

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Alford S. Lee, Circuit Court Judge

Case No. 2014-CP- 39- 0259

Appellant Case No. 2015-001361

Mark Ostendorff,.....Appellant,

v.

School District of Pickens County,.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL RESPONDENT'S DESIGNATION OF MATTER

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Central, SC 29630
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Appellant, pro se

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SC Court of Appeals

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The Honorable Harold P. Welborn, Jr.
Clerk of Court, Pickens County
P.O. Box 215
Pickens, SC 29671-0215

Re: Mark D. Ostendorff v. School District of Pickens County
C.A. No. 2014-CP-39-00259

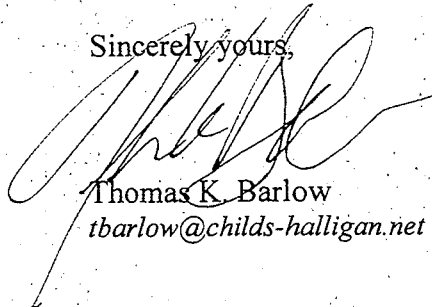
Dear Mr. Welborn:

Our firm represents Defendant, School District of Pickens County, in the above-referenced matter. Enclosed for filing, please find the original and one copy of Defendant's Memorandum of Law in Support of Motion for Summary Judgment. Please return the extra file-stamped copy to our office in the enclosed postage-paid envelope. By copy of this letter, we are serving a copy of Defendant's Memorandum of Law in Support of Motion for Summary Judgment on Mark D. Ostendorff, the *pro se* Plaintiff.

Thank you for your assistance with this matter.

With kind regards, I am

Sincerely yours,



Thomas K. Barlow
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/rml
Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Mark D. Ostendorff,)
)
Plaintiff,)

C.A. No. 2014-CP-39-00259

vs.)

School District of Pickens County)
)
Defendant.)

**DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant, Pickens County School District ("District"), moved for summary judgment on February 9, 2015. The District submits that no genuine issues of material fact exist and it is entitled to summary judgment on Plaintiff's claims against it for the reasons set forth below.

II. STATEMENT OF RELEVANT FACTS

Plaintiff was employed by the District from June 2008 until March 2011 as a Building Project Manager. (Exhibit 1- Complaint ¶ 10). It is undisputed that Plaintiff was an at-will employee with the District. (Ostendorff Dep. p. 60, lines 17-19, Dep. Ex. 3). Due to the scheduled completion of Building Fund projects, Plaintiff was notified in December 2010 that his employment would end on June 30, 2011. (Ostendorff Dep. pp. 76-77, Dep. Ex. 4). However, due to performance concerns, including, taking time off without approval, failing to maintain established work hours, and not completing assigned tasks, Plaintiff's employment was terminated on March 1, 2011. (Ostendorff Dep. pp. 123-124, Dep. Ex. 7). As a result of this termination, Plaintiff has asserted the following causes of action: fraud, "intentional fraud," civil conspiracy, "false testimony under sworn oath," "subordination [*sic*] of false testimony under sworn oath," negligence, gross negligence, "reckless (willful) negligence," "retaliatory

discharge,” “unequal treatment,” and wrongful discharge against the Defendant. (Exhibit 1 - Complaint ¶ 6).

III. ARGUMENTS

A. Plaintiff's Claims Are Time-Barred.

Under S.C. Code Ann. § 15-78-110, the applicable statute of limitations for any tort claim against a governmental entity, like the District, is two years. This is particularly the case under the South Carolina Tort Claims Act, which requires liberal construction in favor of limiting governmental liability. See S.C. Code Ann. § 15-78-20(f). Any of Plaintiff's claims would have arisen out of Defendant's actions on or before March 1, 2011. Therefore, the Defendant's alleged misconduct all occurred more than two years prior to Plaintiff's filing of the instant action on February 28, 2014. (Exhibit 1 - Complaint ¶¶ 23-31, 44-47, 50.)

In fact, Plaintiff concedes that all of Defendant's actions occurred before March 2011, or at the latest May 2011, in his “demand letter,” that he sent to the Defendant on February 11, 2014:

If I have to file the lawsuit, I will file it on February 25, 2014. I will not let any statute of limitations become an issue. Even though I made claims for settlement and also SDPC appeal after March 1, 2011, and the last loss of unemployment insurance was in May 2011, it is only prudent to file by February 25th.

(Ostendorff Dep. Exh. 10.) Plaintiff's lack of knowledge or understanding of the applicable limitations period is an insufficient reason to ignore the statute of limitations. Further, Plaintiff cannot offer sufficient excuse or justification to permit tolling the statute of limitations to save these claims. Accordingly, all of Plaintiff's claims must be dismissed.

B. Assuming, *Arguendo*, Plaintiff's Claims Are Not Time-Barred, Plaintiff Also Fails To State Any Claim On The Merits.

Assuming, *arguendo*, that Plaintiff's claims are not time-barred, Plaintiff cannot create a genuine issue of material fact on any of his claims. Specifically, he cannot point to any evidence

in the record to support a claim for fraud, "intentional fraud," civil conspiracy, "false testimony under sworn oath," "subordination [*sic*] of false testimony under sworn oath," negligence, gross negligence, "reckless (willful) negligence," "retaliatory discharge," "unequal treatment," wrongful discharge, or any other tort claim he might choose to identify or allege, because his employment was terminated for objectively legitimate business and operational reasons, and he cannot offer any evidence of underlying improper motivations.

1. South Carolina Courts do not recognize a cause of action for "negligence," "gross negligence," or "reckless negligence" for the termination of an at-will employee. Further, Plaintiff's wrongful discharge cause of action should be dismissed because the facts do not support that the District violated a clear mandate of public policy.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach of duty. *Fowler v. Hunter*, 697 S.E.2d 531 (S.C. 2010). The absence of any one of these elements renders the cause of action insufficient. *S. Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986).

South Carolina Courts do not recognize a cause of action for "negligence," "gross negligence," or "reckless negligence," on the facts alleged in the Complaint so as to permit an at-will employee to recover damages for termination of employment. The doctrine of employment at-will has long been recognized in the State of South Carolina. See *Shealy v. Fowler*, 182 S.C. 81, 188 S.E. 499 (1936). The doctrine dictates that employment for an indefinite term is terminable by either the employee or the employer for any reason or for no reason without incurring liability for wrongful discharge. *Culler v. Blue Ridge Elec. Coop.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992); *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 769, 259 S.E.2d 812, 813 (1979).

South Carolina has carved out two explicit exceptions to this general rule. First,

an employee has recourse against an employer for termination in violation of public policy. *Small v. Springs Indus., Inc.*, 300 S.C. 481, 484, 388 S.E.2d 808, 810 (1990). Second, an employee has a cause of action against an employer who contractually alters the at-will relationship and terminates the employee in violation of the contract, which Plaintiff does not allege. *Id.* Aside from cases that recognize the limited public policy exception to employment at-will and a contractually altered employee-at will relationship, there is no tort cause of action for "negligent discharge" in South Carolina.

In this case, it is undisputed that Plaintiff is an at-will employee as evidenced by his testimony with regard to the District's Notice of Intent to Employ:

Q. But you knew what at-will meant?

A. Yeah, I knew what at-will meant when that thing showed up. I sure did.

(Ostendorff Dep. p. 60, lines 17-19, Dep. Ex. 3).

In addition, there is no testimony or evidence in the record that this at-will relationship was contractually altered in anyway, as Plaintiff concedes:

Q. Are you aware of anybody that has ever been hired to a five-year contract at Pickens County School District?

A. None that I know of.

Q. --in the building program?

A. None that I know of.

(Ostendorff Dep. pp. 57-58, lines 19-25).

Q. Had you ever had a contract for a term of year before--

A. No.

Q. --with any employer?

A. Huh-uh. I don't think so, no. I might have had one with

HUD. I can't remember. But you're still a contract employee.

(Ostendorff Dep. pp. 61, lines 1-8).

As previously mentioned, the only other exception to the at-will employment doctrine is the public policy exception. In *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E.2d 213 (S.C. 1985), the Court held, "[w]here the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises." *Id.* at 216. The public policy exception applies when an employer requires an employee to violate the law, or the reason for the employee's termination was itself a violation of criminal law. *Garner v. Morrison Knudsen Corp.*, 456 S.E.2d 907 (S.C. 1995). However, where a "[plaintiff] was not asked to violate the law and his termination did not violate criminal law . . . [the] allegations do not support a wrongful discharge action." *Lawson v. South Carolina Dep't of Corrections*, 532 S.E.2d 259, 261 (2000); see also *Barron v. Labor Finders of South Carolina*, 713 S.E.2d 634 (S.C. 2011) (public policy exception is very limited). Plaintiff cannot identify a "clear mandate of public policy" implied by his termination from employment. Further, Plaintiff does not assert that he was asked to violate a law, that his termination violated a criminal law, or any other recognized basis for the public policy exception.

Even though Plaintiff's claims for "negligence" and wrongful discharge fail for the reasons set forth above, the District would to point out that although Plaintiff alleges his employment was terminated because he discovered that employees of the District were misappropriating building funds, when asked during his deposition, Plaintiff was unable to articulate or provide any evidence of unlawful conduct. (Exhibit 1 - Complaint ¶ 8). In particular, Plaintiff testified as follows:

Q. Do you have any evidence that he was doing anything unlawful?

A. His - - the way he was handling business was of

concern. And he was meeting with-- I think it was the Liberty High School, how he's resolving the final inspection and negotiating with the contractor, the site. And he was meeting with him personally, but didn't ask me to go. I've never heard of any time one person spending public money without a witness.

Q. When was that meeting?

A. I don't know. But he said he was meeting and had met with him, with Buddy. Buddy's one of the partners there.

Q. Buddy was one of the contractors?

A. Yes. I can't remember. But that's -- why he has to meet with them individually, that was a concern to me. That's just not the way you do business with public money.

Q. Do you know anything else about that meeting --

A. No, I do not.

Q. -- or what transpired at it?

A. Huh-uh. He might have told Buddy he wasn't giving him a dime, though. You know, I don't know. It's just the telltales. It just does not look -- I mean nothing looks like this makes any sense to a reasonable person. **And there again, as I said, there may have been legitimate reasons why they didn't rehire me and nobody's done anything wrong.** It's just that Bob Folkman couldn't stand me, maybe. I do not know that.

(Ostendorff Dep. pp. 152-153, lines 19-25, 1-23).

For all of the reasons above, these claims fail as a matter of law.

2. Plaintiff cannot prove the elements of a cause of action for defamation as a matter of law.

To recover for defamation, a Plaintiff has to prove: (1) a false and defamatory statement made by an agent of the District (2) to a third party that was unprivileged (3) the District was at fault and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *See Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002).

First, Plaintiff cannot identify any false statement made by an agent of the District:

Q. Do you have any reason to believe that Bob Folkman has given you a bad reference to anybody?

A. The only thing is that I can't get a dadgum job. It's just -- I can do virtually anything from footings to financial statements and willing to work for 10, \$12 an hour, and I still can't get anything.

Q. But nobody has told you that, for example?

A. No.

Q. That I can't hire you, because Bob Folkman said --

A. Yeah, right.

(Ostendorff Dep. p. 142 lines 3-12).

Q. How about as far as anybody else at the school district? Has anybody else told you that anybody else from the school district has given you a bad reference?

A. No. I hope not, but --

(Ostendorff Dep. p. 143 lines 4-8).

Second, even if Plaintiff could identify a false statement made by the District, he could not prove that such a statement was published outside the context of an executive session in a school board meeting or a meeting of administrators—clearly subjecting any alleged statement in that context to a qualified privilege as a matter of law. *See Constant v. Spartanburg Steel Prods. Inc.*, 447 S.E.2d 194 (S.C. 1994) (communication between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business); *Murray v. Holnam*, 542 S.E.2d 743, 749 (S.C. 2001) (issue of conditional or qualified privilege is a question of law for the court).

Third, Plaintiff cannot recover for claimed loss of reputation or mental anguish that may have been created by his own self-publication of the alleged defamatory statements. See 53

C.J.S. Libel & Slander 192 (1987.) As Plaintiff testified:

Q. Right. Did you talk to anybody out of the community about your termination?

A. Oh, yeah, I talked to everybody in the world.

(Ostendorff Dep. p. 140 lines 4-6).

As such, Plaintiff is not able to collect alleged damages for loss of reputation because he admittedly self-publicized his termination "to everybody in the world."

Finally, Plaintiff has not alleged facts to support and cannot prove the existence of special harm resulting from any alleged defamatory statement. For these reasons, Defendant is entitled to summary judgment on Plaintiff's defamation claim.

3. Plaintiff's Civil Conspiracy Claim Fails as a Matter of Law.

"In order to recover for civil conspiracy, a plaintiff must show a combination of two or more persons joined together for the purpose of injuring him and caused him special damages." *McMillan v. Oconee Mem'l Hosp.*, 626 S.E.2d 884, 886 (2006). A civil conspiracy claim must be supported by facts independent of the other causes of action in the complaint; a plaintiff may not simply incorporate allegations that support other causes of action to sustain a case for civil conspiracy. *See Kuznik v. Bees Ferry Assocs.*, 538 S.E.2d 15, 31 (S.C. Ct. App. 2000). No civil conspiracy exists when the conduct at issue concerns an alleged conspiracy between an employee acting within the scope of his employment and his employer. *Springer v. Pellissier*, 2011 W.L. 2601895 (D.S.C. 2011) (citing *McMillan*, 626 S.E.2d at 886, citing *Perk v. Vector Res. Grp., Ltd.*, 485 S.E.2d 140, 144 (Va. 1997)). It is well-established that a corporation cannot conspire with itself. *McMillan*, 626 S.E.2d at 884 (citing 16 AM.JUR.2D Conspiracy § 56 (2005)).

