget have line items on it?

14 A. I don't want to speak to the budget
15 because I don't handle it.

16 Q. Okay. Who handles the budget at SLED?

17 A. The budget is handled by Steve Birnie and
18 his staff.

19 Q. Okay. Do you know how salaries are
20 budgeted at SLED?

21 A. I don't want to speak to that because I
22 don't get involved in that process.

23 Q. Okay. On the retirement program that
24 we're talking about, when was that program/method,
25 when was that created?

1 A. I can't give you an exact date. I'll just
2 tell you I started getting involved in the process
3 sometime in 2002.

4 Q. What was your earliest involvement with
5 it?

6 A. I can't give you an exact date.

7 Q. No. What was it? What did they have you
8 doing with it?

9 A. Well, Chief Stewart and Cindy had
10 obviously sat down and planned what it is they were
11 going to do. Obviously there had been some
12 legislation or a presentation of a similar program
13 to TERI. And after that there was conversation
14 about obviously developing a method for SLED or for
15 law enforcement officers to do something similar.

16 In 2002 when it was time for us to start
17 to process the first employee, of course, my staff
18 and I were told to bring -- and I can't even -- I
19 can't remember who the first individual was, but to
20 bring an employee in. They were going to resign,
21 had agreed to resign, and would agree to come back
22 and work for a reduced salary.

23 The objective, as I was told, was to
24 provide a cost savings to the agency to participate
25 in -- for the whole program to work as it would was

1 to save the agency some money while we participated
2 in this program.

3 Q. So the program was created to save SLED
4 money?

5 A. No, the program was not created to save
6 money. The program was created to bring employees
7 back that we would normally lose to retirement.
8 That was the whole idea of the program, but one of
9 the objectives of the program was to -- was a cost
10 savings, but that was not the ultimate point of the
11 program.

12 Q. Okay. Did budget shortfalls have anything
13 to do with the creation of this program?

14 A. I can't answer that.

15 Q. Do you know who at SLED could?

16 A. At SLED right now nobody. Chief Stewart
17 and Cindy Konduros would probably be best to answer
18 those questions.

19 Q. Do you know specifically who created this
20 program?

21 A. To say who created the program, I don't
22 necessarily would say that it was a creation of a
23 program, but Chief Stewart authorized the processing
24 of employees the way we did.

25 Q. Did he, to your knowledge, consult with

1 anyone before he made this authorization?

2 A. To my best of my knowledge, yes, he did
3 consult with some members of the Budget and Control
4 Board.

5 Q. Do you know specifically which members?

6 A. I can't tell you. Those took place before
7 I got involved in it.

8 Q. To your knowledge, did Chief Stewart --
9 excuse me. To your knowledge, did former Chief
10 Stewart consult with any attorneys before he
11 authorized the process of his employees?

12 A. I guess I'm hesitating because Chief
13 Stewart didn't do a whole lot sometimes without
14 consulting with attorneys. I can't say specifically
15 that he did.

16 Q. Okay. Did former Chief Stewart obtain any
17 approval of the Budget and Control Board?

18 A. I wasn't privileged to those
19 conversations. I can't say what took place. I
20 would just say that Chief probably would not have
21 proceeded, if he consulted with them, without their
22 approval.

23 Q. How were the -- how were the SLED
24 employees notified of this program or method?

25 A. There was a meeting. Chief called -- if I

1 recall, I think he called the captains, some of the
2 lieutenants, the ranked employees in and some of the
3 supervisors to let them know what he was going to be
4 allowing some of the employees to do.

5 Q. Okay. Were you present at that meeting?

6 A. Yes, I was. I was present.

7 Q. Do you recall the presentation that was
8 given at the meeting?

9 A. To call it a presentation, I don't know
10 that I would go that far, but Chief stood up and he
11 just told them what he was thinking about doing. I
12 don't -- it's been so long. I don't recall all the
13 details.

14 Q. Did he cite a particular statutory change
15 that allowed this?

16 A. No, not to my knowledge. I don't know
17 that he would have been speaking in those terms with
18 the State.

19 Q. At any point during your conversation with
20 former Chief Stewart regarding the implementation of
21 this process method/program did he ever say,
22 "There's a statute that allows us to do this"?

23 A. No, not specifically.

24 Q. Did he say anything -- did he use words to
25 that effect?

1 A. About actual statute? Not specifically a
2 statute, but I know during the time frame we were --
3 I'm trying to think when that period was. There was
4 a cap on salaries for PORS employees to participate
5 in the Retirement System if they returned to work.
6 That cap was lifted. And I think that had some
7 bearing on the situation.

8 Q. Okay.

9 A. But to have him state a specific statute,
10 no, I don't recall having those conversations.

11 Q. Does SLED have in-house attorneys?

12 A. SLED has an in-house attorney, yes.

13 Q. During this time frame that we're talking
14 about do you know who the in-house attorney was?

15 A. SLED had Mark Keel, who is currently the
16 director of public safety, Department of Public
17 Safety at the time. He functioned as our chief of
18 staff and he was an attorney.

19 Q. Okay. Were there any -- his job was chief
20 of staff at SLED?

21 A. His job was chief of staff.

22 Q. Were there any people whose job title was
23 like attorney one, attorney two?

24 A. No, not at that time.

25 Q. SLED doesn't have general counsel that's

1 out there?

2 A. SLED has general counsel now, but at that
3 time SLED did not have general counsel.

4 Q. Who is SLED's general counsel now?

5 A. His name is Christopher Hagins.

6 Q. H-a-g-e-n-s?

7 A. H-a-g-i-n-s.

8 Q. I'm terrible at spelling.

9 A. That's all right.

10 Q. How long has he been general counsel?

11 A. He started with us in July of '08.

12 Q. Was he the first general counsel that SLED
13 had?

14 A. I can't speak to that. Since I've been
15 there he's been the first general counsel.

16 Q. Okay. And I think we've already started
17 going down this road a little bit, but how was the
18 program implemented?

19 A. After the meeting with Chief it was
20 everybody's understanding that if they wanted to
21 participate, that they had to schedule a meeting
22 with the chief and he would meet with them. They
23 would discuss the parameters in which they would be
24 retiring. Some of them had conversations with Chief
25 and chose not to take the program because of various

1 reasons only that maybe they know for sure, but if
2 they did not believe that Chief could bring them
3 back to work, then they did not elect to retire.

4 If there was an agreement that Chief would
5 and could bring them back and could use their
6 skills, then they would then retire and then they
7 would sign that agreement and then they would leave
8 service. With that agreement they would return to
9 work at a reduced salary. That was how it was
10 implemented. It was all on a voluntary basis.
11 Nobody was pegged or urged or designated for the
12 program.

13 Q. The parameters that they discussed with
14 former Chief Stewart, do you know who established
15 those parameters?

16 A. No, I don't. And when I say parameters, I
17 mean -- you know, parameters may not have been a
18 good word to use, but there was a discussion of
19 their employment with Chief. And like I said, if
20 Chief felt like he could use them returning, he
21 would bring them back, but if he felt like he could
22 not bring them back, if there was no agreement for
23 them to come back, then again they wouldn't retire.
24 So I can't tell you what those parameters or what
25 those discussions were.

1 Q. Okay. Do you know were there any
2 guidelines for the program as far as eligibility?

3 A. The only eligibility was that they would
4 be eligible to retire. Anybody that was eligible to
5 retire was eligible to volunteer to take the
6 program.

7 Q. Okay. Was it your understanding that --
8 was there a negotiation that was entered into
9 between the agent who was eligible to retire and
10 Chief Stewart or was it -- or was there a set of
11 guidelines that he was looking at using or was it
12 done on a case-by-case basis?

13 A. It was done on a case-by-case basis. I
14 would say there was not -- I wouldn't think there
15 was negotiation. Some of the discussions that I
16 believe took place were -- had to do with
17 employment.

18 Of course, we had some employees who had
19 had a good employment record and then we had others
20 who may not have. And those who may not have had a
21 good employment record were not going to be
22 recommended to come back. And they had those
23 conversations. They knew what they were and that's
24 the way it worked.

25 Q. Right. Was Chief Stewart, was he the

1 final say on who could participate or who could not
2 participate?

3 A. Yes, Chief was the final say on the
4 authorization.

5 Q. So tell me what -- when a person agreed to
6 participate in the program what were they agreeing
7 to do?

8 A. They were agreeing first to retire on the
9 premise that they would be allowed to return at a
10 reduced salary.

11 Q. Was there a specific amount of time they
12 had to sit out from employment?

13 A. The State requires that they take a 15-day
14 break. They could not return prior to that 15-day
15 period.

16 Q. On the -- after the 15-day period were
17 they rehired? Were they reinstated? What term
18 would you use to describe their return to work?

19 A. Rehire. And for most of those people
20 ended up being more than a 15-day break. One of the
21 things that Chief required, because we had to pay
22 out on the annual leave when they terminated, we
23 paid out on the annual leave, but they had to -- if
24 they were paid out, say, 45 days, then they had to
25 take a 45-day break.

1 Q. Okay. What was the purpose of making them
2 do that?

3 A. The Chief did not want to cost the State
4 any additional money in doing -- allowing these
5 employees to return to work. And so if we paid them
6 for 45 days, then we gave them a 45-day break. So
7 whatever period of time we paid them out. So the
8 State mandates the 15-day period, but we asked them
9 to stay out for the 45.

10 Q. And you said they came back at a reduced
11 salary?

12 A. They came back at a brand new salary
13 actually. We rehired them at a new salary.

14 Q. Rehired at a new salary. What was that
15 salary -- how was that new salary calculated?

16 A. Initially the new salary was calculated
17 based on -- I think we figured it at 13.6 percent.
18 And that was what we -- the contribution for the
19 retirement.

20 Q. When you said it was 13.6 percent, what
21 does that mean?

22 A. The retirement contributions that you
23 inquired about earlier and how it was broken down,
24 that was the employer contribution rate.

25 Q. Were they -- was the new salary 13.6

1 percent less than their previous salary?

2 A. Yes.

3 Q. So if a person wanted to participate in
4 the program and they were eligible and they went and
5 met with the Chief and the Chief said, "Okay. You
6 can do this," and they were making \$50,000 a year at
7 the time, they would have sat out for 15 days and
8 then their new salary would have been 13.6 percent
9 lower than the 50,000?

10 A. Yes.

11 Q. Okay.

12 MR. HARLING: We've been going about
13 an hour. You all want to take a break?

14 MR. WOODINGTON: That's fine. Let's
15 take a break.

16 (A recess transpired.)

17 BY MR. HARLING:

18 Q. Ms. Hutto, before we took the break we
19 were talking about the example where a person was
20 making \$50,000, retired, came back, and had the
21 reduction in their salary. The 13.6 percent that it
22 was reduced, you said that was done initially?

23 A. When you say initially, what do you mean?

24 Q. Well, I believe when you answered the
25 question earlier you said that initially it was

1 reduced by 13.6 percent. Is it still reduced that
2 amount or is it reduced by a different amount now?

3 A. You mean if we do anybody today?

4 Q. Yes, ma'am.

5 A. No, we don't do that. Actually we have a
6 new director and he does things a little bit
7 differently. He looks at the function. And, of
8 course, we're in a different economic climate as
9 well. So if we have someone to come back, there's a
10 different way of doing it. I mean, the salary is
11 obviously going to be a lot less when they return.

12 Q. Okay. Who is the new director?

13 A. The new director is Reginald I. Lloyd.

14 Q. Chief Lloyd? Is he the chief or is he the
15 director?

16 A. Director. Director Lloyd.

17 Q. When did they stop calling them the chief?

18 A. When Reggie became in charge.

19 Q. No disrespect to --

20 A. That was his -- I understand. That was
21 his preference.

22 Q. No disrespect to Judge Lloyd. Nice fellow
23 and I didn't -- I just -- when you said director, I
24 thought there was another position that was created
25 and he was the chief and that --

1 A. No. No. So when you hear me refer to --
2 that's why I still call Chief Stewart Chief Stewart.

3 Q. Okay.

4 A. It's former Chief Stewart.

5 Q. Okay. Got it. And you said that the
6 method/program is implemented in a different manner
7 since?

8 A. Yes. We are in a climate now where, of
9 course, we don't have as many retirees as we had
10 previously. We actually are only doing it in -- I
11 want to say with almost critical positions. And so
12 it's not done as often.

13 We've only done it probably four or five
14 times since Reggie has been in place, again with
15 critical positions. He looks at the job. And
16 because the ones that he's brought back have
17 functioned in similar situations, he's looking at
18 pay equity. And he brings them in approximately
19 around the same salary.

