

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2017-001208
Case No. 2013-CP-06-0059

RECEIVED

FEB 28 2018

S.C. SUPREME COURT

Lorenda Robinson, Elaine Nix, Archie Patterson,
and Tami Bollerman, Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment and Workforce, Petitioner.

APPENDIX

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The South Carolina Court of Appeals

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Tami Bollerman, Plaintiffs,

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Respondents,

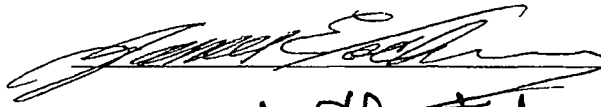
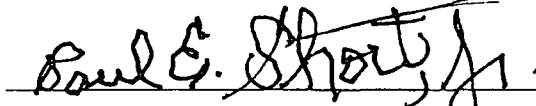
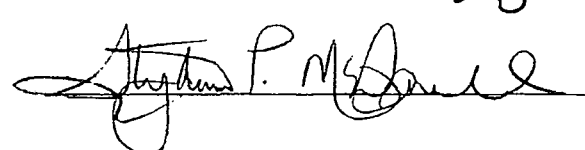
v.

South Carolina Department of Employment and
Workforce, Appellant.

Appellate Case No. 2017-001208

ORDER

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

 C.J.
 J.
 J.

Columbia, South Carolina

FILED

February 1, 2018

DLSCN 02/05/18

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DISCN 02/05/18

THE STATE OF SOUTH CAROLINA
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South Carolina Department of Employment and Workforce, Appellant.

**RETURN TO APPELLANT'S
MOTION TO RECONSIDER**

This Court correctly dismissed this appeal. Neither lower court order struck any defense of Appellant. The effect of both orders was to allow the case to proceed as a class action. No final order has been issued by the lower court. No decision on the merits has been made. Appellants have not been deprived of a substantial right in this litigation. The Rule 59 (e) Order expressly preserves all issues raised in the parties' pleadings. Both orders may be altered by the Court at any time before a decision on the merits of the case. In issuing its December 8, 2017,

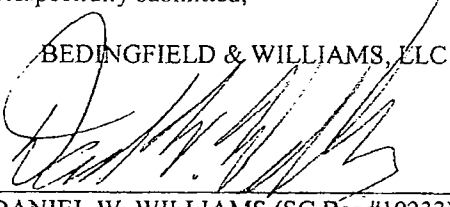
DISCN 12/22/17

Order dismissing this appeal, the Court did not overlook or misapprehend anything. Appellant's motion to reconsider should be denied.

Respectfully submitted,

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DISCN 12/22/17

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BARNWELL COUNTY
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CERTIFICATE OF SERVICE

The undersigned employee of BEDINGFIELD & WILLIAMS, LLC, co-counsel for the Respondents, does hereby certify that I have served a copy of the enclosed Return to Appellant's Motion to Reconsider in the above captioned matter by mailing a copy of same by United States Mail, postage prepaid, to the following addresses on December 20, 2017.

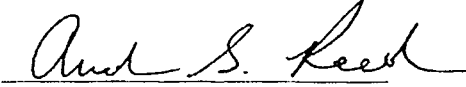
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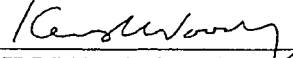
PETITION FOR REHEARING

The Appellant South Carolina Department of Employment and Workforce petitions the South Carolina Court of Appeals for a rehearing of the Court's Order of December 8, 2017, dismissing this appeal.

The grounds for the Appellant's petition for rehearing and the specific relief requested are addressed in the supporting memorandum filed herewith and incorporated herein.

This petition for rehearing is based on the Court's Order dismissing this appeal, the matters on file in this Court pertaining to this appeal, the supporting memorandum filed herewith, Rule 221(a), SCACR, Rule 224, SCACR, and other rules of court.

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December 18, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Appellant South Carolina Department of Employment and Workforce has petitioned the Court for a rehearing of the Court's Order of December 8, 2017, dismissing this appeal. Appellant respectfully requests that this Court reconsider its decision and reinstate this appeal for the reasons set forth herein and in previous filings.

The Order of December 8, 2017, provides in its entirety as follows:

Appellant has appealed the circuit court's orders certifying a class, finding the Plaintiffs have standing to represent the class, and denying reconsideration. After careful consideration, Respondents' motion to dismiss is granted because the underlying orders on appeal are not immediately appealable. *See Schein v. Lamar*, 214 S.C. 329, 263 S.E.2d 383 (1980); *Knowles v. Standard Savings and Loan Assoc.*, 274 S.C. 58, 261 S.E.2d 49 (1979) (finding class certification orders are not immediately appealable). Remittitur will be sent as required by Rule 221(b), SCACR.

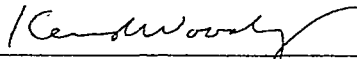
Appellant respectfully submits that the Court overlooked or misapprehended the nature of the order appealed from, as well as the contentions made by Appellant. The Court held that the appeal involved whether Plaintiffs “have standing to represent the class.” However, Appellant’s contention was not strictly related to class certification, but rather was that the dismissal of Appellant’s defenses pertaining to standing, justiciability, mootness and mitigation of damages affected substantial rights and effectively struck those defenses.¹ Amended Return to Motion to Dismiss Appeal at 6. As Appellant noted on p. 8 of its Amended Return, the court below in effect affirmatively granted judgment for Plaintiffs on the issue of standing and by logical extension did the same for the defenses of

¹ Appellant did request that if the Court were to hear the appeal with regard to standing and the defenses that were effectively stricken, class certification could also then be considered, but only if the stricken defense were considered. Amended Return at 9-10, citing *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014).

justiciability, mootness and mitigation of damages. It is not as if the court below made a tentative conclusion that the two named Plaintiffs had standing for the limited purpose of going forward with class certification. The issue of standing and the related issues of justiciability, mootness and mitigation of damages were effectively decided by the court below once and for all in the orders from which this appeal was taken. Accordingly, and for the reasons set forth at pp. 2-9 of Appellant's Return, Appellant respectfully requests that the Court reconsider its order of dismissal and reinstate the present appeal.

Respectfully submitted,

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December 18, 2017

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Columbia, South Carolina


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FILED

Dec 8, 2017

DLSCN 12/12/17

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The Honorable Doyet A. Early, III

DISCN 12/12/17

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**RESPONDENTS' REPLY TO APPELLANT'S
RETURN TO MOTION TO DISMISS**

APPELLANT'S STATEMENT OF FACTS

Appellant, under the heading "Facts", argues the merits of his appeal rather than setting forth facts germane to whether either order is immediately appealable. Respondents did make a clear showing of standing to maintain this action as a class action and that the action should be certified as a class action. They reserve the right to argue the merits of the appeal at the appropriate time.

NEITHER ORDER IS IMMEDIATELY APPEALABLE

Standing Order

Appellant moved for an evidentiary hearing on the issue of standing, and as a result, the court issued an order finding the named plaintiffs had standing to represent the putative class. Had it styled its motion as a motion for summary judgment or a 12(b)(6) motion to dismiss for lack of standing, denial of those motions would not have been appealable. “[S.C. Code Ann.]14-3-330 is construed narrowly, eyeing the nature and effect of the order, not merely it’s label.” Tilman v. Tilman, 420 S.C. 249, 250, 801 S.E.2d 757, 760 (2017) The effect of the order was to allow the case to proceed as a Class action. It did not end the action. Nor did it reach the merits of the case.

The order did not strike any pleading, or any defense raised in Appellant’s pleading. It is common for responsive pleadings to assert defenses such as lack of standing, lack of subject matter or personal jurisdiction, improper venue etc. However, denial of a motion to dismiss on one of these grounds is not tantamount to striking the defense from the pleading. Moreover, the issue is preserved for review upon the entry of final judgment. If the case is not resolved, the court can hopefully hear one appeal as opposed to multiple appeals.

The order did not establish the law of the case. “Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case and may be reconsidered and corrected before entering a final order on the merits.” Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (internal citations omitted) The order in this case merely decides that the plaintiffs have standing to proceed in this cause. While standing is essential to proceed in any cause of action, it is collateral to the substantive issues in the case. It may be

reconsidered by the court at any time before final judgment in the case. Defendant will have the opportunity in this case to ask for reconsideration of both appealed orders.

Nevertheless, Appellant argues this court should take this appeal because it is unlikely the lower court will reconsider its order. Therefore, the interlocutory order should be treated as a final order or at least as a final determination of standing. This argument could be made for any interlocutory order, including orders denying motions to dismiss, orders denying summary judgment, and the class certification order in this case. Again, 14-3-330 is to be narrowly construed. *Tilman*, supra. Appellant's expansive construction of 14-3-330 allows the appeal of all orders denying summary judgment and denying Rule 12 (b) motions, since the losing party could argue the court is unlikely to change its ruling. In this case, the Appellant got what it asked for – an evidentiary hearing on the issue of standing. Notwithstanding how this issue was presented to the court, the result of the order was a finding that respondents had standing to proceed – a matter collateral to the substantive issues in this cause of action. Further, the lower court specifically ruled in its order denying Appellant's 59(e) motion that all issues raised in the pleadings are preserved - leaving open the possibility that it could reconsider its ruling on standing in the future.

Finally, as pointed out by Appellant, the order finding respondents have standing relates directly to the class certification order, (Appellant's Return, page 3) and the class certification order may be altered or amended at any time prior to the decision on the merits. Rule 23 (d) (1) S.C.R.C.P.

Class Certification Order

Appellant concedes that class certification orders normally are not immediately appealable. While it argues the merits of why the class should not have been certified, it gives

no reason the class certification order is immediately appealable under 14-3-330. Respondent does acknowledge the court may consider an appeal of the class certification order if it determines the order finding standing is immediately appealable.

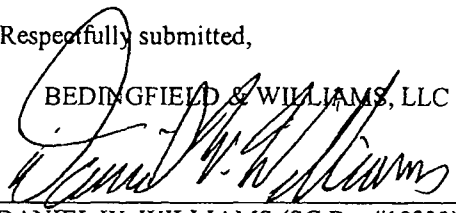
CONCLUSION

The appeal should be dismissed.

Respectfully submitted,

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November 30, 2017

DLSCN 12/04/17

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NOV 27 2017

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AMENDED RETURN TO PLAINTIFFS'-RESPONDENTS'
MOTION TO DISMISS APPEAL

This appeal concerns two Orders of the circuit court holding that two Plaintiffs (Respondents) have standing. Appellant (Defendant), the Department of Employment and Workforce ("DEW"), submits that in so holding, the Order

effectively “strikes out an answer or any part thereof. . . .” S. C. Code Ann. § 14-3-330(2)(c). The part of the Answer stricken was the defense of standing.

PROCEDURAL BACKGROUND

The “Background” section of Respondents’ motion accurately sets forth the pertinent procedural history of this case, except that it does not expressly mention the filing by DEW of an Amended Notice of Appeal on November 2, 2017, several days after DEW received written notice of the entry of an Order dated October 27, 2017 by an e-filing on October 30, 2017.