In the instant case, the District is the only applicable Defendant, as the individual Defendants that Plaintiff named were dismissed from this lawsuit on July 9, 2014. (Exhibit 2 -

Order Granting Motion to Dismiss Individual Defendants). Because the District cannot conspire with itself as a matter of law, Plaintiff's civil conspiracy claim fails. Further, even if Plaintiff had properly alleged a conspiracy among properly named and identified individual defendants, no allegations of special damages, or evidence to support a claim for special damages, exist in this case. Finally, Plaintiff was an at-will employee and could not pursue a civil conspiracy claim on that basis. *See Alonso v. McAllister Towing*, 595 F. Supp.2d 645 (D.S.C. 2009).

4. Plaintiff's Fraud Cause of Action Fails as a Matter of Law.

It is well-settled that to establish actionable fraud there must first be a false representation. *Emerson v. Powell*, 283 S.C. 293, 321 S.E.2d 629 (Ct. App. 1984). To sustain a claim of fraud, all of the following elements must be proven: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). Plaintiff has not pleaded and cannot establish the necessary elements or set forth any evidence to assert a fraud cause of action against the Defendant.

Specifically, Plaintiff testified as follows with regard to his fraud cause of action:

Q: What is your evidence of intentional fraud here, number 4?

A: Okay, because Mr. Folkman, he done the same process of taking days off. And then he fires me on Monday, based on taking that Friday off, and he didn't know if I took that Friday off or not.

(Ostendorff Dep. p. 156 lines 3-8).

Q: But you don't deny that you were out?

A: No, I don't deny it. He didn't know it. He never even - he's never known it until we talked about it at the unemployment insurance hearing.

Q: But you never denied that you were out either, right?

A: No, I never denied it.

Q: Because you were out, I mean, you didn't come in at —

A: Right.

Q: -- all that day, right? Correct?

A: Yeah, that's correct, I did take that day off. But he didn't know if I did or not. That's the point I was trying to making.

(Ostendorff Dep. p. 159 lines 5-17).

It is clear from Plaintiff's testimony that there was no fraud because no "untruth" was told. Regardless of when Mr. Folkman found out that Plaintiff was not at work on the Friday in question, Plaintiff concedes that he was, in fact, absent from work that day. Thus, this claim fails as a matter of law.¹

CONCLUSION

For all of the foregoing reasons, Plaintiff's evidence fails to satisfy each element of his alleged causes of action and Defendant is entitled to judgment as a matter of law on all claims.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Thomas K. Barlow, S.C. Bar No. 8995
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¹ The causes of action titled "false testimony under oath," "subordination [*sic*] of false testimony under sworn oath," and "unequal treatment" are not recognized causes of action or claims upon which relief may be granted in South Carolina. If they were, they would fail for the same reasons as Plaintiff's fraud and other claims.

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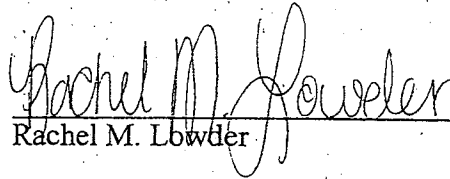
March 27, 2015

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 27^m day of March, 2015:

Mark D. Ostendorff, *Pro Se*
135 Cedar Creek Circle
Central, SC 29630



Rachel M. Lowder

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Mark D Ostendorff

Plaintiff

v.

School District of Pickens County

Board of Trustees, School District of

Pickens County

Alex Saitta

Judy Edwards

Jimmy Gillespie

Herbert Cooper

Jim Shelton

Ben Trotter

Kelly Pew

Henry Hunt

Robert Folkman

Co-Defendants

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
COURT OF COMMON PLEAS

2014 FEB 28 P 1:31

JUDICIAL CIRCUIT

Case No.

2014-CP-

39-259

COMPLAINT

WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

Comes now, Ostendorff, Plaintiff, to this Court, jury trial demanded, seeking recovery of monetary damages from injury caused to him by the above Co-Defendants. Ostendorff seeks damages for lost income from lost employment and lost retirement that he would be entitled to had he not been wrongfully discharged. Ostendorff was employed as a Project Manager in the Building Program for the School District of Pickens County.

Ostendorff also seeks monetary damages from the Co-Defendants in his loss of ten (10) weeks of SC Unemployment Insurance compensation. This damage to Ostendorff was caused by Robert Folkman

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knowingly providing false testimony under sworn oath at an appeal hearing in front of an Investigative Officer of the State of South Carolina from the Department of Employment and Workforce (SCDEW).

Ostendorff seeks monetary damages of the following dollar amounts:

Lost wages of \$ 132,481.00

Lost retirement of \$ 134,400.00 , less Ostendorff's contribution amount of 7.5% or \$ 12,250.00 equaling \$ 122,150.00

Lost Unemployment Insurance benefits of \$ 3,260.00

Ostendorff also seeks damages for defamation of character.

Ostendorff also seeks punitive damages, actual damages, reasonable attorney's fees, and any compensation that the Court or Triers -of -Fact (Jury) find due to Ostendorff.

Ostendorff seeks actual , compensatory, and punitive damages under tort.

Ostendorff , Plaintiff alleges:

1.

That Ostendorff was a public servant being employed by the School District of Pickens County, South Carolina.

2.

That defendants Saitta, Edwards, Gillespie, Cooper, Shelton, Trotter were Board Members of the Board of Trustees , School District of Pickens County at the time of Ostendorff's discharge.

3.

That defendant Hunt was the Superintendent of the School District of Pickens County at the time of Ostendorff's discharge.

4.

That defendant Pew was the Director or Human Relations for the School District of Pickens County at the time of Ostendorff's discharge.

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5.

That Folkman was the Building Program Administrator and Ostendorff's supervisor at the time of Ostendorff's discharge.

6.

That the defendants engaged in fraud, intentional fraud, civil conspiracy, false testimony under sworn oath, subordination of false testimony under sworn oath, negligence, gross negligence, reckless (willful) negligence, retaliatory discharge, unequal treatment, and wrongful discharge of Ostendorff's employment with the School District of Pickens County (SDPC).

7.

That the defendants damaged Ostendorff for reasons of personal gain, political and, or financial gain or prevention of financial loss. Their actions were for their own benefit and not to the public school students of Pickens County.

8.

That Ostendorff was aware of the defendants' misappropriation of School District (SDPC) funding. The defendants found through a third party that Ostendorff was aware of misappropriation of SDPC funding. The motive of the defendants to wrongfully discharge was to prevent Ostendorff from finding, or being more aware of, additional misappropriation of School District (SDPC) funding. The defendants devised a fraudulent plan to get rid of Ostendorff under the pretense of Ostendorff taking unauthorized time off.

9.

That the defendants engaged in false testimony under oath to hide the true motive of wrongfully discharging Ostendorff. The false testimony under sworn oath was given to an investigative official of the State of South Carolina of the Department of Employment and Workforce. The false testimony under oath materially damaged Ostendorff in being penalized ten weeks of unemployment insurance compensation. Ostendorff is of information and belief that all defendants were involved in the false testimony and subordination of that false testimony under sworn oath. All defendants were given opportunity to explain their involvement in Ostendorff's wrongful discharge but none responded, except Trotter's telephone discussion with Ostendorff after receiving Ostendorff's appeal for reinstatement letter addressed to all Board members

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10.

That Ostendorff was wrongfully discharged from his employment with the School District of Pickens County on Tuesday, March 1, 2011. Ostendorff came to employment on June 20, 2008. Ostendorff left employment with The City of Charlotte, North Carolina, where he was an active member of the North Carolina Retirement System. Ostendorff is currently receiving early monetary benefits for his prior participation while being employed with the City of Charlotte.

11.

That Ostendorff was assured that his employment with the School District of Pickens County would be at a minimum of five (5) years, up to seven (7) years. The length of employment from minimum of 5 to 7 years would depend on the completion of the Building Program. Ostendorff accepted the employment offer from the School District of Pickens County with the limiting condition of least 5 years of consecutive employment. The 5 years would meet the minimum requirement to receive a retirement benefit of \$ 400.00 per month for life from the South Carolina Retirement System starting at age 60. Ostendorff was an active member of the SC Retirement System at the time he was wrongfully discharged.

12.

That Ostendorff is owed for 2 years and 4 months at his prior salary of \$ 70,000.00 per year. This amount is lessened by the amounts Ostendorff received from SC Unemployment Insurance and employment he had from the period March 2, 2011, through June 30, 2013. The amount owed Ostendorff may or may not be lessened from money he received in March from unused personal time or vacation. Ostendorff was of the understanding that unused vacation or personal time was a "use it or lose it" policy when leaving employment. The amount may be increased or lessened from any net affect of income taxes due.

13.

That Ostendorff was wrongfully discharged because he had a conversation with a friend of a new school board member about the possible shortfall of the Building Program construction budgets with public funding. Also discussed was the application of Act 388 for funding of school operations and not

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to be used for new construction. That discussion was on either Tuesday, February 22, 2011, or Tuesday, February 15, 2011.

14.

That through the conversation with his friend , the new school board member knew that Ostendorff was aware that the Building Program salaries were being paid from the School District Operations fund. ACT 388 is for the Operations of the School District and is funded through SC sales tax . The Building Program is funded by bond and is repaid through Pickens County property tax receipts. They are to be separate .

15.

That Ostendorff was discharged to try to silence him and not enable him to discover any other misappropriation of ACT 388 money .

16.

That the School Board knew that were South Carolina Statutes that provide severe penalties for School Board Members and Superintendents who misappropriate school funding.

17.

That on Tuesday, March 1, 2011, around 7:30 AM, Ostendorff received an e-mail from Robert Folkman , Building Program Administrator, instructing him to see him in his office. Folkman then discharged Ostendorff. Folkman told Ostendorff that " I'm (Folkman) having to spend too much of my time on RC Edwards and McKissik and going to have to let you go." This made absolutely no sense since Ostendorff had numerous other projects in work that that would require even more of his time .

18.

That on Tuesday, March 1, 2011, in the AM, Ostendorff went to see Kelly Pew, Director of Human Relations , at the School Districts main office to find the real reason why Ostendorff had been discharged. While waiting to see Pew, the School District's Benefit Specialist informed Ostendorff that

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she had received word that Ostendorff was no longer employed with SDPC, but she received that word on Monday, February 28, 2011, a day before Folkman discharged Ostendorff.

19.

That on Tuesday, March 1, 2011, in the AM, Ostendorff then met with Kelly Pew, then the Director of Human Relations, to ask why Ostendorff had been discharged. Ostendorff was told that that Folkman told her that Ostendorff had been discharged because of "failure to complete assignments, failure to maintain regular work hours, and taking unapproved time off". Ostendorff replied that "well, that's the first I've ever heard of it". Pew quickly walked up to Ostendorff, shook his hand and said "good luck in future employment", and escorted Ostendorff out of her office. Pew made no effort to support what Folkman had told her.

20.

That on Tuesday, March 1, 2011, during the short discussion between Pew and Ostendorff, Pew never mentioned any appeal process within in SDPC policies regarding discharge. Folkman neither mentioned any appeal policies within SDPC. All defendants conspired in a plan not to notify Ostendorff of any appeal process because they knew that if Ostendorff did not make an appeal under SDPC policy within in a prescribed timeframe, Ostendorff would lose all rights to bring about any legal action to recover damages.

21.

That on Tuesday, March 1, 2011, Ostendorff returned to his SDPC office to gather his construction reference books, he found his office ransacked. Ostendorff's computer was gone in which a mess was made of his desk in removing cables, etc. It also appeared that someone had been rifling through Ostendorff's files. It was obvious that someone was in a hurry to find what Ostendorff knew.

22.

That on Tuesday, March 1, 2011, Ostendorff requested the balance of the day off. Ostendorff filled out his request for time form which was signed by Tim Newman. Folkman was not in the office to sign the form.

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23.

That on the evening of Tuesday March 1, 2011, Ostendorff called the Senior Project Manager regarding about Folkman discharging Ostendorff. The Senior Project Manager told Ostendorff that "you shouldn't have bad mouthed him". Ostendorff replied that "I've never badmouthed him". The Senior Project Manager said "during the Monday morning meeting he (Folkman) asked us (SDPC Building Program employees) if we heard anything about Mark (Ostendorff) badmouthing the Building Program to anyone on Chastain Road". Ostendorff told the Senior Project Manager to "make sure you write that down with today's date." Ostendorff was out sick Monday, February 28, 2011, due to allergies.

24.

That the conversation with the friend of the SDPC Board member on February 22 or 15, 2011, revealed that Ostendorff was aware of probable misappropriation was the real cause of Ostendorff's discharge. The conversation came about during road work along Chastain Road in front of the son of the friend of the Board member. Ostendorff had been negotiating with the friend for several months regarding the slope of the road work and the resulting affect on his son's property.

25.

That during the conversation with the friend of the Board member, the friend told Ostendorff that he had a friend that was one of the new School Board Members and he (the new member) said "the construction (program) money was a mess". Ostendorff then said to the affect "that could be true as I heard that the Financial Director told Alex Saitta during a School Board meeting that the Construction Program salaries were coming out of the general fund". Ostendorff also said to the affect "I don't think that's allowed under the new state funding guidelines separating new construction based on property taxes and the general fund which is funded out of Columbia from state sales taxes". Ostendorff also said to the affect "if the construction budget was short then they (School Board) will have to put Folkman in charge of Operations so he can siphon money over to the Building Program to complete anything not covered in the bond money." Ostendorff said to the affect that "Folkman was trying to get rid of everyone (Building Program) so no one would be watching him and he could get his 5 years in to get retirement money".

26.

That shortly after being discharged , Ostendorff applied for Unemployment Insurance through South Carolina Department of employment and Workforce (SCDEW). SCDEW notified Ostendorff that was denied benefits because SDPC discharge him for cause. Ostendorff promptly contacted SCDEW and was given allegations made by SDPC. The allegations were given to Ostendorff via telephone as SCDEW will not provide allow a written copy to be sent to the clamiant (Ostendorff). Ostendorff responded to the allegations to SCDEW. SCDEW determined that Ostendorff was not eligible for benefits.

27.

