

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

R. Keith Kelly, Circuit Court Judge

Appellate Case Number 2016-000232

Civil Action Number 2014-CP-42-1759

Denise Parker,.....Respondent,

v.

The National Honorary Beta Club,.....Appellant.

RECORD ON APPEAL

VOLUME 1 OF 2

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¹ The Court's Exhibit No. 1 includes all pages and lines of Ken Dinkins' Deposition Transcript, including portions not read into the record. Portions of the designated excerpts not read into the record are noted on Page 455.

State of South Carolina

County of Spartanburg

) IN THE COURT OF COMMON PLEAS

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) 2014-CP-42-01759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

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Order on Defendant's Motion for
Summary Judgment

I. Introduction

Plaintiff commenced this action on April 29, 2014. Plaintiff's Amended Complaint sets forth three causes of action: (1) Breach of Contract; (2) Breach of Contract Accompanied by Fraudulent Act; and (3) Promissory Estoppel.

On August 19, Defendant filed its Motion for Summary Judgment as to all three claims. Plaintiff filed an opposition with exhibits on August 31, 2015. Defendant filed a supporting Memorandum with exhibits on September 1, 2015. This matter came before the Court for hearing on September 2, 2015. Both parties were represented by counsel.

Based on the parties' submissions and arguments presented, the Court denies Defendant's Motion for the reasons set forth herein.

II. Summary of Facts

For purposes of this Motion, the following facts are set forth in light most favorable to the non-moving party, Plaintiff.

On October 24, 2013, Plaintiff met with three members of Defendant's Board of Directors, the chair of the board, the chairman of the Board's Internal Affairs Committee ("IAC"), and another member of the IAC, Dr. Ken Dinkins. The IAC was addressing

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employee concerns with employees, who had been elected by their peers to meet with the IAC as the Staff Liason Committee. Plaintiff was an elected member of the Staff Liason Committee.

Three days prior to the meeting, Defendant's executive director, Bob Bright, had issued Plaintiff an "Employee Conference" – the first discipline she received in her 38-year career with Defendant. At the meeting, another member of the Staff Liason Committee urged the IAC to ask Plaintiff about the recent discipline Bright issued Plaintiff. Plaintiff was reluctant to speak out for fear that Bright would terminate her. Dinkins informed Plaintiff: "Denise, if we ask you a question, you have to answer it and Bob Bright can't fire you for answering our question." Based on this assurance, Plaintiff answered the IAC's questions.

On November 4, Bright terminated Plaintiff's employment. He informed Plaintiff of two reasons: (1) that she was negative with the Board; and (2) that she failed to respond to emails. Plaintiff has introduced evidence that she did not fail to respond to emails and that Bright was informed of this by both her supervisor and Defendant's IT manager.

III. Standard

Summary judgment is appropriate only when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Engert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)).

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In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues.

Conner v. City of Forest Acres, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002) (citations omitted); *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 133-134, 659 S.E.2d 496, 498 (2008).

At this stage, Plaintiff "is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

IV. Discussion

The parties agree that Plaintiff was employed for an indefinite period of time. "An employment contract for an indefinite term is presumptively terminable at will Th[is is a] mere presumption[], however, which the parties can alter." *Cape v. Greenville County Sch. Dist.*, 365 S.C. 316, 319, 618 S.E.2d 881, 883 (2005).

Plaintiff relies on the promises made by Dr. Dinkins on behalf of the IAC at the October 24 meeting. Whether such promises alter the presumed at-will status presents a question of fact for the jury. *See Burns v. Universal Health Services*, 361 S.C. 221, 234-35, 603 S.E.2d 605, 612 (Ct. App. 2004).

Defendant relies on a disclaimer Plaintiff signed to argue that summary judgment is appropriate on all three claims. Defendant's reliance on a signed disclaimer, however, does not warrant summary judgment under these circumstances because the last disclaimer does not purport to disclaim oral promises to not terminate under certain conditions, the law does not permit attempts to disclaim future oral promises, see *King*

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v. *PYA/Monarch, Inc.*, 453 S.E.2d 885, 889 (S.C. 1995) (citations omitted), the disclaimer is not conspicuous, *Williams v. Riedman*, 339 S.C. 251, 264, 529 S.E.2d 28, 34 (Ct. App. 2000), it does not meet the standards set forth in the statute cited by Defendants, see S.C. Code Ann. § 41-1-110, and -- absent both applicability of and compliance with Section 41-1-110 -- even a conspicuous disclaimer merely presents issues of fact for the jury. *Burns*, 361 S.C. at 235, 603 S.E.2d at 612. Further, the evidence that Plaintiff did not read the disclaimer or understand how it applies creates an issue for the jury. *Jones v. General Electric Co.*, 503 S.E.2d at 181 ("Jones testified the representatives went over the rules, but no one at G.E. pointed the disclaimer information in the Foreword which stated the handbook was not a guarantee of employment for a specified period and that employment remained at will. Jones stated he did not read the information in the Foreword until after he was discharged."); *Shelton v. Oscar Mayer Foods Corp.*, 459 S.E.2d 851, 857 (S.C. Ct. App. 1995) (claim not precluded on the basis that he had actual notice of a disclaimer where employee admitted he had "glanced" at the disclaimer, but had not read the handbook based on employee's testimony that he "pretty much understood," after receiving the handbook that, "you had to do something wrong to get fired."); *Hannah v. United Refrigerated Servs.*, 430 S.E.2d 539, 542 (S.C. Ct. App. 1994) (issue of fact exists where employee read handbook, but it is not established that he read inconspicuous disclaimer).

Defendant further argues that Dr. Dinkins lacked authority to bind Defendant when he promised that Mr. Bright could not terminate Plaintiff for speaking to the IAC/Liason Committee. "Generally, agency is a question of fact." *Town of Kingstree v. Chapman*, 405 S.C. 282, 315, 747 S.E.2d 494, 511 (Ct. App. 2013) (quoting *F & G*

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Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct. App. 2000)); *Murphy v. Jefferson Pilot Commc'ns Co.*, 364 S.C. 453, 463, 613 S.E.2d 808, 813 (Ct. App. 2005) ("The issues of agency relationship and scope of employment are generally for the jury.") (citing *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 115, 341 S.E.2d 385, 387 (Ct.App.1986); *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct.App.1984)). Plaintiff has presented sufficient evidence of actual and apparent authority, as well as ratification, to warrant having the jury resolve this issue as well. Defendant's policies charge the IAC with meeting with employees and gathering information regarding the operations of the organization. Dr. Dinkins himself testified that the IAC/Liason Committee's assurances are given and necessary. Further, both the Board Chair and the Chair of the IAC were in attendance when Dr. Dinkins instructed Plaintiff, and nobody dissented or issued any clarification if one was needed.

Finally, as to the breach of contract accompanied by fraudulent act claim, Defendant also has argued that there is no fraudulent conduct independent from the breach itself. The breach in this case is the termination for speaking to the Board. In addition, Plaintiff has introduced evidence that other reasons given by Bright were knowingly false, which is an act independent of the breach itself. That is all that is required under South Carolina law. *Conner v. City of Forest Acres*, 348 S.C. 454, 466, 560 S.E.2d 606, 612 (2002).

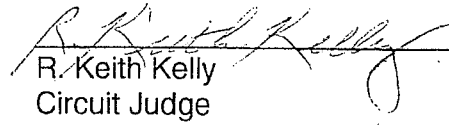
V. Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment is
DENIED.

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IT IS SO ORDERED.


R. Keith Kelly
Circuit Judge

This 11 day of September, 2015

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State of South Carolina

County of Spartanburg

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) IN THE COURT OF COMMON PLEAS

) 2014-CP-42-01759

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)
) Order Denying Defendant's Motion
) JNOV or New Trial and Dismissing
) Plaintiff's Promissory Estoppel Claim

I. Procedural Background

Plaintiff commenced this action on April 29, 2014. Plaintiff initially brought two claims: Count I for breach of contract and Count II for promissory estoppel. During the course of discovery, Plaintiff amended the complaint with the consent of Defendant.

Plaintiff's Amended Complaint sets forth three claims: Count I for breach of contract; Count II for breach of contract accompanied by fraudulent act; and Count III for promissory estoppel.

This matter came to trial on September 28, 2015. The jury heard evidence on September 28, September 30, and October 1st. The parties presented closing argument on October 2nd, and the jury deliberated and returned a unanimous verdict that same day.

The jury found for Plaintiff on both Count I (breach of contract) and Count II (breach of contract accompanied by fraudulent act). The jury awarded actual damages of Five Hundred Eighteen Thousand Six Dollars (\$518,006) and punitive damages of

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Three Hundred Fifty Thousand Dollars (\$350,000).¹ The Court took Count III (promissory estoppel) under advisement as Defendant insisted that it be tried by the Court because the action arises in equity. The Court entered Judgment in the amount of Eight Hundred Sixty-Eight Thousand Six Dollars (\$868,006) as of October 2, 2015.

By agreement of the parties, the Court extended the deadline for submission of post-trial Motions by ten days.

On October 12, 2015, Defendant timely filed its Motion for judgment notwithstanding the verdict (JNOV) and for a New Trial. Defendant raises three arguments as to why it is entitled to judgment as a matter of law (Motion ¶¶ A(1)-(2)), as well as arguments for a new trial absolute under the thirteenth juror doctrine (*id.* ¶ B(1)) and for new trial nisi remittitur (*id.* ¶ B(1)).

Now before the Court are Defendant's Motion JNOV or for New Trial as well as Count III for promissory estoppel. For the reasons that follow, Defendant's Motion is DENIED and Plaintiff's claim for promissory estoppel is DISMISSED.

II. Summary of Evidence Presented

For purposes of background, the Court briefly describes the evidence presented at trial.

Defendant employed Plaintiff for approximately thirty-eight years. In 2013, Bob Bright became executive director of Defendant. By all accounts, there were morale issues in the office after Bright became executive director. The parties disagree, however, as to both the cause or source of the issues and the substance of them.

¹ The jury listed the actual damages under both counts. The Court instructed the jury, as the parties agreed, that actual damages would be awarded only one time to avoid any double recovery.

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Plaintiff was selected by the other coworkers to serve on the staff liaison committee ("SLC"). The purposes of the SLC were to address employee concerns at work, to serve as a liaison with management, and to meet with the Internal Affairs Committee of Defendant's Board of Directors ("IAC").²

In September, 2013, the SLC met with employees, and then with Bright. The SLC was addressing issues, including divisions within the staff and morale, which it discussed with Bright.

On October 25, the SLC was scheduled to meet with the IAC in conjunction with the Board's regularly-scheduled meeting. Bright knew that the meeting would occur and knew of Plaintiff's role on the SLC.

On October 21, Bright issued Plaintiff a written reprimand – the first she ever received in her 38-year career. The reprimand lists three areas of concern: (1) Failure to sustain a professional growth strategy; (2) Does not demonstrate an exceptional mastery of professional skills; and (3) Professional manner in which coworkers are addressed. The sum and substance of the warnings relates to purported complaints that two convention coordinators made about Plaintiff related to issues about which the parties presented competing and conflicting evidence.

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² Article 1, Section 1(A) of the Beta Club Constitution provides that Defendant is governed by a National Board of Directors. Article 1, Section 1(K) states: "[t]he National Board shall set up such organizational committees as shall be necessary for the proper supervision and direction of the affairs of the organization." Pursuant this provision, Defendant established an Internal Affairs Committee. Under the policies adopted by the Board, the Internal Affairs Committee is charged with gathering information, "[m]eeting with staff to receive staff input concerning daily operations," "[m]eeting with the Staff Liaison Committee about suggestions and concerns for improving the National Beta Club," and other duties to learn about and deal with internal issues.

Plaintiff testified that, during the meeting, Bright made a comment about how he could have people lined up on the sidewalk to fill Plaintiff's job, which Plaintiff testified as leaving her fearful of termination.

It is undisputed that nobody expressed any concerns about Plaintiff between the time of her warning on October 21 and the SLC-IAC meeting on October 25.

The IAC-SLC meeting occurred in the context of employee concern about job security morale in the office. One of the IAC Committee members was Dr. Ken Dinkins -- vice chair of the Board, chair of the South Carolina council, and a prior Board Liaison and member of several committees. At the meeting with Dr. Dinkins were other members of the IAC, who also were high-ranking officers of the Board. Pat Stout was Board chair (*Id.* at 34:22 -- 35:4). Dennis Campbell was chair of the IAC, board liaison, and vice chair of the Board at the time. Board members Stan Long and Mark Conley also were present.

Plaintiff would not volunteer any information about what Bright had done to her out of fear of her job. Another SLC member, Pat Mabry, told the members of the Board that they needed to ask Plaintiff what happened when she had her employee conference with Bob Bright on October 21st, 2013. Mabry advised that Plaintiff would not volunteer the information. Dr. Dinkins confirmed that Plaintiff was reluctant to speak about her situation and appeared to be fearful.

The parties do not dispute that, at the meeting and in the presence of the other Board members, Dr. Dinkins told Plaintiff that she was required to answer their

questions about what happened. Through Dr. Dinkins, the IAC assured Plaintiff that Bright could not fire her for answering their questions.³

Plaintiff finally told the Board members about her write up and Bright's comments about people waiting in line for her job. Plaintiff also told the Board how Bright accused her of not helping Barbara Anderson (another member of the Committee in attendance), but that Anderson had no problem with Plaintiff helping her.⁴ Dr. Dinkins confirmed that there is no reason to believe Plaintiff provided any information that was not true.

Dr. Dinkins testified that the IAC met with Bright after the meeting with Plaintiff and the SLC. Bright denied that the IAC specifically informed him about Plaintiff's comments. Dr. Dinkins confirmed, however, that he did discuss fears of job security held by employees, as well as concerns about the manner in which discipline was handled. There was no evidence in the record of other employees being disciplined or in fear of their jobs. Bright acknowledged that, during the meeting, he discussed the possibility of terminating Plaintiff's employment.

Defendant does not contend there were any problems with Plaintiff the rest of that day (October 25). The next week (October 28 – November 1), Bright was out of town. Nobody testified that they had any concerns about Plaintiff that week and nobody informed Bright that there were any issues with Plaintiff.

The following Monday, November 4, Bright returned to work. He called Plaintiff into the office. Present were Plaintiff, Bright, and Laura Lewis. The parties dispute

³ Dinkins, in fact, testified that Bright did not have the authority to fire Plaintiff for answering the IAC's questions.

⁴ Plaintiff testified that Bright accused her of not helping a manager, Barbara Anderson. Anderson, however, denied to Plaintiff knowing anything about it when Plaintiff asked her what the issue was about.

what was said during the meeting. Plaintiff testified that Bright told her "I heard you were negative with the Board," and that he was terminating her employment. Bright and Lewis deny that Bright said that he heard Plaintiff was negative with the Board. Bright presented another document, however, that documented a purported concern about "continued negativity."

The November 4 document Bright presented also cited "communication and failure to respond to emails promptly." Defendant did not present any emails to which Plaintiff did not respond. Bright testified he received numbers of emails sent and received from employees and based the alleged failure to respond to the difference in the numbers. Bright acknowledged, however, that the statistics did not actually show that any sent emails related to any received emails. Plaintiff's supervisor at the time informed Bright that Plaintiff was receiving spam emails and UPS notices. Defendant's information technology (IT) head, Jay Moore, also told Bright that some of the emails may be spam. None of the witnesses identified a situation in which Plaintiff did not respond to their emails. As discussed above, there were no complaints from Garland Meyer, or anyone else about Plaintiff being negative since Bright's prior warning.

In discovery responses, Bright stated that the bases for terminating Plaintiff's employment included her "fail[ure] to keep up with advances in computer programs to allow her to perform necessary job functions," that she was "resistant to change and to embrace new ideas," and that she "fail[ed] to keep up her technical skills." In addition to her own testimony, Plaintiff offered testimony from others, including both her supervisor at the time and Moore, to the effect that Plaintiff was adept at operating the technology

at work, and neither Bright nor any other witness for Defendant offered testimony that she was deficient in these areas.

II. Defendant's Motion JNOV

A. Standard

Because Plaintiff prevailed before the Jury, the issue before the Court is not whether Defendant has provided evidence that could support a verdict in its favor. To the contrary, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013). "[T]he trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when the evidence yields more than one inference or its inference is in doubt. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 546, 716 S.E.2d 295, 299 (Ct. App. 2011).

When considering a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Force v. Richland Memorial Hospital*, 322 S.C. 283, 471 S.E.2d 714, 715 (Ct.App. 1996).

B. Discussion

1. Count I: Breach of Contract

a. Sufficiency of the promise

Defendant's first argument as to Count I is that "the alleged promise in this case

does not constitute an enforceable contract." Motion ¶ A(1). Defendant is correct that cases such as *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923 (1999) stand for the proposition that vague assurances of job security, especially if remote to the issue related to the termination, cannot be enforced in contract.

For example, in *Prescott*, the Plaintiff testified that, approximately twenty years prior to his termination, supervisors told him "as long as you do your job, keep your nose clean, that you'd have a job at Farmers Telephone right on." *Prescott*, 335 S.C. at 333, 516 S.E.2d at 924. In *Davis v. Orangeburg-Calhoun Law Enft Comm'n*, 344 S.C. 240, 542 S.E.2d 755 (Ct. App. 2001) the Court of Appeals held that a statement that the employee would "only be terminated for cause" was "not definite enough to alter his at-will status." *Id.* at 249, 542 S.E.2d at 760.

Cases such as *Prescott* and *Davis* stand for the proposition that colloquial terms about "clean noses" or "just cause" are far too indefinable to evidence any intent to be bound. They provide no measurable standard for determining whether, for example, an employee's conduct meets the standard of keeping his or her "nose clean," or whether grounds for termination are "just." As such, they lack the definiteness required to establish an enforceable promise.

Plaintiff is not relying on any vague promise made long before the facts at issue. Rather, she presented uncontroverted evidence that the IAC made a very specific promise to her, which was limited solely to one basis for which she would not be terminated. Not only is there no ambiguity as to the terms of the promise, the fact it was made is not in dispute. In short, it was a specific promise, made to one specific person that was limited to one specific circumstance.

Plaintiff also produced ample evidence that Defendant intended for the promise to be binding. Dr. Dinkins well understood that Plaintiff was not going to answer questions unless the IAC provided assurances of job protection. There simply is no evidence that Dr. Dinkins did not mean what he said on behalf of the Board/Committee. However, for purposes of this Motion, it is enough that there is some evidence to support the notion that he did.

b. Evidence of a breach

Defendant's second argument is that "Plaintiff failed to present any evidence of a breach." Motion ¶ A(2). Although the parties dispute what was said in the termination meeting, Plaintiff testified that Bright informed her that the reason for her termination was that she was negative with the Board. It was for the jury to determine whether to credit Plaintiff's version or that of Defendant's witnesses.

Although the jury was free to rely solely on Plaintiff's testimony, there is other evidence upon which the jury may have relied. For example, "negativity" was specifically listed by Bright on the November 4 document presented at the termination meeting. Although Bright testified that his "continued negativity" comment related solely to negativity towards coworkers (and not the Board), this assertion is based on Bright's repeated insistence that he observed no improvement in Plaintiff's attitude in the intervening week between the IAC meeting and the termination. The jury may have rejected this assertion, however, as Bright was not in the office at any intervening time. Moreover, as discussed above, all defense witnesses conceded there were no issues during that week and nobody complained to Bright about Plaintiff.

The jury also might have rejected Bright's testimony that nobody ever led him to believe Plaintiff spoke to the Board. Dr. Dinkins testified that the IAC reviewed the issues discussed at the meeting with Bright. Dr. Dinkins also acknowledged that the IAC told Bright about employee fear of termination. The record is devoid of any other employee being threatened with termination.

Bright also could have known that it was Plaintiff who was discussed at the IAC/SLC committee from the fact that the IAC specifically discussed employee discipline procedures with Bright right after its discussion with Plaintiff. Dr. Dinkins testified that, in discussing employee concerns with Bright, the IAC told Bright that he should follow "due process" when disciplining employees. The only employee to which that comment might pertain would be Plaintiff. There simply is no evidence in the record of any other employee having been disciplined.

Finally, although Bright denied that he and the committee ever discussed Plaintiff, he specifically testified in his deposition (read to the jury) that he told the IAC he might fire her.

In weighing the credibility of Bright and Lewis, the jury may also have questioned the strength of their purported recollection. Bright admitted at trial – after the reading of his deposition on point – that he does not remember what was said at the Nov. 4 meeting. Lewis repeatedly claimed she could not remember what was said, but claimed specific recall as to what was *not* said. The Court further notes that counsel for

Plaintiff used both Bright's and Lewis's depositions for impeachment purposes, and he did so numerous times in the case of Bright.⁵

Finally, as discussed above, there is conflicting evidence as to the veracity of the other reasons given over time by Bright for the decision to terminate Plaintiff. If the jury did not believe the other reasons offered by Bright for the termination, it could have concluded that Plaintiff's testimony was credible as to the reason she claims Bright gave.

In the end, it was for the jury to assess the credibility of the witnesses and this Court cannot disturb that decision under the standard for motions JNOV. "The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). "[T]he jury does not [even] have to believe uncontradicted testimony. *Vinson v. Hartley*, 324 S.C. 389, 409, 477 S.E.2d 715, 725 (Ct. App. 1996) (citing *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)). Further, as our Supreme Court has recently noted, "neither an appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Bass v. S.C. Dep't of Soc. Servs.*, No. 27593, 2015 S.C. LEXIS 390, at *15-16 (Dec. 2, 2015) (citing *Garrett v. Locke*, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992)).

⁵ There were several other occasions on which the Court needed to instruct Bright to respond to the questions asked. Again, it was for the jury to determine from its own observation of demeanor and other factors charged what weight to accord witness testimony. As discussed above, the Court does not weigh such possible determinations or resolve credibility arguments. Rather, it confines itself to a review of what a reasonable jury could find.

c. Conclusion as to Count I

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count I is DENIED.

2. Count II: Breach of Contract Accompanied By Fraudulent Act

Defendant's third argument is that "Defendant is entitled to judgment on Plaintiffs breach of contract accompanied by fraudulent act claim because Plaintiff failed to present evidence of an independent fraudulent act accompanying the alleged breach of contract." Motion ¶ A(3). Again, Defendant states a generally correct legal principle that this tort requires a fraudulent act that is distinct, yet related to the act constituting the breach of the contract. *See Smith v. Canal Ins. Co.*, 275 S.C. 256, 257, 269 S.E.2d 348, 349 (1980).

The fraudulent act can be "any act characterized by dishonesty in fact, [or] unfair dealing." *Harper v. Ethridge*, 348 S.E.2d 374, 290 S.C. 112 (Ct. App. 1986). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 541, 542, 336 S.E.2d 502, 504 (Ct. App. 1985).

"'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)).

The breach in this case is the termination by Bright for being "negative with the Board," which contravenes the specific promise by the IAC that Plaintiff would not be terminated for providing it information.

The fraudulent act is not the termination itself. Rather, Plaintiff has contended throughout that the fraudulent acts upon which she relies are the pretextual reasons Bright gave at the time and subsequently for the termination.

The act of the termination and the giving of reasons are separate, distinct, and independent of each other. The former may exist without the latter. At the same time, they are related as they must be and the latter accompanies the former. *Conner*, 560 S.E.2d at 612 (recognizing that the fraudulent intent must "relat[e] to the breaching" and that the fraudulent act must "accompany[] the breach.").

Although the appellate courts have recognized that the facts and circumstances of each case will be unique, in this particular context, *Conner* clearly provides clear legal authority to support the jury's determination. In *Conner*, a police dispatcher alleged that her termination for job performance violated provisions in a handbook. After upholding the Court of Appeals' determination that it was for the jury to resolve disputed testimony regarding the termination, the Supreme Court provided guidance as to breach of contract accompanied by fraudulent act. Again, the Supreme Court determined that it was for the jury to resolve the matter. Although the plaintiff argued that there were several fraudulent acts in which the defendant engaged, the Supreme Court found one allegation sufficient to send the case to the jury. The Supreme Court noted: "Primarily . . . Conner's claim is that the City fabricated pretextual reasons for Conner's termination knowing the reasons were false and did not justify termination for cause." *Conner*, 348

S.C. at 466, 560 S.E.2d at 612). The Court held that conflicting testimony as to whether the reasons were false create "a genuine issue of material fact as to whether the City fraudulently breached its contract." *Id.*

As in *Conner*, the giving of allegedly-pretextual reasons for the termination is an act separate and distinct from the termination itself and yet it accompanied it. And, as in *Conner*, it was for the jury to resolve the disputed testimony on this point.

c. Conclusion as to Count II

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count II is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion JNOV is DENIED.

III. Defendant's Motion for New Trial

As noted above, Defendant has moved for both New Trial Absolute and for New Trial Nisi Remittitur

A. Standard

1. New Trial Absolute

The trial court must grant a new trial absolute if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Alternatively, the trial court may grant a new trial absolute when, sitting as the thirteenth juror, it concludes the jury's verdict is not supported by the evidence. Under the Thirteenth Juror Doctrine in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not

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prevailed. *Youmans v. S.C. DOT*, 380 S.C. 263, 272-73, 670 S.E.2d 1, 5 (Ct. App. 2008) (citing *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993)). The thirteenth juror doctrine permits a court to essentially hang the jury "solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (emphasis added, quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)); *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct. App. 2007) ("The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.") (citing *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984)).

However, the jury's determination of damages is entitled to substantial deference. On appeal, the appellate court reviews a denial of a new trial motion for an abuse of discretion. The appellate court will not reverse the trial court's decision on a motion for new trial unless it is controlled by an error of law or is not supported by the evidence. *Duncan v. Hampton County School Dist. No. 2*, 335 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1999).

2. Nisi Remittitur

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). "If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge

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must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). Otherwise, the trial court alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (citations omitted). "However, compelling reasons must be given to justify invading the jury's province by granting a new trial nisi remittitur." *Id.* "Great deference is given to the trial judge 'who heard the evidence and is more familiar with the evidentiary atmosphere at trial,' and who thus 'possesses a better-informed view of the damages than this Court.'" *Id.* (quoting *Vinson v. Hartley*, 324 S.C. 389, 405-06, 477 S.E.2d 715, 723 (Ct. App. 1996)).

B. Discussion

1. Defendant's new trial absolute

Defendant's first new trial argument is that "[t]his Court should set aside the jury's verdict in favor of a new trial absolute on the grounds that the jury's verdict is based on insufficient evidence and that improper arguments were presented to the jury in closing arguments." Motion ¶ B(1).

a. Sufficiency of evidence

Defendant's Memorandum submitted contemporaneously with the Motion references Defendant's JNOV arguments that Plaintiff offered insufficient evidence that, "(a) her at-will employment had been altered by an employment contract; (b) that Defendant had breached that contract; and (c) that Defendant committed an independent fraudulent act accompanying the allege breach." Memo in Support at 11.

Defendant argues that such insufficiency warrants application of the thirteenth juror doctrine.

For the reasons set forth above, as it pertains to the facts in this case, the Court finds that Plaintiff submitted sufficient evidence of a specific promise that altered her at-will employment in one specific regard. Further, there was sufficient evidence that Defendant terminated Plaintiff for the very reason it promised her would not be used as grounds for termination. Finally, there was ample evidence that the reasons given by Bright for his decision are not true.

After a review of the record, the court finds that the verdict is supported by evidence in which a reasonable jury could have reached. The Court declines to exercise its discretion to hang the jury and order a new trial.

b. Closing argument

Defendant next argues that "the jury was exposed to improper argument in Plaintiff's closing statement in that Plaintiff's counsel presented argument to the jury that was unsupported by the record." Memorandum in Support of Motion at 11. Specifically, Defendant contends that it was improper to argue that Bright was sending a shot across the bow" in giving Plaintiff the warning of October 21 when the alleged contract had not been formed until the IAC/SLC meeting of October 25. *Id.*

Defendant did not preserve its argument regarding Plaintiff's closing arguments. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). To preserve an issue for review as to closing arguments, the complaining party must have made a contemporaneous objection. *State ex rel. Wilson v. Ortho-*

Mcneil-Janssen Pharms., 2015 S.C. LEXIS 249, **26-27, 2015 WL 4112411 (S.C. July 8, 2015) (citations omitted); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: "Since there was no contemporaneous objection, this issue is not preserved for appellate review."); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) ("[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review"); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) ("Failure to object to comments made during [closing] argument precludes appellate review of the issue."). For this reason alone, Defendant's effort to seek a new trial must be rejected.

As a separate and independent basis for denying Defendant's Motion, the Court further finds that there was nothing improper about the argument. It is precisely the purpose of closing argument to argue the theories of the case and inferences a party proposes be drawn from the evidence. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 244, 734 S.E.2d 148, 160 (2012) ("[A]n attorney is permitted to argue the evidence and its inferences in her closing argument") (Pleicones, J., concurring).

Whether the contract was formed before or after the warning is irrelevant to the point Plaintiff was making. Plaintiff's theory of the case was that Bright attempted to intimidate her going into the meeting, and that he was successful in doing so. Plaintiff's theory of the case also was that Bright's effort to intimidate her not only provides background as to the issues discussed in the case, but also provides the context as to why Plaintiff would not respond to IAC questions until Dr. Dinkins gave her the specific promise upon which she has relied.

At trial, Defendant itself used the effects of the October 21 meeting to argue that Plaintiff knew she was on "thin ice" and was employed at will. Plaintiff's retort was that this was precisely Bright's intent and the reason for Dr. Dinkins' promise.

Even if Defendant preserved this argument, there simply is no reason to overturn the verdict simply because Plaintiff's counsel discussed Plaintiff's competing interpretation as to the intent and effects of the October 21 warning.

c. Conclusion as to New Trial Absolute Motion

For the foregoing reasons, Defendant's Motion for New Trial Absolute is DENIED.

2. Defendant's new trial nisi remittitur

Defendant also moves for a new trial nisi remittitur on the grounds that "the jury's verdict is excessive and is not supported by evidence in the record." Motion ¶ B(2).

a. Excessiveness

Defendant's excessiveness argument is limited to the amount of actual damages awarded by the jury. See Defendant's Memo in Support at 13-14.

The jury awarded precisely the amount of damages specified in Dr. Alford's Report. (Plaintiff's Exhibit 9). There was no question as to Dr. Alford's qualifications, and his Report was stipulated into evidence by Defendant. It was therefore the jury's right to decide whether to credit some or all of Dr. Alford's conclusions. *Small v. Springs Industries* ("Small II"), 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) (determining that amount of front pay awarded was "within the range of damage testimony presented by [the plaintiff's] experts" and was therefore within the sole province of the jury to determine).

Defendant primarily complains of the amount of lost wages awarded. Def. Memo in Support at 14. Specifically, Defendant argues: "To allow the jury to award six years of front pay without any facts supporting the underlying premise that she would continue working at the Beta Club until retirement age is totally unreasonable given that she was an otherwise at-will employee." *Id.*

Plaintiff worked practically her entire adult life for Beta Club and testified she planned to work there for as long as she could. Given her lengthy tenure and what the jury apparently found to be the lack of any justification for termination, it could be argued that it would be more speculative to assume that Plaintiff would have been terminated prior to retirement. In any event, the Supreme Court has specifically held that it is for the jury to determine how to determine what evidence to credit and to determine for how long Plaintiff would have remained employed. *Shivers v. John H. Harland Co.*, 310 S.C. 217, 221, 423 S.E.2d 105, 107 (1992) ("In *Small II*, the contract . . . was for an indefinite duration. Thus, for the purpose of establishing damages, **it appropriately was left to the jury to determine how long Small would have continued to be employed but for the wrongful discharge.**"). (emphasis added). Likewise, the use of work life expectancy is proper and well accepted for purposes of expert testimony as to future damages. *Campbell v. Paschal*, 290 S.C. 1, 16, 347 S.E.2d 892, 902 (Ct. App. 1986).

The Court finds that the verdict is supported by evidence and is one which a reasonable jury could have reached. Further, the verdict is not so grossly excessive or inadequate that it shocks the conscience of the court and, further, the court finds that the verdict is not the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Further, the Court declines to exercise its discretion to reduce the

verdict based on the Court's determination that the amount of damages awarded is not excessive and within the amount established by Dr. Alford.

b. Insufficiency of evidence

Neither Defendant's Motion nor its Memorandum specifies how the evidence presented was insufficient to support Dr. Alford's opinion. To the extent Defendant is merely relying on the same bases as for its argument regarding the excessiveness of the verdict, the Court again finds that the verdict is supported by evidence in which a reasonable jury could have reached as explained in *Small II* and *Shivers*.

c. Conclusion as to Motion New Trial Nisi Remittur

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittitur is DENIED.

d. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittur is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial is DENIED.

IV. Plaintiff's Promissory Estoppel Claim

Plaintiff has brought a claim for promissory estoppel, which is admittedly based on the same promise that forms the basis of her contract claim. The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Woods v. State*, 314

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S.C. 501, 505, 431 S.E.2d 260, 263 (Ct.App.1993). Contract and promissory estoppel are two separate and distinct legal theories. Contract and promissory estoppel are two different creatures of the law, and they are not legally synonymous; the birth of one does not spawn the other. *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002).

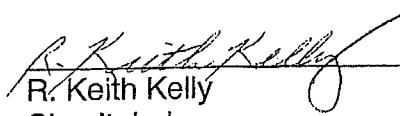
"The doctrine of promissory estoppel is equitable in nature." *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 541-42, 593 S.E.2d 500, 502 (Ct. App. 2004). "[E]quity is generally only available when a party is without an adequate [contractual] remedy at law." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327-28, 721 S.E.2d 447, 449 (Ct. App. 2011) (citations omitted).

The Court posed the following question to the jury: "Did an employment contract exist between Plaintiff, Denise Parker and Defendant, The National Honorary Beta Club?" The jury checked, "Yes." Accordingly, the jury found that there was a contract between the parties. Because a party may only recover under the theory of promissory estoppel where there is no contract, the promissory estoppel claim is hereby DISMISSED.

V. Summary and Conclusion

For the foregoing reasons, Defendant's Motion JNOV is Denied. Defendant's Motion for New Trial is Denied. Plaintiff's claim for promissory estoppel is DISMISSED.

IT IS SO ORDERED.


R. Keith Kelly
Circuit Judge

This 6th day of January, 2016

COUNTY OF SPARTANBURG

Denise Parker

Plaintiff(s)

vs.

The National Honorary Beta Club,

Defendant(s)

Submitted By: Brian P. Murphy
 Address: Brian Murphy Law Firm, PC
 514 Pettigru Street
 Greenville, SC 29601

SC Bar #: 06770
 Telephone #: 864-370-9400
 Fax #: 864-241-1386
 Other:
 E-mail: brian@brianmurphylawfirm.com

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

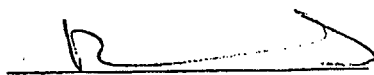
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (980) ☐ Employment Security Comm (990) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: April 25, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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State of South Carolina
County of Spartanburg

) IN THE COURT OF COMMON PLEAS
)
) 2014-CP-42- 1759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

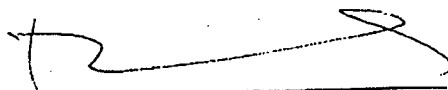
SUMMONS

To: The above-named Defendant:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 514 Pettigru Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted this 25th day of April, 2014.

For the Plaintiff:



Brian P. Murphy No. 6770
C. Alexander Cable No. 100561

Brian Murphy Law Firm, PC
514 Pettigru St.
Greenville, SC 29601
(864) 370-9400
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State of South Carolina

County of Spartanburg

) IN THE COURT OF COMMON PLEAS

) 2014-CP-42- 1759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) Complaint

) Jury Trial Demanded

Plaintiff, through her attorney, would respectfully show as follows:

1. Plaintiff is a resident of Spartanburg County and, at all relevant times, was employed by Defendant in Spartanburg County.
2. Defendant is an organization of unknown corporate/entity status. Defendant's headquarters and principal place of business are in Spartanburg, South Carolina.
3. Under Article 1, Section 1(A) of its Constitution, Defendant is governed by a National Board of Directors.
4. Under Article Article 1, Section 1(K), "[t]he National Board shall set up organizational committees as shall be necessary for the proper supervision and direction of the affairs of the organization."
5. Pursuant to Article Article 1, Section 1(K), Defendant established Internal Affairs Committee.
6. The National Board and/or Internal Affairs Committee created the "Staff Liason Committee," also known as the "Board Liason Committee," comprised, in part, of members of the National Board and employees of the National Board.

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7. Plaintiff was designated as a staff member of the Staff Liason Committee.
8. Plaintiff and other employees understood that the Staff Liason Committee was duly empowered to address management of the organization and, as a condition of employment, Plaintiff was obligated to abide by and cooperate with it. The Staff Liason Committee and/or Internal Affairs Committee had executive authority and the power and right to provide direction and seek information from staff members such as Plaintiff in the discharge of their duties.
9. Under Article 1, Section 1(G), the National Board has the power to "select and appoint an Executive Director who will serve as the Chief Executive Officer (CEO) in managing the affairs of the National Beta Club in compliance with policies and procedures established by the Board." (emphasis added).
10. The Staff Liason Committee worked pursuant to a draft procedure documents distributed to Plaintiff. The document states"
 - a. "The purpose of the Committee is to make any necessary changes and improvements to further aid staff and administrative relations, and make for more effective communication between the Staff Liason Committee and the Board of Internal Affairs Committee;" and
 - b. "Confidentiality will be observed when concerns or suggestions are brought to the Committee."
11. Plaintiff was employed by Defendant for approximately thirty-eight years and had an excellent work record.
12. In 2013, the National Board appointed Bob Bright as Executive Director.
13. A number of issues arose after Bright's appointment because of his management

style and attitude towards the work force, including his boasting about his power to fire people, as well as his discipline of employees for reasons that were false.

14. Plaintiff was one of the employees Bright targeted for discipline and, despite her long record of excellent service, he began to discipline her (and others) for reasons that were false.
15. At a Staff Liason Committee meeting, another employee mentioned Bright's poor treatment of Plaintiff.
16. The Staff Liason Committee, in an apparent good-faith effort to obtain information about the problem, questioned Plaintiff about Bright's conduct towards her. Plaintiff was extremely reluctant to discuss the matter for fear that Bright would retaliate and fire her. Plaintiff was directed by a member of the National Board and Staff Liason Committee that she was obligated to provide information when questioned, and he assured her that Bright could not terminate her employment because she participated in the Staff Liason Committee process.
17. Based on this assurance, Plaintiff provided truthful information to the Staff Liason Committee.
18. Despite the assurances against retaliation, after the Staff Liason Committee meeting, Bright fired Plaintiff. Bright cited two reasons for his decision:
 - a. Plaintiff was negative with the Board Liason Committee; and
 - b. Plaintiff did not return e-mails in a timely manner.
19. The first reason given, on its face, violates the written and oral assurances of confidentiality and that Bright would not retaliate if Plaintiff provided information she was directed to provide to the Staff Liason Committee. The second reason

is patently false and, upon information and belief, Defendant's own IT person informed Bright that the only e-mails he found to which Plaintiff did not respond were Spam e-mails.

Count I
For a First Cause of Action
Breach of Contract

20. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
21. Defendant's written and oral promises provided, in mandatory terms, express assurances of confidentiality and non retaliation for providing information.
22. Defendant further impliedly promised that it would not terminate Plaintiff's employment for complying with a mandate of the Board that she was obligated to follow.
23. Defendant's oral and written assurances constitute contractual obligations that altered the presumed at-will nature of the employment relationship.
24. Defendant breached the contractual obligations by terminating Plaintiff's employment, which breached the express and implied terms of the employment agreement between the parties including, but not limited to, the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim of the breach of contract and that she be awarded all available relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendants complained of herein are in violations of the laws of South Carolina, injunctive relief, an award of lost wages, including lost fringe benefits, which resulted from the wrongful termination

complained of herein, reinstatement or front pay in lieu thereof, compensatory damages, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count II
For a Second Cause of Action
Promissory Estoppel

25. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
26. Defendant made a promise that Plaintiff would not be terminated if she divulged the information about which she was questioned on by Defendant.
27. Plaintiff relied to her detriment on Defendant's promise.
28. Plaintiff has been damaged as a result of her reliance on the promise.

WHEREFORE, Plaintiff requests a trial by jury with respect to claim of promissory estoppel and entry of judgment to include all relief to which she can show an entitlement, including reliance damages, costs, prejudgment as well as postjudgment interest.

Respectfully submitted this 25th day of April, 2014.



Brian P. Murphy, Bar No. 6770
Attorney for Plaintiff.

Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Spartanburg	)	2014-CP-42-1759
Denise Parker,	)	
	)	
Plaintiff,	)	Amended Complaint
v.	)	
	)	Jury Trial Demanded
The National Honorary Beta Club,	)	
	)	
Defendant.	)	

Plaintiff, through her attorney and with the express consent of Defendant, now amends her Complaint and would respectfully show as follows:

1. Plaintiff is a resident of Spartanburg County and, at all relevant times, was employed by Defendant in Spartanburg County.
2. Defendant is an organization of unknown corporate/entity status. Defendant's headquarters and principal place of business are in Spartanburg, South Carolina.
3. Under Article 1, Section 1(A) of its Constitution, Defendant is governed by a National Board of Directors.
4. Under Article Article 1, Section 1(K), "[t]he National Board shall set up such organizational committees as shall be necessary for the proper supervision and direction of the affairs of the organization."
5. Pursuant to Article Article 1, Section 1(K), Defendant established an Internal Affairs Committee.
6. The National Board and/or Internal Affairs Committee created the "Staff Liason Committee," also known as the "Board Liason Committee," comprised, in part, of

members of the National Board and employees of the National Board.

7. Plaintiff was designated as a staff member of the Staff Liason Committee.
8. Plaintiff and other employees understood that the Staff Liason Committee was duly empowered to address management of the organization and, as a condition of employment, Plaintiff was obligated to abide by and cooperate with it. The Staff Liason Committee and/or Internal Affairs Committee had executive authority and the power and right to provide direction and seek information from staff members such as Plaintiff in the discharge of their duties.
9. Under Article 1, Section 1(G), the National Board has the power to "select and appoint an Executive Director who will serve as the Chief Executive Officer (CEO) in managing the affairs of the National Beta Club in compliance with policies and procedures established by the Board." (emphasis added).
10. The Staff Liason Committee worked pursuant to a draft procedure documents distributed to Plaintiff. The document states"
 - a. "The purpose of the Committee is to make any necessary changes and improvements to further aid staff and administrative relations, and make for more effective communication between the Staff Liason Committee and the Board of Internal Affairs Committee;" and
 - b. "Confidentiality will be observed when concerns or suggestions are brought to the Committee."
11. Plaintiff was employed by Defendant for approximately thirty-eight years and had an excellent work record.
12. In 2013, the National Board appointed Bob Bright as Executive Director.

13. A number of issues arose after Bright's appointment because of his management style and attitude towards the work force, including his boasting about his power to fire people, as well as his discipline of employees for reasons that were false.
14. Plaintiff was one of the employees Bright targeted for discipline and, despite her long record of excellent service, he began to discipline her (and others) for reasons that were false.
15. At a Staff Liason Committee meeting, another employee mentioned Bright's poor treatment of Plaintiff.
16. The Staff Liason Committee, in an apparent good-faith effort to obtain information about the problem, questioned Plaintiff about Bright's conduct towards her. Plaintiff was extremely reluctant to discuss the matter for fear that Bright would retaliate and fire her. Plaintiff was directed by a member of the National Board and Staff Liason Committee that she was obligated to provide information when questioned, and he assured her that Bright could not terminate her employment because she participated in the Staff Liason Committee process.
17. Based on this assurance, Plaintiff provided truthful information to the Staff Liason Committee.
18. Despite the assurances against retaliation, after the Staff Liason Committee meeting, Bright fired Plaintiff. Bright cited two reasons for his decision:
 - a. Plaintiff was negative with the Board Liason Committee; and
 - b. Plaintiff did not return e-mails in a timely manner.
19. The first reason given, on its face, violates the written and oral assurances of confidentiality and that Bright would not retaliate if Plaintiff provided information

she was directed to provide to the Staff Liason Committee. The second reason is patently false and, upon information and belief, Defendant's own IT person informed Bright that the only e-mails he found to which Plaintiff did not respond were Spam e-mails.

Count I
For a First Cause of Action
Breach of Contract

20. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
21. Defendant's written and oral promises provided, in mandatory terms, express assurances of confidentiality and non retaliation for providing information.
22. Defendant further impliedly promised that it would not terminate Plaintiff's employment for complying with a mandate of the Board that she was obligated to follow.
23. Defendant's oral and written assurances constitute contractual obligations that altered the presumed at-will nature of the employment relationship.
24. Defendant breached the contractual obligations by terminating Plaintiff's employment, which breached the express and implied terms of the employment agreement between the parties including, but not limited to, the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiff respectfully requests a trial by jury on her claim of the breach of contract and that she be awarded all available relief including, but not limited to, a declaratory judgment that the acts and practices of the Defendants complained of herein are in violations of the laws of South Carolina, injunctive relief, an award of lost

wages, including lost fringe benefits, which resulted from the wrongful termination complained of herein, reinstatement or front pay in lieu thereof, compensatory damages, expenses, and costs, and all other and further relief as to this Court appears necessary and proper.