Plaintiffs-Respondents moved on November 13, 2017 to dismiss this appeal on the ground that the aforementioned Orders are not appealable at present. Defendant-Appellant DEW respectfully submits that the motion should be denied, or in the alternative, held in abeyance until the appeal is fully briefed.

FACTS

In this purported class action for declaratory and injunctive relief, Plaintiffs claim that at time between 2012 and 2016, DEW erroneously denied them one or more weeks of unemployment benefits. DEW based its denial on the fact that those individuals, who were required to conduct four work searches each week, did not perform one of the four through the SC Works Online System (SCWOS), an online job bank operated by DEW. DEW has raised a number of defenses, including lack of standing by the Plaintiffs, but the simplest defense raised by DEW is that its

procedure was authorized, and in fact, mandated by legislative provisos starting on July 1, 2012, and ending on June 30, 2016, at which time DEW did not continue the requirement. An example of those provisos is the one covering fiscal year 2012-2013, which read as follows:

67.7. (DEW: SUTA Contingency Assessment Funds) Thirty percent of the funds appropriated through the contingency assessment funds collected on taxable wages paid by employers shall be spent on enforcement of Section 41-35-110(3) and Section 41-35-120(5) of the 1976 Code, via Eligibility Reviews, Random Verification of Job Contacts and Wage Cross Matches during those weeks covered by the South Carolina State Unemployment Tax Authority (SUTA), and to ensure seated meetings with Unemployment Insurance claimants and requiring that one of the four job search contacts required per week be conducted through SC Works Online System (SCWOS), so that it can be electronically verified.

(Emphases added.) Plaintiffs claim that DEW should not have imposed that requirement without a regulation.

In the course of considering whether to certify a class, the court below held two evidentiary hearings with regard to the standing of the two Plaintiffs who remain in the case. It is axiomatic, of course, that in order to serve as a class representative, the named plaintiff or plaintiffs must have standing. DEW showed at those hearings that, among other things, neither of the two named Plaintiffs could present evidence to prove that they had made four non-online job searches. In order to be entitled to benefits during the timeframe in question, all claimants

must perform four job searches irrespective of the legislative mandate that one of the four searches be online. Even if Plaintiffs are ultimately successful in arguing that DEW could not have complied with this proviso absent a regulation, a person, such as Plaintiffs, who could not show four total job searches in some way, shape, or form would not meet the eligibility requirements of the law and, thus, not able to recover in this class action.

Stated simply, neither Plaintiff was able to prove that they had conducted four job searches during the week (one per person) in which they did not receive benefits. As a result, they lack standing to represent the purported class.

The first Order of the circuit court regarding standing, filed on April 27, 2017, was completely silent on this issue. DEW filed a Rule 59(e) motion pointing out that failure to rule on that issue. The Order filed on October 30, 2017, denying that motion, was summary in nature, and also did not address the need to make four offline job searches in order to have standing.

DEW also contended that one of the Plaintiffs, Archie Patterson, had failed to mitigate his loss. He was eligible to recover the entire sum total of unemployment benefits available to him during the benefit year in question, but instead indisputably (and inexplicably) did not claim that full amount of benefits, leaving an unclaimed balance on his account for that benefit year. The proximate cause of his loss was therefore his own inaction rather than any act of DEW. The

court below merely held summarily that his inaction “does not cure or obviate any earlier wrongful denial of benefits,” 4/27/17 Order at 5, although that holding is supported by no citations to applicable law.

The April 27, 2017 Order also held that standing was present for two other reasons, both untenable. The first was a conclusion that the facts of this case were capable of repetition, yet evading review. 4/27/17/ Order at 5-6. However, those facts were not capable of repetition, because it is undisputed that the complained-of requirement ended on June 30, 2016. While the incapability of repetition is a complete answer to this assertion, Plaintiffs’ claims also would not evade review, because there was nothing to stop the claim of a person who did not recover all benefits to which he was entitled from being adjudicated, no matter how long it took of the issue to be finally decided.

The second untenable ground set forth in the April 27, 2017 Order was “public interest” standing. *Id.* at 6-8. However, the Supreme Court has held that “[t]he key to the public importance analysis is whether a resolution is needed for future guidance.” *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008)(emphasis added). Again, DEW terminated the program effective July 1, 2016, so future guidance is not needed, and the public importance exception therefore does not apply.

The Order of October 30, 2017 did contain one variation from prior Orders, holding that “Nothing in either order should be construed as a decision on the merits and all issues raised in the pleadings are preserved.” 10/30/17 Order at 2. The effect, if any, of that sentence on this appeal is discussed below.

ARGUMENT

1. **The dismissal of DEW’s defenses pertaining to standing, justiciability, mootness and mitigation of damages affect substantial rights and effectively strikes those defenses.**

S.C. Code Ann. § 14-3-330(2) provides that

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

* * *

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;¹

DEW raised the defenses of standing, absence of a justiciable controversy, mootness, and failure to mitigate damages in its Answer, a copy of which is attached. The circuit court’s two Orders on standing unquestionably had the

¹ The Supreme Court and this Court have held that at least some orders affecting substantial rights must be appealed immediately, or the right to appeal will be lost. *See, e.g., First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 377 (Ct. App. 1998).

practical effect of striking out those defenses. Plaintiffs correctly note that there is no South Carolina case specifically addressing the issue of the appealability of an order holding that standing is present. However, the four referenced defenses without question involve substantial rights of a defendant. If the plaintiff or plaintiffs lack standing, the entire case does not present a justiciable controversy and is effectively a hypothetical matter, for which any subsequent proceedings would amount to a waste of time of the courts and the parties. The orders therefore effectively struck the defense of the absence of a case or controversy as well. Finally, by holding that Plaintiff Patterson's inaction "does not cure or obviate any earlier wrongful denial of benefits," 4/27/17 Order at 5, the court below effectively struck the defense of failure to mitigate damages and the defense of mootness as applied to him. His failure to claim benefits to which he was entitled and which would have eliminated any loss from his being disqualified for one week had the effect of rendering his claim in this case moot.

It is true that the Order of October 30, 2017 contained a sentence holding that "Nothing in either order should be construed as a decision on the merits and all issues raised in the pleadings are preserved," 10/30/17 Order at 2. However, the issue of standing was tried before the Court, with both named Plaintiffs appearing as witnesses, as well as several other persons. In light of the depth of the parties' presentations on this issue and DEW's two Rule 59(e) motions, there is no realistic

reason to believe that the circuit court would later reconsider its Orders on this issue. In effect, the court affirmatively granted judgment for Plaintiffs on the issue of standing, rather than denying a motion for summary judgment by DEW on that ground.

The Supreme Court has held that in considering whether an order is appealable, the court looks to the “nature and effect of the order, not merely its label. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015). As a result, any characterization by the circuit court of its order on standing as being nonfinal does not govern appealability.

Plaintiffs cite a number of cases involving denials of motions to dismiss or denials of motions for summary judgment, both situations in which it has been held over and over that the denials of such motions do not establish law of the case and are not appealable. *See, e.g., Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994). The cases cited by Plaintiffs include the following: *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995)(order denying motion to dismiss); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993)(same); *Burkey v. Noce*, 398 S.C. 35, 726 S.E.2d 229 (Ct. App. 2012)(same); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000)(motion to transfer venue); *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017)(granting motion to dismiss a counterclaim, but allowing the

counterclaiming party the right to amend its pleading). As can be seen, none of those cases involved the same kind of order as is present in this case.

2. If the Court permits this appeal to proceed, it would be efficient to consider class certification as well.

Defendant's counsel acknowledge that an order granting class certification is normally not immediately appealable. However, this rule has not been applied rigidly, and "an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation." *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014), quoting *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995).

Among other things, Defendant DEW has contended that *Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 577 S.E.2d 190 (2003), precludes class certification in this case. *Gardner* holds in pertinent part as follows:

A representative class cannot exist where the court must investigate each plaintiff's prejudice claim where it is one of the two predominate issues in the case. Requiring such individualized examination negates the benefits of a class action suit. See *O'Quinn v. Beach Associates*, 272 S.C. 95, 104, 249 S.E.2d 734, 738 (S.C.1978) ("The very purpose of a class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action.").

353 S.C. at 22, 577 S.E.2d at 201. In the present case, as noted above, each putative plaintiff's individual situation needs to be examined to see whether that person made the four non-online job searches that would entitle him or her to a benefit for any week when benefits were denied for failure to perform an online work search. As a result, the nature of these claims "requir[es] each member of the class to prove the elements of the cause of action," thereby making class certification inappropriate.

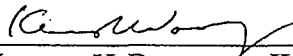
If this Court concludes that the issue of standing is appealable and affirms the circuit court's Order that the named Plaintiffs have standing, a decision on the correctness of the grant of class certification would make an enormous difference in the amount of time and effort that would need to be expended even if the Court were to conclude that the named Plaintiffs had standing. The reason for this is that without class certification, this litigation would involve only the claims of the two named Plaintiffs and not an entire class.

CONCLUSION

For the foregoing reasons, Appellant DEW submits that Plaintiff's-Respondents' Motion to Dismiss should be denied, or in the alternative, held in abeyance until the appeal is fully briefed.

Respectfully submitted,

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*Counsel for Appellant South Carolina
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Columbia, South Carolina

November 27, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS

Lorinda Robinson, Elaine Nix, Archie)
Patterson, Tami Bollerman, Fred)
Alexander, and Pamela Wooten,)

Civil Action No. 2013-CP-06-0059

Plaintiffs,)

AMENDED ANSWER TO AMENDED)
COMPLAINT)

v.)

South Carolina Department of)
Employment & Workforce,)

Defendant.)

FILED FOR RECORD
2015 FEB 19 PM 1:15
RHONDA D. HILBURN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Defendant South Carolina Department of Employment and Workforce, answering the Amended Complaint herein, alleges and shows the following:

FOR A FIRST DEFENSE

1. The Amended Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. The venue of this action is improper, because the question, action or controversy arose in Richland County, where Defendant's headquarters are located. In addition, S.C. Code Ann. § 41-27-610 provides that actions of the kind complained of in this action are deemed to have been committed in part at the office of the Defendant in Columbia.

FOR A THIRD DEFENSE

3. Any allegation of the Amended Complaint not hereinafter admitted or qualified is denied.

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4. Paragraphs 1 through 4 of the Amended Complaint are admitted on information and belief.

5. Answering Paragraph 5, it is admitted that the Defendant SCDEW is an agency of the State of South Carolina. The duties of the agency are as set forth in its governing statutes. Except as expressly admitted, Paragraph 5 is denied.

6. Paragraph 6 is denied.

7. Paragraph 7 sets forth legal conclusions and/or descriptions of the relief sought, neither of which can be admitted or denied. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

8. The first sentence of Paragraph 8 is merely descriptive of the class certification relief sought by Plaintiff, and as such requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof. Answering the second and last sentence of Paragraph 8, it is denied that the referenced actions of DEW were required by statute to be the subject of a regulation.

