

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-21-2331

RECEIVED
SEP 19 2018
SC Court of Appeals

Sally K. Favaloro, Plaintiff/Appellant,

v.

Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, Michael Rose,
and McLeod Regional Medical Center, Defendants/Respondents.

**MEMORANDUM IN SUPPORT OF RESPONDENTS’
MOTION TO DISMISS**

Respondents submit this Memorandum in Support of their Motion to Dismiss the appeal of Plaintiff/Appellant Sally K. Favaloro (“Favaloro”) based on the untimeliness of the Notice of Appeal.

Favaloro’s Notice of Appeal attempts to appeal three Orders: “the orders of D. Craig Brown dated May 9, 2018 (Order of Dismissal), June 26, 2018 (Order to Strike Pleading), and July 30, 2018 (Order of Denial of Rule 59 Motion).” However, Favaloro’s appeal of the Order of Dismissal is clearly untimely, and the trial court’s orders that followed the Order of Dismissal did nothing more than reiterate the closed status of the case because of the Order of Dismissal. Thus, Favaloro’s failure to timely appeal the Order of Dismissal mandates the dismissal of this appeal, in its entirety.

A. Favaloro did not timely appeal or otherwise challenge the trial court's Order of Dismissal.

The trial court entered its Order Granting Defendants' Motion to Dismiss on May 7, 2018 ("Order of Dismissal").¹ The Order of Dismissal made clear as follows: "Plaintiff's Complaint is hereby **DISMISSED, with prejudice**, this 7 of May, 2018." (*Id.* at 26 (emphasis in original).) The trial court's Order of Dismissal was a final disposition of Favaloro's Complaint and the action, thereby ending the action completely. However, Favaloro did not take any timely action to challenge the Order of Dismissal:

- Favaloro did not file or serve a Rule 59 motion within "10 days after the receipt of written notice of entry of judgment or of the filing of an order disposing of the action," Rule 59(b), SCRCF; and
- Favaloro did not file or serve a notice of appeal "within thirty (30) days after receipt of written notice of entry of the order or judgment," Rule 203(b)(1), SCACR.

The Supreme Court has made clear on many occasions that "timely service of the notice of intent to appeal is a jurisdictional requirement, and th[e appellate] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Quality Trailer Prods., Inc. v. CSL Equip. Co.*, 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)); *see also Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (same) (quoting *Mears*, 287 S.C. at 169, 337 S.E.2d at 207); *Oliver v. Lawrence*, Case No. 2013-002587, 2016 WL 6777563 (S.C. Ct. App. Nov. 16, 2016) (same) (quoting *Camp*, 386 S.C. at 574-75, 689 S.E.2d at 636).

Because Favloro failed to timely file the Notice of Appeal under Rule 203(b)(1), her appeal is barred jurisdictionally and must be dismissed. *Id.*; *see also* Rule 260(a), SCACR

¹ The Order of Dismissal is included as Exhibit 1.

(“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”). Favaloro’s appeal must be dismissed accordingly.

B. The Orders that followed the Order of Dismissal merely reiterated the closed status of the case and cannot be challenged independently on appeal.

Rather than timely appeal the Order of Dismissal, in June 2018 Favaloro mailed Respondents’ counsel a copy of a pleading captioned as “Plaintiff’s First Amended Complaint” in the underlying action. Because the Order of Dismissal had already dismissed the action with prejudice, Respondents’ counsel filed a Motion to Dismiss and Strike Pleading Captioned as “Plaintiff’s First Amended Complaint,” and provided a copy to Favaloro and the trial court.²

On June 26, 2018, the trial court entered its Order Granting Defendants’ Motion to Dismiss and Strike Pleading Captioned as “Plaintiff’s First Amended Complaint.”³ The Order Striking Purported Amended Complaint made clear as follows, in pertinent part:

Plaintiff’s Complaint was dismissed with prejudice by virtue of the Court’s May 7, 2018 Order. Plaintiff cannot amend a pleading that has been dismissed with prejudice. This action has ended, and . . . Plaintiff cannot file new or amended allegations to bring the action back to life.

(*Id.* at 2, ¶ 8.a.)

Apparently dissatisfied with this result, Favaloro filed a motion seeking reconsideration of the Order Striking Purported Amended Complaint.⁴ Again rejecting Favaloro’s efforts to

² The Motion to Dismiss and Strike Pleading Captioned as “Plaintiff’s First Amended Complaint” and Attachments thereto (including the purported “First Amended Complaint”) is included as Exhibit 2.

³ The Order Striking Purported Amended Complaint is included as Exhibit 3.

reopen a matter that had been fully and finally resolved since the Order of Dismissal, the Court entered a Form 4 Order on July 30, 2018, noting as follows: “After considering the materials submitted by the parties, this Court hereby denies the Plaintiff’s Rule 59 Motion. This matter will remain dismissed.” (July 30, 2018 Order at 2 (emphasis added).⁵)

Neither the Order Striking Purported Amended Complaint nor the July 30 Form 4 Order denying Plaintiff’s motion to reconsider are independently appealable. The purpose of both Orders was simply to emphasize the finality that resulted from—and Favaloro’s inability to unilaterally reopen the action that was dismissed with prejudice and closed by virtue of—the Order of Dismissal.

Favaloro had multiple opportunities to challenge the Order of Dismissal, through a timely Rule 59 motion and/or a timely notice of appeal. Favaloro did neither, rendering the Order of Dismissal the binding and non-challengeable law of the case. Thus, even if Favaloro could appeal the Orders that followed the Order of Dismissal (though they are not independently appealable), and if she prevailed in such an appeal (though she cannot, as the underlying arguments are plainly baseless), the result would be to remand this matter to an action that has been dismissed in its entirety with prejudice. Accordingly, Favaloro’s appeal of those Orders fails automatically due to the untimely nature of her appeal of the Order of Dismissal.

C. Conclusion.

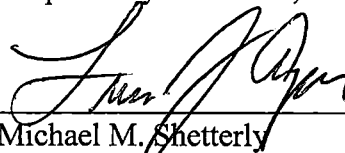
Favaloro’s Notice of Appeal was clearly untimely with respect to the Order of Dismissal. The Court entered the Order of Dismissal on May 7, 2018. Favaloro did not seek reconsideration

⁴ Favaloro’s Rule 59 motion seeking reconsideration of the Order Striking Purported Amended Complaint is included as Exhibit 4.

⁵ The July 30, 2018 Order denying Plaintiff’s motion to reconsider the Order Striking Purported Amended Complaint is included as Exhibit 5.

of that Order and did not serve the Notice of Appeal until August 28, 2018—113 days after the Order of Dismissal, and 83 days after her deadline to appeal the Order had passed. Favaloro's appeal of the Order of Dismissal is thus jurisdictionally barred and must be dismissed. Because the appeal of the Order of Dismissal cannot proceed, neither can the appeal of the Orders that followed the Order of Dismissal—both of which simply reiterated that the case had already been dismissed with prejudice and closed. Favaloro has already wasted the trial court's time and Respondents' time with her stubborn and unfounded litigiousness. Respondents' Motion to Dismiss must be granted to avoid further wasting of the time and resources of the Court and the parties.

Respectfully submitted,



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Attorneys for Respondents

September 18, 2018

EXHIBIT 1

FILED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

2018 MAY -7 PM 2:49

Sally K. Favaloro,

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Plaintiff,

vs.

Case No.: 2017-CP-21-2331

Robert Colones, Ronald Boring,
Marie Segars, Debbie Locklair,
Shannon Carr, Michael Rose, and
McLeod Regional Medical Center,

Defendant.

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS MATTER IS BEFORE THE COURT upon the Motions to Dismiss filed by each of the Defendants in this matter.

The Court has thoroughly reviewed Plaintiff's Complaint, each of the Motions to Dismiss, and Plaintiff's filings in response and opposition to Defendants' Motions to Dismiss. The Court held a hearing on Defendants' Motions on April 16, 2018, which Plaintiff willfully failed to attend notwithstanding clear notice of the hearing and her filing of pleadings opposing the Motions in the Courthouse as the hearing took place. For the reasons set forth below, the Court hereby **GRANTS** Defendants' Motions and **DISMISSES** Plaintiffs' Complaint, with **prejudice**.

I. PROCEDURAL HISTORY AND PLAINTIFF'S WILLFUL FAILURE TO ATTEND HEARING, NOTWITHSTANDING NOTICE THEREOF

Plaintiff filed her Complaint in this action on August 28, 2017. On October 17, 2017, Defendant Dr. Michael Rose timely filed his Motion to Dismiss Plaintiff's Complaint. On November 16, 2017, the remaining Defendants (Robert Colones, Ronald Boring, Marie Segars,

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Debbie Locklair, Shannon Carr, and McLeod Regional Medical Center (“McLeod”)) timely filed their Motions to Dismiss Plaintiff’s Complaint.

On December 11, 2017, the Court notified the parties that a hearing on Defendants’ Motions was scheduled to occur on January 4, 2018, at 9:30 a.m. Also on December 11, 2017, counsel for Defendants notified Plaintiff in writing of the hearing’s date and time. The Court was forced to reschedule the hearing due to inclement weather, and counsel for Defendants notified Plaintiff in writing of the cancellation.

On March 19, 2018, the Court notified the parties that the hearing on Defendants’ Motions was rescheduled to occur on April 16, 2018, at 9:30 a.m. Also on March 19, 2018, counsel for Defendants notified Plaintiff in writing of the date, time, and location for the rescheduled hearing.

At 8:00 a.m. on April 16—the day of the hearing—Plaintiff sent Defendants’ counsel a copy of (1) Plaintiff’s Response to Defendants’ Filings Served October 17 and November 16, 2017, and (2) Plaintiff’s Memorandum in Opposition to Defendants’ Filings Served October 17 and November 16, 2017.¹ Plaintiff’s e-mail to Defendants’ counsel acknowledged Plaintiff’s notice of the hearing, describing the documents as “relating to today’s hearing in this case.”

The hearing proceeded as scheduled on April 16, 2018, at 9:30 a.m. Notwithstanding Plaintiff’s notice of the hearing, she willfully failed to appear for the hearing. During the hearing, the court clerk informed the Court that (1) a male adult personally delivered the documents referenced above for filing that morning, (2) the male adult informed the clerk that Plaintiff would not be appearing for the hearing and that he could not stay, (3) the clerk

¹ These documents, while captioned as a response and opposition to Defendants’ Motions, do not actually respond to any of the arguments or address the legal deficiencies raised in Defendants’ Motions. Nowhere in either of these documents does Plaintiff explain why or how her claims are viable or should be allowed to proceed.

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encouraged Plaintiff and/or her representative to attend the hearing, and (4) the male adult reiterated that Plaintiff would not be attending the hearing and that he could not stay. Accordingly, the hearing proceeded in Plaintiff's absence based on her willful failure to attend.

II. FACTUAL BACKGROUND

Plaintiff's actual Complaint is entirely devoid of factual allegations regarding the basis for her claims against Defendants. Looking to the attachments to Plaintiff's Complaint—confusing letters Plaintiff penned—the Court believes the following are the “facts” in the light most favorable to Plaintiff:

- Defendant Rose was Plaintiff's supervisor during her employment with McLeod (July 7, 2015 Letter at 3 of 8, ¶ 4(d) (“Dr. Rose . . . was, until April 30, 2015, a supervisor over [Plaintiff].”));
- Rose participated in a meeting in which Plaintiff was placed on administrative leave (July 7, 2015 Letter at 4 of 8, ¶ 9 (“[Rose] then sat down, pointedly avoiding eye contact, spoke briefly, then fixed direct eye contact at [Plaintiff] to make the following statement: ‘I’m placing you on administrative leave.’”));
- Plaintiff believes that Rose actually terminated her employment during the April 30, 2015 meeting (July 7, 2015 Letter at 4 of 8, ¶ 10 (“Dr. Rose was not placing [Plaintiff] on administrative leave Instead, he was terminating [Plaintiff].”));
- Rose was not Plaintiff's employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”));
- Plaintiff contends that the termination of her employment was “wrongful [and] was an egregious Policy violation.” (July 21, 2015 Letter at 2 of 8, ¶ (5)(c)); and

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- Plaintiff contends that there are “highly suspicious documents” in her personnel file at McLeod Health (July 31, 2015 Letter).

These are the only salient facts asserted. Beyond these, Plaintiff states legal claims, opinions, and conclusions with no factual underpinning.

Significantly, the Complaint is devoid of any meaningful references to and/or factual allegations against most of the Defendants. Scouring Plaintiff’s Complaint,

- There is only 1 reference to Defendant Robert Colones:
 - The vague contention on Page 3 of 3 of Plaintiff’s first attachment to the Complaint (“AVP Summary – Reading Time: 15 Minutes”) that Colones needed to provide prior approval for the alleged termination of Plaintiff’s employment.
- There are 0 factual allegations related to Defendant Ronald Boring. The only reference to Boring anywhere in the Complaint is his identification as the recipient of a letter Plaintiff sent on September 10, 2015, in an apparent attempt to challenge her alleged “wrongful termination” months after her separation from employment with McLeod Health.
- There are only 2 references to Defendant Marie Segars:
 - The conclusory allegation in Paragraph 105.7 (Plaintiff’s Claim 5.7 for criminal conspiracy) that Segars “performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10”; and
 - The vague contention on Page 3 of 3 of Plaintiff’s first attachment to the Complaint (“AVP Summary – Reading Time: 15 Minutes”) that Segars needed to provide prior approval for the alleged termination of Plaintiff’s employment.
- There are only 2 references to Defendant Debbie Locklair:

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- The conclusory allegation in Paragraph 105.7 (Plaintiff's Claim 5.7 for criminal conspiracy) that Locklair "performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10"; and
- The contentions on Pages 6-7 of 9 of Plaintiff's September 10, 2015 letter (attached to the Complaint) that Locklair (as Chairperson of a Committee that considered Plaintiff's post-separation internal appeal) sent a letter rejecting Plaintiff's post-separation internal appeal, the accuracy of which Plaintiff disputes (Sept. 10, 2015 Letter at 6 of 9 ("In [Locklair's] letter [rejecting Plaintiff's appeal], Locklair: (a) falsely claimed to be "Chairperson" of the August 20 Review Team; and (b) falsely denied the fact that the Review Team found that Dr. Rose's AVP termination violated McLeod policies."); *id.* at 7 of 9 ("[Locklair's] letter's multiple oddities prohibit [the] letter *itself* from being taken seriously.")).
- There are only 3 references to Defendant Shannon Carr:
 - The conclusory allegation in Paragraph 105.7 (Plaintiff's Claim 5.7 for criminal conspiracy) that Carr "performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10";
 - The references to Carr (in her Human Resources capacity) attending and participating in the April 30, 2015 meeting at which Plaintiff was placed on administrative leave (July 7, 2015 Letter at 4-6 of 8; Sept. 10, 2015 Letter at 2 of 9); and
 - The allegations regarding Carr arranging Plaintiff's internal post-separation appeal process (Sept. 10, 2015 Letter at 2 of 9 & 6 of 9).

None of these limited and isolated references to Defendants Colones, Boring, Segars, Locklair, and Carr—the only mention of them in the Complaint or the attachments thereto—give any indication that these Defendants engaged in any conduct that could even potentially (let alone plausibly) create a viable cause of action against them.

III. STANDARD OF REVIEW

A Complaint is subject to dismissal under Rule 12(b)(6) if the facts alleged and inferences deducible therefrom would not entitle the Plaintiff to any relief. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113 (2008). South Carolina retains the code pleading standard rather than the more lenient notice pleading standard found in the Federal Rules. *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000), *aff'd as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003) (citing *Justice v. The Pantry*, 335 S.C. 572, 518 S.E.2d 40 (1999)). Rather than merely pleading conclusions of law, a party seeking relief must set forth assertions of fact that give rise to relief. *Charleston County School District v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 365 (Ct. App. 2001).

Rule 8(a)(2), SCRCPP, provides that a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although the court must liberally construe a pro se pleading, the United States Supreme Court has made clear that a plaintiff must do more than make conclusory statements to state a claim. The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a . . . court may not rewrite a complaint to include claims that were never presented, construct the plaintiffs legal arguments for him, or “conjure up questions never squarely presented” to the court. Rather, the pleading must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face, and the reviewing court need only accept as true the pleading’s factual allegations, not its legal conclusions. Further, allegations that are no more than conclusions are not entitled to the assumption of truth.

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Ridley v. S.C. Dep't of Mental Health, No. 2016-CP-40-2528, 2017 WL 3924003, *2 (S.C. Com. Pl. June 1, 2017) (emphasis added) (citations omitted). Plaintiff's claims are subject to dismissal because, even applying the liberal standard afforded to Plaintiff's *pro se* Complaint, there is not "sufficient factual matter, accepted as true, to state a claim that is plausible on its face." *Id.*

IV. LEGAL ANALYSIS

A. **Plaintiff has not addressed any of the arguments in Defendants' Motions to Dismiss, effectively conceding the legal deficiencies in her Complaint.**

While Plaintiff did file two documents in response/opposition to Defendants' Motions, neither of those documents in any way addresses the arguments Defendants have made in their Motions. Plaintiff's response/opposition does not respond to or contest any of the grounds for dismissal Defendants have raised. Instead, Plaintiff's response/opposition seemingly attempts to assert a new claim for retaliation, contending that Defendants have acted unlawfully by referencing a prior litigation matter in which Plaintiff was involved.

Because "Plaintiff has failed in her response to the motions to dismiss to respond to . . . the arguments made by defendants, she has conceded them." *Reese v. U.S. Bank Nat'l Ass'n*, No. 3:11-cv-2990, 2012 WL 1952819, *3 (D.S.C. Apr. 30, 2012), *adopted*, 2012 WL 1952295 (D.S.C. May 30, 2012); *see also Sumpter v. United States*, No. 5:06-cv-1004, 2007 WL 776113, *1 (D.S.C. Mar. 9, 2007) ("The plaintiff failed to respond to the partial motion to dismiss in this case, which is sufficient grounds on which to grant the motion."). However, like the Federal District Court in *Sumpter*, "the court has additionally reviewed the authorities cited by the defendant and finds them persuasive." *Sumpter*, 2007 WL 776113 at *1.

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B. Claim 1: S.C. Code § 41-10-80(c) – Payment of Wages (“Claim 1”) – Against Defendant McLeod²

Claim 1 contends that Defendant McLeod failed to pay Plaintiff's earned but unpaid wages and other compensation, without identifying with any specificity what wages and compensation she claims were unpaid. Claim 1 against McLeod fails because Plaintiff has not asserted any facts to establish such a claim, as there is nothing in the Complaint even suggesting that Plaintiff did not receive compensation for labor rendered. Plaintiff's Claim 1 is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action.

C. Claim 2: S.C. Code § 15-69-20 – Recovery of Personal Property (“Claim 2”) – Against Defendants Carr, Rose, and McLeod

Claim 2 contends that Defendants—without identifying which Defendant(s)—“wrongfully held her personal property, wrongfully prohibited her from retrieving it, and should be ordered to return it.” As indicated by the statute cited, Plaintiff is attempting to bring a claim and delivery action. Claim 2 (claim and delivery) fails for at least three reasons: (1) Plaintiff does not allege any facts that would state a plausible claim against Carr, Rose, or McLeod, as there are no facts indicating that these Defendants hold or have control over Plaintiff's alleged property; (2) Plaintiff vaguely describes the property to which she refers, making it impossible to respond to the claim; and (3) Plaintiff has not complied with the statutory prerequisites for bringing a claim and delivery action (to which she specifically cites)—Plaintiff has not provided an affidavit as required under S.C. Code §15-69-30, has failed to abide by S.C. Code §15-69-40 in providing a notice of right to a pre-seizure hearing, and has failed to pursue this claim through the sheriff's office under S.C. Code §15-69-50, rather than bringing this action in civil court. Claim 2 is dismissed accordingly.