20 Q. Same salary as they had had prior to when
21 they retired?

22 A. No. When I say same salary, I mean
23 similar salaries.

24 Q. Oh, okay.

25 A. So that we don't --

1 Q. Okay.

2 A. -- throw off any inequities.

3 Q. Okay. Okay. I understand. So what
4 you're saying is Director Lloyd, when and if he lets
5 someone participate, there's a set salary that is
6 paid to the person who participates, it's not based
7 on their previous salary, it's this new salary
8 that's predetermined?

9 A. It's not necessarily predetermined. It's
10 determined based on the position. For instance, if
11 we have a person that functioned as a captain
12 before, we look at what we've done with the other
13 captains who may have participated in the program.

14 Q. Okay.

15 A. And we bring them back at a similar
16 salary.

17 Q. Okay. And under the new method the
18 employer's contribution is paid by SLED?

19 A. Under the new method the contributions are
20 handled exactly the same. There's no change in how
21 those contributions are handled.

22 Q. They are made by SLED?

23 A. Say that again.

24 Q. But they are made by SLED?

25 A. I don't understand what you mean.

1 Q. The employer's contribution under the new
2 method, that contribution is made by SLED?

3 A. Yes. The same as it was before.

4 Q. Okay.

5 A. You did say employer?

6 Q. Yes, ma'am.

7 A. Yes.

8 Q. Employer's, yes, ma'am. You're saying
9 it's the same as it was before?

10 A. When I say the same, I mean it's handled
11 the same way as it has been before. There's no
12 change in the handling of that contribution.

13 Q. Well, let's back up. How was it handled
14 before?

15 A. Well, as we spoke earlier, it's based on
16 the payroll and it's paid quarterly through the
17 treasurer's office.

18 Q. The reduction that used to take place, the
19 reduction of the 13 percent, where did that money
20 go?

21 A. When you say where did the money go?

22 Q. Yes.

23 A. There was really no -- there was no
24 deduction of salary. There was an agreement that
25 the salary when they were rehired would be

1 different. So there was no place for the money to
2 go, so to speak.

3 Q. So was SLED -- under the old method when
4 the reduction of 13.6 percent was being made was
5 SLED making the employer's contribution?

6 A. Yes. Yes. If I can just clarify that
7 earlier question when you were talking about where
8 the money can go?

9 Q. Please.

10 A. Of course, if there's less salary, then
11 there's less payroll to calculate that percentage
12 against. So if that helps clarify that some.

13 Q. Okay. To the best of your knowledge, how
14 many employees have participated in the program?

15 A. To the best of my knowledge, approximately
16 90 employees.

17 Q. Do you know -- we talked a little bit
18 about the financing portion of it and I asked you
19 about the budgeting of salaries. I think you said
20 Mr. Birnie was the person who would --

21 A. He's in charge of our budget currently.

22 Q. Okay. And you may not know the answer to
23 this question, but when -- under Chief Stewart,
24 former Chief Stewart, when the 13.6 reduction was in
25 place mechanically how did that work? Was SLED

1 allocated a sum of money for the salary and the
2 salary was reduced by 13.6 percent and that
3 reduction was taken to pay the employer portion? Is
4 that how it worked or do you know?

5 A. SLED is allocated a certain amount of
6 money for salaries, period, overall. There was no
7 reduction, as I said earlier. You know, when we
8 hire people we agree to hire them at a set salary
9 and we pay the contribution against that salary.
10 So, of course, it's just money that has not been
11 spent, so to speak. So that's what I'm kind of
12 struggling with, where the money went.

13 Q. Okay.

14 A. It's just not money coming out of the pot.

15 Q. Okay. How long can someone continue to
16 work at SLED once they participate in the program?

17 A. The way we agreed with these employees to
18 return to work, they accepted an agreement to work
19 in four-year increments.

20 Q. Okay. Can a person participate in the
21 program and then come back and do it again?

22 A. Yes. And my yes is contingent upon the
23 way it functioned in the past. We have a new
24 director now. So he will be dictating how that will
25 work.

1 Q. Okay. I've got some documents I want to
2 ask you some questions about.

3 (Exhibit No. 2 was marked for
4 identification.)

5 BY MR. HARLING:

6 Q. I'll hand you what's been marked
7 Deposition Exhibit No. 2. Take a look at that and
8 tell me if you recognize it.

9 A. I do.

10 Q. Can you tell me what that is?

11 A. This is a segment that was taken from the
12 online Retirement System Web site regarding the
13 Police Officer Retirement System and our earnings
14 limitation.

15 Q. Let me ask you -- up on the top left-hand
16 corner there's some handwriting. Do you know whose
17 handwriting that is?

18 A. That handwriting is my handwriting.

19 Q. And it looks like it says 9-11-90?

20 A. Yes.

21 Q. Do you know what that is, 9-11-90?

22 A. 9-11-90 is the section from the code of
23 laws that refers to or addresses this issue.

24 Q. Okay. And underneath that it says 48
25 month. Do you know what that's referring to?

1 A. 48 month there is a -- I don't recall
2 specifically, but there is a 48-month stipulation,
3 and I'm going off the top of my head, that talks
4 about once a person has been in the -- as a retiree,
5 once they return to work and work 48 months, then
6 they would be eligible to go into the actual -- back
7 into the Retirement System again.

8 Q. Who is Travis Turner?

9 A. Travis Turner is a representative from the
10 State Retirement System.

11 Q. He works for the State Retirement System?

12 A. Yes.

13 Q. Okay. And 7-7751 would be his phone
14 number?

15 A. His telephone number, yes.

16 Q. Okay. Did he prepare this document?

17 A. I don't know who prepared this document.

18 It was on the Web site. We just pulled it down and
19 copied it.

20 Q. Okay. When did you pull it down?

21 A. I can't recall the exact date that I
22 pulled this down.

23 Q. Was it before or after this litigation?

24 A. I can't -- oh, it was before.

25 Q. Okay.

1 A. Before.

2 Q. This was something that would have been in
3 your file?

4 A. Yes.

5 Q. Okay. When a person participates in the
6 program we're talking about today do they continue
7 to pay the employee's portion of the retirement?

8 A. Yes. That's dictated by the State. We
9 don't have any say-so as an agency.

10 Q. Okay. They continue to do that when they
11 get into the program? When they participate in --

12 A. When we return them to work as a retiree,
13 yes.

14 Q. Right. Okay. They continue to pay the
15 employee's portion?

16 A. Exactly.

17 (Exhibit No. 3 was marked for
18 identification.)

19 BY MR. HARLING:

20 Q. Ms. Hutto, I'm going to hand you what's
21 been marked as Exhibit 3 to your deposition. Why
22 don't you take a look at that and tell me if you
23 recognize it.

24 A. I do.

25 Q. Tell me what that is.

1 A. In 2001 the agency allowed and opened up a
2 retirement incentive program for employees who, if
3 eligible, would elect to take the program and leave
4 as an early -- kind of an early retirement
5 incentive.

6 Q. Okay. That's different from the one that
7 we're here talking about today?

8 A. It's totally different, yes, it is.

9 Q. Okay. Was a -- and this is a document --
10 let me put on the record that it's Bates labeled 055
11 to 062. And the title of it, it says Notice of the
12 2001 South Carolina Law Enforcement Division (SLED)
13 Voluntary Retirement Incentive Program. Was a
14 document similar to this produced for the retirement
15 program we're here for today?

16 A. No. Because that program was not an
17 actual program. It was just kind of an allowance on
18 a case-by-case basis.

19 Q. Okay.

20 (Exhibit No. 4 was marked for
21 identification.)

22 BY MR. HARLING:

23 Q. I'll hand you what's been marked as
24 Exhibit 4. That is a document Bates labeled 053 to
25 054. Do you recognize that document?

1 A. I do.

2 Q. Can you tell me what that is?

3 A. It's the announcement of the retirement
4 incentive program that we spoke about in the
5 Document 3.

6 Q. Okay. And again Exhibits 3 and 4 have
7 nothing to do with the method/program we're talking
8 about?

9 A. Correct.

10 (Exhibit No. 5 was marked for
11 identification.)

12 BY MR. HARLING:

13 Q. I'll hand you what's been marked as
14 Exhibit No. 5. That is a one-page document Bates
15 labeled 011. I'll ask you to tell me if you
16 recognize that.

17 A. I do.

18 Q. Tell me what that is.

19 A. This is the document that was generated
20 after an employee went to see Chief Stewart to
21 determine whether or not they would -- he would
22 allow them to return to work as a retiree.

23 Q. Is this the document that got the process
24 started for participating in the program we're
25 talking about today?

1 A. Yes.

2 Q. So basically they are requesting that they
3 be rehired with SLED and it states, "I understand
4 that if this does occur, the following provisions
5 apply and I agree to them:" The first is to be a
6 full-time employee with no grievance or reduction in
7 force rights. Was that different than what they had
8 before they participated?

9 A. Yes. As a non-retiree as long as they
10 weren't in a position designated at-will that
11 reported directly to the director or was designated
12 by the State or the agency head as an at-will
13 employee, they were with grievance rights.

14 Q. Okay.

15 A. And so when we talk about at-will we're
16 talking about covered employees with rights.

17 Q. Okay. Were any employees at SLED contract
18 employees, had employment contracts, anyone?

19 A. Actually to me as an HR director that
20 word, contract employee, is kind of contrary to each
21 other. I would have to say no. Anybody that we
22 contracted with we contracted with for services.

23 Q. Okay. Let me back up. SLED does not
24 enter into written employment agreements with people
25 who come to work for them, for agents, for law

1 enforcement?

2 A. Not for services.

3 Q. What would they do contracts for?

4 A. If they were working on a different --
5 now, you said for agents?

6 Q. Right. For SLED agents, for the law
7 enforcement personnel?

8 A. No. No, we wouldn't.

9 Q. Okay. There's a line item for salary. It
10 says, "Salary: 10.3 percent less than previous base
11 salary (no longevity pay), reduction of health
12 insurance cost to agency if utilized." Can you tell
13 me where that 10.3 percent figure comes from?

14 A. Actually when I was saying the 10.6, we're
15 talking about over a period of time that figure
16 fluctuated with the Retirement System.

17 Q. Okay.

18 A. Every July 1 possibly. That's where that
19 10.3 came from.

20 Q. Okay. So that 10.3 would reflect the
21 employer's contribution to the Retirement System as
22 of April 19, 2004?

23 A. Yes.

24 Q. Okay. What does reduction of health
25 insurance cost to agency if utilized mean?

1 A. As a retiree, retirees are entitled to
2 insurance benefits under the retiree program. If
3 they elected to take the active health insurance,
4 then, of course, we would have to pay that cost and
5 would then have to compensate for that.

6 Q. That would be deducted from their salary
7 if they decided to do it?

8 A. Well, yes. Yes.

9 Q. If they were not in the program, would
10 they still have to pay that cost?

11 A. When you say if they --

12 Q. Is the reduction of health insurance cost
13 to agency if utilized item on this form, is that
14 something different than what they were receiving or
15 experiencing when they were just regular employees?

16 A. Was that something different? I'm sorry.
17 I'm confused a little bit.

18 Q. Yeah. Let me ask it again. On this form,
19 the request to be rehired form, which is Exhibit No.
20 5, it says, "The following provisions apply and I
21 agree to them:" And one of them is a line item that
22 says, "Salary: 10.3 percent less than previous base
23 salary (no longevity pay), reduction of health
24 insurance cost to agency if utilized."

25 Is that provision -- is that provision

1 different than what they were experiencing when they
2 were employees of SLED and not retirees?

3 MR. WOODINGTON: Are you talking
4 about just the reduction of health insurance cost
5 part of it?

6 MR. HARLING: Yes.

7 BY MR. HARLING:

8 Q. Were they paying for their own health
9 insurance or was SLED paying for it?

10 A. Well, there's two payments. You know,
11 you've got the employer's share and then you've got
12 the employee's share.

13 Q. For health insurance?

14 A. For health insurance you've got both.
15 Under the retiree, of course, as a retiree, the
16 State doesn't pay a contribution -- I mean, the
17 agency doesn't pay a contribution share. Under the
18 active the State would then -- would have to pay a
19 employer's share.

20 Q. Okay.

21 A. Does that answer your question?

22 Q. Yes, it did.

23 A. Most of the items on this form is
24 basically just a reiteration -- and I say most of
25 them is a reiteration of what is allowed under the

1 provisions and code of laws of the State where
2 retirees and employees are concerned.