That on March 11,2011, Ostendorff sent a letter addressed to Alex Saitta , SDPC Board Chairman, appealing his discharge. A copy was also sent to each SDPC Board member. The letter also made a claim for monetary damages. Ostendorff sent the letter as he found no appeal policy from SDPC, but found on the SDPC website that employees being laid off for budget reasons could appeal to the SDPC Board.

28.

That shortly after sending the letter , Trotter called Ostendorff in which he was not aware that Ostendorff was discharged. He said that Judy Edwards called him to ask if he knew anything about Ostendorff's discharge.

29.

That shortly after sending the letter to Saitta , Ostendorff received a voice mail from Saitta informing Ostendorff that Henry Hunt, then SDPC Superintendent, would contact me on the SDPC policy to any appeal.

30.

That Ostendorff later received a voice mail for me to have a conference with Hunt for March 17,2011. Ostendorff had a discussion with Hunt on that date in Hunt's office. Hunt did not appear of knowledge of my discharge prior to my letter to Saitta of March 11,2011. In that discussion with Hunt, Ostendorff explained his position of his wrongful discharge. In that discussion, Ostendorff assured that it was the conversation with the friend with the new school board member was the reason for Ostendorff's discharge, not the reasons Kelly Pew provided Ostendorff on March 1, 2011. Ostendorff also stated he was due monetary compensation for the additional 2 years and 4 months as for

Ostendorff's assurance of 5 years, up to 7 years, of employment and also the retirement money he would receive after the 5 years of employment. Hunt informed Ostendorff that Hunt would investigate the matter.

31.

That on the March 17, 2011, meeting with Hunt, Ostendorff was given Kelly Pew's letter dated March 16, 2011, addressed to Ostendorff.

32.

That on April 5, 2011, Ostendorff sent a letter to Pew regarding her letter of March 16, 2011. Ostendorff in his letter stated that Bob Folkman did not talk to Ostendorff on Monday, February 28, 2011, as Ostendorff was out sick on Monday, February 28, 2011, which was consistent with what Ostendorff informed Pew on the March 1, 2011, discussion that Ostendorff had with Pew. Ostendorff further reiterated Ostendorff's the very short conversation with Folkman on March 1, 2011, which was consistent with Ostendorff's assertion that Folkman discharged Ostendorff because "he was having to spend too much of his time on RC Edwards and McKissik."

33.

That on March 23, 2011, Hunt sent a letter to Ostendorff of Hunt's investigation and findings.

Item 1- Retribution- Hunt stated that " I talked to the board member and he does not recall any comments that would cause Mr. Folkman to retaliate against you." Ostendorff has never talked to or ever met the board member whom was the friend of the father of the property owner on Chastain Road.

Hunt also stated " Also , Mr. Folkman stated that no board member had talked with him about you."

Items 2 and 3- Regarded my assertion of politics and ulterior motives.

Item 4 – Malicious Intent- Hunt stated " You feel that Mr. Folkman planned to deny you insurance coverage for a month by terminating you on February 28. Your termination date was set as March 1 and your coverage continues to March 31. Mr. Folkman does not handled insurance issues and was unaware of the length of time insurance coverage continues after termination."

The March 1, 2011 date for termination was only set for Ostendorff's insurance because of the March 1, 2011 conversation with the Benefit Specialist that Ostendorff's insurance had stopped as of February 28, 2011. Ostendorff then told Pew and Pew then called the Benefit Specialist to correct the

23

Insurance to run through March 2011, as Ostendorff had not actually been terminated by Folkman until the morning of March 1, 2011, and not February 28, 2011.

Ostendorff was not paid for his day of employment of March 1, 2011.

Ostendorff received health insurance through March 2011.

Hunt's investigation was not credible. Hunt was willfully negligent in his investigation and also in his decision not to reinstate Ostendorff or compensate him for at least the remaining 2 years and 4 months along with retirement benefits.

34.

That on April 5, 2011, Ostendorff sent a letter to Hunt appealing his decision from his letter dated March 23, 2011, as required by the SDPC Grievances Policy. That policy was attached to Hunt's letter of March 23, 2011. A copy of Ostendorff's letter was sent to all board members with attachments.

The letter had attachments of Hunt's letter, Pew's letter, Ostendorff's response to Pew, and Ostendorff's response to SCDEW.

Ostendorff pointed out numerous inconsistencies with Ostendorff's discharge and Folkman's comments to Hunt.

The main point being- how did Folkman know if Ostendorff took Friday, February 25, 2011, off or not? The only thing Folkman knew was that he found a request for time off by Ostendorff in his in-basket on Monday, February 28, 2011.

The board members knew that Ostendorff was applying for unemployment insurance benefits.

Ostendorff made a monetary claim in that letter.

35.

That on Monday, February 28, 2011, Folkman terminated Ostendorff for the only reason being that he found a piece of paper that requested time off. The day requested off was Friday, February 25, 2011.

Folkman would not have been of knowledge if Ostendorff was at work or not on Friday, February 25, 2011, because Folkman was not at work on Friday 25, 2011.

24

Ostendorff was out sick on Monday, February 28, 2011. Folkman could not of asked Ostendorff if Ostendorff took off Friday, February 25, 2011, because Ostendorff was unavailable to answer Folkman on Monday , February 28, 2011.

In an earlier instance, Ostendorff requested, through the same method of requesting time off on the Thursday before a Friday, the following Friday off and the request was approved by Folkman. Ostendorff later decided that he needed to come in to work to monitor a subcontractor that was filling an underground storage tank at RC Edwards. Ostendorff drove his own vehicle to RC Edwards. While at RC Edwards , Folkman asked Ostendorff to locate a Consulting Inspector who was late for the pre-construction meeting being held at RC Edwards. Folkman knew that Ostendorff sometimes used his own vehicle and not always his assigned SDPC vehicle. Thus, weather or not Ostendorffs personal vehicle is at his office is no indication if Ostendorff is at work. Ostendorff never retracted his approved Friday off although he worked the entire day that approved for time off.

SDPC does not terminate employment for employees placing requests for time off in their supervisor's in-basket. That is what the employee is asked to do.

It was a fraudulent plan of Folkman and the other defendants that fell apart . The plan was devised the defendants who didn't "cover their tracks".

36.

That a letter dated April 6, 2011, from Hunt to Ostendorff informed Ostendorff that Hunt would present Ostendorff's letter requesting an appeal to the Board of Trustees.

37.

That a letter dated April 13,2011, from Hunt to Ostendorff stating that the Board of Trustees voted in public session to deny Ostendorff's request for a hearing.

38.

That in March 2011, Ostendorff applied for unemployment insurance benefits from South Carolina Department of Employment and Workforce (SCDEW).

39.

That in March 2011, Ostendorff was contacted by SCDEW regarding allegations by SDPC regarding Ostendorff's discharge. The allegations were read to Ostendorff by SCDEW over the

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telephone as SCDEW will not provide a written copy to a claimant. Ostendorff was told by SCDEW that the initials on the allegations were RB/RM.

40.

That Ostendorff responded in writing to SCDEW regarding the SDPC allegations in a letter dated March 27, 2011. The allegations were more of a post-termination performance evaluation in which the employee would have no notification of. Ostendorff responded to all allegations in which most ended with that SDPC would need to be specific and not just general statements.

41.

That the letter Ostendorff sent to Hunt on April 5, 2011, had attached a copy of Ostendorff's letter responding to SCDEW of SDPC's allegations. All Board Members were sent a copy of the letters.

42.

That Ostendorff received letter from SCDEW informing him that he was to be penalized fourteen weeks (14) of unemployment insurance benefits. Ostendorff sent an appeal request to SCDEW on April 7, 2011.

43.

That Ostendorff received a notice from SCDEW dated April 20, 2011, notifying Ostendorff of a SCDEW hearing to consider my appeal of the 14 week penalty. The hearing would be May 4, 2011.

44.

That during the May 4, 2011, SCDEW appeal hearing, Folkman gave false testimony under sworn oath.

The SCDEW hearing officer asked Folkman of what he (Folkman) said at the time when Folkman discharged Ostendorff.

Folkman replied to the affect that "I told him he took time off without authorization. At this point of the Building Program we cannot have employees taking time off."

Folkman produced Ostendorff's request for time off for Friday, February 25, 2011. On that form submitted at the hearing Ostendorff saw comments written request was denied and dated 2/28/2011.

Ostendorff asked Folkman in cross examination to the affect " if you weren't at work on Friday, how would you know if I was at work or not?"

Folkman presented no evidence, no witnesses but just replied " I asked somebody".

Folkman would not say who he asked simply because he didn't ask anyone. Even if he did ask someone, that someone's response would only be hearsay. Folkman was not prepared to come with an answer in advance of Ostendorff's question.

Folkman gave false testimony in the hearing that he discussed the time off request with Ostendorff but Ostendorff was already terminated the day before. That false testimony caused Ostendorff to be penalized 10 weeks of benefits of \$ 326.00 per week.

45.

That upon leaving the hearing room on May 4, 2011, Ostendorff found Folkman waiting on him. Ostendorff, though very surprised at Folkman's waiting, comforted Folkman of his false testimony. Folkman laughed and said "our conversation (discharge on March 1, 2011) wasn't recorded and it would be just your word against mine". Folkman followed Ostendorff to his car when he volunteered "Kelly Pew sent me here."

46.

That Folkman terminated Ostendorff on Monday, February 28, 2011, and the weight of the evidence presented to the triers-of-fact will show that to be factual. The weight of the evidence will show that Ostendorff was not a work on Monday, February 28,2011.

47.

That Folkman and the defendants devised a fraudulent plan to lure Ostendorff into the usual and accepted method of requesting time off then terminating him for taking unauthorized time off. The plan was flawed as it did not take into consideration that Ostendorff would be sick from work on the following Monday. Keeping to the devised plan, Folkman terminated Ostendorff on Monday, although he was not there.

Folkman told the Building Program employees during the usual Monday morning meeting on February 21, 2011, that he was going to take off the following Friday, February 25, 2011.

Folkman deliberately did not tell Ostendorff that Folkman was also going to take off Thursday afternoon February 24, 2011.

Ostendorff had used this same procedure for requesting time off for Fridays. Ostendorff would wait until at least until Thursday to request time off after he conferred with Folkman and the other two Project Managers. If nothing was pending for Friday, then Ostendorff would then submit the form to Folkman.

Sometimes Folkman was in his office, sometimes not when Ostendorff submitted the request form.

If Folkman was in his office, he would sign the request form. Ostendorff would then give the approved form to the clerk.

If Folkman was not in his office, Ostendorff would leave in the request form in Folkman's in-basket in his office. Folkman would then give the approved form to the clerk.

Folkman knew this was the certain method always used by Ostendorff.

Folkman never denied Ostendorff taking a Friday off.

Folkman never informed Ostendorff that Ostendorff would have to see the form with a signature approving the request before taking that time off.

Ostendorff discussed, as usual, with the Senior Project Manager on Thursday, February 24, 2011, if there was anything pending on Friday, February 25, 2011. If not, then Ostendorff would take Friday, February 25, 2011, off and would put the request form in Folkman's in-basket. The Senior Project Manager said ok to take the Friday off. The Senior Project Manager was delegated by Folkman to handle the Building Program when Folkman was out of the office.

48.

That Ostendorff was treated unequally as compared to the other two Project Managers. As examples, Ostendorff was required to be clean shaven every day, whereas another Project Manager would not shave for two or three days on a regular basis. Ostendorff was required to keep his assigned SDPC clean every day, whereas another Project Manager would have dirt covering almost half of his assigned SDPC vehicle for a week at a time without washing it.

28

49.

That Ostendorff in September 2012, requested of SDPC the home address or email address of Hunt, then the former Superintendent, so Ostendorff could request of Hunt the information he gathered during his investigation of Ostendorff's discharge. Hunt would not respond to give his address only that he wanted SDPC involved in giving me any information.

50.

That Ostendorff is defamed as his name in the public. All employment applications ask for reasons leaving previous employers and if ever been terminated or asked to resign.

51.

That the Building Program lacked transparency in funding and monies allocated and spent. Only a graph was produced showing the overall projected Program spending as compared to actual by the month. Ostendorff never saw an auditor or was ever audited for his projects to ensure no impropriety or any appearance of impropriety. It appeared to Ostendorff that the almost one-third billion dollar building program was lacking in oversight.

52.

That Folkman received a promotion shortly after discharging Ostendorff to Director of Operations along with his position of Building Program Administrator. Ostendorff is of information and belief that Folkman received a substantial pay increase at that new promotion. Pew was soon chosen as Superintendent. Ostendorff is of the information and belief, that Pew received a substantial pay increase at that new promotion. Both Folkman and Pew were rewarded for their efforts in discharging Ostendorff and providing cover for the Board's handling of public funds

Damages

Ostendorff seeks actual, compensatory, and punitive damages under breach and tort for wrongful discharge.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the wrongful discharge.

Ostendorff seeks actual and punitive damages under tort for negligence , gross negligence, reckless (willful) negligence for not reinstating and compensating Ostendorff.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud in the origination of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the fraud and intentional fraud of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for malice in backdating discharge date to reduce health insurance coverage.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud for the false testimony at the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the false testimony in the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for negligence, gross negligence, and gross(willful) negligence in subordinating false testimony at the SCDEW hearing.

Ostendorff seeks general damages for defamation. Special damages will be sought if discovery reveals monetary loss to Ostendorff due to fraudulent opinions given to prospective employers of Ostendorff's past work history and discharge.

Ostendorff demands of this Court a judgment for relief of his damages the sum of \$ 254,631.00 as well as punitive damages and other relief that the triers of fact (jury) and Court find proper and just to Ostendorff.