9. Paragraph 9 is denied for lack of information.

10. Paragraphs 10 and 11 are denied.

11. Paragraphs 12 through 14 are denied for lack of information.

12. Paragraph 15 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

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13. Answering Paragraph 16, Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

14. Answering Paragraphs 17 and 18, Defendant would refer the Court to the statutes referenced therein for the best evidence of their contents. Except as expressly admitted, Paragraphs 17 and 18 are denied.

15. Paragraph 19 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

16. Answering Paragraph 20, Defendant would refer the Court to the documents setting forth the requirements referenced in that paragraph and to the law governing the Defendant's operations for the best evidence of the applicable law and practice. Except as expressly admitted, Paragraph 20 is denied.

17. Answering Paragraph 21, Defendant would refer the Court to the documents setting forth the requirements referenced in that paragraph for the best evidence of what occurred. Except as expressly admitted, Paragraph 21 is denied.

18. Answering Paragraphs 22 and 23, Defendant would refer the Court to the statutes referenced therein for the best evidence of their contents. Except as expressly admitted, Paragraphs 22 and 23 are denied.

19. Answering Paragraph 24, Defendant would refer the Court to the documents setting forth the requirements referenced in that paragraph for the best evidence of what occurred. Except as expressly admitted, Paragraph 24 is denied.

20. Paragraph 25 is denied.

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21. Answering Paragraph 26, Defendant would refer the Court to the documents in the files of the Defendants setting forth the actions referenced in that paragraph for the best evidence of what occurred. Except as expressly admitted, Paragraph 26 is denied. It is specifically denied that Plaintiff Nix was ever found to be eligible for unemployment benefits at any time that the online job search policy was in effect, and it is therefore also denied that she was ever denied unemployment benefits for not performing an online work search.

22. Answering Paragraph 27, Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

23. Paragraphs 28 through 34 are denied.

24. Paragraph 35 is denied for lack of information. In addition, it is denied that Plaintiffs are entitled to recover attorneys' fees.

25. Paragraph 36 is denied.

26. Paragraph 37 is merely descriptive of the relief sought by Plaintiff, and as such requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

27. Answering Paragraph 38, Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

28. Paragraph 39 is denied.

29. Paragraph 40 is denied for lack of information.

30. Paragraph 41 is denied.

31. Paragraph 42 is merely descriptive of the relief sought by Plaintiff, and as such requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

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32. Answering Paragraph 43, Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

33. Answering Paragraph 44, Defendant would refer the Court to the pertinent legal authorities and facts of record for the best evidence of Plaintiffs' entitlement to UI benefits. Except as expressly admitted, Paragraph 44 is denied.

34. Paragraph 45 is denied.

35. Paragraph 46 is merely descriptive of the relief sought by Plaintiff, and as such requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of the Defendant, Defendant would deny same and demand strict proof thereof.

36. Any remaining allegations of the Amended Complaint, including Paragraphs 1 through 6 of the prayer for relief, are denied.

FOR A THIRD DEFENSE

37. Plaintiffs are not entitled to relief from this Court, because they did not exhaust administrative remedies.

FOR A FOURTH DEFENSE

38. On information and belief, some or all Plaintiffs lack standing to pursue their present claims. Specifically, Plaintiffs Patterson, Alexander and Wooten have exhausted or will soon exhaust all benefits available to them even without the week or weeks for which they did not receive benefits as a result of not conducting online work searches. In addition, Plaintiff Robinson was disqualified for benefits for the weeks in question for the additional reason that she owed reimbursement to DEW because she collected benefits while employed.

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FOR A FIFTH DEFENSE

39. On information and belief, there is no present case or controversy between the Defendant and some or all of the Plaintiffs.

FOR A SIXTH DEFENSE

40. On information and belief, the claims of some or all of the Plaintiffs are not ripe for adjudication.

FOR A SEVENTH DEFENSE

41. On information and belief, some or all Plaintiffs have failed to take steps that could have mitigated any financial losses claimed by them.

FOR AN EIGHTH DEFENSE

42. Some or all Plaintiffs may have consented to the job search conditions of which they now complain.

FOR A NINTH DEFENSE

43. Some or all Plaintiffs may have waived any claim they may have had to challenge the matters of which they complain.

FOR A TENTH DEFENSE

44. Some or all Plaintiffs may be estopped from challenging the matters of which they complain.

FOR AN ELEVENTH DEFENSE

45. If an individual Plaintiff is asserting impossibility of compliance with the challenged policy, such impossibility may also have rendered it impossible for that individual to obtain employment for that week, so that such Plaintiff would not have suffered any detriment as a result of the policy.

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FOR A TWELFTH DEFENSE

46. Plaintiffs have unreasonably delayed filing this action, and their claims are accordingly barred by the doctrine of laches.

FOR A THIRTEENTH DEFENSE

47. On information and belief, the claims of at least some of the Plaintiffs are presently moot, or will soon become moot. Specifically, Plaintiffs Patterson, Alexander and Wooten have or will soon exhaust all benefits available to them even without the week or weeks for which they did not receive benefits as a result of not conducting online work searches. In addition, Plaintiff Robinson was disqualified for benefits for the weeks in question for the additional reason that she owed reimbursement to DEW because she collected benefits while employed.

FOR A FOURTEENTH DEFENSE

48. The actions of which the Plaintiffs complain have been authorized by the General Assembly, pursuant to Proviso 67.7 of the Part 1B provisos of the General Appropriations Act for fiscal year 2012-2013 (H. 4813, as ratified by the General Assembly), Proviso 83.6. of the Part 1B provisos of the 2013-2014 General Appropriations Act (H. 3710, as ratified by the General Assembly), and Proviso 83.6 of the Part 1B provisos of the 2014-2015 General Appropriations Act (H. 4701, as ratified by the General Assembly). In addition to any other reasons for regulations to be unnecessary under the facts of this case, those provisos have rendered it unnecessary for the Defendant to promulgate regulations in order to implement and enforce the online job search requirement, including the stoppage of benefits to claimants for weeks in which they do not comply with the online work search requirement.

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FOR A FIFTEENTH DEFENSE

49. This Court lacks jurisdiction over this case, because § 41-35-690, S.C. Code Ann., provides that the appeal procedure referenced therein is the sole and exclusive appeal procedure for the kinds of issues involved in this case.

FOR A SIXTEENTH DEFENSE

50. Plaintiffs' claims are barred by the ten-day limitation period set forth in § 41-35-660 for appeals of agency determinations or redeterminations.

FOR A SEVENTEENTH DEFENSE

51. In addition to any other reasons why the claim of Plaintiff Robinson is barred, that claim is also barred because Ms. Robinson claims relief only for the weeks ending August 18, 2012 and August 25, 2012. However, she was specifically disqualified from receiving benefits for those weeks because she was found to have collected unemployment earlier in the year 2012 while actually employed.

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

DAVIDSON & LINDEMANN, P.A.

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Counsel for Defendant

Columbia, South Carolina

February 16, 2015

DLSCN 02/23/15

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
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)
 Lorenda Robinson, Elaine Nix, Archie)
 Patterson, Tami Bolleman, Fred)
 Alexander and Pamela Wooten)
)
 Plaintiffs,)
)
 v.)
)
 South Carolina Department of)
 Employment & Work force,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 13-CP-06-059

CERTIFICATE OF SERVICE

FILED FOR RECORD
 2015 FEB 19 PM 1:15
 KIMBERLY D. McLEVERN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.


The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the AMENDED ANSWER OF THE AMENDED COMPLAINT in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 16th day of February, 2015, addressed as follows:

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 Barnwell, South Carolina 29812

C. Bradley Hutto, Esquire
 Williams & Williams
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 Orangeburg, South Carolina 29115

Alex Pattera, Esquire
 Pattera & Osmer, LLC
 107 East Park Avenue
 Greenville, South Carolina 29601

Stephen R. Suggs, Esquire
 South Carolina Appleseed Legal Justice-Center
 Post Office Box 7187
 Columbia, South Carolina 29202



DLSCN 02/23/15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2017-001208
Case No. 2013-CP-06-0059

RECEIVED

NOV 27 2017

SC Court of Appeals

Lorenda Robinson, Elaine Nix, Archie Patterson,
and Tami Bollerman, Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment and Workforce, Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Amended Return to Plaintiffs'-Respondents' Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by email and by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of November 2017:

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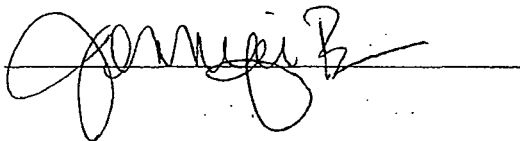
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A handwritten signature in black ink, appearing to read "Stephen R. Suggs", is written over a horizontal line.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2017-001208
Case No. 2013-CP-06-0059

Archie Patterson and Tami Bollerman, Respondents,

v.

South Carolina Department of Employment and Workforce, Appellant.

MOTION TO DISMISS

Respondents move to dismiss this appeal, since all orders from which the appeal is taken are interlocutory and not immediately appealable. Appellant appeals 1) the lower court's May 5, 2016 order certifying this case as a class action; 2) the lower court's April 12, 2017 order finding Respondents had standing to proceed as class representatives; 3) the October 27, 2017 order denying Appellant's 59(e) Motions to both Orders. Instead of filing a separate memorandum, Respondents set forth their argument for dismissal in this motion.

BACKGROUND

In this action filed February 14, 2013, Respondents allege Appellant was required to promulgate regulations before implementing procedures which require claimants for unemployment benefits to perform online employment searches through Appellant.

Respondents' complaint seeks class certification for those who were denied benefits for failure to comply with the online work search requirement.

On January 11, 2016, the trial court heard cross-motions for summary judgment as well as Respondents' motion for class certification. The Court denied both parties motions for summary judgment, but granted Respondents' motion to certify the class.

Appellant filed a Rule 59(e) motion to alter or amend the class certification order, and a hearing on this motion was held on June 7, 2016. At the hearing, counsel for Appellant argued that the Court did not address his assertion that the named Respondents lacked standing and could not adequately represent the class. This hearing concluded with the Appellant reserving all other issues raised in his Rule 59(e) motion and the parties agreeing to confer on a way to address this issue.

As a result, on June 15, 2016, Appellant filed a motion for an evidentiary hearing on the issue of standing. Respondents consented to the motion. Hearings were held on November 2, 2016 and January 11, 2017. As a result this court issued its order dated April 27, 2017 (standing order), finding the remaining named Respondents had standing to maintain this action as a class action. No other finding was reached by the court. Appellant timely filed a 59(e) motion to the Standing Order, and then filed this appeal. After filing the appeal, Appellant moved to remand the case for the limited purpose of hearing the 59(e) motions for both orders. This Court remanded the case by orders filed August 3, 2017, and August 24, 2017. On October 2, the trial court held a hearing on both 59(e) motions.

On October 27, 2017, the Court issued its order denying Appellant's motions to alter or amend the class certification order and the standing order. The Court specifically ruled "nothing in either order should be construed as a decision on the merits and all issues raised in the pleadings are preserved."