Count II
For a Second Cause of Action
Breach of Contract Accompanied by Fraudulent Act

25. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
26. Defendant has breached the Agreement as set forth above.
27. Defendant has breached the Employment Agreement with fraudulent intent relating to the breach.
28. Defendant's decision-maker has testified that, in claiming Plaintiff was negative, he was not referring to discussions with Board members and that his reasons for termination have nothing to do with Plaintiff's communication to the Board's committee.
29. Defendant has committed one or more fraudulent acts accompanying its breach of contract, as evidenced by its dishonesty in fact and unfair dealing such as making blatant misrepresentations regarding the reason for Plaintiff's termination and by now giving reasons for the termination that are false and pretextual.

WHEREFORE, Plaintiff respectfully requests a trial by jury on his claim for breach of contract accompanied by fraudulent act and entry of judgment to include all amounts owed under the Agreement, specific performance, other actual damages, consequential damages, punitive damages, and all other relief to which Plaintiff can

show he is entitled including, but not limited to, costs prejudgment and post-judgment interest.

**Count III
For a Third Cause of Action
Promissory Estoppel**

30. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
31. Defendant made a promise that Plaintiff would not be terminated if she divulged the information about which she was questioned on by Defendant.
32. Plaintiff relied to her detriment on Defendant's promise.
33. Plaintiff has been damaged as a result of her reliance on the promise.

WHEREFORE, Plaintiff requests a trial by jury with respect to claim of promissory estoppel and entry of judgment to include all relief to which she can show an entitlement, including reliance damages, costs, prejudgment as well as postjudgment interest.

Respectfully submitted this 7th day of August, 2015.



Brian P. Murphy, Bar No. 6770
Attorney for Plaintiff.

Stephenson & Murphy, LLC
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 240-9292

State of South Carolina

County of Spartanburg

) IN THE COURT OF COMMON PLEAS

) 2014-CP-42-01759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's Amended Complaint was served on all counsel of record via U.S. Mail, on August 7, 2015, as follows:

Thomas A. Bright
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
P.O. Box 2757
Greenville, SC 29602



Lisa Romaniello
Legal Assistant

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 240-9292

IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE 2014-CP-42-01759 JUDICIAL
) CIRCUIT

) CIVIL ACTION NO. 2014-CP-42-1759

) **DEFENDANT'S OBJECTION**
) **TO PLAINTIFF'S**
) **DESIGNATIONS FOR**
) **DINKINS DEPOSITION**
)

COMES NOW Defendant in the above-captioned case, by and through its counsel Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and files this their Objection To Plaintiff's Designations for Dinkins Deposition as follows:

I. Background

Plaintiff took the deposition of Ken Dinkins on April 7, 2015. Mr. Dinkins was then, and still is, a Board member of the National Honorary Beta Club. On September 22, 2015, Plaintiff filed with the court designation of pages from Dinkins' deposition that Plaintiff intends to introduce at the trial of this matter. Defendant objects to some of those designations for the reasons set forth below.

II. Argument and Authority

a. Testimony Regarding Other Litigation (Pages 21:21-23:2)

Mr. Dinkins was asked about lawsuits filed by two (2) employees of the National Honorary Beta Club who are not at issue in this case. Defendant has filed a Motion in Limine to preclude testimony regarding other litigation on the basis it is not relevant to the narrow issues in this case, would be highly prejudicial, and could lead to confusion of the issues for the jury. For the reasons articulated in Defendant's Motion in Limine, Defendant objects to the introduction of this passage from Dinkins' deposition.

- b. Testimony Regarding Employees Other Than Plaintiff Being Fearful of Losing Their Jobs And About Other Employees Being Discharged From Their Jobs. (Pages 48:13-50:12)

Just as the lawsuits filed by other employees are not relevant to the very narrow contract claim in this case, neither is testimony about how other employees were treated and how many employees were terminated by Mr. Bright. As noted in Defendant's Motion in Limine, the termination of other employees is not relevant to the narrow and specific contract at issue in this case. Even if such testimony has some relevance, it is highly prejudicial and runs the risk of confusing the jury. As stated in Defendant's Motion in Limine, the jury could be incensed about how another employee was treated and render their verdict on facts unrelated to Plaintiff's case. For the reasons set forth in Defendant's Motion in Limine, Defendant objects to the introduction of this passage from Dinkins' deposition

- c. Testimony About Executive Director Bob Bright Accusing Other Employees of Being Negative (pages 69:17-19; 69:22-70:8)

As noted above with regard to other litigation and the termination of other employees, whether the Executive Director accused other employees of being "negative" is irrelevant to this case. The only testimony that is relevant is whether there was a contract of employment between Plaintiff and Defendant and whether Plaintiff was terminated in violation of that alleged contract. See Defendant's Motion in Limine. Thus, these passages, which are about the Executive Director accusing others of being negative are irrelevant and should not be read to the jury.

d. Testimony Regarding What Action The Board Took To Investigate/Take Action After This Lawsuit Was Filed (pages 72:6-73:16)

Plaintiff was terminated on November 4, 2013. The lawsuit was not filed until April 29, 2014. It was only at that time that the Board was first informed (through the Complaint) that Plaintiff contended she was fired for speaking to the Board. Mr. Dinkins was asked what efforts were made to determine whether her allegations about the reasons for her termination were true. Indeed, the whole line of questioning starts with "[S]he says she was fired by Bob Bright because of what she said to your committee."

* * *

Q: Did anybody ask Bob Bright if that's why he fired Denise Parker?

Dinkins Dep. p. 72:12-18.

In essence, Plaintiff is asking what did the Board do after the lawsuit was filed to check out the veracity of her allegations. What the Board did or did not do after this lawsuit was filed is not relevant to the reason Plaintiff was fired by Mr. Bright in November, 2013. He was the person who made that decision and questions to a Board member about what investigation the Board undertook after the lawsuit was filed are not relevant to the narrow contract issue in this case. Therefore, Defendant objects to these passages being read to the jury.

III. Conclusion

For the reasons stated herein and the reasons set forth in Defendant's Motion in Limine, Defendant objects to the above passages of the deposition of Ken Dinkins being published to the jury.

Dated this the 25th day of September, 2015.

Respectfully submitted,

Thomas A. Bright

Thomas A. Bright, SC #884

(with permission)
DCH

Attorney for Defendant The National
Honorary Beta Club

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

The Ogletree Building
300 North Main Street, Suite 500
Greenville, SC 29601
Telephone: 864.271.1300
Facsimile: 864.235.4754

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SPARTANBURG COUNTY
2015 SEP 25 PM 3:25
M. HOPE BLACKLEY

IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE 2014-CP-42-01759 JUDICIAL
) CIRCUIT

) CIVIL ACTION NO. 2014-CP-42-1759

) **CERTIFICATE OF SERVICE**
)
)
)
)
)
)

I do hereby certify that on this 25th day of September, 2015, the foregoing **Defendant's**
Objection To Plaintiff's Designations for Dinkins Deposition has been served upon the
following persons by depositing same in the United States Mail, with sufficient postage affixed
thereto, addressed as follows:

Mr. Brian Murphy
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

Thomas A. Bright
Thomas A. Bright
(with Denise Parker)
2015 SEP 25 PM 3:25
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HOPE BLACKLEY

State of South Carolina

) IN THE COURT OF COMMON PLEAS

County of Spartanburg

) 2014-CP-42-01759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) VERDICT FORM

The jury must unanimously agree on the verdict. Once you have completed this form, the foreperson of the jury should sign and date the form.

CONTRACT

Question 1: Did an employment contract exist between Plaintiff, Denise Parker and Defendant, The National Honorary Beta Club?

☒ Yes ☐ No

If your answer to Question 1 was "Yes", then go on to Question 2.

If your answer to Question 1 was "No", then you should not answer any more questions and the foreperson should sign and date this verdict form.

BREACH OF CONTRACT

Question 2: Did Plaintiff prove by a preponderance of the evidence that Defendant breached the contract?

☒ Yes ☐ No

If your answer to Question 2 was "Yes", then go on to Question 3.

If your answer to Question 2 was "No", then you should not answer any more questions and the foreperson should sign and date this verdict form.

DAMAGES FOR BREACH OF CONTRACT

Question 3: Do you find that the Plaintiff suffered any actual damages as a result of Defendant's breach?

✓
Yes No

If your answer to Question 3 was "Yes," please set forth the amount of any actual damages.

\$ 518,006.00

Five hundred eighteen thousand SIX dollars and 00/100
Please spell out the amount indicated above.

If your answer to Question 3 was "No", then you should not answer any more questions and the foreperson should sign and date this verdict form.

BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

Question 4: Did Plaintiff prove by a preponderance of the evidence that Defendant's breach was accompanied by a fraudulent act?

✓
Yes No

If your answer to Question 4 was "Yes", please set forth the amount of any actual damages.

\$ 518,006.00

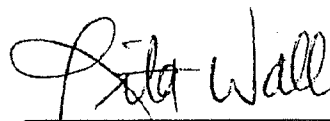
Five hundred eighteen thousand SIX dollars and 00/100
Please spell out the amount indicated above.

If your answer to Question 4 was "Yes", please set forth the amount of any punitive damages.

\$ 350,000.00

Three hundred fifty thousand and 00/100
Please spell out the amount indicated above.

If your answer to Question 4 was "No", then you should not answer any more questions and the foreperson should sign and date this verdict form.

A handwritten signature in cursive script, appearing to read "Rita Wall".

Jury Foreperson

Spartanburg, South Carolina
October 2, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Denise Parker.

☐ Plaintiff

v.

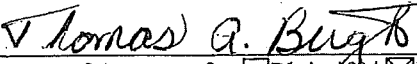
The National Honorary Beta Club

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-42-1759

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Brian Murphy, Bar No. 6770 Address: 207 Whitsett St., Greenville, SC 29601 phone: 864.370.9400 fax: 864.240.9292 e-mail: brian@stephensonmurphy.com other:	Defendant's Attorney: Thomas A. Bright, Bar No. 884 Address: 300 North Main St., Greenville, SC 29601 phone: 864.271.1300 fax: 864.235-4754 e-mail: thomas.bright@odnss.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion For Judgment Notwithstanding The Verdict Or Alternatively New Trial Estimated Time Needed: 30 Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant October 12, 2015 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☒ Other: Motion For Judgment Notwithstanding The Verdict Or Alternatively New Trial	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ Date Filed: _____	

☐ CONTESTED – AMOUNT DUE: _____

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H. HOPE BLACKLEY

IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

**DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT OR ALTERNATIVELY FOR NEW TRIAL**

COMES NOW Defendant, The National Honorary Beta Club (hereinafter "Defendant" or "the Beta Club"), by and through its undersigned counsel and pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure ("SCRCP"), and files this Motion for Judgment Notwithstanding the Verdict or Alternatively Motion For New Trial (jointly referred to as "Defendant's Motion"). Defendant's Motion for judgment and/or a new trial is based upon the following particulars:¹

A. Defendant is entitled to judgement notwithstanding the verdict.

1. Defendant is entitled to judgment because the alleged promise in this case does not constitute an enforceable contract. *See Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336-337 (1999) ("To be binding, an offer [of employment] must be definite. In addition, it must be one which is intended of itself to create legal relations on acceptance.") (citations omitted) (emphasis added).
2. Even if Plaintiff did present sufficient evidence upon which a jury could conclude that there was valid contract, Plaintiff failed to present any evidence of a breach.
3. Defendant is entitled to judgment on Plaintiff's breach of contract accompanied by fraudulent act claim because Plaintiff failed to present evidence of an independent fraudulent act accompanying the alleged breach of

¹ For a detailed analysis of the legal arguments supporting Defendant's Motion, Defendant refers the Court to its memorandum of law contemporaneously filed herewith.

contract. See *Hardee v. Penn Mut. Life Ins. Co. of Philadelphia*, 215 S.C. 1, 11, 53 S.E.2d 861, 865 (1949) (explaining that the fraudulent breach of contract is insufficient to make out a claim for breach of contract accompanied by fraud); *Dunsil v. E. M. Jones Chevrolet Co.*, 268 S.C. 291, 298, 233 S.E.2d 101, 104 (1977)(same); and *Coker's Mobile Home Plaza, Inc. v. ITT Commercial Fin. Corp.*, 900 F.2d 250 (4th Cir. 1990)(finding that the rudimentary aspects constituting breach of contract, even if fraudulent, cannot also form the basis of fraudulent act(s) accompanying the breach).

B. As an alternative to entry of judgment for Defendant, the Court should order a new trial pursuant to Rule 59 of the SCRCP.

1. This Court should set aside the jury's verdict in favor of a new trial absolute on the grounds that the jury's verdict is based on insufficient evidence and that improper arguments were presented to the jury in closing arguments. See *Folkens v. Hunt*, 300 S.C. 251, 255, 387 S.E.2d 265, 268 (1990)(affirming trial court's grant of new trial absolute on the grounds that jury's verdict was not justified based on the evidence presented at trial).
2. Alternatively, this Court should set aside the jury's verdict for actual damages in favor of a new trial *nisi remittitur* on the grounds that the jury's verdict is excessive and is not supported by evidence in the record. See *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996)("[t]he proper measure of compensation [for breach of contract] is the loss actually suffered by the plaintiff as a result of the breach"); and *Small v. Springs Indus., Inc.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455-456 (1987)(setting aside jury verdict on grounds that award damages was excessive).

[SIGNATURES TO FOLLOW]

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Dated this the 12th day of October, 2015.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Thomas A. Bright

Thomas A. Bright (S.C. Bar No. 884)

Attorney for Defendant

The Ogletree Building
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M. HOPE BLACKLEY

IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2015, I served a copy of **Defendant's Motion for Judgment Notwithstanding the Verdict or Alternatively New Trial** in the above-styled cause upon the following, by hand delivery to:

Brian P. Murphy, Esq.
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

Thomas A. Bright

Thomas A. Bright

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M. HOPE BLACKLEY
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IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT OR ALTERNATIVELY FOR NEW TRIAL**

COMES NOW Defendant, The National Honorary Beta Club (hereinafter "Defendant" or "the Beta Club"), by and through its undersigned counsel and pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure ("SCRPC"), and files this Memorandum In Support Of Defendant's Motion for Judgment Notwithstanding the Verdict or Alternatively For New Trial. As explained herein, this Court should grant Defendant judgment and/or a new trial based upon the following:

I. BACKGROUND AND PROCEDURAL POSTURE¹

Denise Parker (hereinafter "Plaintiff") was employed by Defendant for approximately 38 years in a variety of clerical and support staff positions. In 2013, Plaintiff worked as support staff to the National Sponsors and Leadership Development team in Defendant's Convention Department. During the late summer and fall of that year, two of the three National Sponsors in Plaintiff's Department—Ritchie Garland and Shannon Meyer—reached out to the Executive Director/CEO/President of the Beta Club, Bob Bright, about difficulties they were having working with Plaintiff. In particular, Garland and Meyer complained that Plaintiff had not been

¹ For a more detailed explanation of the factual background of this lawsuit, Defendant refers the Court to its Memorandum of law supporting its motion for summary judgment.

helpful with tasks in their Department. During this time, Bob Bright also noticed that Plaintiff was not getting along her co-workers and was demonstrating a negative attitude. On October 21, 2015, Bright met with Plaintiff to discuss her performance and presented Plaintiff with an Employee Conference note identifying specific concerns about her attitude and job performance. Plaintiff admits that this meeting with Bright led her to conclude that Bright was not pleased with her performance, that she was on "thin ice," and that she feared she might be terminated.

On October 25, 2013, the Beta Club's Staff Liaison Committee (to which Plaintiff was a member) held its regularly scheduled meeting with the Beta Club Board's Internal Affairs Committee to discuss staff related issues. At the meeting, Plaintiff was hesitant to speak up about the written warning she received from Bright on October 21 because she was afraid of losing her job after Bright expressed his concerns about her performance several days earlier. After Plaintiff was encouraged to express her concerns by another staff member attending the meeting, Ken Dinkins, a Board member and member of the Internal Affairs Committee, told Plaintiff "[I]f we ask you a question, you have to answer it and Bob Bright can't fire you for answering our question." Plaintiff then went on to speak about her meeting with Bright on October 21, talk about how she feared for her job, and express her concerns about the Beta Club. The entire exchange lasted only a few minutes.

On November 4, 2013, Bright met with Plaintiff again to discuss her attitude and performance issues. Bright's Executive Assistant, Laura Lewis, also attended that meeting. It is uncontradicted that Bright did not enter that meeting with the intention of terminating Plaintiff's employment. Rather, his intent was to reemphasize his concerns expressed in the October 21, 2013, meeting. During the meeting, Bright, again, presented Plaintiff with an Employee Conference note and expressed concerns about Plaintiff's negativity and her job performance.

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Bright felt that Plaintiff's attitude had not changed since their last meeting. Bright also believed that Plaintiff was not answering her e-mail after receiving information from Defendant's IT Manager, James Moore, showing that Plaintiff had sent very few e-mails compared to amount of e-mails she and the Department received during the same period. Bright did not meet with Plaintiff on November 4 with the intention of terminating her employment. During the meeting, however, Bright believed that Plaintiff expressed an unwillingness to adjust her attitude and ultimately terminated the Plaintiff's employment at the conclusion of the meeting.

Plaintiff brought this lawsuit against Defendant asserting causes of action for breach of contract, breach of contract accompanied by fraud, and promissory estoppel. At trial, Defendant moved for directed verdict on each of Plaintiff's claims at the close of Plaintiff's case in chief and at the close of all the evidence. While the Court took Plaintiff's promissory estoppel claim under advisement pending a jury verdict, the Court denied Defendant's motions for directed verdict and submitted the case to the jury. On October 2, 2015, the jury returned a verdict for Plaintiff on both contractual claims. The jury awarded the Plaintiff \$518,006 in actual damages and punitive damages in the amount of \$350,000. Defendant now moves Plaintiff for judgment notwithstanding the verdict or in the alternative, a new trial.

II. APPLICABLE STANDARDS

A motion for judgment notwithstanding the verdict is essentially the renewal of a motion for a directed verdict. *See S. Ry. Co. v. Wilkinson Trucking Co.*, 243 S.C. 150, 152 S.C. 32 S.E.2d 491, 491 (1963). As such, motions notwithstanding the verdict are limited to the same grounds and subject to the same standards as a motion for directed verdict. *Marsh v. S. Carolina Dep't of Highways & Pub. Transp.*, 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989). When reviewing a motion for judgment notwithstanding the verdict, the trial court is only

concerned with the existence or non-existence of evidence, not its weight. *Long v. Norris & Associates, Ltd.*, 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000). In other words, “[w]hen the evidence yields only one inference, [judgment] in favor of the moving party is proper. *Id.*

In contrast to judgment notwithstanding the verdict, “[t]he grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Brinkley v. S. Carolina Dep’t of Corr.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009)(citing *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct.App.1989); and *Boozer v. Boozer*, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct.App.1988)). Furthermore, in South Carolina the “trial judge has a broad discretion sitting as the thirteenth juror to grant a new trial when he is convinced . . . that justice has not been done in the trial.” *Watson v. Town of Pendleton*, 294 S.C. 155, 157, 363 S.E.2d 234, 235 (Ct. App. 1987).

III. LEGAL ARGUMENT

A. Defendant is entitled to judgment notwithstanding the verdict.

1. Defendant is entitled to judgment because the alleged promise in this case does not constitute an enforceable contract.

While an oral promise might be sufficient to alter an employee’s at-will status, such a promise must be definite and made with the specific intent to create a contract. See *Prasco v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336-337 (1999)(“To be binding, an offer [of employment] must be definite. In addition, it must be one which is intended of itself to create legal relations on acceptance.”)(citations omitted)(emphasis added). Indefinite promises (whether isolated or repeated) are insufficient to limit an employee’s at-will relationship. See e.g. *Id.* at 337(“Vague assurances of job security, even if repeated, do not give rise to contractual

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A. HOPE B. ADLEY

rights”); *Sullivan v. Cato Corp.*, No. 8:04-651-GRA-BHH, 2006 WL 644469, at *16 (D.S.C. Mar. 9, 2006)(finding the same).

At trial, Plaintiff failed to present any evidence to the jury that the assurances made by Dinkins met the “definiteness” requirement set forth in *Prescott*. While Dinkins acknowledged that he made those statements to Plaintiff in the Internal Affairs meeting on October 25, 2013, he also testified that (a) it was not his intent to create an employment contract between Plaintiff and the Beta Club; (b) that individual Board members cannot bind the Beta Club; and (c) the entire exchange with Plaintiff occurred in passing and only lasted a few minutes. Furthermore, Plaintiff never offered any evidence that she understood Dinkins’ assurances to constitute a limitation on her at-will employment. During both her deposition and cross-examination at trial, Plaintiff was unable to answer the simple question of whether or not Dinkins’ assurances altered her employment status. Plaintiff’s theory of contract formation rests entirely on the flawed notion that because Dinkins’ made a vague assurance of job security and Plaintiff later “performed” by expressing her concerns to the Board Internal Affairs Committee, the Beta Club is bound by a unilateral employment contract. But that is not a correct application of the settled law in South Carolina. Under *Prescott*, Plaintiff is required to show that both sides had the specific intent to enter into contractual relations. And Plaintiff never presented any evidence of such intent to the jury.

Indeed, the vague assurance of continued employment in this case is just the sort of indefinite promise that courts have consistently found to be insufficient to alter an employee’s at-will status. Several cases from South Carolina state courts and the U.S. District Court for the District of South Carolina are instructive on this point:

- *Davis v. Orangeburg-Calhoun Law Enforcement Comm’n*, 344 S.C. 240, 250, 542 S.E.2d 755, 760 (Ct. App. 2001)(reversing trial court’s denial of employer’s Rule 50

and 59(e) motions after finding that a supervisor's promise to employee at the time of hire he would "only be terminated for cause" is insufficient to create a factual issue as to the alternation of the employee's at-will employment).

- *Taliaferro v. Associates Corp. of N. Am.*, 112 F. Supp. 2d 483, 497 (D.S.C. 1999) *aff'd*, 229 F.3d 1144 (4th Cir. 2000)(holding there an employee's at-will employment had not been altered after finding that a supervisor's assurances of job security were made in a context and for a purpose completely unrelated to altering or negotiating the employee's at-will employment status).
- *Power v. Lear Siegler Servs., Inc.*, No. CA 2:98-2752-18, 1999 WL 33229187, at *5 (D.S.C. Dec. 13, 1999) *aff'd*, 225 F.3d 655 (4th Cir. 2000)(finding that an employer's promise to out-of-state applicant during interview and at time of hire that he would have a job with the company in Charleston, South Carolina so long as the company had contracts was insufficient to alter an employee's at-will employment).
- *Lovette v. Sonoco Products Co.*, No. 2004-UP-159, 2004 WL 6250393, at *3 (S.C. Ct. App. Mar. 11, 2004)(holding that a new employer's assurances of job security when offering of employment to existing employees after buy-out did not place a contractual limitation on the employees' at-will employment, even though the employees relied on those promises by continuing their employment with the new employer).

As made clear in the above cases, an employee's performance in reliance on vague assurances of job security, alone, is insufficient to alter his or her at-will employment. There must be both a definite offer of employment and a specific intent to create contractual relations. Here, Plaintiff has failed to show either requirement. First, when repeatedly asked about her understanding of Dinkins' statements, Plaintiff could not offer any answer regarding the creation of a contract. Second, Plaintiff failed to present any evidence of a specific intent to create legal relations on the part of Dinkins. In fact, the evidence in this case shows just the opposite. Just as in *Taliaferro*, the vague oral assurances of job security at issue here were made in the context of an informal meeting and for a purpose unrelated to the terms of Plaintiff's employment. Dinkins testified that his assurances to Plaintiff were made to encourage her to speak openly with the committee, not contractually limit her at-will employment. Simply stated, there was no credible evidence

upon which the jury could conclude that Plaintiff's at-will employment was altered by Dinkins' statement.

2. Even if Plaintiff did present sufficient evidence upon which a jury could conclude that there was valid contract, Plaintiff failed to present any evidence of a breach.

Assuming *in arguendo* that Plaintiff presented sufficient evidence upon which the jury could conclude there was a contractual limitation placed on her at-will employment, Plaintiff did not present sufficient evidence upon which a jury could conclude there was a breach of that promise. Plaintiff cannot deny that "but-for" her alleged employment contract she was an at-will employee that could be terminated at any time, for any reason. If the jury found that Plaintiff was discharged for any reason other than for speaking to the Internal Affairs Committee of the Board, then her contract claims must fail. Evaluating the evidence presented at trial as a whole, the only reasonable inference that can be drawn is that there were numerous reasons for the termination of Plaintiff's employment. Defendants presented uncontroverted evidence that:

- Plaintiff was afraid for her job after her meeting with Bright about her performance issues on October 21, 2013, some five days before any alleged contract even came into being;
- Plaintiff was given two separate written warnings (on October 21 and November 4, 2013) which identified specific performance concerns;
- There was no evidence presented at trial that anyone ever told Bright that Plaintiff made any comments at all at the Internal Affairs Committee meeting on October 25, 2013. Indeed, Ken Dinkins' testified that neither he nor any other Board member mentioned Plaintiff by name when summarizing the details of the Internal Affairs/Staff Liaison Committee meeting; and
- Both Bright and Laura Lewis testified that no one ever mentioned Plaintiff's conversation with the Board Internal Affairs Committee during the November 4 meeting in which she discharged.

Plaintiff, on the other hand, did not present any evidence concerning breach of the alleged contract. The only evidence presented by Plaintiff on the issue is her own self-serving testimony

that she heard Bright say "I heard that you were negative with the Board." Even if her subjective testimony were true, those words, alone, are not evidence of a breach of her alleged employment contract. That statement merely shows that Bright stated that he had knowledge of her comments to the Board. Plaintiff does not allege that Bright said "I am terminating you because you spoke the Board." Plaintiff failed to present any evidence suggesting that Bright terminated her employment because she spoke to the Board. Instead, Plaintiff relied on her own uncorroborated speculation to insinuate that because Bright said he knew about Plaintiff's comment to the Board, he must have terminated her in violation of her alleged contract. Furthermore, Plaintiff's counsel's assertion that the written warning issued by Bright on October 21, 2013, constituted the "first shot across the bow" in closing arguments amounted to a statement completely unsupported by any evidence admitted during trial. Plaintiff never presented any evidence that the reason for her termination was because she talked to the Board. Plaintiff offered nothing more than mere speculation on her part, unsupported by any real evidence. Accordingly, the jury was not presented with sufficient evidence upon which to conclude that Defendant breached Plaintiff's contract.

3. Defendant is entitled to judgment on Plaintiff's breach of contract accompanied by fraudulent act claim because Plaintiff failed to present evidence of an independent fraudulent act accompanying the alleged breach of contract.

In addition to the above-described reasons, the Court should enter judgment for Defendant on Plaintiff's cause of action for breach of contract accompanied by fraud because Plaintiff failed to present any evidence relating to each of the required elements. "In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the

contract and not merely to its making; and (3) a fraudulent act accompanying the breach.” *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002).

It is well-settled that the accompanying fraudulent act must be “separate and distinct from the act(s) constituting the breach [of contract].” *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980)(emphasis added); *see also D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 556, 730 S.E.2d 340, 355 (Ct. App. 2012) *aff’d in part as modified, vacated in part*, 410 S.C. 319, 764 S.E.2d 701 (2014). Said another way, the acts constituting the breach of contract, even if fraudulent, cannot also serve as the accompanying fraudulent act. *See Hardee v. Penn Mut. Life Ins. Co. of Philadelphia*, 215 S.C. 1, 11, 53 S.E.2d 861, 865 (1949) (explaining that the fraudulent breach of contract is insufficient to make out a claim for breach of contract accompanied by fraud); *Dunsil v. E. M. Jones Chevrolet Co.*, 268 S.C. 291, 298, 233 S.E.2d 101, 104 (1977)(same); *and Coker's Mobile Home Plaza, Inc. v. ITT Commercial Fin. Corp.*, 900 F.2d 250 (4th Cir. 1990)(finding that the rudimentary aspects constituting breach of contract, even if fraudulent, cannot also form the basis of fraudulent act(s) accompanying the breach). As stated in *Hardee*, even the breach of a contract with fraudulent intent is insufficient, by itself, to state a claim. *Hardee*, 215 S.C. at 11. The Plaintiff must go further and present specific evidence of an independent fraudulent act accompanying the breach. *Id.*

Plaintiff claims that reasons given for her termination were pretextual and her conversation with the Internal Affairs Committee of the Board was the real reason for her discharge. In essence, Plaintiff contends that being terminated for false and pretextual reasons is sufficient to give rise to a cause of action of breach of contract accompanied by fraud under *Conner*. But Plaintiff is misguided. While *Conner* provides that dishonest or pretextual acts might be sufficient to constitute evidence of “fraud,” the Supreme Court of South Carolina’s

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decision in *Connor* does nothing to limit its previous holdings in *Hardee* and *Smith* which require the fraudulent act and breach to be separate distinct acts.² Plaintiff is required to present evidence of a fraudulent act independent and distinct from the breach. Even if Plaintiff presented sufficient evidence to show that Bright lied to her about the reasons for her discharge, this would only establish that the contract was breached with a fraudulent intent or purpose. As our Supreme Court has noted, even a willful or fraudulent breach of contract, without evidence of an independent fraudulent act is insufficient to make out a claim for breach of contract accompanied by fraud. *Hardee*, 215 S.C. at 11 (“Even in the wilful and fraudulent breach of a contract only actual damages may be recovered, unless the fraudulent breach is accompanied by a fraudulent act”). Plaintiff has not presented any evidence of an independent fraudulent act accompanying the breach in order to make out this cause of action. Therefore, Defendant is entitled to judgment as a matter of law on Plaintiff’s claim for breach of contract accompanied by fraudulent act.

B. As an alternative to entry of judgment for Defendant, the Court should order a new trial pursuant to Rule 59 of the SCRCP.

If this Court determines that judgment as a matter of law is inappropriate, Defendant alternatively asks that this Court set aside the verdict and order a new trial pursuant to Rule 59 of the SCRCP.

² The holding in *Conner* is completely consistent with those of *Smith* and *Hardee* considering the facts of the case. As explained in detail in Defendant’s Memorandum in Support of its for Motion Summary Judgment, the plaintiff in *Conner* alleged numerous acts which constituted fraud independent of the breach which supported Plaintiff’s claim. See *Conner*, 348 S.C. at 465-466.

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1. **This Court should set aside the jury's verdict in favor of a new trial absolute on the grounds that the jury's verdict is based on insufficient evidence and that improper argument was presented to the jury in closing arguments.**

Should the Court find that Defendant is not entitled to judgment as to Plaintiff's claim for breach of contract, it should set aside the jury's verdict in favor of a new trial absolute based on two specific reasons. First, the jury's verdict was based on insufficient evidence. As explained above, Plaintiff failed to present sufficient evidence that: (a) her at-will employment had been altered by an employment contract; (b) that Defendant had breached that contract; and (c) that Defendant committed an independent fraudulent act accompanying the alleged breach. Plaintiff failed to present sufficient evidence upon which a jury could reasonably render judgment in her favor. This logic, alone, would support an order for a new trial absolute under the "thirteenth juror doctrine." *See Folkens v. Hunt*, 300 S.C. 251, 255, 387 S.E.2d 265, 268 (1990)(affirming trial court's grant of new trial absolute on the grounds that jury's verdict was not justified based on the evidence presented at trial).

Second, the jury was exposed to improper argument in Plaintiff's closing statement in that Plaintiff's counsel presented argument to the jury that was unsupported by the record. As noted above, Plaintiff's counsel presented argument to the jury that Bright's written warning on October 21, 2013, constituted his "first shot across the bow," so as to insinuate a personal dispute with Plaintiff. Such an argument presumes facts not in the evidence. It must be remembered that the October 21st warning occurred five (5) days before the alleged contract based on Dinkins' October 25th remarks ever came into being. Plaintiff's argument speculated on a number of facts that were not in evidence at trial, including:

- a. Bright knew on October 21st that Plaintiff would be attending the October 25th meeting and that she would not be sick or otherwise out of the office on that day;

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- b. Bright knew on October 21st that Dinkins' would tell Plaintiff that she had to speak in the October 25th meeting about the warning she received on October 21st;
- c. Bright knew on October 21st that Plaintiff would say something negative during the October 25th meeting.

Counsel's reference to a "shot across the bow" in reference to the October 21st meeting suggests clairvoyance of mythical proportions. Unfortunately, "clairvoyance of mythical proportions" in legal terms amounts to nothing more than a back door attempt to speculate regarding evidence not before the jury. Any reference to facts not in evidence and then asking the jury to speculate as to the inferences to be drawn from those facts warrants setting aside the verdict and ordering a new trial absolute.

There is a secondary impact this reference to facts not in evidence could have had in this case. As was pointed out numerous times during the trial in this matter, this case is not a wrongful discharge case where the jury is being asked to determine whether Defendant had "just cause" for terminating Plaintiff's employment. Rather, this is a very narrow breach of contract claim in which the jury was asked one question: was there a contract not to terminate Plaintiff's employment for speaking with the Board on October 25th and was Plaintiff terminated for that very reason. Plaintiff's counsel's references to a "first shot across the bow" and "would you have wanted to work under Bob Bright?" were emotional appeals to the jury to view this lawsuit as a wrongful discharge case. In fact, these statements went against the very instructions that the Court charged the jury with concerning legal issues presented by this case. Plaintiff's counsel essentially asked the jury to decide whether Mr. Bright had "just cause" in terminating Plaintiff's employment. But that issue was not before the jury and constitutes improper argument to the jury in an attempt to get them to focus on issues and facts not before them. It was an attempt to argue to the jury that Bob Bright was a bad manager well before the alleged contract was entered

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into and that the jury should render a verdict on that basis. In doing so, Plaintiff's counsel made reference to the same facts not in evidence to support its argument to the jury. This, too, is sufficient grounds for a new trial absolute.

For the forgoing reasons the Court should set aside the jury's verdict and be grant a new trial absolute.

2. Alternatively, this Court should set aside the jury's verdict for actual damages in favor of a new trial *nisi remittitur* on the grounds that the jury's verdict is excessive and is not supported by evidence in the record.

If the Court should find that a new trial absolute is not warranted, it should set aside the jury's verdict for actual damages in favor of a new trial nisi remitter. "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is 'merely excessive,' although not motivated by considerations such as passion, caprice or prejudice." *Hunter v. Staples*, 335 S.C. 93, 105, 515 S.E.2d 261, 268 (Ct. App. 1999)(citations omitted)(emphasis included).

The jury's award \$518,006.00 in actual damages is excessive and based on pure speculation. In contract cases, the typical measure of damages is a plaintiff's actual damages. See *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996)("[the proper measure of compensation [for breach of contract] is the loss actually suffered by the plaintiff as a result of the breach). When an employee is wrongfully discharged these damages may include back pay, lost benefits, and future damages. See *Small v. Springs Indus., Inc.*, 300 S.C. 481, 484, 388 S.E.2d 808, 810 (1990). To date, Plaintiff's lost wages and fringe benefits is approximately \$115,800.00 (approximately \$86,000 in lost wages and \$29,800 in lost benefits). With this in

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mind, the remaining award of \$400,000-plus is manifestly excessive.³ The remainder of the award—close to six years of earnings and benefits—fails to take into consideration the fact that Plaintiff was an at-will employee with no guarantee of continued employment. In other words, she could be terminated at any time and for any reason so long as it was not for speaking to the Board on October 25th. To allow the jury to award six years of front pay without any facts supporting the underlying premise that she would continue working at the Beta Club until retirement age is totally unreasonable given that she was an otherwise at-will employee. Unlike the garden variety wrongful discharge claim or a breach of contract claim based on handbook providing for detailed and mandatory procedural requirements prior to discharge, Plaintiff was an at-will employee who could be terminated for any reason, save one: she could not be fired for speaking to the Board on October 25. To convert that into a lifetime employment commitment is nothing more than pure speculation. Plaintiff's damages should be cut off as of the time of trial as there was no evidence of a guarantee of employment for life. To conclude otherwise would amount to nothing more than rank speculation by the jury.

This Court should set aside the jury's verdict and order new trial *nisi remittitur* on the ground that jury's award of actual damages is excessive.

IV. CONCLUSION

For reasons an authority stated above, Defendant respectfully asks that this Court grant its motion for judgment notwithstanding the verdict, or in alternative, its motion for a new trial.

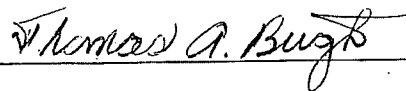
³ The jury's award of six-years of front pay also appears to raise problems under the statute of frauds. To the extent that Plaintiff is claiming that the term of her alleged employment contract was until she retired (six-years), the contract is invalid as a matter of law under the South Carolina Statute of Frauds. Oral contracts for services only satisfy the Statute of Frauds if they are capable of being fully performed within one year. S.C. Code Ann. § 32-3-10.

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Dated this the 12th day of October, 2015.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



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IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2015, I served a copy of **Memorandum in Support of Defendant's Motion for Judgment Notwithstanding the Verdict or Alternatively For New Trial** in the above-styled cause upon the following, by hand delivery to:

Brian P. Murphy, Esq.
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

Thomas A. Bright

Thomas A. Bright

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State of South Carolina

County of Spartanburg

) IN THE COURT OF COMMON PLEAS

) 2014-CP-42-01759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

Plaintiff's Opposition to
Defendant's Motion JNOV or
New Trial

I. Introduction

This matter came to trial on September 28, 2015. The jury heard evidence on September 28, September 30, and October 1st. The parties presented closing argument on October 2nd, and the jury deliberated and returned a unanimous verdict that same day.

The Plaintiff found for Plaintiff on both Count I (breach of contract) and Count II (breach of contract accompanied by fraudulent act). The jury awarded actual damages of \$518,006 and punitive damages of \$350,000. The Court took Count III (promissory estoppel) under advisement as Defendant insisted that it be tried by the Court because the action arises in equity.

By agreement of the parties, the Court extended the deadline for submission of post-trial Motions by ten days. On October 12, 2015, Defendant timely filed its Motion for judgment notwithstanding the verdict (JNOV) and for a New Trial. Plaintiff now responds to Defendant's Motion.

II. Argument

A. Defendant's JNOV arguments are both improper and based solely on an interpretation of facts in the light most favorable to Defendant.

Defendant's arguments ignore the governing standard for post-trial motions and seeks to have this Court credit solely Defendant's theory of the case. That is inapposite to the settled law applicable here:

In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt." *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-430, 445 S.E.2d 439, 440 (1994) (citing *Vacation Time of Hilton Head Inc. v. Lighthouse Realty, Inc.*, 286 S.C. 261, 332 S.E.2d 781 (Ct. App. 1985)).

Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000).

Jamison v. Hilton, 775 S.E.2d 58, 62, 413 S.C. 133 (Ct. App. 2015). For the reasons that follow, Defendant's JNOV arguments simply cannot carry the day and not only ignore the applicable standard above, but also settled law governing the claims themselves.

1. Count I: Breach of Contract

a. Defendant's contract formation arguments lack merit.

1. Defendant has waived its argument that Plaintiff must prove specific intent to be bound.

Defendant does not claim error as to the jury charges, but nonetheless begins its argument with a statement of law that was not charged to the jury.¹ Defendant argues that unilateral contract law requires that the promisor have a specific intent to be bound to the promise. However – without any objection from Defendant – this Court charged the jury from *Miller v. Schmid Laboratories* that the classification of a contract as unilateral means that a company can be bound to certain terms even though it claims that it did not intend such a result. The Court explained that, as long as one party can prove that the employer made a binding offer, the term can be binding on the employer even if the employer did not intend to be bound. *Miller v. Schmid Labs.*, 307 S.C. 140, 142, 414 S.E.2d 126, 127 (1992) (“It is certainly possible under *Small* for a company to unintentionally bind itself through an employee handbook.”). As mentioned, Defendant did not object to this charge, and it is wrong for it to now fault the jury’s conclusion on the basis that it followed the law charged.

¹ Generally, an issue regarding jury charges must be raised and ruled upon on the record. Rule 51, SCRCP (“No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection.”); *Winters v. Fiddie*, 394 S.C. 629, 639-641, 716 S.E.2d 316, 322 (Ct. App. 2011) (discussing *So. Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 216, 329 S.E.2d 736, 737-38 (1985)). Even where the appellate courts have excused the requirement that objections be made as to the charges because the issue already was addressed and further objections would be futile, it is still necessary to raise the issue in a post-trial motion in order to preserve the issue. *Fettler v. Gentner*, 396 S.C. 461, 470-71, 722 S.E.2d 26, 31 (Ct. App. 2012).

2. The Board intended for Defendant to be bound

Defendant intended for itself to be bound by the promise it made Plaintiff. Dr. Dinkins well understood that Plaintiff was not going to answer questions unless the Board Liason Committee provided her assurances of job protection. Dr. Dinkins certainly never testified that he intended for the promise to be illusory. To the contrary, he testified specifically that Bob Bright had no authority to fire Plaintiff for responding to the Committee's questions. Clearly, Dr. Dinkins meant what he said on behalf of the Board/Committee.²

Defendant's remaining arguments simply highlight other issues squarely in the purview of the jury. Dr. Dinkins' testimony, for example, that individual members cannot bind the Board, was of no consequence. (Def. Mem. at 5). First, Dr. Dinkins testified that he was acting in his capacity as member of the Liason Committee. He further testified that the Committee was carrying out its responsibilities under the Board's procedures as a duly-constituted committee under the Beta Club Constitution.

The jury was charged as to actual and apparent authority and Defendant raises no grounds of purported error as to agency/authority. Moreover, the jury was charged as to ratification, which applied since the entire Committee was present during the statement, obviously concurred in Dr. Dinkins' assurance, and received the benefit thereof (i.e. it got the information it was seeking from Plaintiff). Again, Defendant raised no grounds for error as to the charge.

² The arguments being made now are not really the position of the Beta Club, but rather, those of Bob Bright.

Defendant also poses a false issue by asserting that Dr. Dinkins was an "individual member." There simply is no requirement that every member of the Committee speak in unison.³ Defendant's argument once again simply ignores reality.

3. The Board's promise could not be more specific

It would be difficult to imagine a more specific promise than one to not terminate employment for answering specific questions.⁴ This is not a case in which someone, outside the context of a discussion on job security, remarked that the employee would be around as long as she "kept [her] nose clean" or for "as long as [she did] a good job." Here, the jury would have no difficulty understanding the meaning behind the promise. Moreover, although no interpretation of the promise is necessary here, as the promise was clear on its face, Defendant is incorrect to suggest that a promise is not enforceable if subject to interpretation. See, e.g., *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 308-309, 698 S.E.2d 773, 778 (2010) (determining in a bilateral context that promise of a "guaranteed salary for the first year is \$ 110,000 . . . and [compensation] to insure that the second year will be \$ 120,000 earnings" is sufficient to show intent to form employment contract for two years).⁵

³ All Plaintiff needed to prove was that Dr. Dinkins, who was accompanied by the rest of the Committee, including top officers of the Board, spoke with actual or apparent authority or that his statements were ratified. Dr. Dinkins established this much and Defendant does not assert that Dr. Dinkins spoke *ultra vires*.

⁴ The promise in this case is not even disputed. Dr. Dinkins flatly testified that, "[i]f she said it, I won't dispute it," and "I know it was said." The Court here is not even posed with conflicting testimony. How Defendant can challenge the notion of a promise being made is difficult to understand.

⁵ Likewise, Defendant is incorrect to suggest that the law of contracts applicable to oral promises is different than that which applies to written promises. No case says that.

4. Defendant's characterization of Plaintiff's testimony simply is false

Defendant continues the spurious argument that "Plaintiff never offered any evidence that she understood Dinkins' assurances to constitute a limitation on her at-will employment." (Def. Mem at 5). Plaintiff specifically testified as to what she was and was not relying upon in terms of her claim. Plaintiff testified she relied on the promise of the Committee (and was not relying, for example, on prior written policies or handbooks). The questioning to which Defendant continues to refer is to her deposition testimony regarding her knowledge of what constitutes a legal "contract." Over the objection of the Undersigned, this Court allowed Defendant to cross examine Plaintiff as to what was her "contract." She explained she did not know what the legalities of her claim involved. The jury was free to consider that testimony. The fact remains she testified clearly on direct as to what she felt was the promise broken in this case. That is all a lay person can be expected to do.

b. Defendant's argument that there was no evidence of a breach ignores the trial itself.

Defendant's argument that there is no evidence of a breach either defies reality, or reflects a willful disregard for both the standards applicable here and the province of the jury under the Constitution.