Ostendorff affirms :

That I have prepared this pleading and it is to the best of my knowledge

That I have contacted all defendants in writing and have acted in good faith to resolve this matter

February 28, 2014



Mark D Ostendorff
135 Cedar Creek Circle
Central, SC 29630

EXHIBIT 2

FORM 4

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

PICKENS COUNTY
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3900259

Mark D. Ostendorff

2014 JUL 10 P 3:45

School District of
Pickens County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
This matter came before the Court on Defendant's Motion to Dismiss Improperly Named Defendants. After hearing argument from all parties, the motion is hereby GRANTED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

Chris

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INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

[Signature]
Circuit Court Judge

2162 7/2/14
Judge Code Date

For Clerk of Court Office Use Only

7/9/14

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

Mark D. Ostendorff
35 Cedar Creek Circle, Central SC
ATTORNEY(S) FOR THE PLAINTIFF(S) 29630

Thomas Kennedy Barlow and Mary Allison Caudell
PO Box 11367, Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)
Cheryl Watson - Deputy
Harold P. Welborn, Sr. Pickens County
Paul B. Wickensmire Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

[Handwritten mark]

DEPOSITION TRANSCRIPT P. 60,
EXH. 3

MARK OSTENDORFF

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seven years is what he said. But he said the money's in the bank from that bond.

Q. well, just talking again about the five to seven years.

A. Yeah.

Q. If you did something that warranted your termination, I mean, they were allowed to terminate you; weren't they?

A. Well, sure. I mean, if you violate -- crimes and what have you, I can understand, yeah. Oh, yeah, it's not like -- no, you're not to be getting a check for five years just, you know, laying around.

Q. It's not guaranteed money?

A. Right.

Q. Not guaranteed money?

A. Right, it's just -- no.

Q. But you knew what at-will meant?

A. Yeah, I knew what at-will meant when that thing showed up. I sure did.

Q. Did you have a contract in Charlotte?

A. No.

Q. Were you an at-will employee in Charlotte?

A. Yes, but we did have a budget. The same situation. We knew what the budget was and anything else.

Q. Had you ever had a contract for a term of years



SCHOOL DISTRICT OF PICKENS COUNTY NOTICE OF INTENT TO EMPLOY

Name: Mark Ostendorff

Tentative Location: MAINTENANCE/OPERATIONS
Job Assignment: BUILDING PROJECT MANAGER

You are notified that the School District of Pickens County School intends to employ you in the tentative job assignment at the tentative location shown above for the 2010-2011 school year. The District reserves the right to change job assignments or locations upon notice to and consultation with the employee, and no expectation of continued employment beyond the specified period has been created by this Notice of Intent to Employ.

The language used in this document does not create an employment contract with the School District of Pickens County. This document does not create any contractual rights or entitlements. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this notice of intent to employ, create any contract of employment.

The following conditions are considered to be a part of this Notice of Intent to Employ.

1. Rate of Pay: 70,000.00 per year
2. This letter of intent is for the 2010-2011 fiscal year, which begins July 1, 2010 and ends June 30, 2011. Employee will arrange the start and end date with the immediate supervisor.
3. Number of Days: 240
4. You will be required to present necessary health information according to current District policy and DHEC requirements. A tuberculosis form must be on file for each person working in the school district.
5. You will be required to have all required federal documents completed and on file (i.e. I-9 forms).
6. Loss or reduction in any amount of anticipated or appropriated local, state or federal funding may, at the discretion of the District, require a percentage reduction of salary, a reduction in the period of employment and pro-rata reduction in salary, or a discontinuation of employment anticipated under this Notice of Intent to Employ.
7. If employed, the undersigned will be an AT-WILL employee whose employment may be terminated by the Superintendent whenever it is determined to be in the best interest of the District, upon notice to and consultation with the employee.

Please sign and return this Notice of Intent to the Central Services Office (Human Resources) by June 8, 2010.

Henry H. Hunt

5/28/10

Mark Ostendorff 6/3/10

Superintendent

Date

Employee

Date



36

DEPOSITION TRANSCRIPT PP. 76-77,
EXH. 4

MARK OSTENDORFF

1 money out of the general fund because there's not
2 enough money. And the only way they're going to get
3 this thing to work is put Bob Folkman over in
4 operations, to run operations also, so he can siphon
5 the money off to put into the -- because he would be
6 in charge of budgets, in operations. And he would
7 take that money and put it in operations, put it over
8 into the buildings that we didn't get finished.

9 Q. So that's the discussion --

10 A. Yeah.

11 Q. -- with Ken Simpson?

12 A. Right.

13 Q. Did you talk to Jimmy Gillespie?

14 A. I've never met Jimmy Gillespie. I've only met -- I
15 met two of them, and I have talked to Trotter.
16 Trotter was the one that's supposed to be the crazy
17 guy, but he's far from it.

18 Q. What's that?

19 A. He's far from crazy. He knows what he's doing, in my
20 opinion.

21 Q. I think we'll get to that chronologically in a little
22 bit.

23 A. Yeah, okay.

24 Q. Back to this exhibit here, Exhibit 4, which is the
25 December 7, 2010 letter.

1 A. Uh-huh.

2 Q. When you get this letter, your understanding is that
3 you're done on June 30, 2011. That's going to be
4 your last day at that point?

5 A. Tentatively. We know it's not going to -- we know
6 they can't do it without us. We know that. And
7 that's going to change. We all knew that we were
8 probably going to be around, as long as there's
9 money. If the money's gone, of course we are gone,
10 because they can't write you a bad check. As long as
11 there was money, we were going to be there.

12 Q. The letter doesn't say that, though. Right?

13 A. Right, the letter doesn't say it.

14 Q. Did you have any discussion with anybody other than
15 Ken Simpson about that letter, about the December
16 7th --

17 A. I probably have just joked with the contractors that
18 we're supposed to go, all of us are getting the ax.

19 Q. Was that something that the contractors were privy to
20 otherwise, or not?

21 A. I don't really know. I don't know if anybody's told
22 them other than us.

23 Q. What's your understanding of how they've continued to
24 work on the buildings after you and the other project
25 managers were gone?

MEMORANDUM



The School District of Pickens County
Human Resources Services
Curtis A. Sidden Administration Building
PHONE: 397-1000 FAX: 855-8159

December 7, 2010

Via Hand Delivery

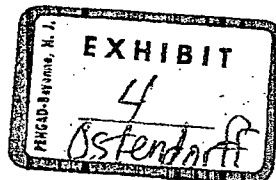
Dear Mark Ostendorff:

Due to scheduled completion of certain Building Fund projects, your employment with the School District of Pickens County will end on June 30, 2011. For this reason, you will not be receiving a letter of intent for the 2011-2012 school year. I wanted to inform you early, so you can begin planning. We want to thank you for your contribution to the successful completion of these projects, and wish you the best as you pursue other career opportunities. If you have any questions, please contact Dr. Kelly Pew at 397-1036.

Sincerely,

A handwritten signature in cursive script that reads 'Henry H. Hunt'.

Henry H. Hunt, Ph.D.
Superintendent

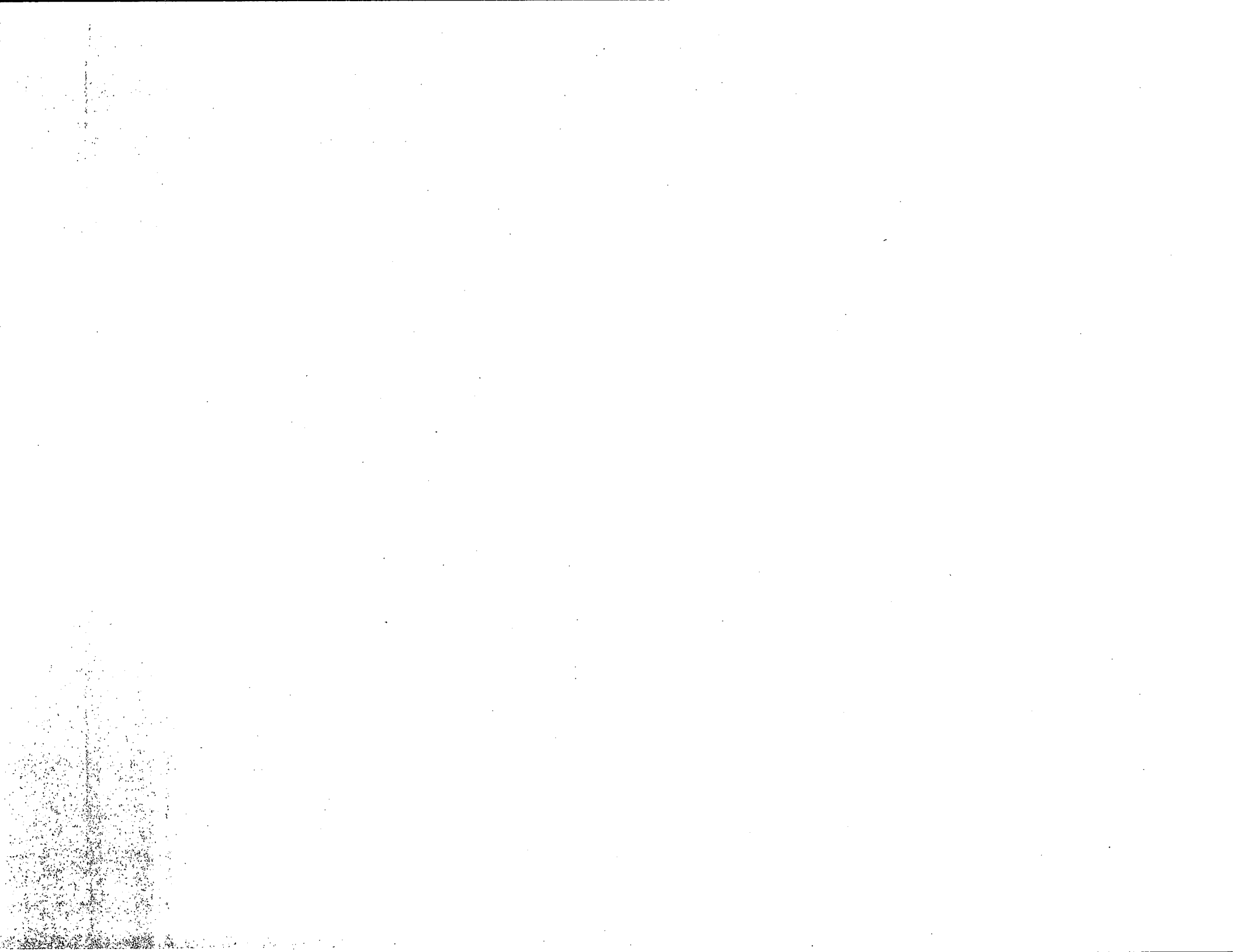


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DEPOSITION TRANSCRIPT PP. 123-

124, EHX. 7, EHX. 10

MARK OSTENDORFF



1 A. No. No, I'd not seen that. He didn't give that to
2 me that Tuesday, telling me that.

3 Q. But could it have been in existence, and he just
4 didn't give it to you?

5 A. I have -- I object to that, because that's
6 speculation. I have no idea. I'm sure -- it depends
7 on who had custody of the document. If it was
8 already sent over to personnel, then, yeah.

9 Q. So your objection is you don't want to speculate --

10 A. Right.

11 Q. -- as to whether he had it or not?

12 A. Yeah.

13 Q. You don't have any evidence that he doctored this up
14 and made this right before the unemployment hearing?

15 A. I couldn't have any idea.

16 Q. That's fine, okay. So then you went to Dr. Pew and
17 had that discussion with her?

18 A. Uh-huh.

19 MR. BARLOW:

20 And then let me go ahead and mark this one.
21 Defendant's Exhibit No. 7 marked for identification
22 (3/16/11 Correspondence)

23 EXAMINATION RESUMED BY MR. BARLOW:

24 Q. Okay, Mark, I'm going to show you Exhibit 7.

25 A. (Reviewing document). Yes, I remember this.

- 1 Q. When did you get this?
- 2 A. Henry Hunt handed it to me, when I met with him.
- 3 Q. And you met with Henry Hunt on March 17th?
- 4 A. Yeah, I think that probably -- I'll have to assume.
- 5 Right off the top of my head, I'm not sure. But,
- 6 yeah, that would be close to it.
- 7 Q. You don't have any reason to dispute that, as being
- 8 the date you met with him?
- 9 A. The date, no.
- 10 Q. No, you don't?
- 11 A. I do not. And I will have -- he'll have notes he
- 12 made. And I don't know if I made any notes on that
- 13 discussion with him or not.
- 14 Q. Did you make any notes of your first conversation
- 15 with Bob Folkman, in which he told you you were going
- 16 to be terminated?
- 17 A. Yes, because I -- and I've got these handwritten
- 18 notes or either it was -- it was something combined
- 19 maybe with Kelly Pew's discussion with her involved
- 20 on that March 1st.
- 21 Q. You did a writeup after that or something?
- 22 A. I did just -- jotted some notes, because I answered
- 23 this letter to her or either -- I don't remember who
- 24 I addressed it to. It was the -- maybe it was the
- 25 school board members or maybe it was to Henry Hunt.



School District of Pickens County

Building success beyond the classroom.

March 16, 2011

Mr. Mark Ostendorf
PO Box 1486
Greenville, SC 29610

Dear Mr. Ostendorf,

This letter is to confirm that Mr. Bob Folkman terminated your employment with the School District of Pickens County effective March 1, 2011. He met with you on February 28, 2011 to discuss specific performance concerns that led to the recommendation for termination. The performance concerns include taking time off without approval, failing to maintain established work hours and not completing assigned tasks. If you have questions regarding the conference held with Mr. Folkman or the contents of this letter, please contact me. Dr. Hunt is scheduled to meet with you on Thursday, March 17, 2011 at 9:00 am to further discuss this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kelly U. Pew'.

Kelly U. Pew, Ph.D.

C: Henry H. Hunt, Ph.D., Superintendent
Mr. Bob Folkman
Personnel File



Human Resource Service

1348 Griffin Mill Road • Easley, SC 29640-6997 • P 864-855-8150 • F 864-855-2011

www.pickens.k12.sc.us

Large handwritten initials, possibly 'AA', written in black ink.

A handwritten mark or signature, possibly a stylized 'A' or '4', written in black ink.

February 11, 2014.