² On page 2 of Plaintiff's Complaint, in Paragraph 4 and subparagraphs 4.1 through 4.7 thereunder, Plaintiff specifies against which of the Defendants she is asserting each of her claims.

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D. Claim 3.1: S.C. Code § 15-53-10 – Declaratory Judgment, Declarations (“Claim 3.1”) – Against Defendants Carr, Rose, and McLeod

Claim 3.1 requests a declaratory judgment “that Defendants wrongfully: terminated Plaintiff, refused to reinstate her, engaged in conspiracies to commit the violations in [her other claims, most of which surround entirely inapplicable criminal statutes under which there is no civil or private right of action], refused to pay her wages and other earned compensation, and refused to return her personal property.” Claim 3.1 fails based on the following: (1) Plaintiff does not allege any facts that would state a plausible claim against Carr or Rose, about whom she has alleged no facts that could plausibly establish an employment relationship; (2) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”)); (3) Plaintiff’s contentions regarding her personal property are deficient as to Carr, Rose, and McLeod for the reasons set forth above regarding Claim 2; and (4) Claim 3.1 is entirely duplicative of other claims in her Complaint, as it merely seeks a declaration that Defendants committed the same violations alleged in the other claims. Further, a declaration by the Court on any one or more issue raised will not terminate any uncertainty or controversy giving rise to the proceeding. S.C. Code Ann. § 15-53-70. A declaration will not restore Plaintiff to her job—the relationship between Plaintiff and McLeod is terminated, and a declaration will not restore it. Thus, no relief will come from any declaration. S.C. Code Ann. § 15-53-120. Claim 3.1 is dismissed accordingly.

E. Claim 3.2: S.C. Code § 15-53-10 – Declaratory Judgment, Further Relief (“Claim 3.2”) - Against Defendants Carr, Rose, and McLeod

Claim 3.2 asks the Court for further declarations, namely to order that Defendants “remove all false documents and statements, return all proper and legal documents, and publish Plaintiff’s eligibility for rehire with Defendants.” Claim 3.2 fails for the same reasons as Claim

3.1. Further: (1) Plaintiff's claim to "return all proper and legal documents" is duplicative of Claim 2 and fails for the same reasons as Claim 2; (2) assuming Plaintiff is referencing McLeod's personnel file on her, she seeks an order to have Defendants "remove all false documents and statements" from McLeod's own, private record—there is no viable cause of action against an employer in South Carolina regarding the contents of its own personnel file; (3) she also seeks to have this Court order McLeod to make its records reflect she is eligible for rehire—which is tantamount to seeking an order to have McLeod have good thoughts about her—this is not a viable cause of action against an employer in South Carolina, nor is it an appropriate use of a declaratory judgment; (4) Plaintiff has not alleged any facts that would establish an employment relationship with Carr or Rose; (5) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")), and thus Plaintiff seeks to compel Rose to perform acts which she claims he cannot do; (6) Plaintiff does not allege any facts indicating that Carr or Rose—personally or in their individual capacity—have control over her personnel file or over the alleged publication of her eligibility for rehire; and (7) there is no claim under which Plaintiff can demand that the Court order McLeod or others to engage in compelled speech regarding her alleged eligibility for rehire, and any Court order compelling such speech would violate the First Amendment, *see Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988) ("There is certainly some difference between compelled speech and compelled silence, but in the context of protected speech, the difference is without constitutional significance, for the First Amendment guarantees "freedom of speech," a term necessarily comprising the decision of both what to say and what *not* to say." (underlined emphasis added)). Claim 3.2 is dismissed accordingly.

F. Claim 4: S.C. Rule of Civil Procedure 65 – Injunction (“Claim 4”) - Against Defendants Carr, Rose, and McLeod

Claim 4 seeks a temporary injunction under Rule 65, SCRPC, related exclusively to “Defendants’ violations of their duties to publish Plaintiff’s eligibility for rehire with Defendants.” There is no allegation in the Complaint that McLeod publishes whether its terminated employees (including Plaintiff) are eligible for rehire.³ Therefore, the Court can only presume that Plaintiff seeks an injunction to compel McLeod to consider Plaintiff for rehire. Claim 4 fails because (1) there is no such thing as a cause of action under Rule 65, SCRPC, as the relief under the Rule can be sought only through motion; (2) there is no viable cause of action against an employer in South Carolina regarding “eligibility for rehire,” and a viable underlying claim is a necessary condition of a request for temporary injunction; (3) Plaintiff has not alleged any facts that would establish an employment relationship with Carr or Rose; (4) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”))—it is nonsensical for her to claim Rose was not in a position to hire or fire her, but then to seek a declaration that she be made eligible for Rose to rehire her; (5) Plaintiff does not allege any facts indicating that Carr or Rose, personally or in their individual capacity, have control over the alleged publication of her eligibility for rehire; and (6) there is no claim under which Plaintiff can demand that the Court order Carr, Rose, McLeod or others to engage in compelled speech regarding her alleged eligibility for rehire, and any Court order compelling such speech would violate the First Amendment, *see Riley*, 487 U.S. at 796-97 (“[T]he First Amendment guarantees “freedom of speech,” a term necessarily comprising the decision of both what to say and what *not* to say.”). Claim 4 is dismissed accordingly.

³ McLeod’s Motion indicates that it uses a neutral reference service for employment inquiries, and that Plaintiff’s eligibility for rehire is not “published” external to McLeod.

G. Claim 5: Negligence Per Se, under Wise v. Broadway, 315 S.C. 273 (1993) – Against Defendant McLeod

Plaintiffs' Claim 5 appears to contend that Defendants—without identifying which Defendant(s)—committed the acts described in Claims 5.1-5.13 and that such acts constitute negligence *per se*. Claim 5 fails for several reasons: (1) there is no such thing as a standalone claim for negligence *per se*—only a claim for negligence; (2) based on the exclusivity provision of the South Carolina Workers' Compensation Act, an employee is disallowed from maintaining “a negligence cause of action against his direct employer or his statutory employer,” *Edens v. Bellini*, 359 S.C. 433, 445, 597 S.E.2d 863, 869 (Ct. App. 2004) (citing *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 478 S.E.2d 91 (Ct. App. 1996), *overruled on other grounds by Abbott v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000)); *see also* S.C. Code Ann. § 42-1-540 (explaining that the “rights and remedies” of the Act “shall exclude all other rights and remedies of such employee . . . , at common law or otherwise, on account of” any work-related accident or injury, including alleged negligence in the workplace); (3) Plaintiff does not allege any facts indicating that McLeod owed her a common law duty or breached such unidentified and nonexistent duty; and (4) Plaintiff's claim for “negligence *per se*” relies entirely on her conclusory and unsupported allegations of purported criminal conduct, all of which fail themselves for the reasons discussed throughout this Order. Claim 5 is dismissed accordingly.

H. Claim 5.1: S.C. Code § 41-10-50 – Payment of Wages (“Claim 5.1”) – Against Defendant McLeod

Claim 5.1 alleges a claim under the South Carolina Payment of Wages Act, apparently based on the same contentions as Claim 1. Claim 5.1 fails because: (1) Plaintiff has failed to plead any facts indicating what wages she is allegedly owed; (2) the Complaint contains no allegation that McLeod withheld any form of wages for labor Plaintiff rendered; and (3) Claim 5.1 is entirely duplicative of Claim 1. Claim 5.1 is subject to dismissal as a matter of law.

I. Claim 5.2: S.C. Code § 16-13-30 – Larceny (“Claim 5.2”) – Against Defendants Rose and McLeod

Claim 5.2 alleges a claim for “larceny,” apparently based on the same contentions as Claim 2. Claim 5.2 against McLeod fails based on the following: (1) there is no private right of action under section 16-13-30 of the South Carolina Code, as it is a purely criminal statute; (2) Plaintiff does not allege any facts indicating that Rose or McLeod hold or have control over Plaintiff’s alleged property or otherwise engaged in any conduct that could even potentially be considered “larceny”; and (3) Claim 5.2 is duplicative of Claim 2. Claim 5.2 fails to state facts sufficient to constitute a cause of action and is dismissed.

J. Claim 5.3: S.C. Code § 16-13-10 – Forgery (“Claim 5.3”) – Against Defendants Locklair, Rose, and McLeod

Claim 5.3 pursues a cause of action for “forgery” and vaguely lists various documents (many of which are the letters Plaintiff wrote herself and attaches to her Complaint, and the others of which appear to be McLeod employment/personnel records). Claim 5.3 is subject to dismissal for at least three reasons: (1) there is no private right of action under section 16-13-10 of the South Carolina Code, as it is a purely criminal statute; (2) Plaintiff does not identify any actions by Locklair that could even potentially constitute “forgery”—the only document connected to Locklair is her August 20 letter rejecting Plaintiff’s internal post-separation appeal (with which Plaintiff apparently disagrees), and potentially the “highly suspicious” documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware in paragraph 4 of her July 31, 2015 letter attached to the Complaint—“to protect the Review Team from being deceived by Dr. Rose or whoever is responsible for adding these highly suspicious pages to my HR file” (emphasis added)); (3) the only documents purportedly connected to Rose are his May 5 letter (which paragraph 25 of Plaintiff’s July 7, 2015 Letter attached to the Complaint simply references as allegedly “null and void”) and the “highly suspicious”

documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware), none of which indicate any plausible “forgery” on Rose’s part; (4) none of the documents purportedly connected to McLeod indicate any plausible “forgery” on McLeod’s part—Rose’s May 5 letter, Debbie Locklair’s August 20 letter, and the “highly suspicious” documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware); and (5) there are no facts in the Complaint alleging that McLeod, Locklair (in her individual capacity), or Rose (in his individual capacity) committed the supposed violation. Claim 5.3 is dismissed accordingly.

K. Claim 5.4: S.C. Code § 16-7-150 – Slander and Libel (“Claim 5.4”) – Against Defendants Segars, Locklair, Rose, and McLeod

Claim 5.4 purports to state a claim for “slander and libel” but references the section of the South Carolina Code involving criminal slander and libel. Claim 5.4 fails based on the following: (1) there is no private right of action under section 16-7-150 of the South Carolina Code, as it is a purely criminal statute—the text of the statute expressly differentiates itself from “an action for damages for libel or slander under the existing law”; (2) Plaintiff has not alleged with any degree of specificity facts sufficient to identify the allegedly defamatory statement, how/when/to whom the allegedly defamatory statement was published, how Segars, Locklair, Rose, or McLeod were involved in the unidentified publication, or how Plaintiff was allegedly harmed by the supposed defamatory statement; (3) if Plaintiff is relying on the “highly suspicious” documents in her personnel file, Paragraph 4 of her July 31, 2015 letter attached to the Complaint makes clear that Plaintiff does not know the author/publisher of those vaguely described documents—“to protect the Review Team from being deceived by Dr. Rose or whoever is responsible for adding these highly suspicious pages to my HR file” (emphasis added)); (4) there are no facts in the Complaint alleging that Locklair, Segars, or Rose, in their

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individual capacities, made the allegedly defamatory statement; (5) there are no facts in the Complaint alleging that McLeod, or any of its agents, made the allegedly defamatory statement; and (6) a common law cause of action for libel or slander must be brought within 2 years of the date on which the alleged defamatory statement was made, and all alleged statements the Court is able to discern from the Complaint occurred more than 2 years before filing, S.C. Code Ann. § 15-3-550.⁴ Therefore, Claim 5.4 is dismissed under Rule 12(b)(6).

L. **Claim 5.5: S.C. Code § 41-15-510 – Retaliation (“Claim 5.5”) – Against Defendants Segars, Rose, and McLeod**

Claim 5.5 contends that Defendants “retaliated and discriminated against Plaintiff” because she allegedly “challenged Defendants’ misconduct.” Claim 5.5 is allegedly based on S.C. Code Ann. § 41-15-510, which prohibits “discharge or . . . discriminat[ion]” against an employee who engages in protected activity “relating to statutes, rules or regulations regarding occupational safety and health.” Claim 5.5 is facially deficient because: (1) Plaintiff has not alleged any facts showing that she engaged in any protected activity under any “statutes, rules or regulations regarding occupational safety and health”; (2) Plaintiff has not fulfilled the conditions precedent to an action for a violation of S.C. Code Ann. § 41-15-510, which require an employee, “within thirty days after the violation occurs, [to] file a complaint with the Director of the Department of Labor, Licensing and Regulation alleging the discrimination,” S.C. Code Ann. § 41-15-520; (3) section 41-15-520 limits actions for alleged violations of section 41-15-510 against private sector employees to those brought by the Director of the DLLR; (4) Plaintiff has not alleged any facts that would establish an employment relationship with Segars or Rose;

⁴ To the extent Plaintiff is contending that Rose’s May 5 letter or Locklair’s August 20 letter (neither of which are attached to the Complaint and are not described with any degree of particularity) are defamatory, McLeod contends that those letters would be subject to a privilege as a matter of law and that Plaintiff has alleged no facts indicating even a plausible ability to overcome the privilege.

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(5) Plaintiff admits that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”)); and (6) Plaintiff does not allege any facts indicating that Segars or Rose, in their individual capacities, discriminated against or discharged her. Claim 5.5 is dismissed accordingly.

M. Claim 5.6: S.C. Code § 1-13-80 (F) – Discrimination (“Claim 5.6”) – Against Defendants Segars, Rose, and McLeod

Claim 5.6 alleges discrimination under the South Carolina Human Affairs Law. Claim 5.6 against fails as a matter of law based on the following: (1) Plaintiff failed to exhaust her administrative remedies under S.C. Code Ann. § 1-13-90, having never filed a charge with the South Carolina Human Affairs Commission; (2) Claim 5.6 is extremely untimely under section 1-13-90, with her Complaint filed on August 28, 2017—nearly two years after the applicable 180-day statute of limitations had expired; (3) Plaintiff failed to bring the action within one year of the wrongful acts occurring, pursuant to §1-13-90(d)(6); (4) Plaintiff has not identified a single protected characteristic on which Claim 5.6 is based; (5) Plaintiff has not alleged any facts that would establish an employment relationship with Segars or Rose; (6) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”)); (7) Plaintiff does not allege any facts indicating that Segars or Rose, in their individual capacities, unlawfully discriminated against her; and (8) Plaintiff does not allege any facts indicating that McLeod, or any of its agents, unlawfully discriminated against her based on any protected characteristic. Claim 5.5 is subject to dismissal as a matter of law.

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N. **Claim 5.7: S.C. Code §16-17-410 – Conspiracy (“Claim 5.7”) – Against Defendants Segars, Locklair, Carr, Rose, and McLeod**

Claim 5.7 contends that four individual defendants conspired with McLeod Health in violation of S.C. Code § 16-17-410. Claim 5.4 fails based on the following: (1) there is no private right of action under section 16-17-410 of the South Carolina Code, as it is a purely criminal statute; (2) there are no facts in the Complaint alleging that any of the individuals, in their individual capacity, engaged in the vaguely alleged conspiracy; and (3) conspiracy requires the combination of two or more persons to conspire together for the purpose of accomplishing an unlawful objective or lawful objective by unlawful means, all of the alleged conspirators appear to be agents of McLeod Health, there is no allegation that any of the individuals were acting outside of their scope of employment, and a party cannot conspire with itself (which is precisely what McLeod would allegedly be doing if its agents were conspiring with each other within the scope of their employment), *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006) (“[W]e believe that it is well settled that a corporation cannot conspire with itself.”); *id.* (“[A]gents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party.” (citing *Goble v. Am. Ry. Express Co., et. al.*, 124 S.C. 19, 26-27, 115 S.E. 900, 903 (1923))). Therefore, Claim 5.7 is dismissed.

O. **Claim 5.8: S.C. Reg. 61-16 § 505 B, D, E – Illegal Treatment of Nurses (“Claim 5.8”) – Against Defendants Carr, Rose, and McLeod**

Claim 5.8 purports to be a claim based on the Department of Health and Environmental Control (“DHEC”) regulations regarding nursing services. The specific regulations cited require (a) a hospital to have 24-hour nursing service under the direction of a registered nurse with nurses licensed in the state of South Carolina, S.C. Code Ann. Regs. 61-16 § 505(B); (b) a hospital to employ other personnel to assist registered nurses in providing care, assigned based

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on education, training and competence, *id.* § 505(D); and (c) a hospital's nursing personnel to be under the supervision of nursing leadership and subject to the policies and procedures of the facility, *id.* § 505(E). Claim 5.8 must be dismissed because: (1) there is no private right of action under the cited regulations; (2) Plaintiff has not alleged any facts that would establish an employment relationship with Carr or Rose; (3) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); (4) Plaintiff does not allege any facts indicating that Carr or Rose, personally or in their individual capacities, failed to comply with the cited regulations; (5) Plaintiff does not allege any facts indicating that McLeod failed to comply with the cited regulations; and (6) the Complaint contains no factual allegations regarding how any of the Defendants in any way violated the cited regulations. Claim 5.8 is dismissed accordingly.

P. **Claim 5.9: S.C. Reg. 61-16 § 506 A, C – Illegal Hospital Records Practices (“Claim 5.9”) – Against Defendants Locklair, Carr, Rose, and McLeod**

Like Claim 5.8, Claim 5.9 is based exclusively on DHEC regulations regarding healthcare facilities in South Carolina. The specific regulations cited require (a) the CEO of the facility to designate an individual to conduct Human Resources Management and be responsible for various Human Resources functions, S.C. Code Ann. Regs. 61-16 § 506(A); and (b) the licensee of a healthcare facility to maintain certain personnel records, *id.* § 506(C). Claim 5.9 fails for the same reasons that Claim 5.8 fails: (1) there is no private right of action under the cited regulations; (2) Plaintiff has not alleged any facts that would establish an employment relationship with any of the individual Defendants; (3) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); (4) Plaintiff

does not allege any facts indicating that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) are “licensees” covered by the regulations; (5) Plaintiff has in no way alleged that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) failed to comply with the cited regulations; and (6) the Complaint contains no factual allegations regarding how any of the Defendants in any way violated the cited regulations. Claim 5.9 is thus subject to dismissal as a matter of law.

Q. Claim 5.10: State v. Carson, 274 S.C. 316 (1980) Misprision of Felony (“Claim 5.10”) – Against all Defendants

Claim 5.10 claims that all of the Defendants committed the crime of misprision of a felony by not remedying the previous vaguely alleged criminal actions. Claim 5.10 must be dismissed because: (1) there is no private right of action for misprision of a felony, as it is a purely criminal matter—the case Plaintiff cites involves a criminal prosecution by the State, and has nothing to do with a civil right of action; and (2) there are no facts in the Complaint alleging that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) engaged in the purported violation of the law. Rule 12(b)(6) mandates dismissal of Claim 5.10.

R. Claim 5.11: 18 U.S.C. § 4 – Misprision of Felony (“Claim 5.11”) – Against all Defendants

Claim 5.11 is identical to Claim 5.10 (even citing only to Claim 5.10 as the basis for the claim), but relies on a federal criminal statute instead of a South Carolina judicial opinion. Claim 5.11 is equally deficient to Claim 5.10: (1) there is no private right of action for misprision of a felony, as it is a purely criminal matter—the statute specifically references criminal penalties and makes no mention of an available civil claim; (2) there are no facts in the Complaint alleging that McLeod or any of the individual Defendants (personally, in their individual capacities, or

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otherwise) violated the federal statute; and (3) Claim 5.11 is entirely duplicative of Claim 5.10. Claim 5.11 is dismissed accordingly.