DISCUSSION

This Court recently issued its opinion in *Tilman v. Tilman*, 420 S.C. 249, 801 S.E.2d 757 (2017) regarding the appealability of lower court orders. In *Tilman*, the court opined:

“Generally only final judgments are appealable. *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) *249 (“ ‘Final judgment’ is a term of art referring to the disposition of all the issues in the case.”). A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942). An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory. *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005).”

S.C. Code Ann. §14-3-330 does allow appeals from certain interlocutory orders which involve the merits of the case or affects Appellant’s substantial rights in actions such as striking a pleading, *Id.* However, “[t]o avoid circuitous litigation and needless appeals, §14-3-330 is construed narrowly, eyeing the nature and effect of the order, not merely its label.” *Id.* at 420 S.C. 250, 801 S.E.2d 760, citing *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 7723 S.E.2d 144, 146 (2015); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302-04, 705 S.E.2d 475, 478-79 (Ct. App. 2011). These orders are interlocutory and not appealable.

CLASS CERTIFICATION ORDER

“[T]he general rule established by this [Supreme] Court is that class certification orders are not immediately appealable.” *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 448, 661 S.E.2d 81, 85 (2008). This is so for several reasons. An order certifying a class is not final; it “may be altered at any time prior to a decision on the merits.” *Id.* At 454, 661 S.E.2d at 88. “Neither does certification reach the ‘merits’ of the underlying cause of action[.]” *Knowles v. Standard Savings and Loan Association*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979). “Class certification, essentially procedural in nature, [also] does not involve substantial or essential legal rights which

require attention prior to final judgment.” *Id.*, 261 S.E.2d at 49. And orders certifying a class “do not prevent a judgment from which an appeal may be taken nor do they discontinue the action.” *Salmonsén*, 377 S.C. at 452, 661 S.E.2d at 87; see also *Schein v. Lamar*, 274 S.C. 329, 331, 263 S.E.2d 383, 384 (1970) (dismissing an appeal from an order certifying a class).

STANDING ORDER

Standing is a fundamental prerequisite to instituting an action. *Youngblood v. South Carolina Dept. of Social Services*, 402 S.C. 311, 317, 741 S.E. 515, 518 (2013). Like subject matter jurisdiction, personal jurisdiction, and venue, standing is a threshold issue to be determined by the court before the court decides anything pertaining to the merits of the case. While Respondents are not aware of any case specifically addressing whether an order finding standing is immediately appealable, the Supreme Court has found denial of motions to dismiss based upon other threshold issues were not immediately appealable. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E. 2d 392 (1995) (denial of a motion to dismiss for lack of subject-matter jurisdiction not immediately appealable), *Mid-State Distributors v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E. 2d 777 (1993) (finding denial of a motion to dismiss for lack of personal jurisdiction not immediately appealable), *Breland v. Love Chevrolet Olds, Inc.* 339 S.C. 89, 529 S.E.2d 11 (2000) (finding denial of a motion to dismiss/change venue not immediately appealable). See also *Burkey v. Noce*, 398 S.C. 35, 726 S.E.2d 229 (2012)

In *Woodard*, the Court noted “[a]n order denying a motion to dismiss for lack of subject matter jurisdiction does not determine anything. (internal citation omitted) Consequently, while such orders may involve a substantial right, they do not fall under §14-3-330(2)(a) because they do not in effect determine the action [nor do they] involve the merits under §14-3-330 (1)” *Id.* At 319 S.C. 243, 460 S.E.2d 394 (fn. 2). Likewise, an order concluding that

Respondents have standing to represent the class does not determine anything. It merely allows the class action to proceed.

Had Appellant filed a motion under S.C.R.C.P. 12(b)(6) to dismiss for lack of standing, denial of that motion would not be immediately appealable. *Burkey supra* (denial of 12(b)(6) motion generally not appealable). The nature and effect of the standing order is to continue the action. The Order did not decide the merits of the case. Moreover, all issues raised in the pleadings are preserved. No substantial right as contemplated by §14-3-330 (2) is affected.

59(e) ORDER

If there remotely was any question regarding the appealability of the class certification order and the standing order, the 59(e) order removes any doubt. It expressly provides: "Nothing in either order should be construed as a decision on the merits and all issues raised in the pleadings are preserved. Moreover, a motion for reconsideration is not immediately appealable unless the underlying order is appealable. The appeal should be dismissed.

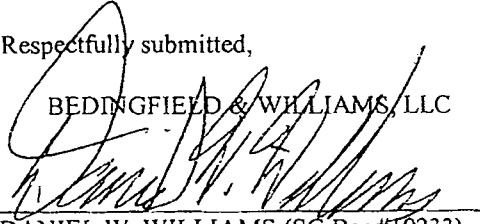
CONCLUSION

For the reasons set forth above, this appeal should be dismissed without prejudice and remanded to the lower court.

Respectfully submitted,

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Counsel for Respondents/Respondents

Barnwell, South Carolina
November 13, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2017-001208
Lower Court Case No. 2013-CP-06-0059

RECEIVED
NOV 02 2017
SC Court of Appeals

Lorenda Robinson, Elaine Nix, Archie Patterson,
and Tami Bollerman, Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment and Workforce, Appellant.

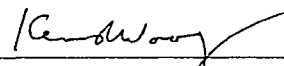
AMENDED NOTICE OF APPEAL

The South Carolina Department of Employment and Workforce appeals the Order of the Honorable Doyet A. Early dated April 12, 2017 and filed April 27, 2017, denying reconsideration of the Order of Judge Early dated April 29, 2016. Appellant received written notice of the entry of the April 12, 2017 Order on April 26, 2017.

The South Carolina Department of Employment and Workforce also appeals the aforementioned Order of the Honorable Doyet A. Early dated April 29, 2016 and filed May 5, 2016. Appellant received written notice of the entry of that Order on May 5, 2016. A timely motion for reconsideration of that Order was filed on May 12, 2016, and denied by the aforementioned Order dated April 12, 2017, written notice of the entry of the latter Order having been received on May 5, 2017.

The South Carolina Department of Employment and Workforce also appeals the Order of the Honorable Doyet A. Early dated October 27, 2017, which (a) denied reconsideration of the Order of Judge Early dated April 12, 2017 and filed April 27, 2017, and (b) further denied reconsideration of the Order of Judge Early dated April 29, 2016 (filed May 5, 2016). Appellant received written notice of the entry of the Order of October 27, 2017 by an e-filing on October 30, 2017.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)	
)	
ARCHIE PATTERSON AND TAMI)	CIVIL ACTION NO.: 2013-CP-06-059
BOLLERMAN,)	
)	
PLAINTIFFS,)	
)	ORDER FINDING THAT NAMED
)	PLAINTIFFS TAMI BOLLERMAN AND
v.)	ARCHIE PATTERSON HAVE
)	STANDING TO REPRESENT
SOUTH CAROLINA DEPARTMENT)	PUTATIVE CLASS
OF EMPLOYMENT & WORKFORCE,)	
)	
DEFENDANT.)	

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REONDA D. JACELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

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PROCEDURAL HISTORY

This matter is before the court on Defendant South Carolina Department of Employment & Workforce's (SCDEW) Motion for Re-Hearing of the Court's Order Certifying Class in the above captioned matter. Named Plaintiffs allege on behalf of themselves, as well as the putative class, that they were wrongfully denied unemployment insurance benefits by SCDEW. SCDEW is a State Agency charged by the South Carolina Legislature with the duty of processing unemployment claims in accordance with the Laws of this State. In order to be eligible to receive unemployment benefits, a claimant must be able to work and be seeking work. On a weekly basis, claimants have to comply with the process established by SCDEW for making claims. On August 6, 2012, without first promulgating regulations, SCDEW changed its method for claimants demonstrating that they were looking for work. SCDEW began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to properly apply online for employment. No other reason was given for denial of benefits. Plaintiffs assert that SCDEW is required by statute to implement regulations to

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establish policies to pay claims for unemployment benefits, in particular South Carolina Code Ann §41-27-510, §41-35-610, and §1-23-10 et. seq., which independently require the agency to promulgate regulations. Alternatively, Plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation under the APA. *See Joseph, et al v. SCDOL, et al*, Appellate Case No. 2014-001115, Opinion No. 27666. (Heard February 19, 2015 – Filed September 14, 2016).

Named Plaintiffs seek to represent a class defined as all persons who are citizens and residents of South Carolina who are eligible for unemployment insurance (UI) benefits but have not received payment due to Defendant's requirement they make an online application for work as a prerequisite to receiving benefits. Following a hearing on Plaintiffs' Motion to Certify the Class, the Court issued an order on April 29, 2016 certifying the class and finding that the named Plaintiffs had standing to bring the action. Defendant moved for reconsideration. Hearings were held to take testimony, the first on November 2, 2016, and the second on January 11, 2017.

PLAINTIFFS TAMI BOLLERMAN AND ARCHIE PATTERSON HAVE STANDING TO BRING THIS ACTION AND REPRESENT THE PUTATIVE CLASS

Tami Bollerman and Archie Patterson each have individual standing to bring this action. Tami Bollerman lost her job after being put on bed rest during her pregnancy. She began receiving unemployment benefits in August of 2012 and successfully applied for and received those benefits until the week ending October 13, 2012. During that week, SCDEW's computer system indicated that she failed to do one of four work searches online. Ms. Bollerman testified that she did, in fact, do an online search for that week, but speculated that she may have taken a link away from the SCDEW online work search site. Despite this, her claim was still denied. She ultimately received two more weeks of unemployment benefits before finding work. Ms. Bollerman did not exhaust



her unemployment benefits and was still eligible for one or more weeks of benefits when she became employed.

Archie Patterson was terminated from his employment with the South Carolina Department of Corrections on May 28, 2012. On June 12, 2012, he was determined to be eligible for unemployment compensation up to a maximum of \$6,520.00. SCDEW determined that he was eligible for benefits and began paying those benefits in August of 2012. In the first week, Mr. Patterson was confronted with the online work search and lost a week of benefits for failing to perform the search. Mr. Patterson explained at the hearing on this matter that he was not proficient with computers and therefore had difficulty with the online application. After losing that week of benefits, he testified that he had his son help him learn to do the online work search. Mr. Patterson continued to receive state benefits until his they were exhausted. Mr. Patterson then received one week of federal unemployment benefits, which a continuation of state benefits and therefore should be paid continuously until exhausted. When he stopped receiving his benefits they had not been exhausted.

In arguing that Plaintiffs lack standing, Defendant asserts that both Tami Bolleman and Archie Patterson did not appeal the adjudication of their benefit loss through administrative channels and have therefore failed to exhaust administrative remedies. SCDEW has an appeals process which eventually leads to the Administrative Law Court. A party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body.” *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006) (citing *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000)). The Administrative Law Court is part of the executive branch. *See, e.g., Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). Because an

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Administrative Law Judge is an agency of the executive branch, "it must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation." *Id.* at 38, 535 S.E.2d at 644. At the hearing, Chief Administrative Hearing Officer Ms. Romi Robinson admitted that a hearing officer would not have the authority to rule on whether requiring on-line searches could be required without SCDEW promulgating regulations regarding on-line searches. Therefore, any appeal concerning whether Plaintiffs were required to complete an online job search would be futile, since by its own admission the hearing officer could not rule on this issue.

