

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger L. Couch, Circuit Court Judge

Opinion No. 5490 (S.C. Ct. App. Withdrawn, Substituted, and Refiled August 16, 2017)

Anderson County.....Petitioner,

v.

Joey Preston and the South Carolina Retirement System.....Respondents.

**APPENDIX TO ANDERSON COUNTY'S
PETITION FOR WRIT OF CERTIORARI
VOLUME I**

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2013-002499

Anderson CountyAppellant,

v.

Joey Preston and The South Carolina Retirement System Respondents.

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Civil Action No. 2009-CP-04-4482

Anderson County,)

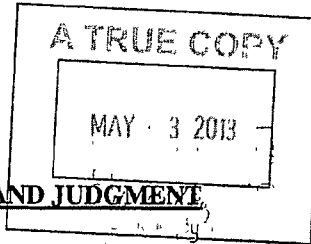
Plaintiff,)

vs.)

Joey Preston and the South Carolina)

Retirement System,)

Defendants.)



FINAL ORDER AND JUDGMENT

The Court held a non-jury trial in the above-captioned matter between October 29, 2012 and November 5, 2012. Plaintiff Anderson County ("County" or "Plaintiff") appeared and was represented by Ted Gentry, Troy Tessier, and Tally Parham of Wyche, P.A. Lane Davis of Nelson Mullins Riley & Scarborough, LLP and Candy Kern-Fuller of the Upstate Law Group, LLC appeared on behalf of Defendant Joey Preston ("Preston"). Before trial, and upon request from its counsel, the Court excused the South Carolina Retirement System ("SRS") from appearing at trial since Plaintiff named SRS only as a stakeholder and SRS had no direct interest in the trial's outcome. The County and Preston consented to SRS's request not to appear.

PROCEDURAL BACKGROUND

The instant lawsuit arose out of a severance agreement ("Severance Agreement") executed between the County and Preston on November 18, 2008. On November 13, 2009, the County sued Preston seeking rescission of the Severance Agreement. The County's Complaint alleged eleven (11) causes of action. Plaintiff's claims included: (1) rescission based upon violation of South Carolina Ethics Act and Anderson County Code §2-37(g); (2) rescission based upon violation of public policy; (3) rescission based upon breach of fiduciary duty; (4) rescission based upon fraud; (5) rescission based upon constructive fraud; (6) rescission based upon

negligent misrepresentation; (7) rescission based upon capriciousness, lack of reasonability, and a result of fraud; (8) rescission based upon fundamental and substantial breach of the Severance Agreement; (9) rescission based upon breach of fiduciary duties relating to back-dated documents, (10) imposition of a constructive trust as to funds held by SRS; and (11) rescission based upon unjust enrichment. The County amended its Complaint in March of 2012 to include additional factual allegations but no additional causes of action.

Preston answered the County's Amended Complaint on May 4, 2012. Preston's Answer to the Amended Complaint counterclaimed for damages resulting from Plaintiff's alleged breach of the Severance Agreement.¹ The County thereafter filed a timely Reply. The parties were allowed to submit their closing arguments in writing to the court after the conclusion of the trial. Both sides submitted their closing arguments within the weeks following the trial.

After the trial of this action an opinion was issued by the South Carolina Court of Appeals in the case of *Cunningham v. Anderson County*, Appellate Case No. 2011-194209. The Court Of Appeals filed the opinion on January 16, 2013, which was subsequently withdrawn and refiled February 27, 2013. Since the issues decided in the *Cunningham* case may have had some relevance to the issues before this Court, the parties were asked to submit briefs as to the effect, if any, that this opinion might have on the issues in this case. Both sides filed briefs, which have been made Court's Exhibits, which touched on the issues. In their communications, they asked this Court to consider certain issues from that decision. The Plaintiff argued that *Cunningham* stood for the propositions that: 1) The decision by Council to enter into the Severance Agreement was arbitrary and capricious because Preston's original employment contract would have been unenforceable; 2) That *Cowart* was affirmed and council should have followed

¹ Preston's Answer to the Amended Complaint contained several other counterclaims which were settled before the trial of this case. As such, the Court's decision only addresses Preston's remaining claim for breach of contract.

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Attorney Bright's advice to do nothing. The Defendant argued: 1) The Severance Agreement was executed, funded and completed prior to the new council taking office and, therefore, *Cunningham* had no application; 2) Council could not have foreseen the exact outcome of the litigation surrounding the *Cowart* line of cases, and therefore, their action was still "fairly debatable" at the time they took it; 3) The 2008 Council was within its discretion to decide a severance agreement that would be completed within their term without restricting the discretion of the 2009 Council.

The Court considered the issues raised by counsel for the parties as a result of the *Cunningham* case in reaching this decision.

OUTSTANDING EVIDENTIARY ISSUES

The Court took under advisement a number of evidentiary issues raised by both Parties during the trial of this case. Table A, which the Court attaches to this Order and incorporates herein by reference, provides the Court's evidentiary rulings as to the outstanding issues.

FINDINGS OF FACT

It is clear to this Court that what has been referred to by both sides as a "toxic political environment" did exist in Anderson County on the 18th day of November 2008. Who was at fault in bringing about this environment is not as important to the Court's conclusions as is the fact that it existed. This toxic environment dominated the political discourse in Anderson County for some time before the execution of the Severance Agreement in question in this case.

Some of the factors giving rise to this environment included, but were not limited to, the following:

- A council person, Cindy Wilson, came onto Council carrying a personal grudge against the County Administrator as a result of decisions made by the administrator in a

condemnation case involving her or her family's land. (*See, e.g.*, Def. Ex. 17; Def. Ex. 18; Def. Ex. 23; Def. Ex. 24; McAbee Tr. Test. (Day 2); Floyd Tr. Test. (Day 5));²

- Repeated accusations and claims, concerning various matters, by Cindy Wilson and others surrounding her concerning the County Administrator. (*See, e.g.*, Def. Ex. 21; Def. Ex. 23; Def. Ex. 24; Def. Ex. 121; Def. Ex. 132; Floyd Tr. Test. (Day 5));
- Candidates and Council members-elect prejudging issues slated to come before them without affording themselves and others the opportunity to gather facts, hold hearings, or be heard. (*See, e.g.*, Brown Tr. Test. (Day 6); Def. Ex. 25; Def. Ex. 26; Def. Ex. 46; Def. Ex. 87; Def. Ex. 89; Def. Ex. 91);
- Council members disregarding the legal "chain of command" established by the Home Rule Act. (*See, e.g.*, Def. Ex. 50, ¶¶27 & 29);
- Council members involving the news media in the decision making processes of Council to the exclusion of other duly elected Council members. (*See, e.g.*, Def. Ex. 71; Def. Ex. 91; Def. Ex. 101; Def. Ex. 102; Def. Ex. 103; Def. Ex. 104; Def. Ex. 105; Floyd Tr. Test (Day 5); Allen Tr. Test. (Depo.), 18:1-19:25);
- Council members and Council-elect involving the news media in "stunts" to gain political advantage over the County Administrator or other Council members. (*See, e.g.*, Def. Ex. 18; Def. Ex. 20; Def. Ex. 50, ¶22; Ex. 71; Ex. 92; Ex. 93; Ex. 97; Ex. 101; Ex. 102; Ex. 103; Ex. 104; Ex. 105);

² The Court's citation to the Record in this Order is intended as merely illustrative, not exhaustive. Ample evidence supports the Court's conclusions throughout the decision beyond what is cited. The Parties have also raised a wide array of legal arguments in this case. After careful review and consideration, the Court addresses those it deems material herein. To the extent an argument has not been deemed worthy of discussion by the Court, it should be deemed as having been fully reviewed and rejected by the Court as without legal basis under the facts of the case *sub judice*.