3 Q. That's that 9-11-90 we talked about
4 earlier?

5 A. Yes, it is.

6 MR. HARLING: Let's go off the record
7 one second.

8 (Off-the-record discussion.)

9 (Exhibit No. 6 was marked for
10 identification.)

11 BY MR. HARLING:

12 Q. I'll hand you what's been marked as
13 Deposition Exhibit No. 6. That is a one-page
14 document with the Bates label of 67 on it. And I
15 believe it contains SLED's Bates number of
16 8022-A-001. Will you take a look at that and tell
17 me if you recognize it?

18 A. Yes, I do.

19 Q. Tell me what that is.

20 A. This is a letter that -- from Phil
21 Grimsley. Obviously he had conversed with former
22 Chief Robert Stewart and they had agreed that he
23 would participate and retire. And then Chief agreed
24 to bring him back. So this is his letter of
25 resignation.

1 Q. Okay. Would a form like this have been
2 done for everyone that was approved to participate?

3 A. Yes.

4 Q. Do you know who prepared this memo? It
5 looks like a form memo that was --

6 A. It was probably done by Chief's
7 administrative assistant.

8 Q. Okay. Who was that?

9 A. Let's see. In '04 would have been Glenda
10 Booth.

11 (Exhibit No. 7 was marked for
12 identification.)

13 BY MR. HARLING:

14 Q. I'll hand you what's been marked as
15 Exhibit 7 to your deposition. That's a one-page
16 document Bates numbered 68 on it. Take a look at
17 that and tell me if you recognize it.

18 A. I do.

19 Q. Tell me what it is.

20 A. This is a document from Phil Grimsley.
21 This is the document that he signed accepting the
22 provisions to be -- to retire and return to work.

23 Q. Okay. This one references a 13.6 percent
24 reduction in his previous base salary. Is that what
25 we were talking about how that number fluctuated

1 over time?

2 A. Well, I'm looking at the date here. Yes,
3 it could have been. It could have been. Phil
4 actually participated -- he did it twice. He
5 started and then he left employment and came back.
6 He called Chief and asked if he could return to
7 work.

8 Q. Okay.

9 A. And Chief allowed him to return to work.
10 So this may be the difference in the two documents.
11 And then there may be -- may have been some change.
12 Even though that's the same fiscal year, we could
13 have been operating on an old figure or something.
14 I would have to look to see why those two numbers
15 are different, but these are two different time
16 periods from which Phil obviously participated in
17 the program.

18 Q. Right.

19 (Exhibit No. 8 was marked for
20 identification.)

21 BY MR. HARLING:

22 Q. I'll hand you what's been marked as
23 Exhibit No. 8 to your deposition. That is a
24 one-page document with a Bates number of 010. Do
25 you recognize that?

1 A. I do.

2 Q. Can you tell me what that is?

3 A. This is a follow-up to the Exhibit No. 7,
4 previous document. This is -- Exhibit 7 is the
5 document that they sign when they request to be
6 rehired. Once they have taken their break and they
7 are coming back to work I had my staff to actually
8 go in and do a confirmation of what they had agreed
9 to. And it's just got the figures in terms of the
10 accrual rate of the leave and also their actual
11 salary.

12 Q. And there's a one-sentence paragraph that
13 says, "Because your last day of employment was June
14 1, 2004 and you were compensated for a total of 45
15 days of annual leave, your re-employment date will
16 be July 19, 2004." Is that what we were discussing
17 earlier about the break in service?

18 A. That's exactly what we were discussing
19 before. Because he had 45 days of leave we gave him
20 more than a 15-day break and brought him back after
21 the 45 days had been exhausted.

22 Q. I think you said the purpose for doing
23 that was to save money for the State?

24 A. Well, it was almost like paying them
25 twice, so to speak, if we only gave them a 15-day

1 break and we brought them back earlier than what we
2 had paid out. Chief was very concerned about not
3 costing the State any money to implement this
4 program or this process. And so that was one of the
5 things that he mandated is that if we paid them out
6 for a period of time of leave, then they would not
7 return until that -- those days had actually been
8 exhausted.

9 Q. Okay. They weren't required to work
10 during that time period?

11 A. No, they weren't required to work.

12 Q. They could volunteer if they wanted to?

13 A. If they wanted to, they could volunteer.

14 Q. Did people typically volunteer?

15 A. Some did, some didn't.

16 Q. When they volunteered what types of work
17 would they do?

18 A. I would think they would do whatever was
19 asked of them. I can't give you any specifics
20 because, you know, I didn't have firsthand knowledge
21 of it.

22 Q. When there was no -- there was no special
23 position the volunteers were put in, they were just
24 put back into whatever --

25 A. They weren't really put back into a

1 position.. They were told that if they -- you know,
2 because some of these guys just want to stay in
3 touch. And so they were just allowed to help out
4 during that time period if they wanted to. And they
5 did it understanding it was strictly a volunteer
6 basis.

7 (Exhibit No. 9 was marked for
8 identification.)

9 BY MR. HARLING:

10 Q. Ms. Hutto, I'm going to hand you what's
11 been marked as Exhibit 9 to your deposition. It's
12 got a Bates number on the bottom of 009. Take a
13 look at that and tell me if you recognize it.

14 A. I'm sorry?

15 Q. Do you recognize that?

16 A. I do recognize it. I'm sorry.

17 Q. Tell me what that document is.

18 A. This document is almost the same document
19 as the previous document, Exhibit 8. Throughout
20 this entire process and especially during this time
21 of year we're getting different policy changes,
22 regulation changes, and whatnot. And it reflects a
23 statement about the language of the document not
24 creating -- necessarily creating a contract. And so
25 we were just transferring that information over to

1 our documents at that point.

2 It's primarily the same thing as the
3 previous document, No. 8, just in a different format
4 where we actually explain to them that they were --
5 had no grievance rights. And, of course, we then
6 refer to it at-will and did a further explanation of
7 what that was.

8 Q. Okay.

9 A. Provided them the salary and also detailed
10 out for them what those contribution rates were and
11 also outlined the leave and again the dates.

12 Q. Okay. Under the salary provision it says,
13 "You will have a reduction of 13.6 percent in your
14 salary to cover the amount it will cost SLED to pay
15 the employer portion of retirement." Is that
16 correct?

17 A. You're asking me if that's what it says?

18 Q. Yes.

19 A. Yes.

20 Q. And then next to that it says, "The 6.5
21 percent employee portion of retirement will no
22 longer be deducted from your check." Is that
23 correct?

24 A. Yes.

25 Q. And the number that's written next to that

1 is a dollar figure of 39,828?

2 A. Yes.

3 Q. To the best of your knowledge, is that
4 the -- is that the reduced salary that Mr. Jowers
5 would have been paid for participating in the
6 program?

7 A. This is the salary he returned -- he was
8 rehired, yes. He would have been rehired at that
9 salary.

10 Q. Okay. And it says there the reduction in
11 the salary is to cover the amount it will cost SLED
12 to pay the employer portion of retirement?

13 A. That's what it says, yes.

14 Q. Okay. That was No. 9.

15 (Exhibit No. 10 was marked for
16 identification.)

17 BY MR. HARLING:

18 Q. I'll hand you what's been marked Exhibit
19 No. 10. It's got a Bates No. 69 on the bottom of
20 it. I'll ask you to take a look at that and tell me
21 if you recognize that document.

22 A. I do.

23 Q. Tell me what that is.

24 A. This is another document. And I think
25 this one may reflect a difference in time -- I know

1 it reflects a difference in time frame, but again I
2 think, and I'm not sure because I don't have all of
3 the information in front of me, but, as I said,
4 Mr. Grimsley 'accepted the program initially, left,
5 and came back.

6 Being that this document is after July 1,
7 the salary difference may reflect a cost of living
8 increase that may have been implemented after July
9 1.

10 Q. Okay. Who is Captain Drakeford?

11 A. Captain Drakeford is Stacy Drakeford, who
12 was Phil Grimsley's captain.

13 Q. Is Stacy Drakeford still at SLED?

14 A. Stacy Drakeford is retired also.

15 Q. Is he retired retired, like gone?

16 A. He's retired and gone, yes. You have to
17 ask that question as retired and gone.

18 Q. Yeah.

19 (Exhibit No. 11 was marked for
20 identification.)

21 BY MR. HARLING:

22 Q. I'm going to hand you what's been marked
23 as Exhibit 11 to your deposition. It's got a Bates
24 label of 70 on the bottom of it. Take a look at
25 that and tell me if you recognize it.

1 A. Yes.

2 Q. Tell me what that is.

3 A. This is the follow-up document that would
4 have followed Mr. Grimsley's return. I can't tell
5 you which -- it had to be the latter time just in
6 looking at the dates, but this would have been the
7 confirmation after he had signed the initial
8 agreement.

9 Q. And again next to the salary provision of
10 that it says, "You will have a reduction of 13.6
11 percent in your salary to cover the amount it will
12 cost SLED to pay the employer portion of
13 retirement." Is that correct?

14 A. That's correct. That's what it says.

15 (Exhibit No. 12 was marked for
16 identification.)

17 BY MR. HARLING:

18 Q. Ms. Hutto, I'm going to hand you what's
19 been marked Exhibit 12 to your deposition. It's got
20 a Bates label of 012. If you'll take a look at that
21 and tell me if you recognize that document.

22 A. I do.

23 Q. Tell me what that is.

24 A. This is a document, a letter that reflects
25 a cost of living or a GI, general increase, that's

1 granted by the legislature to State employees. We
2 sent this letter -- I sent this letter to Mr. Jowers
3 just to confirm the changes in his salary. It also
4 reflects the percentage amount that the law
5 enforcement officers received as a result of a study
6 in 2005.

7 Q. Is that where they had those consultants
8 come through and ask everybody what they did and how
9 much you got paid to do it and then they came back
10 and did a presentation and said everyone is not
11 making enough money and this is what you should be
12 making?

13 A. Pretty much.

14 Q. I'm trying to remember the name of the guy
15 that came out to Lexington and did one for us that
16 time. It says that the -- this document is
17 basically talking about raises that were given to
18 SLED employees?

19 A. Yes.

20 Q. And it reflects the adjustments that were
21 13.55 percent that were made to those raises?

22 A. Correct.

23 Q. Was that adjustment made at SLED?

24 A. Yes.

25 Q. Where did that money go?

1 A. Where did the money go? You ask that
2 question again.

3 Q. Well, the money was sent to SLED to pay
4 the SLED agents; is that right?

5 A. Uh-huh.

6 Q. And the money was reduced by 13.55
7 percent?

8 A. Yes.

9 Q. When that money was reduced there was
10 money given -- SLED kept --

11 A. It remained in the pot for other personal
12 services.

13 Q. Okay.

14 (Exhibit No. 13 was marked for
15 identification.)

16 BY MR. HARLING:

17 Q. I'm going to hand you what's been marked
18 as Exhibit 13 to your deposition. That is a
19 two-page document with a Bates label of 007 through
20 008. If you'll take a look at that and tell me if
21 you recognize it.

22 A. I do.

23 Q. Is that the memo you talked about earlier
24 in your deposition from Chief Stewart?

25 A. It is.

1 Q. Tell me what the purpose of that memo was.

2 A. The purpose of the document, I think, was
3 to clarify some issues and some concerns that agents
4 had with the coming of the end of the first
5 four-year period for those who were participating
6 and who had retired and come back to work.

7 Rank was a issue that had come up among
8 some of the younger staff agents because they felt
9 if the agents who were participating in the program
10 were going to be allowed to keep returning, then
11 they would lose their opportunity to -- and would
12 not get the opportunity to have rank.

13 And so Chief addressed that here in
14 notifying them that when a person -- if a person was
15 allowed to return the second time, that they would
16 not be returning with rank in a supervisory
17 capacity. And that was one of the main concerns of
18 this document.

19 It was also to let the staff know that
20 there was going to be more scrutiny in terms of who
21 was going to be allowed to come back and that we
22 were going to be looking at definitely -- even
23 though the intent of the program was to secure, you
24 know, and to maintain and retain some specialized
25 skills, that we were going to be retaining even

1 more -- being more -- having more scrutiny with that
2 process.

3 Q. Right. Just because somebody got to
4 participate in the program the first time doesn't
5 mean they are going to get to do it the second time?

6 A. Exactly.

7 Q. Look on the second page of that up at the
8 top, up at the top of the first paragraph. It says,
9 "As to accrued leave, the law does not permit a
10 second annual leave payout." Is that what it says?