First, the jury was fully entitled to rely on Plaintiff's testimony itself. Plaintiff unambiguously testified that, in explaining his rationale for the termination, Bright told Plaintiff "I heard you were negative with the Board."⁶

⁶ Defendant appears to stress that it should prevail because Bob Bright testified that, at the commencement of the termination meeting, it was not his intent to terminate Plaintiff. Of course, the jury was free to accept or reject this testimony as it was with all

Second, "negativity" was specifically listed by Bright on the November 4 termination document. Although Bright testified that his "continued negativity" comment related solely to negativity towards coworkers (and not the Board), this assertion was based on Bright's repeated insistence that he continued to observe bad attitude in the intervening week between the IAC meeting and the termination. But Bright wasn't even in the office at any intervening time. He fired Plaintiff the very next instance that he saw her after he learned of her comments to the Board. Moreover, all defense witnesses conceded there were no issues during that week and nobody complained to Bright about Plaintiff. It is not hard to understand why the jury seemingly chose to not believe Bright.

Third, the jury could also easily disbelieve Bright's insistence that nobody ever led him to believe Plaintiff spoke to the Board. Dr. Dinkins testified that the IAC reviewed the issues discussed at the meeting with Bright. Dr. Dinkins also acknowledged that the IAC told Bright about employee fear of termination. That comment could only relate to Plaintiff since the record is devoid of any other employee being threatened with termination. In a somewhat surprising turn, Defendant itself emphasized that Plaintiff was scared and that she knew she was on "thin ice" based on the warning Bright gave Plaintiff just days before the IAC/SLC meeting. Having emphasized that Plaintiff was in dire fear of job loss, it strains credulity for Defendant to

testimony. Bright's testimony conflicted with Plaintiff's account, which was for the jury to resolve. Defendant's characterization of Bright's testimony as "uncontradicted," therefore, is not accurate to say the least. In any event, when Bright formed his decision to terminate Plaintiff for being negative with the Board is not important. It matters only that he did, and that is what the jury obviously concluded.

now claim that Bright would not have understood that the IAC's comments about job loss did not relate to Plaintiff.

Bright also would have known that it was Plaintiff who was discussed at the IAC/SLC committee from the fact that the IAC specifically discussed employee discipline procedures with Bright right after its discussion with Plaintiff. Dr. Dinkins testified that, in discussing employee concerns with Bright, the IAC told Bright that he should follow "due process" when disciplining employees. The only employee to which that comment could pertain would be Plaintiff. There simply is no evidence in the record of any other employee having been disciplined.

Finally, although Bright denied that he and the committee ever discussed Plaintiff, he specifically testified in his deposition (read to the jury) that he told the IAC he might fire her. Bright's attempt at trial to persuade the jury that he and the IAC did not discuss Plaintiff was belied by Bright himself.

Defendant urges the Court to ignore all of the foregoing and rely solely on the testimony of both Bright and Laura Lewis that Bright did not make the comment attributed to him by Plaintiff. This argument fails for three reasons. First, it ignores the applicable standard here as the conflicting testimony was for the jury to resolve. The jury obviously believed Plaintiff, which was its right to do.

Second, Defendant's argument ignores the other evidence discussed above upon which the jury could easily have relied.

Finally, the jury had ample basis for questioning the testimony of Bright and Lewis in this regard. Bright finally admitted at trial – after the reading of his deposition on point – that he does not remember what was said at the Nov. 4 meeting. Lewis'

testimony was equally dubious. As pointed out at trial, Lewis repeatedly claimed she could not remember what was said -- but she then claimed specific recall as to what was *not* said. There is no fair way to characterize Lewis' testimony as anything other than an attempt to support whatever was best for Bob Bright. It was for the jury to assess her credibility. For Defendant to suggest that it mandates judgment as a matter of law ignores all of the contrary evidence, the role of the jury, as well as the legal standard governing the pending Motion.

2. Count II: Breach of Contract Accompanied By Fraudulent Act

a. Defendant's argument that there exists no independent fraudulent act under Count II misconstrues controlling authority

Defendant's effort to complicate the simple is unavailing, and this Court already addressed it in the summary judgment order. Defendant simply continues to ignore that, just as in *Conner*,⁷ the breach in this case is not the same thing as the dishonesty that attended it:

- The breach in this case was the termination of Plaintiff for communicating with the Board; and
- The fraudulent acts are the multiple lies by Bob Bright as to the reason.

With regard to the fraudulent act, it can be "any act characterized by dishonesty in fact, [or] unfair dealing." *Harper v. Ethridge*, 348 S.E.2d 374, 290 S.C. 112 (Ct. App. 1986). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Floyd v. Country Squire Mobile Homes, Inc.*, 287

⁷ *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (S.C. 2002).

S.C. 51, 54, 336 S.E.2d 502, 504 (Ct. App. 1985). "'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Conner v. City of Forest Acres*, 348 S.C. 454, 465–66, 560 S.E.2d 606, 612 (2002) (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)).⁸

In this context, however, there is a Supreme Court case on point! As in *Conner*, the fraudulent act is the litany of pretextual reasons Bob Bright has attempted to give to justify a clear breach both at the time and afterwards⁹ -- reasons that he knew were untrue. *Conner*, 348 S.C. at 466, 560 S.E.2d at 612 ("Primarily . . . Conner's claim is that the City fabricated pretextual reasons for Conner's termination knowing the reasons

⁸ Nothing in Defendant's cited cases suggest anything more than the proposition that there must be some act of a fraudulent nature as that term is used in *Harper*. Plaintiff never suggested otherwise. *Smith v. Canal Ins. Co.*, 275 S.C. 256, 257, 269 S.E.2d 348, 349 (1980) is a motion to dismiss case that has nothing to do with the facts presented here. *Hardee v. Penn Mut. Life Ins. Co.*, 215 S.C. 1, 4, 53 S.E.2d 861, 861 (1949) also does not suggest that lying as to the reasons for the breach is not an independent act. Defendant actually cites from the dissent in *Dunsil v. E. M. Jones Chevrolet Co.*, 233 S.E.2d 101, 268 S.C. 291 (1977), however, that case adds nothing to the analysis either. It merely emphasizes there must be an act that accompanies the breach, which is not contested here. Finally, Defendant incorrectly cites *Coker's Mobile Home Plaza, Inc. v. ITT Commercial Finance Corp.*, 1990 U.S. App. LEXIS 3669, *1, 900 F.2d 250 (4th Cir. S.C. 1990) as being a published decision. That said, it merely relies on *Harper* for the uncontested proposition that "a fraudulent act is simply 'any act characterized by dishonesty in fact, unfair dealing.'" 1990 U.S. App. LEXIS 26996, *15 (quoting *Harper v. Ethridge*, 348 S.E.2d 374, 290 S.C. 112 (S.C. Ct. App. 1986)).

⁹ "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Floyd*, 287 S.C. at 54, 336 S.E.2d at 504.

were false and did not justify termination for cause.") That is separate and apart from the breach itself.¹⁰

Although Defendant does not specifically argue that Plaintiff failed to present evidence that Bright's reasons are pretextual, Plaintiff presented ample evidence in this regard.

First, although Bright testified that his "continued negativity" comment related solely to negativity towards coworkers (and not the Board), this assertion was based on Bright's repeated insistence that he continued to observe bad attitude in the intervening week between the IAC meeting and the termination. But Bright wasn't even in the office at the time. He fired Plaintiff the very next instance that he saw her after he learned of her comments. Moreover, all defense witnesses conceded there were no issues during that week and nobody complained to Bright about Plaintiff.

Second, Bright's contrived "not responding to emails" rationale was knowingly false as both Melody Cooper and Jay Moore told him that spam was involved, and Cooper told Bright that many of the emails were UPS notifications. Bright finally conceded that the purported statistics upon which he claimed to have relied¹¹ do not actually show that any emails sent were related to any received. Every witness questioned either admitted, or finally conceded, that there were no emails sent to Plaintiff seeking a response to which she did not respond.

¹⁰ Had Bob Bright not fabricated reasons, Defendant would merely be liable for breach of contract.

¹¹ Defendant never authenticated the statistics or showed that they were accurate. Defendant allowed all emails from that time to be deleted, even though Plaintiff had pending legal challenges.

Finally, in apparent recognition that Bright's falsehoods about the contemporaneous reasons given would not carry the day, he fabricated an additional reason during discovery. Bright verified the claim made in responses to Interrogatories that Plaintiff "failed to keep up with advances in computer programs to allow her to perform necessary job functions," was "resistant to change and to embrace new ideas," and "fail[ed] to keep up her technical skills." (Def. Resp. to Interrogs. 11, 20 (Pl. Exh. 10)). There was not a scintilla of truth to this sworn statement. Bright could not begin to defend these statements, and every witness questioned testified that Plaintiff was adept at operating the computer programs with which she worked, that she learned new programs to enable her to do her job better, and that she had good technical skills. See *Floyd*, 287 S.C. at 54, 336 S.E.2d at 504 ("The fraudulent act may be . . . subsequent to the breach of contract, but it must be connected with the breach itself . . .")

B. Defendant's New Trial arguments

1. Defendant's 13th juror doctrine arguments are improper because they are based on legal arguments.

In cursory form, Defendant merely references its JNOV arguments and states that the Court should grant a new trial as to the legal sufficiency of the promise, whether there was a breach, and the legal requirement of an independent fraudulent act. (Def. Mem. at 11). Defendant does not assert for new trial purposes that there was any error in the admission of evidence or in the manner in which the jury was charged. Rather, the sole argument Defendant seeks to make from this recitation is that the Court should substitute its judgment for that of the jury by invoking the 13th juror doctrine. (*Id.*)

The primary problem with Defendant's thirteenth juror argument is that it merely incorporates prior *legal* points as to the first and third arguments regarding the law on

altering at-will employment and the law on "independent fraudulent act accompanying the breach." (See Def. Mem. at 11 ("As explained above . . ."))

The thirteenth juror doctrine permits a court to essentially hang the jury "solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (emphasis added, quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)); *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct. App. 2007) ("The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.") (citing *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984)). In other words, it is not a vehicle for ordering a new trial on legal issues submitted to the jury, especially where, as here, Defendant never took issue with any of the charges. If the Court is going to sit as another juror, it should confine its consideration of the facts to the legal issues charged – not the ones that Defendant is now pressing post trial.

The only factual argument Defendant has implicitly posed under its thirteenth juror doctrine argument is whether there was evidence of a breach (i.e. the second issue raised). Defendant never states in its new trial argument how Plaintiff's evidence was insufficient as to any element of her claim, including the factual issue regarding breach. Rather, Defendant's entire argument seemingly is premised on the idea that this Court should simply discredit Plaintiff, her witnesses, and even much of what Dr. Dinkins said. Instead, Defendant impliedly argues, this Court should accord great weight to the testimony of two witnesses (Bob Bright and Laura Lewis) who repeatedly were impeached with their own depositions. Defendant never explains how or why the

Court could or should reach this conclusion, and Plaintiff respectfully submits that Defendant's perfunctory argument fails to present or preserve any valid basis for a new trial.

As to the sole factual issue arguably raised – whether there was a breach – Plaintiff presented evidence easily sufficient to prove by a preponderance of the evidence that Bright fired Plaintiff in contravention of the assurances provided by the Board/Liason Committee.

The jury in this case was attentive, focused, and deliberative. It reached a unanimous verdict as to every question posed to it. The Constitution of South Carolina vests in the jury the authority to resolve disputed issues of fact, and there simply is no basis by which the Court could find that this jury discharged those responsibilities in error.

2. Defendant's argument regarding Plaintiff's closing argument

a. Defendant's argument is not preserved.

Defendant now takes issue with counsel for Plaintiff's closing argument. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). Even if Defendant's argument had merit – which it clearly doesn't – Defendant has not preserved this argument because it made no contemporaneous objection. To preserve an issue for review as to closing arguments, the complaining party must have made a contemporaneous objection. *State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.*, 2015 S.C. LEXIS 249, **26-27, 2015 WL 4112411 (S.C. July 8, 2015) (citations omitted); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450

(2005) (rejecting argument regarding improper closing argument: "Since there was no contemporaneous objection, this issue is not preserved for appellate review."); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) ("[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review"); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) ("Failure to object to comments made during [closing] argument precludes appellate review of the issue."). For this reason alone, Defendant's effort to seek a new trial must be rejected.

b. Defendant's assertions regarding closing argument nonetheless lack merit.

The Undersigned's argument regarding Bob Bright's intentions were hardly improper. It is precisely the purpose of closing argument to argue the theories of the case and inferences a party proposes be drawn from the evidence. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 244, 734 S.E.2d 148, 160 (2012) ("[A]n attorney is permitted to argue the evidence and its inferences in her closing argument") (Pleicones, J., concurring).

Defendant's decision to take issue now with the argument is curious. The "shot across the bow" argument certainly should have come as no surprise when made in closing. It is the same argument the Undersigned made during the second directed verdict motion.¹²

Defendant's argument also is hypocritical. Defendant, not only at trial but also in the pending Motion, has emphasized the impact on Plaintiff from the warning Bright

¹² Even if Defendant did not already understand the clear import of this evidence, it never moved in limine to prohibit such argument to the jury after the directed verdict motion in which the evidence was discussed.

gave Plaintiff on October 21. Defendant repeatedly asserted that Plaintiff knew she was on "thin ice" and her employment was in jeopardy because of the serious nature of the warning. (See Def. Mem. at 2). After Defendant hammered its "thin ice" theme, the Undersigned merely pointed out to the jury that Plaintiff's fear and trepidation is precisely what Bright intended. One has to wonder why Defendant thinks it is proper for it to argue the inferences to be drawn regarding the impact of Bright's October 21 warning, but that it is somehow improper for Plaintiff to do the same. Whatever Defendant's thinking, it has provided no basis for warranting judgment in favor of Defendant, and Defendant cites not a single Rule 59 case to support its bizarre assertion.

2. Defendant's remittitur argument is improper

Defendant belatedly attempts to challenge Plaintiff's evidence of actual damages. The jury awarded actual damages of \$518,006 – the precise amount specified in Dr. Alford's Report. (Plaintiff's Exhibit 9).

This argument also is not preserved because Defendant not only stipulated to entry of Dr. Alford's Report, but Defendant never objected to his testimony that established Plaintiff's actual damages. Defendant stipulated to Dr. Alford's qualifications, and it was therefore the jury's right to decide whether to credit some or all of Dr. Alford's conclusions.

Likewise, Defendant never objected to the Court's jury charges on damages. Defendant's efforts to assert new legal principles to question the jury's application of the law charged to the facts regarding damages simply is improper. *Small v. Springs Indus., Inc.*, 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) ("*Small II*") ("[A]t the close

of the trial judge's charge, he asked [Defendant] whether it had any exceptions to the charge or further requests to charge. Springs replied in the negative and has, therefore, waived any objection it might properly have raised on this issue.")

That said, Defendant's attempt to create its own law is refuted by settled and controlling authority. Defendant's claim that damages are limited to back pay to the time of trial is a frivolous assertion. Damages for a breach of [contract] are to be measured by the actual loss caused by the breach. *Small II*, 300 S.C. at 484, 388 S.E.2d at 810. "Such losses may include back pay as well as future damages." *Id.*

Employment loss damages also include all fringe benefits to which the employee satisfies the jury that she had a reasonable expectation. *Id.*; *Chastain v. Owens Carolina, Inc.*, 426 S.E.2d 834, 836 (Ct. App. 1993) (employee entitled to bonus as element of damages even though bonuses were not guaranteed since evidence supported finding that employee regularly received bonuses before discharge).

Defendant's argument that front pay is speculative also contravenes settled precedent. Plaintiff worked practically her entire adult life for Beta Club and testified she planned to work there for as long as she could. Damages were based on work life expectancy, without any objection from Defendant. (See Pl. Exh. 9 at 3 & n.2) The Supreme Court has specifically held that it is for the jury to determine how to determine what evidence to credit and to determine for how long Plaintiff would have remained employed. *Shivers v. John H. Harland Co.*, 310 S.C. 217, 221, 423 S.E.2d 105, 107 (1992) ("In *Small II*, the contract . . . was for an indefinite duration. Thus, for the purpose of establishing damages, it appropriately was left to the jury to determine how long *Small* would have continued to be employed but for the wrongful discharge.")

(emphasis added).¹³ Likewise, the use of work life expectancy is proper and well accepted for purposes of expert testimony as to future damages. *Campbell v. Paschal*, 290 S.C. 1, 16, 347 S.E.2d 892, 902 (Ct. App. 1986). Despite the fact that Defendant has not preserved this issue, it is completely devoid of merit.

III. Conclusion

For the foregoing reasons, Defendant's Motion should be denied.

Respectfully submitted this 25th day of November, 2015.



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Attorney for Plaintiff

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¹³ In a final desperate effort, Defendant argues in a footnote that the jury's award "appears to raise problems under the statute of frauds." (Def. Mem. at 14 n.3). Defendant's argument is based on its own mischaracterization that Plaintiff's contract is one for a term – something Plaintiff has never asserted. The entire premise of Defendant's concocted, yet unsupported, argument is fallacious. Moreover, it is not preserved because it was never specifically argued at the directed verdict stage.

Defendant fails to cite a single case, let alone an employment contract case, that has been held to be barred by the statute of frauds. Oral employment contracts have never been considered to be within the statute of frauds. See, e.g., *Weber v. Perry*, 201 S.C. 8, 21 S.E.2d 193, 194 (1942); *McGehee v. S. Carolina Power Co.*, 187 S.C. 79, 196 S.E. 538, 541 (1938).

Plaintiff performed all that was expected of her under the terms of the unilateral contract. She answered the questions as she was directed to do. Accordingly, even if the statute of frauds applied, which it doesn't, performance would take this case out of it. *Coker v. Richtex*, 261 S.C. 402, 200 S.E.2d 231 (1973) is just one of many cases for the proposition that performance by either party takes the contract outside of the statute. *Id.* at 405-06, 200 S.E.2d at 232.

State of South Carolina

County of Spartanburg

) IN THE COURT OF COMMON PLEAS

)

) 2014-CP-42-01759

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

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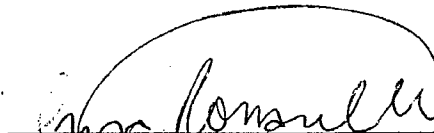
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CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff Denise Parker's Opposition to Defendant's Motion JNOV or New Trial was served on all counsel of record via U.S. Mail on November 25, 2015, to the following address:

Thomas A. Bright
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
P.O. Box 2757
Greenville, SC 29602



Lisa Romaniello
Legal Assistant

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IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

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**DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE
VERDICT OR IN THE ALTERNATIVE FOR A NEW TRIAL**

COMES NOW, Defendant the National Honorary Beta Club (hereinafter "Defendant" or "the Beta Club") by and through its undersigned counsel and submits this Supplemental Memorandum in support of its Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. In Plaintiff's Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict or New Trial (hereinafter "Opposition Brief"), Plaintiff makes several counter arguments to the points of law asserted by Defendant in its memorandum supporting its post-trial motions. In particular, Plaintiff's Opposition Brief contends that she presented evidence at trial sufficient to permit a jury to conclude that Bob Bright had intent to fraudulently breach Plaintiff's alleged employment contract. (See Opposition Brief pp. 9-12.) This supplemental brief is focused on the narrow issue of whether Plaintiff presented sufficient evidence concerning fraudulent intent with regard to the challenged contract required to properly support the jury's award of \$350,000.00 in punitive damages.

LEGAL ARGUMENT

To succeed on a claim for breach of contract accompanied by fraudulent act, a plaintiff must prove that the breaching party had a fraudulent intent with regard to breach the contact at

issue. *See e.g. Zinn v. CFI Sales & Mktg., Ltd*, No. 2012-213193, 2015 WL 7566527, at *10 (S.C. Ct. App. Nov. 25, 2015)(“Breach of contract accompanied by a fraudulent act...requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making.”)(citations omitted). Plaintiff’s Opposition Brief erroneously concludes that she presented evidence sufficient to support the jury’s award of punitive damages in conjunction with Count II. Plaintiff contends that: “[t]he breach in this case was the termination of Plaintiff for communicating with the Board” and “[t]he fraudulent acts are the multiple lies by Bob Bright as to the reason.” (*See* Opposition Brief p. 9.) However, Plaintiff failed to present any evidence to establish that Bright’s actions were motivated by a specific intent to fraudulently breach her alleged employment contract, and therefore, the jury’s award of punitive damages should be set aside.

The evidence pertinent to Bright’s alleged “fraudulent intent” begins with the Conference Note Plaintiff received on October 21, 2013. The Note itself, which is disciplinary in nature, speaks of the following:

- Failure to sustain professional strategy;
- Does not demonstrate an exceptional mastery of professional skills; and
- Professional manner in which coworkers are addressed.

The Note goes on to state that Plaintiff should maintain a professional image, assist coworkers in meeting department objectives, and provide positive assistance to coworkers. At trial, Plaintiff testified that Bright told her the warning was “long past due.” Plaintiff testified that Bright was critical of her for not helping other staff and not addressing coworkers professionally. Bright testified that he spoke with Plaintiff about her negativity and her failure to cooperate with others. Plaintiff testified that on October 21, 2013, she was scared for her job, that she knew Bright was

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not happy with her performance, that she was on thin ice, and that she thought she might be fired.

Plaintiff argues that Bright's reasons for this discipline were not honest and that they were pretextual *i.e.* fraudulent. Whether that assessment is accurate or not, it has no bearing on the specific claim of breach of contract accompanied by fraudulent act. Assuming that this testimony shows some "fraudulent intent" by Bright to get rid of Plaintiff, the alleged fraudulent intent does not relate to the breaching of an alleged employment contract because that contract did not yet exist! The alleged contract did not come into being until October 25, 2013. How could Bright's actions and words on October 21, 2013, which Plaintiff contends reflect his "fraudulent intent," relate to a contract that had not yet come into existence? Even if we assume that Bright was simply looking for an excuse to terminate Plaintiff and he used this warning to falsely critique Plaintiff's performance as a pretext to accomplish that goal, that evidence is of no consequence to this cause of action because it does not relate to the breaching of the contract in question. This is true because the (alleged) actionable contract did not come into being until four (4) days later. Whatever Plaintiff may contend about Bright's fraudulent intent, one thing is clear—his alleged fraudulent intent could not be related to the breach of an alleged contract that did not yet exist.

Plaintiff's argument concerning Bright's critique of her responsiveness to e-mails is similarly misguided. (See Opposition Brief p. 11.) Here again, the memo to Melody Cooper criticizing the department, including Plaintiff, for not timely responding to e-mails was dated on October 22, 2013. Again, assuming for the sake of argument, that Bright, again, was simply trying to manufacture reasons for the purpose of terminating Plaintiff's employment, and even if his criticisms were fabricated and untrue (*i.e.* a pretext), and that the totality of this testimony

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established Bright's "fraudulent intent," that alleged fraudulent intent cannot be "related" to a contract that did not yet exist. It may be argued that it is evidence of a "fraudulent intent" to get rid of Plaintiff or to terminate her employment, but one thing is certain—it cannot be evidence of fraudulent intent to breach a contract that does not yet exist. Again, the jury's award of punitive damages cannot be sustained.

Next we move to November, 2013, the date Plaintiff was fired. The reasons for Plaintiff's dismissal were the reasons first articulated on October 21 and 22, 2013. Plaintiff argues that these reasons were not true and they were simply a pretext for terminating Plaintiff's employment. Even if we accept that argument as true, it does not advance Plaintiff's claim for punitive damages. This is not a wrongful discharge claim. Nor is it a retaliation claim. The cause of action at issue is breach of contract accompanied by fraudulent act. That requires Plaintiff to present evidence of "fraudulent intent" with regard to the breaching of the contract. The missing piece of this puzzle is that there is no evidence in the record that Bright knew that a contract had been formed on October 25, 2015. Plaintiff never testified that she told Bright what Dinkins told her in the October 25th meeting. Dinkins never testified that he told Bright of the alleged "promise" he made to Plaintiff that Bright could not fire her for talking with the board. As that is the alleged employment contract at issue in this case, to prove that Bright had "fraudulent intent" to breach that specific contract, he would have to know about the existence of the contract. But this record is devoid of any evidence that anyone said anything to Bright to put him notice of the existence of the alleged contract. And Bright's knowledge of that alleged contract is critical to Plaintiff's claim because she must prove "fraudulent intent" related to the breach of the contract.

It is true that Dinkins testified that he told Bright that employees were afraid for their jobs. Dinkins also made a comment to Bright about Bright giving employees due process prior to discharge. Plaintiff testified that Bright told her that he had heard that she was negative with the Board. But this testimony is far short of informing Bright that there was ever a contract with Plaintiff (or even a "promise" made to her) to support the necessary element of Plaintiff's claim—proof of fraudulent intent related to the breach of contract. Plaintiff has not presented any evidence that Bright knew about her alleged employment contract, much less acted with the specific intent to fraudulently breach that contract. There is absolutely no evidence in the record that Bright had any personal knowledge of the oral employment contract allegedly formed between Plaintiff and the Beta Club. Absent such a showing, there was no basis for the jury to award punitive damages and that element of the verdict should be set aside.

CONCLUSION

The unavoidable truth is that one cannot form the requisite "fraudulent intent" to breach a contract before the contract is formed. Neither can someone form the requisite "fraudulent intent" to breach a contract if one has no knowledge of the existence of that contract. Based on the record in this case, these two truthisms lead to the inevitable conclusion that there was no legal basis for the award of punitive damages in this case and this Court should set aside that aspect of the jury's verdict.

[SIGNATURES TO FOLLOW]

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Dated this the 7th day of December, 2015.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Thomas A. Bright (with permission of the court)

Thomas A. Bright (S.C. Bar No. 884)

David L. Harris, Jr. (SC Bar No. 101748)

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IN THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,
Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.
2014-CP-42-1759

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2015, I served a copy of **Defendant's Supplemental Memorandum in Support of Defendant's Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial** in the above-styled action upon the following, by hand delivery to:

Brian P. Murphy, Esq.
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

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M. HOPE BLACKLEY

Thomas A. Bright (with permission of court)
Thomas A. Bright

23173780.1

Ogletree Deakins

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SMOAK & STEWART, P.C.

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February 5, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court for Court Of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

FEB 08 2016

SC Court of Appeals

Re: Denise Parker v. The National Honorary Beta Club
Case No.: 2014-CP-42-1759

Dear Ms. Kitchings:

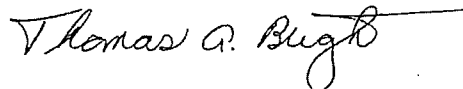
Enclosed for filing are the original and two (2) copies of Appellant The National Honorary Beta Club's Notice of Appeal and a copy of the order Appellant is challenging on appeal. Also enclosed is a check in the amount of \$100.00 for the filing fee. Please return stamped "Filed" copies to us in the enclosed self-addressed prepaid envelope.

A copy of this Notice of Appeal is being filed with the Clerk of Court for the Spartanburg County Court of Common Pleas, and a copy is being served on counsel for Denise Parker.

If you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



Thomas A. Bright

Enclosures

cc: Brian P. Murphy, Esq.
via: Hand Delivery

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Keith R. Kelly, Circuit Court Judge

Case No. 2014-CP-42-1759

Denise Parker,

Respondent,

v.

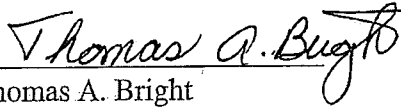
The National Honorary Beta Club,

Appellant.

NOTICE OF APPEAL

The National Honorary Beta Club appeals the judgment of the Honorable Keith R. Kelly dated January 6, 2016. In particulars, the Beta Club appeals the portion of the judgment awarding Denise Parker, the Plaintiff in this case, punitive damages in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000). Appellant received written notice of entry of the judgment on January 11, 2015.

February 5, 2016


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Keith R. Kelly, Circuit Court Judge

Case No. 2014-CP-42-1759

RECEIVED

FEB 08 2016

Court of Appeals

Denise Parker,

Respondent,

v.

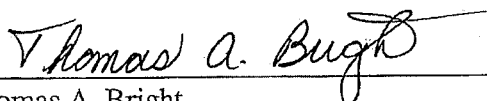
The National Honorary Beta Club,

Appellant.

PROOF OF SERVICE

I hereby certify that on this 5th day of February, 2016, I served a copy of the forgoing **Notice of Appeal** in the above-styled cause upon the following, by hand delivery to:

Brian P. Murphy, Esq.
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601


Thomas A. Bright

23731165.1

State of South Carolina

County of Spartanburg

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) IN THE COURT OF COMMON PLEAS

) 2014-CP-42-01759

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) Order Denying Defendant's Court of Appeals
) JNOV or New Trial and Dismissing
) Plaintiff's Promissory Estoppel Claim

I. Procedural Background

Plaintiff commenced this action on April 29, 2014. Plaintiff initially brought two claims: Count I for breach of contract and Count II for promissory estoppel. During the course of discovery, Plaintiff amended the complaint with the consent of Defendant.

Plaintiff's Amended Complaint sets forth three claims: Count I for breach of contract; Count II for breach of contract accompanied by fraudulent act; and Count III for promissory estoppel.

This matter came to trial on September 28, 2015. The jury heard evidence on September 28, September 30, and October 1st. The parties presented closing argument on October 2nd, and the jury deliberated and returned a unanimous verdict that same day.

The jury found for Plaintiff on both Count I (breach of contract) and Count II (breach of contract accompanied by fraudulent act). The jury awarded actual damages of Five Hundred Eighteen Thousand Six Dollars (\$518,006) and punitive damages of

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Three Hundred Fifty Thousand Dollars (\$350,000).¹ The Court took Count III (promissory estoppel) under advisement as Defendant insisted that it be tried by the Court because the action arises in equity. The Court entered Judgment in the amount of Eight Hundred Sixty-Eight Thousand Six Dollars (\$868,006) as of October 2, 2015.

By agreement of the parties, the Court extended the deadline for submission of post-trial Motions by ten days.

On October 12, 2015, Defendant timely filed its Motion for judgment notwithstanding the verdict (JNOV) and for a New Trial. Defendant raises three arguments as to why it is entitled to judgment as a matter of law (Motion ¶¶ A(1)-(2)), as well as arguments for a new trial absolute under the thirteenth juror doctrine (*id.* ¶ B(1)) and for new trial nisi remittitur (*id.* ¶ B(1)).

Now before the Court are Defendant's Motion JNOV or for New Trial as well as Count III for promissory estoppel. For the reasons that follow, Defendant's Motion is DENIED and Plaintiff's claim for promissory estoppel is DISMISSED.

II. Summary of Evidence Presented

For purposes of background, the Court briefly describes the evidence presented at trial.

Defendant employed Plaintiff for approximately thirty-eight years. In 2013, Bob Bright became executive director of Defendant. By all accounts, there were morale issues in the office after Bright became executive director. The parties disagree, however, as to both the cause or source of the issues and the substance of them.

¹ The jury listed the actual damages under both counts. The Court instructed the jury, as the parties agreed, that actual damages would be awarded only one time to avoid any double recovery.

Plaintiff was selected by the other coworkers to serve on the staff liaison committee ("SLC"). The purposes of the SLC were to address employee concerns at work, to serve as a liaison with management, and to meet with the Internal Affairs Committee of Defendant's Board of Directors ("IAC").²

In September, 2013, the SLC met with employees, and then with Bright. The SLC was addressing issues, including divisions within the staff and morale, which it discussed with Bright.

On October 25, the SLC was scheduled to meet with the IAC in conjunction with the Board's regularly-scheduled meeting. Bright knew that the meeting would occur and knew of Plaintiff's role on the SLC.

On October 21, Bright issued Plaintiff a written reprimand – the first she ever received in her 38-year career. The reprimand lists three areas of concern: (1) Failure to sustain a professional growth strategy; (2) Does not demonstrate an exceptional mastery of professional skills; and (3) Professional manner in which coworkers are addressed. The sum and substance of the warnings relates to purported complaints that two convention coordinators made about Plaintiff related to issues about which the parties presented competing and conflicting evidence.

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² Article 1, Section 1(A) of the Beta Club Constitution provides that Defendant is governed by a National Board of Directors. Article 1, Section 1(K) states: "[t]he National Board shall set up such organizational committees as shall be necessary for the proper supervision and direction of the affairs of the organization." Pursuant this provision, Defendant established an Internal Affairs Committee. Under the policies adopted by the Board, the Internal Affairs Committee is charged with gathering information, "[m]eeting with staff to receive staff input concerning daily operations," "[m]eeting with the Staff Liaison Committee about suggestions and concerns for improving the National Beta Club," and other duties to learn about and deal with internal issues.

Plaintiff testified that, during the meeting, Bright made a comment about how he could have people lined up on the sidewalk to fill Plaintiff's job, which Plaintiff testified as leaving her fearful of termination.

It is undisputed that nobody expressed any concerns about Plaintiff between the time of her warning on October 21 and the SLC-IAC meeting on October 25.

The IAC-SLC meeting occurred in the context of employee concern about job security morale in the office. One of the IAC Committee members was Dr. Ken Dinkins -- vice chair of the Board, chair of the South Carolina council, and a prior Board Liaison and member of several committees. At the meeting with Dr. Dinkins were other members of the IAC, who also were high-ranking officers of the Board. Pat Stout was Board chair (*Id.* at 34:22 -- 35:4). Dennis Campbell was chair of the IAC, board liaison, and vice chair of the Board at the time. Board members Stan Long and Mark Conley also were present.

Plaintiff would not volunteer any information about what Bright had done to her out of fear of her job. Another SLC member, Pat Mabry, told the members of the Board that they needed to ask Plaintiff what happened when she had her employee conference with Bob Bright on October 21st, 2013. Mabry advised that Plaintiff would not volunteer the information. Dr. Dinkins confirmed that Plaintiff was reluctant to speak about her situation and appeared to be fearful.

The parties do not dispute that, at the meeting and in the presence of the other Board members, Dr. Dinkins told Plaintiff that she was required to answer their

questions about what happened. Through Dr. Dinkins, the IAC assured Plaintiff that Bright could not fire her for answering their questions.³

Plaintiff finally told the Board members about her write up and Bright's comments about people waiting in line for her job. Plaintiff also told the Board how Bright accused her of not helping Barbara Anderson (another member of the Committee in attendance), but that Anderson had no problem with Plaintiff helping her.⁴ Dr. Dinkins confirmed that there is no reason to believe Plaintiff provided any information that was not true.

Dr. Dinkins testified that the IAC met with Bright after the meeting with Plaintiff and the SLC. Bright denied that the IAC specifically informed him about Plaintiff's comments. Dr. Dinkins confirmed, however, that he did discuss fears of job security held by employees, as well as concerns about the manner in which discipline was handled. There was no evidence in the record of other employees being disciplined or in fear of their jobs. Bright acknowledged that, during the meeting, he discussed the possibility of terminating Plaintiff's employment.

Defendant does not contend there were any problems with Plaintiff the rest of that day (October 25). The next week (October 28 – November 1), Bright was out of town. Nobody testified that they had any concerns about Plaintiff that week and nobody informed Bright that there were any issues with Plaintiff.

The following Monday, November 4, Bright returned to work. He called Plaintiff into the office. Present were Plaintiff, Bright, and Laura Lewis. The parties dispute

³ Dinkins, in fact, testified that Bright did not have the authority to fire Plaintiff for answering the IAC's questions.

⁴ Plaintiff testified that Bright accused her of not helping a manager, Barbara Anderson. Anderson, however, denied to Plaintiff knowing anything about it when Plaintiff asked her what the issue was about.

what was said during the meeting. Plaintiff testified that Bright told her "I heard you were negative with the Board," and that he was terminating her employment. Bright and Lewis deny that Bright said that he heard Plaintiff was negative with the Board. Bright presented another document, however, that documented a purported concern about "continued negativity."

The November 4 document Bright presented also cited "communication and failure to respond to emails promptly." Defendant did not present any emails to which Plaintiff did not respond. Bright testified he received numbers of emails sent and received from employees and based the alleged failure to respond to the difference in the numbers. Bright acknowledged, however, that the statistics did not actually show that any sent emails related to any received emails. Plaintiff's supervisor at the time informed Bright that Plaintiff was receiving spam emails and UPS notices. Defendant's information technology (IT) head, Jay Moore, also told Bright that some of the emails may be spam. None of the witnesses identified a situation in which Plaintiff did not respond to their emails. As discussed above, there were no complaints from Garland Meyer, or anyone else about Plaintiff being negative since Bright's prior warning.

In discovery responses, Bright stated that the bases for terminating Plaintiff's employment included her "fail[ure] to keep up with advances in computer programs to allow her to perform necessary job functions," that she was "resistant to change and to embrace new ideas," and that she "fail[ed] to keep up her technical skills." In addition to her own testimony, Plaintiff offered testimony from others, including both her supervisor at the time and Moore, to the effect that Plaintiff was adept at operating the technology

at work, and neither Bright nor any other witness for Defendant offered testimony that she was deficient in these areas.

II. Defendant's Motion JNOV

A. Standard

Because Plaintiff prevailed before the Jury, the issue before the Court is not whether Defendant has provided evidence that could support a verdict in its favor. To the contrary, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013). "[T]he trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when the evidence yields more than one inference or its inference is in doubt. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 546, 716 S.E.2d 295, 299 (Ct. App. 2011).

When considering a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Force v. Richland Memorial Hospital*, 322 S.C. 283, 471 S.E.2d 714 (Ct.App. 1996).

B. Discussion

1. **Count I: Breach of Contract**
 - a. **Sufficiency of the promise**

Defendant's first argument as to Count I is that "the alleged promise in this case

does not constitute an enforceable contract." Motion ¶ A(1). Defendant is correct that cases such as *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923 (1999) stand for the proposition that vague assurances of job security, especially if remote to the issue related to the termination, cannot be enforced in contract.

For example, in *Prescott*, the Plaintiff testified that, approximately twenty years prior to his termination, supervisors told him "as long as you do your job, keep your nose clean, that you'd have a job at Farmers Telephone right on." *Prescott*, 335 S.C. at 333, 516 S.E.2d at 924. In *Davis v. Orangeburg-Calhoun Law Enft Comm'n*, 344 S.C. 240, 542 S.E.2d 755 (Ct. App. 2001) the Court of Appeals held that a statement that the employee would "only be terminated for cause" was "not definite enough to alter his at-will status." *Id.* at 249, 542 S.E.2d at 760.

Cases such as *Prescott* and *Davis* stand for the proposition that colloquial terms about "clean noses" or "just cause" are far too indefinable to evidence any intent to be bound. They provide no measurable standard for determining whether, for example, an employee's conduct meets the standard of keeping his or her "nose clean," or whether grounds for termination are "just." As such, they lack the definiteness required to establish an enforceable promise.

Plaintiff is not relying on any vague promise made long before the facts at issue. Rather, she presented uncontroverted evidence that the IAC made a very specific promise to her, which was limited solely to one basis for which she would not be terminated. Not only is there no ambiguity as to the terms of the promise, the fact it was made is not in dispute. In short, it was a specific promise, made to one specific person that was limited to one specific circumstance.

Plaintiff also produced ample evidence that Defendant intended for the promise to be binding. Dr. Dinkins well understood that Plaintiff was not going to answer questions unless the IAC provided assurances of job protection. There simply is no evidence that Dr. Dinkins did not mean what he said on behalf of the Board/Committee. However, for purposes of this Motion, it is enough that there is some evidence to support the notion that he did.

b. Evidence of a breach

Defendant's second argument is that "Plaintiff failed to present any evidence of a breach." Motion ¶ A(2). Although the parties dispute what was said in the termination meeting, Plaintiff testified that Bright informed her that the reason for her termination was that she was negative with the Board. It was for the jury to determine whether to credit Plaintiff's version or that of Defendant's witnesses.

Although the jury was free to rely solely on Plaintiff's testimony, there is other evidence upon which the jury may have relied. For example, "negativity" was specifically listed by Bright on the November 4 document presented at the termination meeting. Although Bright testified that his "continued negativity" comment related solely to negativity towards coworkers (and not the Board), this assertion is based on Bright's repeated insistence that he observed no improvement in Plaintiff's attitude in the intervening week between the IAC meeting and the termination. The jury may have rejected this assertion, however, as Bright was not in the office at any intervening time. Moreover, as discussed above, all defense witnesses conceded there were no issues during that week and nobody complained to Bright about Plaintiff.

The jury also might have rejected Bright's testimony that nobody ever led him to believe Plaintiff spoke to the Board. Dr. Dinkins testified that the IAC reviewed the issues discussed at the meeting with Bright. Dr. Dinkins also acknowledged that the IAC told Bright about employee fear of termination. The record is devoid of any other employee being threatened with termination.

Bright also could have known that it was Plaintiff who was discussed at the IAC/SLC committee from the fact that the IAC specifically discussed employee discipline procedures with Bright right after its discussion with Plaintiff. Dr. Dinkins testified that, in discussing employee concerns with Bright, the IAC told Bright that he should follow "due process" when disciplining employees. The only employee to which that comment might pertain would be Plaintiff. There simply is no evidence in the record of any other employee having been disciplined.

Finally, although Bright denied that he and the committee ever discussed Plaintiff, he specifically testified in his deposition (read to the jury) that he told the IAC he might fire her.

In weighing the credibility of Bright and Lewis, the jury may also have questioned the strength of their purported recollection. Bright admitted at trial -- after the reading of his deposition on point -- that he does not remember what was said at the Nov. 4 meeting. Lewis repeatedly claimed she could not remember what was said -- but claimed specific recall as to what was *not* said. The Court further notes that counsel for

Plaintiff used both Bright's and Lewis's depositions for impeachment purposes, and he did so numerous times in the case of Bright.⁵

Finally, as discussed above, there is conflicting evidence as to the veracity of the other reasons given over time by Bright for the decision to terminate Plaintiff. If the jury did not believe the other reasons offered by Bright for the termination, it could have concluded that Plaintiff's testimony was credible as to the reason she claims Bright gave.

In the end, it was for the jury to assess the credibility of the witnesses and this Court cannot disturb that decision under the standard for motions JNOV. "The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). "[T]he jury does not [even] have to believe uncontradicted testimony. *Vinson v. Hartley*, 324 S.C. 389, 409, 477 S.E.2d 715, 725 (Ct. App. 1996) (citing *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)). Further, as our Supreme Court has recently noted, "neither an appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Bass v. S.C. Dep't of Soc. Svcs.*, No. 27593, 2015 S.C. LEXIS 390, at *15-16 (Dec. 2, 2015) (citing *Garrett v. Locke*, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992)).

⁵ There were several other occasions on which the Court needed to instruct Bright to respond to the questions asked. Again, it was for the jury to determine from its own observation of demeanor and other factors charged what weight to accord witness testimony. As discussed above, the Court does not weigh such possible determinations or resolve credibility arguments. Rather, it confines itself to a review of what a reasonable jury could find.

c. Conclusion as to Count I

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count I is DENIED.

2. Count II: Breach of Contract Accompanied By Fraudulent Act

Defendant's third argument is that "Defendant is entitled to judgment on Plaintiffs breach of contract accompanied by fraudulent act claim because Plaintiff failed to present evidence of an independent fraudulent act accompanying the alleged breach of contract." Motion ¶ A(3). Again, Defendant states a generally correct legal principle that this tort requires a fraudulent act that is distinct, yet related to the act constituting the breach of the contract. See *Smith v. Canal Ins. Co.*, 275 S.C. 256, 257, 269 S.E.2d 348, 349 (1980).

The fraudulent act can be "any act characterized by dishonesty in fact, [or] unfair dealing." *Harper v. Ethridge*, 348 S.E.2d 374, 290 S.C. 112 (Ct. App. 1986). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 541, 336 S.E.2d 502, 504 (Ct. App. 1985).

"'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)).

The breach in this case is the termination by Bright for being "negative with the Board," which contravenes the specific promise by the IAC that Plaintiff would not be terminated for providing it information.

The fraudulent act is not the termination itself. Rather, Plaintiff has contended throughout that the fraudulent acts upon which she relies are the pretextual reasons Bright gave at the time and subsequently for the termination.

The act of the termination and the giving of reasons are separate, distinct, and independent of each other. The former may exist without the latter. At the same time, they are related as they must be and the latter accompanies the former. *Conner*, 560 S.E.2d at 612 (recognizing that the fraudulent intent must "relat[e] to the breaching" and that the fraudulent act must "accompany[] the breach.").

Although the appellate courts have recognized that the facts and circumstances of each case will be unique, in this particular context, *Conner* clearly provides clear legal authority to support the jury's determination. In *Conner*, a police dispatcher alleged that her termination for job performance violated provisions in a handbook. After upholding the Court of Appeals' determination that it was for the jury to resolve disputed testimony regarding the termination, the Supreme Court provided guidance as to breach of contract accompanied by fraudulent act. Again, the Supreme Court determined that it was for the jury to resolve the matter. Although the plaintiff argued that there were several fraudulent acts in which the defendant engaged, the Supreme Court found one allegation sufficient to send the case to the jury. The Supreme Court noted: "Primarily . . . Conner's claim is that the City fabricated pretextual reasons for Conner's termination knowing the reasons were false and did not justify termination for cause." *Conner*, 348

S.C. at 466, 560 S.E.2d at 612). The Court held that conflicting testimony as to whether the reasons were false create "a genuine issue of material fact as to whether the City fraudulently breached its contract." *Id.*

As in *Conner*, the giving of allegedly-pretextual reasons for the termination is an act separate and distinct from the termination itself and yet it accompanied it. And, as in *Conner*, it was for the jury to resolve the disputed testimony on this point.

c. Conclusion as to Count II

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count II is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion JNOV is DENIED.