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- A County Administrator who appeared to be defensive in how he provided information and responded to inquiries of Council members. (*See, e.g., Waldrep Tr. Test. (Day 1); Def. Ex. 34*);
- A County Administrator who conducted himself in his personal and professional actions so as to give rise to suspicion and mistrust. (*See, e.g., Waldrep Tr. Test. (Day 1)*);
- Council-elect conducting meetings, before taking office, with individuals who would later constitute a majority of County Council, where the participants planned specific actions to be taken once they had taken their seats. The meeting participants excluded others on Council with whom they would be serving. (*See, e.g., Waldrep Tr. Test. (Day 1); Moore Tr. Test. (Depo.), 271: 7-25; Allen Tr. Test. (Depo.), 35:1-41:25; Compare Def. Ex. 111 with Def. Ex. 140*);
- Council members engaging in actions carrying with them an appearance of impropriety. (*See infra.*)
- See Exhibit "A" attached hereto for additional evidence on this point.

The above examples reflect the leadership wasteland existing in Anderson County, on both sides of these issues, at the time County Council approved Preston's Severance Agreement.

As a result of the above cited behavior litigation had begun between Joey Preston, both personally and as the County Administrator, and members of the Council he served. This litigation included Preston bringing suit against the Town of Williamston, Cindy Wilson and others concerning allegations made against Preston surrounding his obtaining a BMW roadster. This case resulted in a settlement and the payment of damages from the defendants, including Cindy Wilson, a council member, to Mr. Preston.

Also, Preston as County Administrator sued Robert Waldrep and Cindy Wilson, alleging the need for injunctive relief and civil damages. That case resulted in the issuance of a

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Temporary Restraining Order by Judge Nicholson restraining the two named Council members for violating the Home Rule Act in their dealings with employees of the County and Preston. *See Compl., Preston v. Waldrep & C. Wilson*, 2008-CP-04-2776.³

Further, C. Wilson brought an action against Preston in his official capacity as County Administrator seeking a Writ of Mandamus to obtain financial records of the County, *Wilson v. Preston*, 378 S.C. 348, 662 S.E. 2d 580, (SC 2008). Her petition was denied by the Circuit Court. This decision was affirmed by the South Carolina Supreme Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court's legal and factual findings as to the claims asserted by the parties are as follows:

I. First Cause of Action: County Council's Actions Violated: S.C. CODE ANN. §§ 8-13-100 et seq. ("State Ethics Act"), Anderson County Code §§2-37(g) & 2-288 ("County Code"), and the Common Law.

Anderson County's first claim alleges County Council violated the State Ethics Act, the Anderson County Code, and common law by approving Preston's Severance Agreement. Under this claim, Plaintiff challenges the entire process of passing the Severance Agreement, not just particular votes. (*See Am. Compl.*, ¶35 which alleges that, "The Severance Agreement was adopted by Anderson County Council in violation...".)⁴ Consistent with the allegations put in issue by Plaintiff, the Court has analyzed all Council members' votes as to the passage of the Severance Agreement. After doing so, the Court finds in favor of Preston for the reasons stated below.

³ Throughout the trial, the Court heard evidence regarding the lawsuit brought by Preston against Waldrep and C. Wilson. (*See, e.g., Def. Ex. 50; see also Waldrep Trial Testimony; C. Wilson Testimony (Depo.)*.) To the extent necessary, the Court also takes judicial notice of the entirety of the allegations from the Complaint in that case, which are a matter of public record. *See Rule 201(c), SCRE.*

⁴ The Ninth Affirmative Defense in Preston's Answer to the Amended Complaint, which invokes application of the Supreme Court's decision in *Baird v. Charleston County*, 333 S.C. 519 (1999), similarly compels the Court to analyze the votes of all Council members.

All seven members of Anderson County Council attended the November 18th, 2008 meeting of County Council. All voted on various motions concerning the approval of Preston's Severance Agreement. The Council members in attendance included: Larry Greer ("Greer"), Gracie Floyd ("Floyd"), Bill McAbee ("McAbee"), Michael Thompson ("Thompson"), Ron Wilson ("R. Wilson"), Cindy Wilson ("C. Wilson"), and Bob Waldrep ("Waldrep").

In analyzing County Council's actions, the Court finds that the Anderson County's Code is more restrictive than the State Ethics Act concerning conflicts of interests and the reasons for recusal by a council member. Specifically, the State Ethics Act primarily prohibits elected officials from participating in governmental decisions where an official or his family members derive a direct economic benefit. *See, e.g., S.C. CODE ANN. § 8-13-700.* By contrast, Anderson County Code (hereinafter "ACC") §2-37(g)(4)(e), entitled when "members may not vote," more broadly disallows Council members from participating in decisions where their involvement creates: "a substantial appearance of impropriety." ACC §2-37(g)(4)(e).

With these principles in mind, the Court analyzes County Council's votes in relation to Preston's Severance Agreement, as follows:

Larry Greer & Gracie Floyd

No evidence of record called into question the propriety of the votes cast by Greer or Floyd. No party has suggested any impropriety on the part of Greer and Floyd. As a result, the Court finds both the votes of Greer and Floyd as valid and proper.

Bill McAbee

The County questioned the propriety of McAbee's vote on the Severance Agreement. After considering all evidence of record, however, the Court finds McAbee did not possess a financial interest in Preston's Severance Agreement or the vote approving the same. The Court

likewise finds neither the allegations nor the record evidence concerning McAbee's vote gave rise to a substantial appearance of impropriety.

The Court finds McAbee undertook certain economic development travel, about which the County complains, in an effort to promote economic activities he deemed worthwhile for the County. (*See, e.g.,* McAbee Tr. Test. (Day 2) (discussing benefits of pursuing heavy rail and coal gasification.)) No evidence linked McAbee's travel to Preston's Severance Agreement or the surrounding issues. The evidence established McAbee's economic development travel occurred over an extended period of time and did not relate to Preston's Severance Agreement.

The County also complains of a real estate commission received by McAbee in April of 2008. (*See* Pl. Ex. 60.) The Court rejects the notion that the April of 2008 commission somehow tainted McAbee's Severance Agreement vote. The commission arose out of a real estate contract originating several years before. (*See* Def. Ex. 59.) McAbee received the commission over five months before Preston's employment dispute even arose in September of 2008, before the June of 2008 primaries, and over seven months before the Severance Agreement vote occurred. (*Compare* Pl. Ex. 60 with Def. Ex. 59.) Whenever County Council undertook decisions relating to the transaction from which the commission arose, McAbee recused himself. (*See* Def. Ex. 58.)

No evidence of record reflects Preston had anything to do with the commission received by McAbee. No evidence of record establishes any link between the commission and McAbee's vote in favor of the Severance Agreement. No evidence of record reflects that the commission was somehow improper. Accordingly, the Court finds McAbee's vote was valid and proper.

Michael Thompson

Thompson similarly derived no financial benefit from Preston's Severance Agreement. However, the Court does find Thompson's vote ran afoul of ACC §2-37(g)(4)(e)'s substantial



appearance of impropriety prohibition. At the time Thompson cast his vote, he was seeking future employment from Anderson County through Preston. Also, Preston had approved County-funded training for Thompson. To a casual observer of the Severance Agreement vote, the Court finds such facts and circumstances created a substantial appearance of impropriety. Therefore, Thompson should have refrained from voting on Preston's Severance Agreement.