S. Claim 5.12: 18 U.S.C. § 1512(b)-(c) – Witness and Evidence Tampering (“Claim 5.12”) – Against Defendants Carr, Rose, and McLeod

Claim 5.12 alleges a violation of 18 U.S.C. § 1512, which is a federal criminal statute related to “[t]ampering with a witness, victim, or an informant,” as made clear by the official name of the statute. Like the rest of Plaintiff’s claims, Claim 5.12 is subject to immediate dismissal: (1) there is no private right of action under 18 U.S.C. § 1512, as it is a criminal statute that does not create or even contemplate any civil remedies; (2) there are no facts in the Complaint alleging that McLeod or the individual Defendants (personally, in their individual capacities, or otherwise) violated the statute; and (3) there are no factual allegations in the Complaint beyond Plaintiff’s conclusory contentions that any of the Defendants have violated the statute. Claim 5.12 is dismissed.

T. Claim 5.13: Occupational Safety and Health Act of 1970 § 11(c) – Retaliation (“Claim 5.13”) – Against Defendants Rose and McLeod

Identical to Claim 5.5 (even relying exclusively on Claim 5.5 as supposed support), Claim 5.13 contends, with no explanation, that Rose and McLeod somehow retaliated against Plaintiff in violation of the federal Occupational Safety and Health Act. Claim 5.13 is facially deficient for the same reasons as Claim 5.5: (1) Plaintiff has not alleged any facts showing that she engaged in any protected activity “under or related to” the federal Occupational Safety and Health Act, 29 U.S.C. § 660(c); (2) Plaintiff has not fulfilled the conditions precedent to an action for a violation of 18 U.S.C. § 660(c), which require an employee, “within thirty days after [an alleged] violation occurs, [to] file a complaint with the Secretary [of Labor] alleging such discrimination”; (3) 18 U.S.C. § 660(c) limits actions for alleged violations of the section to those brought by the Secretary of Labor, and there is no private right of action; (4) Plaintiff

admits that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”)); (5) Plaintiff has not alleged any facts that would establish an employment relationship between Rose and Plaintiff; and (6) Plaintiff does not allege any facts indicating that Rose, in his individual capacity, discriminated against or discharged her. Claim 5.13 is dismissed accordingly.

U. Claim 6: Negligence (“Claim 6”) – Against Defendants Rose and McLeod

Claim 6 alleges that Rose and McLeod were somehow negligent through the “termination of, and refusal to reinstate, Plaintiff.” While the claim is captioned as one for “negligence,” the elements Plaintiff lists suggest Plaintiff is attempting to set forth a claim for negligent misrepresentation. Both claims fail as a matter of law: (1) based on the exclusivity provision of the South Carolina Workers’ Compensation Act, an employee is disallowed from maintaining “a negligence cause of action against his direct employer or his statutory employer,” *Edens v. Bellini*, 359 S.C. 433, 445, 597 S.E.2d 863, 869 (Ct. App. 2004) (citing *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 478 S.E.2d 91 (Ct. App. 1996), *overruled on other grounds by Abbott v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000)); *see also* S.C. Code Ann. § 42-1-540 (explaining that the “rights and remedies” of the Act “shall exclude all other rights and remedies of such employee . . . , at common law or otherwise, on account of” any work-related accident or injury, including alleged negligence in the workplace); (2) Plaintiff does not allege any facts indicating that McLeod owed Plaintiff any alleged duty, breached the unidentified and nonexistent duty, or made any false representation; (3) there are no facts in the Complaint that would even potentially establish a duty that Rose, personally or in his individual capacity, owed to Plaintiff; (4) Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8,

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¶ 25(d) (“A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.”); (5) Plaintiff has not alleged any facts that would establish an employment relationship between Rose and Plaintiff; (6) Plaintiff does not allege any facts indicating that Rose, in his individual capacity, breached any alleged duty or made any false representation; and (7) Plaintiff has not alleged any facts that would establish her justifiable reliance on any alleged misrepresentation. Thus, the Court dismisses Claim 6.

V. Claim 7: Breach of Contract (“Claim 7”) – Against Defendant McLeod

Plaintiff’s Claim 7 for breach of contract against McLeod is based on unspecified “Policies and Procedures,” which Plaintiff contends McLeod violated “by terminating her employment and refusing to reinstate her.” Plaintiff has not identified—with any degree of specificity—what alleged policies or procedures created contractual obligations, how the supposed contractual obligations were created, or how McLeod breached the alleged obligations.⁵ This is far from sufficient to state a plausible claim for breach of contract, mandating dismissal of Claim 7 as a matter of law.

W. Claim 8: Fraud (“Claim 8”) – Against Defendants Rose and McLeod

Claim 8 alleges Rose and McLeod committed fraud through the “termination of, and refusal to reinstate, Plaintiff.” Claim 8 must be dismissed because: (1) the Complaint does not comply with Rule 9(b), SCRCF—which plainly requires that all “averments of fraud . . . shall be stated with particularity”—as Plaintiff has not clearly identified the supposed representation or alleged any facts plausibly showing how or why it was false, the materiality of the representation, Defendants’ knowledge of the falsity or reckless disregard of truth or falsity,

⁵ To the extent Plaintiff is relying on McLeod’s employee handbook—which the Court cannot determine based on the factually deficient nature of Plaintiff’s Complaint—McLeod argues that the handbook contains a clear and conspicuous disclaimer that would preclude contractual obligations as a matter of law.

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Defendants' intent that Plaintiff act on the representation, Plaintiff's ignorance of the falsity, Plaintiff's reliance on its truth, Plaintiff's right to rely thereon, or Plaintiff's consequent and proximate injury; and (2) Plaintiff does not allege any facts indicating that McLeod or Rose (in his individual capacity) made any false representation or engaged in conduct that would satisfy the remaining 8 elements of a claim for fraud. Claim 8 is dismissed accordingly.

X. Claim 9: Defamation ("Claim 9") – Against Defendants Rose and McLeod

Plaintiff's Claim 9 alleges a cause of action for defamation against Rose and McLeod, relying entirely on the same "facts" that purportedly support her claim for "forgery." Claim 9 fails for the same reason that Claim 5.4 fails: (1) Plaintiff has not alleged with any degree of specificity facts sufficient to identify the allegedly defamatory statement (as required by Rule 9(h), SCRPC), how/when/to whom the allegedly defamatory statement was published, how McLeod was involved in the unidentified publication, or how she was allegedly harmed by the supposed defamatory statement; (2) if Plaintiff is relying on the "highly suspicious" documents in her personnel file, paragraph 4 of her July 31, 2015 letter attached to the Complaint makes clear that Plaintiff does not know the author/publisher of those vaguely described documents—"to protect the Review Team from being deceived by Dr. Rose or whoever is responsible for adding these highly suspicious pages to my HR file" (emphasis added)); (3) there are no facts in the Complaint alleging that Rose (in his individual capacity), McLeod, or any of McLeod's agents made the allegedly defamatory statement; and (4) a common law cause of action for libel or slander must be brought within 2 years of the date on which the alleged defamatory statement was made, S.C. Code Ann. § 15-3-550, and the only alleged statements the Court can discern

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from the Complaint occurred more than 2 years before filing.⁶ Therefore, Claim 9 is dismissed under Rule 12(b)(6).

Y. Claim 10: Common Law Conspiracy (“Claim 10”) – Against Defendants Rose and McLeod

Claim 10 simply refers to Claim 5.7, apparently attempting to allege that Rose—an agent of McLeod Health—conspired with McLeod Health. Claim 10 fails just like Claim 5.7: (1) there are no facts in the Complaint alleging that Rose (in his individual capacity) or McLeod engaged in the vaguely alleged conspiracy; and (2) conspiracy requires the combination of two or more persons to conspire together for the purpose of accomplishing an unlawful objective or lawful objective by unlawful means, Rose is an agent of McLeod Health, there is no allegation that Rose was acting outside of his scope of employment, and a party cannot conspire with itself (which is precisely what McLeod would allegedly be doing if Rose conspired with McLeod within the scope of his employment), *McMillan*, 367 S.C. at 564, 626 S.E.2d at 887 (“[W]e believe that it is well settled that a corporation cannot conspire with itself.”); *id.* (“[A]gents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party.” (citing *Goble*, 124 S.C. at 26-27, 115 S.E. at 903)). Therefore, Claim 10 is dismissed.

Z. Claim 11: Costs, Attorney’s Fees, and Related Non-Taxable Expenses – Against Defendant McLeod

Claim 11 does not actually assert a claim, but reiterates Plaintiff’s claims under Claims 1 through 10. Accordingly, Claim 11 is dismissed for the same reasons as Claims 1 through 10.

⁶ To the extent Plaintiff is contending that Rose’s May 5 letter or Locklair’s August 20 letter (neither of which are attached to the Complaint and are not described with any degree of particularity) are defamatory, McLeod contends that those letters would be subject to a privilege as a matter of law and that Plaintiff has alleged no facts indicating even a plausible ability to overcome the privilege.

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Defendants' intent that Plaintiff act on the representation, Plaintiff's ignorance of the falsity, Plaintiff's reliance on its truth, Plaintiff's right to rely thereon, or Plaintiff's consequent and proximate injury; and (2) Plaintiff does not allege any facts indicating that McLeod or Rose (in his individual capacity) made any false representation or engaged in conduct that would satisfy the remaining 8 elements of a claim for fraud. Claim 8 is dismissed accordingly.

X. Claim 9: Defamation ("Claim 9") – Against Defendants Rose and McLeod

Plaintiff's Claim 9 alleges a cause of action for defamation against Rose and McLeod, relying entirely on the same "facts" that purportedly support her claim for "forgery." Claim 9 fails for the same reason that Claim 5.4 fails: (1) Plaintiff has not alleged with any degree of specificity facts sufficient to identify the allegedly defamatory statement (as required by Rule 9(h), SCRCF), how/when/to whom the allegedly defamatory statement was published, how McLeod was involved in the unidentified publication, or how she was allegedly harmed by the supposed defamatory statement; (2) if Plaintiff is relying on the "highly suspicious" documents in her personnel file, paragraph 4 of her July 31, 2015 letter attached to the Complaint makes clear that Plaintiff does not know the author/publisher of those vaguely described documents—"to protect the Review Team from being deceived by Dr. Rose or whoever is responsible for adding these highly suspicious pages to my HR file" (emphasis added)); (3) there are no facts in the Complaint alleging that Rose (in his individual capacity), McLeod, or any of McLeod's agents made the allegedly defamatory statement; and (4) a common law cause of action for libel or slander must be brought within 2 years of the date on which the alleged defamatory statement was made, S.C. Code Ann. § 15-3-550, and the only alleged statements the Court can discern

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from the Complaint occurred more than 2 years before filing.⁶ Therefore, Claim 9 is dismissed under Rule 12(b)(6).

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Claim 11 does not actually assert a claim, but reiterates Plaintiff’s claims under Claims 1 through 10. Accordingly, Claim 11 is dismissed for the same reasons as Claims 1 through 10.

⁶ To the extent Plaintiff is contending that Rose’s May 5 letter or Locklair’s August 20 letter (neither of which are attached to the Complaint and are not described with any degree of particularity) are defamatory, McLeod contends that those letters would be subject to a privilege as a matter of law and that Plaintiff has alleged no facts indicating even a plausible ability to overcome the privilege.

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V. CONCLUSION

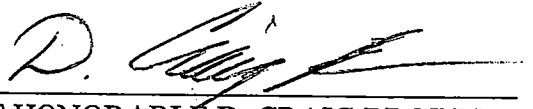
Of the 24 “claims” against McLeod and the individual Defendants, there are recurring deficiencies that mandate dismissal as a matter of law:

- 7 are based on criminal statutes or holdings that have no private or civil right of action (Claims 5.2, 5.3, 5.4, 5.7, 5.10, 5.11, and 5.12);
- 4 are based on statutes under which Plaintiff has not complied with the conditions precedent (Claims 2, 5.5, 5.6, and 5.13);
- 3 are based on statutes under which Plaintiff’s claims are untimely, placing aside the absence of a private right of action under the statutes (Claims 5.5, 5.6, and 5.13);
- 2 others are untimely under the applicable statute of limitations (Claims 5.4 and 9);
- 5 are based on non-criminal statutes, rules, or regulations that contain no private right of action (Claims 4, 5.8, 5.9, and 5.13);
- 2 request that the Court compel speech in violation of the First Amendment (Claims 3.2 and 4); and
- All are duplicative of other claims and rely on entirely circular reasoning that is devoid of plausible facts.

While the Court is obligated to liberally construe Plaintiff’s *pro se* Complaint, even the most liberal construction cannot overcome the obvious and controlling deficiencies in her claims. Plaintiff has made a litany of irrelevant, unsupported, and conclusory allegations against McLeod and the individual Defendants that appear to be for the sole purpose of embarrassing and harassing McLeod and its agents. This is precisely the scenario under which Courts are called to

apply Rule 12(b)(6) and dismiss claims that have no basis in fact and set forth no plausible entitlement to relief.

For all of the reasons set forth above, **IT IS ORDERED** that, Defendants' Motions to Dismiss are hereby **GRANTED** pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and Plaintiff's Complaint is hereby **DISMISSED, with prejudice**, this 7 of May, 2018.



THE HONORABLE D. CRAIG BROWN
SOUTH CAROLINA CIRCUIT JUDGE

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC.
[Handwritten signature]

2018 MAY -7 PM 2:49
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

Sally K. Favaloro,)
)
Plaintiff,)
)
vs.)
)
Robert Colones, Ronald Boring,)
Marie Segars, Debbie Locklair,)
Shannon Carr, Michael Rose, and)
McLeod Regional Medical Center,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-21-2331

**DEFENDANTS' MOTION TO DISMISS AND STRIKE PLEADING CAPTIONED AS
"PLAINTIFF'S FIRST AMENDED COMPLAINT"**

COME NOW Defendants, by and through their undersigned counsel and pursuant to Rules 12(b)(6) and 12(f) of the South Carolina Rules of Civil Procedure, and move to dismiss and strike the pleading captioned as "Plaintiff's First Amended Complaint." Defendants show as follows in support of this Motion:

1. Plaintiff filed her Complaint in this action on August 28, 2017.
2. On October 17, 2017, Defendant Dr. Michael Rose timely filed his Motion to Dismiss Plaintiff's Complaint.
3. On November 16, 2017, the remaining Defendants (Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, and McLeod Regional Medical Center ("McLeod")) timely filed their Motions to Dismiss Plaintiff's Complaint.
4. On May 7, 2018, the Court entered an Order granting Defendants' Motions to Dismiss, thereby dismissing Plaintiff's Complaint with prejudice.

5. The Court's May 7, 2018 Order was a final disposition of Plaintiff's Complaint and this action, thereby ending the action.

6. On June 5, 2018, Defendants' counsel received in the mail a copy of a pleading captioned as "Plaintiff's First Amended Complaint" in this action, which indicated that it was served by mail on June 1, 2018. **(Attachment A.)**

7. Paragraph 11.2 of "Plaintiff's First Amended Complaint" alleges that the pleading amends Plaintiff's Complaint in this action under Rule 15(a), SCRPC, as Plaintiff contends that "no responsive pleading was served" to Plaintiff's Complaint.

8. Plaintiff's purported "First Amended Complaint" fails as a matter of law and must be dismissed and stricken for several reasons:

- a. Plaintiff's Complaint was dismissed with prejudice by virtue of the Court's May 7, 2018 Order. Plaintiff cannot amend a pleading that has been dismissed with prejudice. This action has ended, and no Plaintiff cannot file new or amended allegations to bring the action back to life.
- b. Defendants' Motions to Dismiss Plaintiff's Complaint (timely served on October 17, 2017, and November 16, 2017) were responsive pleadings. Even if there were a pleading that Plaintiff could amend (though there is not), she would need leave of Court to do so under Rule 15, SCRPC.
- c. As of the filing of this Motion, there is no indication on the Court's electronic docket report (the "Public Index") that Plaintiff has filed her purported "First Amended Complaint." Her failure to file the pleading "within five (5) days after service" renders the purported "First Amended Complaint" further deficient and subject to dismissal and striking and Rule 5(d), SCRPC.

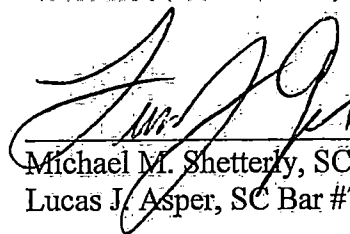
9. A proposed Order Granting this Motion is attached for the Court's consideration as **Attachment B**, as (a) the procedural timeline mandates the granting of this Motion, and there is no colorable argument Plaintiff could make in opposition, and (b) ruling upon this Motion without the need for a hearing would be in the interests of judicial economy to avoid unnecessarily wasting the time and resources of the Court and the parties.

WHEREFORE, Defendants request that the Court enter an Order dismissing the pleading captioned as "Plaintiff's First Amended Complaint," and striking the pleading from the record based on its obvious procedural deficiencies.

Dated this 18th day of June, 2018.

Respectfully submitted,

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



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ATTACHMENT A

JURY TRIAL DEMANDED

**South Carolina Circuit Court
Court of Common Pleas, Florence County**

Sally K. Favaloro,

Plaintiff,

v.

**Robert Colones, Ronald Boring, Marie Segars,
Debbie Locklair, Shannon Carr, Michael Rose,
and McLeod Regional Medical Center,**

Defendants.

Case No. 2017-CP-21-2331

PLAINTIFF'S FIRST AMENDED COMPLAINT

1. **Jurisdiction and Venue.** This Court: (a) has subject matter jurisdiction because the amount in controversy exceeds \$7,500; and (b) is the proper venue because all Defendants reside, or all relevant events occurred, in this county.

2. **Exhibits.** Under S.C. Rule of Civil Procedure 10(c), the following are attached as exhibits to this pleading: AVP SUMMARY, pages 1-3; July 21, 2015 letter (July 21 letter), pages 1-8; July 31, 2015 letter (July 31 letter), pages 1-2; September 10, 2015 letter (September 10 letter), pages 1-9.

3. **Plaintiff.** From July 2012 to April 30, 2015, Plaintiff Sally K. Favaloro, described in the attached July 21 letter, page 3-4, paragraph 5-7, was McLeod Regional Medical Center's: (a) Associate Vice President Surgical Services (AVP); and (b) highest-ranking Operating Room

(OR) Nurse; and (c) highest-ranking OR patient advocate inside the OR; and (d) highest-ranking OR patient advocate outside the OR; and (e) supervisor of more than 310 nurses, techs, and other employees. At all times, Plaintiff acted in good faith and consistent with: all relevant federal laws, all relevant state laws, all Joint Commission standards, all Defendants' policies and procedures, all duties and reporting structure for her AVP position; and professional competence or better than professional competence.

4. **Defendants.** Defendant McLeod Regional Medical Center (McLeod) is a health care professional employer corporation whose business address is in Florence, South Carolina. Each non-McLeod Defendant was a McLeod officer or agent. Colones was Chief Executive Officer. Boring was Chief Operating Officer. Segars was Administrator. Locklair was Senior Vice President. Carr was Human Resources Director. Rose was Vice President Surgical Services.

10. **Facts.**

10.1. Defendants owed duties and promises to Plaintiff that except as Defendants' Policies and Procedures (Policies) allowed, Defendants shall not terminate her employment as AVP. Defendants' duties flow from: (a) federal and state law; and (b) McLeod Policies contractual and non-contractual promises, *see* attached AVP SUMMARY, pages 1-3.