11 A. Yes.

12 Q. Okay. So the first time you want to go
13 and get paid out you had to sit out for the number
14 of days you were paid out for?

15 A. Yes.

16 Q. Second time you don't get paid for any
17 annual leave. So you either use it or lose it?

18 A. Exactly.

19 Q. Okay. And then if you came through the
20 second time, was it the 15 days like the statute
21 says that you had to sit out?

22 A. Yes.

23 Q. Okay.

24 (Exhibit No. 14 was marked for
25 identification.)

1 BY MR. HARLING:

2 Q. I'll hand you what's been marked Exhibit
3 14. It's a one-page document with a Bates number of
4 014 on it. I'll ask you to take a look at that and
5 tell me if you recognize it.

6 A. I do.

7 Q. Tell me what that is.

8 A. This is just an acknowledgment statement
9 that the agents who were participating in the
10 retiree program had received the document, the
11 letter from Chief that was marked Exhibit 13. This
12 was just to make sure that we had an acknowledgment
13 that they received the information.

14 Q. All right. In the -- I guess in the
15 sentence there are -- there's a phrase that's in
16 parentheses that says, "Agents Participating in
17 Retirement/Rehire Program." Is that the name of
18 this program? Is that what it was called?

19 A. That's what they referred to it as. It's
20 hard -- I still say it's not -- it wasn't actually a
21 program because there were no specific things
22 outlined. It was just a method by which we
23 processed retirees in and out, but that's what it
24 was referred to in this document.

25 Q. Okay.

1 (Exhibit No. 15 was marked for
2 identification.)

3 BY MR. HARLING:

4 Q. I'll hand you what's been marked as
5 Exhibit 15. It's a one-page document with a Bates
6 label of 046 on it. Take a look at that and tell me
7 if you recognize that.

8 A. I do.

9 Q. Tell me what that is.

10 A. This is a document that was written and
11 generated by me to retirees. We had several
12 people -- several of our retirees start to kind of
13 bombard our office wanting copies of these documents
14 and it was really putting a lot of added stress on
15 the staff.

16 So what we decided to do is just in one
17 full sweep we went through the files of all the
18 retirees and pulled those documents and made them
19 available to them as a way of kind of to manage that
20 activity.

21 Q. And the CC on the bottom of that is to
22 Major Mark Keel. And that's the person referred to
23 as the chief of staff earlier?

24 A. Yes, it is.

25 Q. And he was the attorney?

1 A. Yes.

2 Q. Thank you.

3 (Exhibit No. 16 was marked for
4 identification.)

5 BY MR. HARLING:

6 Q. Ms. Hutto, I'm going to hand you what's
7 been marked as Exhibit 16 to your deposition. I'm
8 going to ask you to take a look at that and tell me
9 if you recognize it.

10 A. I do.

11 Q. Tell me what that is.

12 A. This is a letter that was given to
13 Mr. Grimsley from our director, Reginald Lloyd, in
14 June of '08. We -- and I say we as an agency. We
15 decided to separate several of these at-will
16 employees. And this was the letter of notification
17 to those individuals.

18 Q. Why was the decision made to separate
19 these employees?

20 A. I would have to relent to Mr. Lloyd on
21 that.

22 Q. I understand. I understand. In this
23 letter it describes it as the law enforcement
24 retirement/retention plan; is that correct?

25 A. Yes. That's what the letter says.

1 Q. Okay.

2 A. But I think, as you can see, there's been
3 different references to it and one of the reasons
4 why is because it didn't actually have a name.

5 Q. Right. There's been some different
6 terminology I've seen. How many people who were
7 participating in this plan were let go at this same
8 time period?

9 A. I didn't come prepared. I could provide
10 that information to you later. I didn't come
11 prepared to give you that today.

12 Q. Okay. Who is Deputy Chief Neal Dolan?

13 A. He's our deputy chief. He's an assistant
14 of Reginald Lloyd.

15 Q. Is he an attorney?

16 A. No, he's not.

17 Q. Who is Assistant Chief Timothy James?

18 A. He's now former Assistant Chief Tim James.
19 He was in the chain of command in the administrative
20 offices.

21 Q. And Inspector Richard Hunton?

22 A. Richard is one of our inspectors. He's in
23 charge of training and -- training and -- let's just
24 say training. I'm sorry. I can't --

25 Q. That's fine. And you said --

1 A. Retain so much.

2 Q. You said Assistant Chief Timothy James is
3 no longer with SLED?

4 A. Yes. He's former Chief James.

5 Q. Do you know where he is now?

6 A. He is working -- employed with Lexington
7 County Hospital, which is where he came from.

8 Q. I believe he was over at Lexington County
9 and then Cayce for a little while?

10 A. Yeah. He's been -- yeah. He's been
11 around a little bit.

12 MR. HARLING: Off the record.

13 (Off-the-record discussion.)

14 (A recess transpired.)

15 (Exhibit No. 17 was marked for
16 identification.)

17 BY MR. HARLING:

18 Q. I'll hand you what's been marked as
19 Exhibit 17 to your deposition. Ms. Hutto, that is a
20 copy of SLED's answers to our interrogatories we
21 sent over when the case first got started.

22 If you will look at the response to
23 Interrogatory No. 1. It references the names of
24 persons known to the parties or counsel to be
25 witnesses concerning the facts of the case it lists

1 out a couple of people. I think we've talked about
2 a majority of them. We talked about former Chief
3 Stewart. And he was involved with the creation of
4 the program; is that correct?

5 A. Yes.

6 Q. And was he the primary person involved in
7 the creation of it?

8 A. He and Cindy.

9 Q. And he was involved in speaking to each of
10 the individual agents when the program was first
11 created and made the final determination as to
12 whether or not they could participate in it?

13 A. Yes.

14 Q. When did he leave SLED?

15 A. In November of 2008.

16 Q. Was former Chief Stewart hands on as far
17 as the day-to-day operations of SLED?

18 A. Very, yes.

19 Q. Would you say he was very familiar with
20 this program?

21 A. Yes. Now, one thing I will say now, in
22 terms of the intricate details of processing it, of
23 course, he probably was not because he -- once his
24 decisions were made he left it to me and my staff to
25 process it.

1 Q. And when you talk about the processing,
2 what do you mean?

3 A. Once he had met with the employees and the
4 documentation flow, getting them in and out of the
5 agency would have been my responsibility.

6 Q. Got it. And the next one listed is
7 Ms. Konduros, Cindy Konduros. And she was Chief
8 Stewart's executive assistant?

9 A. Yes.

10 Q. And her level of knowledge would be
11 similar to that of Chief Stewart's?

12 A. I would say yes.

13 Q. Would you say Ms. Konduros was more or
14 less knowledgeable than you about this or about the
15 same?

16 A. At the onset probably more.

17 Q. She would have more information about the
18 creation of it?

19 A. Yes.

20 Q. Okay. But after the creation you all's
21 level of knowledge would be similar?

22 A. Yes.

23 Q. And Mr. Keel we discussed earlier. He was
24 the former chief of staff and he was also an
25 attorney?

1 A. Yeah. He was an attorney.

2 Q. He was not -- he was an attorney, but he
3 was not a SLED -- he was not SLED's attorney?

4 A. Right.

5 Q. Okay. Was he involved with the creation
6 or do you know?

7 A. I don't know. I don't know how involved
8 he would have been and whether or not he even -- how
9 many -- I don't know.

10 Q. Okay.

11 A. I don't know.

12 Q. You don't know what level of knowledge
13 he's got regarding the program?

14 A. Exactly. I don't know.

15 Q. Okay. Chief Lloyd is the next one. He
16 would obviously know about the program as it exists
17 today; is that correct?

18 A. Yes.

19 Q. As far as the creation of the program,
20 would he have any knowledge regarding that?

21 A. I would say no.

22 Q. His knowledge base would pick up when he
23 became director in late '08, early '09?

24 A. In February of '08. No. I'm sorry. This
25 is '09. Yeah, February of '08.

1 Q. Okay. And did Chief Stewart leave in
2 November 2007 then?

3 A. Exactly. I'm sorry.

4 Q. That's okay.

5 A. Please beg by pardon on that one.

6 Q. That's okay. He left in November of 2007
7 and Mr. Lloyd came in in --

8 A. February of 2008.

9 Q. Okay. And that's when his knowledge base
10 would pick up?

11 A. Yes.

12 Q. Okay. Obviously the next one is you.
13 We've already discussed about your knowledge. The
14 next one is Ms. Coker. And she was --

15 A. Ms. Coker was our benefits counselor. She
16 handled our retirement.

17 Q. Right. Would she have knowledge of the
18 creation of the program, do you think?

19 A. No, she would not.

20 Q. She would just know how it worked after it
21 was created?

22 A. Exactly.

23 Q. Who is Rick Kelly?

24 A. Rick Kelly works at the University of
25 South Carolina obviously. I'm not sure about his

1 participation unless he's somebody that Chief may
2 have spoken to. I'm not sure.

3 MR. WOODINGTON: I'll tell you. He
4 used to be with the Budget and Control Board.

5 MR. HARLING: Is he no longer with
6 them?

7 MR. WOODINGTON: Yeah. Long gone.

8 THE WITNESS: No.

9 MR. WOODINGTON: Same with Osbourne.

10 BY MR. HARLING:

11 Q. Both of them used to be with the Budget
12 and Control Board?

13 A. Yes.

14 Q. Other than that, do you have any
15 independent knowledge of Mr. Kelly's information?

16 A. I don't.

17 Q. Is that true for Mr. Osbourne?

18 A. That's correct.

19 Q. Next witness listed is Vance J. Bettis,
20 Esquire?

21 A. Vance is our outside attorney.

22 MR. WOODINGTON: I would remind the
23 witness not to go into the substance of any
24 conversation between Vance and yourself.

25 THE WITNESS: Okay.

1 MR. WOODINGTON: Or anybody else at
2 the agency.

3 BY MR. HARLING:

4 Q. Without going into the substance of any
5 communications that Mr. Bettis had with you, have
6 you had prior to this litigation ensuing any
7 conversations with Mr. Bettis regarding this program
8 or plan, without going into the substance of it?

9 A. My first instinct is to say no, but Vance
10 has been working with us a long time. So there may
11 have been some casual conversations, but no.

12 Q. And again without going into the substance
13 of anything that Mr. Bettis may have said or that
14 you were told that he said, to your knowledge did
15 Chief Stewart have any conversations or meetings
16 with Mr. Bettis regarding this program?

17 A. I'd have to relent to Chief Stewart. I
18 don't know.

19 Q. Is that true for any other employees at
20 SLED as far as their potential interactions with
21 Mr. Bettis?

22 A. Yes. He probably did, but I don't know
23 for sure.

24 Q. Okay.

25 (Exhibit No. 18 was marked for

1 identification.)

2 BY MR. HARLING:

3 Q. I'll hand you what's been marked as
4 Exhibit 18 to your deposition. Ms. Hutto, these are
5 SLED's responses to our first request for production
6 of documents. Basically it's a legal document where
7 we sent over requesting certain documents be
8 provided to us.

9 If you will flip to Request No. 8. What
10 we've requested is all correspondence or E-mail to
11 or from any party to this action. And it says,
12 "Defendant is continuing to review computer
13 information of former SLED officials in order to
14 determine whether any other responsive information
15 exists." Can you tell me what the status of
16 reviewing that computer information is?

17 A. If I recall, this was in reference to
18 whether or not Cindy or Chief would have had
19 anything on their computer. And it's my
20 understanding that there were no E-mails or
21 documentation filed.

22 Q. Did you have any E-mails related to this?

23 A. Related to the --

24 Q. Program?

25 A. Correspondence in maybe answering

1 questions to employees or something like that. It's
2 hard for me to say yes or no. In eight years I've
3 probably had E-mails. I can't -- I don't want to
4 say no because I don't want to lie, but I can't
5 recall specifically.

6 Q. Have you checked your E-mail to see if you
7 had anything?

8 A. Yes.

9 Q. Did you find anything?

10 A. What we had I think we sent to you guys.

11 MR. WOODINGTON: If that's the case,
12 we didn't send you anything, to the best of my
13 knowledge.

14 MR. HARLING: Yeah, I didn't get any
15 E-mails.

16 MR. WOODINGTON: I think I read this,
17 I'm not trying to get cute or anything, but this
18 referred to E-mails -- correspondence and E-mails
19 that went to -- outside the agency and not
20 inter-agency.