Ronald Wilson

R. Wilson similarly derived no financial benefit from the Severance Agreement vote. But, like Thompson's, the Court finds R. Wilson's vote ran afoul of ACC §2-37(g)(4)(e)'s substantial appearance of impropriety prohibition. In the weeks before the Severance Agreement vote, R. Wilson's adult, emancipated daughter received an extension of her personal services contract ("Services Contract") with Anderson County. To an observer of these transaction, the Court finds such facts and circumstances would have created a substantial appearance of impropriety. Therefore, R. Wilson should have refrained from participating in the vote.

In so holding, the Court acknowledges the County failed to introduce any evidence directly linking the Services Contract's extension to R. Wilson's Severance Agreement vote. R. Wilson received no direct benefit from the Services Contract's extension. And, no evidence establishes R. Wilson knew of the Services Contract's extension when he voted. Indeed, the evidence of record suggests otherwise. (*See, e.g.,* Schaum Tr. Test. (Day 6).)

By operation of ACC §2-37(g)(4)(a), however, a Council member has a disqualifying interest when a direct descendant has a financial interest in the transaction. Thus, while lacking a direct financial interest in the Severance Agreement vote and Services Contract, the Court finds R. Wilson should not have voted on Preston's Severance Agreement since his daughter had recently received a substantial benefit from Administrator Preston. Such vote, in the Court's view, improperly carried a substantial appearance of impropriety.

C. Wilson & Waldrep

The circumstances surrounding the respective votes of C. Wilson and Waldrep mirror each other and, as such, the Court treats them collectively herein. For the reasons set forth below, the Court finds both C. Wilson and Waldrep possessed direct financial interests in the Severance Agreement vote and their respective votes carried a substantial appearance of impropriety. As such, the Court finds neither C. Wilson nor Waldrep should have participated in the Severance Agreement vote. In reaching this conclusion, this Court notes that neither of these parties had an extended period of time in which to analyze their participation in this vote. Further, this Court notes that they both voted against their respective interests. Nevertheless, this Court must analyze their votes on the same standard as the other votes cast in this matter.

At the time of the Severance Agreement's adoption, C. Wilson and Waldrep were named, in their individual capacities, in a lawsuit brought by Preston. The complaint in that case sought costs and attorney's fees as well as injunctive relief. *See* Compl., *Preston v. Waldrep & C. Wilson*, 2008-CP-04-2776.⁵ Preston alleged C. Wilson and Waldrep interfered with the execution of his job as County Administrator. *Id.* After the lawsuit commenced and well in advance of the Severance Agreement vote, Preston, by and through his personal attorney, also gave notice to County Council of both his claim for anticipatory breach of contract and tort claims he intended to pursue against two County Council members—C. Wilson and Waldrep. (*See* Pl. Ex. 22.) These are some of the same issues upon which the *Cunningham* case was allowed by the Court of Appeals to go forward toward trial.

⁵ Throughout the trial, the Court heard evidence regarding the lawsuit brought by Preston against Waldrep and C. Wilson. (*See, e.g.*, Def. Ex. 50; *see also* Waldrep Trial Testimony; C. Wilson Testimony (Depo.)) To the extent necessary, the Court also takes judicial notice of the entirety of the allegations from the Complaint in that case, which are a matter of public record. *See* Rule 201(c), SCRE.

During trial, testimony from Waldrep and C. Wilson (by deposition) confirmed Preston was asserting tort claims against them personally. (See Waldrep. Tr. Test. (Day 1); Tr. Test. C. Wilson (Depo.), 59: 14-18; 75: 1-8; Pl. Ex. 22.)⁶ In turn, Paragraph Six of the Severance Agreement states:

In consideration of the County's agreement to provide Employee [Preston] with the severance payments described in this Agreement, Employee, for himself, his heirs, his legal representatives, and his assigns, hereby covenants irrevocably never to make any claim or demand, or to commence, cause, or permit to be instituted or prosecuted, any suit, charge, proceeding, or action at law or in equity, ~~against the County [or] any of its Council members, employees, managers, officers, board members, or any of its affiliated parts, entities, or subsidiaries, as well as the successors and assigns of those entities and persons, by reason of any claim, demand, or cause of action which Employee may now have, or may hereinafter acquire, relating to his employment, with the County, expressly including, but not limited to, the termination of and/or the conditions of his employment with the County.~~ The parties expressly covenant for themselves, their legal representatives, their heirs, and assigns, that this Agreement may be treated as a complete defense to any legal, equitable, or administrative action that may be brought, instituted, or taken by Employee against the County, related to Employee's employment, and/or the termination of his employment, or the conditions of his employment, and shall forever be a complete bar to the commencement or prosecution of any action, suit, charge, claim, or legal proceeding relating in any way to Employee's employment or termination of employment.⁷

⁶ At trial, the County also argued the release contained in the Severance Agreement conferred identical benefits upon all Council members. According to the County, to the extent the release conferred benefits on all Council members, all votes were improper for the same reason. The Court rejects this analysis. As noted above, Anderson County Code §2-37(g) (4) provides: "No member shall vote on any matter in which he/she has a personal or financial interest greater than that of the general Anderson County public." Here, Preston filed a lawsuit against C. Wilson and Waldrep individually, which remained pending at the time of the Severance Agreement vote. Moreover, Preston had supplied notice of an intent to pursue tort claims against two Council members, which C. Wilson and Waldrep acknowledged referred to them. By contrast, at the time of the Severance Agreement vote, Preston had not filed a lawsuit nor given notice of his intent to pursue tort claims against any other member of County Council. Thus, as to C. Wilson and Waldrep, the Severance Agreement conferred personal and financial benefits greater than that of the general Anderson County public, while the release conferred no benefits on the remaining members of Council (against whom no lawsuit was filed or claims asserted) different than those of the public.

⁷ By contrast, Preston's Master Employment Agreement required him only to: "execute and deliver to the County a release, releasing the County of all further claims that the Administrator may have against the County." (Pl. Ex. 1, p. 4, ¶E (Emphasis added).)

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(Pl. Ex. 7, p. 2, ¶6.)⁸ Since Preston agreed not to pursue any further claims against any County Council member, Waldrep and C. Wilson had a direct economic interest in the outcome of the vote regardless of the vote's outcome. Therefore, due to a potential appearance of substantial impropriety, Waldrep and C. Wilson should not have participated in a vote on Preston's Severance Agreement while Preston maintained a lawsuit against them individually. ACC §2-37(g).

~~According to Plaintiff, the votes of Waldrep and C. Wilson should nonetheless be~~ counted because they voted against Preston's Severance Agreement. The Court disagrees. Waldrep and C. Wilson had personal and financial interests "greater than that of the general Anderson County public" thereby prohibiting their participation and vote. In such instances, ACC §2-37(g)(4) provides: "No member shall vote on any matter in which he/she has a personal or financial interest greater than that of the general Anderson County public."⁹ No exception exists based upon how a Council member votes. Accordingly, the Court finds Waldrep and C. Wilson should not have voted on the Severance Agreement or any related issues.

Having found the votes of Thompson, R. Wilson, C. Wilson, and Waldrep as improperly cast, the Court next analyzes what impact flows from such findings. In that regard, the Court finds the Supreme Court's holding in *Baird v. Charleston County*, 333 S.C. 519, 535, 511 S.E.2d 69, 79 (1999) controlling. Adopting the majority view, the *Baird* Court held:

In general, the vote of a council member who is disqualified because of interest or bias in regard to the subject matter being considered may not be counted in determining the necessary majority for valid action. See W.J. Dunn, *What*

⁸ Having found Preston's Severance Agreement as a valid contract, as discussed below, the Court also finds Paragraph 6 of the Severance Agreement establishes Preston's seventh affirmative defense of release.