The Administrative Law Court has "no authority to rule on the facial validity" of a regulation under state law. In *Drummond*, the Plaintiff filed suit stating that the South Carolina Department of Revenue "improperly promulgated regulations that do not conform to [statute] because the regulations allow the sales tax exemption only for diabetic supplies sold pursuant to a prescription or written authorization, which appellant claims is not required under the statute." *Drummond v. State, Dep't of Revenue*, 378 S.C. 362, 365, 662 S.E.2d 587, 588 (2008). The Court held that: "Although appellant is not challenging the constitutionality of the regulation, he is challenging its validity under state law. Because the Administrative Law Court is part of the executive branch, as stated in *Video Gaming*, it has no authority to rule on the facial validity of Reg. 117-332." *Id.* at 370, 662 S.E.2d at 591.

In addition to that, the Court of Appeals, in dicta, recently stated that "[a]nother exception to the exhaustion requirement is recognized when an agency has acted outside of its authority." *Brown v. James*, 389 S.C. 41, 55, 697 S.E.2d 604, 611-12 (Ct. App. 2010). Other courts have held that an exception to the exhaustion of administrative remedies requirement exists when an agency has acted outside its authority. *See, e.g., Grever v. Idaho Telephone Co.*, 499 P.2d 1256, 1259 (Ida.

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1972) (“[T]he rule will be departed. . . where the agency acts outside its authority.”). Because the plaintiffs are alleging that the SCDEW “acted outside its authority,” a court should hold that they did not need to exhaust administrative remedies. By requiring exhaustion of administrative remedies, the court would force a member of the executive branch, the ALC, determine the validity of a policy of another member of the executive branch; thus, it would violate the separation of powers doctrine. *See Ward v. State*, 343 S.C. 14, 20, 538 S.E.2d 245, 248 (2000) (Because an agency is part of the executive branch, “requiring the agency or ALJ to rule on the constitutionality of Act 189 would violate the separation of powers doctrine.”).

The Plaintiffs here are seeking a determination that SCDEW’s policy requiring online searches was unlawful. The administrative courts, as a part of the executive branch, cannot determine that issue and therefore the issue can only be addressed in circuit court.

Defendant also argues in the case of Archie Patterson that he has mooted his claims or failed to mitigate his losses by failing to apply for benefits. Even if Mr. Patterson chose not to apply for benefits after he was denied benefits that does not cure or obviate any earlier wrongful denial of benefits. Therefore Mr. Patterson’s claim is not moot and he has not failed to mitigate damages.

Even if Mr. Patterson and Ms. Bollerman lacked individual standing as alleged by SCDEW, they still have standing to represent the class under two distinct legal theories. The South Carolina Supreme Court has recognized that even when a plaintiff lacks standing to bring an action, they may still have standing if the harm they suffered is capable of repetition but evading review. *Byrd v. Irmo High School*, 321 S.C. 426 (1996). In that case, a student challenged his suspension from school and Irmo High argued that the case was moot because he was no longer under the suspension by the time the case was heard. The court held that when a case involves an issue that

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is capable of being repeated but can become moot before a court can decide it, an exception to the mootness doctrine exists. Here, one of the named Plaintiffs has, according to the Defendant, suffered a loss of benefits in a given week, and later failed to apply for benefits during a week when he might have recovered the lost week.

The design of unemployment benefit (UI) payments in South Carolina causes plaintiffs who are unemployed long enough to exhaust weeks of their benefits and potentially moot their own claims. The maximum length of the UI payment period in South Carolina is technically 20 weeks, but more often than not it is less. Therefore, many individual plaintiffs are incapable of maintaining their standing for the multiple years that such a case can take to complete. The issue in this case is capable of repetition but evading review.

The second exception to the mootness doctrine is the public importance exception. *Sloan v. Greenville County*, 361 S.C. 568, 606 S.E.2d 464 (2004). Under that exception, a case must present "imperative and manifest urgency requiring the establishment of a rule for future guidance in 'matters of important public interest.'" *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (citing *Sloan v. Greenville County*). The exception was established in South Carolina in the case of *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947). In that case, the Supreme Court of South Carolina, having already resolved the controversy between the parties by holding appointments to a board invalid, turned anyway to the matters in the case that it deemed of public importance. *Ashmore* at 96. "Questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest." *Id.* at 96. In a more recent case involving the public importance exception, the Supreme Court found it did not exist in a case involving federal and state preemption of zoning ordinances, applicability of zoning ordinances, and tort

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liability because the case presented “no issue of the constitutionality or legality of government action.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846 (2014). Here, the only question for this Court is whether or not SCDEW is legally entitled to require the online work search as a prerequisite to benefits. This question can be resolved in a class action as already determined by this Court in its Order Certifying Class.

More recently, in *South Carolina Public Interest Foundation v. South Carolina Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), the court found a public importance exception in a case involving the composition of a board which was established by statute. The statute, S.C. Code Ann. § 11-43-140 (2011), places two members of the General Assembly onto the board allegedly in violation of the dual office holding provisions of the South Carolina Constitution. The court held that even where the Plaintiff did not assert a particularized injury he still had standing because the case presented a “colorable claim that the Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board,” and therefore fit into the public importance exception.

Here both individual Plaintiffs testified about the difficulties faced by unemployment insurance recipients in losing even a single week of benefits as a result of the online work search requirement. Similarly, John Ruoff, after being qualified as an expert witness, testified about general hardships faced by recipients of unemployment insurance who are relying on those checks as a sole source of income while they search for employment. Ruoff further testified that the very purpose of Unemployment Insurance is to ameliorate the effects of losing a job.

Here, before this Court, is a matter of great public interest. SCDEW claims, as a matter of law, that a budget proviso of the General Assembly directing it to spend certain monies on implementing an online work search requirement not only entitles, but requires the agency to

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design and implement such an online search requirement and to do so without any legislative oversight or input. As argued repeatedly by the Plaintiffs throughout the course of this litigation, that claim is erroneous under both the APA and SCDEW's own enabling legislation. Nonetheless, SCDEW has steadfastly enforced the online search requirement, with brief interruption, since the budget proviso was passed. Even if the court were to decide that the Plaintiffs do not have individual standing, the issue itself is important enough for the court to retain jurisdiction.

However, this Court does find that both Tami Bollerman and Archie Patterson have individual standing. This Court further finds that each of them also has standing on the basis of suffering harm than is capable of repetition but evading review. This Court also finds that each of them has standing based on the public importance exception.

IT IS THEREFORE ORDERED that this case move forward as a class action based on my finding that the named plaintiffs meet the requirements to serve as class representatives.

AND IT IS SO ORDERED.



Honorable Doyet A. Early, II
Judge of the Second Circuit

April 12, 2017
Bamberg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
LORINDA ROBINSON, ELAINE NIX,)
ARCHIE PATTERSON AND TAMI)
BOLLERMAN,)

PLAINTIFFS,)

v.)

SOUTH CAROLINA DEPARTMENT)
OF EMPLOYMENT & WORKFORCE,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-06-059

ORDER CERTIFYING CLASS

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EMILY A. NIELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Named Plaintiffs seek certification of a class of individuals who were wrongfully denied unemployment insurance benefits by the South Carolina Department of Employment and Workforce (hereinafter referred to as "SCDEW"). SCDEW is a State Agency charged by the South Carolina Legislature with the duty of processing unemployment claims in accordance with the Laws of this State. A hearing was held in this matter on January 11, 2016. After arguments and review of briefs, affidavits, and other evidence presented, this Motion is granted.

Plaintiffs assert as of August 6, 2012, SCDEW, without first promulgating regulations, began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to properly apply online for employment. Plaintiffs assert that SCDEW is required by Statute to implement regulations to establish policies to pay claims for unemployment benefits in particular S.C. Code Ann. §41-27-510, §41-35-610, and §1-23-10 et. seq. Alternatively, plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation.

Named Plaintiffs define the class as all persons who are citizens and residents of South

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Carolina who are eligible for unemployment insurance (UI) benefits but have not received payment because of procedures and policies required of class members by Defendant to make an online application for work as a prerequisite to his/her claim for benefits, this policy having not been promulgated as a regulation as mandated by statute. After applying a vigorous analysis of all five prerequisites for class certification as required by *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), I find that the five (5) prerequisites for class certification have been met.

PREREQUISITES FOR CLASS CERTIFICATION

This action has been brought and may be maintained as a class action pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure. Under South Carolina Rules of Civil Procedure 23(a), the proponent of the Class must show:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,
- (4) the representative parties will fairly and adequately protect the interests of the class, and
- (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a) SCRPC.

Class actions are favored in South Carolina. *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 577, 703 S.E.2d 197, 204 (2010). The South Carolina Supreme Court has recognized and endorsed an expansive view and treatment of class actions. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 523 S.E.2d 781 (2000) (“By omitting the additional requirements [of 23(b) from the Federal Rules of Civil Procedure], Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart.”); *see also Grazia*,

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id. Suits commonly involving large numbers of plaintiffs, each with a small individual claim, who, without the class action device, might have no practical recourse due to the high costs obligation, are appropriate for class prosecution. *See S.C. Nat'l Bank v. Stone*, 139 F.R.D. 325, 328 (D.S.C. 1991). In addition, “[t]he class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.” *Grazia*, 390 S.C. at 576, 703 S.E.2d at 204 (quoting *Califano*, 442 U.S. at 701).

The court has wide discretion in certifying a class action. *Waller v. Seabrook Island Prop. Owners Ass'n*, 388 S.E.2d 799, 801 (S.C. 1990). The focus for class certification is simply whether the prerequisites of Rule 23 have been met. *Tilley v. Pacesetter Corp.*, 508 S.E.2d 16, 21 (1998) (a court may not look to the merits when determining class certification).

1. The Proposed Class is so Numerous that Joinder of All Members is Impracticable.

“There is no requirement . . . that at the pleading stage of the case either the exact number of persons comprising the class be specified or the class members be identified.” *McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 159 (Ct. App. 1986) (citation omitted). A “fluid, changing membership . . . does not render the class action device unsuitable.” *Id.* There is no “magic number” necessary to establish numerosity. *See Green v. Cauthen*, 379 F.Supp. 361, 371-72 (D.S.C. 1974).

In *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011), the South Carolina Court of Appeals upheld certification of a class of 228 persons. Based upon the Affidavit of John Matthews, this class may very well consist of over 60,000 people whose unemployment benefits were denied. SCDEW employee, Kevin Cummings, in his October 27, 2014 deposition, indicates approximately 50,000 persons were denied benefits

because of a failure to comply with the on-line work search requirement and these persons have not exhausted their benefits. Defendant, in its Memorandum against class certification, notes "that there is a large number of persons who have had claims stopped for a week or more because of failure to comply with the online work search requirement." Using Mr. Cummings estimations, the numerosity prerequisite is clearly satisfied.