21 THE WITNESS: That went outside the
22 agency?

23 MR. WOODINGTON: From or to any --
24 well, I guess you could say from SLED. I don't
25 know.

1 BY MR. HARLING:

2 Q. Do you think you have E-mails that are
3 related to the retirement program?

4 A. I'll have to look. I may. You're talking
5 about eight years.

6 Q. Yes, ma'am.

7 A. I don't know that there's anything left on
8 my computer. I mean, you know, over a period of
9 time that stuff kind of disappears, the E-mails,
10 because over an eight-year period they can't house
11 all of that stuff. So I would --

12 MR. WOODINGTON: We'll add it to the
13 list.

14 MR. HARLING: Yeah. And again
15 subject to -- I think those may be very important
16 and they may be highly trivial, but I'd like to --

17 MR. WOODINGTON: Well, regardless of
18 what she remembers right here today, I'm pretty sure
19 I asked her. So it's not like, oh, we just realized
20 it. I would call this a double-check.

21 MR. HARLING: That's fine.

22 (Exhibit No. 19 was marked for
23 identification.)

24 BY MR. HARLING:

25 Q. Ms. Hutto, I'll hand you what's been

1 marked as Exhibit 19. Again that is SLED's answer
2 to our second set of interrogatories. Again those
3 were questions that we sent over.

4 The first one we sent was, "Identify the
5 statute or statutes SLED relied upon when creating
6 the retirement program at issue in this matter." In
7 the response we got there were some stated
8 objections, but it says, "Subject to the objections,
9 this Defendant would advise that the actions taken
10 by SLED which are the subject of this litigation
11 were taken pursuant to the normal statutory powers
12 of the agency with respect to personnel, including
13 S.C. Code annotated 8-15-10 and 23-3-10, and any
14 pertinent regulations or policies issued thereunder.
15 These actions were taken after consultation with the
16 Budget and Control Board." Is that correct?

17 A. Are you asking me if that's what it says?

18 Q. Did I read that correctly? Yes, ma'am.

19 A. You did. Yes.

20 Q. Okay. Let me ask you this. What I just
21 read, is that factually accurate?

22 A. I would have to relent to Chief Stewart
23 and Cindy Konduros.

24 Q. Was the statute -- statutory section
25 9-11-90 referenced at all, to your knowledge?

1 A. Again are you referring to the creation?

2 Q. Yes, ma'am.

3 A. I would have to relent to them. I don't
4 know what they relied upon to create.

5 Q. Okay. How about the implementation of it
6 or the administration of it?

7 A. Well, you're talking about in terms of
8 what you just read when you say the implementation
9 of it?

10 Q. Uh-huh. Was South Carolina Code Annotated
11 Section 9-11-90 referenced at all in the
12 implementation of this program, to your knowledge?
13 That's the one that talks about the 48 months, the
14 15 days.

15 A. Was it referenced in the creation?

16 Q. In the implementation?

17 A. In the implementation?

18 Q. Uh-huh.

19 A. Yes.

20 Q. Okay.

21 MR. WOODINGTON: If that's the case,
22 it was an oversight on my part then.

23 BY MR. HARLING:

24 Q. And the second one is, "Identify the
25 number of SLED employees who have participated in

1 the SLED retirement program at issue in this
2 matter." And it's approximately 85 to 90 total have
3 participated; is that correct?

4 A. That's correct.

5 Q. Okay.

6 A. I'm not sure -- I'm confused on --

7 Q. Let me try and clear it up. Tell me what
8 your confusion is.

9 A. It referred to the statute. Never mind.
10 I think I understand. Never mind.

11 Q. If you have any questions or if I can
12 clear up anything, please let me know and I will do
13 my best to clear up any confusion you may have. You
14 don't have any questions for me?

15 A. No.

16 Q. Okay. I'm sorry. I thought you were --
17 that's fine. And I think we already discussed this
18 earlier, but the way records are kept at SLED, is it
19 correct that the salary allocation amounts -- you
20 can't speak to the salary allocation amount, that's
21 what Mr. Birnie is the best person to talk to about
22 that; is that correct?

23 A. Yes.

24 Q. Okay.

25 (Exhibit No. 20 was marked for

1 identification.)

2 BY MR. HARLING:

3 Q. I'm going to hand you what's been marked
4 as Exhibit 20 to your deposition. That's got a
5 Bates range from 296 to 307. Take a look at that
6 document and tell me if you recognize it.

7 A. I do.

8 Q. Tell me what that is.

9 A. This is the report that I referred to
10 earlier that I said came from either the comptroller
11 general or the treasurer's office that recorded the
12 transaction of the retiree contributions.

13 Q. Okay. This document or these documents,
14 which appear to go from June 2003 to June 2009 -- if
15 you'll check that and just make sure I'm right. It
16 looks like they have run dates from June 2003 to
17 June 2009?

18 A. That's correct.

19 Q. And this is the document that reflects how
20 much is paid by SLED to the Retirement Systems for
21 the police officers and for the regular employee
22 retirement; is that correct?

23 A. That's correct.

24 Q. Okay. And on the first page that's Bates
25 labeled 296 that is a run date of June 16, 2003; is

1 that correct?

2 A. That's correct.

3 Q. And it says, "Period ending date June 16,
4 2003." Is this -- when this document is sent to
5 SLED is that confirming the amount that has already
6 been paid or is that telling SLED this is what you
7 need to pay?

8 A. This is confirming what's already taken
9 place.

10 Q. Okay. So for -- I guess fiscal year is
11 probably not the right -- is that right?

12 A. Fiscal year.

13 Q. Okay. For the fiscal year of 2003,
14 according to the document on Page 296, the South
15 Carolina Retirement System employee contributions
16 withheld were \$11,292.76; is that right?

17 A. Okay. Let me explain what we sent. If
18 you notice, there's a handwritten -- right up under
19 the run date there's a handwritten notation that
20 should have 7-1 of that particular year.

21 Q. That says 7-1-03?

22 A. Yes.

23 Q. Okay.

24 A. Based on the inquiry or the
25 interrogatories, what I provided was the first run

1 of the fiscal year so that the rate for that fiscal
2 year could be reflected..

3 Q. Got it. Okay.

4 A. So that's what you have.

5 Q. Okay.

6 A. So you have the first one of the fiscal
7 year. So based on the question that you asked, the
8 answer would be no.

9 Q. Okay.

10 A. That does not reflect the entire year.

11 Q. Okay. That would just have been from
12 January -- let me back up. I'm confusing me and
13 you. Let's back up. What time frame is reflected
14 in the document on Page 296?

15 A. The first pay period in that fiscal year.

16 Q. The first pay period in that fiscal year?

17 A. Yes. Each one of these should reflect the
18 first pay period in each fiscal year. And that was
19 to show the actual contribution rate.

20 Q. So this is just -- this doesn't show the
21 annual contribution of SLED, this shows the
22 contribution for SLED for --

23 A. That particular period.

24 Q. And are these available for every pay
25 period?

1 A. They should be. We went back and found
2 the first pay period of the fiscal year.

3 Q. All right. Let me do this. Tell me what
4 the numbers mean. I thought those were annual
5 numbers, but they seem --

6 A. No. The objective of what I -- when I
7 found this report the objective was to show -- if
8 you look at the contribution rates to the left, if
9 you look at 1-B, it says contribution rate.

10 MR. WOODINGTON: 2-B.

11 THE WITNESS: 2-B. I'm sorry. 2-B.
12 You see the SCRS and then you see the PORS. That's
13 the contribution rate. If you look at No. 3-B, you
14 add that .2 on the PORS side, the accidental -- for
15 the group life. No. 4 is the accidental death
16 contribution. And you add that and you come up with
17 a total contribution rate for that fiscal year.

18 BY MR. HARLING:

19 Q. Okay. The employee contribution withheld,
20 No. 1 at the top, does that reflect just for one pay
21 period?

22 A. Yes, it does.

23 Q. Okay. So I know -- and I know this is an
24 inaccurate way to get to this number, but
25 technically if I multiplied that by 52, that would

1 give --

2 MR. WOODINGTON: No. Pay period is
3 two weeks.

4 THE WITNESS: It would be --

5 MR. WOODINGTON: No. It's half of
6 24.

7 BY MR. HARLING:

8 Q. 26. I'm sorry. 26.

9 A. 24. 24.

10 Q. Two a month?

11 A. Yes.

12 Q. 1st and 15th of every month?

13 A. 24, yes.

14 Q. Okay. Okay.

15 A. It would be difficult to do that
16 calculation because with the employees coming in and
17 out in terms of hiring and separations that number
18 would fluctuate.

19 Q. How often are these reports generated?

20 A. Just based on my memory, because they are
21 actually coming out of our payroll office, I recall
22 quarterly, I believe, but I would have to
23 double-check. I think quarterly.

24 Q. Can you check on that and get me as many
25 of these as you can?

1 A. Yes.

2 Q. I was looking at them and I thought --

3 A. For the same period?

4 Q. From, I think, 2003 to 2009. If they are
5 done -- if there's one for each pay period, then
6 there should only be -- there should be 24 done a
7 year. So that's like 150 pages.

8 A. Well, it may be -- yeah. I guess maybe I
9 didn't understand what you were asking in the
10 interrogatory. And I think we tried to -- I think
11 we communicated back to try to get some
12 clarification. And what I did was just provided you
13 what I thought -- provided you with what you asked.

14 Q. Okay. What I was trying to get was the
15 total amounts that were given per employee, but
16 Mr. Woodington told me that that's not -- this is
17 the only way the information is maintained?

18 A. Right. And that's why I provided you
19 this, so you could see how it was maintained,
20 because there's no way to get the per employee
21 amount.

22 Q. But there's a way to get the per pay
23 period amount though?

24 A. Yeah. I can -- yeah. I'll try. Whatever
25 they -- whatever frequency they created, we'll get

1 it to you if that's what you want.

2 Q. Okay. Yeah. That's what I want. Thank
3 you. Thank you. Because when I was looking at
4 those numbers I thought they looked awful low, but,
5 I mean, maybe there's --

6 MR. WOODINGTON: That's No. 4 on the
7 list of things on the to do list.

8 THE WITNESS: Well, it was a start.
9 I just -- like I said, I just didn't know what --

10 MR. HARLING: I understand. I
11 understand.

12 MR. WOODINGTON: I didn't understand
13 the question or the answer, to be honest with you,
14 until today.

15 THE WITNESS: But do you see what I
16 was trying to provide you?

17 BY MR. HARLING:

18 Q. Yes, ma'am. Yeah, I see where you're
19 headed with it. You were trying to establish what
20 the contribution -- the employer's contribution rate
21 per fiscal year from 2003 to 2009?

22 A. Exactly. And it's also to show you how it
23 was actually done so that you would not -- so you
24 would know it wasn't done per employee.

25 Q. Right. Got it. Okay. I follow. And

1 this document is prepared by the comptroller?

2 A. Yes.

3 Q. And the comptroller gets the salary from
4 SLED?

5 A. The comptroller processes the salary. So
6 they have that information.

7 Q. Okay. So they basically take the total --

8 A. Because they actually send the information
9 to the treasurer's office to cut the check.

10 Q. Okay. So the comptroller gets the --
11 they've already got the SLED salary information,
12 they know what all the salaries are?

13 A. Yes.

14 Q. They know the percentage?

15 A. Yes.

16 Q. And they just do some quick math and that
17 comes up with these numbers and --

18 A. In other words, that's where the -- the
19 comptroller's office is where the SLED payroll meets
20 the Retirement System.

21 Q. Got it. Got it. Okay. Who do you deal
22 with at the comptroller's office?

23 A. There's several people there. Our payroll
24 person actually deals with the comptroller general's
25 office unless there's some specialized question and

1 I will call them.

2 Q. Who is the person that would know the most
3 about the SLED salaries out there at the
4 comptroller's office?

5 A. Who would know the most about SLED
6 salaries at the comptroller general's office?

7 Q. Yes, ma'am.

8 A. I can't answer that question.

9 Q. Who is your primary contact down there?

10 A. I would have to give you our contact in
11 our office, Carol Templeton.

12 Q. Carol Templeton. And what is her title at
13 SLED?

14 A. She's our payroll administrator.

15 Q. Okay. And these total salaries under the
16 PORS, P-O-R-S, column, where would -- where would
17 the participants in this program that we're talking
18 about today, where would -- what line would they be
19 under? Would they be under total members' salaries
20 under A-1 or would they be under A-2 or would they
21 be somewhere else?