To: School District of Pickens County
School Board of Pickens County
Alex Saitta
Judy Edwards
Jimmy Gillespie
Herbert Cooper
Jim Shelton
Ben Trotter
Kelly Pew
Henry Hunt
Robert Folkman

Re: Mark Ostendorff employment termination

Gentlemen:

This letter is a final demand for damages from my wrongful discharge for the dollar amount of \$268,881.00. The dollar amounts are from :

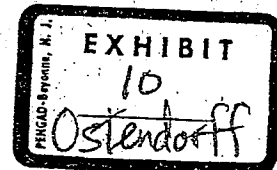
- 1) Lost wages of \$ 132,481.00
- 2) Lost retirement income of \$ 134,400.00

The lost wages are for 2 years and 4 months at \$ 70,000.00 salary per year., less \$30,481 that I received from unemployment insurance and employment income. I was assured employment at least 5 years, up to 7 years, for the duration of the building program. The lost retirement is lost retirement of \$ 400.00 per month for an estimated life expectancy to age 88. This amount is close to the amount I would have added to my NC retirement plan had I not left Charlotte Utility Department to come to SDPC. Based on extensive efforts to find any employment with SC Retirement System participation, I cannot expect to find any employment that I can financially survive on much less what I was making at SDPC or Charlotte Utilities. There is also a new issue of 8 years of contribution to receive benefits. My age now is 60.

My damages would need to increase or decrease based on tax affect and present value of money.

If we cannot come to an agreement to settle, I will file a lawsuit against all persons listed above either collectively or individually. If I sue individually, any defendant can cross claim anyone else.

If I have to file the lawsuit, I will file it on February 25, 2014. I will not let any statute of limitations become an issue. Even though I made claims for settlement and also SDPC appeal after March 1, 2011, and the last of loss of unemployment insurance was in May 2011, it is only prudent to file by February 25th.



A waiver of statute of limitations would be acceptable if you want to settle. The waiver will need to meet SC statutes and also a clear statement of intent to settle. The waiver would have to be from each person listed above. I would need to receive the waiver in time to assure it will satisfy legal requirements. Those not on a waiver will be sued on the February 25, 2014 date.

If litigated, I will ask for both actual and punitive damages. I will also ask for any attorney fees and tax consequences.

Once a lawsuit is filed, it cannot be sealed from the public domain.

I will demand a jury trial to be the triers of fact. If a judge ever dismisses the case or any part of it under rule 56 (c), I will appeal and if necessary to the US Supreme Court. It will get overturned by Anderson v. Liberty Lobby. The appeal process can easily take 7 years to be remanded to the original trial court. Your name will be a party to the lawsuit for its duration. I am currently in the appeal process for 2 appeals with SunTrust Mortgage which is now 6 years old and I expect at least another 3 years if I have to go to the US Supreme Court.

If you look on the York County Clerk of Court's website, you can look up my name. You will clearly see that I am very experienced with litigation. It is a reflection of being in the construction industry. I can assure you that there is nothing advantageous with having your name on a lawsuit for any length of time.

The issues to justify any Summons and Complaint at a minimum will be:

A) Regarding my discharge-

- 1) Wrongful discharge- this will include Folkman, Pew, and any others responsible for my discharge. There is no basis to terminate a public employee because he was having a conversation with a friend of a Board member about the possible shortfall of construction budgets with public funding and application of Act 388. Wrongful discharge is both actual and punitive damages under tort.
- 2) Civil Conspiracy related to my discharge - this will include Folkman, Pew, at least one Board member. Civil Conspiracy is both actual and punitive damages under tort.
- 3) Willful negligence - by all Board members and Pew and Hunt if any information provided to the Board on my appeal and was against reinstating my employment and compensation for wrongful discharge.
- 4) Intentional fraud- Evidence will show that Folkman used fraudulent intent to have me apply for time off when he deliberately made himself unavailable without notice to approve in advance. This was likely Pew and at least one Board member. Intentional fraud is both actual and punitive damages.
- 5) Civil conspiracy- That Folkman and likely Pew and at least one Board member planned the fraudulent strategy to discharge me. Civil conspiracy is both actual and punitive damages.

- 6) Retaliatory discharge- by Bob Folkman and at least one Board member. Retaliatory discharge is both actual and punitive damages. It also includes damages emotional stress, etc.
 - 7) Malice - Folkman terminated me on Tuesday March 1 but back dated it to Monday February 28. This meant that I had one less month coverage of health insurance which I needed for my chronic hayfever treatment.
 - 8) Intimidation- Folkman intimidated fellow employees on Monday February 28 and reinforced that intimidation on Tuesday March 1 by terminating me. That strategy was likely in collusion with at least one Board member.
- B) Regarding Bob Folkman's false testimony under oath at my unemployment insurance hearing in which I was penalized ten weeks based on his false testimony-
- 1) Intentional fraud - Folkman presented a fraudulently contrived document to supplement his false testimony. Intentional fraud is both actual and punitive damages under tort.
 - 2) Civil conspiracy - this involves at least Folkman and Pew. Civil conspiracy is both actual and punitive damages under tort.
 - 3) Willful negligence - this will include Pew, Hunt, and all Board members. All knew or should have known that Folkman was going to provide false testimony and intentional fraud at the hearing. Willful negligence is both actual and punitive damages under tort.
- C) Defamation of character- possible actual damages for future employment with other employers. Also, all employment applications ask if ever been terminated or forced to resign or ask to give reason why left an employer:
- D) Any statute that requires employers to protect the public employee in carrying out his duty. Also any SC or US Constitutional issues.

The allegations on the complaint will be explicit and accompanied by my affidavits to the facts to assure the case is not dismissed by a prejudicial Judge. Any information each person wishes to provide me, if credible and timely, may affect my allegations against that person. My mailing address is:

Mark Ostendorff
 135 Cedar Creek Circle
 Central, SC 29630

My telephone number is (864)640-3340. Leave a voicemail as I do not answer any unrecognized number.

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If you wish to settle, there could be options agreeable to me:

- 1) Pay me back wages of \$70,000.00/yr for the 2 years and 4 months, and make the required contributions to the SC Retirement System. Reinstatement me with a minimum wage employment for only as long as it takes to be in active standing of 5 years of previous employment. I will agree to leave as soon as it is certain that I will start receiving my monthly retirement benefit for my 5 years of service at the AFC of \$70,000.00. This would have to be consistent with SC Retirement System's policies. I must be employed at the time I return the money that I earlier had to withdraw. We can adjust to reflect my previous income of the 2 year, 4 month period.
- 2) Pay me back wages of 2 years and 4 months, then the \$400.00/month each month as long as I am alive. That could be 100 more years or 1 day. This method will reduce the net tax I owe over a lump sum amount. Again, adjust to my previous income of the 2 year, 4 month period.
- 3) Pay over time the both the back wages of \$70,000.00/yr for the 2yr and 4 months, along with the \$400.00/month retirement amount. This too would reduce the net tax I would owe over a lump sum amount.
- 4) I am open to any other options.

A settlement would make moot any issues and no longer a basis for a lawsuit as I would no longer have been damaged.

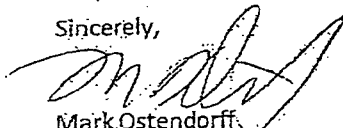
I am not asking for anymore than the minimum I have lost.

You may want to consider using any insurance coverage policies you may have to settle. If I win in lawsuit, usually a policy will pay court ordered judgment damages of negligence but they can sue you for that amount and also you have to pay for their attorney fees when they sue you. No policies will pay for court ordered judgment damages from fraud, deceit, or malice, thus making you pay the judgment.

I hope we can come to a quick agreement. Time is of the essence. If we cannot come to an agreement and no waiver made, I will file the lawsuit this month on the 25th.

This is the same letter to all above persons. I will send one letter to each person addressed to the School District's physical location. I will also mail a duplicate to each person if I have their other mailing address.

Sincerely,


Mark Ostendorff

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DEPOSITION TRANSCRIPT PP. 57-58

MARK OSTENDORFF

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sign that.

Q. Do you have any document at all, from Reggie, that says you were employed for a term of five years?

A. No.

Q. Is there any email or anything that would say that at all?

A. No, but there was numerous conversations. We had a couple meetings that we were all going to be gone except for Jaime. Jaime was supposed to take over the operations after that.

Q. What if they don't have enough money for your position? Can they not --

A. Well, that was -- because I asked Reggie where's the money for five years. He said it's in the bank. Because I asked him if it was going to be a bond referendum. And he said no, we've already got the bond under that purchase payment plan. They got the monies in the bank.

Q. Does anybody at the district have a five-year contract? Are you aware of anybody?

A. I have no idea.

Q. Are you aware of anybody that has ever been hired to a five-year contract at Pickens County School District --

A. None that I know of.

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- 1 Q. -- in the building program?
- 2 A. None that I know.
- 3 Q. Bob Folkman was not?
- 4 A. I don't have no idea of Bob Folkman's situation.
- 5 Q. You don't? You don't know if he signed the exact
- 6 same thing you did?
- 7 A. I have no earthly idea. It was strange. His
- 8 employment was strange to me. He said he wasn't in
- 9 the retirement plan. That was just -- it made no
- 10 sense.
- 11 Q. Were you in the state retirement plan?
- 12 A. Yes.
- 13 Q. So that was taken out of your check --
- 14 A. Right.
- 15 Q. -- along with all the other withdrawals, deductions?
- 16 A. Right, yes.
- 17 Q. Normal state and federal taxes, and all that?
- 18 A. Right.
- 19 Q. Is it your contention that things were taken out of
- 20 your check that shouldn't have been?
- 21 A. No.
- 22 Q. Do you know if Otis had the same contract, notice of
- 23 intent to employ?
- 24 A. I can't say if he actually had the same one. We all
- 25 signed it, I think, in the meeting room, because this

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DEPOSITION TRANSCRIPT P. 61

MARK OSTENDORFF

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before --

A. No.

Q. -- with any employer?

A. Huh-uh. I don't think so, no. I might have had one with HUD. I can't remember. But you're still a contract employee.

Q. Sure. And HUD could stop working with you anytime they wanted?

A. Right. I mean, yeah, they just -- you really -- you were paid by the banks if you did an inspection.

Q. Sure. You don't know how much the other project managers were getting?

A. I'm thinking Otis made 71. I'm just guessing, because I think -- and Jaime was making 75.

Q. Do you recall having further discussions after that June email with Bob Folkman, about your appearance at work and --

A. Oh, this?

Q. -- the appearance of the truck? Look at Exhibit 2. I believe it was Exhibit 2.

A. My glasses on will help.

Q. Yes, after 1 and 2.

A. Right. This one -- I kept this taped in front of my desk.

Q. That being Exhibit 2?

DEPOSITION TRANSCRIPT PP. 152-
153

MARK OSTENDORFF

- 1 A. Right.
- 2 Q. Who is she covering for?
- 3 A. I don't know. I'm only guessing.
- 4 Q. And why is she covering for them?
- 5 A. Again I don't know the reasons why.
- 6 Q. That's fine, I mean, if that's the answer.
- 7 A. Uh-huh.
- 8 Q. Bob Folkman. I guess you're suing him individually
- 9 because you think he has something to gain by getting
- 10 rid of you?
- 11 A. That's correct.
- 12 Q. And what is his individual gain by getting rid of
- 13 you, as opposed to his gain as an employee of the
- 14 school district by not having to deal with you
- 15 anymore?
- 16 A. Because I'm not there to look at him. That's how he
- 17 gains. I might gain knowledge of what he's doing on
- 18 something unlawful.
- 19 Q. Do you have any evidence that he was doing anything
- 20 unlawful?
- 21 A. His -- the way he was handling business was of
- 22 concern. And he was meeting with -- I think it was
- 23 the Liberty High School, how he's resolving the final
- 24 inspection and negotiating with the contractor, the
- 25 site. And he was meeting with him personally, but

SS

1 didn't ask me to go. I've never heard of any time
2 one person spending public money without a witness.

3 Q. When was that meeting?

4 A. I don't know. But he said he was meeting and had met
5 with him, with Buddy. Buddy's one of the partners
6 there.

7 Q. Buddy was one of the contractors?

8 A. Yeah. I can't remember. But that's -- why he has to
9 meet with them individually, that was a concern to
10 me. That's just not the way you do business with
11 public money.

12 Q. Do you know anything else about that meeting --

13 A. No, I do not.

14 Q. -- or what transpired at it?

15 A. Huh-uh. He might have told Buddy he wasn't giving
16 him a dime, though. You know, I don't know. It's
17 just the telltales. It just does not look -- I mean
18 nothing looks like this makes any sense to a
19 reasonable person. And there again, as I said, there
20 may have been legitimate reasons why they didn't
21 rehire me and nobody's done anything wrong. It's
22 just that Bob Folkman couldn't stand me, maybe. I do
23 not know that.

24 Q. That could be part of it.

25 A. Oh, that's -- yeah. If that's it, then -- he can't

DEPOSITION TRANSCRIPT PP. 142-

143

MARK OSTENDORFF

1 no, he hadn't heard of anything.

2 Q. Do you have any reason to believe that Bob Folkman
3 has given you a bad reference to anybody?

4 A. The only thing is that I can't get a dadgum job.
5 It's just -- I can do virtually anything from
6 footings to financial statements and willing to work
7 for 10, \$12 an hour, and I still can't get anything.

8 Q. But nobody has told you that, for example?

9 A. No.

10 Q. That I can't hire you, because Bob Folkman said --

11 A. Yeah, right.

12 Q. -- you were not --

13 A. I can't find anything. I haven't sent out any formal
14 requests other than through, you know, the school
15 district, whether anybody's inquired. But sometimes
16 -- you know, you were doing good until you wrote us
17 that letter asking. So I just don't know. And I'm
18 going to have to -- at some point I will, because
19 things just aren't making sense, especially like down
20 in Columbia, trying to get on one of the new plants
21 down there.

22 Q. But as you sit here today, you don't have any --

23 A. Yeah, I don't know of any.

24 Q. -- knowledge of that?

25 A. Nobody's called me up and said, hey, man, I can't

1 hire you because he gave me a bad reference. A lot
2 of people just do not want to get involved in stuff
3 like that.