III. Defendant's Motion for New Trial

As noted above, Defendant has moved for both New Trial Absolute and for New Trial Nisi Remittitur

A. Standard

1. New Trial Absolute

The trial court must grant a new trial absolute if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Alternatively, the trial court may grant a new trial absolute when, sitting as the thirteenth juror, it concludes the jury's verdict is not supported by the evidence. Under the Thirteenth Juror Doctrine in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not

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prevailed. *Youmans v. S.C. DOT*, 380 S.C. 263, 272-73, 670 S.E.2d 1, 5 (Ct. App. 2008) (citing *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993)). The thirteenth juror doctrine permits a court to essentially hang the jury "solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (emphasis added, quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)); *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct. App. 2007) ("The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.") (citing *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984)).

However, the jury's determination of damages is entitled to substantial deference. On appeal, the appellate court reviews a denial of a new trial motion for an abuse of discretion. The appellate court will not reverse the trial court's decision on a motion for new trial unless it is controlled by an error of law or is not supported by the evidence. *Duncan v. Hampton County School Dist. No. 2*, 335 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1999).

2. Nisi Remittitur

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). "If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge

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must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). Otherwise, the trial court alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (citations omitted). "However, compelling reasons must be given to justify invading the jury's province by granting a new trial nisi remittitur." *Id.* "Great deference is given to the trial judge 'who heard the evidence and is more familiar with the evidentiary atmosphere at trial,' and who thus 'possesses a better-informed view of the damages than this Court.'" *Id.* (quoting *Vinson v. Hartley*, 324 S.C. 389, 405-06, 477 S.E.2d 715, 723 (Ct. App. 1996)).

B. Discussion

1. Defendant's new trial absolute

Defendant's first new trial argument is that "[t]his Court should set aside the jury's verdict in favor of a new trial absolute on the grounds that the jury's verdict is based on insufficient evidence and that improper arguments were presented to the jury in closing arguments." Motion ¶ B(1).

a. Sufficiency of evidence

Defendant's Memorandum submitted contemporaneously with the Motion references Defendant's JNOV arguments that Plaintiff offered insufficient evidence that: "(a) her at-will employment had been altered by an employment contract; (b) that Defendant had breached that contract; and (c) that Defendant committed an independent fraudulent act accompanying the alleged breach." Memo in Support at 11.

Defendant argues that such insufficiency warrants application of the thirteenth juror doctrine.

For the reasons set forth above, as it pertains to the facts in this case, the Court finds that Plaintiff submitted sufficient evidence of a specific promise that altered her at-will employment in one specific regard. Further, there was sufficient evidence that Defendant terminated Plaintiff for the very reason it promised her would not be used as grounds for termination. Finally, there was ample evidence that the reasons given by Bright for his decision are not true.

After a review of the record, the court finds that the verdict is supported by evidence in which a reasonable jury could have reached. The Court declines to exercise its discretion to hang the jury and order a new trial.

b. Closing argument

Defendant next argues that "the jury was exposed to improper argument in Plaintiff's closing statement in that Plaintiff's counsel presented argument to the jury that was unsupported by the record." Memorandum in Support of Motion at 11. Specifically, Defendant contends that it was improper to argue that Bright was sending a "shot across the bow" in giving Plaintiff the warning of October 21 when the alleged contract had not been formed until the IAC/SLC meeting of October 25. *Id.*

Defendant did not preserve its argument regarding Plaintiff's closing arguments. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). To preserve an issue for review as to closing arguments, the complaining party must have made a contemporaneous objection. *State ex rel. Wilson v. Ortho-*

Mcneil-Janssen Pharms., 2015 S.C. LEXIS 249, **26-27, 2015 WL 4112411 (S.C. July 8, 2015) (citations omitted); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: "Since there was no contemporaneous objection, this issue is not preserved for appellate review."); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) ("[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review"); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) ("Failure to object to comments made during [closing] argument precludes appellate review of the issue."). For this reason alone, Defendant's effort to seek a new trial must be rejected.

As a separate and independent basis for denying Defendant's Motion, the Court further finds that there was nothing improper about the argument. It is precisely the purpose of closing argument to argue the theories of the case and inferences a party proposes be drawn from the evidence. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 244, 734 S.E.2d 148, 160 (2012) ("[A]n attorney is permitted to argue the evidence and its inferences in her closing argument") (Pleicones, J., concurring).

Whether the contract was formed before or after the warning is irrelevant to the point Plaintiff was making. Plaintiff's theory of the case was that Bright attempted to intimidate her going into the meeting, and that he was successful in doing so. Plaintiff's theory of the case also was that Bright's effort to intimidate her not only provides background as to the issues discussed in the case, but also provides the context as to why Plaintiff would not respond to IAC questions until Dr. Dinkins gave her the specific promise upon which she has relied.

At trial, Defendant itself used the effects of the October 21 meeting to argue that Plaintiff knew she was on "thin ice" and was employed at will. Plaintiff's retort was that this was precisely Bright's intent and the reason for Dr. Dinkins' promise.

Even if Defendant preserved this argument, there simply is no reason to overturn the verdict simply because Plaintiff's counsel discussed Plaintiff's competing interpretation as to the intent and effects of the October 21 warning.

c. Conclusion as to New Trial Absolute Motion

For the foregoing reasons, Defendant's Motion for New Trial Absolute is DENIED.

2. Defendant's new trial nisi remittitur

Defendant also moves for a new trial nisi remittitur on the grounds that "the jury's verdict is excessive and is not supported by evidence in the record." Motion ¶ B(2).

a. Excessiveness

Defendant's excessiveness argument is limited to the amount of actual damages awarded by the jury. See Defendant's Memo in Support at 13-14.

The jury awarded precisely the amount of damages specified in Dr. Alford's Report. (Plaintiff's Exhibit 9). There was no question as to Dr. Alford's qualifications, and his Report was stipulated into evidence by Defendant. It was therefore the jury's right to decide whether to credit some or all of Dr. Alford's conclusions. *Small v. Springs Industries* ("Small II"), 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) (determining that amount of front pay awarded was "within the range of damage testimony presented by [the plaintiff's] experts" and was therefore within the sole province of the jury to determine).

Defendant primarily complains of the amount of lost wages awarded. Def. Memo in Support at 14. Specifically, Defendant argues: "To allow the jury to award six years of front pay without any facts supporting the underlying premise that she would continue working at the Beta Club until retirement age is totally unreasonable given that she was an otherwise at-will employee." *Id.*

Plaintiff worked practically her entire adult life for Beta Club and testified she planned to work there for as long as she could. Given her lengthy tenure and what the jury apparently found to be the lack of any justification for termination, it could be argued that it would be more speculative to assume that Plaintiff would have been terminated prior to retirement. In any event, the Supreme Court has specifically held that it is for the jury to determine how to determine what evidence to credit and to determine for how long Plaintiff would have remained employed. *Shivers v. John H. Harland Co.*, 310 S.C. 217, 221, 423 S.E.2d 105, 107 (1992) ("In *Small II*, the contract . . . was for an indefinite duration. Thus, for the purpose of establishing damages, **it appropriately was left to the jury to determine how long Small would have continued to be employed but for the wrongful discharge.**") (emphasis added). Likewise, the use of work life expectancy is proper and well accepted for purposes of expert testimony as to future damages. *Campbell v. Paschal*, 290 S.C. 1, 16, 347 S.E.2d 892, 902 (Ct. App. 1986).

The Court finds that the verdict is supported by evidence and is one which a reasonable jury could have reached. Further, the verdict is not so grossly excessive or inadequate that it shocks the conscience of the court and, further, the court finds that the verdict is not the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Further, the Court declines to exercise its discretion to reduce the

verdict based on the Court's determination that the amount of damages awarded is not excessive and within the amount established by Dr. Alford.

b. Insufficiency of evidence

Neither Defendant's Motion nor its Memorandum specifies how the evidence presented was insufficient to support Dr. Alford's opinion. To the extent Defendant is merely relying on the same bases as for its argument regarding the excessiveness of the verdict, the Court again finds that the verdict is supported by evidence in which a reasonable jury could have reached as explained in *Small II* and *Shivers*.

c. Conclusion as to Motion New Trial Nisi Remittur

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittur is DENIED.

d. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittur is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial is DENIED.

IV. Plaintiff's Promissory Estoppel Claim

Plaintiff has brought a claim for promissory estoppel, which is admittedly based on the same promise that forms the basis of her contract claim. The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Woods v. State*, 314

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S.C. 501, 505, 431 S.E.2d 260, 263 (Ct.App.1993). Contract and promissory estoppel are two separate and distinct legal theories. Contract and promissory estoppel are two different creatures of the law, and they are not legally synonymous; the birth of one does not spawn the other. *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002).

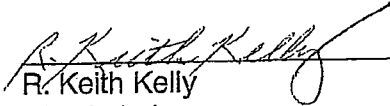
"The doctrine of promissory estoppel is equitable in nature." *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 541-42, 593 S.E.2d 500, 502 (Ct. App. 2004). "[E]quity is generally only available when a party is without an adequate [contractual] remedy at law." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327-28, 721 S.E.2d 447, 449 (Ct. App. 2011) (citations omitted).

The Court posed the following question to the jury: "Did an employment contract exist between Plaintiff, Denise Parker and Defendant, The National Honorary Beta Club?" The jury checked, "Yes." Accordingly, the jury found that there was a contract between the parties. Because a party may only recover under the theory of promissory estoppel where there is no contract, the promissory estoppel claim is hereby DISMISSED.

V. Summary and Conclusion

For the foregoing reasons, Defendant's Motion JNOV is Denied. Defendant's Motion for New Trial is Denied. Plaintiff's claim for promissory estoppel is DISMISSED.

IT IS SO ORDERED.


R. Keith Kelly
Circuit Judge

This 6th day of January, 2016

1 And then the only other final issue, Your Honor,
2 is the parties have pre-marked exhibits. The plaintiff has
3 marked Exhibits 1 through 12, which are on the table.

4 Defendant has marked Exhibits 1 through 9.

5 Both parties have reviewed the exhibits and we are
6 prepared to stipulate into evidence the twelve exhibits
7 marked by plaintiff and the nine exhibits marked by
8 defendant.

9 MR. BRIGHT: It just makes it easier, Your Honor,
10 for everybody to use them without worrying about the issues
11 of authentication and the rest and confusing the jury with
12 all those questions that we have to go through and the jury
13 wonders what they're all about.

14 THE COURT: Isn't it great when we have good
15 lawyers?

16 MR. BRIGHT: Well, I don't know about that, but --
17 agreeable lawyers, Your Honor.

18 THE COURT: Good. Thank you.

19 MR. MURPHY: Ask that on Friday and see what you
20 think.

21 THE COURT: Yeah.

22 MR. BRIGHT: And, again, just to amplify, on the
23 designations, it is not that we are objecting to
24 everything --

25 THE COURT: Okay.

1 MR. BRIGHT: -- in his designations. There are
2 just certain passages.

3 THE COURT: Let's take them.

4 MR. MURPHY: Well, Your Honor, are the exhibits
5 admitted into evidence?

6 THE COURT: Yes, the exhibits are admitted into
7 evidence. They are 1 through 12 for the plaintiff and 1
8 through 9 for the defense.

9 MR. MURPHY: And for clarification, since they
10 have been admitted, the parties can refer to the contents of
11 them in any opening?

12 THE COURT: Yes.

13 MR. MURPHY: Okay.

14 MR. BRIGHT: I have no problem with that.

15 MR. MURPHY: Okay.

16 MR. BRIGHT: I have no problem with that.

17 (Whereupon, Plaintiff's Exhibit No. 1 was admitted
18 into the record as evidence).

19 (Whereupon, Plaintiff's Exhibit No. 2 was admitted
20 into the record as evidence).

21 (Whereupon, Plaintiff's Exhibit No. 3 was admitted
22 into the record as evidence).

23 (Whereupon, Plaintiff's Exhibit No. 4 was admitted
24 into the record as evidence).

25 (Whereupon, Plaintiff's Exhibit No. 5 was admitted

1 into the record as evidence).

2 (Whereupon, Plaintiff's Exhibit No. 6 was admitted
3 into the record as evidence).

4 (Whereupon, Plaintiff's Exhibit No. 7 was admitted
5 into the record as evidence).

6 (Whereupon, Plaintiff's Exhibit No. 8 was admitted
7 into the record as evidence).

8 (Whereupon, Plaintiff's Exhibit No. 9 was admitted
9 into the record as evidence).

10 (Whereupon, Plaintiff's Exhibit No. 10 was
11 admitted into the record as evidence).

12 (Whereupon, Plaintiff's Exhibit No. 11 was
13 admitted into the record as evidence).

14 (Whereupon, Plaintiff's Exhibit No. 12 was
15 admitted into the record as evidence).

16 (Whereupon, Defendant's Exhibit No. 1 was admitted
17 into the record as evidence).

18 (Whereupon, Defendant's Exhibit No. 2 was admitted
19 into the record as evidence).

20 (Whereupon, Defendant's Exhibit No. 3 was admitted
21 into the record as evidence).

22 (Whereupon, Defendant's Exhibit No. 4 was admitted
23 into the record as evidence).

24 (Whereupon, Defendant's Exhibit No. 5 was admitted
25 into the record as evidence).

1 (Whereupon, Defendant's Exhibit No. 6 was admitted
2 into the record as evidence).

3 (Whereupon, Defendant's Exhibit No. 7 was admitted
4 into the record as evidence).

5 (Whereupon, Defendant's Exhibit No. 8 was admitted
6 into the record as evidence).

7 (Whereupon, Defendant's Exhibit No. 9 was admitted
8 into the record as evidence)

9 THE COURT: Okay.

10 MR. MURPHY: Thank you.

11 Your Honor, on the objections, there are four
12 objections.

13 I can make the first one easy. The first was
14 testimony regarding other litigation in Mr. Dinkins
15 deposition. I'll withdraw that designation. And that
16 was --

17 THE COURT: Do I have those? I'm sorry, do I? I
18 don't --

19 MR. BRIGHT: I have got an extra copy, Your Honor,
20 if you would like.

21 THE COURT: Are they in this book that you gave
22 me? Maybe they are here.

23 MR. BRIGHT: I believe you have our objections
24 that are in our notebook, Your Honor. I have an extra set
25 of his designations.

1 THE COURT: That's this?

2 MR. BRIGHT: Yes.

3 THE COURT: And your objections are at what tab?

4 MR. BRIGHT: Excuse me?

5 THE COURT: Which tab?

6 MR. BRIGHT: Oh, I don't remember which tab it is.

7 This is our --

8 THE COURT: Okay. Mr. Murphy?

9 MR. MURPHY: Yeah, Your Honor, with respect to the
10 first set of objections --

11 (Off the record)

12 (Back on the record)

13 THE COURT: Okay.

14 MR. MURPHY: Your Honor, with respect to the first
15 set of objections, page 21, line 21, through page 23, line
16 2, we will withdraw that designation.

17 THE COURT: Okay.

18 MR. MURPHY: The second designation, Your Honor,
19 is something that I have really got to be heard on, I've
20 taken very seriously, and that is they want to bar Dr.
21 Dinkins' testimony, the board member's testimony, that
22 employees were fearful of losing their jobs.

23 Your Honor, this goes to sort of the core of the
24 case. Ms. Parker was on a Staff Liaison Committee and their
25 job, as the testimony will show, is to get the concerns of

1 THE COURT: Okay. That's done.

2 As to pages 48, at line 13, through page 50, at
3 line 12, Toria and I, my law clerk, if y'all not met her,
4 please do so, but it's Toria Davis, we spent some time with
5 Commonwealth South Carolina Rules. I recommend those to
6 you, if you have not used those, as well as what Judge Casey
7 Manning gave me, which is Professor Riser's Evidence and our
8 own evidence book.

9 As to that, the court is going to allow page 48,
10 at line 13 through 21; page 49, at line 8 through page 50,
11 at line 12.

12 The exclusions are excluded as hearsay as to what
13 other employees may have said. I believe that's what the
14 doctor talked about what he had heard.

15 And also exclusions as far as confusing to the
16 jury under Rule 403 and Covington v. George at 359 S.C. 100.
17 That's a 2004 case from our court.

18 As to the third matter, the testimony about
19 director Bob Bright, the court is allowing page 69, line 17,
20 through 19, because it is relevant, or it could be relevant,
21 is relevant, allow it in.

22 The remainder is excluded because the question
23 called for hearsay answers and it is a hearsay answer by the
24 doctor.

25 As to the fourth one, the court is allowing page

1 72, at line 6, through page 73, at line 5, but excluding
2 page 73, line 6 through 16 as being confusing and misleading
3 to the jury.

4 And I believe the motion in limine, I agree with
5 what both of you ended up saying I'm going to have to take
6 it up in the context of whatever that testimony might be at
7 that time.

8 I think that's what I had before me.

9 MR. BRIGHT: Yeah, I'm just trying to get
10 everything in my mind, Your Honor.

11 THE COURT: Sure. I will be quiet for a minute
12 then.

13 MR. BRIGHT: Your Honor, the defendant understands
14 your ruling and has no problems with that as said.

15 THE COURT: Okay.

16 MR. BRIGHT: Your Honor, I'll keep it simple, but
17 I would probably say with regard to the motion in limine we
18 have already argued, instead of making too much of a
19 speaking motion, what I will say is object based on our
20 previous motion in limine.

21 THE COURT: Okay.

22 MR. BRIGHT: And that way we will know the basis
23 for the objection. We don't have to take a whole lot of
24 time with it. The court knows it doesn't send a message to
25 the jury. It doesn't interrupt the flow of his examination

1 A. I worked for the Spartanburg County library with the
2 story caravan where we went out out to the neighborhoods and
3 different schools telling stories and singing songs to the
4 children.

5 Q. Okay. And when did you join the Beta Club?

6 A. November the 1st, 1975.

7 Q. We both talked about it in opening, but tell the jury
8 what is Beta Club?

9 A. Beta Club is an honor organization for junior high
10 students, which is grades 5 through 12 -- I mean 5 through
11 9, excuse me. And the senior high division is 9 through 12.

12 Q. Okay. And where were Beta Clubs located?

13 A. All over the United States and several territories.

14 Q. Do you know when it started?

15 A. In Landrum, South Carolina.

16 Q. Do you know when?

17 A. 1934.

18 Q. Tell the jury since November 1, 1975, what positions
19 have you held at the Beta Club?

20 A. Junior Membership Department, Sales Department, back to
21 Junior Membership, Convention, and sales, senior membership.

22 Q. Okay. Who hired you?

23 A. The founder, Dr. John Harris.

24 Q. When you were in the Convention Department, that was; I
25 guess, the second to last department that you were in at the

1 Beta Club, is that correct?

2 A. Correct.

3 Q. Okay. Was there any change to your position in the
4 Convention Department during 2013?

5 A. 2013?

6 Q. Right.

7 A. Can you explain?

8 Q. Were you moved at all, or did you department
9 re-organize at all in any way?

10 A. Yes, sir, we were moved from the second floor up to
11 third floor, Barbara Anderson and myself.

12 Q. Okay. And then at some point after that did you move
13 to a different department?

14 A. I was in Senior Membership.

15 Q. And when were you moved to Senior Membership?

16 A. I started on October 1.

17 Q. Okay. So before -- for about a couple weeks before
18 early October you were in the Membership Department,
19 correct?

20 A. Yes, sir.

21 Q. Okay. And when you were in the Membership
22 Department --

23 Well, let me ask it this way. Was the membership the
24 last department that you were assigned to at the Beta Club?

25 A. Yes, sir.

1 Q. Was it the department in which you were assigned on the
2 day that you were terminated?

3 A. Yes, sir.

4 Q. And who was your supervisor from October 1 until the
5 time that you were terminated?

6 A. Melody Cooper.

7 Q. Now, let's go through your history.

8 Tell the jury who are the different supervisors that
9 you had throughout the years at the Beta Club.

10 A. Glenn Ross, Rachel Tinsley, George Lockamy, Glenn
11 Stribling, Melody Cooper, Laura Lewis, Judy Cummings, and
12 Barbara Anderson.

13 Q. And you heard Mr. Bright in opening talk about you not
14 liking change. Let me ask you, was all these changes in
15 supervisors, did you ever have any problem with one of these
16 supervisors during the time that they were your supervisors?

17 A. No, sir.

18 Q. And tell the jury -- because we heard Mr. Bright talk
19 about the change in the CEO what he called growing pains,
20 how many CEO's did you work for during your thirty-eight
21 years at the Beta Club?

22 A. It was George Lockamy, G.M. Stanford, John Burnett,
23 Charlie Tillotson, Ken Klein, and then Bob Bright.

24 Q. I'm going to get to Mr. Bright in a moment, but all
25 these prior CEO's that you worked for, did you ever have any

1 problems with them, any of them?

2 A. No, sir.

3 Q. Ever get written up by any of them?

4 A. No, sir.

5 Q. Ever have a problem with the change associated with any
6 of them coming on board?

7 A. No, sir.

8 Q. Do you recall when Mr. Bright was named CEO of the Beta
9 Club?

10 A. Yes, sir.

11 Q. What was your reaction when you heard Bob Bright was
12 going to become the CEO?

13 A. We were excited because we knew that he had Beta at
14 heart, because he was a sponsor in Kentucky. He was on our
15 board of directors for fifteen plus years, so we were
16 excited that someone was coming in that loved Beta and loved
17 the Beta kids.

18 Q. Now, after Mr. Bright came on board as the CEO -- do
19 you recall when he came on board?

20 A. He started January 1, 2013.

21 Q. After he came on board, did the atmosphere in the
22 office change any at all at the Beta Club?

23 A. Yes, sir.

24 Q. Can you describe the atmosphere at the Beta Club after
25 Mr. Bright became the CEO?

1 A. The morale was down and there was a division between
2 the staff.

3 Q. How did you personally view your interaction in
4 relation to Mr. Bright?

5 A. Can you explain?

6 Q. Well, how did you get along with Mr. Bright?

7 A. Fine.

8 Q. Prior to this October 21 that we will be talking about
9 here in a minute, did Mr. Bright, from the time he joined in
10 January until October 21, did he ever criticize your
11 performance at all?

12 A. No, sir.

13 Q. Did he ever tell you he was unhappy with you at all?

14 A. No, sir.

15 Q. Can you give an example of something Mr. Bright did
16 that created tension in the office?

17 A. Well, we had a staff meeting and Mr. Bright -- we had
18 exempt, which was the department heads, and nonexempt, which
19 was myself, and Mr. Bright said that he was sorry but he
20 took care of his people and he was sorry about us, but he
21 compared the nonexempt people to like custodians and
22 cafeteria workers and the exempt people were like the
23 principals and school teachers.

24 Q. And, again, where did he say this?

25 A. In a staff meeting.

1 Q. Now, Mr. Bright also mentioned a couple other people,
2 Richie Garland and Shannon Meyer. Do you know Mr. Garland?

3 A. Yes, sir.

4 Q. When did he join the Beta Club?

5 A. The summer of 2013.

6 Q. And what position did he hold?

7 A. He was national sponsor/leadership.

8 Q. And so what department is that in?

9 A. Convention.

10 Q. And Ms. Meyer, what -- do you know Shannon Meyer?

11 A. Yes, sir.

12 Q. And who is Shannon Meyer?

13 A. She was our national sponsor/leadership and convention
14 also.

15 Q. They are both in the Convention Department, correct?

16 A. Correct.

17 Q. And you were in the Convention Department when they
18 started?

19 A. Yes, sir.

20 Q. Now, when you were in Convention and Richie and Shannon
21 were in Convention, did they ever -- either one of them ever
22 tell you they had a problem with you?

23 A. No, sir.

24 Q. Now, from October 1 until you were terminated in
25 November, you weren't in their department, correct?

1 A. Correct.

2 Q. You were, again, for the jury, from October 1 until the
3 time that you were terminated in what department?

4 A. Senior Membership.

5 Q. Now, let's go to October 21. I'll hand you what's
6 already been introduced as Exhibit No. 1. Are you familiar
7 with this document, Denise?

8 A. Yes, sir.

9 Q. And when did you receive it?

10 A. October the 21st, 2013.

11 Q. And who gave it to you?

12 A. Bob Bright.

13 Q. And, again, just to be clear, on October 21, 2013, when
14 Mr. Bright gave you this, were you working with either
15 Shannon Meyer or Richie Garland?

16 A. No, sir.

17 Q. And, again, your supervisor on October 21 was?

18 A. Melody Cooper.

19 Q. Where did Mr. Bright give this to you?

20 A. Where?

21 Q. Yes. Where were you when he gave it to you?

22 A. In the board room on the second floor.

23 Q. Okay. Was Ms. Cooper, your supervisor, in that room
24 with you when you received this?

25 A. No, sir.

1 Q. In fact, did Ms. Cooper ever discipline you during the
2 time that you worked for her at the Beta Club?

3 A. No, sir.

4 Q. Did Ms. Cooper ever indicate that she was unhappy with
5 your performance at all?

6 A. No, sir.

7 Q. Did you know this document was coming? Did you know
8 that you were about to receive it?

9 A. No, sir.

10 Q. Tell the jury what happened. Tell the jury how you
11 came into receiving this document.

12 A. I was working in my office on third floor in senior,
13 doing senior membership entering the data into the computer
14 and Laura Lewis, the administrative assistant for Bob Bright
15 called my office and she said, Denise, Bob wants to know if
16 you can come down to the board room for a minute?"

17 And I said "yes, I will be right down."

18 Well, I went in -- opened the door and went into the
19 board room. Mr. Bright and Laura Lewis was sitting on the
20 other side of the conference table and I sat down in front
21 of Bob Bright and he had his head down looking at this piece
22 of paper. He said "Denise, I apologize, but this is long
23 past due," he said, "but I need -- I have been busy and I
24 haven't gotten around to doing this, so I need for you to
25 sign it and date it," and he handed me this piece of paper.

1 MR. MURPHY: And I'm just going to point out for
2 the purpose to Your Honor, we have a slightly different
3 version that I have gone over with Mr. Bright before, but,
4 in fact, the exhibit that will go back to the jury --

5 BY MR. MURPHY:

6 Q. You did end up signing this document, correct?

7 A. Yes, sir.

8 Q. Now, let's talk about some of the reasons that are on
9 here or some of the statements that were made on here.

10 The first item of concern under professionalism is
11 written is "failure to sustain a professional growth
12 strategy." Do you see that?

13 A. Yes, sir.

14 Q. Okay. Had you ever been given any kind of objectives
15 or anything talking about your job in sustaining a
16 professional growth strategy?

17 A. No, sir.

18 Q. Do you even know what that means?

19 A. No, sir.

20 Q. Did Mr. Bright explain to you what that meant?

21 A. No, sir.

22 Q. He gave you this but didn't explain what it meant, is
23 that what you are telling the jury?

24 A. He didn't explain that first one, no, sir.

25 Q. Okay. The next statement is "does not demonstrate an

1 exceptional mastery of professional skills." Do you see
2 that?

3 A. Yes, sir.

4 Q. Did Mr. Bright explain that to you?

5 A. No, sir.

6 Q. The third statement says "professional manner in which
7 coworkers are addressed." Do you see that?

8 A. Yes, sir.

9 Q. Did you ask Mr. Bright for any examples there?

10 A. Yes, sir.

11 Q. Did he give you any?

12 A. Yes, sir.

13 Q. Okay. What did he say?

14 A. He said that I was not helpful to Barbara Anderson that
15 morning, I did not do what she asked me to do. And I told
16 him I didn't understand, that I did what she asked.

17 Q. Okay. Did he say anything else?

18 A. He told me that -- he says, "for instance, Denise, I
19 could bring the whole office staff down here and give you
20 examples of where you have not been helpful with your fellow
21 coworkers," and he pointed toward the road and he said "as a
22 matter of fact, Denise, there is people lined up out here in
23 the street waiting for your job."

24 Q. And, again, before he said all these things to you, had
25 you ever been criticized in any way by him or any of the

1 supervisors at the Beta Club?

2 A. No, sir.

3 Q. Now, so the only specific example he gave you was
4 something about Barbara Anderson earlier that day, correct?

5 A. Correct.

6 Q. And Barbara Anderson is somebody that you had been
7 reporting to when you were in --

8 A. Senior Division, yes.

9 Q. Right.

10 Okay. Did you do anything to look into this supposed
11 issue with Barbara Anderson?

12 A. Yes, sir.

13 Q. What did you do?

14 A. When I got off the elevator Barbara Anderson was coming
15 down the hall to her office and she saw that I was crying.

16 And she said "Denise --

17 MR. BRIGHT: Objection, hearsay.

18 THE COURT: Hold on.

19 MR. MURPHY: Your Honor, this is their supervisor.

20 THE COURT: Something that the supervisor said?

21 MR. MURPHY: Yes.

22 THE COURT: Okay. How is that not hearsay?

23 MR. MURPHY: Well, it's their statement, Your
24 Honor, plus I'm not offering it for the truth of the matter
25 asserted.

1 Q. Go ahead and start back.

2 You were telling us that you saw Barbara, she saw you,
3 and then what was said between the two of you?

4 A. Ms. Anderson asked me what was wrong and she wanted to
5 know if something happened to my mother or dad, and I just
6 shook my head no and I followed her to her office and I
7 closed the door and I hugged her and I said "I apologize,
8 Barbara, if I did not do what you asked me to do this
9 morning."

10 And she said "Denise, I don't know what you are talking
11 about." I told her "Bob Bright said that I did not do what
12 you had asked me to do."

13 And she said "you did what I asked you to do." She
14 says "well, do I need to go talk to him?"

15 I said "no," I said "just let it go."

16 Q. Okay. Now, after the time October 21 --

17 So October 21 did you hold another position at the Beta
18 Club, other than your normal position as an employee?

19 A. Yes, sir.

20 Q. Okay. What was that?

21 A. I was a member of Staff Liaison Committee.

22 Q. And what is the Staff Liaison Committee?

23 A. The Staff Liaison Committee is made up of three of the
24 employees that are voted on by secret ballot by their fellow
25 coworkers and the top three highest votes for those three

1 employees are on that committee.

2 Q. Okay. And so you were elected by your coworkers only?

3 A. Yes, sir.

4 Q. And who else was elected? Who else was on the Staff
5 Liaison Committee at this time?

6 A. Barbara Anderson and Pat Mabry.

7 Q. And what was the role of the Staff Liaison Committee?
8 What does it do?

9 A. Staff Liaison was to meet with the staff on the third
10 Tuesday of every month and take any suggestions, concerns
11 that they would have, you know, in the office to the Board
12 of Directors when they come in.

13 Q. Okay. Did the Staff Liaison Committee -- how often did
14 it meet?

15 A. We met the third Tuesday once a month.

16 Q. And then you met with the employees?

17 A. Yes, we met with the employees.

18 Of course, Pat Mabry was the chair and she would make
19 an all call that Tuesday morning and tell the staff that we
20 were in the board room for the next thirty minutes. If
21 anyone had any concerns, to please come by and see us.

22 Q. After -- on the -- after the monthly meeting, after you
23 met with the staff, did you meet with anybody else after
24 that?

25 A. Yes, sir, after we met with the staff that morning we

1 would call the CEO in, whoever that would be at the time,
2 which was Bob Bright then. We would call him in to go over
3 those and anything that could not be resolved.

4 Q. Okay. And was there a chair of this Staff Liaison
5 Committee?

6 A. Yes, sir.

7 Q. And who was that at the time?

8 A. Pat Mabry.

9 Q. I'll also show you what's been already admitted as
10 Exhibit No. 2. Could you tell the jury what that is?

11 A. It's National Beta Club Staff Liaison Committee
12 Procedures.

13 Q. Okay. And what were those for? What was the purpose
14 of those?

15 A. It was the guidelines and all for the committee and all
16 to follow.

17 Q. Now, in September of 2013, right before your warning,
18 what issues was the Staff Liaison Committee addressing?
19 What kind of things were being brought up?

20 A. It was morale. Division in the office. Bushes on the
21 side of the road that needed to be cut back.

22 Q. Let me go to another document then we have already
23 admitted as Plaintiff's Exhibit No. 3. I don't have blowups
24 for all these, but we are going to work through them pretty
25 quickly.

1 What is Exhibit No. 3.

2 A. Internal Affairs agenda for September 17, 2013.

3 Q. Okay. And what's the fourth issue on the agenda for
4 that month?

5 A. Division of staff.

6 Q. Okay. And the handwriting on this document is who?

7 A. It's mine.

8 Q. Okay. These notes were notes from your meeting?

9 A. Yes, sir.

10 Q. And then you have something written circled under
11 number 9. What did you write down there?

12 A. "Have groups - divisions."

13 Q. And then there is in the bottom right-hand corner it
14 appears that "your issue right here in this room gossip
15 circle, cold shoulder. I am decision maker. Not speaking
16 to people." Do you see those notations?

17 A. Yes, sir.

18 Q. What are those notations?

19 A. It's things that Bob Bright had said in the staff
20 meeting.

21 Q. Now, we talked about the Staff Liaison Committee. Are
22 you familiar with an entity called the Internal Affairs
23 Committee?

24 A. Yes, sir.

25 Q. Or Board Liaison Committee?

1 A. Yes, sir.

2 Q. And what is that?

3 A. The Board Liaison Committee is made up of five members
4 from our Board of Directors.

5 Q. And what do they do?

6 A. They meet with the Staff Liaison Committee and help
7 resolve any issues that's in the office that hasn't been
8 resolved.

9 Q. And do you ever meet with the Internal Affairs
10 Committee as a Staff Liaison Committee?

11 A. Yes, sir.

12 Q. How often does the Staff Liaison Committee meet with
13 the Internal Affairs Committee?

14 A. It's usually twice a year, in the spring and fall.

15 Q. And was there such a meeting between the Staff Liaison
16 Committee and the Internal Affairs Committee of the board
17 sometime during the fall of 2013?

18 A. Yes, sir.

19 Q. Do you recall when that was?

20 A. October the 25th, 2013.

21 Q. The jury can see I have written up there, but how close
22 in time then was that Internal Affairs Committee meeting to
23 the time that you got that first warning from Mr. Bright?

24 A. What, four days later? Three.

25 Q. And were board members present on behalf of the

1 Internal Affairs Committee at the meeting?

2 A. Yes, sir.

3 Q. Who was present from the board?

4 A. It was Pat Stout. He was the chair. Dennis Campbell,
5 vice chair. Ken Dinkins, Mark Conley, and Stan Long.

6 Q. Do you recall when the board representatives were
7 present and your Staff Liaison Committee members present,
8 what topic was being discussed at this meeting on the 25th?

9 A. Yes, sir.

10 Q. What was that topic?

11 A. Pay raises and morale and divisions in the office.

12 Q. When the issue or morale came up at the office, did you
13 speak up?

14 A. No, sir.

15 Q. Did your name come up at all?

16 A. Yes, sir.

17 Q. How did your name come up?

18 A. Pat Mabry, the chair, looked at the Board Internal
19 Affairs Committee and said "you need to ask Denise what
20 happened in her employee conference on the 21st, that she's
21 not going to say anything."

22 Q. She meaning you?

23 A. Yes.

24 Q. Okay. Well, what did this warning that you received on
25 the 21st, is that something that had been bothering you?

1 A. Yes, sir.

2 Q. And why didn't you bring it up?

3 A. Because I could not afford to lose my job since I was a
4 widow and the only breadwinner in my family. I didn't want
5 to get dismissed or anything.

6 Q. Did you talk to the board about whether you wanted to
7 talk about this after Pat Mabry "said talk to Denise
8 Parker." Did you say anything to the board?

9 A. One of the -- Dr. Ken Dinkins, he said "Denise, if we
10 ask you the questions, you have to answer it and Bob Bright
11 can't fire you for that."

12 Q. Before Dr. Dinkins said that, did you say anything
13 about whether you wanted to speak or not?

14 A. No, sir.

15 Q. Now, when Dr. Dinkins said "if we ask a question, you
16 have to answer it and Bob Bright can't fire you for that,"
17 were other members of the board that you just mentioned,
18 were they sitting there with him?

19 A. Yes.

20 Q. Did any of them speak up and say "no, that's not right,
21 or, "we are not going to promise you that," anything like
22 that?

23 A. No, sir.

24 Q. After Dr. Dinkins said "if we ask you a question, you
25 have to answer it and you can't be fired for answering it,"

1 did you answer all their questions?

2 A. Yes, sir, I told them what happened with Barbara
3 Anderson.

4 Q. Okay. And did you tell them about your write-up on the
5 21st?

6 A. Yes, sir.

7 Q. And did you answer all their questions truthfully?

8 A. Yes, sir.

9 Q. Now, that happened on the 25th.

10 Did anything else -- do you have any other problems
11 with anybody else on the 25th?

12 A. No, sir.

13 Q. And next week was the week of the 28th through the 1st.
14 Did you have any run-ins with Mr. Bright or any supervisors
15 the week of the 28th?

16 A. No, sir, because Mr. Bright was not in the office that
17 next week.

18 Q. Okay. Did you have any problems with anybody else at
19 the office the week of the 28th?

20 A. No, sir.

21 Q. And we come to the next Monday.

22 Just for the record, to be clear, what's your normal
23 work week in the office at the time?

24 A. Monday through Friday.

25 Q. Is that what it was?

1 A. Eight to four, yes, sir.

2 Q. You didn't work normally weekends?

3 A. No, sir.

4 Q. So then the next work day would have been November 4th,
5 correct?

6 A. Correct.

7 Q. Okay. And let me show you what's been marked and
8 entered as Exhibit No. 4. Do you recognize that document?

9 A. Yes, sir.

10 Q. And what is that document?

11 A. It's an employee conference from Bob Bright.

12 Q. And who gave that to you?

13 A. Bob Bright.

14 Q. And where were you when he gave it to you?

15 A. I was working in Senior Membership Department.

16 Q. Okay. But where -- how did he give it to you? What
17 setting? Were you in your office, his office?

18 A. He came to my office where I was working and answering
19 e-mails and asked me if I could step across the hall into
20 Bobby Hart's office, that he needed to see me and I said
21 yes, sir.

22 Q. When you got to the office who was in there?

23 A. Laura Lewis.

24 Q. And, again, at this point in time, November 4th, who's
25 your supervisor?

1 A. Melody Cooper.

2 Q. Was Ms. Cooper in there at all?

3 A. No, sir.

4 Q. After you got into that office that he took you into,
5 tell the jury what happened.

6 A. Mr. Bright closed the doors and then he walked around
7 on the other side of the desk and he looked at me and he
8 said -- he handed me this piece of paper and he said "you
9 need to date it and sign it," and he said "I understand you
10 were negative in the board meeting," and I said "no, sir, I
11 only answered the questions that Dr. Dinkins asked me and he
12 said that, you know, I could not be fired if I answered
13 their questions." And he said that I did not answer my
14 e-mails and I asked him for an example. I said "I don't
15 understand. I answer my e-mails." I said "I don't answer
16 spam e-mails or UPS, you know, e-mails that we get saying
17 that the package has been delivered or has the wrong
18 address. I don't answer those for fear of getting viruses
19 on our network." And he said that he had documentation to
20 prove me different about answering e-mails.

21 Q. Then what happened?

22 A. Then he looked at me and he said "you are no longer
23 employed here at National Beta Club, you need to turn your
24 key in and get all of your personal belongings when you
25 leave."

1 Q. So he fired you on a meeting on the 4th, right?

2 A. Yes.

3 Q. Now, at work are there certain types of e-mails you
4 don't respond to?

5 A. Yes, sir.

6 Q. Okay. Tell the jury what types of e-mails you would
7 receive as part of your job that you wouldn't respond to.

8 A. Spam e-mails and UPS notifications.

9 Q. What's a UPS notification?

10 A. It's like if a package was delivered and it should have
11 went to this street address and had the wrong address on it,
12 they would just send us notification of the correct address.

13 Q. Did you respond to your work e-mails when somebody sent
14 you an e-mail asking you for a response?

15 A. Yes, sir.

16 Q. Did anyone at Beta Club ever complain to you that you
17 weren't responding to e-mails?

18 A. No, sir.

19 Q. Did Bob Bright in that meeting -- you said he had
20 paperwork. He said he had paperwork, right?

21 A. Yes, sir, he said he had documentation to prove me
22 different.

23 Q. Did he show you documentation to prove you different?

24 A. No, sir.

25 Q. Did Bob Bright show you a single e-mail in that meeting

1 to which you did not respond?

2 A. No, sir.

3 Q. Now, after you were terminated did you ever have any
4 discussion with anybody from the Beta Club about this issue
5 of Bob Bright claiming you didn't respond to e-mails?

6 A. Yes, sir.

7 Q. With whom did you have that discussion?

8 A. Jay Moore, our technology person.

9 Q. Okay.

10 MR. BRIGHT: Object to hearsay.

11 THE COURT: Is this person the same as before -- I
12 mean this person employed?

13 MR. BRIGHT: This is the gentleman who is
14 responsible for the IT management of the Beta Club.

15 MR. MURPHY: Correct, Your Honor, he was the
16 person supposedly that was putting together the data on
17 which she was fired.

18 THE COURT: Okay. Objection is noted, but it's
19 overruled. Go ahead.

20 BY MR. MURPHY:

21 Q. Where did this conversation occur?

22 A. CVS in Boiling Springs December the 20th, 2013.

23 Q. And tell the jury what happened.

24 A. I was going back to the pharmacy department to pick up
25 medicine for my mother and Jay Moore was sitting there at

1 the mini clinic waiting to see someone and he got up and
2 hugged me and wanted to know how I was doing. I said fine.
3 And I asked him if he could tell me what e-mails Bob Bright
4 was referring to that I did not answer. He said "Denise, I
5 tried to explain to Mr. Bright three different times that
6 that was your spam e-mails and that you did not answer spam
7 e-mails."

8 Q. And, Denise, I want to go back and review because you
9 heard Mr. Bright characterize your actions and your demeanor
10 and your attitude at work. I want to go back through your
11 work history again a little bit and refer you to Exhibit
12 No. 5. Do you recognize the document that we have marked
13 collectively as Exhibit No. 5?

14 A. Yes, sir.

15 Q. Okay. And what are these?

16 A. It's my evaluations --

17 Q. Okay.

18 A. -- of my supervisors.

19 Q. Okay. I think you have got about twenty on here, is
20 that correct, that we found?

21 A. Yes, sir.

22 Q. I'm not going to -- I assure the jury -- I'm not going
23 to go through twenty evaluations, but I just want to hit the
24 last few -- the last few supervisors that you had.

25 Let's go to Tab A and this is your evaluation for the

1 prior year, is that correct?

2 A. Yes, sir, 2012.

3 Q. Let me ask you, did Bob Bright ever give you an
4 evaluation?

5 A. No, sir.

6 Q. He never gave you a written objective or any kind of
7 performance stuff in writing until he started writing you
8 up?

9 A. Correct.

10 Q. Let's go to this and let's go to topic number one,
11 which is your human relations. Read to the jury what
12 your -- and who's your supervisor at this point?

13 A. It was Glenn Stribling.

14 Q. Mr. Stribling.

15 What does he say under number one?

16 A. He's got checked quality. He's got "Denise is a true
17 team player. She is diligent at every task assigned."

18 Q. What did he say under number -- what did he write under
19 number two?

20 A. "Denise was willing to help the customer in any way
21 possible. She is quiet, but this doesn't prevent her from
22 performing --

23 Q. Is "offering"?

24 A. "Offering good service." Sorry.

25 Q. That's all right.

1 Under number three, what did he write for number three?

2 A. "Constantly trying to find work, if not assigned tasks.

3 She is a steady worker."

4 Q. What did he say under number five on the next page?

5 A. "Hard worker."

6 Q. What did he say under number seven?

7 A. "She is the one in the department to go to for a
8 thorough and accurate job."

9 Q. Let's go to the next supervisor and turn to tab D with
10 me.

11 Well, I guess we will go to Mr. Stribling. He was the
12 last one of you. On tab D, do you see data, page 44 down
13 there at the bottom under D?

14 Do you see under comments, example of your work that
15 are important for your supervisor? Do you see what he wrote
16 in there?

17 A. Yes, sir.

18 Q. Okay. Go ahead and read to the jury what your
19 supervisor wrote about you.

20 A. "Denise is one of the hardest most efficient workers I
21 have ever worked with. She constantly takes the initiative
22 to get the job done, whatever that job is. I recommend a
23 bonus for a job extremely well done," and his initials GS.