2. There are Questions of Law or Fact Common to the Class.

The Class has common questions of law or fact as a result of the Defendant's policy; that is, the members of the class all have had their statutory benefits reduced or suspended because of the policy. Rule 23(a)(2) requires a showing of the existence of "questions of law or fact common to the class." The South Carolina Supreme Court has provided guidance in this analysis. In *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), the Court stated that:

To establish commonality, a party must show that "there are questions of law or fact common to the class." Rule 23, SCRCP. In practical terms this means the party must articulate the existence of "significant common, legal, or factual issues" which bind the proposed class together. *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 64 (S.D. Ohio 1991).

Critically, "not every issue in the case must be common to all class members." *O'Connor v. Boeing North Amer., Inc.*, 184 F.R.D. 311, 329 (C.D. Cal. 1998). Commonality is met only where the class shares a determinative issue. *See Stott v. Haworth*, 916 F.2d 134, 145 (4th Cir. 1990) ("certification is proper only when a determinative critical issue overshadows all other issues").

Id. at 200-01.

In the present case, the Class Members share a common determinative issue. Each member of the Class would be eligible for unemployment benefits under the regulations and statute, but were denied benefits because they failed to meet the requirements of the new policy.

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The determinative issue for all members of the Class is whether SCDEW was required to enact the new policy as a regulation.

Defendants argue that Plaintiffs have the burden of proving they have met other requirements of receiving unemployment benefits, such as satisfying the four (4) job search requirement, being available for work, and actively seeking work. Therefore, commonality cannot be met. This argument is without merit. Plaintiffs specifically have limited the definition of the class to all persons who were denied benefits because of the failure to comply with the online work search requirement. They have not sought to certify a class to recover benefits for persons who were denied benefits for any other reason. Therefore, the prerequisite of commonality has been met.

3. The Claims of the Representative Party are Typical of the Claims of the Class Members.

SCRCP Rule 23(a)(3) requires that the claims of the Class Representative be "typical of the claims of the class." The typicality requirement compares the similarity of the named Plaintiff's claim to the claims of the class as a whole.

The proposed class action presents similar claims for each member. The named Representatives, i.e. each member of the class has suffered the same type of harm from the new Policy. Specifically, each member has had his/her unemployment benefits denied for at least one week because of SCDEW's implementation of the online work search requirement policy. Further, each Plaintiff is capable of becoming employed in the future and suffering harm from this policy. Moreover, each named plaintiffs and each class member are seeking the same remedial measures. Each member is seeking damages for the lost benefits and an injunction until the SCDEW enacts the policy as a regulation. Therefore, the typicality requirement is satisfied.

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4. The Representative Party will Fairly and Adequately Protect the Interests of the Class.

SCRCF Rule 23(a)(4) requires that the representative party will fairly and adequately protect the interests of the Class. There are two criteria which the Court should examine in determining whether the Class Representative adequately protects the interests of the class. These two criteria are: "(1) the representative must have common interests with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel." *Runion v. U.S. Shelter*, 98 F.R.D. 313, 317 (D.S.C. 1983); see *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (*Runion* "sets forth all criteria to be considered in determining whether a particular named plaintiff will adequately represent a proposed class.").

The first element requires the class representative to "not have any significant antagonistic or conflicting interests to the unnamed members of the class." *Runion*, 98 F.R.D. at 317. "The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class." *Waller*, 300 S.C. at 468, 388 S.E.2d at 801 (citation omitted). Since the plaintiffs all have the same economic interests, namely acquiring unemployment compensation, there is no antagonism within this class. The second element should be satisfied because the representative parties have counsel and there is no evidence of close relationships between the representative members and the SCDEW. *Runion*, 98 F.R.D. at 317-18 (denying Mr. Runion as representative because of his close relationship with the defendant). Further, Plaintiffs have supplied the Affidavit of John Freeman indicating Plaintiffs' counsel experiences with class action litigation, as well as their own affidavits outlining their experience. I find that the prerequisite of adequacy has been met.

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5. The Amount in Controversy Exceeds One Hundred Dollars for Each Class Member.

The final prerequisite is that the amount in controversy must exceed one hundred dollars for each member of the class. SCRCP 23(a)(5). This amount is based on the amount claimed by the Plaintiffs if it is apparent that the claim is made in good faith. *See Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 201 (S.C. 1991). Here, the amount in controversy is the amount of unemployment compensation denied for each member. The average weekly benefit, according to SCDEW's website, is \$236.00. Each of the members of the class has missed at least one week's worth of benefits as a result of SCDEW's arbitrary policy. Further, Plaintiffs have defined the class as those who have more than \$100.00 in damages. Therefore, any claim of less than \$100.00 is excluded. I find that the prerequisite \$100.00 threshold for damages has been met.

CONCLUSION AND CLASS DEFINITION

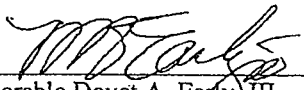
I find that all five (5) prerequisites of class certification have been met, including the damages threshold, and hereby certify a class consisting of all persons who are: (1) citizens and residents of South Carolina; (2) who were eligible to receive unemployment benefits, through SCDEW; (3) who made application through SCDEW to receive benefits; and (4) who did not receive benefits for one or more weeks as a result of their failure to conduct an online job search on or after August 5, 2012.

No part of this Order shall be construed as a decision on the merits of this case.

AND IT IS SO ORDERED.

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Bamberg, South Carolina
April 29, 2016


Honorable Doyet A. Early III
Judge of the Second Circuit

As a result, on June 15, 2016, defendant filed a motion for an evidentiary hearing to on the issue of standing. Plaintiffs consented to the motion. Hearings were held on November 2, 2016 and January 11, 2017. As result this court issued its order dated April 27, 2017, finding the remaining named plaintiffs had standing to maintain this action as a class action. No other finding was reached by the court. Defendant timely filed a 59(e) motion to the Standing Order, and on October 2 this court held a hearing on this motion as well as any matter previously raised by the defendant in its 59(e) motion regarding class certification.

After, careful review of both orders and consideration of the arguments of both parties, I respectfully deny both motions. The Class certification order sufficiently sets forth my reasoning for granting class certification and the May 5, 2016, Order regarding the named plaintiffs standing sets fort sufficient findings to conclude the named plaintiffs have standing to maintain this action as a class action. Nothing in either order should be construed as a decision on the merits and all issues raised in the pleadings are preserved.

AND IT IS SO ORDERED.

Honorable Doyet A. Early, III
Judge of the Second Circuit

Barnwell, South Carolina
_____, 2016



Barnwell Common Pleas

Case Caption: Lorinda A Robinson, et al , plaintiff, et al VS SC Department of
Employment & Work Force
Case Number: 2013CP0600059
Type: Order/Other

So Ordered

s/D.A. Early III 2136

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2017-001208
Lower Court Case No. 2013-CP-06-0059

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SC Court of Appeals

Lorenda Robinson, Elaine Nix, Archie Patterson,
and Tami Bollerman, Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment and Workforce, Appellant.

CERTIFICATE OF SERVICE


The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Amended Notice of Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 2nd day of November 2017:

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A handwritten signature in black ink, appearing to read "Stephen R. Suggs", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

The South Carolina Court of Appeals

Lorinda Robinson, Elaine Nix, Archie Patterson, and
Tami Bollerman, Plaintiffs,

Of whom Archie Patterson and Tami Bollerman, are the
Respondents,


v.

South Carolina Department of Employment and
Workforce, Appellant.

Appellate Case No. 2017-001208

ORDER

Appellant has filed a motion, consented to by Respondents, requesting this court to clarify its August 3, 2017 order, which partially remanded this case for the limited purpose of allowing the circuit court to rule on the pending Rule 59(e), SCRCP motion. This court's previous order did give the circuit court jurisdiction to hear any pending 59(e) motions, but to the extent clarification is necessary, this court notes the circuit court may rule on any and all 59(e) motions that are currently pending, including any amended motions.


FOR THE COURT

Columbia, South Carolina

cc:
William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire
Daniel Webster Williams, Esquire

FILED

August 24, 2017

DISCN 08/28/17

C. Bradley Hutto, Esquire
Alexander D. Pattera, Esquire
Stephen R. Suggs, Esquire
The Honorable Doyet A. Early, III

DLSCN 08/28/17

The South Carolina Court of Appeals

Lorinda Robinson, Elaine Nix, Archie Patterson, and
Tami Bollerman, Plaintiffs,

Of whom Archie Patterson and Tami Bollerman, are the
Respondents,

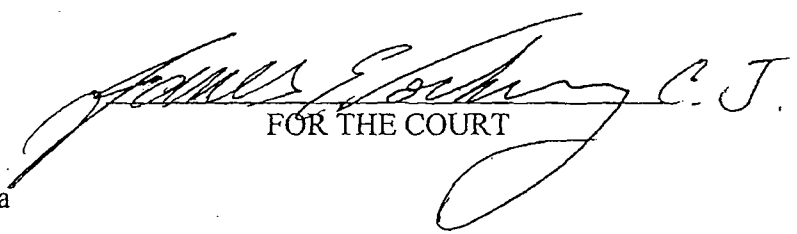
v.

South Carolina Department of Employment and
Workforce, Appellant.

Appellate Case No. 2017-001208

ORDER

The petition to reinstate is granted. This appeal will be held in abeyance and the case is partially remanded for the limited purpose of allowing the circuit court to rule on the pending Rule 59(e) motion.


FOR THE COURT

Columbia, South Carolina

cc:

William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire
Daniel Webster Williams, Esquire
C. Bradley Hutto, Esquire
Alexander D. Pattera, Esquire
Stephen R. Suggs, Esquire
The Honorable Doyet A. Early

FILED

August 3, 2017

DLSCN 08/07/17

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Case No. 2013-CP-06-0059

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SC COURT OF APPEALS

Lorenda Robinson, Elaine Nix, Archie Patterson,
Tami Bollerman, Fred Alexander and Pamela Wooten, Plaintiffs,
Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.


South Carolina Department of Employment and Workforce, Appellant.

NOTICE OF APPEAL

The South Carolina Department of Employment and Workforce appeals the Order of the Honorable Doyet A. Early dated April 12, 2017, denying reconsideration of the Order of Judge Early dated April 29, 2016. Appellant received written notice of the entry of the April 12, 2017 Order on May 5, 2017.

The South Carolina Department of Employment and Workforce also appeals the aforementioned Order of the Honorable Doyet A. Early dated April 29, 2016. Appellant received written notice of the entry of that Order on May 5, 2016. A timely motion for reconsideration of that Order was filed on May 12, 2016, and denied by the aforementioned Order dated April 12, 2017, written notice of the entry of the latter Order having been received on May 5, 2017.

DAVIDSON & LINDEMANN, P.A.