4 Q. How about as far as anybody else at the school
5 district? Has anybody else told you that anybody
6 else from the school district has given you a bad
7 reference?

8 A. No. I hope not, but --

9 Q. Let's talk about where you have applied for jobs
10 since you've been gone from the school district.
11 First of all, are you working now?

12 A. I work part-time for Food Lion in Seneca.

13 Q. What are you doing for them?

14 A. I basically do janitor, maintenance, stocking.
15 whatever they want me to do. I'm, you know, low
16 rung, bottom rung employee.

17 Q. How long have you been working over there?

18 A. Two years.

19 Q. And what do they pay you over there?

20 A. I really don't know. Nine dollars an hour, or
21 something like that.

22 Q. Is there opportunity for advancement there, at all?

23 A. I don't think I could advance there as long as I
24 live. I mean, in the grocery store business, you
25 have to be there a really long time. No, there's --

DEPOSITION TRANSCRIPT P. 140

MARK OSTENDORFF

1 A. They were, when I was talking to them. I don't know
2 if they are now. Because like I said, I'm not up to
3 date on --

4 Q. Right. Did you talk to anybody out of the community
5 about your termination?

6 A. Oh, yeah, I talked to everybody in the world.

7 Q. You did?

8 A. Any job interviews.

9 Q. How about not job interviews?

10 A. I think I talked to my old boss up in Charlotte,
11 because I had to ask him if I need him for a
12 reference, for a job reference. So I made sure I
13 kept in touch with him. And, you know, he worked
14 government and he worked for City Council of Kings
15 Mountain. He knows how it goes.

16 Q. Who is he?

17 A. He's Tom Howard.

18 Q. Tom Howard?

19 A. Yeah, and I don't know if he's still living in
20 Charlotte or not. I've got his number somewhere, but
21 he retired from Charlotte-Mecklenburg. Worked with
22 him virtually the whole 14 years there.

23 Q. So he serves as a reference for you?

24 A. Yeah, I use him for a reference on a job application.
25 Some of them did ask the last employer. I mean last

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DEPOSITION TRANSCRIPT P. 156

MARK OSTENDORFF

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Q. Is that it?

A. That's all I got on her, yeah.

Q. What is your evidence of intentional fraud here, number 4?

A. Okay, because Mr. Folkman, he done the same process of taking days off. And then he fires me on Monday, based on taking that Friday off, and he didn't know if I took that Friday off or not.

Q. What is your reason for thinking that he didn't know that you took it off?

A. I'm going to go by on what his testimony, under sworn oath is. That for the insurance, is that --

Q. For unemployment?

A. Yeah, unemployment insurance. Yeah. I asked Folkman. I said how did you -- Bob, how did you -- to the effect, how did you know if I was there on that Friday, if you weren't there on that Friday? He said, "I asked somebody," and wouldn't provide a name, who he asked. And that would be hearsay anyway. So you terminate someone based on what somebody else said? And they wouldn't have known if I was there or not, anyway.

Q. Well, it's pretty simple for him to figure out if you were there or not; isn't it?

A. No.

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DEPOSITION TRANSCRIPT P. 159

MARK OSTENDORFF

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1 car being there or me not being in the office. And
2 he knows that. That's not -- that was convenient,
3 and he never asked who it was. I mean he never
4 offered who the person he even asked on that Monday.

5 Q. But you don't deny that you were out?

6 A. No, I don't deny it. He didn't know it. He never
7 even -- he's never known it until we talked about it
8 at the unemployment insurance hearing.

9 Q. But you've never denied that you were out either,
10 right?

11 A. No, I never denied it.

12 Q. Because you were out, I mean, you didn't come in
13 at --

14 A. Right.

15 Q. -- all that day, right? Correct?

16 A. Yeah, that's correct, I did take that day off. But
17 he didn't know if I did or not. That's the point I
18 was trying to make.

19 Q. I understand your point. I just don't understand the
20 relevance of the point.

21 A. He --

22 Q. Explain --

23 A. Okay, back up. He's firing me for not being there,
24 when he doesn't know if I'm there or not. He's fired
25 me because, according to this, if you get down to --

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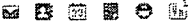
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Bridgestone Spring
Promotion

* Mark D. Ostendorff v. School District of Pickens C

People

* **Thomas K. Barlow**
To: lalfordj@sccourts.org
CC: markostendorff@yahoo.com

Apr 21 at 3:49 PM

Please see attached.

THOMAS K. BARLOW
CHILDS & HALLIGAN, PA
THE TOWER AT 1301 GERVAIS ST., SUITE 900
PO BOX 11367
COLUMBIA, SC 29211-1367
PHONE: (803) 254-4035
FAX: (803) 771-4422

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* **Mark Ostendorff** Apr 22 at 11:33 AM
To: Thomas K. Barlow, lalfordj@sccourts.org

Please see the attached letter dated April 22, 2015.

Thank you,
Mark Ostendorff

Show message history

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Reply, Reply All or Forward | More

* **Mark Ostendorff** Today at 10:13 PM
To: Thomas K. Barlow, lalfordj@sccourts.org

Please see the attached letter dated April 23, 2015.

Thank you,

Scroll for Important Safety Information and Indication
IMPORTANT SAFETY INFORMATION
Some people have had changes in behavior, hostility, agitation, depressed mood, suicidal thoughts or actions while using CHANTIX to help them quit smoking. Some people had these symptoms when they began taking CHANTIX, and others developed them after several weeks. For more information, see the Medication Guide.

66

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

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Tyler R. Turner
Mary Allison Caudell

April 21, 2015

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
++ Also admitted in Georgia

VIA E-MAIL

The Honorable Lee S. Alford
Moss Justice Center
1675-1J York Highway
York, SC 29745-7434

RE: Mark D. Ostendorff v. School District of Pickens County
C.A. No. 2014-CP-39-00259

Dear Judge Alford:

I am writing in response to your email following the April 1, 2015 summary judgment hearing in this case, in which you requested that the parties clarify their positions on whether the Plaintiff has stated a claim for breach of an alleged five-year oral contract. The School District submits that Plaintiff has not stated a claim for breach of contract and summary judgment is appropriate for the following reasons.

First, Plaintiff's complaint, which I have attached to this letter, does not assert a breach of contract claim. Although Plaintiff is appearing *pro se*, he is still required to follow the rules of civil procedure and is held to the same standards as if he had an attorney. *See State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 n. 5 (2003) (finding a *pro se* litigant has full responsibility for complying with substantive and procedural requirements of the law); *Goodson v. American Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). The complaint alleges only tort claims and no reading of the complaint would have put the School District on fair notice that Plaintiff was pursuing a breach of contract action. As I represented to the Court during oral argument, Plaintiff claimed at deposition that he had been told that his employment with the School District was to be for "at least five years," and as such, I was prepared to address a breach of contract claim at the hearing. The School District has not agreed to any amendment of the complaint to add a breach of contract theory or to try that issue by consent. Mr. Ostendorff's April 16, 2015 reply to the Court's inquiry confirms that he was pursuing tort theories, rather than a breach of contract theory.

Second, even if Mr. Ostendorff had properly alleged breach of a five-year oral employment contract, his mere performance of his job duties for several years would not save that claim from the statute of frauds. Courts applying South Carolina law have held that part performance of an alleged oral employment contract that cannot be completed in a year does not

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take the alleged contract out of the statute of frauds. See *Computer Servicers, Inc., v. Beacon Mfg. Co.*, 328 F. Supp. 653, 655 n. 3 (D.S.C. 1970) (citing *Hillhouse v. Jennings*, 60 S.C. 373, 38 S.E. 599 (1901)), *aff'd*, 443 F.2d 906 (4th Cir. 1971). The Georgia Court of Appeals explained the rationale for refusing to recognize part performance in relaxing the statute of frauds in the context of an alleged oral employment contract as follows:

An oral employment contract for a definite term not to be performed within one year is within the statute of frauds . . . Although the statute of frauds does not apply where there has been such part performance of the contract "as would render it a fraud of the party refusing to comply if the court did not compel a performance," the part performance required to obviate the statute of frauds must be substantial and essential to the contract. Thus, oral employment contracts for longer than one year are unenforceable unless there has been part performance that is consistent with the presence of a contract and inconsistent with the lack of a contract.

Ford Clinic, Inc. v. Potter, 540 S.E.2d 275, 277-78 (Ga. Ct. App. 2000) (*emphasis added*).

This squares with South Carolina courts' consistent pronouncements that part performance must be "clearly and unequivocally referable to the contract" and not some other possible relationship to take the matter out of the statute of frauds. See *Fesmire v. Digh*, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009); *Stackhouse v. Cook*, 271 S.C. 518, 523, 248 S.E.2d 482, 484 (1978); *Aust v. Beard*, 230 S.C. 515, 523, 96 S.E.2d 558, 562 (1957). Thus, a plaintiff's actions of coming to work and performing a job for the employer are not sufficient to establish part performance because they are not inconsistent with employment terminable at will—the default rule in South Carolina—and are not "clearly and unequivocally referable" to the alleged employment contract. A contrary rule would eviscerate the statute of frauds and allow any at-will employee who has worked for any period of time to claim and attempt to enforce an oral contract of employment greater than a year.

Finally, even if Mr. Ostendorff had alleged and could prove a five-year oral contract, as a matter of law, that contract necessarily would have contained a provision making his employment terminable at will. In *Cape v. Greenville County School District*, 365 S.C. 316, 618 S.E.2d 881 (S.C. 2005), the plaintiff unsuccessfully argued that because she had a contract for a definite term, a specific contract provision allowing her to be terminated "at-will" was unenforceable and she could only be terminated for cause. The Supreme Court disagreed, holding:

An employment contract for an indefinite term is presumptively terminable at will, while a contract for a definite term is presumptively terminable only on just cause. These are mere

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The Honorable Lee S. Alford
April 21, 2015
Page 3

presumptions, however, which the parties can alter by express contract provisions . . . the parties have, by an express contract provision, altered the presumption that employment for a definite term is terminable only upon just cause, and replaced that presumption with an at-will termination clause.

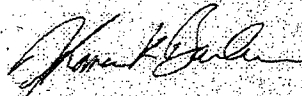
Cape, 365 S.C. at 318-19, 618 S.E.2d at 882-83.

Eight months prior to the termination of his employment in March 2011, Mr. Ostendorff signed the attached "**School District of Pickens County Notice of Intent to Employ.**" Section 7 of this document clearly states: "7. If employed, the undersigned will be an AT-WILL employee whose employment may be terminated by the Superintendent whenever it is determined to be in the best interest of the District, upon notice to and consultation with the employee." Of course, this document also states that "No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this notice of intent to employ, create any contract of employment," thereby further negating Plaintiff's "oral contract" argument. Even assuming that Plaintiff had earlier agreed to a five-year oral contract of employment, the June 2010 Notice of Intent to Employ constitutes a valid, bilateral amendment of that prior agreement that includes an at-will termination provision. Thus, Plaintiff cannot state a breach of contract claim for the termination of his at-will employment.

For the foregoing reasons, the School District is entitled to summary judgment not just on Plaintiff's tort claims, but to the extent he may have alleged any contract-based claim.

We appreciate the Court's consideration of our position in this matter, and please do not hesitate to contact me if any additional information is needed.

Sincerely yours,



Thomas K. Barlow
tbarlow@childs-halligan.net

/lmc
Attachments

c: Mr. Mark D. Ostendorff
Mary Allison Caudell, Esq.

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SCHOOL DISTRICT OF PICKENS COUNTY NOTICE OF INTENT TO EMPLOY

Name: Mark Ostendorff

Tentative Location: MAINTENANCE/OPERATIONS
Job Assignment: BUILDING PROJECT MANAGER

You are notified that the School District of Pickens County School intends to employ you in the tentative job assignment at the tentative location shown above for the 2010-2011 school year. The District reserves the right to change job assignments or locations upon notice to and consultation with the employee, and no expectation of continued employment beyond the specified period has been created by this Notice of Intent to Employ.

The language used in this document does not create an employment contract with the School District of Pickens County. This document does not create any contractual rights or entitlements. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this notice of intent to employ, create any contract of employment.

The following conditions are considered to be a part of this Notice of Intent to Employ.

1. Rate of Pay: 70,000.00 per year
2. This letter of intent is for the 2010-2011 fiscal year, which begins July 1, 2010 and ends June 30, 2011. Employee will arrange the start and end date with the immediate supervisor.
3. Number of Days: 240
4. You will be required to present necessary health information according to current District policy and DHEC requirements. A tuberculosis form must be on file for each person working in the school district.
5. You will be required to have all required federal documents completed and on file (i.e. I-9 forms).
6. Loss or reduction in any amount of anticipated or appropriated local, state or federal funding may, at the discretion of the District, require a percentage reduction of salary, a reduction in the period of employment and pro-rata reduction in salary, or a discontinuation of employment anticipated under this Notice of Intent to Employ.
7. If employed, the undersigned will be an AT-WILL employee whose employment may be terminated by the Superintendent whenever it is determined to be in the best interest of the District, upon notice to and consultation with the employee.

Please sign and return this Notice of Intent to the Central Services Office (Human Resources) by June 8, 2010.

Henry H. Hunt

5/28/10

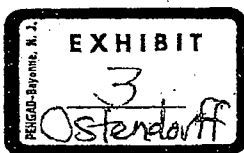
Superintendent

Date

Mark Ostendorff 6/13/10

Employee

Date



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2014-1015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Mark D. Ostendorff

2014 FEB 28 P 1:31

Plaintiff

JUDICIAL CIRCUIT

v.

CASE NO.