22 A. They would be probably a combination of
23 both. Under 2-A, that's the employer contribution
24 and what the employer contribution would balance
25 against. If you look at 2-A-2 --

1 Q. 2-A-2. Okay.

2 A. It says total retiree's salaries. That's
3 where those salaries would be.

4 Q. That would be where the SLED -- like
5 Mr. Grimsley --

6 A. Any retirees that we would have, their
7 salaries would be in that amount.

8 Q. Okay. That would be where Mr. Grimsley
9 and Mr. Jowers would be?

10 A. Yes. All SLED retirees.

11 Q. Okay. Would there be any other retirees
12 in that number or would that just be all the program
13 participants in that?

14 A. No. No. That's all retirees. There's no
15 differentiation between those that, you know, take
16 the program and those who -- that's them, anybody
17 that's retired from SLED.

18 Q. That's retired and came back and went to
19 work and got a paycheck?

20 A. TERI or --

21 Q. Okay. 2-A-2 on Page 296, that is going to
22 have TERI?

23 A. That's going to have all retirees.

24 Q. All retirees?

25 A. Regardless of what they do or where they

1 came from.

2 Q. Got it. All of them. All retirees. So
3 somewhere in that number is --

4 A. And this is regardless of whether they
5 retire from us or anybody else.

6 Q. Got it. Got it. Okay.

7 A. Anybody that's retired from State
8 government and working at SLED would be in that
9 amount.

10 Q. Okay.

11 MR. WOODINGTON: Can we go off the
12 record for a second?

13 MR. HARLING: Sure.

14 (Off-the-record discussion.)

15 BY MR. HARLING:

16 Q. Ms. Hutto, we were off the record for a
17 second. We were talking about the lines and columns
18 on Exhibit 20 on Page 1 or Bates No. 296 of Exhibit
19 20. And we were discussing whether the people who
20 were participating in the program at issue for
21 today's purposes, they were on 2-A-2 as retirees and
22 they would be under the column of PORS; is that
23 correct?

24 A. That's correct.

25 Q. Okay.

1 A. But I definitely want to make the note
2 that all employees who were retired law enforcement
3 from any entity in State government would be listed.

4 Q. Okay. What about -- there was some
5 discussion about the ones who were TERI?

6 A. The TERI employees would be under the SCRS
7 designation.

8 Q. Okay. Is that true for law enforcement
9 personnel that participate in the TERI program?

10 A. Law enforcement persons cannot participate
11 in the TERI program.

12 Q. Okay.

13 A. TERI is for non-law enforcement people.

14 Q. Okay. All right. That would be regular
15 SLED TERI employees under 2-A-2 SCRS. All retirees
16 under the police officers' system would be under
17 PORS?

18 A. That's correct.

19 Q. Okay. Got it. And the contribution rate
20 that was listed on 296 of Exhibit 20 was 13.45
21 percent. And that again reflects the employer's
22 portion that needs to be paid to the Retirement
23 System for PORS?

24 A. Now, there's three different contribution
25 rates.

1 Q. For the -- just for the retirement part,
2 just for retirement; is that correct?

3 A. I'm sorry if I hesitate.

4 Q. No. That's fine.

5 A. When you say just for the retiree part,
6 you have the group life and the accidental death.
7 They also have a contribution rate.

8 Q. Okay. But just for the employer
9 retirement contributions is that rate 13.45 percent?

10 A. That's correct.

11 Q. Okay. And then there's some other
12 percentages that are related to group life
13 contributions and accidental death contributions; is
14 that correct?

15 A. That's correct.

16 Q. Were the plan -- or the program
17 participants' salaries reduced to account for the
18 group life contribution as well?

19 A. It's all combined into one. It's broken
20 down for this particular report.

21 Q. Okay.

22 A. But the contribution rate is a combination
23 of the three.

24 Q. Okay. So the entire SLED employer
25 contribution for 2003 fiscal year ending June 2003

1 would have been 13.8 --

2 A. 45.

3 Q. Or it would have been 13.85 when you're
4 adding the two?

5 A. Oh, when you add the other two, that's
6 correct.

7 Q. Okay. So that's what SLED was statutorily
8 obligated to pay the Retirement System in 2003 for
9 the employer portion; is that right?

10 A. Correct.

11 Q. Okay. And it looks like in 2004 that
12 amount contribution rate, is that 13 percent or it
13 looks like -- I can't tell if that's a 13 or a 13
14 and a number with a percentage sign over it.

15 A. I see 13, but I'm like you. I can't read
16 that other.

17 Q. And so the percentage or, I guess, the
18 employer contribution for 2004 would have been
19 whatever that figure is for contribution rate, be it
20 13 percent or 13.6 percent, it would have been that
21 plus the .2 percent for group life and plus the .2
22 percent for accidental death; is that right?

23 A. Correct.

24 Q. In 2005 it would have been 13.55 percent
25 plus .2 percent plus .2 percent; is that right?

1 A. That's correct.

2 Q. Would have been 13.95 percent. If you'll
3 flip to Page 299 of that exhibit. Can you tell me
4 what that document is? You're smiling. So --

5 A. The environment in employment over the
6 last several years have evolved to the point where
7 employees are not staying with employers for a
8 period of time. So they created the ORP. And
9 that's the optional retirement program.

10 The more recent employees that are
11 retiring or coming into the system have an option to
12 take in lieu of the SCRS and taking an optional
13 retirement with these various carriers. So they can
14 opt to take one of those in lieu of the SCRS. And
15 so that's what that is, those few employees that are
16 participating in that program.

17 And if you notice, the number of
18 participants is listed here because that program is
19 managed a little bit differently and what it allows
20 for is the -- with that evolution of the type of
21 employees or migration of employees so quickly from
22 one employer to another it allows for a different
23 type of administration and it's easier to port these
24 programs into other systems.

25 Q. Okay.

1 A. That option was only given to the
2 employees from that point in time. Employees who
3 were currently working could not go back and opt
4 into this program. So this would not reflect any of
5 the retirees.

6 Q. Okay. This wouldn't be any of our people?

7 A. No.

8 Q. Okay. In 2006 it looks like the
9 contribution rate would have been 13.55 percent plus
10 .2 percent plus .2 percent; is that correct?

11 A. That's correct.

12 Q. Total 13.95 percent. And then on Page 301
13 again there's the ORP contribution?

14 A. And you will have that sheet from this
15 point on because of the implementation of that
16 program.

17 Q. Okay. Doesn't look like it's very
18 popular?

19 A. Well, the younger folks don't quite
20 understand it.

21 Q. Page 302 is the 2007 contribution rate.
22 So that would be 13.65 plus .2 plus .2. That would
23 have been 14.05 percent; is that correct?

24 A. Yes. I'm not adding. So --

25 Q. Okay.

1 A. That's what the individual amounts are,
2 yes.

3 Q. In 2008 it's 13.72 percent for the
4 contribution from the employer and then adding .2
5 percent to that and then again adding .2 percent to
6 that; is that correct?

7 A. That's correct.

8 Q. When the contribution rate went up to
9 13.72 percent was there another adjustment to the
10 participants' salaries?

11 A. No. After the initial onset of the
12 program, if I recall, we may have adjusted it once.
13 After that point we did not adjust it.

14 Q. Then in 2009 it looks like the
15 contribution rate has gone to 14.15 percent and then
16 adding another .2 percent and another .2 percent; is
17 that right?

18 A. That's correct.

19 (Exhibit No. 21 was marked for
20 identification.)

21 BY MR. HARLING:

22 Q. I'll hand you what's been marked Exhibit
23 21 to the deposition. The Bates numbers on that
24 document are from 117 to 125. Do you recognize
25 that?

1 A. I do.

2 Q. Did you assist in preparing that?

3 A. I did.

4 Q. Tell me what this document is.

5 A. This document is just a reflection of the
6 employees -- the retirees under the Police Officer
7 Retirement System that retire and return to work.

8 Q. Okay.

9 A. And their salaries and the dates of their
10 return and the status of their return.

11 Q. Okay. Can you go through -- well, let me
12 ask you -- I'm just going to ask you some questions
13 about the basic headings just to make sure I'm
14 understanding what everything means. The name
15 column on the far left-hand corner, there are
16 numbers assigned to them; is that correct?

17 A. That's correct.

18 Q. And those numbers represent an individual
19 participant in this program; is that correct?

20 A. That's correct.

21 Q. Okay. The last day prior to retirement,
22 that is a --

23 A. That's the date they separated in their
24 initial retirement from SLED.

25 Q. Okay. That's the date they would have

1 sent Chief Stewart the letter dated --

2 A. That's the date they actually retired from
3 SLED.

4 Q. And that's the date that either -- that's
5 the date that would have been reflected in Exhibit 6
6 or a document similar to Exhibit 6?

7 A. Or retirement letter, yes.

8 Q. Yeah. Okay. That's the date they would
9 have retired?

10 A. Yes.

11 Q. Got it. Salary at retirement is how much
12 money they were making?

13 A. At the time of separation.

14 Q. Rehire date?

15 A. The date they would have been rehired.

16 Q. Okay. That's the date that would have
17 been the minimum 15 days, but up to the full amount
18 of leave time they were paid out for; is that
19 correct?

20 A. Correct.

21 Q. Some of these, Nos. 1 through 11, are
22 listed as temporary and there's a date next to that.
23 What does that mean?

24 A. Those employees would have been the
25 employees that participated in that retirement

1 incentive program.

2 Q. That's the one that was listed in --

3 A. Yes.

4 Q. Okay.

5 A. That is totally separate from the way we
6 process the others.

7 Q. And that is the program that is referenced
8 in Exhibit 4 to your deposition; is that correct?

9 A. That is correct. You notice all of them
10 have the '01 retirement date.

11 Q. Right. Correct. Salary at rehire is the
12 salary that they were rehired at when they entered
13 into the program?

14 A. Yes.

15 Q. Okay. Date EMPMT term, that's the date
16 employment terminated?

17 A. Yes.

18 Q. And that is the date that they -- is that
19 the date they left the program?

20 A. Yes. That's the date they left after we
21 were -- after rehire.

22 Q. Okay. And then the salary at term means
23 salary at termination?

24 A. That's correct.

25 Q. And then it says employment -- return

1 employment date?

2 A. That date would have been reflected if
3 they came back after that point.

4 Q. And then rehire salary?

5 A. Would have been the salary that we would
6 have rehired them the second time if they returned.

7 Q. Okay. And the following date employment
8 terminated would have been the second time they --
9 and then it just kind of goes on. It goes out -- it
10 goes out from there. They would terminate, get
11 rehired, work their prescribed period, terminate,
12 rehire, go out from there?

13 A. Correct.

14 Q. Okay. If you would turn to -- turn to
15 Page 120. There are several employees that -- for
16 example, if you look at the second column -- or the
17 second row down where it says salary at term 33,187
18 and next to that it says return employment date
19 8-17-06.

20 A. Okay. Slow down a little bit. Say that
21 again.

22 MR. WOODINGTON: Second line of
23 numbers.

24 BY MR. HARLING:

25 Q. Yes.

1 A. Okay. 33,187.

2 Q. And then the return employment date was
3 8-17-06?

4 A. I'm with you.

5 Q. And then next to that it says the rehire
6 salary was 33,187?

7 A. That's correct.

8 Q. Why was there no reduction in salary
9 there? Did you only reduce the salary once?

10 A. I can't answer that question without
11 knowing who it was.

12 Q. Okay. Were different people handled
13 differently as far as reductions in salary?

14 A. Well, as you pointed out earlier, that
15 first group with the 9-28 separation date, the
16 information there is reflective of their -- of them
17 being -- taking part in that voluntary separation.

18 Q. Got it.

19 A. So if those are the first two entries,
20 they would be a little bit different.

21 Q. Okay. I understand. I understand.

22 A. But they were included because at some
23 point they did sign the agreement.

24 Q. Right. I gotcha. Why were some converted
25 to hourly? If you look on the first page, for

1 example, No. -- it's No. 15.

2 A. No. 15?

3 Q. Uh-huh. Well, I'm going across.

4 A. Going all the way across?

5 Q. Yeah, I'm going all the way across. And
6 it goes from -- went from a salary of 64,000 -- no.
7 I'm sorry. 14. Excuse me. Look at name No. 14.

8 A. Okay. Tell me what line you get to when
9 you go all the way across.

10 MR. WOODINGTON: He's just asking on
11 the first page.

12 BY MR. HARLING:

13 Q. Yeah, it's on the first page, on Page 117.

14 A. He returned as a temporary employee.

15 Q. Okay. And temporary employees are paid
16 hourly?

17 A. Yes.

18 Q. Okay.

19 A. Obviously this person left and agreed to
20 come back and work in that capacity.

21 Q. Okay. The rehire salary for everyone --
22 for everyone after Employee No. 11 looks like they
23 all had the reduction taken in their rehire salary
24 the first time they retired and came back; is that
25 correct?