24 Q. Let's go to the next tab and I guess this is your next
25 supervisor, Melody Cooper, is that correct?

1 A. Correct, yes, sir.

2 Q. Okay. Under tab E, under number one, under human
3 relations, what does Ms. Cooper say about you?

4 A. "Effective and pleasant with both staff and customers.
5 Positive and happy?"

6 Q. Under number two?

7 A. "Never has to be asked to complete a task. Always
8 willing."

9 Q. Go to the next page, under number six?

10 A. "Willing to help anytime needed."

11 Q. Go to the next page, under eleven.

12 A. "Dresses neat, kind and helpful in dealing with
13 others."

14 Q. Let's go to the last page of that -- well, second to
15 the last page of that on page 69. Do you see the little
16 section that says "additional comments from the supervisor?"

17 A. Yes, sir.

18 Q. Why don't you read that to the jury, please?

19 A. "Denise is certainly an asset to membership and Beta as
20 a whole. Her pleasant attitude and willing to always do
21 what is right is appreciated. Please remember to stand up
22 for yourself next year."

23 Q. Okay. Let's go back to tab B. I want to ask you about
24 something you put in your 2011 review. Can you go to
25 page 29 on tab B? Under part four -- you made some

1 statement about what you would like. What did you say under
2 number one and number two?

3 A. "I would like to learn more about Publisher. I would
4 like to learn more about Adobe Photo shop and scanning
5 pictures.

6 Q. And Publisher and Adobe Photo shop, what are those?

7 A. They were used in the Convention Department for their
8 convention program.

9 Q. What are they?

10 A. It's programs for like our pictures for the convention
11 programs.

12 Q. Okay. Did you ever -- did you make any efforts to
13 learn these programs?

14 A. Yes, sir.

15 Q. What did you do?

16 A. Judy Cummings would help me learn. I mean, she helped
17 me put what I need.

18 Q. Did the Beta Club ever offer you any training or
19 classes that you ever turned down?

20 A. No, sir.

21 Q. Were you ever told to learn a computer program that you
22 ought to learn?

23 A. No, sir.

24 Q. Now, I want to next talk to you about the claims in
25 this case. You heard Mr. Bright talk about those in his

1 THE COURT: Everybody is good?

2 JURY FORELADY: Yes.

3 THE COURT: All right.

4 Yes, sir.

5 MR. BRIGHT: May it please the court?

6 THE COURT: Yes, sir.

7 MR. BRIGHT: Thank you.

8 CROSS EXAMINATION BY MR. BRIGHT:

9 Q. Ms. Parker, I want to talk about some of the things
10 that you have talked about in your direct examination and
11 make it clear to the jury some of the things that you were
12 trying to say.

13 You have worked for the Beta Club for some thirty-eight
14 years, is that right?

15 A. Correct.

16 Q. And in those thirty-eight years you have handled a lot
17 of different positions in that job, in that company, haven't
18 you?

19 A. Yes, sir.

20 Q. In fact, wouldn't you agree with me that there are lots
21 of times when there is a crisis in merchandising, everybody
22 goes and helps out merchandising; and then there is a crisis
23 in membership and everybody goes to help out membership?
24 Isn't that kind of the way it worked?

25 A. Yes, sir.

1 Q. In fact, you probably knew as much about what was going
2 on at the Beta Club than anybody because of your length of
3 service there?

4 A. Yes, sir.

5 Q. At some point in time you did just about everything
6 there was to do at the Beta Club, at one time or another,
7 would you agree?

8 A. I didn't do accounting.

9 Q. Okay. All right. With the exception of maybe finance.
10 You didn't do finance?

11 A. Right.

12 Q. And this was a relatively small staff, wasn't it?

13 A. Yes, sir.

14 Q. Twenty, twenty-two people?

15 A. About twenty of us.

16 Q. Okay. And you got to know each other pretty well,
17 didn't you?

18 A. Yes, sir.

19 Q. And, in fact, a lot of the people that you worked with
20 have been there for a fairly long period of time, hadn't
21 they?

22 A. Correct.

23 Q. Is it fair to say then that you have got comfortable
24 with the way things were done and the way things you were
25 used to having them done for thirty-eight years?

1 A. Could you ask that question again, please?

2 Q. Just by working there for thirty-eight years, did you
3 get comfortable with the way that you did things?

4 A. I just knew how to do what I did. I mean, what my job
5 was and I did it.

6 Q. Okay. Did you get comfortable with the way that you
7 did your job?

8 A. I wouldn't say -- yes, sir.

9 Q. Okay. In fact, isn't it true that because of the
10 nature of the work that the Beta Club does you had exposure
11 to state sponsors?

12 A. Yes.

13 Q. They come to the office, you got to meet them?

14 A. Yes, sir.

15 Q. And, in fact, that's what kind of created a bit of a
16 bond was getting the opportunity to work with those state
17 sponsors?

18 A. Yes, sir.

19 Q. And isn't it true that that was the same with the
20 board? There was kind of a bond with the board because the
21 board would visit fairly frequently or would visit twice a
22 year?

23 A. I would only see them like when they would come in the
24 office, unless I was at their convention.

25 Q. You might see them at the convention, right?

1 Q. And I think you have already said that because of the
2 small staff in the Beta Club, people got moved around quite
3 a bit to help out where there were problem areas, isn't that
4 true?

5 A. Yes, sir.

6 Q. Okay. And, in fact, in October of 2013 you were -- you
7 had actually been moved to the Membership Department on a
8 temporary basis to substitute for someone who was out on
9 medical leave of absence, isn't that right?

10 A. Correct.

11 Q. That was Leigh Mason?

12 A. Correct.

13 Q. So you knew that was only going to last for a
14 relatively short period of time?

15 A. Yes, sir.

16 Q. Okay. So when she came back, she was going to go
17 there, but that's the kind of cooperation you need, isn't
18 it?

19 A. Yes, sir.

20 Q. Now, when Mr. Bright came in, he started making
21 changes, didn't he?

22 A. Yes, sir.

23 Q. He moved people around. He moved people from this job
24 to that job and from another job to someplace else. He
25 moved people around, didn't he?

1 A. Yes, sir.

2 Q. And he hired two new national sponsors who were, in
3 essence, going to be your -- along with Barbara Anderson,
4 were going to be the head of the Convention Department,
5 isn't that right?

6 A. I was never told they were going to be like over me.

7 Q. Well, who was going to be over you then?

8 A. Barbara Anderson was in Convention, and then Melody
9 Cooper -- when I went to Membership, excuse me.

10 Q. Let me hand you what's been admitted as Defendant's
11 Exhibit No. 9 and ask you if you have ever seen that before?

12 A. No, sir.

13 Q. Is that an organizational chart?

14 A. Yes, sir.

15 Q. And does it show where the Convention Department is?

16 A. Yes, sir.

17 Q. And what does it show for the Convention Department?

18 A. It has Convention, Barbara Anderson; Convention, Richie
19 Garland; Convention, Denise Parker; Convention, Shannon
20 Meyer; Convention, Vickie Horne.

21 Q. Would you agree with me that there are several names
22 that are above a couple others?

23 A. Yes, sir.

24 Q. Who is above the others in what you just described?

25 A. In which one?

1 Q. In Convention.

2 A. In Convention? I am not sure I know the question that
3 you are asking.

4 Q. All right. You said there were names. I'm just asking
5 you whose names are above the others.

6 A. Shannon Meyer, Richie Garland, Barbara Anderson.

7 Q. Okay. Let me be real specific.

8 MR. BRIGHT: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRIGHT:

12 Q. The first name at the top of Convention says Barbara
13 Anderson, is that correct?

14 A. Correct.

15 Q. And then down below that there is -- there are two
16 lines coming down under Convention. One line goes down to
17 Barbara Anderson and one line goes down to Richie Garland
18 and one line goes down to Shannon Meyer, is that right?

19 A. Yes, sir.

20 Q. And then under Richie Garland there is a line and a box
21 that says Denise Parker?

22 A. Yes, sir.

23 Q. Were you supporting and helping with the clerical help
24 for Richie Garland in the Convention Department?

25 A. When they would come ask questions I would help them.

1 Q. But --

2 A. But I was not --

3 Q. Would you agree that your job was the clerical support
4 for the Convention Department?

5 A. Under Barbara Anderson.

6 Q. Okay. And this organizational chart shows that there
7 is a line between your name and Richie Garland's name, is
8 that right?

9 A. Correct, Richie Garland was junior and Shannon was
10 junior and Ms. Anderson was senior.

11 Q. Correct.

12 And didn't you there for a while help with the Junior
13 Convention Department, the group?

14 A. I did when Judy Cummings was there, yes, sir.

15 Q. And did you do that when Richie Garland was there?

16 A. I was moved to senior.

17 Q. Did you work at any point in time with Richie Garland
18 in Junior Convention?

19 A. I would help he and Shannon with the bulletins.

20 Q. Okay. The bulletins, complicated process, would you
21 agree?

22 A. Yes, sir.

23 Q. The bulletins are relatively thick, aren't they?

24 A. Correct.

25 Q. Forty, sixty pages long?

1 these were changes that were being made by Mr. Bright,
2 weren't they?

3 A. Yes, sir.

4 Q. Now, I want you to take a look at what's been marked
5 and admitted as Plaintiff's Exhibit No. 3.

6 Now, the title of that, if I am correct, is internal
7 affairs agenda, right?

8 A. Yes, sir.

9 Q. Was that actually a list of items that the Liaison
10 Committee wanted to discuss with the Internal Affairs
11 Committee?

12 A. I'm not really sure because the chair would have
13 compiled this list.

14 Q. What chair?

15 A. The Staff Liaison Committee.

16 Q. Okay.

17 A. Pat Mabry.

18 Q. But my point is this is not an agenda that the Internal
19 Affairs Committee sent out? This was an agenda set by the
20 Liaison Committee, is that right? These are the issues that
21 the Liaison Committee wanted to talk to the Internal Affairs
22 Committee about?

23 A. Correct.

24 Q. Okay. And, in fact, you said that you made notes on
25 these things?

1 A. Yes.

2 Q. Correct?

3 A. Yes.

4 Q. This is your handwriting?

5 A. Yes, sir.

6 Q. And you were noting that we have groups and divisions,
7 correct?

8 A. Correct, that was in the staff meeting.

9 Q. So this was a discussion about the fact that we have a
10 problem here with groups and divisions, is that correct?

11 A. Yes, sir.

12 Q. And that's something that you wanted to have discussed
13 with the Internal Affairs Committee?

14 A. Yes, sir.

15 Q. Okay. There is a discussion -- there is a comment down
16 on the right-hand side about gossip circles. Was that a
17 problem?

18 A. I really don't know if that's --

19 Q. This is your handwriting, isn't it?

20 A. That was from Mr. Bright. I was just making notes.

21 Q. This was what Mr. Bright said?

22 A. Yes.

23 Q. So Mr. Bright said it, "there are gossip circles. We
24 got a problem with gossip circles." Is that what he said?

25 A. Yes, sir.

1 Q. So you knew that was -- that was an issue he had with
2 staff, correct?

3 A. Yes, sir.

4 Q. And he talks about "cold shoulder", does he not?

5 A. Yes, sir.

6 Q. And did you understand that also as being a problem?

7 A. No, sir.

8 Q. Well, what did you understand that to mean?

9 A. I really didn't understand what he was referring to.

10 Q. Why did you write it down?

11 A. I was just making notes.

12 Q. Does it have any significance to this lawsuit?

13 A. I'm not sure I understand your question.

14 Q. Does the comment that you wrote down "cold shoulder"
15 have anything to do with any of your claims in this lawsuit?

16 A. The groups and division that is another Internal
17 Affairs Agenda?

18 Q. We talked about that, and we talked about gossip
19 circles.

20 Were there other things that Mr. Bright talked about
21 that he indicated were problems?

22 A. I don't recall.

23 Q. Okay. Now, you talked a little bit on your direct
24 examination about how the fact that Mr. Bright sat down with
25 you on October 21st and told you he was unhappy with your

1 performance, did he not?

2 A. Can you explain that question?

3 Q. Sure. Let me make it easier.

4 You have got Defendant's Exhibit -- or Plaintiff's
5 Exhibit No. 1 in front of you. Did you have a meeting with
6 Mr. Bright when you discussed that document?

7 A. Yes, sir.

8 Q. And did you understand when you sat down with Mr.
9 Bright that he was not happy with you?

10 A. I knew the items of concerns he had down there.

11 Q. Okay. Did you think he was telling you "you are doing
12 a great job?"

13 A. No, sir.

14 Q. Did you think he was telling you "I got problems with
15 your performance?"

16 A. I really didn't understand the first two.

17 Q. Well, I didn't ask you if you understood them.

18 My question was did you understand that he had a
19 problem with your performance?

20 MR. MURPHY: Objection, Your Honor. He just --
21 that is what he is asking. He is saying "I'm not asking
22 what you understand. I'm asking you what you understand."
23 He's arguing with her. She's answered the question.

24 THE COURT: He will rephrase.

25 BY MR. BRIGHT:

1 Q. When Mr. Bright sat down with you, did he indicate to
2 you that he had a problem with you as an employee with the
3 Beta Club?

4 A. No, sir.

5 Q. Did he tell you he had problems with what you were
6 doing?

7 A. No, sir.

8 Q. What did he tell you about -- what did he tell you
9 about?

10 A. Are you referring to that 21st, that conference?

11 Q. Yes, ma'am. Yes, ma'am.

12 A. He just read the first two and on the third one that
13 says "professional manner in which coworkers are addressed"
14 I asked him to explain and he said I had not been helpful
15 with Barbara Anderson that morning and what she had asked me
16 to do about sending the program to the printer.

17 Q. Okay. I'm listening. Is there anything else?

18 A. And I told him I didn't understand, that I had done
19 what Ms. Anderson asked me and that I sent the Indiana
20 program down to the printer on the second floor and Ms.
21 Anderson called me back and said that the printer had
22 jammed, would I please come down and fix the jam. And I
23 said I would be right down, so I went down and unjammed the
24 machine and it started printing the programs again for her.
25 And I told her that I may not get around to putting the

1 Indiana convention program on line, that she may want to see
2 if Jay Moore could do it, because Bob Bright had instructed
3 Melody Cooper to keep me busy entering the data with the
4 Membership Department and that Laura Lewis would take up the
5 slack for me.

6 Q. Did Mr. Bright tell you there are a whole lot of people
7 I can bring in here to tell you -- or they could tell us
8 examples of how you are not helpful with your co-workers?

9 A. Yes, sir, he told me he could bring a whole office
10 staff down or he could give me examples of how I was not
11 helpful.

12 Q. Okay. Did you understand that he was not happy with
13 you because you were not helpful with your co-workers?

14 A. I didn't understand who I had not been helpful to.

15 Q. I didn't ask you if you understood who he was talking
16 about.

17 What I'm asking you is when he said that to you, when
18 he said, "you are not helpful with your co-workers," did you
19 understand he was not happy with you about the fact that you
20 were not helpful with your co-workers?

21 A. No, sir.

22 Q. You didn't understand that?

23 A. I'm sorry, I didn't understand what co-workers I had
24 not been.

25 Q. And I appreciate that. I understand you say you don't

1 come in. And when I got to the door he said "another thing,
2 Denise. You need to smile more."

3 Q. Would you be in tears if you thought Mr. Bright was
4 happy with your performance?

5 A. No, sir.

6 Q. Were you in tears because you felt he was criticizing
7 your performance?

8 A. Yes, sir, I was hurt.

9 Q. Because he was criticizing your performance?

10 A. Yes, sir.

11 Q. Okay. And this was a man who had come into the office
12 and made a number of changes that meant you couldn't go to
13 lunch with people that you usually went to lunch with; meant
14 you weren't going to go to conventions; meant you weren't
15 going to be involved with the state sponsors? These were
16 all things that were changing for Denise Parker, weren't
17 they?

18 A. Yes, sir.

19 Q. And when he sat down with you on September -- or on
20 October 21st --

21 I want to put this up. We are talking about this time
22 frame. When he sat down with you on September 21st --

23 MR. MURPHY: October.

24 MR. BRIGHT: October, I'm sorry.

25 BY MR. BRIGHT:

1 Q. October 21st, you knew he wasn't happy with your
2 performance?

3 A. Yes, sir, when he handed me this paper.

4 Q. Okay. And it's a warning, correct?

5 A. Correct.

6 Q. So on the 21st you knew, because you left the meeting
7 crying you were at risk?

8 A. Yes, sir.

9 Q. You were afraid for your job?

10 A. Yes, sir.

11 Q. You thought Mr. Bright might fire you?

12 A. Yes, sir.

13 Q. And the reason he was going to fire you were for the
14 things that he talked with you about in the meeting on the
15 21st, correct?

16 A. Correct.

17 Q. And you felt that way before you ever had any meeting
18 with the Internal Affairs Committee, didn't you?

19 A. I'm sorry?

20 Q. You felt that way long before, four or five days
21 before, the Internal Affairs Committee meeting you were
22 afraid for your job?

23 A. Yes, sir, I was afraid.

24 Q. And he had already talked to you?

25 A. Yes, sir.

1 Q. And he had told you what he had a problem with?

2 A. Yes, sir.

3 Q. And, in fact, he told you it's long past due? Isn't
4 that what you testified to?

5 A. That's correct.

6 Q. Now, on the 25th, when you shared with the board your
7 experience with Mr. Bright on the 21st, you knew your job
8 was at risk?

9 A. I didn't share until I was --

10 Q. I understand that. You were not --

11 MR. MURPHY: If she would be able to finish her
12 answer, please?

13 BY MR. BRIGHT:

14 Q. I'm sorry, I didn't mean to interrupt. I apologize.
15 Do you want to finish your answer?

16 A. I didn't share any anything with the Board of
17 Directors. I was, you know, asked.

18 Q. Agreed. You were reluctant to say anything?

19 A. Yes.

20 Q. And the reason for that is you already were at risk for
21 losing your job? You knew that?

22 A. Yes.

23 Q. You knew you were already on thin ice?

24 A. Correct.

25 Q. And Mr. Bright had told you that the reason for it was

1 your dealings with other employees, your professionalism,
2 and things of that nature, correct?

3 A. He had not explained the first two reasons.

4 Q. Okay. But did he talk about the professionalism,
5 didn't he?

6 A. The third one, yes, sir.

7 Q. Would you agree with me that professionalism includes
8 the way you cooperate with other people?

9 A. Yes, sir.

10 Q. Would you agree with me that professionalism includes
11 how you communicate with other people?

12 A. Yes, sir.

13 Q. Do you agree that it includes how you are helpful or
14 not helpful with other people?

15 A. Yes, sir.

16 Q. And as we said earlier, in a small office it's even
17 more important because there is so many few people, right?

18 A. Correct.

19 Q. Now, do you have any knowledge of -- or did you ever
20 witness any board member tell Mr. Bright anything about what
21 you said in the meeting on the 25th?

22 A. No, sir, because I was not in the meeting.

23 Q. Okay. You never witnessed any board member tell Mr.
24 Bright anything about what happened in your meeting on the
25 25th?

1 A. No, sir.

2 Q. Did any board member that attended the meeting on the
3 25th ever tell you that they spoke to Mr. Bright about the
4 specifics of what you talked about with them in that
5 meeting?

6 A. No, sir.

7 Q. Now, Mr. Bright met with you again on the 4th, is that
8 correct?

9 A. Correct.

10 Q. And that's the day that you were terminated?

11 A. Yes, sir.

12 Q. And two of the things that Mr. Bright raised were
13 continued negativity and not answering e-mails, is that
14 right?

15 A. Yes, sir.

16 Q. All right. And you disagreed with him? You said "no,
17 I answer my e-mails." Didn't you tell him that?

18 A. I told him I didn't understand, that I answered my
19 e-mails.

20 Q. Yeah, you told him "I answer my e-mails," correct?

21 A. Yes, and that I did not answer spam e-mails for fear of
22 getting a virus on our networking system.

23 Q. And did you tell him "I'm not negative?"

24 A. I told him that I only answered the questions that the
25 board had asked me and they had told me that I would not be

1 fired if I -- that I had to answer their questions and that
2 Bob Bright could not fire me.

3 Q. Now, on this document that's been marked Plaintiff's
4 Exhibit No. 11, does Mr. Bright note "continued negativity"?

5 A. Yes, sir.

6 Q. And did you tell him "I haven't been negative, "I'm not
7 negative"?

8 A. No, sir.

9 Q. You didn't tell him that?

10 A. I told him that I would only answer the questions that
11 the board member asked me.

12 Q. You said you loved the people that you worked with?

13 A. Yes, sir.

14 Q. Did you love Richie Garland?

15 A. Yes, sir.

16 Q. Did you treat him that way?

17 A. Yes, sir.

18 Q. Did you love Shannon Meyer?

19 A. Yes, sir.

20 Q. Did you treat her that way?

21 A. Yes, sir.

22 Q. Did you love Laura Lewis?

23 A. Yes, sir.

24 Q. Did you treat her that way?

25 A. Yes, sir.

1 THE COURT: Ms. Cooper, tell me your full name,
2 please, for my court reporter and spell your last name,
3 please.

4 THE WITNESS: Melody Elizabeth Cooper,
5 C-O-O-P-E-R.

6 THE COURT: Thank you Ms. Cooper.

7 Yes, sir.

8 DIRECT EXAMINATION BY MR. MURPHY:

9 Q. Ms. Cooper, you currently -- you formerly were employed
10 by the Beta Club, is that correct?

11 A. That is correct.

12 Q. When did you join the Beta Club, ma'am?

13 A. Part-time in March of 1989. Full time on July 1st of
14 that year.

15 Q. And what positions did you hold with the Beta Club?

16 A. Membership coordinator for approximately five years.
17 The rest of that time I was membership director.

18 Q. And who was the CEO when you joined, do you recall?

19 A. George Lockamy.

20 Q. And what other CEO's did you work for while you were
21 employed by the Beta Club?

22 A. Interim director would have been Joan Burnett. CEO
23 Charlie Tillotson. CEO also Ken Klein, and then Bob Bright.

24 Q. From 1989 then until Denise was terminated did you work
25 with her?

1 A. Sure.

2 Q. In what capacity did you work with Denise in?

3 A. Sometimes as a co-worker. Twice Denise worked in the
4 department for me.

5 Q. When was the last time Denise worked for you in your
6 department?

7 A. The last several weeks that we were employed, so
8 Octoberish of 2013.

9 Q. Okay.

10 A. I can't give you a specific date.

11 Q. Okay. During that time do you recall Bob Bright ever
12 discussing any performance issues with Denise Parker?

13 A. He did not include me in on those, if he did.

14 Q. Tell the jury both as a fellow co-worker and as a
15 supervisor, in your own words please describe Denise Parker
16 as an employee.

17 A. As an employee, probably one of the most dedicated
18 employees that you could have. Always willing to do her
19 load of the work, whether it was in your department or not
20 and assist other departments. When she was over our Sales
21 Department she assisted me in membership on numerous
22 occasions when she had time.

23 Q. So did she work in membership any when she wasn't
24 formally assigned to membership?

25 A. The organization we worked for many years was one of

1 teamwork, so certainly if you could help one another, that
2 was something that we always tried to do and Denise was very
3 good about that. She didn't try to waste any time. If she
4 had time, she was helping process, or even if it was not her
5 department.

6 Q. Once Denise moved to membership did she ever talk to
7 you about her doing some work for the Convention Department?

8 A. She did. She said they had requested some files and
9 that she wanted to get those files for them.

10 During that time it was a very tense time for us to
11 work. The environment was not worker friendly, and --

12 MR. BRIGHT: I'll object, Your Honor, going far
13 beyond the scope of the question that was asked.

14 THE COURT: Mr. Murphy?

15 MR. MURPHY: Well, I'll rephrase it, but I'll come
16 back to that point with a question, Your Honor.

17 THE COURT: All right.

18 BY MR. MURPHY:

19 Q. At this point, Melody, I'm just asking you about
20 whether she continued to do some work for the Convention
21 Department while she reported to you in the Membership
22 Department?

23 A. She did.

24 Q. Say in October of 2013?

25 A. She did. She came to me and said she needed to locate

1 some files. That was fine with me and I told her, you know,
2 whether she needed to do it now or when she had time, either
3 was fine with me.

4 Q. Okay. Now, let's go to the issue you raised. You
5 described the atmosphere in the office in the fall of 2013?

6 MR. BRIGHT: I'm going to object, Your Honor, as
7 not being relevant to the issue in the case.

8 THE COURT: Mr. Murphy?

9 MR. MURPHY: It absolutely is relevant, Your
10 Honor. They have asserted and it's already in the record
11 that Denise had a disruptive attitude, she was disrupting
12 with co-workers, she was causing problems with her
13 co-workers and everything, and I wanted to get the
14 co-workers and her own supervisor's perspective on what
15 really was going on at that point.

16 THE COURT: The objection is overruled.

17 Go ahead.

18 BY MR. MURPHY:

19 Q. Ma'am, please from your perspective tell these ladies
20 and gentlemen of the jury what the atmosphere was like in
21 this fall of 2013 time frame.

22 A. For me, and I have to assume for others, it was a very
23 tense time. You were concerned about your safety as an
24 employee. And when I say safety, I mean employment, your
25 livelihood to be able to support yourself.

1 You know, I felt like, and I'm sure others did too. In
2 fact, I know others mentioned it to me that they didn't know
3 from day to day if they would be employed.

4 MR. BRIGHT: Again, Your Honor, I'm going to renew
5 my objection.

6 THE COURT: Mr. Murphy?

7 MR. MURPHY: Well, Your Honor, if he's objecting
8 to my question, you already ruled on my question.

9 MR. BRIGHT: May we approach, Your Honor?

10 THE COURT: Yes, sir.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 BY MR. MURPHY:

14 Q. Let me do it this way, ma'am. Let me show you
15 something that's already been admitted into evidence.

16 I'm going to show you some written questions and we'll
17 start with the back page.

18 A. Okay.

19 Q. It's a verification there. Do you know who the person
20 is that verified these answers?

21 A. Bob Bright.

22 Q. Okay. I'm going to ask you about an answer that Mr.
23 Bright gave in this case on the record.

24 If you look at page 10 there, under what's called
25 interrogatory number 20.

1 A. Okay.

2 Q. I'm going to start reading from the second line.

3 Mr. Bright verified "the plaintiff was terminated for
4 her disruptive attitude and her failure to keep up her
5 technical skills." Do you see that?

6 A. On number 20? Yes, I do.

7 Q. Okay. Let me first ask you about that, disruptive
8 attitude. Did Denise Parker ever exhibit in all the years
9 that you worked with her a disruptive attitude?

10 A. No, Denise was a good team worker, in my opinion.

11 Q. Did Denise ever fail to keep up with technical skills
12 in any way?

13 A. While she was working with me, certainly not. In fact,
14 she was -- I would have taken Denise every day I worked at
15 the Beta Club as an employee.

16 Q. There has been talk in this case -- and you weren't
17 here yesterday, but talk in this case, there was a document
18 given to Denise at her termination dated November 4th. Mr.
19 Bright never shared that document with you as her
20 supervisor, did he?

21 A. I do not recall seeing it.

22 Q. Okay. Well, the second reason Mr. Bright put on that
23 document was "communication and failure to respond to
24 e-mails promptly." Let me ask you about that. In all the
25 years that you worked with Denise, did she ever fail to

1 respond to an e-mail that you sent her requesting any
2 information or help?

3 A. No, she did not.

4 Q. Do you recall an issue of Mr. Bright talking about an
5 issue of e-mails in this late October time frame?

6 A. He addressed me with e-mails saying that some were not
7 me personally. Denise and I both got what was called UPS
8 exceptions. So that says if a box is to be delivered at ten
9 o'clock tomorrow and it's not going to be there at ten
10 o'clock, you are going to get an exception. And that sounds
11 like it would not by very many, but weather conditions
12 across the whole nation did present issues for delivery and
13 we got quite a few of those. Those were not something that
14 you would respond to, so it would look like you didn't
15 answer an e-mail, but you did not need to answer the e-mail.

16 Q. Is there another type of e-mail to which you would not
17 want to respond?

18 A. Well, we got, you know, spam. At times a fair amount.
19 Sometimes not that much. Of course, you don't respond to
20 spam.

21 Sometimes we would assist our clients and they may send
22 back "thank you, I appreciate your help." There is a point
23 where you don't go back and say thank you, thank you, thank
24 you, so those would be no responses also.

25 Q. Okay. Let me show you an e-mail. I don't know if you

1 have seen this. This has already been admitted in the
2 record as Plaintiff's Exhibit No. 11. Do you see the first
3 e-mail on that page?

4 A. The one that starts "yesterday" was --

5 Q. Yes.

6 A. Okay.

7 Q. Now, that's e-mail from who?

8 A. It looks like I sent it to Bob probably.

9 Q. What date did you send that to -- Bob is Bob Bright?

10 A. Correct.

11 Q. Okay. And when did you send that e-mail to Mr. Bright?

12 A. It says Tuesday October 22nd, 2013.

13 Q. Okay. Let's go to the second paragraph. I would like
14 you to read to the jury that paragraph and then the next
15 line after that paragraph, please.

16 A. The one starting with Lanie?

17 Q. The one starting with Lanie and next line that "we
18 all."

19 A. "Lanie only gets membership e-mails for a new sponsor
20 or a lost sponsor. I think from the past she gets a lot of
21 junk e-mails. Leigh seems to get a good bit of that also.
22 Leigh also keeps her inbox with a lot of old e-mails that
23 are not to be answered since they are not Beta in a good
24 amount of the cases. We all get more junk mail now than in
25 the past. Seemed to come with Charter."

1 Q. And what did you mean by that, "we all get more junk
2 mail than now in the past. Seems to come with Charter."
3 What was that in reference to?

4 A. Well, at the time we had had previously another group
5 do our IT. The spams that they had seemed to stop a great
6 deal -- spam filters, I'm sorry, seemed to stop a great deal
7 of e-mails that we didn't need to get.

8 With a new technology person, not to say he wasn't
9 doing his job, because certainly I would not say that, but
10 we did seem to get more spam and junk e-mail.

11 Q. Now, these -- going back to these UPS exceptions. Did
12 you tell Bob Bright about these UPS exceptions?

13 A. Yes, I did.

14 Q. Now, you mentioned the IT. Who was head of IT for the
15 Beta Club in October of 2013?

16 A. Jay Moore.

17 Q. Did you have a discussion with Jay Moore about this
18 e-mail issue and Mr. Bright raising that somebody is not
19 responding to e-mails?

20 A. I did. I asked him -- I told him that we had been
21 presented with that as an issue, that we were not answering
22 e-mails, and that we were answering all that deserved an
23 answer and would he consider intervening to at least tell
24 him that that was the case, that we had numerous spam
25 e-mails that we did not need to address.

1 Q. Did Mr. Moore tell you anything in response?

2 MR. BRIGHT: Objection, hearsay.

3 THE COURT: Mr. Murphy?

4 MR. MURPHY: Your Honor, the same issues as
5 yesterday. He's the head of the IT for the Beta Club.

6 THE COURT: Okay. It's overruled.

7 MR. BRIGHT: Thank you, Your Honor.

8 BY MR. MURPHY:

9 Q. What did Mr. Moore say in response when you told him
10 what you just told the jury about the e-mails?

11 A. He said he would and that he has -- that we had gotten
12 numerous spam that would not need to be answered.

13 Q. Who did he say he had said that to?

14 A. Bob Bright.

15 Q. Do you recall either Richie Garland or Shannon Meyer
16 ever complaining about Denise Parker?

17 A. I did not have a lot of contact with them, as far as
18 work, so, no, I didn't notice them say anything about
19 Denise. I know I assisted them at times and several members
20 of membership, including Denise.

21 Q. In terms of learning new programs with computer
22 processes, what's your, you and Denise's, willingness to do
23 those types of things?

24 A. I felt like she was willing. Membership certainly
25 changed.

1 Denise I believe worked in membership prior to my ever
2 being employed there, so our system changed numerous times
3 during her employment and I never had an issue with her
4 being able to pick up programs that were in my department.

5 Q. And your employment also ended on the same day as
6 Denise, correct?

7 A. That's correct.

8 MR. BRIGHT: Object, Your Honor. Her employment
9 is not relevant to the issues here.

10 THE COURT: Relevance, Mr. Murphy?

11 MR. MURPHY: I'll withdraw the question, Your
12 Honor.

13 THE COURT: Okay. The question and answer is
14 stricken. The jury is to disregard it.

15 BY MR. MURPHY:

16 Q. Let's just talk about the last few weeks of Denise's
17 employment then, okay?

18 A. Yes.

19 Q. During the last few weeks of Denise's employment could
20 you describe the work load in your department membership?

21 A. Probably heavier than normal.

22 Q. And how did Denise deal with that? How did she do?

23 A. As always, very diligent, very conscientious worker.

24 Q. Were there any issues with Denise's performance or her
25 attitude during this time?

1 A. Working for me, no.

2 MR. MURPHY: Nothing further, Your Honor.

3 THE COURT: Thank you.

4 MR. BRIGHT: If I may, Your Honor?

5 THE COURT: Yes.

6 CROSS EXAMINATION BY MR. BRIGHT:

7 Q. Ms. Cooper, good morning?

8 A. Hi. How are you?

9 Q. I don't believe you and I have had the pleasure of
10 meeting.

11 A. No, sir.

12 Q. Let's talk a little bit about some of the things that
13 you have just shared with counsel.

14 I think you made the comment that you had little
15 contact with Mr. Garland and Ms. Meyer, is that right?

16 A. As far as working, that's true, yes.

17 Q. I want to hand you what's been marked and admitted as
18 Defendant's Exhibit No. 9. Do you recognize that?

19 A. Organizational chart of the Beta Club.

20 Q. Have you seen that before?

21 A. Certainly.

22 MR. BRIGHT: Your Honor, I'm putting up a blowup
23 of the same exhibit.

24 THE COURT: Yes, sir.

25 MR. BRIGHT: I don't intend to introduce it as an

1 wasn't in any of the meetings, to move it along, Your Honor.

2 MR. BRIGHT: That's great, Your Honor.

3 THE COURT: Okay.

4 MR. BRIGHT: Fine.

5 THE COURT: It's so stipulated.

6 BY MR. BRIGHT:

7 Q. I want to look at the exhibit that counsel showed you a
8 few moments ago, which is Plaintiff's Exhibit No. 11. I'm
9 going to get a copy right in front of me so I have got it
10 too.

11 A. Okay.

12 Q. It may take me a moment to find it.

13 Now, this e-mail from you to Mr. Bright is dated
14 October 22nd, is that correct?

15 A. Yes.

16 Q. Now, below that is an e-mail Mr. Bright sent to you?

17 A. That's correct.

18 Q. Correct.

19 And he was informing you that -- he was directing you
20 to please have "the department continue to work on customer
21 service today." That was the point of the e-mail, wasn't
22 it?

23 A. That is what it says, yes.

24 Q. And he acknowledges that many of these may not be work
25 related, doesn't he?

1 A. It says "many of these e-mails may not be work
2 related," right.

3 Q. Did you -- and then he goes through a list of the
4 people that worked in your department, including Pat Mabry,
5 Lanie, and Leigh Mason, and he also includes Denise Parker,
6 is that right? He lists their name?

7 A. He does.

8 Q. And he lists on there the number of e-mails that they
9 received as of 3:30 yesterday, correct?

10 A. Yes.

11 Q. All right. For example, Leigh Mason, was she out on
12 leave at this point in time?

13 A. I do believe she was, yes.

14 Q. All right. And it shows that she had received 143
15 e-mails. And does it also show that she responded to five?

16 A. That is correct.

17 Q. Now --

18 MR. MURPHY: Excuse me, Your Honor -- excuse me,
19 Your Honor. I need to object to the fact that he's
20 establishing that was sent and received. I certainly don't
21 mind if that's what Mr. Bright said.

22 MR. BRIGHT: Absolutely, Your Honor. He's
23 absolutely correct. I agree.

24 THE COURT: Okay.

25 BY MR. BRIGHT:

1 Q. Was this memo informing you that Mr. Bright believed
2 that there were 143 e-mails that had been sent to Leigh
3 Mason?

4 A. That's correct.

5 Q. And that she had responded to five?

6 A. Yes.

7 Q. I would ask you to turn to the last page of this
8 exhibit, if you would please. And up at the top, is this a
9 second e-mail from you to Mr. Bright?

10 A. There is one from -- well, it's one below it. It looks
11 like maybe I responded to that one, is my guess, is "Denise
12 answers to the ones that comes to Leigh's inbox."

13 Q. All right. And was that your understanding at the
14 time?

15 A. Yes.

16 Q. So when Mr. Bright says he believes Leigh got 143
17 e-mails, your understanding is that Denise Parker was
18 responsible for the e-mails that were coming to Leigh Mason?

19 A. She was, for the most part, filling in for Leigh, as
20 far as e-mails were concerned.

21 Q. And there is this e-mail that you got from Mr. Bright
22 also reflects that he believed that Ms. Parker had gotten 51
23 e-mails and only responded to one?

24 A. Yes.

25 Q. So between Leigh Mason and Denise Parker, Mr. Bright

1 was indicating to you that it was his belief that there had
2 been a 194 e-mails that had come to those two individuals
3 and there had been a total of six responses to those
4 e-mails?

5 MR. MURPHY: Objection, Your Honor. He doesn't
6 say responses to those e-mails. That's a misrepresentation.

7 MR. BRIGHT: Excuse me, Your Honor, I'll quote the
8 document correctly.

9 THE COURT: All right.

10 BY MR. BRIGHT:

11 Q. Sent e-mails?

12 A. Uh-huh.

13 Q. Is that what it says?

14 A. It says sent, yes.

15 We did not always answer e-mails at the same time each
16 day. A lot of times it was late in the day because at that
17 time we had processed the information we needed to and sent
18 that out to UPS. So after this point would be more of a
19 time that we would hit the major part of our e-mails.

20 Now, we would glance through. If somebody needed a
21 direct response, we would try to do it, you know, at that
22 time, but if someone was away from their desk, say box and
23 credentials to send to clubs, those e-mails were obviously
24 not answered at the time.

25 Q. And I guess my question is this. When you received

1 this e-mail from Mr. Bright, did you understand that he had
2 a concern about the timeliness of responding to e-mails in
3 the Membership Department where Ms. Parker was working?

4 MR. MURPHY: Your Honor, again --

5 BY MR. BRIGHT:

6 Q. Is that your understanding?

7 MR. MURPHY: I would object. The exhibits says
8 nothing about these being responses. It says e-mails
9 received, e-mails sent. It doesn't say these e-mails are
10 responses to the e-mails received.

11 THE COURT: Re-characterize.

12 BY MR. BRIGHT:

13 Q. Once you got this e-mail from Mr. Bright, did you have
14 a concern about -- or did he express a concern, or did you
15 understand there was a concern about responding to e-mails?

16 A. I understood he had a concern. I also, from my time in
17 membership, knew that we answered e-mails.

18 Q. Okay. And if you go back again to the very first page
19 of this e-mail exchange to the first entry, what is the last
20 thing that you told Mr. Bright in your e-mailed response?

21 A. "We will certainly try to get e-mails answered more
22 timely."

23 Q. So you were telling him we will try and respond more
24 timely, correct?

25 A. Correct.

1 Q. Now, would you agree that in the Membership Department
2 you get e-mails from teachers and sponsors from the various
3 states that are volunteers?

4 A. Yes.

5 Q. And they may be asking questions about things they
6 needed to have answered?

7 A. Certainly.

8 Q. And that they have -- did you recognize that they had
9 limited time in the school day when they would be available?

10 A. That seems to be the case, but a lot of teachers would
11 e-mail you no matter what time of day it was.

12 Q. Well, let me ask the question a different way. Did you
13 think that timely response to e-mails was an important
14 function for the people in the Membership Department?

15 A. Certainly, and in my opinion we performed that.

16 Q. Were you ever present in any meetings with any members
17 of the Board of Directors and Mr. Bright where the Board of
18 Directors informed Mr. Bright of any conversations they had
19 with Denise Parker?

20 A. No, I was not.

21 MR. BRIGHT: If I may have a moment, Your Honor?

22 THE COURT: Yes, sir.

23 (Off the record).

24 (Back on the record).

25 MR. BRIGHT: Your Honor, I believe that's all the

1 questions that I have. Thank you.

2 Thank you, Ms. Cooper.

3 THE COURT: Anything?

4 MR. MURPHY: No.

5 THE COURT: Ma'am, you may step down. Please be
6 careful.

7 THE WITNESS: Thank you.

8 MR. MURPHY: Your Honor, she's excused, correct?

9 THE COURT: Any objection to her being excused,
10 Mr. Bright?

11 MR. BRIGHT: None, Your Honor.

12 THE COURT: Ma'am, you may stay or go, whichever
13 you choose.

14 THE WITNESS: I think I will go to work.

15 THE COURT: Thank you.

16 MR. MURPHY: Your Honor, at this time I would like
17 to call Mr. Glenn Stribling.

18 THE COURT: Okay.

19 Sir, come up and be sworn, please.

20 GLENN STRIBLING, having been first duly sworn,
21 testified as follows:

22 THE COURT: Sir, if you would, tell us your full
23 name and spell your last name for my court reporter.

24 THE WITNESS: Eugene Glenn Stribling. It's
25 spelled S-T-R-I-B-L-I-N-G.

1 THE COURT: Thank you Mr. Stribling.

2 Yes, sir.

3 MR. MURPHY: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. MURPHY:

5 Q. Mr. Stribling, where are you from?

6 A. Spartanburg, South Carolina.

7 Q. Okay. And you are still living here?

8 A. Yes, sir.

9 Q. Let's talk about the Beta Club. How long -- you were
10 formerly -- your name has come up and the jury heard it a
11 little bit, but --

12 A. Yes, sir.

13 Q. -- you were employed by the Beta Club?

14 A. Yes, sir.

15 Q. Okay. And how long were you with the Beta Club?

16 A. From 1979 -- June 1, 1979, until February the 28th,
17 2013. Excuse me, 2014.

18 Q. '14.

19 And so you left. And you left -- how did you leave,
20 sir?

21 A. I retired.

22 Q. Okay. So you retired a few months after Denise's
23 termination?

24 A. That's correct.

25 Q. And so you would have worked with Denise almost

1 thirty-five years?

2 A. Yes, sir. Thirty-four.

3 Q. She was there when you got there?

4 A. Yes, sir.

5 Q. Did you ever supervise Denise?

6 A. Yes, sir.

7 Q. When were you her supervisor?

8 A. I was her supervisor for -- from 2000 -- well, for
9 about seven years.

10 Q. And what department were you in at that time?

11 A. Convention Department.

12 Q. And tell the jury so they understand, we are hearing
13 different versions of what Denise was like, okay? Give
14 you -- can you describe Denise's personality?

15 A. Personality, she was easy to get along with. She was
16 quiet, very quiet individual, didn't talk a whole lot, but
17 Denise was one of the hardest working individuals that I
18 knew at the Beta Club. She did her job, did it well and to
19 the best of her ability and was more than willing to do
20 whatever was needed to do in order to get the job done.

21 Q. Okay. In thirty-five years of working together --

22 A. Yes, sir.

23 Q. -- did you ever witness Denise Parker being rude to
24 anybody?

25 A. No, sir.

1 Q. To you?

2 A. No, sir.

3 Q. To Shannon Meyer?

4 A. No, sir.

5 Q. To Richie Garland?

6 A. No, sir.

7 Q. To Laura Lewis?

8 A. No, sir.

9 Q. To Bob bright?

10 A. No, sir.

11 Q. Anyone else?

12 A. No.

13 Q. And for many of these years -- I guess seven years,
14 maybe, as her supervisor, the rest of her years you were her
15 co-worker?

16 A. That's correct.

17 Q. Including at the very end of her employment you were
18 co-workers?

19 A. Yes, sir.

20 Q. Okay. In fact, my opposing counsel put up a chart.
21 You were at that time somewhere right along the same level
22 or --

23 A. That's correct.

24 Q. -- a notch a little bit above where Denise was on the
25 chart, is that correct?

1 A. That is correct.

2 Q. Tell the jury as a co-worker what was it like day in
3 and day out to have Denise as part of this team?

4 A. Denise was a fine worker. I have no reason to believe
5 anything else. She got along well with staff. And, as I
6 say, she was a very hard worker and did her job to the best
7 of her ability.

8 Q. Okay. What about her -- if somebody asked her, even as
9 a co-worker, "hey, I have got it" -- you just heard Mr.
10 Bright ask, Tom Bright ask Melody about the importance of
11 people pitching in. If merchandise needs help, go to
12 merchandise. Membership needs help, everybody go over to
13 membership.

14 A. Yes, sir.

15 Q. What was your experience with Denise when say you were
16 in one department and she was in another and you needed
17 help?

18 A. She was more than willing to help in any way possible.
19 More than willing to do that.

20 Q. If you ever had a question for Denise, was she
21 responsive?

22 A. Sure.

23 Q. Did you ever have any e-mail you sent her and she just
24 wouldn't send you back an e-mail?

25 A. No, sir. No, sir.

1 Q. Let me show you what I went over with Ms. Cooper and
2 that is this response that Bob Bright verified where he says
3 "plaintiff was terminated for her disruptive attitude and
4 failure to keep up her technical skills." Do you see that
5 statement by Bob Bright?