2014-CP- 39-259

School District of Pickens County

SUMMONS

Board of Trustees, School District of

Pickens County

Alex Saitta

Judy Edwards

Jimmy Gillespie

Herbert Cooper

Jim Shelton

Ben Trotter

Kelly Pew

Henry Hunt

Robert Folkman

Defendants

Herbert Cooper
241 Pendleton Road
Clemson, SC 29631

_____, you are to appear and defend this action within 30 days after the service of the attached complaint to the Plaintiff and failure to do so judgment by default

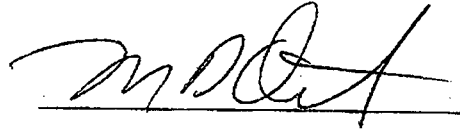
71

Will be rendered against you for the relief demanded in the complaint.

The Plaintiff's mailing address is: 135 Cedar Creek Circle

Central , SC 29630

February 28, 2014



Mark D Ostendorff
Plaintiff, Pro Se
(864) 640-3340

Defendant and address:

School District of Pickens County
1348 Griffin Mill Road
Easley , SC 29640

Board of Trustees, School District of Pickens County
1348 Griffin Mill Road
Easley, SC 29640

Alex Saitta
112 Fairway Drive
Pickens , SC 29671

Henry Hunt
105 Inverness Way
Easley , SC 29642

Judy Edwards
104 Tanglewood Drive
Easley , SC 29642

Robert Folkman
200 Loch Lomond Drive
Pickens, SC 29671

Jimmy Gillespie
413 Chastain Road
Central, SC 29630

Herbert Cooper
241 Pendleton Road
Clemson , SC 29631

Jim Shelton
1510 Hunt's Bridge Road
Easley, SC 29640

Ben Trotter
520 Rotterdam Road
Easley , SC 29640

Kelly Pew
1348 Griffin Mill Road
Easley, SC 29640

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2014 FEB 28 P 1:31

Mark D Ostendorff

Plaintiff

v.

School District of Pickens County

Board of Trustees, School District of
Pickens County

Alex Saitta

Judy Edwards

Jimmy Gillespie

Herbert Cooper

Jim Shelton

Ben Trotter

Kelly Pew

Henry Hunt

Robert Folkman

Co-Defendants

JUDICIAL CIRCUIT

Case No.

2014-CP- 39-259

COMPLAINT

WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

Comes now, Ostendorff, Plaintiff, to this Court, jury trial demanded, seeking recovery of monetary damages from injury caused to him by the above Co-Defendants. Ostendorff seeks damages for lost income from lost employment and lost retirement that he would be entitled to had he not been wrongfully discharged. Ostendorff was employed as a Project Manager in the Building Program for the School District of Pickens County.

Ostendorff also seeks monetary damages from the Co-Defendants in his loss of ten (10) weeks of SC Unemployment Insurance compensation. This damage to Ostendorff was caused by Robert Folkman

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knowingly providing false testimony under sworn oath at an appeal hearing in front of an Investigative Officer of the State of South Carolina from the Department of Employment and Workforce (SCDEW).

Ostendorff seeks monetary damages of the following dollar amounts:

Lost wages of \$ 132,481.00

Lost retirement of \$ 134,400.00 , less Ostendorff's contribution amount of 7.5% or \$ 12,250.00 equaling \$ 122,150.00

Lost Unemployment Insurance benefits of \$ 3,260.00

Ostendorff also seeks damages for defamation of character.

Ostendorff also seeks punitive damages, actual damages, reasonable attorney's fees, and any compensation that the Court or Triers -of -Fact (Jury) find due to Ostendorff.

Ostendorff seeks actual , compensatory, and punitive damages under tort.

Ostendorff , Plaintiff alleges:

1.

That Ostendorff was a public servant being employed by the School District of Pickens County, South Carolina.

2.

That defendants Saitta, Edwards, Gillespie, Cooper, Shelton, Trotter were Board Members of the Board of Trustees , School District of Pickens County at the time of Ostendorff's discharge.

3.

That defendant Hunt was the Superintendent of the School District of Pickens County at the time of Ostendorff's discharge.

4.

That defendant Pew was the Director or Human Relations for the School District of Pickens County at the time of Ostendorff's discharge.

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5.

That Folkman was the Building Program Administrator and Ostendorff's supervisor at the time of Ostendorff's discharge.

6.

That the defendants engaged in fraud, intentional fraud, civil conspiracy, false testimony under sworn oath, subordination of false testimony under sworn oath, negligence, gross negligence, reckless (willful) negligence, retaliatory discharge, unequal treatment, and wrongful discharge of Ostendorff's employment with the School District of Pickens County (SDPC).

7.

That the defendants damaged Ostendorff for reasons of personal gain, political and, or financial gain or prevention of financial loss. Their actions were for their own benefit and not to the public school students of Pickens County.

8.

That Ostendorff was aware of the defendants' misappropriation of School District (SDPC) funding. The defendants found through a third party that Ostendorff was aware of misappropriation of SDPC funding. The motive of the defendants to wrongfully discharge was to prevent Ostendorff from finding, or being more aware of, additional misappropriation of School District (SDPC) funding. The defendants devised a fraudulent plan to get rid of Ostendorff under the pretense of Ostendorff taking unauthorized time off.

9.

That the defendants engaged in false testimony under oath to hide the true motive of wrongfully discharging Ostendorff. The false testimony under sworn oath was given to an investigative official of the State of South Carolina of the Department of Employment and Workforce. The false testimony under oath materially damaged Ostendorff in being penalized ten weeks of unemployment insurance compensation. Ostendorff is of information and belief that all defendants were involved in the false testimony and subordination of that false testimony under sworn oath. All defendants were given opportunity to explain their involvement in Ostendorff's wrongful discharge but none responded, except Trotter's telephone discussion with Ostendorff after receiving Ostendorff's appeal for reinstatement letter addressed to all Board members

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10.

That Ostendorff was wrongfully discharged from his employment with the School District of Pickens County on Tuesday, March 1, 2011. Ostendorff came to employment on June 20, 2008. Ostendorff left employment with The City of Charlotte , North Carolina, where he was an active member of the North Carolina Retirement System. Ostendorff is currently receiving early monetary benefits for his prior participation while being employed with the City of Charlotte.

11.

That Ostendorff was assured that his employment with the School District of Pickens County would be at a minimum of five (5) years , up to seven (7) years. The length of employment from minimum of 5 to 7 years would depend on the completion of the Building Program. Ostendorff accepted the employment offer from the School District of Pickens County with the limiting condition of least 5 years of consecutive employment. The 5 years would meet the minimum requirement to receive a retirement benefit of \$ 400.00 per month for life from the South Carolina Retirement System starting at age 60. Ostendorff was an active member of the SC Retirement System at the time he was wrongfully discharged.

12.

That Ostendorff is owed for 2 years and 4 months at his prior salary of \$ 70,000.00 per year. This amount is lessened by the amounts Ostendorff received from SC Unemployment Insurance and employment he had from the period March 2, 2011, through June 30, 2013. The amount owed Ostendorff may or may not be lessened from money he received in March from unused personal time or vacation. Ostendorff was of the understanding that unused vacation or personal time was a "use it or lose it " policy when leaving employment. The amount may be increased or lessened from any net affect of income taxes due.

13.

That Ostendorff was wrongfully discharged because he had a conversation with a friend of a new school board member about the possible shortfall of the Building Program construction budgets with public funding . Also discussed was the application of Act 388 for funding of school operations and not

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to be used for new construction. That discussion was on either Tuesday, February 22, 2011, or Tuesday, February 15, 2011.

14.

That through the conversation with his friend , the new school board member knew that Ostendorff was aware that the Building Program salaries were being paid from the School District Operations fund. ACT 388 is for the Operations of the School District and is funded through SC sales tax . The Building Program is funded by bond and is repaid through Pickens County property tax receipts. They are to be separate .

15.

That Ostendorff was discharged to try to silence him and not enable him to discover any other misappropriation of ACT 388 money .

16.

That the School Board knew that were South Carolina Statutes that provide severe penalties for School Board Members and Superintendents who misappropriate school funding.

17.

That on Tuesday, March 1, 2011, around 7:30 AM, Ostendorff received an e-mail from Robert Folkman , Building Program Administrator, instructing him to see him in his office. Folkman then discharged Ostendorff. Folkman told Ostendorff that " I'm (Folkman) having to spend too much of my time on RC Edwards and McKissik and going to have to let you go." This made absolutely no sense since Ostendorff had numerous other projects in work that that would require even more of his time .

18.

That on Tuesday, March 1, 2011, in the AM, Ostendorff went to see Kelly Pew, Director of Human Relations , at the School Districts main office to find the real reason why Ostendorff had been discharged. While waiting to see Pew, the School District's Benefit Specialist informed Ostendorff that

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she had received word that Ostendorff was no longer employed with SDPC ,but she received that word on Monday ,February 28, 2011, a day before Folkman discharged Ostendorff.

19.

That on Tuesday , March 1, 2011, in the AM, Ostendorff then met with Kelly Pew, then the Director of Human Relations, to ask why Ostendorff had been discharged. Ostendorff was told that that Folkman told her that Ostendorff had been discharged because of "failure to complete assignments, failure to maintain regular work hours, and taking unapproved time off". Ostendorff replied that " well, that's the first I've ever heard of it". Pew quickly walked up to Ostendorff, shook his hand and said "good luck in future employment", and escorted Ostendorff out of her office. Pew made no effort to support what Folkman had told her.

20.

That on Tuesday, March 1, 2011, during the short discussion between Pew and Ostendorff, Pew never mentioned any appeal process within in SDPC policies regarding discharge. Folkman neither mentioned any appeal policies within SDPC. All defendants conspired in a plan not to notify Ostendorff of any appeal process because they knew that if Ostendorff did not make an appeal under SDPC policy within in a prescribed timeframe , Ostendorff would lose all rights to bring about any legal action to recover damages.

21.

That on Tuesday, March 1, 2011, Ostendorff returned to his SDPC office to gather his construction reference books, he found his office ransacked. Ostendorff's computer was gone in which a mess was made of his desk in removing cables, etc. It also appeared that someone had been rifling through Ostendorff's files. It was obvious that someone was in a hurry to find what Ostendorff knew.

22.

That on Tuesday, March 1, 2011, Ostendorff requested the balance of the day off. Ostendorff filled out his request for time form which was signed by Tim Newman. Folkman was not in the office to sign the form.

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23.

That on the evening of Tuesday March 1, 2011, Ostendorff called the Senior Project Manager regarding about Folkman discharging Ostendorff. The Senior Project Manager told Ostendorff that "you shouldn't have bad mouthed him". Ostendorff replied that "I've never badmouthed him ". The Senior Project Manager said "during the Monday morning meeting he (Folkman) asked us (SDPC Building Program employees) if we heard anything about Mark (Ostendorff) badmouthing the Building Program to anyone on Chastain Road". Ostendorff told the Senior Project Manager to " make sure you write that down with today's date." Ostendorff was out sick Monday, February 28, 2011, due to allergies.

24.

That the conversation with the friend of the SDPC Board member on February 22 or 15, 2011, revealed that Ostendorff was aware of probable misappropriation was the real cause of Ostendorff's discharge. The conversation came about during road work along Chastain Road in front of the son of the friend of the Board member. Ostendorff had been negotiating with the friend for several months regarding the slope of the road work and the resulting affect on his son's property.

25.

That during the conversation with the friend of the Board member, the friend told Ostendorff that he had a friend that was one of the new School Board Members and he (the new member) said "the construction (program) money was a mess". Ostendorff then said to the affect " that could be true as I heard that the Financial Director told Alex Saitta during a School Board meeting that the Construction Program salaries were coming out of the general fund". Ostendorff also said to the affect "I don't think that's allowed under the new state funding guidelines separating new construction based on property taxes and the general fund which is funded out of Columbia from state sales taxes". Ostendorff also said to the affect "if the construction budget was short then they (School Board) will have to put Folkman in charge of Operations so he can siphon money over to the Building Program to complete anything not covered in the bond money." Ostendorff said to the affect that " Folkman was trying to get rid of everyone (Building Program) so no one would be watching him and he could get his 5 years in to get retirement money".

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26.

That shortly after being discharged , Ostendorff applied for Unemployment Insurance through South Carolina Department of employment and Workforce (SCDEW). SCDEW notified Ostendorff that was denied benefits because SDPC discharge him for cause. Ostendorff promptly contacted SCDEW and was given allegations made by SDPC. The allegations were given to Ostendorff via telephone as SCDEW will not provide allow a written copy to be sent to the clamiant (Ostendorff). Ostendorff responded to the allegations to SCDCEW. SCDEW determined that Ostendorff was not eligible for benefits.

27.

That on March 11,2011, Ostendorff sent a letter addressed to Alex Saitta , SDPC Board Chairman, appealing his discharge. A copy was also sent to each SDPC Board member. The letter also made a claim for monetary damages. Ostendorff sent the letter as he found no appeal policy from SDPC, but found on the SDPC website that employees being laid off for budget reasons could appeal to the SDPC Board.

28.

That shortly after sending the letter , Trotter called Ostendorff in which he was not aware that Ostendorff was discharged. He said that Judy Edwards called him to ask if he knew anything about Ostendorff's discharge.

29.

That shortly after sending the letter to Saitta , Ostendorff received a voice mail from Saitta informing Ostendorff that Henry Hunt, then SDPC Superintendent, would contact me on the SDPC policy to any appeal.

30.

That Ostendorff later received a voice mail for me to have a conference with Hunt for March 17,2011. Ostendorff had a discussion with Hunt on that date in Hunt's office. Hunt did not appear of knowledge of my discharge prior to my letter to Saitta of March 11,2011. In that discussion with Hunt, Ostendorff explained his position of his wrongful discharge. In that discussion, Ostendorff assured that it was the conversation with the friend with the new school board member was the reason for Ostendorff's discharge, not the reasons Kelly Pew provided Ostendorff on March 1, 2011. Ostendorff also stated he was due monetary compensation for the additional 2 years and 4 months as for

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Ostendorff's assurance of 5 years , up to 7 years, of employment and also the retirement money he would receive after the 5 years of employment. Hunt informed Ostendorff that Hunt would investigate the matter.

31.

That on the March 17, 2011, meeting with Hunt, Ostendorff was given Kelly Pew's letter dated March 16, 2011, addressed to Ostendorff.