1 A. Yes.

2 Q. And that was that 13.5, 13.6 percent
3 reduction?

4 A. That's correct.

5 Q. Was the comptroller general notified that
6 they were retiring and coming back at a reduced
7 salary?

8 A. We're not under an obligation to -- first
9 of all, let me understand what you're asking. Was
10 the comptroller general notified?

11 Q. Right.

12 A. When we rehire an employee, we submit their
13 paperwork as a new hire to the comptroller general's
14 office to process their payroll.

15 Q. Okay.

16 A. So I guess the answer would be yes.

17 Q. Okay. And what paperwork was submitted to
18 the comptroller? What forms would they be?

19 A. We enter in an electronic system that's
20 connected and there's a transmission of that
21 documentation. So our payroll person would
22 actually -- actually it's a combination of the human
23 resources office and the payroll office. We would
24 put in a certain amount of information for a
25 designated period of time and then the payroll

1 person would do her part of it. And then, of
2 course, that transmission is made to the comptroller
3 general's office electronically.

4 Q. Okay.

5 A. So there's no paperwork per se.

6 Q. Would that transmission to the comptroller
7 for the new hires list their annual salary?

8 A. It would list -- yes.

9 Q. Okay.

10 A. And then, of course, it's broken down by
11 biweekly amounts.

12 (Off-the-record discussion.)

13 (A recess transpired.)

14 BY MR. HARLING:

15 Q. We were talking about the information
16 that's transmitted from SLED to the comptroller
17 general in electronic format?

18 A. Yes.

19 Q. And one piece of that information that
20 would have been transmitted would have been the
21 annual salary?

22 A. Yes.

23 Q. And we were going to look at a specific
24 example. If you'll look under the name column at

25 No. 32.

1 A. Okay.

2 Q. When the information regarding Employee 32
3 was transmitted to the comptroller general the
4 annual salary would have been listed as what? Would
5 it have been 39,828 or --

6 A. You mean as a new hire?

7 Q. Uh-huh.

8 A. As a new hire it would have been 39,828.

9 Q. That's the amount that would have been
10 sent to the comptroller?

11 A. Yeah.

12 Q. Okay. That information is transmitted.
13 How is that information stored or recorded at the
14 comptroller or do you know?

15 A. I have no idea how the comptroller keeps
16 that information.

17 Q. Is there a record of that information
18 transmitted from SLED?

19 A. It should be, but I'm not sure. I can
20 check.

21 Q. Okay.

22 MR. HARLING: Will you add that to
23 the list of --

24 MR. WOODINGTON: Doesn't sound too
25 promising, but I'll add it.

1 THE WITNESS: Well, if you would be
2 clear in terms of what exactly you want and for what
3 period you want? I mean, tell me --

4 BY MR. HARLING:

5 Q. Well, Employee 32 on July 19, 2004, was
6 rehired by SLED. And at some point prior to that
7 something was sent to the comptroller saying his
8 annual salary is 39,828; is that correct?

9 A. Yes.

10 Q. All right. I need to get whatever record
11 you have, if any, of that information being
12 transmitted.

13 A. Okay. On Employee No. 32?

14 Q. Yes, ma'am.

15 MR. WOODINGTON: Is there any reason
16 we couldn't do that for the two named plaintiffs?

17 MR. HARLING: That is one of the
18 named plaintiffs.

19 MR. WOODINGTON: Oh, okay.

20 MR. HARLING: Yeah. And I wasn't
21 trying to be cryptic. I was just trying -- yeah.
22 If you could do it for both.

23 THE WITNESS: I recognize the salary.

24 MR. HARLING: If you could do it for
25 both of the named plaintiffs, that would be --

1 MR. WOODINGTON: All right.

2 THE WITNESS: So you want a report to
3 reflect that their salaries were transmitted to the
4 comptroller general's office as a new hire?

5 MR. HARLING: Yes. Whatever
6 information that was sent to the comptroller that
7 you've got.

8 MR. WOODINGTON: It sounds like it
9 would just be the form -- the new employee form that
10 you fill out.

11 THE WITNESS: Well, it goes to the
12 comptroller general's office, but we enter it into a
13 system. So it's not actually a form.

14 MR. HARLING: And on the other end I
15 can send a subpoena over to the comptroller and we
16 can do -- I'm just thinking out loud.

17 MR. WOODINGTON: It will add
18 complications.

19 THE WITNESS: So you want that on
20 both of them?

21 MR. HARLING: Yes, ma'am.

22 THE WITNESS: So we'll just go --
23 I'll go by the rehire date?

24 MR. HARLING: Right. Right.

25 MR. WOODINGTON: We're going to be

1 looking at those two persons' files anyway just to
2 make sure we've got anything that may be relevant
3 that's in them.

4 BY MR. HARLING:

5 Q. When that comptroller form is prepared,
6 Exhibit 20 is prepared, does the comptroller just
7 total up all the salaries that they have for SLED
8 employees and make that calculation? That's based
9 on information they already have; is that correct?

10 A. I would assume so. I'm not familiar with
11 their process.

12 Q. Mr. Birnie would be the one?

13 A. Well, no, not from the comptroller
14 general's office. You have to -- in terms of how
15 they prepare the report, you would have to -- you
16 would have to get with them. I'm not sure.

17 Q. Okay.

18 A. I doubt Steve would know their process.

19 Q. Okay. I want you to go back to Exhibits
20 11 and 9. And what I want to specifically ask you
21 about is the language in that salary portion that
22 says you have a reduction of 13.6 percent of your
23 salary to cover the amount it would cost SLED to pay
24 the employer portion of retirement. And it says
25 that in both of them. Does that portion of that

1 mean that the employee was covering the amount SLED
2 was supposed to pay?

3 A. No.

4 MR. WOODINGTON: Object to the form
5 of the question.

6 BY MR. HARLING:

7 Q. What does that mean then to you?

8 A. I'm trying think if I can think about
9 what --

10 Q. Take your time.

11 A. That was an explanation of why there was a
12 difference in the salary.

13 Q. That was -- I'm sorry. Say that again.

14 A. That was an explanation of why there was a
15 difference in the salary from when they were
16 employed previously based on the understanding and
17 the agreement that they signed. This was just
18 explaining that difference so that the employee
19 would understand that that's what they had agreed
20 to.

21 Q. So the employee was covering the amount it
22 would cost SLED to pay the employer portion of
23 retirement?

24 MR. WOODINGTON: Object to the form
25 of the question.

1 THE WITNESS: When you say

2 covering --

3 BY MR. HARLING:

4 Q. I'm not saying covering. That's what the
5 document says.

6 A. I understand. I guess I would have to say
7 based on the way it's written, yes.

8 Q. I know I'm jumping around with exhibits a
9 little bit. Let me get you to go back to Exhibit
10 21, which is the spreadsheet with compensation on
11 it. That's that big document..

12 A. Oh, the big one?

13 Q. Yeah.

14 A. Okay.

15 Q. The rehire salary was supposed to be the
16 salary at retirement reduced by the percentage; is
17 that right?

18 A. Yes.

19 Q. Do you know if that -- if the rehire
20 salaries are 13.6 percent less than the salary at
21 retirement?

22 A. Well, some of them may have been a little
23 bit different because you notice that rate
24 fluctuated.

25 Q. Right.

1 A. But, yes, it should have been.

2 MR. HARLING: I don't have any
3 further questions.

4 MR. WOODINGTON: I don't either. I
5 don't have any questions.

6 MR. SMITH: Not I.

7 MR. HARLING: Subject to the -- we're
8 going to keep the deposition open subject to those
9 documents we requested. You want to put the list on
10 the record?

11 MR. WOODINGTON: Yeah. Let me do the
12 best I can with that. I think it was four or five.
13 I missed a few. No. 1 would be any documents not
14 previously produced from files of the two named
15 plaintiffs, that is that relate to retirement, not
16 just any old thing. Okay.

17 MR. HARLING: Whatever you've got
18 will be --

19 MR. WOODINGTON: Well, I mean, you
20 know, it can go back to 1970 something, but --

21 MR. HARLING: Yeah, let's just do
22 retirement.

23 MR. WOODINGTON: The results of a
24 search of Chief Stewart and Cindy's files, if
25 there's anything to be found or any files to be

1 found.

2 MR. HARLING: Right.

3 MR. WOODINGTON: No. 3 is how many
4 were, quote, unquote, let go in July '08 by Reggie
5 Lloyd, which is probably the majority of them, I
6 have a feeling.

7 No. 4 would be Ms. Hutto's E-mails to the
8 extent that they are within the interrogatory
9 question.

10 No. 5 would be as many of these CG reports
11 per pay period as is possible to get.

12 MR. HARLING: Right.

13 MR. WOODINGTON: No. 6, I think, is
14 the only other one. Whatever salary information was
15 communicated from SLED to the comptroller general's
16 office for both of the named plaintiffs starting
17 with the first rehire.

18 MR. HARLING: I believe that is
19 everything.

20 MR. WOODINGTON: That's it.

21 Further Deponent sayeth not.

22 (Whereupon, the taking of the
23 deposition was concluded at 4:44 p.m.)

24

25

1 Certificate of Reporter

2

3 I, Brad H. Thomas, Certified Realtime
 4 Reporter and Notary Public in and for the State of
 5 South Carolina, do hereby certify that I reported
 6 the deposition of LYNN HUTTO on the 26th day of
 7 October, 2009; that the witness was first duly sworn
 8 by me, and that the foregoing 123 pages constitute a
 9 true and correct transcription of the said
 10 deposition.

11

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

16 I further certify that the original of
 17 said transcript shall be hereafter sealed and
 18 delivered to W. JONATHAN HARLING, ESQUIRE, Lewis &
 19 Babcock, LLP, 1513 Hampton Street, Columbia, South
 20 Carolina 29211. This sealed original transcript
 21 shall be retained by the above party, who shall be
 22 responsible for filing same with Court prior to
 23 trial or any hearing which might result in a final
 24 order on any issue.

25

26 In witness whereof I set my hand and seal
 27 this 2nd day of November, 2009.

28

29

30

31 My Commission
 32 expires 12/12/17

33

34

35

36

37

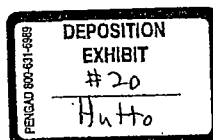
 Brad H. Thomas, CRR
 and Notary Public for the
 State of South Carolina

CPR403HA

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/03

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2003
EMPLOYER NAME: GOVERNORS OFF-SLED					
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS		
1. Employee Contributions Withheld	.00	11,292.76	38,049.13		
2. Employer Retirement Contributions	.00	188,211.06	585,379.74		
a. 1) Total member's salaries	.00	18,908.24	94,224.39		
2) Total retiree's salaries	+	207,119.30	683,604.13		
3) Total Salaries (a.1 + a.2)					
b. Contribution rate		x 10.7%	x 13.45%		
c. Employer retirement contributions (line 2a.3 x 2b)		22,161.77	91,944.76		
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)		207,119.30	683,604.13		
b. Contribution rate		x 0.15%	x 0.2%		
c. Employer contributions (line 3a x 3b)		310.68	1,367.21		
4. Accidental death contributions (if covered) - PORS only					
a. Total salaries (a.1 + a.2)			683,604.13		
b. Contribution rate			x 0.2%		
c. Employer contributions (line 4a x 4b)			1,367.21		
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	33,765.21	132,726.91		
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)	.00	33,765.21	132,726.91		
8. Total Remittance (combine SCRS, PORS & Judicial)			166,494.12		



6022-B-001

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OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATC 06/16/04

7-1-4

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2004
EMPLOYER NAME: GOVERNORS OFF-SLED					
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS		
1. Employee Contributions Withheld	.00	10,266.38	35,961.32		
2. Employer Retirement Contributions					
a. 1) Total member's salaries	.00	171,104.22	553,250.61		
2) Total retiree's salaries	+ .00	+ 23,436.97	+ 123,942.57		
3) Total Salaries (a.1 + a.2)	.00	204,541.19	677,193.18		
b. Contribution rate		x 10.85%	x 13.6%		
c. Employer retirement contributions (line 2a.3 x 2b)		22,192.72	92,098.27		
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)		204,541.19	677,193.18		
b. Contribution rate		x 0.15%	x 0.2%		
c. Employer contributions (line 3a x 3b)		306.81	1,354.39		
4. Accidental death contributions (if covered) - PORS only					
a. Total salaries (a.1 + a.2)			677,193.18		
b. Contribution rate			x 0.2%		
c. Employer contributions (line 4a x 4b)			1,354.39		
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	32,765.91	130,768.37		
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)	.00	32,765.91	130,768.37		
8. Total Remittance (combine SCRS, PORS & Judicial)			163,534.28		