⁹ In addition, and as noted *supra*, personal financial interest also includes matters where a Council member's "participation in the matter at hand would create a substantial appearance of impropriety." ACC §2-37(g).

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Constitutes Requisite Majority of Members of Municipal Council Voting on Issue, 43 A.L.R.2d 698, 748 (1955). Therefore, a court has jurisdiction to invalidate an ordinance if the requisite number of votes to pass the ordinance would not exist but for the improper vote.

Id. at 535, 511 S.E.2d at 77-78 (citing W.J. Dunn, *What Constitutes Requisite Majority of Members of Municipal Council Voting on Issue*, 43 A.L.R.2d 698, 748 (1955) (“[T]he Council action will be upheld if the majority was not dependent on the votes of disqualified members and rejected if there would be no majority without such votes.”)¹⁰

¹⁰ Numerous decisions around the country accord with the *Baird* Court's analysis. See *Marshal v. Ellwood*, 189 Pa. 348, 354, 41 A. 994, 995 (1899) (“It would be an astonishing proposition to submit that an ordinance...which was passed by a considerable majority of perfectly qualified votes, should be declared illegal because it had received the supporting vote of one member who was disqualified.”); *Anderson v. City of Parsons*, 209 Kan. 337, 342, 496 P.2d 1333, 1337 (1972) (“It is also the rule that where the required majority exists without the vote of the disqualified member, his presence and vote will not invalidate the result”); *Hodge v. Princeton*, 227 Ky. 481, 13 S.W.2d 491 (1929) (considering the disqualification of one of four votes); *Hawkins v. Grand Rapids*, 192 Mich. 276, 158 N.W. 953 (1916) (reducing number of votes to fifteen due to failure of nine members to participate); *Commonwealth ex rel. Whitehouse v. Raudenbush*, 249 Pa. 86, 94 A. 555 (1915) (disqualifying vote of interested council member); *Alamo Heights v. Gerety*, 264 S.W.2d 778 (Tex. Civ. App. 1954); *Sup'rs of Oconto County v. Hall*, 47 Wis. 208, 2 N.W. 291 (1879); *Woodward v. City of Wakefield*, 236 Mich. 417, 210 N.W. 322 (1926); *Saks & Co. v. Beverly Hills*, 107 Cal. App. 2d 260, 237 P.2d 32 (1951) (five votes, three disqualified, left one to one vote) (overruled on other grounds as to meaning of the term “trial *de novo*” at issue in *City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 776, 537 P.2d 375, 379 (1975)); *State ex rel. Oakey v. Fowler*, 66 Conn. 294, 32 A. 162, 163 (1895) (“If his own vote was necessary to give a majority of the board of selectmen, we should feel compelled to hold his election to be void.”); *Fort Wayne v. Lake Shore & M. S. Ry. Co.*, 132 Ind. 558, 32 N.E. 215, 217 (1892) (“sufficient number of councilmen voted for the resolution granting the land to the railroad company to pass it without counting the vote of Edgerton”); *Tuscan v. Smith*, 130 Me. 36, 153 A. 289, 292 (1931) (“The vote was unanimous and he was but one of three.”); *Beale v. Santa Barbara*, 32 Cal. App. 235, 162 P. 657 (1916); *Murach v. Planning & Zoning Commission of City of New London*, 196 Conn. 192, 203, 491 A.2d 1058, 1065 (1985) (“Where the required majority exists without the vote of a disqualified member, his presence and vote will not invalidate the result.”); *Klindt v. Pembina County Water Resource Bd.*, 2005 N.D. 106, 697 N.W.2d 339, 350 (2005) (question is whether vote was “determinative”); *Eways v. Reading Parking Authority*, 385 Pa. 592, 124 A.2d 92 (1956); *Board of Com'rs of Richmond County v. Thompson*, 216 Ga. 348, 349, 116 S.E.2d 737, 738 (1960) (reducing vote count by two).

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Relying upon authority from other jurisdictions, Anderson County argues only one tainted vote sufficed to rescind the Severance Agreement.¹¹ However, the Court relies upon the *Baird* decision in concluding the "one tainted vote rule" does not control in South Carolina.¹² Moreover, *Baird* does not indicate that South Carolina's courts would consider the political position or relative strength of those advocating for one side or another in determining which votes to allow.

No South Carolina authority supports the County's premise wherein it argues that South Carolina's courts should weigh the potential sway of participating individual officials when reviewing the validity of governmental votes. To the contrary, here, all elected officials owed the same legal duties to their constituents. The Court treats each public official equally and finds their respective votes warrant equal weight and independence.¹³

¹¹ Had it not elected to follow the *Baird* holding, the Court may very well have had to consider what impact other tainted votes of Waldrep and C. Wilson had on the County's ability to bring the instant lawsuit and the Court's jurisdiction to hear Plaintiff's claims. For example, votes approving the investigation of the Severance Agreement and to commence and maintain the instant lawsuit could prove void if, as Plaintiff urges, one tainted vote (such as those cast by C. Wilson and Waldrep) invalidated Council action. (See, e.g., Def. Ex. 138; Anderson County Meeting Minutes, Nov. 12, 2009 (publicly available at: http://www.andersoncountysc.org/web/Council_Minutes01.asp.) In light of the Court's decision, however, the Court finds further factual development and legal analysis, in this regard, proves unnecessary to the current analysis.

¹² Consistent with the balance of this decision, the Court notes the superiority of the analytical framework established by the *Baird* Court. Under Plaintiff's urged approach, the validity and finality of an otherwise valid action of a legislative body could be rendered uncertain by virtue of a judicial challenge arising out of an alleged appearance of impropriety, regardless of whether the challenged vote proved outcome determinative. The Court rejects such approach as inconsistent with the holding of *Baird* and the other authority discussed herein. See, e.g., *Eways v. Reading Parking Authority*, 385 Pa. 592, 604, 124 A.2d 92, 98 (1956) ("However, it is equally true that where a Resolution or Ordinance is passed or adopted by a sufficient number of legal votes, it will not be invalidated by improper illegal votes if the contract or subject matter in question was lawful and there is no fraud or statutory restriction. To hold otherwise would injure the public interest or stifle government.").

¹³ The County characterizes County Council's approval of the Severance Agreement as "judicial" in nature. The Court rejects the County's distinction in this regard. The "appointment and removal of a public officer is a governmental function..." *Piedmont Pub. Serv. Dist. v. Cowart*,

The Court, therefore, rejects Plaintiff's premise that because Thompson (as Chairman of Council) and R. Wilson (as Chairman of the Personnel Committee) supported the Severance Agreement, their influence somehow overwhelmed the independent judgment of County Council's remaining elected officials. Indeed, even if such inquiry proved appropriate, the evidence of record establishes otherwise. As discussed *infra*, each of the Council members whose votes the Court has found as properly cast in favor of the Severance Agreement, articulated independent and lucid grounds supporting their respective votes. (See Greer Tr. Test. (Day 4); McAbee Tr. Test. (Day 2); Floyd Tr. Test. (Day 5).)