10.2. On April 30, 2015, Defendants violated their duties and promises to Plaintiff by terminating her. The termination: (a) included seizure of most of her personal and professional property from her AVP office; and (b) was wrongful. *See* attached July 21 letter, pages 3-8.

10.3. Defendants owed duties and promises to Plaintiff that if Defendants terminated her, then except as Policies allowed, Defendants shall reinstate her. Defendants found that the

termination was wrongful and admitted that the termination was wrongful. *See* attached September 10 letter, pages 2-6.

10.4. On August 26, 2015, Plaintiff discovered that Defendants violated their duties and promises to her by refusing to reinstate her. *See* attached September 10 letter, page 2.

10.5. Defendants owed duties and promises to Plaintiff that if Defendants wrongfully terminated her or wrongfully refused to reinstate her, then Defendants shall not perpetrate criminal or non-criminal deceptions to deny and conceal their wrongdoing. *See* attached AVP SUMMARY, page 2, paragraph 3, quoting Supervisor's Reference Manual: "Supervisors will be held accountable for the failure to ... detect [supervisor] non-compliance with applicable policies and legal requirements".

10.6. On July 27, 2015, Plaintiff discovered that Defendants violated their duties and promises to her by perpetrating criminal and non-criminal deceptions to deny and cover up their wrongful termination of her. *See* attached July 31 letter, pages 1-2.

10.7. On August 26, 2015, Plaintiff discovered that Defendants violated their duties and promises to her by perpetrating criminal and non-criminal deceptions to deny and cover up their wrongful refusal to reinstate her. *See* attached September 10 letter, pages 2-9.

10.8. On September 10, 2015, and February 29, 2016, Plaintiff informed Defendants of Defendants' felonies perpetrated to deny and cover up their wrongful termination of, and wrongful refusal to reinstate, Plaintiff.

10.9. At all times, Defendants owed duties and promises to Plaintiff to oppose, or to refrain from furthering, the felonies and other violations. Defendants refused to oppose, but instead acted to further, the felonies and other violations.

11. Claims.

11.1. In this pleading, Plaintiff follows S.C. Rules of Civil Procedure 1-20, to the letter and in spirit. In each Claim: (a) All conditions precedent have occurred or been performed, and if law required Plaintiff to exhaust any administrative remedies, then Plaintiff exhausted those administrative remedies at the proper time, at the proper place, in the proper manner, and to the proper extent. (b) The present tense includes the past tense and vice versa; the singular form includes the plural and vice versa; and the masculine form includes the feminine and vice versa. (c) Each statement in this pleading is adopted by reference to the extent necessary to perfect any Claim. (d) "Defendants" means: (1) McLeod Regional Medical Center; and (2) one or more of the individual Defendants, acting directly or indirectly through one or more of their officers or agents. (e) Upon the facts, stated herein or not, Defendants: owed Plaintiff duties; violated those duties; proximately damaged Plaintiff; and owe Plaintiff relief in the form of actual damages, costs, and attorney's fees, plus other forms of relief depending on the particular Claim.

11.2. Claims 1 - 11 were presented in Plaintiff's Original Complaint. Plaintiff did not amend her pleading, and to it, no responsive pleading was served. In this First Amended Complaint, Plaintiff follows Rule 15(a), SCRPC, stating: "A party may amend his pleading once as a matter of course at any time before ... a responsive pleading is served". Upon Rule 15(c), SCRPC, the Claims asserted in this amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, and this First Amended Complaint relates back to the date of the original pleading.

12. Claim 12. The elements of a claim for payment of wages upon S.C. Code § 41-10 are
(a) (b) (c) (d) and (e):

(a) Defendants were employers in the state ("employer" means every employer corporation or officer or agent). Defendant McLeod is a health care professional employer corporation whose business address is in Florence, South Carolina. Each non-McLeod Defendant was a McLeod officer or agent. *See supra*, ¶ 4.

(b) Plaintiff was defendants' employee. From July 2012 to April 2015, Plaintiff was Defendants' employee as Associate Vice President Surgical Services.

(c) Defendants discharged plaintiff. On April 30, 2015, Defendants Rose and Carr discharged Plaintiff by: ordering her to surrender, and confiscating, her badge and office keys; ordering her to first immediately remove from her office her immediately necessary personal items, meaning her purse containing her car keys and house keys, and to not remove anything else; and ordering her to then immediately exit the McLeod campus and not return; and ordering her to not contact or respond to any contact from any other McLeod employee. Defendants' reason for the termination, stated by Rose, was simply: "I don't know. I can't talk about it. I don't know. I need some time to think about that."

(d) Defendant owed plaintiff wages ("wages" means salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO)). Defendants owed Plaintiff wages in the amount of \$17,336.54 or some similar amount.

(e) Defendants did not pay the wages. Defendants did not pay Plaintiff the wages of \$17,336.54 or some similar amount.

(f) Damages. Defendants acts proximately caused Plaintiff to lose, or to incur debt for, or to pay for: wages, wage-replacement loan interest, increased health insurance costs, costs of court, and reasonable attorney's fees.

(g) Relief. Upon S.C. Code § 41-10-80 (C), Plaintiff may recover three times the amount owed, which is \$52,009.61 or some similar amount, plus costs and reasonable attorney's fees. Plaintiff demands those amounts, plus: interest on those amounts, wage-replacement loan interest, and the costs of increased health insurance.

13. Claim 13. The elements of a claim for conversion upon *Am. Credit of Sumter, Inc. v. Nationwide Mutual Ins. Co.*, 378 S.C. 623 (2008) are (a) (b) and (c):

(a) The unauthorized exercise of the right of ownership over personal property. Plaintiff did not authorize Defendants to exercise any right of ownership over any of Plaintiff's personal property in Plaintiff's Associate Vice President Surgical Services office. Defendants wrongfully exercised a purported right of ownership over Plaintiff's personal property by entering Plaintiff's office and confiscating all of her personal property there.

(b) The property belongs to another. This property belongs to Plaintiff and not to Defendants. It includes Plaintiff's: awards, books, calendars, charts, clothing, computer-stored documents and files, correspondence, daytimers, decorations, desk accessories, drawings, evidence of Defendants' law-violating wrongdoings, food, gifts, hard copy documents and files, notebooks, notepads, notes, pens and pencils, personal mementoes, personal rule books, photos, plants, plaques, professional journals, professional magazines, professional manuals, recruiter

communications, staff evaluations, thank-you cards, vendor communications, wall-hangings, and other items.

(c) The exercise was to the exclusion of the owner's rights. Defendants prevented Plaintiff from taking the property with her or returning later to take it with her. Specifically, Defendants: (1) ordered her to first immediately remove from her office her immediately necessary personal items, meaning her purse containing her car keys and house keys, and to not remove anything else; and (2) ordered her to then immediately exit the McLeod campus and not return. Defendants never withdrew those orders, but instead confiscated Plaintiff's property for themselves. Plaintiff has asked Defendants to return her property. Defendants have refused. Plaintiff has filed a court claim to recover her property. Defendants have opposed it.

(d) Damages. Defendants' acts proximately caused Plaintiff: the physical loss of all Plaintiff's property, costs to replace that property, costs of court, and attorney's fees.

(e) Relief. Plaintiff demands the return of all Plaintiff's property and/or an award of compensation for the permanent loss of that property, plus costs Plaintiff has incurred to replace that property, punitive damages, costs, and attorney's fees.

14. Claim 14. The elements of a claim for breach a contract for continuing employment upon *Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215 (Ct. App. 1993) and *Fuller v. E. Fire & Sas. Ins. Co.*, 240 S.C. 75 (1962) are (a) (b) (c) (d) and (e):

(a) Offer. (1) Terms of the Offer. In June and July 2012, Defendants offered to employ Plaintiff as Defendants' Associate Vice President Surgical Services upon the terms specified in the Contract Documents. The Contract Documents included: the Supervisor's Desk Reference

(SDR); SDR Addendum I - III; and Performance Expectation Process Dismissal form, which together prohibited Defendants' termination of Plaintiff. The SDR and Addendum: are handbooks; are personnel manuals; are not conspicuously disclaimed against being an employment contract or part of one; do not include a first page underlined or capital letters or any other disclaimer against being an employment contract or part of one; do not include a Plaintiff-signed disclaimer against being an employment contract or part of one; and/or were not issued after June 20, 2004. (2) Making of the Offer. Defendants offered Plaintiff the contract for continuing employment by offering to Plaintiff: the title and Office of McLeod Associate Vice President Surgical Services and things unique to that Office, including: SDR, badge, office, office keys, secretary, secretary space, storage space, computer access, computer files, hard copy files, 310 direct and indirect report employees, paycheck, wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO), Internal Revenue Service W2 Forms, health insurance, retirement account, and other McLeod employee benefits.

(b) Acceptance. Plaintiff accepted Defendants' contract offer by accepting what Defendants offered and by using those things to perform the duties of Associate Vice President Surgical Services for approximately one hundred forty-one weeks.

(c) Valuable consideration. As valuable consideration for the Contract: (1) Plaintiff received from Defendants paycheck, wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) of approximately \$450,000.00; and (2) Defendants received from Plaintiff approximately one hundred forty-one weeks of Defendants' highest employee achievement standard, "Role Model". Role Model is defined as "Performance

consistently exceeds standards. Contributions and results significantly exceed expectations and represent top performance when compared to peers performing similar work."

(d) Breach. In 2015, on April 30 at 1533, Defendants, through Rose and Carr, terminated Plaintiff's employment. Defendants' reason for the termination, stated by Rose, was simply: "I don't know. I can't talk about it. I don't know. I need some time to think about that." Under the Contract, any termination of Plaintiff is a breach of the Contract unless Defendants have achieved a Traditional Dismissal or a First Offense Dismissal.

(1) A Traditional Dismissal required these documents (Required Documents): (1) a pre-April 30 at 1533 PEP Informal Discussion document; and (2) a pre-April 30 at 1533 PEP Coaching document; and (3) a pre-April 30 at 1533 PEP Performance Talk document; and (4) a pre-April 30 at 1533 PEP Performance Reminder document; and (5) a pre-April 30 at 1533 PEP Decision Making Leave document; and (6) a document showing that: prior to April 30 at 1533, Rob Colones gave his approval, to Dr. Rose, to dismiss the AVP under Traditional Dismissal; and (7) a document showing that: prior to April 30 at 1533, Marie Segars gave her approval, to Dr. Rose, to dismiss the AVP under Traditional Dismissal; and (8) a document showing that: Marie Segars was involved in an April 30 at 1533 Dismissal Meeting to dismiss the AVP under Traditional Dismissal; and (9) an April 30 PEP Dismissal Worksheet showing that: Dr. Rose attended an April 30 at 1533 Dismissal Meeting and signed the PEP Dismissal Worksheet dismissing the AVP; and (10) an April 30 PEP Dismissal Worksheet showing that: a Witness attended an April 30 at 1533 Dismissal Meeting and signed the PEP Dismissal Worksheet dismissing the AVP; and (11) an April 30 Traditional Dismissal PEP Dismissal Letter dismissing

the AVP; and (12) a document showing that: at an April 30 at 1533 Dismissal Meeting, Dr. Rose offered to allow the AVP to resign in lieu of dismissal, and the AVP refused.

(2) A First Offense Dismissal required these documents (Required Documents): (1) a pre-April 30 at 1533 document showing that: Dr. Rose found that the AVP had committed a "First Offense Dismissal" "intolerable act" whereby the AVP forfeited her right to PEP protection against dismissal (for example: theft, assaulting a fellow employee, selling drugs on the premises, failure to submit to a drug screen, falsification of record, etc.); and (2) a pre-April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Marie Segars; and (3) a pre-April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Human Resources; and (4) a pre-April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Dr. Rose; and (5) a document showing that: prior to April 30 at 1533, Rob Colones gave his approval, to Dr. Rose, to dismiss the AVP for a First Offense Dismissal intolerable act; and (6) a document showing that: prior to April 30 at 1533, Marie Segars gave her approval, to Dr. Rose, to dismiss the AVP for a First Offense Dismissal intolerable act; and (7) a document showing that: Marie Segars was involved in an April 30 at 1533 Meeting to dismiss the AVP for a First Offense Dismissal intolerable act; and (8) a document showing that: Dr. Rose and a Witness attended an April 30 at 1533 Dismissal Meeting and signed an April 30 document dismissing the AVP; and (9) a document showing that: there was an April 30 First Offense intolerable act Dismissal Letter dismissing the AVP; and (10) a document showing that: at an April 30 at 1533 Dismissal Meeting, Dr. Rose offered to allow the AVP to resign in lieu of dismissal, and the AVP refused.

(3) If the termination was on some date and time other than April 30 at 1533, then under the Contract, any termination of Plaintiff is a breach of the Contract unless Defendants had created the Required Documents relative to that other date and time. Whether the termination was on April 30 or not, Defendants failed to create any of the Required Documents. Therefore, Defendants failed to achieve any Traditional Dismissal or First Offense Dismissal. Therefore, Defendants breached the contract for continuing employment.

(e) Damages. Defendants acts proximately caused Plaintiff to lose or incur debt for or pay for: wages, wage-replacement loan interest, increased health insurance, costs of court, and reasonable attorney's fees. The termination caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(f) Relief. Plaintiff demands recovery of actual damages, costs, and attorney's fees.

15. Claim 15. The elements of a claim for breach of contract for reinstatement upon the cases in Claim 14 are the Claim 14 elements (a) (b) (c) and (e) and this Claim 15 element (d):

(d) Breach. Under the Contract, if Defendants terminate Plaintiff, then Defendants shall reinstate Plaintiff unless Defendants have achieved a Traditional Dismissal or a First Offense Dismissal. As shown in Claim 14 (d) above, Defendants terminated Plaintiff but wholly failed to achieve either type of Dismissal. Therefore, the Contract required that Defendants shall immediately reinstate Plaintiff as Associate Vice President Surgical Services. Defendants refused to do so. Therefore, Defendants breached the contract for reinstatement.

(f) Damages. The refusal to reinstate caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(g) Relief. Plaintiff demands the Contract-required reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, plus all Plaintiff's lost wages and benefits, plus interest, accruing from April 30, 2015, costs and attorney's fees.

16. Claim 16. The elements of a claim for declaratory judgment to construe a contract upon S.C. Code § 15-53 are (a) and (b):

(a) Plaintiff claims a contract. Plaintiff hereby claims both: a contract for continuing employment, in Claim 14; and a contract for reinstatement, in Claim 15.

(b) Plaintiff requests a construction. Plaintiff hereby requests: a construction of both contracts; and a declaration that Defendants have breached both contracts; and an award of compensation for damages for the breaches; and Plaintiff's reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose; and all other relief Plaintiff may be allowed under the following statutes: S.C. Code § 15-53-20 "Courts of record ... shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.... The declaration may be either affirmative or negative in form or effect." S.C. Code § 15-53-30 "Any person interested under a ... written contract or other writings constituting a contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a

declaration of rights, status, or other legal relations thereunder." S.C. Code § 15-53-40 "A contract may be construed either before or after there has been a breach thereof." S.C. Code § 15-53-90 "All existing rights to jury trials are hereby preserved." S.C. Code § 15-53-100 "[T]he court may make such award of costs as may seem equitable and just." S.C. Code § 15-53-120 "Further relief based on declaratory judgment or decree may be granted whenever necessary or proper." S.C. Code § 15-53-130 "This chapter is declared to be remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered."

17. Claim 17. The elements of a claim for wrongful termination or refusal of reinstatement in violation of public policy upon *Barron v. Labor Finders of South Carolina*, 393 S.C. 609 (2011) are (a) (b) and (c):

(a) An employer terminated, or refused to reinstate, plaintiff. In July 2012, Defendants hired Plaintiff as Associate Vice President Surgical Services. On February 17, 2014, Plaintiff informed Defendants, in writing, that the next day, Plaintiff would be filing a whistleblower lawsuit against another medical center. The next day, Plaintiff filed her whistleblower lawsuit. The next year, April 2015, despite Plaintiff's clean personnel record, Defendants terminated Plaintiff's employment. Defendants' internal investigation found that Defendants' termination of Plaintiff was wrongful. Plaintiff requested reinstatement. Defendants refused.

(b) The termination or refusal of reinstatement was in retaliation for, or in discrimination against, plaintiff for instituting a claim protected by public policy.

(1) Refusal of reinstatement. Defendants refused to reinstate Plaintiff because, as Defendants stated in writing, Plaintiff filed the lawsuit "*Favaloro v. BJC HealthCare, et al.*, 4:14-cv-00284-CAS, U.S. District Court, Eastern District of Missouri (asserting whistleblower claims, FMLA claims, retaliation claims, discrimination claims, conspiracy claims, defamation claims, and negligence *per se* in her original complaint)." Public policy, both federal and state, expressly protects Plaintiff's application for reinstatement from Defendants' expressed discrimination and retaliation against Plaintiff because of Plaintiff's whistleblower lawsuit. Specifically: (a) Title VII of the Civil Rights Act of 1964 SEC. 2000e-3 (a). [Section 704] states: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." (b) S.C. Code § 1-13-80 (F) states: "It is an unlawful employment practice for an employer to discriminate against an employee or applicant for employment ... because the individual has opposed a practice made an unlawful employment practice by this chapter or because the individual has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter."

(2) Termination. Defendants' reason for the termination was unstated. When Plaintiff asked, Defendants offered only: "I don't know. I can't talk about it. I don't know. I need some time to think about that." Defendants' stated reason, for refusing to reinstate Plaintiff, was the same as Defendants' unstated reason, for terminating Plaintiff: discrimination and retaliation against Plaintiff because of Plaintiff's whistleblower lawsuit.

(c) Damages. The termination and refusal to reinstate caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(d) Relief. Plaintiff demands actual damages, punitive damages, reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, costs, and attorney's fees.

18. Claim 18. The elements of a claim for fraud, upon the case of *Mutual Sav. & Loan Ass'n v. McKenzie*, 274 S.C. 630 (1980), are (a) (b) (c) (d) (e) (f) (g) (h) and (i):

(a) Defendant made representations to plaintiff. Defendants' false representations to Plaintiff included false representations (1) - (6): (1) Regarding Plaintiff, Defendants would obey: federal and state laws, and their contract with Plaintiff, and McLeod's handbooks, personnel manuals, policies and procedures, and other standards, written and unwritten. (2) Defendants would not terminate Plaintiff except as allowed by: the termination requirements in Defendants' contract with Plaintiff; and the Supervisor's Desk Reference (SDR) handbook and personnel manual. (3) If Defendants did terminate Plaintiff in violation of the contract and SDR, then Defendants would reinstate Plaintiff. (4) On April 30, 2015, Defendants including Rose and Carr were not terminating Plaintiff and were not breaching their contract with Plaintiff but instead were placing Plaintiff on "administrative leave". (5) If on August 20, 2015, the Dispute Resolution Review Team did not find that Defendants and Rose had obeyed their contract with Plaintiff and the SDR in terminating Plaintiff, then Defendants would reinstate Plaintiff. (6) After any termination, Defendants would pay Plaintiff her earned and unpaid vacation pay and return

her personal property to her or allow her to retrieve it. (7) Regarding each of these Defendants' representations:

(b) the representation was false.

(c) the representation was material.

(d) Defendants knew it was false.

(e) Defendants intended that plaintiff would act on it.

(f) Plaintiff was not aware that it was false.

(g) Plaintiff relied on its truth.

(h) Plaintiff had a right to rely on its truth.