BY: 

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May 22, 2017

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Counsel for Respondents

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 ARCHIE PATTERSON AND TAMI)
 BOLLERMAN,)
)
 PLAINTIFFS,)
)
 v.)
)
 SOUTH CAROLINA DEPARTMENT)
 OF EMPLOYMENT & WORKFORCE,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-06-059

ORDER FINDING THAT NAMED
 PLAINTIFFS TAMI BOLLERMAN AND
 ARCHIE PATTERSON HAVE
 STANDING TO REPRESENT THE
 PUTATIVE CLASS

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 RICHARD D. McELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

PROCEDURAL HISTORY

This matter is before the court on Defendant South Carolina Department of Employment & Workforce's (SCDEW) Motion for Re-Hearing of the Court's Order Certifying Class in the above captioned matter. Named Plaintiffs allege on behalf of themselves, as well as the putative class, that they were wrongfully denied unemployment insurance benefits by SCDEW. SCDEW is a State Agency charged by the South Carolina Legislature with the duty of processing unemployment claims in accordance with the Laws of this State. In order to be eligible to receive unemployment benefits, a claimant must be able to work and be seeking work. On a weekly basis, claimants have to comply with the process established by SCDEW for making claims. On August 6, 2012, without first promulgating regulations, SCDEW changed its method for claimants demonstrating that they were looking for work. SCDEW began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to properly apply online for employment. No other reason was given for denial of benefits. Plaintiffs assert that SCDEW is required by statute to implement regulations to

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establish policies to pay claims for unemployment benefits, in particular South Carolina Code Ann §41-27-510, §41-35-610, and §1-23-10 et. seq., which independently require the agency to promulgate regulations. Alternatively, Plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation under the APA. *See Joseph, et al v. SCDOL, et al*, Appellate Case No. 2014-001115, Opinion No. 27666. (Heard February 19, 2015 – Filed September 14, 2016).

Named Plaintiffs seek to represent a class defined as all persons who are citizens and residents of South Carolina who are eligible for unemployment insurance (UI) benefits but have not received payment due to Defendant's requirement they make an online application for work as a prerequisite to receiving benefits. Following a hearing on Plaintiffs' Motion to Certify the Class, the Court issued an order on April 29, 2016 certifying the class and finding that the named Plaintiffs had standing to bring the action. Defendant moved for reconsideration. Hearings were held to take testimony, the first on November 2, 2016, and the second on January 11, 2017.

**PLAINTIFFS TAMI BOLLERMAN AND ARCHIE PATTERSON HAVE
STANDING TO BRING THIS ACTION AND REPRESENT THE PUTATIVE CLASS**

Tami Bollerman and Archie Patterson each have individual standing to bring this action. Tami Bollerman lost her job after being put on bed rest during her pregnancy. She began receiving unemployment benefits in August of 2012 and successfully applied for and received those benefits until the week ending October 13, 2012. During that week, SCDEW's computer system indicated that she failed to do one of four work searches online. Ms. Bollerman testified that she did, in fact, do an online search for that week, but speculated that she may have taken a link away from the SCDEW online work search site. Despite this, her claim was still denied. She ultimately received two more weeks of unemployment benefits before finding work. Ms. Bollerman did not exhaust

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her unemployment benefits and was still eligible for one or more weeks of benefits when she became employed.

Archie Patterson was terminated from his employment with the South Carolina Department of Corrections on May 28, 2012. On June 12, 2012, he was determined to be eligible for unemployment compensation up to a maximum of \$6,520.00. SCDEW determined that he was eligible for benefits and began paying those benefits in August of 2012. In the first week, Mr. Patterson was confronted with the online work search and lost a week of benefits for failing to perform the search. Mr. Patterson explained at the hearing on this matter that he was not proficient with computers and therefore had difficulty with the online application. After losing that week of benefits, he testified that he had his son help him learn to do the online work search. Mr. Patterson continued to receive state benefits until his they were exhausted. Mr. Patterson then received one week of federal unemployment benefits, which a continuation of state benefits and therefore should be paid continuously until exhausted. When he stopped receiving his benefits they had not been exhausted.

In arguing that Plaintiffs lack standing, Defendant asserts that both Tami Bolleman and Archie Patterson did not appeal the adjudication of their benefit loss through administrative channels and have therefore failed to exhaust administrative remedies. SCDEW has an appeals process which eventually leads to the Administrative Law Court. A party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body." *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006) (citing *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000)). The Administrative Law Court is part of the executive branch. *See, e.g., Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). Because an



Administrative Law Judge is an agency of the executive branch, "it must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation." *Id.* at 38, 535 S.E.2d at 644. At the hearing, Chief Administrative Hearing Officer Ms. Romi Robinson admitted that a hearing officer would not have the authority to rule on whether requiring on-line searches could be required without SCDEW promulgating regulations regarding on-line searches. Therefore, any appeal concerning whether Plaintiffs were required to complete an online job search would be futile, since by its own admission the hearing officer could not rule on this issue.

The Administrative Law Court has "no authority to rule on the facial validity" of a regulation under state law. In *Drummond*, the Plaintiff filed suit stating that the South Carolina Department of Revenue "improperly promulgated regulations that do not conform to [statute] because the regulations allow the sales tax exemption only for diabetic supplies sold pursuant to a prescription or written authorization, which appellant claims is not required under the statute." *Drummond v. State, Dep't of Revenue*, 378 S.C. 362, 365, 662 S.E.2d 587, 588 (2008). The Court held that: "Although appellant is not challenging the constitutionality of the regulation, he is challenging its validity under state law. Because the Administrative Law Court is part of the executive branch, as stated in *Video Gaming*, it has no authority to rule on the facial validity of Reg. 117-332." *Id.* at 370, 662 S.E.2d at 591.

In addition to that, the Court of Appeals, in dicta, recently stated that "[a]nother exception to the exhaustion requirement is recognized when an agency has acted outside of its authority." *Brown v. James*, 389 S.C. 41, 55, 697 S.E.2d 604, 611-12 (Ct. App. 2010). Other courts have held that an exception to the exhaustion of administrative remedies requirement exists when an agency has acted outside its authority. *See, e.g., Grever v. Idaho Telephone Co.*, 499 P.2d 1256, 1259 (Ida.

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1972) (“[T]he rule will be departed. . . where the agency acts outside its authority.”). Because the plaintiffs are alleging that the SCDEW “acted outside its authority,” a court should hold that they did not need to exhaust administrative remedies. By requiring exhaustion of administrative remedies, the court would force a member of the executive branch, the ALC, determine the validity of a policy of another member of the executive branch; thus, it would violate the separation of powers doctrine. *See Ward v. State*, 343 S.C. 14, 20, 538 S.E.2d 245, 248 (2000) (Because an agency is part of the executive branch, “requiring the agency or ALJ to rule on the constitutionality of Act 189 would violate the separation of powers doctrine.”).

The Plaintiffs here are seeking a determination that SCDEW’s policy requiring online searches was unlawful. The administrative courts, as a part of the executive branch, cannot determine that issue and therefore the issue can only be addressed in circuit court.

Defendant also argues in the case of Archie Patterson that he has mooted his claims or failed to mitigate his losses by failing to apply for benefits. Even if Mr. Patterson chose not to apply for benefits after he was denied benefits that does not cure or obviate any earlier wrongful denial of benefits. Therefore Mr. Patterson’s claim is not moot and he has not failed to mitigate damages.

Even if Mr. Patterson and Ms. Bollerman lacked individual standing as alleged by SCDEW, they still have standing to represent the class under two distinct legal theories. The South Carolina Supreme Court has recognized that even when a plaintiff lacks standing to bring an action, they may still have standing if the harm they suffered is capable of repetition but evading review. *Byrd v. Irmo High School*, 321 S.C. 426 (1996). In that case, a student challenged his suspension from school and Irmo High argued that the case was moot because he was no longer under the suspension by the time the case was heard. The court held that when a case involves an issue that

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is capable of being repeated but can become moot before a court can decide it, an exception to the mootness doctrine exists. Here, one of the named Plaintiffs has, according to the Defendant, suffered a loss of benefits in a given week, and later failed to apply for benefits during a week when he might have recovered the lost week.

The design of unemployment benefit (UI) payments in South Carolina causes plaintiffs who are unemployed long enough to exhaust weeks of their benefits and potentially moot their own claims. The maximum length of the UI payment period in South Carolina is technically 20 weeks, but more often than not it is less. Therefore, many individual plaintiffs are incapable of maintaining their standing for the multiple years that such a case can take to complete. The issue in this case is capable of repetition but evading review.

The second exception to the mootness doctrine is the public importance exception. *Sloan v. Greenville County*, 361 S.C. 568, 606 S.E.2d 464 (2004). Under that exception, a case must present "imperative and manifest urgency requiring the establishment of a rule for future guidance in 'matters of important public interest.'" *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (citing *Sloan v. Greenville County*). The exception was established in South Carolina in the case of *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947). In that case, the Supreme Court of South Carolina, having already resolved the controversy between the parties by holding appointments to a board invalid, turned anyway to the matters in the case that it deemed of public importance. *Ashmore* at 96. "Questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest." *Id.* at 96. In a more recent case involving the public importance exception, the Supreme Court found it did not exist in a case involving federal and state preemption of zoning ordinances, applicability of zoning ordinances, and tort

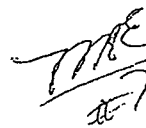
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liability because the case presented “no issue of the constitutionality or legality of government action.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014). Here, the only question for this Court is whether or not SCDEW is legally entitled to require the online work search as a prerequisite to benefits. This question can be resolved in a class action as already determined by this Court in its Order Certifying Class.

More recently, in *South Carolina Public Interest Foundation v. South Carolina Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), the court found a public importance exception in a case involving the composition of a board which was established by statute. The statute, S.C. Code Ann. § 11-43-140 (2011), places two members of the General Assembly onto the board allegedly in violation of the dual office holding provisions of the South Carolina Constitution. The court held that even where the Plaintiff did not assert a particularized injury he still had standing because the case presented a “colorable claim that the Board is unconstitutionally comprised, casting a cloud of illegitimacy which could marginalize the important decisions of the Board,” and therefore fit into the public importance exception.

Here both individual Plaintiffs testified about the difficulties faced by unemployment insurance recipients in losing even a single week of benefits as a result of the online work search requirement. Similarly, John Ruoff, after being qualified as an expert witness, testified about general hardships faced by recipients of unemployment insurance who are relying on those checks as a sole source of income while they search for employment. Ruoff further testified that the very purpose of Unemployment Insurance is to ameliorate the effects of losing a job.

Here, before this Court, is a matter of great public interest. SCDEW claims, as a matter of law, that a budget proviso of the General Assembly directing it to spend certain monies on implementing an online work search requirement not only entitles, but requires the agency to


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design and implement such an online search requirement and to do so without any legislative oversight or input. As argued repeatedly by the Plaintiffs throughout the course of this litigation, that claim is erroneous under both the APA and SCDEW's own enabling legislation. Nonetheless, SCDEW has steadfastly enforced the online search requirement, with brief interruption, since the budget proviso was passed. Even if the court were to decide that the Plaintiffs do not have individual standing, the issue itself is important enough for the court to retain jurisdiction.