6 A. Yes, sir.

7 Q. What's your response to that?

8 A. I just -- that's just not the Denise Parker I know or
9 that I worked with.

10 Q. There has also been discussion Monday at the start of
11 this trial about mention of division of the staff.

12 A. Yes.

13 Q. Divisions of staff?

14 A. Yes.

15 Q. In the fall of 2013, give the jury your perspective on
16 that, please.

17 A. As far as the divisions --

18 MR. BRIGHT: Your Honor, I'm going to object. I
19 don't see the relevance of this issue.

20 THE COURT: Mr. Murphy?

21 MR. MURPHY: That issue has already been put in
22 the case. There was discussion -- if you recall, Your
23 Honor, there was discussion, discussion with employees,
24 discussion with Staff Liaison Committee. That was the issue
25 going into the meeting with the Internal Affairs Committee.

1 THE COURT: I understand, so don't go too far with
2 it.

3 MR. MURPHY: May the witness answer the question I
4 asked?

5 THE WITNESS: Yes, sir.

6 MR. MURPHY: Thank you.

7 A. All right, clarify exactly what you are talking about.

8 BY MR. MURPHY:

9 Q. Okay. In the fall of 2013, are you familiar with the
10 issues that were discussed in terms of division of the
11 staff?

12 A. Morale problems and so on?

13 Q. Tell the jury what you know about that.

14 A. Yes, sir. At the time I was working in what we would
15 call retention, in a retention situation. I was calling
16 clubs or schools and talking to sponsors, talking to
17 principals and so on in the process of trying to -- if a
18 club had not responded to us and had not sent any new
19 members to our organization, it was my job to call them and
20 find out what we could do to help and this kind of thing.

21 As far as division in morale is concerned, when I --
22 there were twenty-one individuals who worked in the Beta
23 Club.

24 Q. Let me just -- I don't want to really interrupt you,
25 but I wanted to be consistent with something the judge had

1 said earlier and you may or may not have heard.

2 A. Okay.

3 Q. I don't want you to talk about the employment or maybe
4 how employment ended for other individuals.

5 A. Okay.

6 Q. Okay.

7 A. All right.

8 MR. MURPHY: Is that fair enough, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. MURPHY:

11 Q. Okay. Go ahead, sir. If you could do your answer
12 without getting into that, we would appreciate it.

13 A. Okay. Morale was such that individuals I would say
14 were on egg shells.

15 Q. Okay.

16 A. We were on egg shells.

17 Q. Let's leave it at that then.

18 A. Okay.

19 Q. Let me just ask you, was Denise Parker the cause of any
20 of that?

21 A. No.

22 Q. Did Mr. Bright make any statement to the employees that
23 was the cause of this?

24 MR. BRIGHT: Objection, Your Honor, relevance.

25 THE COURT: Mr. Murphy?

1 as follows:

2 THE COURT: Have a seat there, sir, and when you
3 get situated, tell us your full name and spell your last
4 name for my court reporter, please.

5 THE WITNESS: James Moore, M-O-O-R-E.

6 DIRECT EXAMINATION BY MR. MURPHY:

7 Q. Good morning.

8 How long have you been employed by the Beta Club?

9 A. Eight years.

10 Q. And what's your current position?

11 A. Chief information officer.

12 Q. And the jury has heard testimony about an October time
13 frame of how certain specific of e-mails being received and
14 sent by different employees.

15 Would you like some water?

16 A. No.

17 Q. We have got some.

18 A. That's okay. It's not going to help.

19 Q. Let us know, or if you need a break just let us know.

20 Mr. Moore, were you involved in compiling statistics on
21 the numbers of e-mails sent or received by different
22 employees at the Beta Club?

23 A. Yes, I was.

24 Q. And isn't it true you don't have any of that data that
25 you actually provided to Mr. Bright about the number of

1 e-mails sent or received?

2 A. That's correct.

3 Q. Now, on the system as it existed in this fall of 2013
4 time frame e-mails remained on your system for about six
5 months if they were put in a trash bin or deleted box,
6 correct?

7 A. I believe that's correct.

8 Q. Okay. And then they remain on backup tapes that you
9 have for another three months?

10 A. That part I was incorrect about in my deposition.

11 Q. Okay.

12 A. In going back and reviewing the backup tapes, that
13 e-mail server is only backed up nightly, so it did not make
14 it onto the tapes, so it just overwrites it every night.

15 Q. Okay. So you have e-mails from the system for six
16 months --

17 A. Correct.

18 Q. -- even if they are moved to the trash bin or the
19 deleted file, whatever it's called on your process?

20 A. Correct.

21 Q. Okay. And isn't it true, though, that nobody ever
22 asked you to preserve any e-mails until early 2015?

23 A. I believe it was when Mr. Tom Bright visited our office
24 and asked me to do that, which would have been -- yes,
25 probably -- it was in 2015. I'm not sure of the date.

1 Q. I understand. So it was in 2015. Okay.

2 Now, when Denise was employed, the e-mail system that
3 you used was Zimbra?

4 A. That's correct.

5 Q. And there was an anti-spam program called Spam Fast?

6 A. That's correct.

7 Q. Now, some of the spam would be cut off at the server
8 level and some of it would make it to individual desktops,
9 correct?

10 A. Correct.

11 Q. And most of the time if it made it to the desktop, it
12 would it go into that person's inbox?

13 A. Correct.

14 Q. So you would count it as an e-mail received?

15 A. Correct.

16 Q. And the program that Denise used while she was an
17 employee, the computer programs were Zimbra for e-mail,
18 Microsoft Word Excel and Microsoft Publisher?

19 A. Correct.

20 Q. And there weren't any changes to Word Excel or
21 Publisher during this time, other than normal software
22 updates?

23 A. I believe that's correct.

24 Q. Okay. And Denise had no trouble using any of the
25 programs that she was required to use, did she?

1 A. Not that I know of.

2 Q. Now, there has been an e-mail, sir, that you and I have
3 talked about where Mr. Bright wrote down numbers for e-mails
4 sent and received?

5 A. Uh-huh.

6 Q. Do you recall that?

7 A. I do.

8 Q. And you can't, sitting before this jury, say that any
9 of those numbers are correct, can you?

10 A. I can say when I counted them I felt like they were
11 correct on that day.

12 Q. But you didn't write the e-mail that Mr. Bright sent?

13 A. No, I did not write the e-mail that Mr. Bright sent.

14 Q. In fact, you didn't even see that e-mail until much,
15 much later?

16 A. That's correct.

17 Q. At that time you had gotten rid of your count of the
18 sent and received e-mails?

19 A. Uh-huh. Correct.

20 Q. Okay. And if you would do, sir, because the gentleman
21 to your right, just as before when did the deposition, the
22 court reporter needs words.

23 So you provided to Mr. Bright some kind of information
24 about the number of e-mails that went into somebody's inbox
25 and the number of e-mails that went out in their sent

1 forward, correct?

2 A. Correct.

3 Q. You never represented to Mr. Bright that e-mails sent
4 were actually responses to the e-mails that were received?

5 A. No, I never actually looked at the contents of any of
6 the e-mails.

7 Q. Okay. So it's possible that nobody's e-mails -- that
8 somebody's e-mails that were sent had nothing to do with the
9 e-mails that were received?

10 A. That's correct.

11 Q. Okay. And with regard to those numbers that Mr. Bright
12 put in his e-mail to Melody Cooper, you never went back, and
13 you were never asked to go back, to check to see whether any
14 of those numbers were correct?

15 A. That's correct.

16 Q. And you did speak to Mr. Bright about the number of
17 e-mails sent to Denise, correct?

18 A. I'm not sure I recall that.

19 Q. You don't recall while Denise was still employed that
20 you spoke to Mr. Bright about e-mails that Denise received?

21 A. I don't -- if you can refresh my memory, but I don't
22 remember.

23 Q. Okay. Well, yes, sir.

24 MR. MURPHY: Your Honor, I don't want to give the
25 appearance of trying to impeach him. If I could let him

1 look at his deposition just to refresh his recollection?

2 THE COURT: Yes.

3 MR. MURPHY: I don't mind.

4 BY MR. MURPHY:

5 Q. Go to page 26, beginning at lines 20, and I'll give you
6 a chance to just read that through to the end of the page
7 and -- in fact, if you want to just read over page 26.

8 Do you see the lines there to the left?

9 A. I did.

10 Q. Okay. When it starts -- going back to line 6, you can
11 see the whole context of the conversation.

12 A. I understand what you are asking now.

13 Q. Okay. Okay. And I'm sorry if my question wasn't clear
14 more.

15 Let me ask it this way. Do you recall telling Mr.
16 Bright that some of the e-mails Denise received were spam?

17 A. I believe when I told Mr. Bright that statement that it
18 was not specific to Denise, but it was just some e-mails
19 that people receive could be spam.

20 Q. And you made that statement to Mr. Bright while Denise
21 was still employed?

22 A. I believe so.

23 Q. Okay. And after you told Mr. Bright some of the
24 e-mails could be spam, you didn't go back to see how many
25 actually were spam, did you?

1 A. No.

2 Q. And Mr. Bright never asked you to go back to see how
3 many e-mails Denise, or Melody, or anybody else received
4 were spam, did he?

5 A. No.

6 Q. And you never printed out any e-mails for Mr. Bright so
7 he could see what they were?

8 A. No.

9 Q. And you never showed any of these Denise e-mails to
10 anybody at the Beta Club?

11 A. No.

12 Q. And you are not aware -- having compiled the
13 information that you compiled, Mr. Moore, you are not aware
14 of any evidence that anybody sent Denise an e-mail that
15 required a response to which she did not respond?

16 A. I didn't look at the e-mails.

17 Q. You worked with Denise for about six years?

18 A. Yes.

19 Q. And you had a good working relationship with Denise,
20 didn't you?

21 A. I believe so.

22 MR. MURPHY: I don't have anything further, Your
23 Honor.

24 THE COURT: All right.

25 MR. BRIGHT: May I have a moment, Your Honor?

1 Honor.

2 THE COURT: Everybody is hungry right now and give
3 you a chance to collect your thoughts as well.

4 MR. BRIGHT: Thank you.

5 THE COURT: 2:15 for everybody else.

6 (Deposition of Dr. Ken Dinkins marked as Court's
7 Exhibit No. 1 for identification)

8 (Deposition Designations of Dr. Ken Dinkins marked
9 as Court's Exhibit No. 2 for identification)

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened).

12 THE COURT: Okay. Is everybody ready to go?

13 MR. BRIGHT: Your Honor, I'm ready to make the
14 directed verdict motion.

15 THE COURT: All right.

16 MR. BRIGHT: May it please the court?

17 THE COURT: Yes, sir.

18 MR. BRIGHT: I think we have made the point I
19 think abundantly clear as we have gone through these first
20 two days that the case that we are dealing with is not a
21 wrongful discharge case. This is a very straightforward
22 breach of contract case.

23 Now, there are three causes of action: Breach of
24 contract, breach of contract accompanied by fraudulent act,
25 and promissory estoppel. I'm going to take those in an

MOTION FOR DIRECTED VERDICT

1 inverse order, because I think the arguments are simple for
2 the first two and a little more complicated for the second.

3 With regard to the concept of promissory estoppel,
4 the court made the comment before we left the courtroom this
5 morning that is an equitable remedy that is provided to a
6 party when there is no consideration to support a contract.

7 What we learned when we read Conner v. City of
8 Forest Acres, 611 S.E. 2d 905, the Supreme Court opinion
9 from 2005, our Supreme Court has said that even an at-will
10 employment relationship is a contractual relationship. It's
11 just that the -- it is unsupported by any consideration
12 other than the employer's duty to perform -- or the
13 employee's duty to perform and the employer's duty to
14 provide compensation.

15 So no matter how you cut it, when you get to the
16 end of this case there is a contractual relationship. It
17 may be at will, in which case the defendant wins on the
18 contract claim, or it may be that there is a narrow contract
19 over here that limits under what circumstances she could be
20 terminated, but with regard to promissory estoppel, the mere
21 existence of the contract means that promissory estoppel
22 cannot exist in the employment context.

23 We have cited for the court both Peacock v. Dillon
24 County and Glover v. Lockheed Corporation, both which stand
25 for the proposition that promissory estoppel is not an

1 available cause of action in the employment context, because
2 all employment arrangements involve a contract, and,
3 therefore, some form of consideration.

4 And we would urge that there is no issue for the
5 jury to rule on in -- we are entitled to judgment as a
6 matter of law on the promissory estoppel claim, because as a
7 matter of law there can be no promissory estoppel in the
8 employment context.

9 Second, I would move to the breach of contract
10 accompanied by fraudulent act. Obviously if there is no
11 contract, there can be no breach of contract accompanied by
12 fraudulent act. I'll deal with that in a minute, but what I
13 want to deal with first are the other two elements that are
14 required to be proven by the plaintiff in order to recover
15 on a cause of action for breach of contract accompanied by
16 fraudulent act. Not only does it require the breach of a
17 contract, but it requires, two, a fraudulent intent related
18 to the breaching of the contract, and number three, and most
19 importantly, a fraudulent act accompanying the breach.

20 I would urge the court's review of a
21 non-employment case, but one that is extremely important, a
22 Court of Appeals opinion from 2012, D.R. Horton v. Westcott
23 Land. And the underlying issue isn't really important, but
24 there was a breach of contract accompanied by fraudulent act
25 claim in that case. And one of the things that the

1 plaintiff said was "well, Your Honor, they keep changing
2 their reasons for why they did what they did. They first
3 told it was for this, now they are saying it's for this, and
4 now it's saying it's for something else."

5 The court said that even the shifting reasons for
6 action, or even threats to another party, are not enough to
7 establish the existence of a fraudulent act accompanying the
8 breach. That is not an independent fraudulent act. More is
9 necessary than mere speculation as to the reason for acting.

10 What evidence do we have in this case? We have
11 got plaintiff testifying that she was told why she was being
12 terminated. She has testified about getting a warning.
13 She's testified about why she was told she was being
14 terminated. She has testified "I don't think I did all
15 those things." But what testimony has she presented as to
16 any fraudulent act engaged in by the defendants? There is
17 no testimony in this record at all of any independent
18 fraudulent act engaged in by the defendant.

19 If their argument is merely we disagree with the
20 reason for the dismissal, or we don't think she did what you
21 said she did, which is, in essence, the only testimony that
22 they have presented thus far, then every employment
23 termination case, Your Honor, is an accompanied by
24 fraudulent act case, and that's the point of D.R. Horton.
25 D.R. Horton says there must be an independent fraudulent

1 act.

2 So far as the evidence has been presented today,
3 there is nothing about any fraudulent act, any fraudulent
4 intent, anything associated with the breach of the contract
5 here. So on that basis, Your Honor, we believe that the
6 breach of contract accompanied by fraudulent act, there just
7 hasn't been any evidence presented of any fraudulent act at
8 all.

9 Even the fraudulent intent related to the
10 breaching of the contract is not enough. As Conner v. City
11 of Forest Acres talks about, it says the three elements are
12 breach of contract, fraudulent intent related to the
13 breaching of the contract, and a fraudulent act accompanying
14 the breach.

15 And Conner is a classic example where you would
16 that kind of circumstance, because in that case the employee
17 was terminated. She goes through a grievance process. The
18 grievance committee overturns it. It gets appealed up to
19 the next level of management and they reversed the grievance
20 committee and there were a whole series of acts. The breach
21 of contract was you couldn't terminate her. But the
22 accompanying acts associated with that case in Conner were
23 all the series of events that occurred with regard to the
24 appeal of her termination up through the grievance process,
25 which as the court knows happens in municipal government all

1 the time, and then the overturning of it by the governing
2 officials. And the court even made the comment there are
3 any number of fraudulent acts here.

4 In our case there have been none. There is no
5 evidence of even fraudulent intent. She disagrees that she
6 should have been terminated. She disagrees that she didn't
7 answer e-mails. Yes, we have a dispute about those things,
8 but that's not evidence of a fraudulent act. And for that
9 reason we feel that South Carolina directed verdict should
10 be granted with regard to the breach of contract accompanied
11 by fraudulent act.

12 Finally we come to the more complicated argument,
13 which is the breach of contract argument.

14 We are contending two things.

15 Number one, there is insufficient evidence to
16 establish the existence of a contract.

17 Number two, we are arguing there is insufficient
18 evidence in the record as it's been developed thus far to
19 prove the breach of any contract.

20 We start, Your Honor, with the proposition that
21 employment in South Carolina is presumed to be at will. We
22 know there are other exceptions, but this isn't a public
23 policy exception case. This isn't a handbook contract case.
24 It's none of that. So she is at will, unless she can prove
25 a specific contract. And plaintiff's contention in this

1 case, the specific contract she says she had was made in a
2 statement made to her in a meeting with the internal affairs
3 committee and that that constitutes some sort of an oral
4 contract which alters her at-will employment. And as the
5 court knows, at-will employment means you could be
6 terminated for good reason, bad reason, or no reason at all.

7 Now, the mere fact that this is an oral contract
8 doesn't remove it from all the requirements of proving the
9 existence of a contract. It's different from a handbook
10 case, in that the courts have said those are implied
11 contracts. This case involves a specific contract. An oral
12 contract must be for some definite -- in the employment
13 context, some definite employment benefit. It must
14 establish all the elements of the contract. The plaintiff
15 has the burden to establish all of those elements. There
16 must be a specific offer, communication, and performance and
17 reliance on the communication of that offer.

18 More importantly, and I would recommend to the
19 court Prescott v. Farmers Telephone Cooperative, a 1999
20 Supreme Court opinion, that says in order for an oral
21 contract to create any sort of a contract that's actionable,
22 it must be made with specific intent to create contractual
23 relations or legal relations. It must be intended to create
24 legal relations.

(25 Now, the courts in South Carolina have

1 consistently and routinely held that indefinite assurances
2 of job security are insufficient to create a contract. For
3 example, in Prescott the individual said, you know, as long
4 as you work here and as long as you keep your nose clean and
5 as long as you don't do anything wrong, you will have a job.

6 In Davis v. Orangeburg Calhoun Law Enforcement
7 Commission, a 2001 Court of Appeals opinion, the issue there
8 was someone said we only fire people for good cause or just
9 cause. And the Supreme Court of South Carolina has
10 consistently held that offers of that -- or that
11 conversations and comments of that nature do not rise to the
12 level of a commitment to a specific contractual
13 relationship.

14 Now, the statement that we have here, and we don't
15 have much evidence about it, but we do have Dr. Dinkins
16 testimony that was read into the record, and we do have the
17 plaintiff's testimony from Monday, the statement here is
18 nothing more than an isolated comment made by one of 18
19 board members to an employee in a meeting.

20 The members -- the board members don't supervise
21 the day-to-day activities of the employees. The plaintiff
22 testified to that. She admitted to that. The executive
23 director is the only person that has authority to hire and
24 fire employees. They testified she knew that. This
25 statement is nothing more and it's akin to assurances of job

1 security such as those that were made in Prescott, in
2 Sullivan, in Fulgrim, in Davis, and Tellefaro of indefinite
3 -- of some indefinite concept. Nothing more than an
4 indefinite assurance.

5 And we have to remember, Your Honor, that in order
6 for an oral contract to be something that's actionable,
7 there has to be an intent to have a contractual agreement.
8 And you remember the testimony that I tried to draw from the
9 plaintiff, both in her deposition and here in the courtroom,
10 where she couldn't even answer what the contract was. She
11 didn't -- couldn't answer that question. How can there be
12 an intent to create legal relations in the form of an oral
13 contract when she doesn't even know what it is, and she
14 can't articulate what her claim is or what her contract is?

15 There was no offer of a definite term of
16 employment. There was merely vague assurances of job
17 security, and there was nothing to show that there was an
18 intent to create a contractual relationship. And even in
19 the reading of the testimony of Dr. Dinkins, there is
20 nothing in there that suggests an intent to create a
21 contractual relationship.

22 So in summary, Your Honor, the statement that they
23 contend creates a contractual relationship, there was no
24 offer of definite employment. It was merely a vague
25 assurance of job security. There was no intent to create

1 legal relations. All we have is -- she can't even testify
2 about what the contract would be. How could that be
3 evidence of intent? And on the basis --

4 Now, the plaintiff may counter and say oh, well,
5 Miller v. Schmid Labs, which is a 1992 opinion, and there
6 are several other cases, those were all implied contracts
7 dealing with handbooks, Your Honor. They are not this case.
8 This is case is a very specific oral contract case, and we
9 know the standard for that contract.

10 So on that basis this particular comment made by
11 Dr. Dinkins doesn't rise to the level of a contractual
12 commitment. It's nothing more than an indefinite statement.

13 I would also point out, Your Honor, I just mention
14 this in passing, that we have heard from Dr. Alford that she
15 wants six years damages. That suggests that this is a
16 contract that couldn't be performed within one year and I
17 would question whether or not it satisfies the Statute of
18 Frauds in the fact that it wasn't in writing. So we make
19 that argument as well.

20 Finally, Your Honor, I'm going to move on to the
21 fact that there is no proof of any breach of the contract.
22 The alleged contract is "you cannot fire me for speaking to
23 the board of the internal affairs," or that the board said
24 "we won't fire you for talking to the board." There is no
25 evidence in the record from any witness that Mr. Bright, the

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1 person who terminated her employment, was ever told about
2 the fact that plaintiff even spoke to the board, much less
3 what she said to the board. No evidence. There is no
4 evidence that anyone else told him what was said in that
5 board meeting or what she told the board.

6 Now, there can't be a breach of "you can't fire me
7 for going to the board" if Mr. Bright didn't know anything
8 about her going to the board or what she said.

9 Moreover, Your Honor, we have to remember that if
10 there are any other reasons for terminating her employment,
11 anything, because she is otherwise an at-will employee but
12 for this one alleged contractual provision, if there are any
13 other reasons in the record for her discharge, she could be
14 terminated and it doesn't breach that contract.

15 She admits that she was at risk for discharge as
16 of October 21st, 2013, before she ever went to the board.
17 She admits that she was on thin ice. She knew that Bright
18 was upset with her performance, although it took a long time
19 for me to get there. And this is all before she ever talked
20 to the board. She knew she was at risk. She even told the
21 board, according to her testimony, "I'm afraid he's going to
22 fire me."

23 Since she was an at-will employee, if there is any
24 evidence in the record of any other reason for discharge,
25 then they can't prove that the breach of the contract was

1 the but-for reason for her termination. And if there is any
2 other reason that supports the termination, the defendant
3 must prevail.

4 I would point out that she's failed to present any
5 evidence that Bright knew anything about what was said to
6 the board or what she said, and her burden is to prove that
7 talking to the board was the only reason for her discharge,
8 akin to, Your Honor, a workers' compensation retaliation
9 case.

10 If there is any other reason, because she was
11 otherwise an at-will employee, if there is any other reason,
12 then she could be terminated and it doesn't breach her
13 contract. And we have to remember all this discussion about
14 e-mails, that was one of the things that was on the list of
15 things he was upset about and what she testified is why he
16 fired her.

17 Your Honor, we contend there is no contract. We
18 contend there is no breach. We contend that it doesn't
19 satisfy the Statute of Frauds. We would allege that there
20 is no evidence of fraud. And, finally, we have alleged
21 that. Or we assert that there is no evidence -- or that a
22 promissory estoppel case cannot exist hand in hand with an
23 employment contract case.

24 Your Honor, unless you have any questions, that's
25 my argument.

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1 THE COURT: I don't at this time. Thank you.

2 MR. BRIGHT: Thank you.

3 THE COURT: Mr. Murphy.

4 MR. MURPHY: Thank you, Your Honor.

5 Just for point of clarification, Your Honor, Mr.
6 Bright said -- he has cited things to this court and I think
7 he said something about a Peacock case. Has there been
8 something submitted that I'm not aware of? I don't have
9 anything.

10 THE COURT: I don't have -- I don't --

11 MR. BRIGHT: I can get the Peacock case for
12 everybody.

13 MR. MURPHY: I thought he said -- he was
14 citing stuff to you again.

15 MR. BRIGHT: I think it was cited in our summary
16 judgment motion.

17 THE COURT: Yeah, I think he's referring to the
18 summary judgment.

19 MR. MURPHY: And that's fine, Your Honor.

20 MR. BRIGHT: And I suspect that those cases were
21 attached.

22 MR. MURPHY: And that's fine, Your Honor.

23 Let me start with the contract issue, the ones
24 that are going to the jury -- or the ones that are before
25 the jury. I will just walk through the elements very

1 simply, okay, because this is not difficult.

2 The term of the contract that's at issue here --
3 and Mr. Bright is incorrect in asserting that there is some
4 delineation in the law between handbook cases and oral
5 promise cases. They're not. In fact, Small v. Springs
6 Industry, which is partly based on a handbook was also
7 partly based on oral. And the very seminal case in this
8 area said they are the same. You put them all together.
9 You treat them the same. They are a unilateral contract. I
10 know he wants to take all the handbook cases and say don't
11 look at them. There is a really good reason, because over
12 and over and over again they say these things are issues for
13 the jury, but those cases rely in part on written stuff and
14 in part on oral stuff, but the case law -- the legal
15 principles are exactly the same, and it's unilateral
16 contract principles and it's very simple.

17 Now, he is right that I'm not relying on a written
18 document to establish the terms of the contract in this
19 case.

20 And I also agree with him that the court has said
21 for a contract to be enforceable based on oral statements,
22 it must be definite. And I would agree with him that the
23 courts have said things like "hey, keep your nose clean and
24 you will have a job for life." That's not specific enough.
25 And the reason is, Your Honor, we can't measure it. What is

1 keeping your nose clean mean? Okay.

2 What if you -- "if you do a good job here, I won't
3 terminate you, unless there is cause." What does that mean?
4 You couldn't measure it. You couldn't look at it and see
5 did that happen or not. And I agree, those are too
6 indefinite.

7 Your Honor, I never had a case with a more
8 definite promise in this case. To say there isn't evidence
9 of a promise is a bit strange. The plaintiff testified that
10 Dr. Dinkins told her "if we ask you a question, you must
11 answer it and Bob Bright can't terminate you for answering
12 our questions." Dr. Dinkins substantially corroborates
13 that. He doesn't remember saying those exact words, but
14 here, the testimony we just read back was from pages 41 of
15 his deposition, "if Denise would say I said it, I wouldn't
16 deny it. I remember it being said, because we say this when
17 they come in and meet with us. Hey, we are here as a
18 representative group of the board. We are here to gather
19 information about what's morale, the working conditions at
20 the office, and we want you to be clearly honest with us
21 about what you tell us. So, yeah, it's been said. You
22 know, what you say here is not going to be basically held
23 against you or a condition of employment." Now, that's not
24 exactly what she said, but it doesn't have to be exactly
25 what she said. Her testimony itself is enough evidence. A

1 very definite promise "if you answer our questions, you
2 won't be fired for that. Bob Bright won't fire you."

3 He also testified Bob Bright doesn't have the
4 authority to fire her for answering questions to the board.
5 A very specific promise.

6 I also agree with part of his analysis, in that
7 under unilateral contract principles the issue in the
8 contract is was there an offer or a promise, okay? Was it
9 communicated to her? Well, that's the testimony. They said
10 it to her. And I'm not going to go through all the issues.
11 He didn't argue actual parent authority, or anything like
12 that. You know, we went through all that testimony with Dr.
13 Dinkins to say that's his job, that's what they are here
14 for, the constitution, that's what they do in running the
15 place. But there is no -- there is no dispute that this
16 offer was communicated to her. So that only leaves one
17 thing; breach.

18 And for Mr. Bright to say there is no evidence in
19 the record that she was terminated for speaking to the board
20 is really stretching it. There is evidence, not only from
21 Denise Parker, but there is evidence from Bob Bright too.
22 Denise Parker testified when he terminated her, he said "I
23 heard you were negative with the board." That's all I
24 needed, Your Honor, but there is more.

25 Let's go back to the reasons he gave when he fired

1 her. Continued negativity. There it is, negativity. Now,
2 he didn't add with the board. He didn't say that on this,
3 but he said continued negativity. Now, what was the
4 evidence in the record about the negativity? She wasn't
5 negative with anybody. The only negativity he could be
6 referring to there is what she said with the board. It
7 corroborates what she said. I don't need to corroborate
8 what she said. To get to the jury she just needs to say it,
9 but to say there is no evidence that there is either a
10 breach, or that he knew what was said to the board, that
11 also -- Your Honor, Dr. Dinkins also testified, if you
12 recall, that after the board met with the Staff Liaison
13 Committee, they met with Mr. Bright and talked about the
14 issues. That's enough for the jury to infer that they told
15 him exactly what was going on. Where else did he get this
16 continued negativity? There is no evidence of being
17 negative with the co-workers. Every co-worker that
18 testified here said she wasn't negative. Even Jay Moore.

19 Now, his argument with regard to D.R. Horton, Your
20 Honor, we addressed that in summary judgment, okay? And,
21 again, the court in D.R. Horton was addressing a different
22 argument that we are addressing. We are straight up on
23 Conner. And I'll go into his argument on Conner in just a
24 second, but in D.R. Horton there was an argument about
25 shifting reasons. Well, we got shifting reasons in this

1 case, but I don't even need to go into that, but in Horton
2 they never said the shifting reasons were false reasons.
3 They just said at different points in the contractual
4 relationship they had different reasons. That's not fraud.

5 Okay, you go to Conner v. The City of Forest Acres
6 and Mr. Bright talks about the fact that the plaintiff in
7 that case contended that there were numerous fraudulent acts
8 in connection with the termination, but here is what the
9 court said. "Primarily, however, Conner's claim is that the
10 city fabricated pretextual reasons for Conner's termination
11 knowing the reasons were false." That is what the Supreme
12 Court held was enough to constitute the fraudulent act
13 giving rise to breach of contract accompanied by fraudulent
14 act claim. Fabricating false and pretextual reasons is all
15 I need to get to the jury.

16 Now, what were the reasons? We have in the record
17 so far two on here and more in the record, okay? Continued
18 negativity. She wasn't negative with anybody. I even had
19 her testify she wasn't negative with the board. Not true.
20 There is no evidence to contradict my evidence.

21 Communications and failure to respond to e-mails
22 promptly. We had every witness testify she responded to her
23 e-mails promptly. And the only thing in the record is some
24 statistics that aren't about responses to e-mails at all.
25 It's about how many e-mails she sent, not how many e-mails

1 she responded to.

2 But it went further, Your Honor. In the
3 interrogatories they gave other reasons for termination and
4 they talked about her disruptive attitude and failure to
5 keep up with technical skills. Those are other reasons that
6 were given and verified by Bob Bright as the reasons for her
7 termination.

8 Take those in order. Disruptive attitude. Is
9 that a true reason? Every witness has testified has said
10 she doesn't have a disruptive attitude, including her
11 supervisor Melody Cooper.

12 Failure to keep up with technical skills. The
13 I.T. man and Melody Cooper both testified there was no
14 problems with her keeping up with her technical skills. And
15 she also testified she learned more things as they came
16 along, got training, and had no problems with her technical
17 skills.

18 So they have given you now a total of four
19 reasons. Not only do I have in evidence that they are false
20 and pretextual, there is absolutely no evidence to support
21 them.

22 Now, on the elements -- I'm sorry, Your Honor, I
23 said the third element was a breach. That's not true. The
24 third element is -- he argued breach, and I have addressed
25 that now. The third element for unilateral contract and

1 performance, okay? Here is the evidence. They made the
2 offer or statement. "If you answer our questions" -- "you
3 know, answer our questions, you will not be fired." Every
4 witness, including -- Dr. Dinkins testified to this and she
5 testified to this. Those are the only two witnesses that I
6 believe will testify in this case about what was said in the
7 Internal Affairs Committee meeting. Both the witnesses have
8 testified she wasn't going to answer that question until she
9 got that promise. Once she got that promise, both witnesses
10 testified she answered the questions and answered them
11 truthfully. That's performance. That's performance as
12 contemplated by the offer and that completes the contract.

13 That also, Your Honor, and we argued before in
14 summary judgment, takes it completely out of any Statute of
15 Frauds issue.

16 I take issue with Tom Bright's statement that Dr.
17 Dinkins, which is one of 18 board members. No, he was not.
18 He was an officer specifically under the constitution put on
19 the Internal Affairs Committee under their rules and
20 procedures to perform this function, and Dr. Dinkins
21 testified to that. He said "we were meeting with her in our
22 capacity as Internal Affairs Committee members. That is our
23 function. It is our function to ask them questions and get
24 to it and we tell them they need to tell us the truth." He
25 wasn't one of 18 board members. The other four members of

1 that committee sat there, and I had her testify, they sat
2 there and when he made that statement, "answer our questions
3 and you can't be fired," not one of them spoke up and took
4 issue with that.

5 Tom said that I'm going to keep going back to
6 Miller v. Schmid Laboratory, and he's absolutely correct,
7 but he keeps making this argument that I think, Your Honor,
8 is just a backdoor way of trying to argue meeting of the
9 minds, that there is no intent to create a contract. That's
10 the meeting of the minds language that the Supreme Court
11 said, and addressed this in the charges, my response to the
12 charges. The Supreme Court said that's reversible error to
13 consider that. Once an offer is made and the person
14 performed, which is the only form of acceptance necessary
15 for unilateral contract, it doesn't matter whether the offer
16 or intent of that statement to be a contractual obligation.
17 And the Supreme Court couldn't have been more clear on that.
18 An entire case got reversed. It was a contract employment
19 case. An entire case got reversed simply because the judge
20 said meeting of the minds in the jury charge, and that's
21 what he's arguing here. So, yes, I am going to say Miller
22 v. Schmid Labs and I'm going to keep saying it.

23 He keeps talking about she couldn't say what the
24 contract was. And do you remember I argued about this.
25 Your Honor, lay people don't have to say "this is the legal

1 elements of my claim and here is the evidence supporting the
2 legal elements of my claim." Now, she's far more articulate
3 and educated than I'm sure a lot of people who come before
4 this court. And I objected and I argued when he did that
5 and I made the point in that, and I think you sustained it
6 at that point. She fully testified as to the promise that
7 was made to what she was relying. She doesn't have to know
8 what it's called. She doesn't have to know if it's a
9 unilateral contract, or a bilateral contract, or what the
10 consideration was. She doesn't know these things. And, you
11 know, I guess he thinks it's fine to try to out-lawyer her
12 on the stand and the jury would be affected by that. If
13 they are, I guess the jury can consider her legal acumen in
14 making its decision, but that's not the burden on her as the
15 plaintiff is to testify as to the contract. I just need to
16 have her put on the evidence and I can argue to you
17 constitute a contract.

18 He's made the statement that if there is any other
19 reason in the record to support termination, they have to
20 win as a matter of law. Well, isn't that the absolute
21 reverse of the standard under Rule 50? I mean, that turns
22 it completely on its head. I mean, what plaintiff would
23 ever win a case if the defendant could just offer some
24 evidence to support their defense so they win as a matter of
25 law? No, all I have to do is present some evidence to

1 support my theory of law and I get to the jury and that's
2 where this case belongs.

3 He argued that there is no evidence that the board
4 told Tom Bright -- excuse me, Bob Bright, what she said in
5 the meeting. Well, of course there is. One, Dr. Dinkins
6 says he met with him after and he told him what was said in
7 the meeting. "But how did this come up? Continued
8 negativity." And she testified "when he fired you, you said
9 you were negative with the board." Well, that's evidence
10 right there he knows.

11 Now, can I say it's proof that a board member
12 specifically told Bob Bright that? I don't have to, Your
13 Honor. I don't even have to prove the board did tell him.
14 As long as he -- if he heard a rumor about what she told the
15 board and it went through ten different people -- I don't
16 know how it happened, but if it went all the around
17 Spartanburg and came back to him through somebody with no
18 authority whatsoever what Denise did, as long as he heard
19 it, it doesn't matter who told him. So I don't know if he
20 spoke to Barbara Anderson, if he spoke to Pat Mabry. I
21 don't know if Pat Mabry told somebody else, who told
22 somebody else, who told somebody else who got it back to
23 Bob. I don't know. I don't have to know. I don't have to
24 prove that. He is setting a false standard for us. All I
25 have to show is that Bob Bright terminated her for what he

1 understood she said to the board. I don't have to prove a
2 chain of communications from the board to him. I think I
3 have. I certainly got enough to get to the board, but that
4 was never the standard. He is setting the bar way too high
5 on this.

6 Your Honor, he also said that she did not dispute
7 that he was upset with her performance. Do you remember, we
8 had a long go-around about that. He said "she wouldn't
9 answer my questions. She wouldn't answer my question." And
10 that's what I was objecting to the question. She can't
11 testify whether he's upset with her performance. She
12 testified he warned her, he scared the dickens out of her,
13 he got her in fear of her job. She knew she was on thin
14 ice. That supports the plaintiff's case, not theirs, okay?
15 So the fact he did those things is not -- it doesn't match
16 up with any grounds to attack any of the elements of my
17 claim under breach of contract or breach of contract
18 accompanied by fraudulent act.

19 Now, he said -- he wants you to evaluate this akin
20 to a workers' comp retaliation case. That's not the law
21 under contract. You take can't a statutory claim, which has
22 a very specific proof scheme that's been passed on by the
23 courts and say I'm going to take that statute and apply it
24 to contract law. Contract law has been around since we have
25 been a colony, Your Honor. And he will not cite to you one

1 single opinion under contract cases for employment that says
2 I have to show sole cause. He keeps saying it and he keeps
3 trying to put it in his charges. He wants you to charge
4 that. He wants you to believe that's the law. It is not
5 the law. He doesn't even cite in the history of law any
6 other contract case that says that. I don't have to show
7 sole cause. That's never been the law.

8 Finally, Your Honor, on promissory estoppel, we
9 did have a discussion with that. That's an equitable claim.
10 I understand that the court has decided to make that
11 decision at the bench. That I think is your prerogative,
12 and as a general principle that's correct. It is an
13 equitable claim where for some reason you don't have a valid
14 and binding contract. That's what Mr. Bright is claiming in
15 this case. And my suggestion would be, you know, hold onto
16 that claim. You will decide it. You can wait until after
17 the verdict is decided. If they rule for me in the
18 contract, then it's not even an issue. If not, then I think
19 we will take argument on promissory estoppel, or whatever
20 their verdict means, and the court can make that decision,
21 but all I have to prove for my elements of promissory
22 estoppel is a promise. It's been promised. She relied on
23 it. She did. The testimony is that she, only after given
24 the assurance she wouldn't be fired if she answered their
25 questions truthfully, and that she's been harmed by that.

1 Well, yeah, she lost her job. So I can meet all the
2 elements of promissory estoppel. The fact that I may have a
3 contract isn't grounds for dismissing it at this point. You
4 can take that up later, but I can meet all the elements of
5 promissory estoppel for the reasons I have spoken earlier.

6 THE COURT: Okay. Mr. Bright, anything?

7 MR. BRIGHT: Your Honor, I'm not going to belabor
8 the point because I think you have gotten the essence of the
9 arguments so far.

10 I think on the promissory estoppel the thing that
11 I'm saying basically is that at-will employment in and of
12 itself is a contract. And when there is a contract, you
13 cannot have promissory estoppel. He may be trying to prove
14 another contract, which is the issues in this case, and I
15 understand that, but I'm merely saying that that contract --
16 or the fact that it's in the employment context, they are
17 all contractual and promissory estoppel doesn't exist.

18 And the only other thing I would say, Your Honor,
19 is that even when you look at Dr. Dinkins' deposition at
20 page 49 where he talks about the fact "we talked to Mr.
21 Bright," there is no evidence that anybody ever let him know
22 that anybody ever said anything about Ms. Denise Parker, and
23 that is their burden to prove. They had an obligation to
24 come in here and prove that somehow there is a connection in
25 order to prove a prima facie case that that was the reason

1 for her termination and they have failed to do so.

2 THE COURT: Okay.

3 MR. BRIGHT: All right.

4 THE COURT: Thank you.

5 Okay. I agree with plaintiff's counsel about the
6 chancery issues or the cause of action, chancery cause of
7 action. That's exactly what I was going to do. My law
8 clerk and I have discussed that at lunch. That's under
9 advisement, because I don't have to reach that at this point
10 in time.

11 Just so our young lawyers out there understand
12 that is a cause of action in here that is a chancery or an
13 equity I guess is the new term, but I'm getting old, so it's
14 in chancery and that does not go to the jury. That is
15 determined by the court, but because of that it's not going
16 to be going back there, so at this time that ruling is under
17 advisement.

18 As to the breach of contract of fraudulent act,
19 the motion for a directed verdict is denied. There is
20 sufficient evidence -- there is sufficient evidence in the
21 record, and I'm not going to take the time to recite it.
22 Both you gentlemen have made excellent arguments here and
23 the record is complete and I think it's complete enough for
24 any appellate court, if they choose to look at that to see
25 it, so I incorporate by reference the testimony and the

1 arguments that you have made. There is a question of fact.

2 As to the breach of contract, the same thing. The
3 directed verdict is denied on this. I think there is a
4 question of fact as to whether or not there was a contract
5 and whether or not that contract was breached.

6 I also find that the facts in the other cause of
7 action, the fraudulent intent as well. Again, I incorporate
8 the arguments you gentlemen made along with the evidence
9 here.

10 MR. BRIGHT: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 Anything else?

13 MR. BRIGHT: Nothing further at this stage. We
14 are ready to proceed.

15 THE COURT: Anything from the plaintiff before we
16 bring the jury in?

17 MR. MURPHY: Nothing, Your Honor.

18 THE COURT: Okay. Anybody want to take two
19 minutes before we bring the jury in? Two minutes.

20 (Whereupon, proceedings were recessed).

21 (Whereupon, proceedings were reconvened)

22 THE COURT: Everybody ready?

23 MR. BRIGHT: Yes, sir.

24 MR. MURPHY: Yes, sir.

25 THE COURT: Let's have our jury.

1 processes those names, prints out certificates. Each member
2 gets a certificate, as well as a membership pin as well.

3 Q. All right. Let's move over to the Merchandise
4 Department. What is the Merchandise Department?

5 A. Well, merchandise, primarily we have a large graduation
6 merchandise that we actually ship out graduation stolls and
7 cords, but we also have convention merchandise as well that
8 we take to conventions and they sell, you know, T-shirts,
9 you know, different little nicknacks for people to buy at
10 the conventions.

11 Q. Finally, let's talk about the department that were in
12 convention?

13 A. Yes.

14 Q. What does convention do?

15 A. Convention has the national sponsors. There was at the
16 time when I was hired there was three. That would have been
17 myself, Shannon Meyer and Barbara Anderson. And the
18 national sponsors help the state sponsors in each of those
19 eighteen states to put on those state conventions, as well
20 as we serve as a mentor to all sponsors to help them with
21 any, you know, issues that they have with their club or
22 coming up with ideas for service projects in their
23 community. So we basically assist to be that mentor for our
24 state sponsors, as well as regular club sponsors.

25 Q. Now, describe for me, if you will, the hierarchy within

1 the Convention Department after you came on board and after
2 Shannon Meyer came on board.

3 A. When we came on board there was the three national
4 sponsors. That was me, Barbara, and Shannon. And then we
5 all had briefly -- for a couple of weeks we had three
6 support staff, which would have been Ms. Parker, Vickie
7 Horne, and we also had Lanie Curry in the production side of
8 things.

9 Q. And does this chart show Ms. Curry was moved eventually
10 over to the Membership Department?

11 A. Correct.

12 Q. And what were there -- all three of those, what were
13 their responsibilities? What are their duties?

14 A. They were to assist us with any of the needs that we
15 had. When we go to a convention, we have name tags that we
16 have to print for each one of those -- for those
17 conventions. We have to pack for that convention, to assist
18 with handbooks.

19 Each -- each convention actually has -- we used to call
20 them bulletins. We refer to those as handbooks now, which
21 are basically the schedules for that convention, the rules
22 for the competitions. You know, everything that had to do
23 with that actual state convention.

24 Q. Now, let me hand you what's been marked and admitted as
25 Defendant's Exhibit No. 1, and I would represent to you that

1 the job description for convention coordinator. What is
2 that document?

3 A. This would have been the job description for Ms.
4 Parker, as well as Ms. Horne.

5 Q. Okay. Is that accurate, to the best of your knowledge?

6 A. Yes.

7 Q. Now, let's go back.

8 When did you actually first start at the Beta Club?

9 A. Well, because I was actually at Chesnee High School,
10 which was down the road, I frequented the office quite a bit
11 and was able to assist them in helping get ready for the
12 national convention, but actually as an employee I started
13 July 1 in 2013.

14 Q. Did you know the people in the national office before
15 you were hired?

16 A. Yes.

17 Q. How did you get to know them?

18 A. Well, as a sponsor, I being so close, as a state
19 sponsor each year our state sponsors come together and are
20 trained. The first year they actually are trained in
21 Spartanburg here. We actually just finished training for
22 that this past week, but we bring those state sponsors in,
23 actually train them on how to actually put together a
24 convention, all the duties that they will actually do for
25 that convention. So when I was here in Spartanburg, you

1 Q. Is that critical for the support of the Beta Club?

2 A. Yes, because of how small we are.

3 You know, when we go across the nation when we are in
4 conventions, I think people have this idea that the national
5 Beta Club headquarters is this gynomous place that you have
6 lots of employees, but we are just a very small office here
7 in Spartanburg.