(i) There was a consequent and proximate injury to Plaintiff. The termination and refusal to reinstate, even after the Dispute Resolution Review Team found that Defendants wrongfully terminated Plaintiff, caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages. Rule 9(b), SCRCF, requires that the circumstances constituting fraud be stated with particularity. Under Rule 9(f), SCRCF, averments of time and place are material. Plaintiff, following Rules 9(b) and 9(f), attaches four exhibits to this Complaint that both: state with particularity the circumstances constituting Defendants' fraudulent acts and intents; and specify times and places.

(j) Relief. Plaintiff demands actual damages, punitive damages, reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, costs, and attorney's fees.

19. Claim 19. The elements of a claim for breach of contract accompanied by a fraudulent act, upon the case of *Harper v. Ethridge*, 290 S.C. 112 (Ct. App. 1986), are (a) (b) and (c):

(a) Breach of contract. See supra, Claims 14 and 15.

(b) Fraudulent intent relating to the breach of contract, not merely to its making. As explained in the exhibits to this Complaint: When Defendants terminated Plaintiff, they falsely stated, and they deceived Plaintiff into believing, that the termination was an "administrative leave". After Defendants terminated Plaintiff, Defendants recommended that Plaintiff pursue a Dispute Resolution Process to achieve reinstatement and recovery of lost wages and benefits. However, Defendants knew that the Dispute Resolution Process was a complete sham. Defendants designed and executed it to harass, frustrate, and further injure Plaintiff. If the Dispute Resolution Review Team found that Defendants had wrongfully terminated Plaintiff, then Defendants would simply attempt to deceive Plaintiff into believing the opposite. Defendants McLeod, through its Human Resources representative, admitted that Defendants had wrongfully terminated Plaintiff, and the Review Team did unanimously find that Defendants had wrongfully terminated Plaintiff. Nevertheless, Defendants maliciously and falsely claimed the opposite and refused to reinstate Plaintiff. Rule 9(b), SCRCP, requires that the circumstances constituting fraud be stated with particularity. Under Rule 9(f), SCRCP, averments of time and place are material. Plaintiff, following Rules 9(b) and 9(f), attaches four exhibits to this Complaint that both: state with particularity the circumstances constituting Defendants' fraudulent acts and intents; and specify times and places.

(c) Fraudulent act accompanying the breach. See supra, Claim 18.

(d) Damages. The termination and refusal to reinstate, even after the Dispute Resolution Review Team found that Defendants wrongfully terminated Plaintiff, caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(e) Relief. Plaintiff demands actual damages, punitive damages, reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, costs, and attorney's fees.

20. Claim 20. The elements of a claim for negligence per se upon *Wise v. Broadway*, 315 S.C. 273 (1993) are (a) and (b):

(a) Defendants violated a statute. As further specified in the four exhibits to this Complaint, Defendants acted as described in, and in those ways violated, the following statutes:

S.C. Code § 41-10-50, Payment of Wages. *See supra*, Claim 12.

S.C. Code § 16-13-30, Larceny. *See supra*, Claim 13.

S.C. Code § 16-13-10, Forgery.

S.C. Code § 16-7-150, Slander and Libel.

S.C. Code § 41-15-510, Retaliation. *See supra*, Claim 17.

S.C. Code § 1-13-80 (F), Discrimination. *See supra*, Claim 17.

S.C. Code § 16-17-410, Conspiracy. *See supra*, Claim 21.

S.C. Regs. 61-16 § 505 B, D, E. Illegal treatment of nurses.

S.C. Regs. 61-16 § 506 A, C. Illegal hospital records practices.

State v. Carson, 274 S.C. 316 (1980), Misprison of felony.

18 U.S.C. § 4, Mispriison of felony.

18 U.S.C. § 1512 (b) (c), Witness and evidence tampering.

Occupational Safety and Health Act of 1970 § 11(c), Retaliation. See Claim 17.

(b) The violation proximately damaged plaintiff. As explained in the exhibits attached to this Complaint, Defendants' violations of these statutes supported, and advanced, and then covered up, the wrongfulness of Defendants' termination and refusal to reinstate Plaintiff. The termination and refusal to reinstate, even after the Dispute Resolution Review Team found that Defendants wrongfully terminated Plaintiff, caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(c) Punitive damages. The element of a claim for punitive damages, under *Wise v. Broadway*, 315 S.C. 273 (1993), is that Defendants violated the statute. Regarding each statute above, Defendants violated the statute and did so recklessly, willfully, and wantonly.

(d) Relief. Plaintiff demands actual damages, punitive damages, reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, costs, and attorney's fees.

21. Claim 21. The elements of a claim for conspiracy upon *Pye v. Fox*, 369 S.C. 555 (2006) are (a) (b) and (c):

(a) Two or more people combined (b) for the purpose of injuring plaintiff and (c) caused plaintiff special damages.

(1) Conspiracy 1. To injure Plaintiff professionally, financially, and personally, Rose and Carr combined by: terminating Plaintiff, taking and depriving Plaintiff of her Associate Vice President Surgical Services badge, computer access, keys, office access, personal property, wages, and other employment benefits; refusing to reinstate Plaintiff; stating the opposite of the fact that they found that Defendants and Rose and Carr violated McLeod Policies and wrongfully terminated Plaintiff; creating, and placing into Plaintiff's personnel file, knowingly false statements and forgeries defaming Plaintiff. The termination and refusal to reinstate caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(2) Conspiracy 2. To injure Plaintiff professionally, financially, and personally, Rose and Segars combined by: stating the opposite of the fact that they found that Defendants and Rose and Carr violated McLeod Policies and wrongfully terminated Plaintiff. Their supporting the wrongful termination and refusal to reinstate caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(3) Conspiracy 3. To injure Plaintiff professionally, financially, and personally, Carr and Locklair combined by: stating the opposite of the fact that the Dispute Resolution Review Team found that Defendants and Rose and Carr violated McLeod policies and wrongfully terminated Plaintiff. Their countermanding the Team's findings, and instead supporting the wrongful termination and refusal to reinstate, caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(4) Conspiracy 4. To injure Plaintiff professionally, financially, and personally, Rose, Carr, Segars, Boring, and Colones combined by: refusing to reinstate Plaintiff; and failing to report Defendants' criminal and non-criminal wrongdoing, and taking action to cover-up that wrongdoing. Their countermanding the Dispute Resolution Review Team's findings, and instead supporting the wrongful termination and refusal to reinstate, caused Plaintiff loss of wages, salary, bonus, vacation, holiday, sick leave payments, and other paid time off (PTO) exceeding \$500,000.00, and other damages.

(5) Conspiracy 5. All Defendants: combined with their legal representatives; to violate Plaintiff's legal rights; by obtaining from government officials law-violating results against Plaintiff. Under S.C. Code § 16-17-735 (A)(2), a person violates the law if he: acts or purports to act in an official capacity; knows that his conduct is illegal; and denies or impedes a plaintiff in the exercise or enjoyment of any right, power or privilege. Under S.C. Code § 16-17-735 (B), a person violates the law if he: falsely asserts authority of law in connection with ... issuance of an instrument that: (1) purports to be a judgment or other order of a court of this State or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; and (2) is not adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency of a state. Regarding these statutes, Defendants obtained law-violating results against Plaintiff when they obtained from government officials: (a) the ongoing failure to appoint mediators in this case, in clear violation of South Carolina Alternative Dispute Resolution Rule 4(c); and (b) the January 22, 2018 refusal to investigate Plaintiff's South Carolina OSHA whistleblower complaint, in clear violation of S.C. Code § 41-15-520 and South Carolina Rules of Civil Procedure 6(e); and (c) the

signature of a May 7, 2018 document, which clearly, maliciously, and deceitfully violates both Plaintiff's rights and professional and government officer duties to protect Plaintiff's rights, under: the U.S. Constitution's First and Fourth and Seventh Amendments, the South Carolina Constitution, S.C. Code § 16-17-735; the relevant professional rules and codes of conduct, and the South Carolina Rules of Civil Procedure. Special damages include depriving Plaintiff of her rights to reinstatement, redress of grievances, free speech, and jury trial.

(d) Relief. Regarding Conspiracies 1 - 4, Plaintiff demands actual damages, punitive damages, reinstatement to the Office of Associate Vice President of Surgical Services, retroactive to April 30, 2015, with a reporting structure exclusive of Dr. Rose, costs, and attorney's fees. Regarding Conspiracy 5, Plaintiff demands: compliance with South Carolina Alternative Dispute Resolution Rule 4(c) to appoint mediators in this case; and compliance with professional and government officer duties to protect Plaintiff's rights, including the voiding, striking, and expungement of the clearly, maliciously, and deceitfully violative May 7, 2018 document.

30. Relief. Consistent with, upon, as described in, and beyond the foregoing Claims, Plaintiff demands all relief to which Plaintiff may be entitled upon the following laws: S.C. Code § 41-10-80 (C), payment of wages; S.C. Code § 15-69-210, recovery of personal property; S.C. Code § 15-53, declaratory judgment; S.C. Code § 15-37-10, civil action costs; S.C. Rule of Civil Procedure 65(f)(2), injunction; S.C. Rule of Civil Procedure Rule 54(d)-(e), judgment; laws requiring or allowing recovery of other costs, attorney's fees, and related non-taxable expenses; and actual damages, punitive damages, attorney's fees, costs, interest, declaratory judgment,

injunction, reinstatement; and any other relief to which Plaintiff may be entitled at law or in equity.

Signature.

By:




Sally K. Favaloro, Plaintiff
2002 Chickadee Court
Florence, SC 29501
Telephone: (314) 743-6651
email: skfavaloro@me.com

Service.

This document is being served, by regular mail, on June 1, 2018, on counsel for Defendants: Michael M. Shetterly, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 300 North Main Street, Suite 500, Greenville SC 29601.

This document is being filed, by regular mail, on June 1, 2018, with the Clerk of Court, Judicial Center, 181 N. Irby Street, Suite 1100, Florence, SC 29501.

By:



Sally K. Favaloro, Plaintiff
2002 Chickadee Court
Florence, SC 29501
Telephone: (314) 743-6651
email: skfavaloro@me.com

**McLeod Health, Human Resources Dispute Resolution Process ("DRP"),
Team Review ("Team Review") regarding the
Dr. Michael Rose ("Dr. Rose") Wrongful Employment Termination,
on April 30, 2015, at 1533, of the
McLeod Associate Vice President of Surgical Services Sally Favaloro ("AVP")**

AVP SUMMARY – READING TIME: 15 MINUTES

A. Team Review Issues: PEP, DRP, Dismissal Steps – 4 minute summary.

McLeod Health Human Resources Policies and Procedures ("Policy" or "Policies") provide two employee corrective action processes: Performance Expectation Process ("PEP"); and Dispute Resolution Process ("DRP").

In a PEP, the employee must prove, to the supervisor, that the employee has corrected or will correct their improper conduct to produce proper conduct. PEP includes four Steps:

Step 1, Performance Talk Meetings, when the employee must prove "commitment that the employee will redirect her conduct for a successful outcome" (p. 77). Step 2, Performance Reminder Meetings, when the employee must prove "commitment to correct the problem" or conduct (p. 80). Step 3, Decision-Making Leave, when the employee must prove by written Action Plan: "that the employee owns their problems and steps the employee will perform in order to meet acceptable standards" (p. 84). Step 4, Dismissal (also called Termination) of Employment, when the employee has failed to prove "satisfactory performance ... or conduct to the expectations of McLeod, and return to an acceptable level of service excellence, performance ... or conduct" (p. 85).

In a PEP:

- (a) the issue is the employee's conduct; and
- (b) the employee must prove that her conduct obeyed all supervisor requirements.

A PEP is the opposite of a DRP.

In a DRP, the supervisor must prove, to the Review Team, that the supervisor's conduct obeyed the Policies. DRP includes three Steps:

Step 1, Informal Presentation, when the supervisor receives notice that his conduct violated Policy for which corrective action is sought (p. 49). Step 2, Informal Response, when he must prove, to the satisfaction of the employee, that his conduct did not violate any Policy (p. 49). Step 3, Team Review, when he must prove, to the DRP Review Team, that his conduct did not violate any Policy (p. 50)

In a DRP:

- (a) only the supervisor's conduct, *not the employee's conduct*, is the issue; and
- (b) the supervisor must prove that his conduct obeyed all applicable Policies.

McLeod written Policies have established a zero tolerance policy for supervisor conduct that undermines McLeod's values of caring, quality, person, and integrity. (p. 53). Specifically, when a supervisor perceives unsatisfactory service, he is "expected to handle the situation promptly, constructively, and in a tactful manner, following all established guidelines as outlined in the [PEP] Supervisor's Reference Manual (also called the SDR) (p. 57).

Beyond that, "Supervisors will be held accountable for the failure to ... detect [supervisor] non-compliance with applicable policies and legal requirements where reasonable diligence on the part of the supervisor would have prevented problems or [a supervisor's] violation." (p. 57). McLeod's zero tolerance policy, requiring a supervisor to follow all established SDR guidelines, and to prevent a supervisor's Policy violation, applies to "all employees, at all levels, including managers and above." (p. 71).

Beyond those strict written Policies: McLeod values require supervisors to deliver integrity, through trust and respect. Upon such integrity, a supervisor "Demonstrates the Service Excellence Standards of Value of Caring, Value of the Person, Value of Quality, and Value of Integrity in every interaction to produce fair and honest behavior [and] Serves as a role model for ethical behavior by acting in ways that are consistent with the values of the organization and by treating ... staff with respect. Stands up for what is right when unethical behavior is observed or reported." (Insight, Living Our Values, p. 40).

For example: A First Offense Dismissal terminates the employee immediately, depriving her of PEP protection, prior warning, and prior notice. Because a First Offense termination is the most severely devastating supervisor act possible: Except upon a most extremely severe event, McLeod's zero tolerance policy and high strict standards prohibit First Offense Dismissal.

Beyond those strict written HR Policies and McLeod values: Well-established unwritten HR Policy even further prohibits a termination unless the supervisor has also also given the employee a fair opportunity to resign in lieu of termination.

Under McLeod zero tolerance written Policy, its unwritten Policy, and its values: It is almost impossible for a supervisor to have not violated Policy in a termination: on First Offense, without warning, without notice, and without giving the employee a fair chance to resign in lieu of termination.

In this DRP, Supervisor Dr. Rose has claimed, quite vaguely, that his April 30 AVP termination "was within McLeod Health policy". Under the Policy, stated on SDR page 17 (p. 85), Dr. Rose has violated the Policies unless he has claimed and proved that he performed the

DISMISSAL STEPS under either: A. **Traditional Dismissal**; or B. **First Offense Dismissal**. However: Dr. Rose has not claimed that he performed any steps to any **Dismissal**. Therefore, Dr. Rose has not claimed that he did not violate Dismissal Policies. Furthermore, the facts, uncontested by Dr. Rose, prove that he did violate these Policies (p. 29-31).

Because the AVP was never in PEP, when Dr. Rose terminated her, Dr. Rose violated the Policy -- unless **he has claimed, and he has proved** that: the AVP committed a singular act, of First Offense severity, so intolerable that the AVP forfeited her right to PEP protection (for example theft, assault, selling drugs, falsification of documents), which act was thoroughly reviewed and received prior approval for AVP Dismissal, by: Dr. Rose, and Marie Segars, and Rob Colones, and Human Resources; and the AVP was given a fair chance to resign (p. 89).

Dr. Rose's uncontested Policy violations have caused the AVP to suffer: (a) loss of employment; and (b) loss of nearly four months of wages, bonus, etc.; and (c) forfeiture of all unpaid PTO, including almost five weeks vacation (p. 24); and (d) expressed ineligibility for future McLeod hire; and (e) likely ineligibility for hire at any other medical facility elsewhere; and (f) loss of insurance and other benefits; and (g) seizure of her McLeod campus located professional and personal property, including evidence relevant to this DRP; and (h) McLeod notification to her "licensure agencies and/or DHEC of the employee's separation according to applicable board, DHEC and/or licensing requirements" (p. 57); and (i) loss of good professional and personal reputation.

Dr. Rose has not contested the fact that on April 30, he terminated the AVP: in violation of Dismissal Policies, without warning, without notice, and without giving the AVP any chance to resign in lieu of termination. When asked why he was committing that most severely devastating supervisor act, he responded, face-to-face in person to the AVP: **"I don't know. I can't talk about it. I don't know. I need some time to think about that."**

B. The Uncontested Facts – 6 minute summary.

Please read the 3-page "**Uncontested Facts**", which appears on AVP Packet pages 29-31.

C. Dr. Rose Apparently False Documents: Timeline And Issues – 5 minute summary.

Please read the 5-page "**Dr. Rose Apparently False Documents: Timeline And Issues**", which appears on last AVP Packet pages 93-97.

Sally K. Favaloro
2002 Chickadee Court, Florence SC 29501
skfavaloro@me.com - 314-743-6651

July 21, 2015

by hand delivery and by certified mail

Mr. Tim Hess
Vice President, Human Resources
McLeod Regional Medical Center
555 East Cheves Street
Florence, SC 29502

Dear Mr. Hess:

Regarding: (a) Dr. Michael Rose's April 30, 2015 wrongful dismissal of his Associate Vice President of Surgical Services ("AVP"), Sally K. Favaloro; and (b) the McLeod Health Human Resources Dispute Resolution Process ("DRP") that is addressing that wrongful dismissal:

A. The former employee's appropriate completion of the informal DRP.

1. Under DRP Section III. Procedure, Guidelines: "Eligible Issues for Consideration" include "Actions on which the action taken is a ... dismissal."

2. Because DRP III. Procedure, Guidelines clearly define Dr. Rose's April 30 wrongful dismissal of his AVP to be an eligible issue for a DRP: (a) on June 17, I timely contacted Dr. Rose to schedule a meeting, which completed Informal Problem Resolution, Step 1; and (b) on July 7, I presented to Dr. Rose the wrongful dismissal problem, which completed Step 2; and (c) on July 16, I received from the Vice President/designee written notice that the wrongful dismissal problem is not resolved, which completed Step 3.

3. Under Step 3, bullet point two, because the problem is not resolved, I am hereby contacting you, a Human Resources Representative, within five (5) working days from the written notice of the Vice President/designee, to request a formal DRP Team review.

4. Under DRP, Formal Problem Resolution: "1. The ... former employee must complete the informal problem resolution process [Steps 1, 2, and 3] before being eligible to proceed with the formal dispute resolution process." On July 16, I completed the final informal dispute resolution process, Step 3. Furthermore, during the informal DRP: I have presented the eligible dismissal issue in a fully appropriate manner, I have as always fully supported McLeod security enforcement, and I will continue to do both in the formal DRP Team review. Therefore, the dismissal issue should remain eligible for formal DRP Team review.

B. The former employee's outline of the reasons for formal DRP Team review.

5. Under DRP, Informal Problem Resolution, Step 3, bullet point two, I respectfully request formal DRP Team review for the following reasons:

(a) Only the formal DRP Team review can resolve the problem. The purpose of this DRP is to resolve the April 30 wrongful termination problem. Toward that resolution, on July 7, in writing, I offered a carefully considered eight-part proposed resolution. In response, through letters I received July 16 (the "Letters"), Dr. Rose and the Vice President/designee: (1) did not agree to any part of my proposed resolution; and (2) did not refer to any part of my proposed resolution; and (3) did not

propose any other resolution. Instead, Dr. Rose and the Administrator both directed this issue back to Human Resources, where only the formal DRP Team review can resolve the problem.