The Court's reasoning, in this regard, also accords with South Carolina precedent. South Carolina law disfavors substituting judicial determinations for the decision-making of officials elected to make such judgments. In so finding, the Court references the decisions of *Segars-Andrews v. Judicial Merit Selection Commission et al.* and *Bear Enterprises v. The County of Greenville et al.*, wherein South Carolina's appellate courts have afforded great deference to legislative bodies and their decision-making, both legislatively and judicially. *Segars-Andrews*, 387 S.C. 109, 130, 691 S.E. 2d 453, 469 (2010) (declining judicial intervention into political determinations conferred to a legislative body due to Separation of Powers constraints); *Bear Enterprises*, 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct. App. 1995) ("If the propriety of the Council's decision is even "fairly debatable," we cannot inject our judgment into a review of their decision, but must leave that decision undisturbed."); *see also* S.C. CODE ANN. § 4-9-620

324 S.C. 239, 241 (1996). Indeed, it is a statutory power conferred upon County bodies to exercise within their legislative discretion. S.C. CODE ANN. § 4-9-620. In addition, the County also characterizes the Severance Agreement as conferring solely an "individual benefit." The Court likewise rejects this characterization. The evidence at trial confirmed those Council members who appropriately voted in favor of the Severance Agreement did so in hopes of promoting the public good. Some of the rationales included *inter alia*: a desire to avoid a significant downside risk to the County, to avoid further political infighting that had proved deleterious to the County, to help the County Council move forward with County business, which had been stymied, and to help ensure the County could hire competent County Administrators later.

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(conferring upon County Council the discretion to hire and remove County Administrators in Council-Administrator form of government).¹⁴

The Court next examines how many votes were necessary to approve the Severance Agreement. Pursuant to ACC § 2-37(g)(3), approval of the Severance Agreement required a simple majority of those members present and voting. ACC § 2-37(g)(3) (“[A] majority vote of those members present and voting shall decide all questions, motions, and other votes.”). Upon applying the *Baird* holding and ACC § 2-37(g)(3) to the facts at bar, the Court finds a majority of votes of those present and properly voting approved Preston’s Severance Agreement.

Specifically, the Court finds the votes approving Preston’s Severance Agreement included the following:

- Motion to Amend the Agenda: Passed 5-2, with Thompson and R. Wilson voting Aye; with Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 23, ll. 28-30.)
 - Motion to Amend Proposed Amendment to Agenda: Failed 2-5, with Waldrep and C. Wilson voting Aye; Thompson and R. Wilson voting Nay; Removing Improper Votes, Failed 0-3. (Pl. Ex. 5, p. 23, ll. 22-26.)
- Motion to Adopt the Severance Agreement: Passed 5-2, with Thompson and R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 27, ll. 36-39.)
 - Question called for: Passed 5-2, with Thompson and R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 27, ll. 28-32.)

¹⁴ See also *Griggs v. Hodge*, 229 S.C. 245, 251, 92 S.E.2d 654, 657 (1956) (“As a general rule, the courts will not attempt to interfere with the exercise of discretionary powers by a public board or subordinate governmental agency.”); *Schroeder v. O’Neill*, 179 S.C. 310, 184 S.E.2d (1936) (“The Court will not interfere with discretionary powers of a municipal body, except in cases of fraud or clear abuse of power, or where unreasonable or capricious”); *Plunkett v. Aiken*, 159 S.C. 97, 108-09, 156 S.E. 245 (1931) (“The exercise of that discretion so long as it is not unreasonable or capricious, is a matter of policy with which the Courts are not concerned. There was not sufficient evidence to show any exercise of arbitrary power or caprice upon the part of the City Council, and we cannot sustain the decree of the Circuit Judge on this additional ground, as urged by the respondents.”).

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- Motion to Approve Transfer of Funds to Fund the Agreement: Passed 5-2, with Thompson and R. Wilson voting Aye; Waldrep and R. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 30, ll. 41-45.)
 - Motion to Table Motion to Transfer Funds: Failed 2-5, with Thompson and R. Wilson voting Nay; Waldrep and C. Wilson voting Aye; Removing Improper Votes, Failed 0-3. (Pl. Ex. 5, p. 30, ll. 15-20.)
 - Question Called For on Motion to Transfer Funds: Passed 5-2, with Thompson and R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 30, ll. 30-38.)
- ~~Motion to Reconsider the Transfer of Funds Motion: Passed 6-0-1, with Thompson, R. Wilson and Waldrep voting Aye; C. Wilson Abstaining; Removing Improper Votes, Passed 3-0-1. (Pl. Ex. 5, p. 32, ll. 3-5.)~~
- Second Vote on Motion to Transfer Funds: Passed 5-2, with Thompson, R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 33, ll. 7-8.)
 - Question Called For: Passed 5-2, with Thompson and R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 3-0. (Pl. Ex. 5, p. 32, ll. 43-46.)
- Motion to Reconsider Approval of the Severance Agreement: Passed 4-0-3, with Thompson voting Aye; R. Wilson, C. Wilson and Waldrep abstaining; Removing Improper Votes, Passed 3-0-3. (Pl. Ex. 5, p. 33, ll. 30-43.)
 - Question Called For: Passed 4-3, Thompson and R. Wilson voting Aye; Waldrep and C. Wilson voting Nay; Removing Improper Votes, Passed 2-1. (Pl. Ex. 5, p. 33, ll. 34-39.)¹⁵

¹⁵ Of all the votes leading up to the approval of the Severance Agreement, only the parliamentary vote to call for the question on the motion to reconsider was close. The Court finds, however, that even if Waldrep and C. Wilson could have voted, no change in outcome would have manifested. First, under Robert's Rules of Order Article 1, §7, debate would have eventually expired regardless of the outcome on the subject vote to call for the question. Consistent with their votes throughout, the trial testimony from voting Council members reflected that additional debate on the Motion to Reconsider would not have changed their ultimate vote. (*See, e.g.,* McAbee Tr. Test.; Greer Tr. Test; Floyd Tr. Test.) The County has not introduced any evidence to the contrary. Second, had such members felt that additional debate could materially change their ultimate vote, they could have voted against the final vote adopting the Severance Agreement. As noted above, this did not occur, as the Second Vote on the Severance Agreement passed with a vote of 5-1-1. Third, adverse parliamentary rulings can be appealed under the Anderson County Code. *See* ACC § 2-37(g). Here, no appeal occurred. (*See* Pl. Ex. 5.) Finally, South Carolina Courts do not review the parliamentary processes of legislative bodies. *See State v. Lewis*, 181 S.C. 10, 186 S.E. 625, 631 (1936) ("That is merely a

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- Second Vote on Severance Agreement: Passed 5-1-1, with Thompson and R. Wilson voting Aye; C. Wilson voting Nay; Waldrep Abstaining; Adjusted Vote, Passed 3-0-1.

(See Pl. Ex. 5.)

Therefore, under Plaintiff's first cause of action, Preston's Severance Agreement does not warrant rescission. After discounting the improper votes, the Court finds a majority of members present and voting duly passed Preston's Severance Agreement.

II. Second Cause of Action: Public Policy Voids County Council's Actions; and Seventh Cause of Action: County Council's Actions Were Arbitrary and Capricious.

Plaintiff's second and seventh causes of action respectively alleged County Council's vote approving the Severance Agreement warrants rescission because such vote contravened public policy and constituted arbitrary and capricious decision-making. (See Am. Compl., ¶¶37-39 & 71-74.) As the second and seventh causes of action present interrelated issues, the Court addresses them together, and for the reasons set out below, rejects both claims as unsupported by fact or law. Accordingly, the Court finds in favor of Preston as to the second and seventh causes of action.