8022-B-002

CPR403NA

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUHDATE 05/15/05

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2005
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS		
1. Employee Contributions Withheld	.00	11,118.13	35,776.76		
2. Employer Retirement Contributions					
a. 1) Total member's salaries	.00	125,299.90	550,409.40		
2) Total retiree's salaries	+ .00	+ 38,411.12	+ 120,749.38		
3) Total Salaries (a.1 + a.2)	.00	223,711.02	671,158.78		
b. Contribution rate		x 10.8%	x 13.55%		
c. Employer retirement contributions (Line 2a.3 x 2b)		24,160.79	90,942.01		
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)		223,711.02	671,158.78		
b. Contribution rate		x 0.15%	x 0.2 %		
c. Employer contributions (Line 3a x 3b)		335.57	1,342.32		
4. Accidental death contributions (if covered) - PORS only					
a. Total salaries (a.1 + a.2)			671,158.78		
b. Contribution rate			x 0.2 %		
c. Employer contributions (Line 4a x 4b)			1,342.32		
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	35,614.49	129,403.41		
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)	.00	35,614.49	129,403.41		
8. Total Remittance (combine SCRS, PORS & Judicial)			165,017.90		

8022-B-003

CPR403NB

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

AURDATE 06/15/05

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2005
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	0	.00		
2.	CITISTREET	3	3,509.59		
3.	ING	4	4,201.11		
4.	TIAA-CREF(SOUTHEAST)	0	.00		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions					
a.	Total ORP Wages				7,710.70
b.	Contribution rate				x 5.800 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)				447.22
3. Group Life Contributions					
a.	Total ORP Wages				7,710.70
b.	Contribution rate				x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)				11.57
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)				458.79

8022-B-004

CPR403NA

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/06

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2006
EMPLOYER NAME: GOVERNORS OFF-SLED					
RETIREMENT CONTRIBUTIONS		JUDICIAL	SCRS	PORS	
1. Employee Contributions Withheld					
a. 1) Total member's Contributions		.00	12,067.00	43,054.00	
2) Total retiree's Contributions		+ .00	+ 294.22	+ 9,771.03	
3) Total Contributions (a.1 + a.2)		.00	12,361.22	52,845.03	
2. Employer Retirement Contributions					
a. 1) Total member's salaries		.00	193,073.31	662,371.35	
2) Total retiree's salaries		+ .00	+ 31,418.00	+ 152,326.73	
3) Total Salaries (a.1 + a.2)		.00	224,491.31	814,698.08	
b. Contribution rate			x 10.8%	x 13.55%	
c. Employer retirement contributions (Line 2a.3 x 2b)			24,245.06	110,391.59	
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)			224,491.31	814,698.08	
b. Contribution rate			x 0.15%	x 0.2%	
c. Employer contributions (Line 3a x 3b)			336.74	1,629.40	
4. Accidental death contributions (if covered) - PORS only				814,698.08	
a. Total salaries (a.1 + a.2)				814,698.08	
b. Contribution rate				x 0.2%	
c. Employer contributions (Line 4a x 4b)				1,629.40	
5. Total Due for the Month (1 + 2 + 3 + 4)		.00	36,943.02	166,495.42	
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)		.00	36,943.02	166,495.42	
8. Total Remittance (combine SCRS, PORS & Judicial)				203,438.44	

8022-B-005

GPR403NB

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/06

EMPLOYER CODE:	201.02	AGENCY:	010	PERIOD ENDING DATE:	06/16/2006
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	0	.00		
2.	CITISTREET	0	.00		
3.	THE HARTFORD	5	5,806.23		
4.	TIAA-CREF(SOUTHEAST)	0	.00		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions					
a.	Total ORP Wages				5,806.23
b.	Contribution Rate				x 5.800 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)				336.76
3. Group Life Contributions					
a.	Total ORP Wages				5,806.23
b.	Contribution rate				x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)				8.71
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)				345.47

8022-B-005

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CPR403NA

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/14/07

7-1-07

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/15/2007
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS		
1. Employee Contributions Withheld					
a. 1) Total member's Contributions	.00	13,688.70	49,672.19		
2) Total retiree's Contributions	+ .00	+ 947.92	+ 8,011.23		
3) Total Contributions (a.1 + a.2)	.00	14,630.62	57,683.42		
2. Employer Retirement Contributions					
a. 1) Total member's salaries	.00	210,593.66	764,188.26		
2) Total retiree's salaries	+ .00	+ 37,479.45	+ 124,995.06		
3) Total Salaries (a.1 + a.2)	.00	248,073.11	889,183.32		
b. Contribution rate		x 11.4%	x 13.65%		
c. Employer retirement contributions (Line 2a.3 x 2b)		28,280.33	121,373.52		
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)		248,073.11	889,183.32		
b. Contribution rate		x 0.15%	x 0.2%		
c. Employer contributions (Line 3a x 3b)		372.11	1,778.36		
4. Accidental death contributions (if covered) - PORS only			889,183.32		
a. Total salaries (a.1 + a.2)			889,183.32		
b. Contribution rate			x 0.2%		
c. Employer contributions (Line 4a x 4b)			1,778.36		
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	43,283.06	182,613.66		
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)	.00	43,283.06	182,613.66		
8. Total Remittance (combine SCRS, PORS & Judicial)			225,896.72		

8022-B-007

CPR403NB

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/14/07

EMPLOYER CODE:	201.02	AGENCY:	DIG	PERIOD ENDING DATE:	06/15/2007
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	0	.00		
2.	CITISTREET	0	.00		
3.	THE HARTFORD	3	4,606.95		
4.	TIAA-CREF(SOUTHEAST)	1	1,212.58		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions					
a. Total ORP Wages					5,819.53
b. Contribution rate					x 6.400 %
c. Employer ORP Contributions (Line 2.a x Line 2.b)					372.45
3. Group Life Contributions					
a. Total ORP Wages					5,819.53
b. Contribution rate					x 0.150 %
c. Employer Contributions (Line 3.a x line 3.b)					8.73
4. Total ORP Contributions due for the Month (Line 2.c + Line 3.c)					381.18

8022-B-008

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OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/12/08

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2008
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS		
1. Employee Contributions Withheld					
a. 1) Total member's Contributions	.00	15,307.96	56,658.69		
2) Total retiree's Contributions	+ .00	+ 1,005.52	+ 8,569.02		
3) Total Contributions (a.1 + a.2)	.00	16,313.48	65,227.71		
2. Employer Retirement Contributions					
a. 1) Total member's salaries	.00	235,506.43	871,673.23		
2) Total retiree's salaries	+ .00	+ 35,296.12	+ 131,031.33		
3) Total Salaries (a.1 + a.2)	.00	270,802.55	1003,504.56		
b. Contribution rate		x 12.48%	x 13.72%		
c. Employer retirement contributions (line 2a.3 x 2b)		33,796.16	137,680.83		
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)		270,802.55	1003,504.56		
b. Contribution rate		x 0.15%	x 0.2%		
c. Employer contributions (Line 3a x 3b)		406.20	2,007.01		
4. Accidental death contributions (if covered) - PORS only					
a. Total salaries (a.1 + a.2)			1003,504.56		
b. Contribution rate			x 0.2%		
c. Employer contributions (Line 4a x 4b)			2,007.01		
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	50,515.84	206,922.56		
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)	.00	50,515.84	206,922.56		
8. Total Remittance (combine SCRS, PORS & Judicial)			257,438.40		

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CPR003NB

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/17/08

EMPLOYER CODE:	201.02	AGENCY:	010	PERIOD ENDING DATE:	06/16/2008
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	1	1,583.33		
2.	CITISTREET	0	.00		
3.	THE HARTFORD	3	4,879.19		
4.	TIAA-CREF(SOUTHEAST)	1	1,436.29		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions:					
a.	Total ORP Wages				7,898.81
b.	Contribution rate				x 7.480 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)				590.83
3. Group Life Contributions					
a.	Total ORP Wages				7,898.81
b.	Contribution rate				x 0.150 %
c.	Employer Contributions (line 3.a x Line 3.b)				11.85
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)				602.68

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CPR403NA

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC, 29211-1960

RUNDATE 06/16/09

EMPLOYER CODE: 201.02		AGENCY: 010		PERIOD ENDING DATE: 06/16/2009	
EMPLOYER NAME: GOVERNORS' OFF-SLED					
RETIREMENT CONTRIBUTIONS		JUDICIAL	SCRS	PORS	
1. Employee Contributions Withheld					
a. 1) Total member's Contributions	.00		15,031.58		45,952.25
2) Total retiree's Contributions	+ .00		+ 879.64		+ 3,441.34
3) Total Contributions (a.1 + a.2)	.00		15,911.22		49,393.59
2. Employer Retirement Contributions					
a. 1) Total member's salaries	.00		231,256.72		706,956.58
2) Total retiree's salaries	+ .00		+ 18,756.89		+ 52,943.85
3) Total Salaries (a.1 + a.2)	.00		250,013.61		759,900.43
b. Contribution rate			x 12.74%	x	14.15%
c. Employer retirement contributions (Line 2a.3 x 2b)			31,851.74		107,525.91
3. Group life contributions (if covered)					
a. Total salaries (a.1 + a.2)			250,013.61		759,900.43
b. Contribution rate			x 0.15%	x	0.2%
c. Employer contributions (Line 3a x 3b)			375.02		1,519.80
4. Accidental death contributions (if covered) - PORS only					
a. Total salaries (a.1 + a.2)					759,900.43
b. Contribution rate				x	0.2%
c. Employer contributions (Line 4a x 4b)					1,519.80
5. Total Due for the Month (1 + 2 + 3 + 4)		.00	48,137.98		159,959.10
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)					
b. Adjustments					
c. Total (a + b)					
7. Net Remittance (Line 5 +/- Line 6c)		.00	48,137.98		159,959.10
8. Total Remittance (combine SCRS, PORS & Judicial)					208,097.08

8022-B-0011

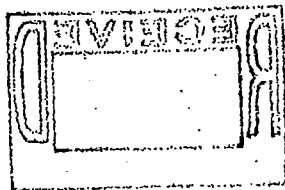
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CPR403NB

OFFICE OF COMPTROLLER GENERAL
DEPOSIT OF RETIREMENT CONTRIBUTIONS
SOUTH CAROLINA RETIREMENT SYSTEMS
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/09

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2009
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	4	6,118.15		
2.	CIIISIREET	0	.00		
3.	THE HARTFORD	2	4,060.70		
4.	TIAA-CREF (SOUTHEAST)	1	1,450.62		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions					
a.	Total ORP Wages				11,629.47
b.	Contribution rate				x 7.740 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)				900.12
3. Group Life Contributions					
a.	Total ORP Wages				11,629.47
b.	Contribution rate				x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)				17.44
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)				917.56



8022-S-0012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 08-CP-40-8854

Phillip D. Grimsley, Sr., and
Roger M. Jowers, on behalf of
themselves and others similarly situated,

Appellants,

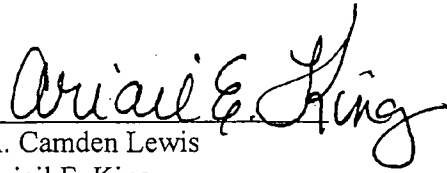
vs.

South Carolina Law Enforcement Division
and the State of South Carolina,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and this Record complies with the August 13, 2007 Order of the South Carolina Supreme Court which requires redaction of certain personal identifying information.



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June 6, 2013

Attorneys for the Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 08-CP-40-8854

Phillip D. Grimsley, Sr., and
Roger M. Jowers, on behalf of
themselves and others similarly situated,

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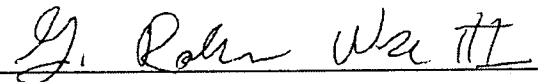
South Carolina Law Enforcement Division
and the State of South Carolina,

Respondents.

PROOF OF SERVICE

I, Robinson Wise, secretary to the law firm of Lewis, Babcock & Griffin, L.L.P., hereby
certify that I have served a copy of the Record on Appeal upon opposing counsel by hand delivering
a copy of same to opposing counsel addressed as follows:

Kenneth P. Woodington, Esquire
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Robinson Wise

This 7th day of June, 2013.