(b) All facts and Policies show that the April 30 termination was clearly wrongful. On July 7, I made my Step 2 presentation of the issue ("Presentation"), in writing, to Dr. Rose and the Vice President/designee. The Presentation, attached hereto as pages 3-8, includes facts and McLeod Policies that overwhelmingly show that Dr. Rose's April 30 termination was wrongful. However, in response to the Presentation:

(1) The Letters wholly fail to contradict, and fail to oppose, and fail to question, and fail to otherwise reference, any of the facts, or any of the Policies, or any of the reasoning, on which the Presentation showed that the termination was wrongful.

(2) The Letters wholly fail to offer any alternate claimed facts, and fail to offer any alternate claimed Policy, and fail to offer any alternate claimed reasoning, and fail to offer any alternate claim or question of any kind, that might in any way suggest that the termination was not wrongful.

(c) The wrongful termination was an egregious Policy violation. Specifically: (1) It violated every applicable written and non-written Policy. (2) It was the most severe action possible: an employment termination. (3) It was done without any prior warning whatsoever. (4) It was done without any written basis. (5) It was done without any *non-written* basis. (6) It involved face-to-face deception. (7) It involved after-the-fact deception. (8) It was done against a greatly-valued high-level clinically-crucial McLeod officer: a Role Model with a perfectly clean personnel record, an Associate Vice President in charge of more than 300 staff, the Hospital's highest-ranking Operating Room nurse, and its highest-ranking Operating Room patient advocate. (9) It effectively prevents the former AVP from obtaining future employment, at McLeod or elsewhere. (10) It effectively prevents other McLeod employees from hiring the former AVP. (11) Finally, it leaves the Surgical Services Department severely deficient in Operating Room nurse leader education, training, and experience, which in turn has and will continue to both disable staff performance and endanger patient safety.

C. The former employee's outline of the expected outcome of the DRP Team review.

6. Under DRP, Informal Problem Resolution, Step 3, bullet point two, I expect, in that I respectfully request, from formal DRP Team review, the same outcome that on July 7 in writing I requested, and on July 14 the Letters did not directly oppose, or question, or reference. Specifically, as I stated on July 7: "To resolve Dr. Rose's April 30 wrongful termination of her, Sally Favaloro would respectfully request: (a) Reinstatement as Associate Vice President of Surgical Services, retroactive to April 30. (b) Compensation of back pay and full benefits from April 30 to the reinstatement date. (c) Retrieval from all recipients of, and destruction of, the original and all copies of Dr. Rose's May 5 letter. (d) Publication of writings to effectively correct all misinformation spread by Dr. Rose regarding Sally Favaloro. (e) Dr. Rose's entry into the Performance Expectation Process to address his April 30 wrongful termination and related behavior. (f) A reasonable opportunity to discuss, with McLeod senior management, lessons that can be learned from Dr. Rose's wrongful termination of the AVP. (g) Reasonable assistance to Sally Favaloro in repairing the professional relationships that Dr. Rose has damaged. (h) Reasonable assistance to Sally Favaloro in creating McLeod employment options well out of Dr. Rose's reach."

Sincerely,

Sally K. Favaloro, R.N., B.S.N.

Sally K. Favaloro
2002 Chickadee Court, Florence SC 29501
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July 7, 2015

McLeod Health Human Resources Dispute Resolution Process
Informal Problem Resolution, Step 2

**Dr. Michael Rose's April 30, 2015 Wrongful Termination
of the McLeod Associate Vice President of Surgical Services**

A. Introduction

1. Under the McLeod Health Human Resources Dispute Resolution Process ("DRP"), Informal Problem Resolution, Step 2, bullet point one, Sally K. Favaloro now presents, in writing to assure correctness and completeness, the issue of Dr. Michael Rose's April 30, 2015 wrongful termination of the McLeod Associate Vice President of Surgical Services ("AVP").

2. In this presentation, as in the McLeod Health Human Resources Policies and Procedures ("Policies"), the terms employment "dismissal" and "termination" are synonymous and are used interchangeably.

3. This presentation will show that: (a) on April 30, 2015, Dr. Rose, by requiring the AVP to surrender her McLeod AVP badge and McLeod AVP office keys, terminated her McLeod AVP employment; and (b) that termination was a wrongful termination, in that it violated various Policies.

B. The Terminating Supervisor and the Associate Vice President of Surgical Services

4. The terminating supervisor, Dr. Rose: (a) sits on the McLeod Regional Medical Center ("McLeod") Board of Directors, from which he is in effect a supervisor over all McLeod employees at all levels; and (b) maintains physician privileges in the McLeod operating rooms ("OR"s) where his interests sometimes oppose the interests of McLeod OR nurses; and (c) is Vice President of Surgical Services; and (d) was, until April 30, 2015, a supervisor over the AVP.

5. For more than two years, ending on April 30, Sally Favaloro was McLeod's: (a) AVP; and (b) highest-ranking OR Nurse; and (c) highest-ranking OR patient advocate inside the OR; and (d) highest-ranking OR patient advocate outside the OR; and (e) supervisor of more than 310 nurses, techs, and other employees.

6. The McLeod Health Performance Development System (Insight) describes the highest employee achievement standard, "Role Model", this way: "Performance consistently exceeds standards. Contributions and results significantly exceed expectations and represent top performance when compared to peers performing similar work." In Sally Favaloro's first year as AVP, Dr. Rose evaluated her as a Role Model. In her second year as AVP, Dr. Rose again evaluated her as a Role Model. In her current year as AVP, Dr. Rose again evaluated her as a Role Model, specifically praising her as: "[a] A role model in exhibiting and conveying the values of caring and the value of the person. [b] A role model in responding to the needs of the organization, and creating a sense of trust among patients. [c] A role model in collaboration. [d] A role model in learning ability. [e] A role model in results orientation. [f] A role model for ethical behavior, who acts in ways that are consistent with the values of the organization, and with uncompromising honesty."

7. Dr. Rose's Overall Rating Comment delivered the highest praise of all: "Held against the ideals of patient-oriented behavior and deep caring standards Sally is ideally hard-wired for our McLeod values."

C. Dr. Rose's April 30 Termination of the AVP

8. On April 30, Thursday, at approximately 1400, Dr. Rose called for a 1530 meeting, in his office, with the AVP, for the specific purpose of terminating her employment. However, Dr. Rose: (a) did not inform the AVP of the purpose of the meeting; and (b) did not inform the AVP that anyone else might be at the meeting; and (c) did not contact the AVP; and (d) did not contact the AVP's secretary. Instead, Dr. Rose contacted his own secretary, Natasha Ducey. Ducey, likewise, did not contact the AVP. Instead, Ducey contacted Gwen Barr, secretary to the AVP. Ducey did not inform Barr of the purpose of the meeting; and Ducey did not inform Barr that anyone else might be at the meeting.

9. At 1530, as Dr. Rose required, the AVP entered Dr. Rose's office to find, seated with him, Human Resource's Shannon Carr ("Carr"). Dr. Rose stood, motioned the AVP to the chair in front of Dr. Rose's desk, but pointedly avoided all eye contact. The AVP walked toward the chair until Dr. Rose, still avoiding eye contact, motioned for her to sit down. The AVP sat down and made direct eye contact with Dr. Rose. He then sat down, pointedly avoiding eye contact, spoke briefly, then fixed direct eye contact at the AVP to make the following statement: "I'm placing you on administrative leave."

10. Dr. Rose's statement was false. As will be shown below: Dr. Rose was not placing the AVP on administrative leave (Paragraph 12). Instead, he was terminating the AVP (Paragraph 16).

11. When the AVP asked if Dr. Rose was taking this action because of something the AVP said, Dr. Rose again pointedly averted his eyes, refused to answer or acknowledge the AVP's question, and emphatically looked away. Then Dr. Rose, through Carr, under the guise of the

stated "administrative leave": (a) prohibited the AVP from working the next working two days, May 1 Friday and May 4 Monday; and (b) stated that the AVP would be fully paid for those two days.

12. In fact, there was no "administrative leave". Despite Dr. Rose's prohibition and statement, according to McLeod Policies, he did not place, and could not place, the AVP on "administrative leave", or other "leave", for three reasons: First, McLeod Leave of Absence Policy paragraph I dictates that if an employee is on a leave of absence, then the absence must be "a prolonged absence from work". In contrast, Dr. Rose prohibited the AVP from working only May 1 Friday and May 4 Monday. Two days is the opposite of a prolonged absence. Second, Policy paragraph I dictates that if an employee is on a leave of absence, then that employee absence is unpaid. In contrast, Dr. Rose stated that the AVP's two non-working days would be fully paid. A fully paid absence is the opposite of an unpaid absence. Third, Policy paragraph III E dictates that any "administrative" leave for the AVP Surgical Services must be approved by both: the Senior Vice President and Administrator; and Human Resources Leadership. In contrast, Dr. Rose obtained no written approval, for any leave, from either of these two sources, or from anyone else, including from Dr. Rose himself. Therefore, Dr. Rose did not place the AVP on any leave of absence.

13. Dr. Rose, having misled the AVP into believing that he had placed her on administrative leave, again through Carr: (a) avoided any statement specifying when or under what circumstances the AVP might return to work; and (b) prohibited the AVP from initiating any communication, by any means, for any reason, to any McLeod employee; and (c) prohibited the AVP from responding to any communication, by any means, for any reason, from any McLeod employee; and (d) prohibited the AVP from accessing any part of the McLeod campus, specifically by requiring her, at meeting's end, to proceed directly to her office, gather her things, and immediately leave the McLeod campus.

14. Dr. Rose, through Carr, allowed two exceptions to the AVP's terminated communication and terminated campus access: (a) he did not prohibit the AVP from accessing the McLeod campus to receive medical treatment; and (b) he did not prohibit the AVP from initiating or responding to a communication with EAP, Carr, or himself.

15. Dr. Rose, through Carr, having stated the prohibitions against the AVP, then: (a) terminated the AVP's access to her AVP office, by requiring the AVP to surrender her McLeod AVP office keys; (b) terminated the AVP's access to any other McLeod office, by requiring the AVP to surrender her McLeod AVP badge.

16. As shown above (Paragraph 12), according to McLeod Policies, Dr. Rose did not place the AVP on "administrative leave". Now, again as determined and defined by McLeod Policies, Dr. Rose's requiring the AVP to surrender her badge and keys achieved his intended purpose -- AVP employment termination -- for four reasons. First, McLeod Supervisor's Desk Reference ("SDR"), Dismissal Steps, page 18, provides that a

supervisor will "Collect all McLeod property: keys, I.D. badge, etc." only at meeting for employment termination (called employment "dismissal"). Second, SDR, Addendum II, provides that a supervisor will "Collect name badge, keys, [etc]" only at a meeting for employment termination (called "Involuntary Terminations"). Third, SDR, non-numbered page 24, provides that a supervisor will "Collect McLeod property from the employee (keys, ID badge, [etc]) only at a meeting for employment termination (called "Dismissal"). Fourth, SDR, Dismissal Steps, page 17, defines "Dismissal or Termination" as "the removal of an employee from active employee status". Dr. Rose's exhaustive prohibitions (Paragraphs 13-15), especially his requiring the AVP to surrender her badge and office keys, immediately and completely removed the AVP from every active employee status.

17. Expressly and explicitly according to every applicable McLeod Policy: the termination of a McLeod employee, and the requirement to surrender McLeod badge and office keys, are one and the same. Therefore: when (a) on April 30, Dr. Rose, through Carr, intentionally required the AVP to surrender her McLeod AVP badge and office keys, then (b) on April 30, Dr. Rose intentionally terminated the AVP's McLeod employment.

18. After the AVP surrendered her McLeod AVP badge and her McLeod AVP office keys, the AVP asked Carr for permission to ask a question. When Carr gave permission, the AVP turned to Dr. Rose, made direct eye contact, and asked "Why are you doing this?" Dr. Rose immediately and emphatically looked away, lurched back in his chair, waved his hands in front of his face, and stated "I don't know. I can't talk about it. I don't know. I need some time to think about that."

19. Immediately again, Dr. Rose averted his eyes from the AVP and gazed toward Carr. Carr, having provided her contact information, terminated the meeting. The AVP courteously stood up, exited Dr. Rose's office, strictly complied with Dr. Rose' communication prohibitions, gathered her things, and immediately left the McLeod campus, now as the former AVP.

20. However, because of Dr. Rose's false pretense of "administrative leave", and because of his prohibiting the AVP from accessing her former office's SDR Policy, the AVP would not learn, until more than seven weeks later, on June 22, that Dr. Rose terminated her McLeod employment on April 30. On that day, McLeod terminated its highest-ranking OR nurse, a Role Model AVP with a perfectly clean personnel record, because, in Dr. Rose's own words: "I don't know. I can't talk about it. I don't know. I need some time to think about that."

D. Dr. Rose's April 30 Termination of the AVP Was A Wrongful Termination

21. Under McLeod Policies, an employment termination is either: a wrongful termination; or a non-wrongful termination. A non-wrongful termination does not violate any McLeod Policies; instead, it obeys all applicable McLeod Policies. A wrongful termination violates one or more McLeod Policies.

22. McLeod Policies, SDR, Glossary of Terms, page 20, allow an *immediate* termination *only* when "the acts are so intolerable that the employee forfeits the right to the benefit of the performance expectation process (Examples may include, but are not limited to: theft, assault, threatening patient or coworker safety, falsification of records, failure to submit to a drug screen, willful violation of a know safety procedure, etc.)" Dr. Rose could not think up any such intolerable acts when he explained that he was terminating the AVP because, in his own words: "I don't know. I can't talk about it. I don't know. I need some time to think about that." Therefore, his immediate termination of the AVP was a wrongful termination of the AVP.

23. Regardless what Dr. Rose, after "time to think about that", may claim, McLeod Policies, SDR, Addendum I, page 21, Policy Matrix, "Termination" (also called "Dismissal"), prohibited him from terminating any AVP -- except after he had obtained, beyond his own written initiation, "Prior Approval" from: (a) the Senior Vice President and Administrator; and (b) the McLeod Regional Medical Center President; and (c) Human Resources Leadership. Dr. Rose, having terminated the AVP without any of those Prior Approvals, wholly violated the applicable Policy Matrix. Therefore, his immediate termination of the AVP was a wrongful termination.

24. By Dr. Rose's wrongful termination, McLeod lost its highest-ranking OR nurse, a Role Model AVP *with a perfectly clean personnel record*, because, in Dr. Rose's own words: "I don't know. I can't talk about it. I don't know. I need some time to think about that."

E. The May 5 Letter

25. In this DRP, Dr. Rose's May 5 letter is irrelevant, is of no effect, and is null and void, for these reasons: (a) Before May 1, Sally Favaloro's McLeod employment, and her McLeod personnel record, was completed, finalized, and closed, to the exclusion of the May 5 letter. (b) From May 1 forward, Sally Favaloro is not a professional subordinate of, and is not otherwise employed by, and is not otherwise associated with, Dr. Rose or McLeod. (c) From May 1 forward, neither Dr. Rose, nor McLeod, is a professional supervisor of, or is an employer of, or is otherwise associated with, Sally Favaloro. (d) A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro. (e) A non-employee, as in Sally Favaloro on May 5, cannot be terminated or professionally evaluated by a non-employer, as in Dr. Rose. (f) The May 5 letter entirely excludes any reference to the DRP issue, which is Dr. Rose's April 30 wrongful termination of the AVP. (g) The May 5 letter does not challenge that fact that in terminating the AVP, Dr. Rose's reason was, in his own words: "I don't know. I can't talk about it. I don't know. I need some time to think about that."

F. Requested Outcome

26. To resolve Dr. Rose's April 30 wrongful termination of her, Sally Favaloro would respectfully request: (a) Reinstatement as Associate Vice President of Surgical Services,

retroactive to April 30. (b) Compensation of back pay and full benefits from April 30 to the reinstatement date. (c) Retrieval from all recipients of, and destruction of, the original and all copies of Dr. Rose's May 5 letter. (d) Publication of writings to effectively correct all misinformation spread by Dr. Rose regarding Sally Favaloro. (e) Dr. Rose's entry into the Performance Expectation Process to address his April 30 wrongful termination and related behavior. (f) A reasonable opportunity to discuss, with McLeod senior management, lessons that can be learned from Dr. Rose's wrongful termination of the AVP. (g) Reasonable assistance to Sally Favaloro in repairing the professional relationships that Dr. Rose has damaged. (h) Reasonable assistance to Sally Favaloro in creating McLeod employment options well out of Dr. Rose's reach.

G. Next Steps

27. Continuing in the McLeod Human Resources Dispute Resolution Process, Informal Problem Resolution, Step 2, bullet point one, Dr. Rose will now review the April 30 wrongful termination issue, as herein presented, and communicate to the former AVP, within ten (10) working days from the initial presentation, the results of his review. Toward the end of correct and complete communication, and consistent with this written initial presentation, I respectfully request that Dr. Rose communicate the results of his review to me in writing.

Sincerely,

A handwritten signature in cursive script that reads "Sally K. Favaloro". The signature is written in dark ink and is positioned above the printed name.

Sally K. Favaloro, R.N., B.S.N.

Sally K. Favaloro
2002 Chickadee Court, Florence SC 29501
skfavaloro@me.com - 314-743-6651

July 31, 2015

by hand delivery

Rhonda Williams
Human Resources
McLeod Regional Medical Center
555 East Cheves Street
Florence, SC 29502

Regarding: Dr. Michael Rose's April 30 wrongful termination of the McLeod Associate Vice President of Surgical Services, as contested under McLeod Health, Human Resources Dispute Resolution Process, Page 3 of 5, Formal Problem Resolution, Paragraph Number 3 and 4.

Dear Rhonda,

1. As you know: (a) on July 27 Monday, at 2:30 in your office, and on July 29 Wednesday at 11:45 in your office, you met with me to assist me to prepare for the Dispute Resolution Process ("DRP") Team Review; and (b) at those meetings, in reviewing my main Human Resources File ("HR File"), we saw a file, that contained one or more documents, that contained:

(a) one or more highly suspicious pages, referring to Dr. Rose as their creator, that were not in my HR File as of May 4 (when I knew, without any HR confirmation needed, that, with no exception, my HR File is clean); and

(b) one or more highly suspicious pages, referring to Dr. Rose as their creator, that were *still* not in my HR File as of May 21 (when you confirmed with me, by phone, that, except for a single one-page letter dated May 5, my HR File is clean); and

(c) one or more highly suspicious pages, referring to Dr. Rose as their creator, that were *still* not in my HR File as of June 22 (when you confirmed with me, in your office in person, which confirmation I documented by June 24 letter to you, that, except for a single one-page letter dated May 5, my HR File is clean); and

(d) one or more highly suspicious pages, referring to Dr. Rose as their creator, that to date *still* have not been given to me (despite my June 22 request to review my HR File; and despite my July 27 oral request to be given copies of those documents; and despite my July 29 oral and written request to be given copies of those documents); and

(e) one or more highly suspicious pages, referring to Dr. Rose as their creator, that to date *still* have not been referred to, or mentioned to me, or suggested to me, at any time, by anyone -- expect by you, for the first time on July 27, which is the first time that I have been allowed to review my HR File.

2. The creation of these highly suspicious pages, and their content, and their July 2015 appearance in my HR File, all raise very serious questions regarding improper records manipulation, tampering, and forgery regarding my HR File.