8 Q. Okay. Now, one of the things that you mentioned were
9 these bulletins, these handbooks. Describe again for us
10 what these things looked like and what they are for.

11 A. The actual bulletin is -- it's -- it depends on the
12 actual state and how large the state is and how large that
13 convention may be, but there are usually anywhere from fifty
14 pages to around eighty pages worth of information with the
15 rules for the different competitions, the schedules for
16 those competitions. And they basically -- at the time they
17 looked more just like a regular word document that had --
18 basically we have a theme each year that our state sponsors
19 vote on and a lot of the competitions actually have to do
20 with a theme. This past year our theme was Betas Rock in
21 the Country, so a lot of those competitions had to do with
22 that theme, but you would see that all of those competitions
23 would basically have a theme or two describing what the
24 competition is. It talks about the rules and what's
25 expected and then gives a little bit of the rue brick of

1 what the judges would actually be looking at for those
2 competitions.

3 Q. Does it also contain things like hotel information,
4 schedules, dates --

5 A. Yes.

6 Q. -- and things of that nature?

7 A. The deadline dates for when we actually expect all of
8 that, you know, for them to register and things are there as
9 well.

10 Q. Okay. Now, do those -- do these have to be revised
11 every year?

12 A. Every year. Again, I talked about the state councils.
13 Each council can add or add rules to their state
14 competitions. So each of those councils would actually have
15 revisions to those competitions, but we also would just have
16 the necessary changes. That would be the date and the theme
17 that would be different each year and that could be many,
18 many times. Pretty much on every page would be the theme.

19 Q. Like names change?

20 A. Yes.

21 Q. And would these changes be repeated on numerous pages
22 throughout the book?

23 A. Yes.

24 Q. All right. Now, what was your role in making changes
25 from year to year in these booklets? Just tell me what your

1 role was.

2 A. Well, when I first came in, you know, I was told that
3 we had to get these bulletins out. They had to actually be
4 released.

5 Q. How many were you talking about?

6 A. We have at the time thirty-two, but in the junior
7 division there would have been fourteen division -- I mean
8 fourteen states that had junior conventions at the time, so
9 I had fourteen of those.

10 Q. Was there a demarcation of junior and senior?

11 A. Yes.

12 Q. What -- explain that in conjunction with this
13 organizational chart that you had.

14 A. It was explained to me pretty much in the very
15 beginning that Ms. Parker would assist in the junior and she
16 had assisted in the junior division, to my knowledge, for
17 the time that I had known her there and that she would be
18 the one who would assist in helping get those changes made.
19 And Ms. Horne would actually assist Ms. Anderson in the
20 senior division to get those changes made as well.

21 Q. Well, were you responsible for the junior?

22 A. Yes.

23 Q. And she -- and Ms. Parker was assisting you?

24 A. Yes. Well, and Shannon Meyer would have assisted me,
25 but at the time in July Shannon had not come to the office

1 yet.

2 Q. Now, what role did Ms. Parker play in the modification
3 or change of these bulletins from year to year?

4 A. Well, Ms. Parker actually was the one who had the
5 documents on her computer and she would actually be the one
6 to make those changes in the document. So basically I would
7 take those documents and actually tell her the actual
8 changes to make in the document.

9 Q. How would you do that?

10 A. Well, at the time she explained to me that the prior
11 national sponsor would write it on a sticky note and tag
12 where all the changes would need to be made and that we
13 would circle those changes and, you know, tell exactly what
14 it needed to change to.

15 Q. All right. So did you start doing that with Ms.
16 Parker?

17 A. Yes.

18 Q. Did you encounter any problem or resistance?

19 A. Well, at the time I can remember going through the
20 first one and thinking a lot of these changes are changes
21 that would -- you know, could just be done with one sticky
22 note, so I actually went to Ms. Parker and said is there a
23 way that I can put these on a sticky note and actually on,
24 you know, very front and say change all the dates to this
25 and change all the themes so that I wouldn't have to do that

1 throughout the whole document, and she told me no, that
2 there would be no way, that she was not going to be
3 responsible if something was wrong.

4 Q. Now, did you engage in any further discussion with her
5 about that?

6 A. No, I did not. At the time, you know, I knew the
7 importance of getting those out and I also knew that I was
8 the, you know, the new kid in town, so I just -- I went back
9 to my office and continued to do that.

10 Q. Did that complicate the bulletin process for you?

11 A. It just made it a lot more time consuming.
12 Complicating the process, it was just something that you had
13 to do over and over and over, so I -- it was just so
14 redundant.

15 Q. What was Ms. Parker's demeanor when she told you she
16 wasn't going to do that?

17 A. She was very closed off and -- and she was actually on
18 the third floor, so I actually had to go to her office to
19 talk to her, but just pretty much, you know, that's not the
20 way that we are going to do it. This is how it's been done
21 in the past and we will continue to do it this way.

22 Q. Now, did you have access to the word documents so you
23 could go in and make the changes yourself?

24 A. No, I did not.

25 Q. Did Ms. Parker ever express to you any dissatisfaction

1 she had with the work or the work environment?

2 A. Throughout times, yes. She expressed her
3 dissatisfaction with Mr. Bright and the changes that he had
4 actually made.

5 Q. What kind of changes did she talk to you about?

6 A. Well, one of those was actually the lunch schedule. In
7 the past pretty much -- you know, as long as the phone was
8 covered out front everyone could go to lunch at any time
9 that they wanted to go. And one of the things that Mr.
10 Bright put into place was to make sure that every department
11 was covered, and so the support staff actually had times
12 they were -- that they had to report that they were going to
13 lunch. And so the national sponsors -- I think there was
14 some -- I don't think. I know there was some
15 dissatisfaction with the fact that she could no longer go to
16 lunch with the other employees.

17 Q. Did she ever express that dissatisfaction to you?

18 A. Yes.

19 Q. How?

20 A. She would say that. "You know, I can't believe that
21 he's done this. We have always, you know, ate lunch
22 together. You know, I don't like this change."

23 Q. Were there any other changes that Mr. Bright made that
24 Ms. Parker expressed dissatisfaction with?

25 A. One of those -- when I talked about the state sponsors,

1 in the past when -- actually when I was a state sponsor, Ms.
 2 Parker and the support staff actually had assisted in that
 3 state sponsor training. And since there was another
 4 national sponsor that actually had just been hired, and then
 5 Laura Lewis, who was the executive assistant or
 6 administrative coordinator at the time, she actually had
 7 been prior a national sponsor. So since we were all in
 8 play, there was not a need to have the support staff to
 9 assist in that state sponsor training.

10 And it was also taught to me as being a national
 11 sponsor, Mr. Bright shared with me that we would have to pay
 12 overtime for those support staff to actually -- to attend
 13 those sessions, so he made the decision not to have them to
 14 be involved in that, and so there was some dissatisfaction
 15 with that.

16 Q. Did she ever express that dissatisfaction to you?

17 A. Yes.

18 Q. What did -- what, if anything, did she tell you?

19 A. She had always been involved in it, that she did not
 20 like the change. She couldn't believe that this was
 21 happening.

22 And I can remember sometime in I believe it was early
 23 September I called a meeting with our department and --

24 Q. Why would you call a meeting? What was the meeting
 25 for?

1 A. Well, I had just experienced over August -- well,
2 pretty much all of July and then all of August just a sense
3 of a wall that was there in our department and a sense of
4 not wanting to be a part of the team, and so I knew it was
5 something that I needed to address. With those sponsors
6 coming into town we had to be a united front as a department
7 and that we had to get these issues, you know, off our chest
8 and move past this. We had to be -- we had to be a team.

9 Q. Was Ms. Parker one of the people that you had that
10 impression about?

11 A. Yes.

12 Q. Why did you have that impression?

13 A. There was never a sense of wanting to help me and to
14 wanting me to succeed. I always felt like, you know, that
15 she did her job, but anytime that I would ask for things
16 like "do you know --

17 I can remember an occasion when we had a whistle that
18 we actually -- some electronic whistle that we used; "have
19 you seen the electronic whistle for the junior division?"
20 And she would say "you know, I know it's down in your
21 office. I don't know exactly where it's at, but it's there
22 somewhere."

23 Q. Did she get up and help you go look for that whistle?

24 A. No, sir.

25 Q. Did she ever make any suggestions to you about where it

1 might be, other than generally saying "it's in your office"?

2 A. No, sir.

3 Q. What was your -- what was her demeanor when she was
4 telling you that? Did you detect that she was trying to be
5 helpful to you?

6 A. No. I actually thought the whole time -- I was kind of
7 puzzled that -- you know, I had known her, you know, those
8 previous years and had never really had any negative
9 dealings with her at all, but it was -- I just felt that
10 once I became an employee, that there was a sense of a line
11 that was drawn and that she didn't want me to be successful.

12 Q. Did anything happen that led you to conclude that she
13 didn't want you to be successful?

14 A. Well, I mean, I think some of the things that I just
15 described; you know, not wanting to be part of the team; you
16 know, not actually coming downstairs to actually ask me, you
17 know, "what are some things that you need," or, "is there
18 anything that I can help you with?" There were other people
19 in the building.

20 You know, like I said, it's a small office that seemed
21 to be helpful, but I just felt like in our department there
22 was a definite negativity there.

23 Q. And did you feel that negativity from Ms. Parker?

24 A. Yes.

25 Q. Did you ever address it with her? Did you ever sit

1 down and talk to her about it?

2 A. I did at that meeting. We actually -- I brought the
 3 whole department together and I explained that, you know,
 4 coming from education I kind of looked at the office kind of
 5 like our school would be, that as -- Mr. Bright would be
 6 like our principal and that we have to all be on the same
 7 page.

8 I can remember, you know, exactly saying "I know you
 9 may not agree with everything that he is doing, but that we
 10 have to be on the same page. We have to get past those
 11 issues and we have to be moving forward, because those
 12 sponsors were coming in and it was crucial that they see a
 13 unity with our department, that they see a unity in our
 14 office," because at the end of the day we were there -- and
 15 I remember saying "we are there for the students. You know,
 16 we can't let these office issues come in the way of what we
 17 are actually here for."

18 Q. Did Ms. Parker have anything to say after you discussed
 19 all this with the group?

20 A. She did actually address Ms. Anderson, Barbara
 21 Anderson, which was another of the national sponsors, and
 22 she said, "you know, Ms. Anderson, if this was another CEO,
 23 you would have already went to the board about it."

24 Q. What about?

25 A. About the issues that she was upset about.

1 Q. And what issues was she upset about?

2 A. We talked about lunch. We talked about the state
 3 sponsors, not being able to, you know, attend all the
 4 sessions for the state sponsors. And just being negative
 5 and anything that Mr. Bright put forth that they did not
 6 agree with.

7 Q. Was there any -- had there been any discussion about
 8 changes in who was going to convention?

9 A. Yes, we -- sometime in I believe it was the beginning
 10 of September the schedule for the conventions of who
 11 actually would be traveling to conventions was released.
 12 And as I spoke of prior, in the past there was only two
 13 national sponsors and there was not an administrative
 14 coordinator with Ms. Lewis, so anyone that was traveling to
 15 assist in any of those conventions, they would have relied
 16 on the support staff in the Convention Department to do that
 17 and if they ever worked overtime, they had to pay overtime
 18 for that. So the convention schedule came out and did not
 19 have the support staff traveling.

20 Q. Now, we have talked a little bit about this
 21 organizational chart that you have in front of you. Was
 22 this -- was there ever a meeting where that was discussed
 23 with the employees?

24 A. Yes. I don't remember the exact time. Sometime I
 25 think towards the end of August Mr. Bright did have a staff

1 meeting where he passed out the organization chart to
2 everyone to make sure that everyone was aware.

3 Q. Was Ms. Parker in that meeting?

4 A. Yes.

5 Q. Were you in that meeting?

6 A. Yes.

7 Q. What kind of information was being shared with the
8 group? And I don't want you to tell me what anybody said,
9 but what kind of information did you learn? What did you --
10 what did you find out from that meeting?

11 MR. MURPHY: Your Honor, that's exactly what he's
12 asking would be all objectionable on the grounds of hearsay.
13 He can't testify to what he learned without testifying what
14 was said, what Mr. Bright said.

15 MR. MURPHY: He doesn't -- I'm not asking him to
16 tell me what Mr. Bright said. I'm asking him what changes
17 did he learn about as a result of that meeting.

18 MR. MURPHY: He learned about it because somebody
19 said it in the meeting. It's hearsay. He doesn't have any
20 independent knowledge of the changes, other than what was
21 said in the meeting. That's the premise of the question.

22 THE COURT: Let me see counsel.

23 (Whereupon, the lawyers approached the bench for
24 an off-the-record discussion)

25 THE COURT: Okay, the objection is overruled. He

1 can testify to what he understands.

2 BY MR. BRIGHT:

3 Q. Let me make it very abundantly clear. Don't tell me
4 what anybody said in that meeting -- what Mr. Bright said in
5 that meeting.

6 What I want to know is coming out of that meeting what
7 did you understand were the changes that had been made?

8 A. Well, in the meeting we were -- we basically -- like
9 all meetings, we go through actually what's going on in each
10 department, kind of update everyone, but at the end he
11 passed out the organization chart and wanted to make sure
12 everyone was clear of who worked for who and who reported to
13 who and make sure that everyone understood the structure of
14 the organization.

15 Q. Did you have occasion to observe Ms. Parker's demeanor
16 in that meeting?

17 A. Yes.

18 Q. What was it?

19 A. I was observing everyone in our department and I could
20 see that she was visibly upset. She was, you know, crossing
21 her arms and, you know, rolling her eyes whenever it was
22 going on. And so after the meeting I immediately tried to
23 approach her, because I knew that there was some
24 dissatisfaction. And so when I tried to approach her, she
25 just shook her head and walked away.

1 Q. Did you reach any conclusion from your exchange with
2 her?

3 A. That she was not happy and did not want to be a part of
4 the team.

5 Q. Did you share -- these concerns that you have just been
6 explaining to the jury, did you share those with Mr. Bright?

7 A. Yes. Our office is very small and at any given day Mr.
8 Bright was in my office ten to fifteen times a day, because
9 we are so small and, you know, every day he would come in
10 and see what we are doing and talk about things that were
11 going on in the convention department, so he was very much
12 aware of the every-day dealings of our department.

13 Q. Did Ms. Parker ever describe for you how she felt she
14 was being treated in the Convention Department?

15 A. You know, she did. On many occasions I would say, you
16 know, that she was unhappy with the things that Mr. Bright
17 was doing, that she felt like she was a second class
18 citizen, that she did not feel like she was able to be a
19 part and -- I mean, she would -- she would make that aware
20 quite a bit.

21 Q. Okay. After this -- you have described two meetings
22 for us. One was the meeting where you went over the
23 organizational chart and one was the meeting that you
24 called?

25 A. Right.

1 Q. After your meeting with the employees in the Convention
2 Department did you see any improvement in her demeanor or
3 her attitude or her behavior, meaning Ms. Parker?

4 A. No. In fact, I probably would say it was probably
5 worse then. It was --

6 Q. Tell me what you mean by that.

7 A. Just trying to avoid me, trying to not be a part. I
8 just felt like there was just that sense of, like I said,
9 that line that was drawn and that she did not want to be a
10 part.

11 Q. Did you ever have a sense that she wanted you to
12 succeed?

13 A. No.

14 Q. Did you have the opposite feeling?

15 A. Yeah, I actually did not think she wanted -- she did
16 not want me to be successful.

17 Q. What made you feel that way?

18 A. Well, I mean, for me, and coming from education,
19 dealing with school, you just -- as a teacher we all jumped
20 in, we all helped. We all do things as a part of a team. I
21 taught art for ten years before I came to the national
22 headquarters and all the fine arts teachers just jump in and
23 help at any given time and I never felt that at all.

24 Q. Going back to these booklets that you were doing for
25 the convention, how was Ms. Parker actually physically

1 making the change?

2 A. Well, actually she would go in, I'm assuming, in
 3 Microsoft Word, because that was what the document was, and
 4 I can remember, you know, asking her is there a way that I
 5 can just do that on a sticky note or can I write it on the
 6 front? Any time there is a theme, replace it with this
 7 theme? Any time there is a date or a deadline date, replace
 8 it with this deadline date?

9 And then after speaking with Ms. Lewis, who had
 10 actually been at the Beta Club office before, I learned that
 11 there was a search and replace method that had been used in
 12 the past that she actually told me about, and so I asked Ms.
 13 Parker if there was a way that we could do that, and, again,
 14 the answer was no, that she was not going to be responsible
 15 for any mistakes, that I would need to write those out on a
 16 sticky note and that would be the only ones that were going
 17 to be changed.

18 Q. How did that make you feel?

19 A. Again, I felt like there was not a sense of trying to
 20 help me succeed, because I knew, you know, coming in that I
 21 was charged to make the Convention Department, to make
 22 leadership so much more than what it was at the time and I
 23 felt like, you know, I was basically just doing those
 24 mundane tasks of, you know, writing things on a sticky note.

25 I can even remember one time when she gave it back to

1 me and said there is still mistakes in here, there is still
2 some dates that have not been changed, or that I had not
3 seen yet. And I remember thinking if you seen that and you
4 know that, if you wanted me to succeed, why would you not go
5 ahead and change that and why would you not save me the time
6 from having to go through and look and try to find it.

7 Q. Now, I assume, since you were new to the Beta Club in
8 August, or July -- was it July?

9 A. July.

10 Q. July of 2013, you didn't necessarily know how the
11 equipment in the office worked, did you?

12 A. Correct. I mean, I basically was a math guy. That's
13 the kind of computer that I also had was an Apple, and so
14 when I came in everything was on Microsoft Word. I mean,
15 I'm familiar with Microsoft Word, but not to the extent of
16 the search and replace and things like that.

17 Q. Did you ever run into problems using your equipment in
18 the office?

19 A. There was -- at the office there was some very large --
20 we have a print shop, basically, that some very large xerox
21 copiers that are there in the print shop and when we had
22 those state sponsors coming in, we had to run off all those
23 papers for them. And each one of them actually would get
24 different documents, because each one of them was very
25 different, so they may get the financial information for

1 their state and so you wouldn't give that out to every
 2 sponsor. So there was a sense of having to collate all of
 3 that on those machines and I was not very familiar with the
 4 machines at the time. Ms. Lewis was the one who actually
 5 was assisting to help get those actually done.

6 Q. Did you ever recall an instance where you struggled
 7 with how to work the machine?

8 A. Yes. Like I talked about with the collating, the
 9 process of actually collating those and putting those
 10 together, we actually -- and I can't remember the exact
 11 function that we were doing, but at one point we realized
 12 that we had actually done that all wrong and we had spent
 13 about two hours on it, and so, you know, we had -- we were
 14 sitting there thinking --

15 Q. Who is we?

16 A. Me and Ms. Lewis. And --

17 Q. Was there anybody else around?

18 A. Yes, Ms. Parker was actually in the room with another
 19 employee.

20 Q. Was she there the whole time that you were there for
 21 two hours?

22 A. No, not the whole time. She was in and out of the
 23 print shop.

24 Q. And what kind of problem were you having?

25 A. I can remember thinking that we had done it the right

1 way, and then once we realized that we didn't, you know, we
2 had all thirty-two of those documents sitting there and
3 realized that something was wrong with them. And so
4 whenever Ms. Lewis said "I can't believe that we have done
5 this, you know, this wrong," another employee said "well, if
6 you would have just asked, we would have helped you," and
7 Ms. Parker just laughed and walked away.

8 Q. What do you mean she laughed and walked away?

9 A. She just, you know, started -- she just kind of started
10 chuckling and got on the elevator and went upstairs.

11 Q. Okay. What did you think about that?

12 A. Well, I can remember, just like always, thinking if
13 this person is in my department and this person really wants
14 our department to succeed and wants me as an individual to
15 succeed, why do I have to ask as -- you know, why do I have
16 to say, you know, what's going on. Why would she not want
17 to help me to succeed.

18 Q. Did Ms. Parker make any suggestions to you on how to
19 use that piece of equipment?

20 A. No.

21 Q. Did you ask her?

22 A. No, I didn't ask at the time.

23 Q. Why not?

24 A. Well, I'm -- because at the time I thought if she, you
25 know, knew what was actually going on, that she would jump

1 in and help. If I -- if we see someone in our office that
2 seems like they are struggling or seems like there is a
3 need, we just jump in.

4 Q. Okay. What was her demeanor during this incident you
5 are having with this piece of equipment not being able to be
6 successful? What was her demeanor at the time?

7 A. I felt like that she was basically talking behind my
8 back and kind of poking fun at us when we were there, and so
9 that's kind -- that's what I actually interpreted from the
10 situation.

11 Q. Okay. Did have ever feel that Ms. Parker was helpful
12 to you in your job?

13 A. No.

14 Q. Why not? What made you feel that way?

15 A. I felt like she did do the things that she always knew,
16 you know, in the Convention Department, but actually to help
17 me to succeed I did not feel that at all.

18 As I said before, you know, if I'm a part of a team, I
19 would expect, you know, that every day I would come "what
20 can I help you with? Is there any task that we need to do
21 today?" What -- "you know, what are we doing," because I
22 never really wanted to be the person who was, you know, the
23 top dog giving out all the orders. I always try to jump in
24 and help and do and be a part of the team. I think that's
25 what's important, especially when you are in a small office.

1 Q. Did you ever -- did you ever get frustrated?

2 A. Yes, quite a bit.

3 Q. Why?

4 A. Well, with the job that you -- that we -- or that I
5 actually had with all of those conventions, I knew that, you
6 know, that teachers were ready to get all of that
7 information and I felt like all of that was kind of over,
8 you know, over my head and that I was trying to fulfill
9 those duties. And being the new kid, I didn't know all the
10 ropes for the Beta Club, so I -- I had to rely quite a bit
11 on Ms. Lewis, who was not really even in our department.

12 Q. Could you rely on Ms. Parker?

13 A. You know, if I ever really asked, you know, much of
14 anything from her, I always got a very generic "it's down
15 there somewhere," or, "this is the way we have done it in
16 the past," but never a real sense of wanting to help and be
17 a part.

18 Q. Did you ever share your frustrations with Mr. Bright?

19 A. Yes.

20 Q. Did you do it once, twice? How often?

21 A. I would say many times a week. You know, when he would
22 come down and say "why are you using all these sticky
23 notes?" What -- "you know, what are you doing here?" There
24 would be stacks of them and we would go through one revision
25 and then Ms. Parker would make another copy of all of the

1 fourteen again and then I would have to go through them
2 again. And, you know, he was coming down and thinking this
3 should be so very easy, you know, what's going on, and so,
4 you know, I shared that frustration with him of I'm having
5 to actually do this because this is the way that quote,
6 unquote, had been done in the past.

7 Q. Did you ever have occasion to observe just Ms. Parker's
8 demeanor in the office generally? Was she friendly to
9 people? Was she unfriendly to people? What was she doing?

10 A. Well, I knew Ms. Parker was a very quiet person, you
11 know, whenever I came in, but as time went on, I could tell
12 that her demeanor was much more negative. And by the end of
13 September, like I said, there was always a sense of
14 dissatisfaction and just negativity in general and that she
15 was not happy to be there at all.

16 Q. How would you assess her willingness to help you be
17 successful?

18 A. I would think that she would have the knowledge to help
19 me to be successful, but her actually willingness to help
20 me, I did not feel that.

21 Q. How would you assess her willingness for the department
22 to be successful?

23 A. I think that overall as the department, you know, we
24 had to all work together and I didn't feel that there was a
25 sense of working together at all.

1 Q. How about -- how would you assess her willingness to
2 help the Beta Club be successful?

3 A. Well, I think that if the Beta Club is going to be
4 successful, then every department has to be successful. We
5 can't have, you know, departments that are lagging or not
6 performing the best that they possibly can be. If we are
7 going to be successful as an organization, we have to all be
8 able to be -- you know, we have to be all be able to pitch
9 in.

10 Q. Did you share the things that you have told this jury
11 to Mr. Bright --

12 A. Yes.

13 Q. Let me finish my question.

14 Did you share that with Mr. Bright throughout the time
15 that you worked with Ms. Parker?

16 A. Yes. And like I said, him being in my office every
17 single day, you know, I think he got to witness that quite a
18 bit. You know, when I would come down and say I can't
19 find -- for the example of "I need to order an electronic
20 whistle," and he said "well, do we not have those?"

21 "Well, I think we do. I don't know where they are at.
22 Ms. Parker told me that it was my office somewhere, but I
23 don't know where that's at and she's not really been willing
24 to help me find it."

25 Q. Okay. I'm going to hand you what's been admitted as

1 Defendant's Exhibit No. 10 and see if you recognize that.

2 Have you seen that before?

3 A. Yes.

4 Q. What is this document that you have?

5 A. This would have been the e-mail that would have been
6 sent to let us know that Denise would be filling in in the
7 Senior Membership in the absence of I believe it was Leigh
8 Mason.

9 Q. Was Ms. Mason going to be out on leave?

10 A. Yes.

11 Q. Was there a need for membership to have some help?

12 A. Yes, that's the busiest time.

13 Q. Is this the kind of thing that was done all the time at
14 the Beta Club, to move people around to help out?

15 A. Yes.

16 Q. Did you interpret her move to help membership to mean
17 that you didn't supervise her any more?

18 A. Well, at the time I didn't -- I didn't look at it as
19 she was moving there full time, so, you know, it wasn't that
20 she was actually going there. It was just a temporary move.

21 Q. Okay. Did the Convention Department still have need to
22 call on her on occasion?

23 A. Yes.

24 Q. And did you continue to do so?

25 A. In the month of October Ms. Meyer and I was at -- we

1 THE COURT: Everybody ready for the jury?

2 MR. BRIGHT: Yes.

3 MR. MURPHY: Yes. We are going to use the
4 original deposition. Do you prefer we hand it to somebody
5 to be opened, or do you --

6 THE COURT: You can do it.

7 MR. MURPHY: Okay.

8 THE COURT: You are an officer of the court.

9 MR. MURPHY: Okay.

10 THE COURT: Everybody ready?

11 MR. BRIGHT: Yes.

12 MR. MURPHY: Yes.

13 THE COURT: We can have our jury.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: Madam Forelady, any matters for the
17 jury?

18 JURY FORELADY: No, Your Honor.

19 THE COURT: All right. Thank you.

20 Yes, sir.

21 MR. MURPHY: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. MURPHY:

23 Q. Mr. Garland, a short time ago you testified that in
24 August, September time frame you observed that Denise
25 Parker's demeanor was poor. Do you recall that testimony?

1 A. That it was -- I'm sorry, I couldn't hear you.

2 Q. Did you describe her demeanor as poor?

3 A. It was poor?

4 I do remember talking about it being that she was
5 negative, yes.

6 Q. Okay. Her demeanor was negative?

7 A. Yes.

8 Q. And the very last question Beta Club counsel asked you
9 was he pointed out that she was terminated in November. Do
10 you remember him saying that?

11 A. Yes.

12 Q. And he asked you in October and November time frame
13 "did you see any improvement in her demeanor," and what was
14 your answer?

15 A. No, I did not see any improvement.

16 Q. Do you recall, sir, I took your testimony under oath
17 before?

18 And you understood when I took your testimony before
19 that you were under oath, correct?

20 A. Yes.

21 Q. Okay. And there was a court reporter there and gave an
22 oath to you, right?

23 A. Yes.

24 Q. And I probably even told you that this is just as
25 serious as if we were in court in front of a judge and jury?

1 A. Right.

2 Q. And that is the seriousness with which you answered my
3 questions back in just August 12th of this year?

4 A. Right.

5 Q. Would you turn to page 52 of your deposition? I'm
6 going to read the questions I asked you and the answers that
7 you give under oath beginning on line 18 of page 52.

8 "Q. Is my understanding correct that you never had any
9 problems or concerns about Denise Parker in the month of
10 October 2013?

11 "A. No. The month of October I was out of the office
12 quite a bit.

13 "Q. And you never had any problems or concerns
14 regarding Denise Parker in the month of November 2013?

15 "A. Correct."

16 Did I read your sworn testimony correctly?

17 A. Yes.

18 Q. And you also testified about the meetings when the org
19 chart was given out?

20 A. Uh-huh.

21 Q. Correct?

22 A. Yes.

23 Q. And that was after your meeting with the group in
24 September?

25 A. Yes. I'm sorry, the meeting of the org chart was given

1 out -- was after the meeting with them in September?

2 Q. Was it?

3 A. No.

4 Q. When was the meeting with the org chart?

5 A. It would have been toward the end of August.

6 Q. Okay. When was your meeting in September?

7 A. Sometime -- it would have been before the state
8 sponsors came, which would have been toward the end of
9 September.

10 Q. So all these -- the truth is Denise Parker never
11 complained to you about anything after that meeting in
12 September?

13 A. Well, when you asked me the question in my deposition,
14 I didn't say that I had told her about not complaining, so I
15 tried to reiterate to you in the deposition that I was
16 basically talking about her not being negative and being a
17 part of the team and that I did not witness that after that
18 meeting.

19 Q. Your meeting in September was the meeting with Vickie,
20 Denise and Lanie, correct?

21 A. Lanie would not have been there in September. It would
22 have been Denise, Vickie, Barbara, and Shannon, and myself.

23 Q. Okay. And that was the meeting in September?

24 A. Correct.

25 Q. Let's go to page 23 of your deposition and let's start

1 on line 23.

2 "Q. After your meeting in September did you ever hear
3 Denise Parker make any complaints about her employment at
4 the Beta Club?

5 "A. After the meeting in September, you know, she was
6 very closed off to me and hardly had any conversation with
7 me in regards to her unhappiness. It wasn't really
8 necessarily anything she said. It was the manner in which
9 her actions that I knew there was dissatisfaction. And like
10 I said, almost a feeling of distance that she tried to place
11 between me and her.

12 "Q. After your meeting in September, did Denise Parker
13 ever complain" -- well, that was stricken. Sorry.

14 "Q. After your meeting in September, did Denise Parker
15 ever complain about anything having to do with her
16 employment at the Beta Club?

17 "A. To me, specifically there was not an accusation of
18 that. Not a specific accusation, no."

19 Did I read your sworn testimony correctly?

20 A. Yes. And if you will go on over into the deposition, I
21 did explain to you that that's not what my meeting was about
22 was her not complaining.

23 My meeting was about her not being a part of the team
24 and not being -- you know, willing to actually help out and
25 be a part. So on over in the deposition I do clarify that I

1 wasn't trying to tell her not to complain about the Beta
2 Club. I was trying to tell her to be a part, to be, you
3 know, on the same page.

4 Q. And that wasn't what the question was about.

5 On direct testimony you said that after he passed out
6 that org chart she continued to complain and complain and
7 complain, and the truth was she never complained after that
8 September meeting.

9 A. I don't recall saying that she complained. I recall
10 saying that she was negative.

11 Q. You testified on direct that she complained about the
12 change of the org chart and she continued to complain about
13 that. Is that not your testimony?

14 A. She did whenever he had the meeting. Yeah, she did
15 complain.

16 Q. She never complained after that September meeting.
17 That's what you said in your deposition.

18 A. She did not complain, no, but she was not a part of the
19 team.

20 Q. All right. Now, sometime in September Denise started
21 reporting to Barbara Anderson?

22 A. Correct.

23 Q. And then Denise moved out of convention altogether and
24 into that Membership Department under Melody?

25 A. Correct.

1 Q. And when she moved to membership, she moved up to the
2 third floor?

3 A. She actually would have been on the third floor from
4 the moment when I was actually there.

5 I do remember before I was actually the national
6 sponsor she used to have the office beside the office that I
7 currently was actually in, but in July actually when I came
8 in was when she moved to the third floor.

9 Q. Okay. She was on the third floor. You worked on the
10 second floor?

11 A. Correct.

12 Q. Now, you talked a lot about how you felt Denise felt.
13 I want to talk about what actually happened, okay? Not so
14 much how you felt, or how somebody else. I want to talk
15 about what actually happened.

16 You claimed you were her supervisor?

17 A. Right.

18 Q. You were right over her on that org chart. You were in
19 charge of Denise, right?

20 A. Correct.

21 Q. But the only time that you ever indicated any
22 dissatisfaction to Denise Parker was in that September
23 meeting of your department?

24 A. Correct.

25 Q. You never wrote up Denise?

1 A. No, actually I was actually not the department head at
2 that time. The actual department head would have been Mr.
3 Bright. He actually told us since he was the CEO and there
4 was not a department head, he would act as the department
5 head. So I did at the time, you know, what I felt was the
6 correct procedure, which was to tell my department head.

7 Q. The correct procedure, if you had a problem with Denise
8 Parker, was to tell your department head?

9 A. Correct.

10 Q. Correct?

11 A. Yes.

12 Q. And you claim that you frequently had these problems
13 with Denise Parker?

14 A. Correct.

15 Q. And you are her supervisor?

16 A. (Shaking head yes).

17 Q. And you never discussed these problems with Denise
18 Parker.

19 A. I did in September.

20 Again, coming from the education world, where we are --
21 you know, there is a team and being the new person on the
22 block, I didn't feel that that was my place to discipline an
23 employee, so I did what I thought was the correct thing to
24 do, which was to go to Mr. Bright.

25 Q. So you believed that if you had a problem with Denise

1 Parker and she's ignoring all these direct orders from you,
2 the thing to do is not talk to her, but go behind her back
3 and tattle to Bob Bright? That's what you thought was the
4 correct thing to do?

5 A. I didn't consider it tattling.

6 Q. You never did any of this to her face, did you?

7 A. In the September meeting I did, yes.

8 Q. The only thing you told her in the September meeting
9 was get past the negativity, we'll go on as scheduled?

10 A. And not being able to go to conventions and not be able
11 to be involved with the state sponsors as well.

12 Q. The only thing you ever said to her is get past
13 negativity?

14 A. Correct.

15 Q. As her supervisor that's the harshest thing she ever
16 got from you?

17 A. Yes, but again, being the new person there and being,
18 you know, the person who is wanting to see change in the
19 Convention Department, I didn't look at it as, like I said,
20 a top-down approach. I was there to be a part of the team
21 and moving forward.

22 Q. My question is as her supervisor, that's the most that
23 you ever did was tell her to get past negativity?

24 A. And be a part of the team, yes.

25 Q. And when she actually brought up these issues in this

1 meeting and the other employees were bringing up these
2 issues in this meeting, it's because you asked them to bring
3 up the issues?

4 A. Well, it was more of a directive that we have got to
5 get past this, we have got to be, you know, be working
6 together. We have got to be on the same team. And when i
7 recognized the whole issue of a teacher, you know, looking
8 to the principal as being that visionary and being able to
9 move forward, that we had to be on that same page.

10 Q. I didn't ask about principals or anything like that.

11 You asked them to discuss their issues with you in the
12 September meeting?

13 A. No, I did not ask them to discuss it. I was basically
14 making a statement that we needed to move past all of that.

15 Q. Go back to your deposition.

16 A. Okay.

17 Q. Do you have it with you?

18 A. Uh-huh.

19 Q. Okay. Go to page 15.

20 Again, you are under oath for this deposition, correct?

21 A. Correct.

22 Q. Page 15, beginning on line 20.

23 "Did you ask Denise and Vickie what they were upset
24 about?

25 "A. They discussed it in that meeting, yes.

1 "Q. I understand they discussed it, but did you ask
 2 them to discuss it?

3 "A. In the meeting?

4 "Q. Yes.

5 "A. Yes."

6 A. Yes, but the meeting -- the actual meeting -- the
 7 purpose of the meeting was not for them to discuss it. As
 8 in all meetings, you want the other party when you are
 9 actually talking about issues that you have, you want them
 10 to be able to talk about those issues. So, yes, they did
 11 discuss their issues in the meeting.

12 Q. Mr. Garland, I never asked you about the purpose of the
 13 meeting. I asked you did you ask them to discuss the
 14 issues. You said no. In your deposition you said yes.

15 MR. BRIGHT: Your Honor, I don't think this is
 16 correct. I think we are now bordering on harassing the
 17 witness. He's answered the question.

18 THE COURT: Let's move along.

19 MR. MURPHY: Okay, Your Honor, I will.

20 BY MR. MURPHY:

21 Q. Once you asked them to discuss these issues with you,
 22 you wanted Denise and Vickie to be honest with you in that
 23 meeting, didn't you?

24 A. Correct, yes.

25 Q. And Denise was honest with you.

1 A. She did not say that she could get past the issues.
 2 No, she did not say she could get past them. She did tell
 3 me that she was upset and she did say, you know, to Barbara
 4 "if this was actually happening under another CEO, you would
 5 have already went to the board with that."

6 Q. Go to your deposition, page 16. I'll begin on line 3.

7 My question to you on August 12th of this year was "did
 8 you expect them to be honest with you about what was
 9 bothering them?"

10 "A. Yes.

11 "Q. And were they honest with you about what was
 12 bothering them?"

13 "A. Yes."

14 Is that -- did I read that correctly?

15 A. Yes, you did.

16 Q. And after that meeting in which you asked them to tell
 17 you what was bothering them and they honestly told you what
 18 was bothering them, you never told Denise that you were ever
 19 unhappy with her performance?

20 A. As I said in the deposition, I did express the concerns
 21 that we actually had with negativity, with not being on the
 22 same page, and I did say in the deposition that it did not
 23 get any better. In fact, I actually said somewhere in there
 24 that it actually got worse, that there was almost a sense of
 25 avoiding me.

1 Q. My question, sir, after the meeting in September you
2 never told Denise Parker you were unhappy with her
3 performance?

4 A. Correct, and she -- but she actually was my secretary
5 and she never actually made any attempts to not be negative
6 or to actually even be helpful at all.

7 Q. And after this meeting in September when you asked her
8 to say what was bothering her and she honestly told you what
9 was bothering her, after that meeting Denise never
10 complained to you about anything at the Beta Club?

11 A. She did not complain, no.

12 Q. And you don't know of Denise complaining to anybody
13 else at the Beta Club.

14 A. I would not know that, no.

15 Q. And the truth is after this September meeting Denise
16 never did anything that indicated to you that she was
17 dissatisfied?

18 A. Well, to me not actually being a part of that team
19 tells me that you are not satisfied.

20 Q. Go to page 30 of your deposition.

21 "Q. All right. Then did Denise do anything after the
22 meeting in September that indicated to you that she was
23 still dissatisfied?

24 "A. She did not do anything, no, that indicated she
25 was dissatisfied, but she did not do anything that indicated

1 that she was satisfied."

2 A. Correct.

3 Q. Let's go to the print shop incident. You said that you
4 were in there about two hours?

5 A. Correct.

6 Q. Denise was in there some of that time. You never asked
7 Denise for help?

8 A. No, I did not.

9 Q. And your testimony about what was said about what you
10 went through wasn't a statement made by Denise?

11 A. Correct, Denise was actually the one who laughed and
12 walked out the room.

13 Q. I didn't ask about Denise laughing and walking out of
14 the room.

15 The statement that you testified about was not made by
16 Denise Parker.

17 MR. BRIGHT: Your Honor, he asked and answered
18 that question and he just amplified his answer. I don't
19 think there is anything wrong with that.

20 THE COURT: Go ahead.

21 BY MR. MURPHY:

22 Q. Am I correct?

23 A. Correct.

24 Q. In fact, you don't recall Denise saying anything during
25 that whole incident?

1 A. Correct.

2 Q. So Denise wasn't there the whole time, you didn't ask
3 her for any help, you don't know what she said, you just
4 felt like she was talking behind your back. That's your
5 testimony?

6 A. Correct, and I did not feel like she was willing to
7 help. And like I said, in the small office, if you see
8 people that are in distress or you know don't know what they
9 are doing, you would think that there would be somewhat of a
10 sense of willingness to help or, you know, "is there
11 anything that I can help with," or, "can I help you in any
12 way? I may not know what it is," but -- I think there is
13 just a --

14 My thought was that being in the department, that she
15 would want to be able to help out in any way, especially
16 for, you know, the new person who was actually there.

17 Q. Well, I want to focus on what actually happened and
18 what you are saying how you felt, okay?

19 A. Okay.

20 Q. You were her boss?

21 A. (Shaking head yes).

22 Q. Correct?

23 A. Correct.

24 Q. You claim that you needed help?

25 A. Correct.

1 Q. But you didn't ask for it?

2 A. Correct.

3 Q. But you think after thirty-eight years of service in
4 the Beta Club that Denise Parker was fired because you
5 didn't ask for any help and you just felt like she was
6 talking behind your back?

7 A. You know, again, I was not -- I was not in the meeting
8 why she was actually fired.

9 I do know -- I can speak from my experience that she
10 did not -- she was not willing to actually help me succeed.

11 Q. When you didn't ask for it?

12 A. Correct.

13 Q. You were in a lot of meetings that Denise wasn't in,
14 because you talked with Bob Bright about this stuff all the
15 time?

16 A. Not in the actual meetings, but every day conversation.

17 Q. Every day conversation with Bob Bright you are going
18 around with Shannon Meyer saying Denise Parker did this
19 stuff, Denise Parker did it and I asked her this and she
20 won't do this, right?

21 A. I don't think it was in that context, no.

22 Q. Why would you keep doing that day in and day out, if
23 that's what you want this jury to believe, but you never
24 ever said saying to Denise Parker except in the one
25 September meeting where you said move past negativity?

1 A. I think it's important that, you know, being the actual
2 new person there, I wasn't there to come and put my gavel
3 down that this is how we are going to do this, this is the
4 process in which we are going to do, you know, these actual
5 tasks. I was actually looking for some guidance and some
6 actual help in the actual process and I didn't feel that at
7 all.

8 Q. Sir, you didn't ask for any help. You never once asked
9 her for help that she didn't give it to you.

10 A. I would think that the new person wouldn't have to ask
11 every day "what can you help me with?" I would think that
12 the support staff would actually ask every day "what can I
13 help you with?"

14 Q. Would you expect her to follow you around all day while
15 you did your separate job?

16 A. No, but I did expect at least once a day to ask "if
17 there is anything that I can help you with?"

18 Q. And you never told her that. You never said "check
19 with me once a day and ask me if I need something of help
20 with", did you?

21 A. No, I did not specifically say that.

22 Q. Now, the search and replace thing, I don't want to make
23 too much of it, but are you trying to get the jury to
24 believe that you gave a direct order to Denise Parker to do
25 something and she refused your direct order?

1 A. When I asked is there a way that we can do this, she
2 said no, there was not a way, that she was actually going to
3 still require that I write those actually down, because she
4 was not going to be responsible if anything was wrong.

5 Q. Did you give Denise Parker a direct instruction that
6 she refused?

7 A. I mean, it depends on whether you consider that a
8 direct instruction. I considered it that is there a way
9 that we can do this and she said no, so I guess it's
10 interpretation of how if you consider it a direct
11 interpretation or not.

12 Q. Well, I'm trying to find out what you are trying to get
13 this jury to believe. Are you trying to get this jury to
14 believe that you gave her a direct instruction that she
15 refused to do?

16 A. Correct, I would say that, yes.

17 Q. And didn't do anything about that?

18 A. Well, I reported it to my --

19 Q. All right. You went to Bob Bright. Yeah, you went
20 behind her and reported to Bob Bright, but you didn't do
21 anything --

22 You are telling this jury you gave an employee an
23 instruction, she didn't do anything about it and you didn't
24 even talk to her about that?

25 A. Right.

1 Q. You didn't document it on any documentation of this
2 whole thing going on, is there?

3 A. Well, I did exactly what I was instructed that I was to
4 do was to report to my department head.

5 Q. Is there any documentation that you are aware of that
6 supports this notion that you told her to make a change in
7 the handbook and she said she wouldn't do?

8 A. Not to my knowledge, not any documentation of that.

9 Q. And to the best of your knowledge, Mr. Bright, when you
10 went in there and told him apparently this happened, he
11 didn't do anything about it either?

12 A. I'm not sure what -- I'm not sure exactly what he did.

13 Q. Well, you don't know that Denise Parker was ever
14 disciplined for supposedly not doing what you told her to
15 do?

16 A. No, I was not aware, no.

17 Q. And when you talk about her negative demeanor, you want
18 this jury to believe that in August, September on she was
19 just negative. The truth is Denise never said one negative
20 thing about you, did she?

21 A. Well, to me I don't think negativity has to be
22 accompanied with actual words. You know, just your
23 mannerisms and your actual body language can speak volumes
24 on whether or not you are approachable or that you are
25 willing to be a part of that team, as I was referring to

1 earlier.

2 Q. Do you remember what my question was?

3 A. Yes.

4 Q. Would you answer it, please?

5 A. She did not say that, no.

6 Q. Denise Parker never said she was critical of you in any
7 way?

8 A. No, she did not express that to me.

9 Q. Denise Parker never expressed any dissatisfaction of a
10 single decision that you ever made?

11 A. At the time I would not have really made many
12 decisions. You know, by the time that she was actually
13 transferred over to the Membership Department, there
14 wouldn't have been many decisions that I would have actually
15 made at that time.