As to the second cause of action, the Court finds that public policy renders neither the Severance Agreement nor the vote adopting the same as void as against public policy. While paragraphs 37 through 39 of the Amended Complaint never specify how the Severance Agreement's approval violated public policy, the Court finds greater harm would exist by virtue of South Carolina's courts disturbing the decision of a legislative body. As noted *supra*, in furtherance of strong public policy in this state, South Carolina courts accord deference to the discretionary decision-making conferred upon legislative bodies by statute. *Segars-Andrews*,

matter of parliamentary procedure, which each body, by special rule, may, and usually does, regulate for itself."); *Smith v. Jennings*, 67 S.C. 324, 328, 45 S.E. 821, 822-23 (1903) (Same); see also MASON'S MANUAL OF LEGISLATIVE PROCEDURES § 71, at 72 (1975) ("[C]ourts will not disturb a ruling on a parliamentary question made by a legislative . . . body having authority necessary to make rules for its government . . .").

387 S.C. at 130, 691 S.E. 2d at 469; *Bear Enters.*, 319 S.C. at 140, 459 S.E. 2d at 886; *see also* S.C. CODE ANN. § 4-9-20; *supra*, n. 8. The Court, therefore, finds in favor of Preston as to the second cause of action.

As to the seventh cause of action, the Court finds County Council's vote in favor of Preston's Severance Agreement did not constitute arbitrary decision-making. In reaching this conclusion, the Court relies upon the decision of *Bear Enterprises v. County of Greenville*. Quite simply, *Bear* stands for the proposition that: "[i]t is not the prerogative of the courts to pass upon the wisdom of County Council's decision . . ." *Bear Enters.*, 319 S.C. at 140, 459 S.E.2d at 885. "The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary." *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001). Importantly, "The decision of the legislative body is presumptively valid and the [opposing party] has the burden of proving otherwise." *Bear Enters.*, 319 S.C. at 141, 459 S.E.2d at 885 (citing *Lenardis v. City of Greenville*, 316 S.C. 471, 471, 450 S.E.2d 597, 597 (Ct. App. 1994)).

Anderson County was required, but did not, prove the arbitrariness of County Council's action "by clear and convincing evidence." *Bear Enters.*, 319 S.C. at 141, 459 S.E.2d at 886 (citing *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1991)): "If the propriety of the Council's decision is even 'fairly debatable,' [the court] cannot inject [its] judgment into a review of [the Council's] decision, but must leave that decision undisturbed." *Id.* at 140, 459 S.E.2d at 885 (citing *Lenardis*, 316 S.C. at 472, 450 S.E.2d at 598) (holding the county's decision in refusing to rezone an area was not arbitrary or capricious). Applying these standards to the case at bar, the Court finds County Council's vote approving the Severance Agreement did not constitute arbitrary and capricious action.

According to Plaintiff, the financial value of the Severance Agreement rendered County Council's vote approving the same arbitrary and capricious. Specifically, Anderson County compares severance amounts owed under the strict terms of Preston's Master Employment Agreement with the financial value of the Severance Agreement. Because the latter exceeds the former, Plaintiff concludes the Severance Agreement was arbitrary and capricious. The Court disagrees.¹⁶

The evidence at trial established Anderson County Council's approval of the Severance Agreement proved neither arbitrary nor capricious. In light of the information available to County Council when it approved the Severance Agreement, and in light of events occurring since, the Court finds Anderson County Council's approval of the Severance Package fell within the advice of counsel and has proven a reasonable choice. (See Bright Tr. Test. (Day 1) (Conceding advice to Personnel Committee included several potential options including settling with Preston; conceding he informed Personnel Committee of potential downside of litigation); see also Def. Ex. 28, p. 4, ¶F.)¹⁷

The reasonability of County Council's decision-making proves especially true in light of the steps the Council-elect had leaked to the public as their intended course of action upon taking office. Based on what the members of County Council knew at the time, such actions could very

¹⁶ As an initial matter, it is worth noting that Preston's claims, as articulated in correspondence from his attorney dated October 23, 2008, included potential tort claims and exceeded severance claims arising strictly from the four corners of his Master Employment Agreement. (See Pl. Ex. 22; see also Bright Tr. Test. (Day 1).) Moreover, the release contained in the Severance Agreement exceeds the scope of the release contemplated by Preston's Master Employment Agreement. (Compare Pl. Ex. 1, p. 4, ¶E with Pl. Ex. 7, p. 2, ¶6.) Preston's Master Employment Agreement also contained an indemnity provision, which survived the Agreement, but was terminated under the Severance Agreement. (Compare Pl. Ex. 1, p. 8, §14 with Pl. Ex. 7, p. 2, ¶6.) Thus, contrary to Plaintiff's suggestions, County Council's mere approval of a Severance Agreement providing for severance amounts exceeding the strict operation of Preston's Master Employment Agreement does not render the Severance Agreement arbitrary and capricious.

¹⁷ Importantly, the County's employment lawyer alluded to subsequent events before County Council acted upon the Severance Agreement

well have violated Preston's legal and contractual rights. Both Preston's Master Employment Contract and South Carolina statute provided for a hearing before dismissal or suspension without cause. (*See, e.g.*, Pl. Ex. 1, p. 7, ¶13; S.C. CODE ANN. § 4-9-620.)

By November of 2008, the evidence at trial demonstrated that the issue of whether to suspend and dismiss Preston had already been made by Council-elect without giving Preston the right to present evidence at a fair and impartial hearing before the entire 2009 Council. It is clear to this Court that the matter had been prejudged by the majority of Council-elect. To follow such course could very well have resulted in the costly litigation feared by the County's employment lawyer. The County's employment lawyer estimated potential exposure, including attorney's fees and costs, of up to two million (\$2,000,000.00) dollars. (*See* McBee Tr. Test. (Day 2); Greer Tr. Test. (Day 4); *see also* Floyd Tr. Test. (Day 5); Bright Tr. Test. (Day 1).) Also, it is noted that the *Cunningham* case has been allowed to go forward toward trial on issues relating to his wrongful discharge. These are some of the same issues that may have been asserted by Preston had the plan developed by the councilmen and councilmen-elect in the time leading up to this vote been allowed to proceed as had been planned.

Each of the Council members who the Court has found properly voted for the Severance Agreement provided independent and lucid reasons supporting their votes.¹⁸ Certainly their

¹⁸ (*See, e.g.*, Greer Tr. Test. (Day 4) (testifying that he voted in favor of the Severance Agreement because *inter alia*: he hoped it would end political infighting that he observed as having impaired the County's ability to conduct business; he sought to avoid the potential downside risk of two million (\$2,000,000,00) dollars, as articulated by the County's employment counsel; he sought to avoid risk to economic development caused by political infighting; and he deemed it important to treat the County Administrator fairly so as not to impair County's ability to find another Administrator); Floyd Tr. Test. (Day 5) (testifying that she voted in favor of the Severance Agreement because, *inter alia*: she believed the County faced over two million (\$2,000,000.00) dollars in liability if it lost to Preston; she hoped the Severance Agreement would end the political infighting she had observed as interfering with County Council's ability to complete business; she believed the Severance Agreement was the honest and fair thing to do; she believed it was important for the County to treat Preston honestly and fairly; and by voting in favor of the Severance Agreement, an outcome deleterious to the County could be avoided.);

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decisions were unpopular with segments of the community and with Council-elect. However, Courts should not weigh the decisions of legislative bodies based upon the popularity of their decisions. Courts must instead judge whether a reasonable basis existed for making the decision in question. Reasonable decisions made by legislative bodies can often be unpopular when they are made. That fact does not make the decisions in question arbitrary, capricious or illegal.