3. Under South Carolina law: Title 16, Chapter 13, Article 1, Section 16-13-10, Forgery: "(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; [or] (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing" [and] (B) A person who violates the provisions of this section is guilty of a felony"

4. Because I signed the Release, the Review Team now has access to these highly suspicious pages. To protect the integrity of my main HR File, and to protect the integrity of the Review Team process, and to protect the Review Team from being deceived by Dr. Rose or by whoever is responsible for adding these highly suspicious pages to my HR File, I am requesting your assistance both: (a) to review and investigate these highly suspicious documents; and (b) to review, and if they arouse suspicion to investigate, all other pages, documents, and files, to which the Review Team may have access. Toward that end, regarding each document in my HR File, especially and most urgently any file or document or page that is dated before May 5, or refers to any file or document or page that is dated before May 5, please provide me with:

(a) its file name, document name, date it was created, the device on which it was created, who created it, who received it, and when they received it; and

(b) a hard copy that I can take home, or a hard copy that I can photograph, or a hard copy that I can review in your office; and

(c) all rules about whether the Review Team may review it or be made aware of it, and, from this point forward, what person can add or delete anything to or from my HR File.

In this regard: a "file" means an electronic or non-electronic container of documents, even if the file is empty or blank; a "document" means an electric or non-electric container of pages, even if the document is empty or blank; and a "page" means an electric or non-electric container of information, even if the page is empty or blank.

5. Rhounda, thank you again for all your assistance.

Sincerely,



Sally K. Favaloro, R.N., B.S.N.

Sally K. Favaloro
2002 Chickadee Court, Florence SC 29501
skfavaloro@me.com - 314-743-6651

September 10, 2015

by certified mail and by hand delivery to:

Ronald Boring
Chief Operating Officer
McLeod Health
555 East Cheves Street
Florence, SC 29502

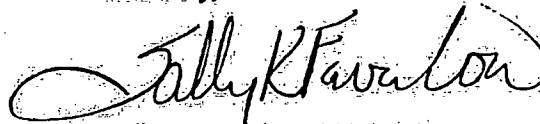
Re: McLeod Health, Human Resources Dispute Resolution Process ("DRP"), Team Review ("Team Review") regarding the Dr. Michael Rose ("Dr. Rose") Wrongful Employment Termination, on April 30, 2015, at 1533, of the McLeod Associate Vice President of Surgical Services Sally Favaloro ("AVP").

Mr. Boring:

Under the "McLeod Health Human Resources Dispute Resolution Process", Appeal Proceedings, I have attached the "AVP Appeal". By August 31 agreement with McLeod Human Resources Hearing Officer Rhounda Williams, this appeal is timely when mailed or delivered on or before today, September 10.

Thank you for your consideration of this AVP Appeal.

Sincerely,



Sally K. Favaloro, R.N., B.S.N.

**McLeod Health, Human Resources Dispute Resolution Process ("DRP"),
Team Review ("Team Review") regarding the
Dr. Michael Rose ("Dr. Rose") Wrongful Employment Termination,
on April 30, 2015, at 1533, of the
McLeod Associate Vice President of Surgical Services Sally Favaloro ("AVP")**

AVP APPEAL

On April 30 at 1533, Dr. Rose, through HR Director Shannon Carr, wrongfully terminated the AVP's McLeod employment. On June 17, at McLeod's invitation, the AVP commenced a DRP. On August 20, a formal hearing Review Team decided that: (a) Dr. Rose had violated McLeod Policies; and (b) the AVP must be reinstated. On August 26, the AVP learned that Carr, to cover up her own wrongdoing, is denying and countermanding the Team's decision. The AVP now appeals to require Carr to comply with the Team's decision to reinstate the AVP.

Prior To The August 20 Review Team Hearing.

On July 27, as the AVP prepared for the Review Team ("Team") hearing, the AVP discovered, in her HR file, what appeared to be criminal forgeries created by Dr. Rose and Carr (see attached Exhibit A). However, McLeod, through HR, assured the AVP in substance that: Dr. Rose should not prevail; Dr. Rose doesn't have a case; and there never were any documents, even including the apparent forgeries, that could justify any Dr. Rose termination of the AVP.

The August 20 Review Team Hearing.

On August 20, Carr assembled her Team for the formal hearing regarding Dr. Rose's April 30 AVP termination. At the hearing's conclusion two hours later: (1) the "AVP Summary", which explained the DRP process, remained uncontested (Exhibit B); and (2) the "Uncontested Facts", which stated facts all uncontested by Dr. Rose, remained uncontested (Exhibit C; AVP Packet, page 29-31, 28); and (3) the "Dr. Rose Questionable Documents: Timeline And Issues", which exposed Dr. Rose's apparent criminal forgeries, remained uncontested (Exhibit D; AVP Packet, page 38-39). See the entire AVP Packet Contents, including Packet pages 1-97 (Exhibit E).

Because all relevant issues were uncontested, there were two questions for the Team:
(1) Did Dr. Rose prove that he obeyed the Policy-required Steps for a Traditional Dismissal?
(2) Did Dr. Rose prove that he obeyed the Policy-required Steps for a First Offense Dismissal?

Under the Policies: (a) each set of Steps requires a supervisor to enter certain documents into an employee's HR file before dismissal; and (b) the DRP requires the Team to decide whether those documents were there. So, in this particular DRP, the two Questions for the Team were:

Question 1.

Did Dr. Rose prove to you that on April 30 at 1533, when he terminated the AVP, he obeyed the Policy-required Dismissal Steps for a Traditional Dismissal?

For this termination, a Traditional Dismissal required Dr. Rose to have entered, into the AVP's HR file, each of these twelve (12) documents*, each properly completed, dated, and signed, before April 30 at 1533 (except documents 8-12, to be entered the next business day):

(1) a pre- April 30 at 1533 PEP Informal Discussion document; and (2) a pre- April 30 at 1533 PEP Coaching document; and (3) a pre- April 30 at 1533 PEP Performance Talk document; and (4) a pre- April 30 at 1533 PEP Performance Reminder document; and (5) a pre- April 30 at 1533 PEP Decision Making Leave document; and (6) a document showing that: prior to April 30 at 1533, Rob Colones gave his approval, to Dr. Rose, to dismiss the AVP under Traditional Dismissal; and (7) a document showing that: prior to April 30 at 1533, Marie Segars gave her approval, to Dr. Rose, to dismiss the AVP under Traditional Dismissal; and (8) a document showing that: Marie Segars was involved in an April 30 at 1533 Dismissal Meeting to dismiss the AVP under Traditional Dismissal; and (9) an April 30 PEP Dismissal Worksheet showing that: Dr. Rose attended an April 30 at 1533 Dismissal Meeting and signed the PEP Dismissal Worksheet dismissing the AVP; and (10) an April 30 PEP Dismissal Worksheet showing that: a Witness attended an April 30 at 1533 Dismissal Meeting and signed the PEP Dismissal Worksheet dismissing the AVP; and (11) an April 30 Traditional Dismissal PEP Dismissal Letter dismissing the AVP; and (12) a document showing that: at an April 30 at 1533 Dismissal Meeting, Dr. Rose offered to allow the AVP to resign in lieu of dismissal, and the AVP refused.

To Question 1: if, in the DRP hearing packets, you find each of these twelve (12) documents, then your Answer, below, must be "Yes"; but if in the packets, you do not find any one or more of these twelve (12) documents, then your Answer, below, must be "No".

Team Member #1 Answer: Yes _____. No _____. Signature _____.
Team Member #2 Answer: Yes _____. No _____. Signature _____.
Team Member #3 Answer: Yes _____. No _____. Signature _____.
Team Member #4 Answer: Yes _____. No _____. Signature _____.
Team Chairperson Answer: Yes _____. No _____. Signature _____.

* Documents 1-11 are required for a Traditional Dismissal under: (a) McLeod Policies, Supervisor's Desk Reference ("SDR"), pages 6-17; and (b) SDR Addendum I, Policy Matrix for Performance Expectation Process, page 21, bottom row, "Dismissal". See AVP Packet, Tab Y. Document 12 is required under unwritten McLeod Policies. See AVP Packet, Tab L and Tab M, June 30 letter, paragraph 5(b).

Question 2.

Did Dr. Rose prove to you that on April 30 at 1533, when he terminated the AVP, he obeyed the Policy-required Dismissal Steps for a First Offense Dismissal?

For this termination, a First Offense Dismissal required Dr. Rose to have entered, into the AVP's HR file, each of these ten (10) documents*, each properly completed, dated, and signed, before April 30 at 1533 (except for documents 7-10, to be entered the next business day):

(1) a pre- April 30 at 1533 document showing that: Dr. Rose found that the AVP had committed a "First Offense Dismissal" "intolerable act" whereby the AVP forfeited her right to PEP protection against dismissal (for example: theft, assaulting a fellow employee, selling drugs on the premises, failure to submit to a drug screen, falsification of record, etc.); and (2) a pre- April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Marie Segars; and (3) a pre- April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Human Resources; and (4) a pre- April 30 at 1533 document showing that: a First Offense intolerable act dismissal case against the AVP was "thoroughly reviewed" by Dr. Rose; and (5) a document showing that: prior to April 30 at 1533, Rob Colones gave his approval, to Dr. Rose, to dismiss the AVP for a First Offense Dismissal intolerable act; and (6) a document showing that: prior to April 30 at 1533, Marie Segars gave her approval, to Dr. Rose, to dismiss the AVP for a First Offense Dismissal intolerable act; and (7) a document showing that: Marie Segars was involved in an April 30 at 1533 Meeting to dismiss the AVP for a First Offense Dismissal intolerable act; and (8) a document showing that: Dr. Rose and a Witness attended an April 30 at 1533 Dismissal Meeting and signed an April 30 document dismissing the AVP; and (9) a document showing that: there was an April 30 First Offense intolerable act Dismissal Letter dismissing the AVP; and (10) a document showing that: at an April 30 at 1533 Dismissal Meeting, Dr. Rose offered to allow the AVP to resign in lieu of dismissal, and the AVP refused.

To Question 2: if, in the DRP hearing packets, you find each of these ten (10) documents, then your Answer, below, must be "Yes"; but if in the packets, you do not find any one or more of these ten (10) documents, then your Answer, below, must be "No".

Team Member #1 Answer: Yes _____. No _____. Signature _____.
Team Member #2 Answer: Yes _____. No _____. Signature _____.
Team Member #3 Answer: Yes _____. No _____. Signature _____.
Team Member #4 Answer: Yes _____. No _____. Signature _____.
Team Chairperson Answer: Yes _____. No _____. Signature _____.

* Documents 1-9 are required for a First Offense Dismissal under: (a) McLeod Policies, Supervisor's Desk Reference ("SDR"), page 17; and (b) SDR Addendum I, Policy Matrix, page 21, bottom row, "Dismissal". See AVP Packet, Tab Y. Document 10 is required under unwritten McLeod Policies. See AVP Packet, Tab L and Tab M, June 30 letter, paragraph 5(b).

The Review Team Answers.

In answer to Question 1, the Team found none of the documents that McLeod Policy required Dr. Rose to present to justify a Dismissal Steps - Traditional Dismissal. The Team found none of the documents because there are no such documents. Dr. Rose did not include in his packet any such documents; he did not file with HR any such documents; and he did not even claim to file, at any time, in any place, any such documents. Dr. Rose did not even make the vaguest reference to any such documents. Therefore, when on April 30 at 1533 Dr. Rose dismissed the AVP, Dr. Rose wholly violated all of the Dismissal Steps required for a Traditional Dismissal. Once again, Dr. Rose did not even claim to not violate that Policy.

In answer to Question 2, the Team found none of the documents that McLeod Policy required Dr. Rose to present to justify a Dismissal Steps - First Offense Dismissal. The Team found none of the documents because there are no such documents. Dr. Rose did not include in his packet any such documents; he did not file with HR any such documents; and he did not even claim to file, at any time, in any place, any such documents. Dr. Rose did not even make the vaguest reference to any such documents. Therefore, when on April 30 at 1533 Dr. Rose dismissed the AVP, Dr. Rose wholly violated all of the Dismissal Steps required for a First Offense Dismissal. Once again, Dr. Rose did not even claim to not violate that Policy.

In general, McLeod Policies dictate that in a DRP, the supervisor has violated the Policies unless he has proved, to the Review Team, that he did not violate them. Specifically, in this DRP, the Team found: (a) no proof of any Dr. Rose compliance with any Policies; and (b) no evidence of any Dr. Rose compliance with any Policies; and (c) no fact suggesting any Dr. Rose compliance with any Policies; and (d) no claim of any Dr. Rose compliance with any Policies. To the contrary, the Team found: (e) an uncontested claim that Dr. Rose violated the Policies; and (f) uncontested facts showing that Dr. Rose violated the Policies; and (g) uncontested evidence that Dr. Rose violated the Policies; and (h) uncontested proof that Dr. Rose violated the Policies.

In a completely uncontested DRP like this one, the Team could simply sign their Question 1 and 2 Answers and announce or hand them to Dr. Rose and the AVP. However, Carr's DRP Policy, Proceedings, paragraph 5, states: "The Dispute Resolution Team will complete its review/deliberations and notify in writing [Dr. Rose, the AVP, and others] ... of its decision within three (3) working days [after the hearing]". In violation of that Policy, both Dr. Rose and the AVP were informed: not by the Team; and not in writing. Also, they were informed not as late as three working days, but within a few hours.

More than five days after being informed that the Team had found against him and in favor of the AVP, Dr. Rose remained furious, and border-line violently so. On August 25 Tuesday at about 1415, at a robotics planning meeting, an outside consultant favorably mentioned work done before April 30 by the AVP. Immediately at the mention of the AVP's name, Dr. Rose thrust backwards his chair, reared up, back, and forward, slammed both hands forcefully down into the table, and loudly scolded all others present: "I don't ever want to hear that name again!" All

others present, stunned by the Dr. Rose outburst against the long-absent AVP, remained mute and still for a fearful moment.

Locklair's Wrongful Letter.

Following the August 20 Review Team hearing, the AVP remained patiently optimistic that Carr would not deny or countermand the Team's decision, but would instead proceed toward reinstatement of the AVP. However, on August 26, the AVP received, from the Regional Administrator / Cheraw / Dillon, Debbie Locklair, a wrongful letter. In that letter, dated August 20 and postmarked August 24, Locklair: (a) falsely claimed to be "Chairperson" of the August 20 Review Team; and (b) falsely denied the fact that the Review Team found that Dr. Rose's AVP termination violated McLeod Policies. Locklair's letter appeared to be yet another criminal forgery against the AVP (see Exhibits A, D; AVP Packet, page 38-39). Contrary to Locklair's letter, the facts are these:

(1) Under McLeod Human Resources Dispute Resolution Process Policies (DRP Policies), pages 3-4, Dispute Resolution Team Membership, paragraph 4 of 4: "The Senior Vice President of Human Resources and Training or his/her designee will select a business unit Vice President, Assistant or Associate Vice President who may act as chairperson." In this DRP, the Policies disqualified Locklair from acting as chairperson because: (a) she is not a McLeod Regional Medical Center "business unit" employee (see paragraph 1 of 4); and (b) instead, she is a McLeod Medical Center Dillon business unit employee (see paragraph 1 of 4); and (c) she is not a "Vice President, Assistant or Associate Vice President"; and (d) instead, she is a "Senior Vice President, and she is a Regional Administrator"; and (e) she was not selected by the Senior Vice President of Human Resources and Training; and (f) instead, she was hand-picked only by Shannon Carr, who is an apparent conspirator on Dr. Rose forgeries created for their use in this DRP against the former AVP; and finally (g) on August 6, McLeod, through this DRP's Hearing Officer, expressly disqualified Locklair, personally, from being chairperson, because of her actual and inevitable conflict-of-interest and bias in favor of Dr. Rose and against the AVP.

(2) Beyond Locklair's disqualification from being chairperson, she was also disqualified from being a non-chairperson, because: (a) she is not a member of the "employee's distinct business unit" (see DRP Policy, page 3-4, Dispute Resolution Team Membership, paragraph 2 and 3 of 4); and (b) her conflict-of-interest and bias disqualification, explained above, prevented her from being "neutral and and unaware of the situation at hand" (see paragraph 2 of 4); and (c) she is a member of "senior management" (see paragraph 3 of 4). Furthermore, beyond her multiple disqualifications from this DRP's Review Team membership: (a) there was no Review Team "tie decision", so there could be no chairperson vote (see Proceedings: page 5, paragraph 4); and (b) in fact Locklair did not vote. Accordingly, DRP Policies do not allow Locklair, a non-chairperson and non-member and non-voter of this Review Team, to communicate, or to otherwise act, on the behalf of, or regarding, any Review Team member, or her action, or her inaction.

(3) Beyond the Policies' prohibitions against Locklair from having any effect on this DRP, her letter's multiple oddities prohibit Locklair's letter itself from being taken seriously. For example: (a) her letter refers to an enclosed "Policy 800.25 outlining the process and the Committee's Responsibilities", but her letter does not enclose anything; and (b) the DRP Policy is numbered 18322-12-182, not "800.25"; and (c) her letter refers to a "Committee", but DRP Policy defines a Dispute Resolution Process Team; not any "Committee"; and (d) her letter refers to a copy sent to "HR file", but DRP Policy does not allow anyone to copy anything to "HR file", whatever that might be; and most importantly (f) none of this DRP Review Team's four voting members signed Locklair's letter; so Locklair's letter is, at most, irrelevant to this DRP.

The AVP, not deceived by Locklair's letter, sought to confirm that the Review Team's Answers and decision are properly documented in her HR file. However, on August 31, eleven days after the Review Team hearing, HR informed the AVP that: (a) there is now nothing at all in her HR file from the Review Team; and furthermore (b) someone has inexplicably removed both of the AVP's HR files relevant to this DRP, including two AVP letters notifying HR of apparent Dr. Rose and Carr forgeries.

Legal Liabilities.

Under South Carolina Code of Laws, Locklair's letter, and all other false HR records regarding the AVP, constitute one or more of the following: (a) criminal libel; (b) criminal forgery; (c) criminal conspiracy; (d) violations of hospital licensing standards; (e) misprison of felony; (f) violations of Joint Commission Sentinel Event Alerts; and (g) negligence *per se* regarding McLeod's duty of due care, and McLeod individual employees' duties of due care, to the AVP. Specifically:

(a) South Carolina Code of Laws, Title 16 Crimes and Offenses, Chapter 7, Article 3, Section 16-7-150 states: "Slander and libel. Any person who shall with malicious intent originate, utter, circulate or publish any false statement of matter concerning another the effect of which shall tend to injure such person in his character or reputation shall be guilty of a misdemeanor and, upon conviction therefor, be subject to punishment by fine not to exceed five thousand dollars or by imprisonment for a term not exceeding one year, or by both fine and imprisonment, in the discretion of the court; provided, that nothing herein shall be construed to abridge any right any person may have by way of an action for damages for libel or slander under existing law."

(b) South Carolina Code of Laws, Title 16 Crimes and Offenses, Chapter 13, Article 1, Section 16-13-10 states: "Forgery. (A) It is unlawful for a person to: (1) falsely make ... [or] cause or procure to be falsely made ... any writing or instrument of writing; (2) utter or publish as true any false ... writing or instrument of writing; ... (4) willingly act or assist in any of the premises [of a false statement] with an intention to defraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony, and upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years"

(c) South Carolina Code of Laws, Title 16, Crimes and Offenses, Chapter 17 Offenses Against Public Policy, Article 7, Section 16-17-410 states: "Conspiracy. The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years."

(d) Under South Carolina law, R. 61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, 1976 Code Sections 44-7-110 through 44-7-394, 44-37-40, 63-7-40: 506. Employees (II): "A. The Chief Executive Officer shall designate an individual to conduct Human Resources Management within the organization. That individual, and other individuals as needed, shall have responsibility for ... maintenance of accurate and complete personnel records (emphasis added).... [and] C. The licensee shall maintain either personnel records or a data base in accordance with all appropriate state and federal laws."