32.

That on April 5, 2011, Ostendorff sent a letter to Pew regarding her letter of March 16, 2011. Ostendorff in his letter stated that Bob Folkman did not talk to Ostendorff on Monday, February 28, 2011, as Ostendorff was out sick on Monday, February 28, 2011, which was consistent with what Ostendorff informed Pew on the March 1, 2011, discussion that Ostendorff had with Pew. Ostendorff further reiterated Ostendorff's the very short conversation with Folkman on March 1, 2011, which was consistent with Ostendorff's assertion that Folkman discharged Ostendorff because "he was having to spend too much of his time on RC Edwards and McKissik."

33.

That on March 23, 2011, Hunt sent a letter to Ostendorff of Hunt's investigation and findings.

Item 1- Retribution- Hunt stated that " I talked to the board member and he does not recall any comments that would cause Mr. Folkman to retaliate against you." Ostendorff has never talked to or ever met the board member whom was the friend of the father of the property owner on Chastain Road.

Hunt also stated " Also , Mr. Folkman stated that no board member had talked with him about you."

Items 2 and 3- Regarded my assertion of politics and ulterior motives.

Item 4- Malicious Intent- Hunt stated " You feel that Mr. Folkman planned to deny you insurance coverage for a month by terminating you on February 28. Your termination date was set as March 1 and your coverage continues to March 31. Mr. Folkman does not handled insurance issues and was unaware of the length of time insurance coverage continues after termination."

The March 1, 2011 date for termination was only set for Ostendorff's insurance because of the March 1, 2011 conversation with the Benefit Specialist that Ostendorff's insurance had stopped as of February 28, 2011. Ostendorff then told Pew and Pew then called the Benefit Specialist to correct the

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Insurance to run through March 2011, as Ostendorff had not actually been terminated by Folkman until the morning of March 1, 2011, and not February 28, 2011.

Ostendorff was not paid for his day of employment of March 1, 2011.

Ostendorff received health insurance through March 2011.

Hunt's investigation was not credible. Hunt was willfully negligent in his investigation and also in his decision not to reinstate Ostendorff or compensate him for at least the remaining 2 years and 4 months along with retirement benefits.

34.

That on April 5, 2011, Ostendorff sent a letter to Hunt appealing his decision from his letter dated March 23, 2011, as required by the SDPC Grievances Policy. That policy was attached to Hunt's letter of March 23, 2011. A copy of Ostendorff's letter was sent to all board members with attachments.

The letter had attachments of Hunt's letter, Pew's letter, Ostendorff's response to Pew, and Ostendorff's response to SCDEW.

Ostendorff pointed out numerous inconsistencies with Ostendorff's discharge and Folkman's comments to Hunt.

The main point being- how did Folkman know if Ostendorff took Friday, February 25, 2011, off or not? The only thing Folkman knew was that he found a request for time off by Ostendorff in his in-basket on Monday, February 28, 2011.

The board members knew that Ostendorff was applying for unemployment insurance benefits.

Ostendorff made a monetary claim in that letter.

35.

That on Monday, February 28, 2011, Folkman terminated Ostendorff for the only reason being that he found a piece of paper that requested time off. The day requested off was Friday, February 25, 2011.

Folkman would not have been of knowledge if Ostendorff was at work or not on Friday, February 25, 2011, because Folkman was not at work on Friday 25, 2011.

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Ostendorff was out sick on Monday, February 28, 2011. Folkman could not of asked Ostendorff if Ostendorff took off Friday, February 25, 2011, because Ostendorff was unavailable to answer Folkman on Monday , February 28, 2011.

In an earlier instance, Ostendorff requested, through the same method of requesting time off on the Thursday before a Friday, the following Friday off and the request was approved by Folkman. Ostendorff later decided that he needed to come in to work to monitor a subcontractor that was filling an underground storage tank at RC Edwards. Ostendorff drove his own vehicle to RC Edwards. While at RC Edwards , Folkman asked Ostendorff to locate a Consulting Inspector who was late for the pre-construction meeting being held at RC Edwards. Folkman knew that Ostendorff sometimes used his own vehicle and not always his assigned SDPC vehicle. Thus, weather or not Ostendorffs personal vehicle is at his office is no indication if Ostendorff is at work. Ostendorff never retracted his approved Friday off although he worked the entire day that approved for time off.

SDPC does not terminate employment for employees placing requests for time off in their supervisor's in-basket. That is what the employee is asked to do.

It was a fraudulent plan of Folkman and the other defendants that fell apart . The plan was devised the defendants who didn't "cover their tracks".

36.

That a letter dated April 6, 2011, from Hunt to Ostendorff informed Ostendorff that Hunt would present Ostendorff's letter requesting an appeal to the Board of Trustees.

37.

That a letter dated April 13, 2011, from Hunt to Ostendorff stating that the Board of Trustees voted in public session to deny Ostendorff's request for a hearing.

38.

That in March 2011, Ostendorff applied for unemployment insurance benefits from South Carolina Department of Employment and Workforce (SCDEW).

39.

That in March 2011, Ostendorff was contacted by SCDEW regarding allegations by SDPC regarding Ostendorff's discharge. The allegations were read to Ostendorff by SCDEW over the

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telephone as SCDEW will not provide a written copy to a claimant. Ostendorff was told by SCDEW that the initials on the allegations were RB/RM.

40.

That Ostendorff responded in writing to SCDEW regarding the SDPC allegations in a letter dated March 27, 2011. The allegations were more of a post-termination performance evaluation in which the employee would have no notification of. Ostendorff responded to all allegations in which most ended with that SDPC would need to be specific and not just general statements.

41.

That the letter Ostendorff sent to Hunt on April 5, 2011, had attached a copy of Ostendorff's letter responding to SCDEW of SDPC's allegations. All Board Members were sent a copy of the letters.

42.

That Ostendorff received letter from SCDEW informing him that he was to be penalized fourteen weeks (14) of unemployment insurance benefits. Ostendorff sent an appeal request to SCDEW on April 7, 2011.

43.

That Ostendorff received a notice from SCDEW dated April 20, 2011, notifying Ostendorff of a SCDEW hearing to consider my appeal of the 14 week penalty. The hearing would be May 4, 2011.

44.

That during the May 4, 2011, SCDEW appeal hearing, Folkman gave false testimony under sworn oath.

The SCDEW hearing officer asked Folkman of what he (Folkman) said at the time when Folkman discharged Ostendorff.

Folkman replied to the affect that "I told him he took time off without authorization. At this point of the Building Program we cannot have employees taking time off."

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Folkman produced Ostendorff's request for time off for Friday, February 25, 2011. On that form submitted at the hearing Ostendorff saw comments written request was denied and dated 2/28/2011.

Ostendorff asked Folkman in cross examination to the affect "if you weren't at work on Friday, how would you know if I was at work or not?"

Folkman presented no evidence, no witnesses but just replied "I asked somebody"

Folkman would not say who he asked simply because he didn't ask anyone. Even if he did ask someone, that someone's response would only be hearsay. Folkman was not prepared to come with an answer in advance of Ostendorff's question.

Folkman gave false testimony in the hearing that he discussed the time off request with Ostendorff but Ostendorff was already terminated the day before. That false testimony caused Ostendorff to be penalized 10 weeks of benefits of \$ 326.00 per week.

45.

That upon leaving the hearing room on May 4, 2011, Ostendorff found Folkman waiting on him. Ostendorff, though very surprised at Folkman's waiting, comforted Folkman of his false testimony. Folkman laughed and said "our conversation (discharge on March 1, 2011) wasn't recorded and it would be just your word against mine". Folkman followed Ostendorff to his car when he volunteered "Kelly Pew sent me here."

46.

That Folkman terminated Ostendorff on Monday, February 28, 2011, and the weight of the evidence presented to the triers-of-fact will show that to be factual. The weight of the evidence will show that Ostendorff was not a work on Monday, February 28, 2011.

47.

That Folkman and the defendants devised a fraudulent plan to lure Ostendorff into the usual and accepted method of requesting time off then terminating him for taking unauthorized time off. The plan was flawed as it did not take into consideration that Ostendorff would be sick from work on the following Monday. Keeping to the devised plan, Folkman terminated Ostendorff on Monday, although he was not there.

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Folkman told the Building Program employees during the usual Monday morning meeting on February 21, 2011, that he was going to take off the following Friday, February 25, 2011.

Folkman deliberately did not tell Ostendorff that Folkman was also going to take off Thursday afternoon February 24, 2011.

Ostendorff had used this same procedure for requesting time off for Fridays. Ostendorff would wait until at least until Thursday to request time off after he conferred with Folkman and the other two Project Managers. If nothing was pending for Friday, then Ostendorff would then submit the form to Folkman.

Sometimes Folkman was in his office, sometimes not when Ostendorff submitted the request form.

If Folkman was in his office, he would sign the request form. Ostendorff would then give the approved form to the clerk.

If Folkman was not in his office, Ostendorff would leave in the request form in Folkman's in-basket in his office. Folkman would then give the approved form to the clerk.

Folkman knew this was the certain method always used by Ostendorff.

Folkman never denied Ostendorff taking a Friday off.

Folkman never informed Ostendorff that Ostendorff would have to see the form with a signature approving the request before taking that time off.

Ostendorff discussed, as usual, with the Senior Project Manager on Thursday, February 24, 2011, if there was anything pending on Friday, February 25, 2011. If not, then Ostendorff would take Friday, February 25, 2011, off and would put the request form in Folkman's in-basket. The Senior Project Manager said ok to take the Friday off. The Senior Project Manager was delegated by Folkman to handle the Building Program when Folkman was out of the office.

48.

That Ostendorff was treated unequally as compared to the other two Project Managers. As examples, Ostendorff was required to be clean shaven every day, whereas another Project Manager would not shave for two or three days on a regular basis. Ostendorff was required to keep his assigned SDPC clean every day, whereas another Project Manager would have dirt covering almost half of his assigned SDPC vehicle for a week at a time without washing it.

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49.

That Ostendorff in September 2012, requested of SDPC the home address or email address of Hunt, then the former Superintendent, so Ostendorff could request of Hunt the information he gathered during his investigation of Ostendorff's discharge. Hunt would not respond to give his address only that he wanted SDPC involved in giving me any information.

50.

That Ostendorff is defamed as his name in the public. All employment applications ask for reasons leaving previous employers and if ever been terminated or asked to resign.

51.

That the Building Program lacked transparency in funding and monies allocated and spent. Only a graph was produced showing the overall projected Program spending as compared to actual by the month. Ostendorff never saw an auditor or was ever audited for his projects to ensure no impropriety or any appearance of impropriety. It appeared to Ostendorff that the almost one-third billion dollar building program was lacking in oversight.

52.

That Folkman received a promotion shortly after discharging Ostendorff to Director of Operations along with his position of Building Program Administrator. Ostendorff is of information and belief that Folkman received a substantial pay increase at that new promotion. Pew was soon chosen as Superintendent. Ostendorff is of the information and belief that Pew received a substantial pay increase at that new promotion. Both Folkman and Pew were rewarded for their efforts in discharging Ostendorff and providing cover for the Board's handling of public funds

Damages

Ostendorff seeks actual, compensatory, and punitive damages under breach and tort for wrongful discharge.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the wrongful discharge.

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Ostendorff seeks actual and punitive damages under tort for negligence , gross negligence, reckless (willful) negligence for not reinstating and compensating Ostendorff.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud in the origination of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the fraud and intentional fraud of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for malice in backdating discharge date to reduce health insurance coverage.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud for the false testimony at the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the false testimony in the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for negligence, gross negligence, and gross(willful) negligence in subordinating false testimony at the SCDEW hearing.

Ostendorff seeks general damages for defamation. Special damages will be sought if discovery reveals monetary loss to Ostendorff due to fraudulent opinions given to prospective employers of Ostendorff's past work history and discharge.


Ostendorff demands of this Court a judgment for relief of his damages the sum of \$ 254,631.00 as well as punitive damages and other relief that the triers of fact (jury) and Court find proper and just to Ostendorff.

Ostendorff affirms :

That I have prepared this pleading and it is to the best of my knowledge

That I have contacted all defendants in writing and have acted in good faith to resolve this matte

February 28 ,2014



Mark D Ostendorff
135 Cedar Creek Circle
Central , SC 29630

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

In The Court of Common Pleas

Alford S. Lee, Circuit Court Judge

Case No. 2014-CP-39-0259

Appellant Case No. 2015-00131

Mark Ostendorff,.....Appellant,

v.

School District of Pickens County,.....Respondent.

CERTIFICATE OF MAILING

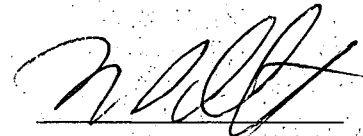
I, Mark Ostendorff, hereby certify that I placed two copies of Supplemental Record On Appeal Respondent's Designation Of Matter in the U.S. Postal Service, postage paid, addressed to the Respondent's attorneys at: Thomas K. Barlow, Mary Allison Caudell, Halligan, Mahoney & Williams Law Firm, PO Box 11367, Columbia, SC 29211.

August 29, 2017

RECEIVED

AUG 31 2017

SC Court of Appeals



Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellant, pro se

The South Carolina Court of Appeals

Mark D. Ostendorff, Appellant,

v.

School District of Pickens County, Respondent.

Appellate Case No. 2015-001361

20 Aug

Tue
8/29

ORDER

Respondent's motion to compel Appellant to serve a supplemental record on appeal is granted. Within twenty days of the date of this order, Appellant shall serve a supplemental record on appeal that includes all the matters designated by Respondent that were omitted from the record. Appellant shall also file a proof of service for the supplemental record on appeal within twenty days of the date of this order. Due to the lengthy procedural nature of this case, no further extensions will be granted absent a showing of extraordinary circumstances.

Paul E. Shortt, Jr.
FOR THE COURT

Columbia, South Carolina

cc:
Mark Ostendorff
Thomas Kennedy Barlow, Esquire
Mary Allison Caudell, Esquire

FILED
August 9, 2017