As was stated in the *Bear Enterprises* case, if the decision made by County Council was "fairly debatable" the decision should remain undisturbed. 319 S.C. at 140, 459 S.E.2d at 885. Here, this Court has determined the decision to approve the Severance Agreement was "fairly debatable." It is noteworthy that, upon taking office, Council-elect did take actions to initiate this litigation on similar issues facing the 2008 Council in the litigation averted by the Severance Agreement. The resulting costs to Anderson County for this litigation and the underlying investigation have exceeded the County employment attorney's 2008 estimate of two million (\$2,000,000.00) dollars. (See, e.g., Allen Tr. Test (Depo.), 20:25-21:1-8 (Testifying "investigation in this lawsuit" was already nearing two million dollars (\$2,000,000.00) in January of 2012).) Therefore, the Court finds that Anderson County Council's decision to enter into Preston's Severance Agreement was neither arbitrary nor capricious.¹⁹

McAbee Tr. Test. (Day 2) (testifying that he voted in favor of the Severance Agreement because *inter alia*: he wanted to avoid the downside risk of in excess of two million (\$2,000,000.00) dollars, if the County lost the dispute with Preston, as articulated by the County's employment lawyer; he hoped the Severance Agreement could put behind the contentious period of County Council, which had already lasted several years and impaired County Council's ability to move forward.)

¹⁹ The County has raised subsequent precedent to the Court regarding the potential unenforceability of Preston's Master Employment Agreement. Such precedent, however, does not change the Court's decision. At the time of the Severance Agreement's approval, no such precedent existed. Legislative bodies do not have to foresee what an appellate court may decide five (5) years later. The question before the Court is whether, based upon the information then available, County Council's decision-making was fairly debatable. The Court finds that it was. If the issue was so clear, the County's employment attorney would not have identified a potential downside risk of up to two million (\$2,000,000.00) dollars.

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III. Third Cause of Action: Preston Breached His Fiduciary Duty to Anderson County.

Plaintiff's third cause of action seeks rescission of the Severance Agreement due to Preston's alleged breach of fiduciary duty resulting from violations of the State Ethics Act and Anderson County Code. (See Am. Compl., ¶¶40-46.) As an initial matter, the Court finds no evidence supporting Plaintiff's contention that Preston breached a fiduciary duty by violating the State Ethics Act or Anderson County Code.²⁰ (See *infra* (discussing County Council members as those individuals who owed disclosure duties, to the extent applicable). As found above, the Court has discounted the favorable votes of Thompson and R. Wilson as contrary to the Anderson County Code inasmuch as such votes carried a substantial "appearance of impropriety" and that they personally had a greater stake in the outcome than a member of the general public in Anderson County *See supra*. After doing so, the Court finds in favor of Preston in relation to the County's third cause of action.

The analysis applied by the Court follows the Supreme Court's holding in *Baird*, 333 S.C. at 519, 511 S.E.2d at 69. In *Baird*, the State Ethics Commission advised the tainted voter not to vote on a Bond Ordinance. When the tainted voter ignored the State Ethics Commission and nonetheless voted, the remedy, as determined by the *Baird* Court, was to invalidate the tainted vote "in determining the necessary majority for valid action." *Id.* at 535, 511 S.E.2d at 77. The remedy was not to overturn the entire vote. *Id.* The Court finds the instant remedy should be no greater than in *Baird*.

Pursuant to the Supreme Court's holding in *Baird*, then, this Court should discount the tainted votes and then determine whether County Council would have still adopted the Severance Agreement. *Id.*, 511 S.E.2d at 78 (The court has jurisdiction to undo legislative action if the

²⁰ As to the specific nuclei of allegations (*i.e.*, Thompson, McAbee, and Wilson), the Court has set out additional analysis below, which similarly applies to Plaintiff's third cause of action. The Court incorporates by reference analysis later in this opinion to the extent it applies to the County's third cause of action.

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requisite number of votes "would not [have] exist[ed] but for the improper vote[s].") Unlike *Baird*, however, when the Court discounts the tainted votes in this case, the result of the vote remains unchanged.²¹ Accordingly, Anderson County Council still approved Preston's Severance Agreement. Further, this would be true even if the votes of Waldrep and C. Wilson remained undisturbed for the reasons set forth above. Therefore, the Court finds in favor of Preston as to Plaintiff's third cause of action.

IV. Fourth Cause of Action: Preston Committed Fraud; Fifth Cause of Action: Preston Committed Constructive Fraud; Sixth Cause of Action: Preston Committed Negligent Misrepresentation.

As to the fourth, fifth, and sixth causes of action, Plaintiff respectively alleges Preston committed fraud, constructive fraud, and negligent misrepresentation warranting the Severance Agreement's rescission. (See Am. Compl., ¶¶40-70.) The Court finds Anderson County failed to prove the necessary elements of such claims. See *Kahn Construction Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980) (reciting nine elements of fraud required to be proven by clear, cogent, and convincing evidence); *Woods v. State*, 314, S.C. 501, 431 S.E.2d 260 (Ct. App. 1993) (reciting nine elements of constructive fraud); *Baptist Foundation for Christian Education v. Baptist College*, 282 S.C. 53, 317 S.E.2d 453 (Ct. App. 1984) (noting clear, cogent, and convincing proof for constructive fraud); *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847, 852 (Ct. App. 1997) (reciting six elements required for negligent misrepresentation claim); *Smothers v. Richland Memorial Hosp.*, 328 S.C. 566, 493 S.E.2d 107 (Ct. App. 1987). Accordingly, the Court finds in favor of Preston as to the fourth, fifth, and sixth causes of action.

²¹ The Court similarly finds no evidence of record establishes any of the remaining votes of County Council would have changed had such Council members known the information about which Plaintiff complains. Indeed, the evidence of record demonstrates none of the remaining proper votes would have voted differently. Moreover, as noted above, Anderson County failed to prove any connection linking the Thompson Allegations and R. Wilson Allegations to the Severance Agreement. The Court instead discounted Thompson's vote and R. Wilson's vote due to the appearance of impropriety.

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The County predicates its fourth, fifth, and sixth claims on the McAbee, Thompson, and R. Wilson allegations. As noted *supra*, the Court finds no evidence supports any impropriety as to the McAbee allegations. As to Thompson and R. Wilson, the County failed to introduce any evidence linking the alleged improprieties to Preston's Severance Agreement. Moreover, to the extent duties of disclosure existed, the impacted *elected officials* possessed positive legal duties to disclose any issues implicating ethical matters. But, in any event, Plaintiff failed to prove such disclosures were material to the outcome, as Plaintiff has not shown such disclosures, even if made, would have changed the votes of McAbee, Greer, and Floyd. Indeed, the evidence of record supports an opposite conclusion.

Moreover, by November 18, 2008, the Court finds Preston did not possess a duty to disclose information about his employment claims to County Council. It is clear to this Court that by October and November of 2008, Preston and County Council had assumed positions adverse to each other. By that time, Preston had already sued two Council members individually, asserting claims for injunctive relief, payment of costs, and attorney's fees. (*See, e.g.*, Def. Ex. 50.) Preston had further employed personal counsel to advance a claim of anticipatory breach of his employment contract by Council and the Council-elect. (*See, e.g.*, Pl. Ex. 23.) Preston had likewise given notice of tort claims he intended to bring against individual Council members and Council-elect. (*Id.*) The County and the individual Council members each had retained their own attorneys to protect their interests. It is clear to this Court, that at that time, the Parties were in adversarial positions to each other concerning the continued employment of Joey Preston.

In effect, in October and November of 2008, Preston was a claimant against certain Council members and Council itself. Because of their adversarial positions, open and known to both parties, any responsibility Preston may have had to keep County Council fully informed of his position in this matter had been necessarily greatly diminished or negated. Under these

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circumstances, Preston did not owe a duty, and this Court has found scant authority to support such a fiduciary duty to one's employer in such a litigious situation as existed in Anderson County at that time. Accordingly, the Court finds Preston did not owe County Council a duty to furnish information adverse to his claim: when both parties had employed attorneys, when both parties were preparing for litigation, and when the involved Council members themselves had positive legal duties to disclose the ethics issues cited by Plaintiff. Further, this Court has invalidated any tainted votes and the result of the voting remains unchanged.