(e) Under State v. Carson, 274 S.C. 316 (1980), the crime of misprison of a felony is "a criminal neglect to prevent a felony from being committed or to bring the offender to justice after its commission, but without such previous concert with, or subsequent assistance of, him as will make the concealer an accessory before or after the fact."

(f) On August 27, 2009, the Commission issued a "Sentinel Event Alert" to McLeod, regarding danger to patients. The Alert stated: (1) "Organizations should have a transparent and equitable disciplinary process that takes into account personal responsibility and accountability...." and (2) "[A]ctions that erode leadership credibility and undermine organizational safety culture [include] ... Exempting influential individuals from complying with organizational quality and safety policies, such as policies on intimidating and disruptive behaviors." In practical effect, the Alert warned McLeod that: (a) a disciplinary system that fails to hold employees personally accountable for intimidating or disruptive behaviors can (b) exempt influential individuals from policy compliance, which can (c) undermine hospital and patient safety and endanger employees and patients.

(g) Under South Carolina law, the violation of a statute, for example, violation of the statutes referred to in (a)-(e) above, constitutes negligence *per se*, and negligence *per se* is some evidence of recklessness and willfulness that requires submission of the issue of punitive damages to the jury. Wise v. Broadway, 315 S.C. 273 (1993).

The AVP's Request.

To conclude this DRP, the AVP respectfully requests: (a) Reinstatement as Associate Vice President of Surgical Services, retroactive to April 30, with a reporting structure exclusive of Dr. Rose. (b) Compensation of full back pay and full benefits from April 30 to the reinstatement date. (c) Retrieval from all recipients of, and destruction of, the originals and all copies of any

improper documents in or relating to the AVP's HR files. (d) A reasonable opportunity to discuss, with McLeod senior management, lessons that can be learned from Dr. Rose's wrongful termination of the AVP and HR's handling of this DRP. (e) Reasonable assistance to Sally Favaloro in repairing the professional relationships that Dr. Rose and others have damaged. (f) Reasonable assistance to Sally Favaloro in creating well-fitting long-term employment options within McLeod.

ATTACHMENT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

Sally K. Favaloro,)
)
Plaintiff,)
)
vs.)
)
Robert Colones, Ronald Boring,)
Marie Segars, Debbie Locklair,)
Shannon Carr, Michael Rose, and)
McLeod Regional Medical Center,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-21-2331

**ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS AND STRIKE
PLEADING CAPTIONED AS “PLAINTIFF’S FIRST AMENDED COMPLAINT”**

THIS MATTER IS BEFORE THE COURT upon Defendants’ Motion to Dismiss and Strike the Pleading Captioned as “Plaintiff’s First Amended Complaint.”

The Court has thoroughly reviewed Defendants’ Motion and the pleading captioned as “Plaintiff’s First Amended Complaint.” For the reasons set forth below, the Court hereby **GRANTS** Defendants’ Motions and **DISMISSES** and **STRIKES** the pleading captioned as Plaintiffs’ First Amended Complaint:

1. Plaintiff filed her Complaint in this action on August 28, 2017.
2. On October 17, 2017, Defendant Dr. Michael Rose timely filed his Motion to Dismiss Plaintiff’s Complaint.
3. On November 16, 2017, the remaining Defendants (Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, and McLeod Regional Medical Center (“McLeod”)) timely filed their Motions to Dismiss Plaintiff’s Complaint.

4. On May 7, 2018, the Court entered an Order granting Defendants' Motions to Dismiss, thereby dismissing Plaintiff's Complaint with prejudice.

5. The Court's May 7, 2018 Order was a final disposition of Plaintiff's Complaint and this action, thereby ending the action.

6. On June 5, 2018, Defendants' counsel received in the mail a copy of a pleading captioned as "Plaintiff's First Amended Complaint" in this action, which indicated that it was served by mail on June 1, 2018.

7. Paragraph 11.2 of "Plaintiff's First Amended Complaint" alleges that the pleading amends Plaintiff's Complaint in this action under Rule 15(a), SCRCP, as Plaintiff contends that "no responsive pleading was served" to Plaintiff's Complaint.

8. Plaintiff's purported "First Amended Complaint" fails as a matter of law and must be dismissed and stricken for several reasons:

- a. Plaintiff's Complaint was dismissed with prejudice by virtue of the Court's May 7, 2018 Order. Plaintiff cannot amend a pleading that has been dismissed with prejudice. This action has ended, and no Plaintiff cannot file new or amended allegations to bring the action back to life.
- b. Defendants' Motions to Dismiss Plaintiff's Complaint (timely served on October 17, 2017, and November 16, 2017) were responsive pleadings. Even if there were a pleading that Plaintiff could amend (though there is not), she would need leave of Court to do so under Rule 15, SCRCP, and the Court has granted no such leave.
- c. As of the filing of this Motion, there is no indication that Plaintiff has filed the "First Amended Complaint." Her failure to file the pleading "within five (5)

days after service” renders the “First Amended Complaint” further deficient and subject to dismissal and striking and Rule 5(d), SCRPC.

For all of the reasons set forth above, **IT IS ORDERED** that, Defendants’ Motion to Dismiss and Strike Pleading Captioned as “Plaintiff’s First Amended Complaint” is hereby **GRANTED** pursuant to Rules 12(b)(6) and 12(f) of the South Carolina Rules of Civil Procedure, and the pleading captioned as Plaintiff’s First Amended Complaint is hereby **DISMISSED** and **STRICKEN**, this ____ of _____, 2018.

THE HONORABLE D. CRAIG BROWN
SOUTH CAROLINA CIRCUIT JUDGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

Sally K. Favaloro,)
)
Plaintiff,)
)
vs.)
)
Robert Colones, Ronald Boring,)
)
Marie Segars, Debbie Locklair,)
)
Shannon Carr, Michael Rose, and)
)
McLeod Regional Medical Center,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

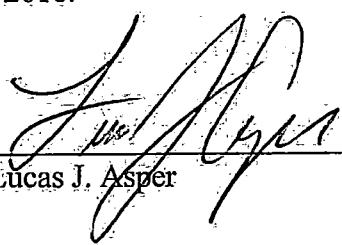
Case No.: 2017-CP-21-2331

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS AND STRIKE PLEADING CAPTIONED AS "PLAINTIFF'S FIRST AMENDED COMPLAINT"** in the above-captioned matter has been served upon:

Sally K. Favaloro
2002 Chickadee Court
Florence, SC 29501

via U.S. Mail, postage prepaid, this 18th day of June, 2018.



Lucas J. Asper

EXHIBIT 3

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Sally K. Favaloro,)

Plaintiff,)

vs.)

Robert Colones, Ronald Boring,)
Marie Segars, Debbie Locklair,)
Shannon Carr, Michael Rose, and)
McLeod Regional Medical Center,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-21-2331

DEBIS FOULOS O'HARA
C.C.P. & GS
FLORENCE COUNTY, SC

2018 JUN 26 AM 10: 26

FILED

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND STRIKE PLEADING CAPTIONED AS "PLAINTIFF'S FIRST AMENDED COMPLAINT"

THIS MATTER IS BEFORE THE COURT upon Defendants' Motion to Dismiss and Strike the Pleading Captioned as "Plaintiff's First Amended Complaint."

The Court has thoroughly reviewed Defendants' Motion and the pleading captioned as "Plaintiff's First Amended Complaint." For the reasons set forth below, the Court hereby **GRANTS** Defendants' Motions and **DISMISSES** and **STRIKES** the pleading captioned as Plaintiffs' First Amended Complaint:

1. Plaintiff filed her Complaint in this action on August 28, 2017.
2. On October 17, 2017, Defendant Dr. Michael Rose timely filed his Motion to Dismiss Plaintiff's Complaint.
3. On November 16, 2017, the remaining Defendants (Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, and McLeod Regional Medical Center ("McLeod")) timely filed their Motions to Dismiss Plaintiff's Complaint.

4. On May 7, 2018, the Court entered an Order granting Defendants' Motions to Dismiss, thereby dismissing Plaintiff's Complaint with prejudice.

5. The Court's May 7, 2018 Order was a final disposition of Plaintiff's Complaint and this action, thereby ending the action.

6. On June 5, 2018, Defendants' counsel received in the mail a copy of a pleading captioned as "Plaintiff's First Amended Complaint" in this action, which indicated that it was served by mail on June 1, 2018.

7. Paragraph 11.2 of "Plaintiff's First Amended Complaint" alleges that the pleading amends Plaintiff's Complaint in this action under Rule 15(a), SCRCP, as Plaintiff contends that "no responsive pleading was served" to Plaintiff's Complaint.

8. Plaintiff's purported "First Amended Complaint" fails as a matter of law and must be dismissed and stricken for several reasons:

- a. Plaintiff's Complaint was dismissed with prejudice by virtue of the Court's May 7, 2018 Order. Plaintiff cannot amend a pleading that has been dismissed with prejudice. This action has ended, and no Plaintiff cannot file new or amended allegations to bring the action back to life.
- b. Defendants' Motions to Dismiss Plaintiff's Complaint (timely served on October 17, 2017, and November 16, 2017) were responsive pleadings. Even if there were a pleading that Plaintiff could amend (though there is not), she would need leave of Court to do so under Rule 15, SCRCP, and the Court has granted no such leave.
- c. As of the filing of this Motion, there is no indication that Plaintiff has filed the "First Amended Complaint." Her failure to file the pleading "within five (5)

days after service" renders the "First Amended Complaint" further deficient and subject to dismissal and striking and Rule 5(d), SCRPC.

For all of the reasons set forth above, **IT IS ORDERED** that, Defendants' Motion to Dismiss and Strike Pleading Captioned as "Plaintiff's First Amended Complaint" is hereby **GRANTED** pursuant to Rules 12(b)(6) and 12(f) of the South Carolina Rules of Civil Procedure, and the pleading captioned as Plaintiff's First Amended Complaint is hereby **DISMISSED** and **STRICKEN**, this 26 of June, 2018.


THE HONORABLE D. CRAIG BROWN
SOUTH CAROLINA CIRCUIT JUDGE

FILED

2018 JUN 26 AM 10:27

DORIS FOLIOS O'HARA
CCCP & GS
SPRINGFIELD COUNTY, SC

EXHIBIT 4

South Carolina Circuit Court
Court of Common Pleas, Florence County

Sally K. Favaloro,

Plaintiff,

v.

Robert Colones, Ronald Boring, Marie Segars,
Debbie Locklair, Shannon Carr, Michael Rose,
and McLeod Regional Medical Center,

Defendants.

Case No. 2017-CP-21-2331

BORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

2018 JUL -9 PM 1:11

FILED

PLAINTIFF'S RULE 59 MOTION

1. In this case, on June 26, 2018, an order was signed and filed. The order presents multiple false statements, and it is manifestly frivolous. Under SCRCF, Rule 59, the order should be set aside, and stricken from the record, for the following reasons:

A. The order's five claimed justifications are manifestly false, so the order is frivolous.

2.1. Order paragraph 8.a. states, falsely: "Plaintiff cannot amend a pleading that has been dismissed with prejudice. The action has ended and no [sic] Plaintiff cannot file new or amended allegations to bring the action back to life." The order's statement is false because, as Plaintiff explained in the First Amended Complaint, paragraph 11.2, before stating Claims 12 - 21: "Claims 1 - 11 were presented in Plaintiff's Original Complaint. Plaintiff did not amend her pleading, and to it, no responsive pleading was served. In this First Amended Complaint, Plaintiff follows Rule 15(a), SCRCF, stating: "A party may amend his pleading once as a matter

CERTIFIED: A TRUE COPY
Boris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

of course at any time before ... a responsive pleading is served". Plaintiff's Rule 15(a) right to amend her pleading "once as a matter of course" means that any dismissal of an Original Complaint, be it without prejudice or with prejudice or with extreme prejudice or otherwise, is simply irrelevant to Plaintiff's right to file a First Amended Complaint "as a matter of course".

2.2. Order paragraph 8.b. states, falsely: "Defendants' Motions to Dismiss Plaintiff's Complaint ... were responsive pleadings." The order's statements is false because, as SCRCF, Rule 7(a) explains, the set of pleadings allowed expressly excludes any motion, including "Defendants' Motions to Dismiss Plaintiff's Complaint".

2.3.1. Order paragraph 8.c. states, falsely: "...there is no indication that Plaintiff has filed the 'First Amended Complaint.' Her failure to file the pleading 'within five (5) days after service' renders the [Complaint] further deficient and subject to dismissal and striking and [sic] Rule 5(d), SCRCF." The order's statement is false because, in point of fact, there is an indication that Plaintiff timely filed the Complaint. Specifically, on the Complaint's page 23, Plaintiff states and signs in blue ink: "This document is being filed, by regular mail, on June 1, 2018 [the day Plaintiff served it], with the Clerk of Court, Judicial Center, 181 N. Irby Street, Suite 1100, Florence, SC 29501."

2.3.2. In further point of fact, the Clerk of Court acknowledged its receipt of the Complaint. Plaintiff has the return receipt stating that on June 4 at 12:42 p.m., the Complaint was received, and was in writing signed for, by the Clerk of Court, by its agent named "Singleton". In even further point of fact, the Clerk of Court acknowledged its receipt in a second way: Plaintiff has the return receipt stating that on June 5, the Complaint was filed with, and was in writing signed for, by the Clerk of Court, by its agent identified as "JTK".

2.3.3. Under SCRCP, Rule 5(e), "The filing of pleadings ... with the court ... shall be made by filing them with the clerk of court..." Plaintiff has stated in the First Amended Complaint itself, and the Clerk of Court has acknowledged, in two separate instances, through two different individuals, that Plaintiff timely filed the First Amended Complaint with the Clerk of Court on June 4, three days after its June 1 service, and two days before its filing was due.

2.3.4. Defendants themselves admit that Plaintiff filed the Complaint when they demand, as relief, that it be stricken from the file. Such relief requires the Complaint to first be on file, and so Defendants admit that it was. Finally, the order itself admits that Plaintiff filed the Complaint when it orders, following Defendants' motion, that the Complaint be stricken from the file. Again, such relief requires that the Complaint first be on file, and so the order admits that it was.

2.4. The order's final paragraph states, falsely, that the order is granted "pursuant to" Rule 12(b)(6). But Rule 12(b)(6) addresses only a "failure to state facts sufficient to constitute a cause of action". The order's statement is false because neither the order, nor the motion that requested it, mention, in any way, anything, about any failure, to state any fact, regarding any cause of action, whatsoever. So the order cannot possibly be justified "pursuant to" Rule 12(b)(6).

2.5. The order's final paragraph states, falsely, that the order is granted "pursuant to" Rule 12(f). But Rule 12(f) addresses only "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter". The order's statement is false because neither the order, nor the motion that requested it, mention, in any way, anything, about any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter, whatsoever. So the order cannot possibly be justified "pursuant to" Rule 12(f).

B. Other facts manifestly prohibit the order, so the order is frivolous.

3. SCRCRCP, Rule 6(d), states: "A written motion ... shall be served not later than ten days before the time specified for the hearing...." Plaintiff received by mail Defendants' motion on June 22 Friday. According to SCRCRCP, Rule 6(a), it was just two days later, June 26 Tuesday, that the order was signed and filed. By depriving Plaintiff of 80% of her guaranteed time to respond, the order egregiously violated Rule 6(d).

4. At this point in this case, the main alleged wrongdoer against Plaintiff is D. Craig Brown. In Plaintiff's First Amended Complaint, Paragraph 21(a)(5), Brown is alleged to have engaged in multiple crimes and conspiracies against Plaintiff. The allegations against Brown are uncontested. When Defendants reviewed those allegations, instead of requesting random assignment of a judge to hear their motion to strike the Complaint, Defendants sent it to Brown to strike it. Brown admits that he "thoroughly reviewed" the Complaint. However, rather than recusing himself as required, he retaliated against Plaintiff by signing the manifestly frivolous order to strike the claims against himself from the record. Brown and his order both egregiously violate the South Carolina Code of Judicial Conduct, Cannon 3 E. (1) (a), (c) and (d).

C. Relief.

5. The June 26 order's five claimed justifications are manifestly false, and other facts manifestly prohibit the order. The order is frivolous. For the foregoing reasons, Plaintiff requests: (a) that the order be set aside and stricken from the record; and (b) that D. Craig Brown be disqualified from ever acting as a judge in this case; and (c) that Plaintiff's First Amended Complaint be re-filed into the court record; and (d) that Defendants be ordered to answer Plaintiff's First Amended Complaint within fifteen days of the date of Plaintiff's requested order.

D. Signature.

By:



Sally K. Favaloro, Plaintiff
2002 Chickadee Court
Florence, SC 29501
Telephone: (314) 743-6651
email: skfavaloro@me.com

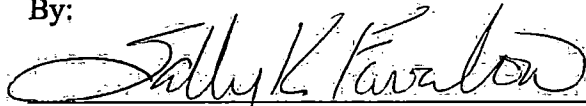
E. Service.

This document is being served, by regular mail, on July 9, 2018, on counsel for Defendants: Michael M. Shetterly, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 300 North Main Street, Suite 500, Greenville SC 29601.

This document is being served, by regular mail, on July 9, 2018, on D. Craig Brown, c/o the Clerk of Court, Judicial Center, 181 N. Irby Street, Suite 1100, Florence, SC 29501.

This document is being filed, in person and by regular mail, on July 9, 2018, with the Clerk of Court, Judicial Center, 181 N. Irby Street, Suite 1100, Florence, SC 29501.

By:



Sally K. Favaloro, Plaintiff
2002 Chickadee Court
Florence, SC 29501
Telephone: (314) 743-6651
email: skfavaloro@me.com

2018 JUL -9 PM 1:11
DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED

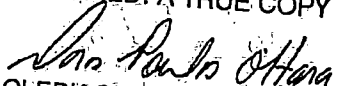
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

EXHIBIT 5

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2102331

Sally K Favaloro

2018 JUL 30 PM 3:13

Robert Colones

Marie Segars

Shannon Carr

Wileod Regional Medical

Center

SC

Ronald Boring
Debbie Locklair
Michael Rose

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
See page 2 for additional information

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

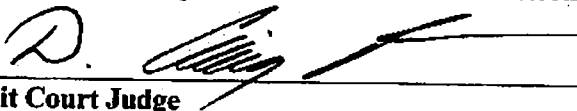
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2160
Judge Code

7-30-18
Date

For Clerk of Court Office Use Only

This judgment was entered on 30 July 2018, and a copy mailed first class or placed in the appropriate attorney's box on 31 July 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Sally K Favaloro 2002 Chickadee Ct Florence, SC 29501

Michael Montgomery Shetterly PO Box 2757 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

After considering the materials submitted by the parties, this Court hereby denies the Plaintiff's Rule 59 Motion. This matter will remain dismissed.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-21-2331

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SC Court of Appeals

Sally K. Favaloro, Plaintiff/Appellant,

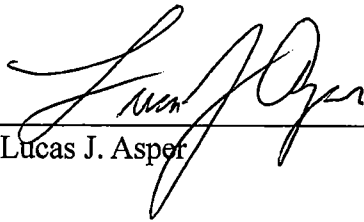
v.

Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, Michael Rose,
and McLeod Regional Medical Center, Defendants/Respondents.

PROOF OF SERVICE

I certify that I have served Memorandum in Support of Respondents' Motion to Dismiss on Appellant Sally K. Favaloro by sending her a copy of the same via first class mail, properly addressed, postage prepaid, at the following address: Sally K. Favaloro, 2002 Chickadee Court, Florence, SC 29501.

September 18, 2018



Lucas J. Asper