16 Q. Did Denise Parker ever express any dissatisfaction of
17 any decision that you ever made?

18 A. Not express verbally, no.

19 Q. And Denise Parker never said that she didn't want you
20 to be successful?

21 A. No, she did not say that.

22 Q. And you never heard Denise Parker refer to you or use
23 your name in a negative way at all?

24 A. No, not mine..

25 Q. And you can't -- Shannon Meyer is sitting back here.

1 You can't identify a single thing that Denise ever said
2 about Shannon Meyer?

3 A. Correct.

4 Q. So are you trying to get the jury to believe that after
5 thirty-eight years Denise Parker got fired because she
6 crossed her arms in a meeting?

7 A. No, I -- I do believe that as support staff I think
8 it's important, you know, to recognize that as support staff
9 there has to be a need of someone coming to that person and
10 saying "what can I help with today," or, "is there anything
11 that I can help with," and I think that in part was the
12 biggest issue.

13 Q. And there was no complaints about Denise after she
14 moved to membership, was there?

15 A. Complaints from her? I'm not sure what you are asking.

16 Q. Well, there were no complaints from her after September
17 at all on anything, was there?

18 A. Not to me, no.

19 Q. Okay. And nobody complained about Denise after she
20 moved to membership?

21 A. I don't -- I don't know. I did not have any
22 conversations with membership.

23 Q. So you didn't have any problems with Denise in October?

24 A. Correct. As I said, you know, we were actually on the
25 road quite a bit.

1 I did -- when I was back in the office I still felt
 2 that there was a sense of not wanting to be around me to try
 3 to avoid, so that's what I referenced earlier in the fact
 4 that I did not feel that she was not being negative any
 5 more.

6 Q. Your entire testimony basically boils down to how you
 7 feel?

8 A. I -- I mean, things that I talked about, yes, the way
 9 that I felt.

10 Q. You talked about Barbara Anderson and Denise reported
 11 to Barbara Anderson in September, correct?

12 A. Yes.

13 Q. And Barbara Anderson never indicated she had any
 14 problems with Denise?

15 A. Well, I learned from Ms. Anderson that she did speak
 16 with Ms. Parker on an occasion about not being --

17 MR. MURPHY: Your Honor, I'm going to -- this is
 18 not responsive to my question.

19 BY MR. MURPHY:

20 Q. My question was in 2013, Barbara Anderson never
 21 indicated to you she had any problems with Denise Parker.

22 MR. BRIGHT: And he's trying to answer that
 23 question, Your Honor.

24 BY MR. MURPHY:

25 Q. That question, sir, is during the time that Denise

1 Parker was employed, Barbara Anderson never indicated she
2 had any problems with Denise Parker?

3 A. I can't speak for prior, but in October I do recall
4 speaking with Ms. Anderson about Ms. Parker and I did learn
5 that she said that she was -- that she did tell Ms. Parker
6 she could not be negative, that she had to be -- that she
7 had to smile more.

8 Q. Go to your deposition, page 40.

9 A. All right.

10 Q. Beginning on line 7.

11 "Q. Did Ms. Anderson ever indicate she had any issue
12 whatsoever with any of Denise's work?

13 "A. No.

14 "Q. And Ms. Anderson never indicated she had any
15 difficulty getting along with Denise, did she?

16 "A. No."

17 Did I read that correctly?

18 A. Yes, but on line three I do -- it does reference what I
19 was talking about. Ms. Anderson did tell me that she had a
20 conversation with Ms. Parker about being positive and
21 putting a smile on her face and trying to be happy with what
22 she's doing.

23 Q. Okay, but that wasn't my question.

24 My question was Barbara Anderson never indicated she
25 had a problem with Denise, and the answer to that question

1 is that's correct.

2 A. Well, other than being positive.

3 Q. Well, Barbara Anderson didn't say she had any problem
4 with Denise being positive.

5 A. I mean, I can't speak for Ms. Anderson. I just know
6 what Ms. Anderson told me that she had that conversation
7 with her.

8 Q. And, finally, you attributed a statement to Denise
9 Parker where you said she made the statement "it's not how
10 we have done it in the past." Do you recall testifying to
11 that?

12 A. Uh-huh.

13 Q. Okay. Now, all of your deposition, all the times that
14 I asked you any issue that you have had with Denise Parker,
15 you never attributed that statement to her in your
16 deposition, did you?

17 A. I don't -- I don't recall everything that I said, but I
18 do know that's what was said in there.

19 MR. MURPHY: Nothing further, Your Honor.

20 THE COURT: All right.

21 MR. BRIGHT: If I may, Your Honor?

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION BY MR. BRIGHT:

24 Q. I think I handed you previously Defendant's Exhibit 1,
25 which was Ms. Parker's job description?

1 A. Uh-huh.

2 Q. Was her job to help you as your clerical support?

3 A. Yes, it states that in her job description.

4 Q. Did she help you when you were trying to get the
5 manuals, these bulletins done, by using any sort of search
6 and replace?

7 A. No.

8 Q. Did she tell you that couldn't be -- that that was not
9 the way they were going to do it?

10 A. Correct.

11 Q. So who then had to go and make the changes?

12 A. I actually had to write those down individually and
13 give them back to her.

14 Q. So it wasn't a function of she refused to do it? She
15 refused to do her job?

16 A. Correct.

17 Q. All these things that you have talked about, and you
18 talked about negativity, teamwork, and all that sort of
19 thing, weren't those things important in your office?

20 A. Yes, very. These are crucial to what we do.

21 Q. Why?

22 A. I think it's important to know how small we are and to
23 know, you know, that we have those actual functions that if
24 they are not getting carried out, there is a timeline in
25 education and that those things don't come out in a certain

1 amount of time, then we will not have people to attend those
2 conventions. So our department is one who has quite a bit
3 of deadlines that things actually have to be done in a
4 certain timely fashion.

5 Q. And how many people attend these conventions?

6 A. We have about a hundred thousand over the course of a
7 year.

8 Q. So you are touching a lot of people, is that correct?

9 A. Correct.

10 Q. Does not being a part of the team impact the ability to
11 deliver the services that the Beta Club is required to
12 deliver?

13 A. Yes.

14 Q. How?

15 A. I think that it's important to point out, because I was
16 actually having to do all of those manual changes, the
17 things that I was charged actually to do, the visionary type
18 things, I wasn't able to do that. So at that time I felt
19 like I was actually bogged down with those actual manual
20 changes.

21 Q. Now, Ms. Parker testified yesterday that she loved you
22 like family. Is the things that she's testified to today,
23 did you feel like she loved you like family?

24 A. I would not have called it family, no.

25 Prior to actually working there, I did not have any

1 Q. How long have you been here in South Carolina?

2 A. Two -- a little over two years. I came on August 12th
3 of 2013.

4 Q. Why did you come to South Carolina?

5 A. Because I was employed as a national sponsor and
6 leadership director.

7 Previously I had been a sponsor at my school for both
8 the junior and the senior program.

9 Q. Let's be honest with you, are you a little nervous
10 today?

11 A. A little bit nervous.

12 Q. Okay. Where do you work?

13 A. I work at the National Beta Club.

14 Q. And what is your position?

15 A. I'm national sponsor and leadership director.

16 Q. And what is that position? What do you do?

17 A. As described by Mr. Garland, I work -- my main job is
18 to work with sponsors all over the nation working with their
19 convention, that state sponsor to host that convention in
20 their state, but also the normal sponsor, that teacher that
21 is at the school. There is about eight thousand clubs, so
22 that's eight thousand, plus, sponsors.

23 Q. And which department did you work in?

24 A. The Convention Department.

25 Q. Did you have any background in the Beta Club before you

1 came to the national headquarters?

2 A. Yes, sir, I had been a local sponsor and then also
3 served as a sponsor in my home state of Texas.

4 Q. All right. Now, what was Ms. Parker's roll or
5 responsibility within the Beta Club?

6 A. Clerical and support for the Convention Department.

7 Q. And who was the -- who were the people in charge of the
8 Convention Department?

9 A. There were three national sponsors at that time.

10 Q. And who were they?

11 A. That was Mr. Garland, Ms. Anderson, and myself.

12 Q. And what kinds of things was Ms. Parker responsible for
13 doing for the national sponsors?

14 A. The initial, when I walked in on August 2nd, it was
15 imperative that we get those handbooks done for the local
16 sponsors at their schools, so Ms. Parker was working back
17 and forth in that editing process with that.

18 Q. Now, we have heard Mr. Garland talk about those
19 handbooks.

20 A. Uh-huh.

21 Q. What is the significance of that? Are they important?

22 A. Very much so. I had just come from a school situation,
23 and when you are at your school waiting for that, because
24 that's what gets your whole -- your whole year started. So
25 if you were a convention school you wait for that, because

1 that's got all your dates. That's got all your
2 competitions, and so you are waiting on that.

3 I actually started a scrapbook one year too early and
4 then I got my rules and had changed it up. I had to throw
5 that thing away and start over. So you didn't start until
6 you got those actual rules in your hand.

7 Q. What kind of things were being changed -- did these
8 require changes year after year?

9 A. Yes, sir. There would possibly be a letter change at
10 the beginning, a one page letter. The deadline date was
11 spoken of before. That was in the book numerous times
12 along -- almost every page. Hotel information, that would
13 be listed. And, of course, the theme is which you heard.
14 Each year has a certain theme and that theme was also listed
15 numerous times in those documents.

16 Q. Now, when you started was there any particular project
17 that you were handed when you walked in the door?

18 A. Day one I -- my office is about the fourth door down on
19 the right and I didn't get any further than that. When I
20 walked in on August the 12th, Richie said "you have to help
21 me. We have got to do something." So I took Texas because
22 I was most familiar with that one.

23 Q. What do you mean by you took Texas? What about that?

24 A. Each state has a handbook, so I took that Texas
25 handbook and that was the one that I was going to work with

1 Ms. Parker in the editing process with, because I knew it
2 very well.

3 Q. Now, what -- was there -- was there a template
4 somewhere for these things or what?

5 A. Ms. Parker had the access to the actual word documents,
6 so what I had was the paper copy of that 2012 handbook and I
7 was converting that to a 2013.

8 Q. And what were you -- what were you doing?

9 A. Replacing those things and that deadline date and then
10 those other minor changes. The changing out of letter and
11 hotel information was a possible change.

12 Q. Did you write on them? What did you do?

13 A. Well, I first -- I did the editing that I knew of a
14 competition that may have changed, so I did the editing that
15 would have only been known, you know, by notes that were
16 taken previously and I did that in Texas and I walked up to
17 the third floor and I gave that to Ms. Parker with just
18 those edits. Not every date changed and not every theme
19 changed. Just on the front page, the delete sign and had
20 written, you know, making history was going to be the -- or
21 the new theme was that it was going to be in the new date
22 and it was going to be --

23 Q. Would that show up in multiple places in the book?

24 A. Multiple places.

25 Q. Did you change that every place in the book?

1 A. I didn't on that one original Texas. I just did it the
2 one time on the front. When you thought the very first time
3 I did make the change there.

4 And I went to Ms. Parker and I put that on her desk,
5 put it in front and, you know, I told her what I had done,
6 that I, you know, changed the date here and changed the
7 theme here and I made a few other changes and, you know, so
8 I put it on her desk and she said I would have to do that
9 again. I would have to write those dates out every time and
10 I would have to write that theme out. And I did discuss
11 search and replace and she said --

12 Q. Well, tell me about that. Don't go so quickly.

13 What was it? What was -- there tell me about the
14 discussion with search and replace.

15 A. I said, you know, "can't we do search and replace for
16 the date, for the deadline date, which is multiple times,
17 and the theme?" I felt like those were two reasonable
18 things. They are just a change. It's just a one -- you
19 know, that would be typing the date in one time, and so I
20 felt like that was reasonable and so I suggested that.

21 Q. What was her response?

22 A. She pushed that back towards me and "I'm not going to
23 do it that way."

24 Q. Did that create any problems for you?

25 A. Well, I -- that was -- well, I was going to have to do

1 it a different way, because she was not going to do it that
2 way. So I took that handbook down and I told Richie I had
3 failed, that it wasn't going to get done that way. And --
4 because we had -- we had discussed let's give it another
5 try. I think he had tried previously and I was going to
6 give it another try.

7 Q. Was making those kinds of changes her job
8 responsibility?

9 A. I would say so, yes, sir.

10 Q. So did you have to basically do her job by making those
11 changes by hand on each copy, on that copy?

12 A. We would have to make those changes by hand, yes.

13 Q. You have heard counsel ask Mr. Garland, well, on the
14 organizational chart she reports to you, correct? Isn't
15 that right?

16 A. On the chart she does.

17 Q. Well, why didn't you tell her "Denise, I'm not asking
18 you. I'm telling you. Do it."

19 A. Well, that was day one and I -- you know, you certainly
20 don't want to upset someone on day one and I wouldn't want
21 to upset someone on day fifty-one, so it was clear and I
22 took the handbook and went downstairs.

23 Q. What was clear?

24 A. It was clear that she was not going to make that easy
25 change.

1 Q. What was your -- did you reach any conclusion about her
2 as an employee as a result of this dialogue?

3 A. I thought it was going to be a tough, a tough process.
4 I could tell it was going to be difficult.

5 Q. So did you work -- did you continue to work on the
6 Texas handbook?

7 A. Yes, sir.

8 Q. And what happened?

9 A. Some of the same things that Mr. Garland has discussed.
10 We had stacks, because there were fourteen states, so we are
11 not just talking about one state. So we would get one done
12 and that would go upstairs and Ms. Parker would make the
13 corrections that were handwritten and she would make a new
14 copy and give you the first, you know, or the edited copy
15 and the new print. She could verbally point out that "you
16 still have some mistakes you need to fix," or possibly put a
17 note on one, you know, on the particular page where you had
18 missed something.

19 Q. What kind of things would you miss or make a mistake
20 about?

21 A. I missed dates. I missed a theme sometimes. Those
22 were the things that Ms. Parker, you know, pointed out to me
23 that were missed.

24 Q. Now, were those things that she knew what they were?

25 A. Yes, there is a day on there and there is one theme for

1 the year. So those are -- those were always the same date
2 for that particular state and the theme was the same in
3 every handbook.

4 Q. So when she noticed that you had missed a date, would
5 she just go ahead and type that change in?

6 A. Not to my knowledge, because she would point those out
7 or let me know that there were still mistakes there and then
8 you would have to go back downstairs and edit that.

9 Ms. Lewis, Laura Lewis also worked -- was helping with
10 that third eye. We were using her as a third person to help
11 us, you know, get through this process.

12 Q. What reaction do you have about going through this
13 process with Ms. Parker?

14 A. It was somewhat of a belittling experience, because I
15 had not experienced that in my educational, you know, world.
16 I was -- I was somewhat frustrated and I felt like I wasn't
17 able -- I wasn't doing a very good job I felt.

18 Q. Why did you feel that way?

19 A. Because I wasn't able to get that done. It was a time
20 consuming process and that made me not feel like I was not
21 doing my job.

22 Q. Was it your job to type up the changes?

23 A. No, it was not my job to type up the changes, but it
24 was my responsibility to get those handbooks done, or it was
25 our responsibility.

1 Q. Did you feel Ms. Parker was helping you get that done?

2 A. Not as easily as I feel like she could have helped.

3 Q. Now, you were -- when did you start?

4 A. August 12th.

5 Q. So I assume being new you didn't know where everything
6 was located, did you?

7 A. No, sir. I had never been -- I had been to the office
8 one day after being hired. I came one day in June for a
9 visit, so I had never been to the office. It was -- it
10 was -- South Carolina is a foreign place for me.

11 Q. Did you ever have occasion to ask people "where am I
12 going to find something?"

13 A. Certainly. We have lots -- there is lots of documents.
14 There is lots of things that we have to have for convention
15 and, to me, Ms. Parker was a logical person to ask. She's
16 been there numerous years. She's worked in convention.
17 She's done the junior convention before. She had that
18 relationship, so she was our person -- she and Vickie Horne
19 were our persons to ask and so it just seemed logical, so I
20 did ask Denise a lot of questions.

21 Q. Did you ever ask her where to find things?

22 A. Yes, sir.

23 Q. What kinds of things would you be looking for that you
24 needed to deal with?

25 A. A judging form for one of the contests, or a results

1 sheet, or types of paperwork, like that.

2 Q. Now, was it important for you to find those things?

3 A. Yes, sir, we were on a time crunch. Those sponsors
4 were coming in September and you want to show them what they
5 are going to be using in their convention and so we needed
6 those documents.

7 Q. Now, when did this -- did this happen more than once
8 that you asked her where things were?

9 A. I asked -- I asked her lot of questions. I don't know
10 if it was always just about where things are, but I asked a
11 lot of questions.

12 Q. How did she respond when you asked her where things
13 were?

14 A. She would just usually say "oh, it's down there. You
15 will find it. You know, it's in your office somewhere. You
16 will find it."

17 Q. Did she give up to kind of help you look in your
18 office?

19 A. I cannot recall a time that Ms. Parker came downstairs
20 to help.

21 Q. Did you get a sense that she was trying to help you?

22 A. No, sir.

23 Q. What did you feel?

24 A. I figured that she was not there to cooperate with me
25 or to be supportive of that. I somewhat got a sense that

1 she somewhat relished in that I didn't know things or I was
2 not as proficient as maybe I should have been or as
3 knowledgeable.

4 Q. Did you share these experiences with anyone?

5 A. Certainly, with Richie.

6 Q. Why would you share those with Mr. Garland?

7 A. I think we were experiencing the same things. We
8 were -- we were in the same boat. We were trying to
9 accomplish the same thing and we were in the same office, so
10 we -- we shared daily. I mean, we asked a lot.

11 Q. Were there deadlines to be important?

12 A. Our deadline was September 1. Our internal deadline
13 was September 1st, because schools was starting. As I said,
14 those -- those volunteers, those teachers are waiting on
15 that.

16 Q. Did you share any of these concerns that you had with
17 anyone other than Mr. Garland? Did you ever share them with
18 Mr. Bright?

19 A. Yes, sir, Mr. Bright was in our office quite a bit.

20 Q. What kind of things would you share with him?

21 A. You know, he was watching; "well, what are y'all
22 working on?" You know, are you -- do you -- "are you doing
23 what we need to do? Are you able to get done what you need
24 to get done?" He was asking those questions. I felt like,
25 you know, he was kind of monitoring our progress, I felt

1 like.

2 Q. What would you tell him?

3 A. "Well, we are still working on this edit of this." You
4 know, we explained what we were doing and showed him from
5 edit to edit to edit on this particular document.

6 Q. Did you tell Mr. Bright anything about the search and
7 replace issues?

8 A. I don't remember word for word or how exactly, you
9 know, that I said, but, yes, I mean, we had talked about how
10 search and replace and that sort of thing, so I feel sure
11 that we did, but remembering a particular time, no, sir.

12 Q. Did you share with him -- were you frustrated?

13 A. Yes, sir, I was.

14 Q. How frustrated were you?

15 A. I wasn't sure I had made the right decision.

16 Q. What do you mean by you weren't sure you had made the
17 right decision?

18 A. I had -- I wasn't sure that this was the job for me.

19 Q. Why?

20 A. Because I wasn't able to do my -- I didn't feel like I
21 was able to do my job very well and I had made a huge leap
22 and it was quite.-- it was quite unnerving to think that you
23 couldn't do a simple task. You know, to me a handbook was
24 simple to get that done and it was not an easy task. I
25 thought if I can't do a handbook, how am I going to help

1 host a convention. How am I going to support sponsors if I
2 can't get the handbook done.

3 Q. Was Ms. Parker helping you get those handbooks done?

4 A. We were -- we were in --

5 Ms. Parker would put in corrections that I made, yes,
6 sir, and that was helpful, but there was a huge hindrance in
7 many things that were going back and forth in the office.

8 Q. What do you mean by hindrance?

9 A. To not just replace those dates and move on with me was
10 a hindrance.

11 Q. Again, being new I assume you had issues with operating
12 some of the equipment, like Mr. Garland did, is that
13 correct?

14 A. Yes, sir, we -- actually there were many forms and he
15 and I one day were working on a carbon copy form and we were
16 not being successful. Some of them would work and we would
17 write on them and it would go on the second page perfectly
18 and sometimes nothing would be anywhere or it would be on
19 the back of the page. We were not very successful with
20 that.

21 Q. What were you actually working on?

22 A. The print shop. Much of the equipment is in the print
23 shop and so we were there in the print shop.

24 Q. And this is on the second floor, is that right?

25 A. Yes, sir.

1 Q. Now, are you telling me that she never helped you?

2 A. No, sir.

3 Q. Was she ever helpful?

4 A. Yes, sir. You know, if that handbook, when those edits
5 were done by hand, Ms. Parker was quick to put that in and
6 make that copy and hand that right back to me or call me and
7 I would come back upstairs to get it. She was quick to do
8 those type things if those were hand edited in the manner
9 that she said I would need to do that.

10 Q. Did you ever have occasion to write e-mails to Ms.
11 Parker to thank her for doing things?

12 A. I did. I am -- if -- and there was a -- there was a
13 disconnect with Ms. Parker and myself and so many -- every
14 time she did something for me, I tried that positive praise.
15 That's probably the educational, especially elementary
16 educational background I have that you praise someone you
17 are having a problem with. So if you had a student that was
18 not positive or belligerent or a problem and you saw them
19 and they did something for you in the classroom, you were to
20 immediately praise that person or that child to get them to
21 your side. I was trying to win Ms. Parker to my side.

22 Q. Did you perceive Ms. Parker as a problem or
23 belligerent?

24 A. That's the best -- I guess that's the best analogy.
25 She was like that, students that I would have in my

1 classroom. That problem student, I guess.

2 Q. Let me hand you what's been admitted as Defendant's
3 Exhibit No. 12. Just take a look. Are those copies of
4 e-mails of thanks that you sent to Ms. Parker?

5 A. Yes, sir.

6 Q. What was your purpose in sending these e-mails?

7 A. I needed Denise on my side or I wanted Denise to be on
8 my side. I wanted to work together.

9 Q. How did you know she wasn't on your side?

10 A. I felt that from that first day. When that first
11 handbook came across back on her table to me, I felt like
12 there was not -- she was not on my side. And I did send
13 this e-mail, the very first -- or the second Monday, the
14 19th. I sent that e-mail and I said, you know, "thank you.
15 I hope had you a great weekend" to make that connect. I
16 was -- I was trying to make that connect.

17 Q. Evaluating your experience in the short time that you
18 worked with Ms. Parker, would you characterize her as being
19 helpful for you?

20 A. Not helpful to me, no, sir.

21 Q. Was she cooperative?

22 A. She cooperated when I followed the rules --

23 Q. That she had made?

24 A. -- by her.

25 Q. Did you feel she was a team player?

1 A. A very -- if it was -- no, sir, not on the whole team.

2 Q. Was her attitude positive or negative?

3 A. It would be negative.

4 Q. What are some of the indications of her negative
5 attitude?

6 A. Those -- it's those issues that we have already talked
7 about. Like I say, I would -- because I knew no one, I was
8 observant of everyone and I can't recall a meeting that we
9 left in our staff meetings where it felt like a positive
10 vibe happened that Denise was happy with any meeting we had,
11 whether it was a large staff meeting or small meeting in our
12 own department of five. I never got that positive vibe.

13 Q. Did you share all of this with Mr. Garland and Mr.
14 Bright?

15 A. Uh-huh. Mr. Garland would check on me sometimes and
16 say "okay, Shannon, are you okay? Are you going to be able
17 to stay?" Sometimes he would make me cry. Mr. Garland is
18 how I felt.

19 Q. And how did you feel?

20 A. Again, I just -- I wanted to be there. Beta means a
21 lot to everyone at the office and -- and I wanted to be able
22 to stay and whatever that took, so I tried very hard not to
23 let that get me down.

24 Q. Not let what get you down?

25 A. The negative and not being able to -- it was -- it was

1 demeaning not to be able to ask your helper, someone who is
2 there to help you, to ask for their help or to get them to
3 do something for you. That was very demeaning for me as an
4 educator, who has always been able to handle a classroom of
5 many students to get them to do what you needed them to do.

6 MR. BRIGHT: May I have a moment, Your Honor?

7 THE COURT: Yes, sir.

8 (Off the record)

9 (Back on the record)

10 MR. BRIGHT: Nothing further, Your Honor.

11 THE COURT: Okay.

12 CROSS EXAMINATION BY MR. MURPHY:

13 Q. You testified when you spoke with Mr. Garland about
14 these things, you were almost crying, is that right?

15 A. Yes, 'I did cry.

16 Q. You cried?

17 A. Yes, sir.

18 Q. In fact, you almost quit?

19 A. I thought about going home, yes, sir.

20 Q. Because Denise Parker didn't make global changes in a
21 handbook?

22 A. It wasn't about Denise. It was about what I was not
23 able to do for sponsors.

24 Q. Because Denise Parker didn't make global changes in a
25 handbook?

1 letter, was there?

2 A. No.

3 Q. There was no problems with her making changes to add
4 the information that Mr. Hart wanted added in October, was
5 there?

6 A. No, sir.

7 Q. All right. Let's look at your relationship with Denise
8 in August. You go to tab B.

9 Go to the second paragraph of your e-mail. This is an
10 e-mail about the bulletins, right, junior Beta bulletins?

11 A. Yes.

12 Q. The second paragraph. It says "I hope you had a good
13 weekend. If you need anything from me, just tell me. I
14 know that I have a lot to learn. Thank you for everything
15 last week." That's what you wrote to her?

16 A. Yes, sir.

17 Q. Okay. And October 2nd, which is tab F, this is also
18 about the bulletins, right?

19 A. Yes, sir.

20 Q. Okay. And on October 2nd, 12:30 p.m., she sends you
21 "Shannon, this is two pages", and we are going to have an
22 accident here in a minute.

23 All right. Let's go to October 2nd.

24 This e-mail regarding the Missouri --

25 A. Yes, sir, Missouri, Junior.

1 Q. She sends you some changes, I guess, and you told her
2 in October "thank you, that was a big help for me. I
3 couldn't get all the charts right."

4 A. Yes, sir. It's likely that in October I was out of the
5 office with leadership. And, again, I -- I said thank you
6 to Ms. Parker every time.

7 Q. Yeah. You did it again on October 11th?

8 A. Yes.

9 Q. Sure did.

10 A. I did.

11 Q. There is a bunch of bulletins and these are for the
12 changes if October that Mr. Hart wanted to make. Again,
13 well after August, right? He wanted something added about
14 an emergency information or something?

15 A. Yes, sir.

16 Q. And she made that change in all those bulletins?

17 A. Uh-huh.

18 Q. Right?

19 A. Yes, sir.

20 Q. Okay. And what you said was "thank you for doing all
21 this. I know it took time. We appreciate you. Thanks
22 Shannon."

23 A. Yes, sir. I was again out of the office I'm sure at a
24 leadership. Mr. Garland and I were their leadership.

25 Q. Well, show me this e-mail where either you or Richie

1 Garland ever indicate there is any dissatisfaction with the
2 way that Denise Parker is assisting in these bulletins.

3 Show me one.

4 A. You are not going to find one. Brand new. I wasn't --
5 I wasn't going to make that step and play that being there
6 thirty-eight years.

7 Q. But the only documentary proof that this jury has as to
8 Denise Parker assisting you in the bulletin in August and
9 October of 2013 is all positive?

10 A. It's me trying to praise Denise for what she was doing
11 for me.

12 Q. It's all positive, right?

13 A. Positive praise.

14 Q. No actual documentary proof anywhere of her not
15 assisting anybody?

16 A. Correct.

17 Q. Now, you testified about asking Denise to help you find
18 some things. Do you recall that?

19 A. Yes, sir.

20 Q. You used the word -- you attributed words to her that
21 Denise says "you will find it?"

22 A. Yes.

23 Q. You don't recall those being her words, do you?

24 A. I recall flippant kind of answers like "it's there, you
25 will -- "it's in your office somewhere. I know you will

1 find it."

2 Q. That's all you recall her saying when she asked you
3 where something was, and that's all you asked her, right?
4 You asked where something was and all you really recall her
5 saying was "it's in your office?" Right?

6 A. Or "it's down there somewhere."

7 Q. Right.

8 A. "On the second floor. You know, in your area, in our
9 area."

10 Q. Ms. Meyer, you will find that that's something that you
11 added in there.

12 A. I -- I believe I remember me saying "you will find it.
13 You know it's there somewhere. I'm sure you will find it."

14 Q. Turn to your deposition, please, page 30.
15 Do you recall when I took your deposition?

16 A. Yes, sir.

17 Q. That was also on August 12th, 2015, right?

18 A. Yes, sir.

19 Q. Go to page 30, please.

20 Do you recall that you were under oath when I took your
21 deposition?

22 A. Yes, sir.

23 Q. And do you recall I told you that the oath that you
24 took is the same oath that you will take when you are in
25 front of a judge and jury?

1 A. Yes, sir.

2 Q. All right. And I'll read my question and your answer
3 under oath.

4 "Q. Now, you don't specifically recall Denise saying
5 you will find it, do you?

6 "A. I mean, I can't say those were her exact words,
7 but that was again the gist of it like it's there, you will
8 find it."

9 Did I read that correctly?

10 A. Yes, sir, "like it's there, you will find it."

11 Q. Her exact words is "it's in your office."

12 You asked her where something was and she said "it's in
13 your office."

14 A. Or in our -- you know, our area. The second floor.
15 Denise was on the third floor, so it's down there. I mean,
16 it's in your office, or --

17 Q. And this was in August of 2013, right?

18 A. It would have been August and September. I had many
19 questions. It could have been October.

20 Q. Do you --

21 A. I confess I have lots of questions. I mean, I don't --

22 Q. Well, I'm just trying to --

23 Denise Parker got fired after thirty-eight years and
24 I'm trying to figure out why the defendant is trying to say
25 he fired her.

1 In August you asked her where something was and --

2 MR. BRIGHT: Objection to his making a speech,
3 Your Honor.

4 THE COURT: Yes.

5 MR. MURPHY: Okay. I'll rephrase, Your Honor.

6 BY MR. MURPHY:

7 Q. You never told Denise to come with you and find
8 something, did you?

9 A. I did not request that, no.

10 Q. You never heard anybody else tell her go find something
11 and where she refused to go find it?

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

13 Q. The whole deal is you asked her where something was in
14 August and she told you where it was? That's really what
15 this all is all about?

16 A. I would have asked Denise multiple questions because
17 she was the person I felt like had the knowledge.

18 Q. You never told Denise that you were dissatisfied with
19 her response?

20 A. No, sir.

21 Q. And you don't know anybody else telling Denise that her
22 response was improper in any way?

23 A. No, sir.

24 Q. And you weren't present when anyone spoke to Denise
25 about any of these issues on any of these changes, were you?

1 A. No, sir, I was not in any meeting.

2 Q. Nobody ever confronted her about any of this, did they?

3 A. I was not at -- no, sir, I was not in any meetings.

4 Q. You guys just went behind her back and talked about
5 that. That's all you did.

6 A. I don't consider that behind her back, but --

7 Q. Did you do it to her face?

8 A. If she had been downstairs, we would probably -- she
9 probably would have been in that same meeting, or in our
10 office. These were not closed door meetings with Mr.
11 Bright.

12 Q. Go in closed doors, but you didn't do it in front of
13 Denise. You never said "Denise, come on in. Let's you and
14 I and Bob Bright, let's sit down and talk about these issues
15 and get them clarified." You guys never did any of that,
16 did you?

17 A. I did not engage that -- I did not feel like I had
18 that, you know, that type of relationship. I wasn't there
19 to --

20 Q. And you guys are above her on the org chart. She's at
21 the bottom of that org chart. You are right above her,
22 right?

23 A. On the chart, yes, sir.

24 Q. My question is you guys never sat down and said "you
25 know, Denise, let's talk this out. Let's get these issues

1 on the table." Nobody ever did that. Bob Bright, you,
2 Richie Garland, nobody ever did that?

3 A. I didn't, no, sir.

4 Q. Nobody else did it either?

5 A. Not -- not to my knowledge.

6 Q. Okay. And other than the example where you say you
7 asked her where something was and she told you where it was,
8 you can't provide any other example where you asked Denise
9 to do something and she didn't respond appropriately?

10 A. I tried not to ask Denise. I tried not to.

11 Q. So the answer to my question is yes, that's correct?

12 A. Ask the question one more time.

13 Q. I'll be happy to.

14 Other than this example that you gave where you asked
15 Denise where something was and she told you, said it was in
16 your office, you can't provide the jury with one other
17 example --

18 A. I asked her --

19 Q. -- where you asked Denise for something and she didn't
20 respond appropriately?

21 A. But I asked more than one time on different things and
22 was not given information of a place where I could find that
23 downstairs in my office or downstairs in the front room. I
24 mean, I asked multiple questions.

25 Q. Let's go back to your deposition.

1 Go back to page 30. Let's go right after I asked you
2 that question on line 12. The question was "now, you don't
3 specifically recall Denise saying you will find it, do you?"

4 And your answer was "I mean, I can't say those were her
5 exact words, but, again, that was the gist of it like it's
6 there, you will find it."

7 My next question was "and you are referring to the
8 incident you talked about before in which you asked where
9 something was and she said it was in your office.

10 "A. Yeah. When you would ask like help me figure out
11 the workings of where this might be or where that might
12 live.

13 "Q. Well, can you give me any other specific example
14 of where you asked Denise for help and she didn't give you
15 the help?

16 "A. No, not specifically."

17 Did I read that correctly?

18 A. Yes, sir. I didn't have other specific examples, but
19 that didn't mean I didn't ask questions.

20 Q. Let's go again to page 32.

21 A. Okay.

22 Q. On line 10:

23 "Q. Well, can you provide me any specific example
24 where you ever asked Denise for something and she didn't
25 answer your question in a way that you thought was

1 appropriate?

2 "A. No, not specific."

3 That's what you testified under oath.

4 A. Yes, sir, I can't give you a specific of what I was
5 asking for specifically. I don't have that.

6 Q. But you can specifically tell this jury that you were
7 crying and almost quit.

8 A. Because that's about my feelings and I know that, but
9 as far as specific things that I asked for and the specific
10 things a conversation back and forth, I don't recall that.
11 I mean, I don't have those specifics to give you.

12 Q. You never communicated to Denise that you were not
13 happy with the services she provided?

14 A. No, sir, I did not.

15 Q. The only thing that you did -- you never told her --
16 you never communicated that you were unhappy. The only
17 thing you did supposedly was go to talk to Richie Garland
18 and Bob Bright?

19 A. And write positive notes to Denise. That's what I did.

20 Q. Let's talk about this print shop issue.

21 You don't remember Denise saying anything during this
22 incident in the print shop, do you?

23 A. No, sir.

24 Q. You don't recall Lanie Curry saying anything?

25 A. No, sir.

1 Q. This was in early September of 2013?

2 A. It would have been before the sponsors came, before
3 September 25th.

4 Q. And all you saw was Denise talking quietly?

5 A. Denise laughing at Richie and I.

6 Q. You don't know what she was laughing at. You saw her
7 talking quietly and laughing with Lanie.

8 A. You -- you know when somebody is laughing at you. I
9 felt like Denise was laughing at me.

10 Q. You just felt that way. You didn't hear her say
11 anything that led you to believe she was laughing at you?

12 A. I could tell she was laughing at my -- at our
13 struggles.

14 Q. You couldn't tell by anything she said?

15 A. Nothing specific she said that I heard, no, sir.

16 Q. And you couldn't tell by anything that Lanie said?

17 A. No, sir. I don't recall anything.

18 Q. In fact, you are just making this assumption?

19 A. I was reading the room, I think. I think -- I was just
20 making a presumption based upon what I saw, yes, sir.

21 Q. And you never said anything to Denise about this?

22 A. No, I didn't confront Denise about laughing at us. I
23 didn't.

24 Q. And Richie Garland never said anything to Denise about
25 it?

1 A. No, sir, we -- we did not say anything.

2 Q. You are not aware of anyone telling Denise that you and
3 Richie Garland were concerned that you guys felt like you
4 were being laughed at?

5 A. Maybe one more time.

6 Q. Absolutely.

7 You are not aware of anybody telling Denise that you or
8 Richie Garland were concerned at all because you two felt
9 like she was laughing at you?

10 A. I don't know that we ever shared that incident. I'm
11 not sure that we have shared that specific incident.

12 Q. With Denise?

13 A. Or anyone else, so I would think -- I wouldn't know of
14 anyone talking to her about that incident.

15 Q. You never -- you never told Bob Bright about this
16 incident?

17 A. I'm not a hundred percent sure that I did.

18 Q. Go to page 42 of your deposition, beginning on line 13.

19 "So you never told Bob Bright about the print shop
20 incident in which you were having trouble making carbon
21 copies?

22 "A. Not that I remember."

23 Was that your testimony?

24 A. I didn't remember -- yes, sir, I didn't remember if I
25 had told him or not.

1 Q. I read your testimony correctly?

2 A. Yes, sir, not that I remember.

3 Q. And this -- you talked about you felt like Denise was
4 talking about you. Nobody ever told you that Denise was
5 talking behind your back, did they? Nobody ever said that.
6 Nobody ever told you Denise ever talked about you behind
7 your back.

8 A. No, sir, I never said that -- to me talking behind your
9 back is like gossiping and I don't -- I didn't -- no one
10 ever told me that Denise gossiped about me.

11 Q. And nobody ever indicated to you in any way that Denise
12 was ever gossiping about you or talking about you behind
13 your back?

14 A. No, sir.

15 Q. Do you have any examples of where you ever e-mailed
16 Denise when she didn't e-mail you back promptly?

17 A. No, sir, I don't.

18 Q. Do you know of anyone claiming that they e-mailed
19 Denise and she didn't e-mail them back?

20 A. No, sir.

21 Q. Do you know of any technology used at Beta Club in
22 which Denise was unfamiliar?

23 A. Maybe search and replace, but I don't -- I don't know.

24 Q. You don't know?

25 A. On Word, because she didn't do that.

1 Q. She knew she knew how to do that, right? That's how
2 they had been doing it?

3 A. I thought so, but she --

4 Q. Denise was proficient in Word, wasn't she?

5 A. I would assume so and she was -- she was quick. She
6 was fast.

7 Q. The truth is you never told Denise to do something that
8 she didn't do?

9 A. Unless you want to talk about that first time when I
10 asked her to do it in that manner with search and replace,
11 then she said "I'm not going to do it that way."

12 Q. Let's look at your deposition, page 71, line 11.

13 "Q. Did Denise Parker ever refuse anything you told
14 her to do?

15 "A. No."

16 Did I read that correctly?

17 A. Yes.

18 Q. And you never asked Denise to change the way she was
19 doing things, did you?

20 A. I never gave her direction.

21 Q. And so whatever concerns that you discussed with Bob
22 Bright and Richie Garland were concerns you had while Denise
23 was working in convention?

24 A. Correct that. Early August. August, September.

25 Q. Right.

1 So whatever problems that you had with her were over by
2 mid September? If you had any, they were over by mid
3 September?

4 A. I no longer -- I mean, I did not request things of
5 Denise as soon as we got through that process. Like I just
6 found other ways to find things or to get the things we
7 needed, so I didn't have many dealings with Ms. Parker
8 afterwards.

9 Q. You didn't have any problems with her after mid
10 September?

11 A. No dealings, yes, sir.

12 Q. No dealings. I didn't ask that question.

13 A. No problems, yes, sir.

14 Q. No problems after mid September?

15 A. Yes, sir.

16 Q. And you never complained about Denise after mid
17 September?

18 A. I didn't complain about her, no, sir.

19 Q. You didn't make any complaints about her in October?

20 A. I never made complaints -- well, you know, besides
21 discussing with Mr. Garland, you know, but as far as a
22 formal complaint, I didn't -- I did not make a complaint,
23 no, sir.

24 Q. Well, if you didn't have any problems with her, you
25 weren't complaining about her, right?

1 A. Correct, yes, sir.

2 Q. You certainly didn't have any problems with her in
3 October or November?

4 A. Not that I can recall, no, sir.

5 Q. And you didn't complain about Denise at all in November
6 either?

7 A. No, sir.

8 MR. MURPHY: Nothing further, Your Honor.

9 THE COURT: Okay.

10 THE COURT: Anything?

11 MR. BRIGHT: I have got a few minutes, Your Honor.

12 THE COURT: Can you do it in five minutes?

13 MR. BRIGHT: We think so, Your Honor.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION BY MR. BRIGHT:

16 Q. I want to follow up just on some questions that you
17 were just asked.

18 You said that you didn't have any dealings with her
19 after a certain period of time. Why?

20 A. Probably two-fold. October was -- I was out of the
21 office a lot in October, and probably it was a personal
22 choice.

23 Q. Did you avoid her?

24 A. I probably did.

25 Q. Why?

1 A. Because it was not a good working relationship and I
2 just -- you know, I didn't request things and I just found
3 other ways to get things done.

4 Q. Now, you didn't tell her to use search and replace.
5 You asked her to use search and replace?

6 A. Yes, sir.

7 Q. So when you were reading from your deposition, your
8 deposition testimony was accurate. You didn't tell her --

9 A. Near.

10 Q. -- and she didn't refuse, but you asked her and she
11 didn't do it?

12 A. Yes, sir.

13 Q. Okay. You said that you made a choice to avoid her.
14 Did you feel bullied?

15 A. Well, that's a -- I probably was intimidated by the
16 length of time that Denise had been in the office and the
17 knowledge that she had and my lack of knowledge, so there
18 probably was that, you know, balance.

19 Q. Despite the fact that you were higher on the
20 organizational chart?

21 A. Yes, sir.

22 Q. Now, this Exhibit No. 12, those e-mails?

23 A. Yes, sir.

24 Q. What was your -- what were -- were you trying to
25 accomplish anything by sending her those e-mails?

1 A. I guess I was. I mean --

2 Q. What were you trying to accomplish?

3 A. I would have liked to have been Denise's friend, or
4 been on a friendly relationship, because that's who I am, I
5 guess.

6 Q. Did you feel that you had a friendly relationship with
7 her?

8 A. No, sir.

9 Q. Now, she has testified that she loved you like family.
10 Did you feel like she treated you like she loved you like
11 family?

12 A. No, sir.

13 Q. How did she treat you?

14 A. With some disregard.

15 Q. You talked about the editing process the first time
16 when she handed it back to you and said she wasn't going to
17 use search and replace. Did that exacerbate or stretch out
18 the period of time that it took to edit those things?

19 A. Yes, sir.

20 Q. Why?

21 A. Because if I missed one, that was a whole other edit.
22 If I -- you know, if we had done search and replace, I would
23 haven't missed a date, the computer would have caught every
24 date. It would have caught everything. And if I missed
25 one, that was the other time upstairs and a whole other time

1 that Denise had to type something in and print that off and
2 call me to come get it.

3 Q. Were you doing her job for her?

4 A. Dates could have been changed easily by Denise and not
5 all dates were changed by Denise when she could have done
6 that.

7 MR. BRIGHT: Let me have a moment, Your Honor.

8 THE COURT: Yes, sir.

9 (Off the record)

10 (Back on the record)

11 MR. BRIGHT: That's all I have, Your Honor.

12 THE COURT: Okay.

13 MR. MURPHY: One minute?

14 THE COURT: Okay.

15 RECROSS EXAMINATION BY MR. MURPHY:

16 Q. You testified you didn't have any dealings with her
17 after September?

18 A. I tried not to do a directive, you know, what we had to
19 do, but I didn't initiate new projects or ask Denise to do
20 new things.

21 Q. The changes you kept testifying about were in October.

22 A. Yes, sir, but you stated from Mr. Bobby Hart, Bobby
23 would have given me those two pages and I would have
24 forwarded those to Denise, yes, sir. And the Missouri
25 charts --

1 Q. The Missouri chart, you dealt with her on that, didn't
2 you, correct?

3 A. Yes, sir.

4 Q. After September?

5 A. But that was with the handbook and I -- we had to. It
6 had to go through Denise.

7 Q. And you dealt with Denise in doing that?

8 A. Yes, sir, but I didn't initiate any new projects or try
9 to do more than the handbook.

10 MR. MURPHY: Nothing further, Your Honor.

11 THE COURT: All right. Thank you.

12 Ma'am, you may step down. Please be very careful.

13 Okay. Madam Forelady and ladies and gentlemen, we
14 have had a full day today. We are going to recess for the
15 evening. As I told you yesterday, and I'll keep to that,
16 it's now about 6:44. We are not going past -- I'm sorry,
17 5:44. We are not going to go past 5:45. We may have
18 children to get. So with that we are going to recess for
19 the evening. So we will start here at nine in the morning.
20 The solicitor doesn't have any kind of emergency or
21 anything. So, as I said that, we ask you to be back in the
22 morning about 8:50, or thereabouts. You will have some
23 coffee and water and the facilities will be here for you.
24 You be back about 8:50. I'll already be here. The lawyers
25 will already be here. We get here about eight o'clock. In