However, this Court does find that both Tami Bollerman and Archie Patterson have individual standing. This Court further finds that each of them also has standing on the basis of suffering harm than is capable of repetition but evading review. This Court also finds that each of them has standing based on the public importance exception.

IT IS THEREFORE ORDERED that this case move forward as a class action based on my finding that the named plaintiffs meet the requirements to serve as class representatives.

AND IT IS SO ORDERED.



Honorable Doyet A. Early, III
Judge of the Second Circuit

April 12, 2017
Bainberg, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 LORINDA ROBINSON, ELAINE NIX,)
 ARCHIE PATTERSON AND TAMI)
 BOLLERMAN,)
)
 PLAINTIFFS,)
)
 v.)
)
 SOUTH CAROLINA DEPARTMENT)
 OF EMPLOYMENT & WORKFORCE,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-06-059

ORDER CERTIFYING CLASS

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 SC Court of Appeals

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 RHOSSA O. HILVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Named Plaintiffs seek certification of a class of individuals who were wrongfully denied unemployment insurance benefits by the South Carolina Department of Employment and Workforce (hereinafter referred to as "SCDEW"). SCDEW is a State Agency charged by the South Carolina Legislature with the duty of processing unemployment claims in accordance with the Laws of this State. A hearing was held in this matter on January 11, 2016. After arguments and review of briefs, affidavits, and other evidence presented, this Motion is granted.

Plaintiffs assert as of August 6, 2012, SCDEW, without first promulgating regulations, began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to properly apply online for employment. Plaintiffs assert that SCDEW is required by Statute to implement regulations to establish policies to pay claims for unemployment benefits in particular S.C. Code Ann. §41-27-510, §41-35-610, and §1-23-10 et. seq. Alternatively, plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation.

Named Plaintiffs define the class as all persons who are citizens and residents of South

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Carolina who are eligible for unemployment insurance (UI) benefits but have not received payment because of procedures and policies required of class members by Defendant to make an online application for work as a prerequisite to his/her claim for benefits, this policy having not been promulgated as a regulation as mandated by statute. After applying a vigorous analysis of all five prerequisites for class certification as required by *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), I find that the five (5) prerequisites for class certification have been met.

PREREQUISITES FOR CLASS CERTIFICATION

This action has been brought and may be maintained as a class action pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure. Under South Carolina Rules of Civil Procedure 23(a), the proponent of the Class must show:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a) SCRPC.

Class actions are favored in South Carolina. *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 577, 703 S.E.2d 197, 204 (2010). The South Carolina Supreme Court has recognized and endorsed an expansive view and treatment of class actions. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 523 S.E.2d 781 (2000) (“By omitting the additional requirements [of 23(b) from the Federal Rules of Civil Procedure], Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart.”); *see also Grazia*,

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id. Suits commonly involving large numbers of plaintiffs, each with a small individual claim, who, without the class action device, might have no practical recourse due to the high costs obligation, are appropriate for class prosecution. *See S.C. Nat'l Bank v. Stone*, 139 F.R.D. 325, 328 (D.S.C. 1991). In addition, “[t]he class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.” *Grazia*, 390 S.C. at 576, 703 S.E.2d at 204 (quoting *Califano*, 442 U.S. at 701).

The court has wide discretion in certifying a class action. *Waller v. Seabrook Island Prop. Owners Ass'n*, 388 S.E.2d 799, 801 (S.C. 1990). The focus for class certification is simply whether the prerequisites of Rule 23 have been met. *Tilley v. Pacesetter Corp.*, 508 S.E.2d 16, 21 (1998) (a court may not look to the merits when determining class certification).

1. The Proposed Class is so Numerous that Joinder of All Members is Impracticable.

“There is no requirement . . . that at the pleading stage of the case either the exact number of persons comprising the class be specified or the class members be identified.” *McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 159 (Ct. App. 1986) (citation omitted). A “fluid, changing membership . . . does not render the class action device unsuitable.” *Id.* There is no “magic number” necessary to establish numerosity. *See Green v. Cauthen*, 379 F.Supp. 361, 371-72 (D.S.C. 1974).

In *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011), the South Carolina Court of Appeals upheld certification of a class of 228 persons. Based upon the Affidavit of John Matthews, this class may very well consist of over 60,000 people whose unemployment benefits were denied. SCDEW employee, Kevin Cummings, in his October 27, 2014 deposition, indicates approximately 50,000 persons were denied benefits



because of a failure to comply with the on-line work search requirement and these persons have not exhausted their benefits. Defendant, in its Memorandum against class certification, notes "that there is a large number of persons who have had claims stopped for a week or more because of failure to comply with the online work search requirement." Using Mr. Cummings estimations, the numerosity prerequisite is clearly satisfied.

2. There are Questions of Law or Fact Common to the Class.

The Class has common questions of law or fact as a result of the Defendant's policy; that is, the members of the class all have had their statutory benefits reduced or suspended because of the policy. Rule 23(a)(2) requires a showing of the existence of "questions of law or fact common to the class." The South Carolina Supreme Court has provided guidance in this analysis. In *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), the Court stated that:

To establish commonality, a party must show that "there are questions of law or fact common to the class." Rule 23, SCRCP. In practical terms this means the party must articulate the existence of "significant common, legal, or factual issues" which bind the proposed class together. *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 64 (S.D. Ohio 1991).

Critically, "not every issue in the case must be common to all class members." *O'Connor v. Boeing North Amer., Inc.*, 184 F.R.D. 311, 329 (C.D. Cal. 1998). Commonality is met only where the class shares a determinative issue. See *Stott v. Haworth*, 916 F.2d 134, 145 (4th Cir. 1990) ("certification is proper only when a determinative critical issue overshadows all other issues").

Id. at 200-01.

In the present case, the Class Members share a common determinative issue. Each member of the Class would be eligible for unemployment benefits under the regulations and statute, but were denied benefits because they failed to meet the requirements of the new policy.

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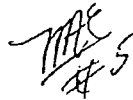
The determinative issue for all members of the Class is whether SCDEW was required to enact the new policy as a regulation.

Defendants argue that Plaintiffs have the burden of proving they have met other requirements of receiving unemployment benefits, such as satisfying the four (4) job search requirement, being available for work, and actively seeking work. Therefore, commonality cannot be met. This argument is without merit. Plaintiffs specifically have limited the definition of the class to all persons who were denied benefits because of the failure to comply with the online work search requirement. They have not sought to certify a class to recover benefits for persons who were denied benefits for any other reason. Therefore, the prerequisite of commonality has been met.

3. The Claims of the Representative Party are Typical of the Claims of the Class Members.

SCRCP Rule 23(a)(3) requires that the claims of the Class Representative be "typical of the claims of the class." The typicality requirement compares the similarity of the named Plaintiff's claim to the claims of the class as a whole.

The proposed class action presents similar claims for each member. The named Representatives, i.e. each member of the class has suffered the same type of harm from the new Policy. Specifically, each member has had his/her unemployment benefits denied for at least one week because of SCDEW's implementation of the online work search requirement policy. Further, each Plaintiff is capable of becoming employed in the future and suffering harm from this policy. Moreover, each named plaintiffs and each class member are seeking the same remedial measures. Each member is seeking damages for the lost benefits and an injunction until the SCDEW enacts the policy as a regulation. Therefore, the typicality requirement is satisfied.



4. The Representative Party will Fairly and Adequately Protect the Interests of the Class.

SCRCP Rule 23(a)(4) requires that the representative party will fairly and adequately protect the interests of the Class. There are two criteria which the Court should examine in determining whether the Class Representative adequately protects the interests of the class. These two criteria are: "(1) the representative must have common interests with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel." *Runion v. U.S. Shelter*, 98 F.R.D. 313, 317 (D.S.C. 1983); see *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (*Runion* "sets forth all criteria to be considered in determining whether a particular named plaintiff will adequately represent a proposed class.").

The first element requires the class representative to "not have any significant antagonistic or conflicting interests to the unnamed members of the class." *Runion*, 98 F.R.D. at 317. "The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class." *Waller*, 300 S.C. at 468, 388 S.E.2d at 801 (citation omitted). Since the plaintiffs all have the same economic interests, namely acquiring unemployment compensation, there is no antagonism within this class. The second element should be satisfied because the representative parties have counsel and there is no evidence of close relationships between the representative members and the SCDEW. *Runion*, 98 F.R.D. at 317-18 (denying Mr. Runion as representative because of his close relationship with the defendant). Further, Plaintiffs have supplied the Affidavit of John Freeman indicating Plaintiffs' counsel experiences with class action litigation, as well as their own affidavits outlining their experience. I find that the prerequisite of adequacy has been met.

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5. The Amount in Controversy Exceeds One Hundred Dollars for Each Class Member.

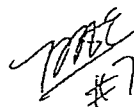
The final prerequisite is that the amount in controversy must exceed one hundred dollars for each member of the class. SCRCP 23(a)(5). This amount is based on the amount claimed by the Plaintiffs if it is apparent that the claim is made in good faith. *See Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 201 (S.C. 1991). Here, the amount in controversy is the amount of unemployment compensation denied for each member. The average weekly benefit, according to SCDEW's website, is \$236.00. Each of the members of the class has missed at least one week's worth of benefits as a result of SCDEW's arbitrary policy. Further, Plaintiffs have defined the class as those who have more than \$100.00 in damages. Therefore, any claim of less than \$100.00 is excluded. I find that the prerequisite \$100.00 threshold for damages has been met.

CONCLUSION AND CLASS DEFINITION

I find that all five (5) prerequisites of class certification have been met, including the damages threshold, and hereby certify a class consisting of all persons who are: (1) citizens and residents of South Carolina; (2) who were eligible to receive unemployment benefits, through SCDEW; (3) who made application through SCDEW to receive benefits; and (4) who did not receive benefits for one or more weeks as a result of their failure to conduct an online job search on or after August 5, 2012.

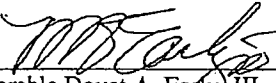
No part of this Order shall be construed as a decision on the merits of this case.

AND IT IS SO ORDERED.

Handwritten signature and the number 7.

7

Bamberg, South Carolina
April 29, 2016


Honorable Doyet A. Early, III
Judge of the Second Circuit

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

Appellate Case No.
Case No. 2013-CP-06-0059

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COURT OF APPEALS

Lorenda Robinson, Elaine Nix, Archie Patterson,
Tami Bollerman, Fred Alexander and Pamela Wooten, Plaintiffs,
Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment & Workforce, Appellant.

CERTIFICATE OF SERVICE

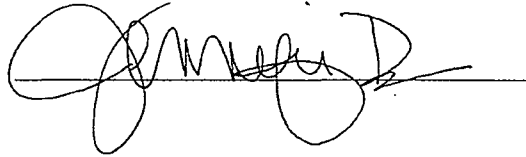
The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Notice of Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 22nd day of May 2017:

Daniel W. Williams, Esquire
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A handwritten signature in black ink, appearing to read "Stephen R. Suggs", written over a horizontal line.