The County also complains that Preston failed to correct information supplied by Thompson to a local newspaper. According to Plaintiff, in June of 2008, Thompson publicly denied in a newspaper interview that he sought employment with the County. (*See Am. Compl.*, ¶¶ 16, 44, 48.)²² The Court rejects Plaintiff's claims as unsupported. However, even assuming Preston somehow owed a duty to correct misstatements of sitting Council members (his employers) to the media, Plaintiff failed to prove that Preston had anything to do with Thompson's statement to the media, or that Preston even knew about Thompson's statement when the Severance Agreement vote occurred. Moreover, no evidence established County Council's members knew and relied upon Thompson's statement. Similarly, no evidence demonstrated that had such information been known, it would have materially affected the outcome of the Severance Agreement vote. Based upon the totality of evidence presented during six (6) days of trial, the Court finds it would not have changed the outcome.

As to the Schaum issues, the Court finds the Services Contract was a public file and Preston had no duty to inform Council of public information. *See, e.g.*, S.C. CODE ANN. § 30-4-40(a)(5)(A). It had been widely known that Schaum had a Services Contract with the County

²² The County also cites Preston's failure to correct Thompson's alleged misstatement in support of its third cause of action. The same analysis would apply to that cause of action. That is to say, assuming a duty existed to correct Thompson's statement, the County failed to prove Preston even knew of the same.

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long before Preston asserted any claims against the County. Schaum's relationship with R. Wilson was likewise known. No evidence proved the Services Contract's renewal was in any way material or related to County Council's decision to approve Preston's Severance Agreement. The evidence further failed to prove County Council would not have approved the Severance Agreement, regardless. Indeed, the Court finds the evidence of record proves otherwise.

Therefore, the Court finds no fraud, constructive fraud, or negligent misrepresentation arose by virtue of Preston's remaining quiet during the Severance Agreement vote. The Court similarly finds the Severance Agreement was not the product of fraud nor was it an abuse of power. Accordingly, the Court finds in favor of Preston in relation to Plaintiff's fourth, fifth, and sixth causes of action.

V. Eighth Cause of Action: Preston Breached the Severance Agreement by Back-dating Documents & Ninth Cause of Action: Breach of Fiduciary Duties by Back-dating Documents.

Plaintiff bottoms its eighth and ninth causes of action on allegations relating to former Anderson County Economic Development Director, Heather Jones. (Am. Compl. ¶¶ 75-80.) According to Plaintiff, Preston participated in back-dating memoranda relating to Jones' employment with the County. (See Am. Compl., ¶¶ 11(a), (b), & (c).) After reviewing the evidence of record, the Court finds Preston did not breach the Severance Agreement by executing back-dated memoranda and had he done so the breach would not have justified the relief sought.

No evidence of record demonstrates that any document executed by Preston changed the County's existing employment or contractual obligations to Jones. The documents in question memorialized agreements that had been previously made and acted upon by all parties. (See, e.g., Jones Tr. Test. (Depo.), (relating to SUV allegations: 125: 9-19; 127: 20-25; 128: 1-13; 128: 24-25; 129: 1-5; 129: 18-25; 130: 1-4 Def. Ex. 66; Def. Ex. 138); (relating to Educational Reimbursements: 122: 5-20; 123: 10-12; 123: 17-25; 124: 14-25).) Moreover, the County failed

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to prove that Preston executed any memoranda on or after December 1, 2008, as alleged.²³ (See Am. Compl., ¶¶ 11(a), (b), & (c).) Accordingly, the Court finds none of the alleged actions relating to Jones breached the Severance Agreement, nor did the execution of Jones' employment memoranda harm the County in any way.

For a breach of contract to warrant rescission, the breaches must prove so substantial and fundamental as to defeat the contract's purpose. *Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993) ("The general rule is that for a breach of contract to warrant rescission, the breach must be so fundamental and substantial as to defeat the purpose of the contract."); *Smith v. First Provident Corp.*, 245 S.C. 509, 512, 141 S.E.2d 646, 647 (1965); *Davis v. Cordell*, 237 S.C. 88, 99, 115 S.E.2d 654, 655 (1960); *Martin v. Carolina Water Serv., Inc.*, 280 S.C. 235, 240, 312 S.E.2d 556, 560 (Ct. App. 1984).

Even if Preston somehow breached the Severance Agreement, which is rejected as unsupported, the Court finds that any such breaches would not rise to the level of justifying a rescission of the contract. *Brazell v. Windson*, 384 S.C. 512, 517, 682 S.E.2d 824, 826 (2009) (citing *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143-44, 382 S.E.2d 915, 917 (1989); 26 RICHARD A. LORD, WILLISTON ON CONTRACTS § 68:21 (4th ed. 1999 & Supp. 2012) (Instructing that the breach must be "of a most substantial character and pervade[] almost the entire contract" such that the breach would "defeat its purpose in nearly every respect."). Accordingly, the Court finds in favor of Preston as to the eighth and ninth causes of action.

VI. Tenth Cause of Action: Seeking a Constructive Trust for Funds Held by SCRS.

²³ The Court notes that the evidence demonstrated Jones had use of a County vehicle from December of 2006 until her departure in 2009, which was standard and necessary for her job. Jones never submitted any educational reimbursements. As to the travel memorandum, Preston never executed the memorandum and Jones never took the contemplated trip. (See Jones Tr. Test. (Depo.), 117: 22-23.) Thus, none of the Jones' allegations impacted the County whatsoever.

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In its tenth cause of action, Anderson County seeks the imposition of a constructive trust over funds "in possession of" SCRS. (Am. Compl., ¶¶81-84.) Given the remaining findings of the Court, as set forth in this decision, Plaintiff's cause of action for constructive trust no longer remains viable. Accordingly, the Court finds in favor of Preston as to the tenth cause of action.

VII. Eleventh Cause of Action: Unjust Enrichment.

Plaintiff's eleventh cause of action purports to seek rescission based upon the remedy of unjust enrichment. No evidence supports a finding of unjust enrichment in this case. Preston and the County each retained attorneys who negotiated the terms of the Severance Agreement. As noted above, County Council approved the Severance Agreement by a majority of Council members present and voting.

The Court finds the County's unjust enrichment claim is misplaced. Unjust enrichment does not provide grounds for the rescission of a contract. Unjust enrichment does not provide an equitable remedy when a valid contract exists. And, unjust enrichment does not create a vehicle to recoup a contract benefit—after the fact—if a party no longer views the exchange of consideration as desirable. In any event, the Court finds the evidence of record fails to establish Preston's retention of the benefits conferred by the Severance Agreement constitutes a condition under which it would be unjust for him to retain the same. Accordingly, the Court finds in favor of Preston as to the County's eleventh cause of action.

VIII. Further Grounds Supporting Judgment in Favor of Preston.

The Court declines to rescind Preston's Severance Agreement for two additional reasons. They include:

- A. Rescission Proves Unavailable In This Case Because the Court Cannot Return the Parties to Their *Status Quo* Before the Severance Agreement's Formation.**

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In order to invoke its equitable powers to rescind a contract, and in the absence of fraud, the Court must be able to return the parties to their *status quo* before the contract's formation.²⁴ See *King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 129 (Ct. App. 1984) ("In the absence of fraud which would justify shifting the loss to the party who opposes rescission, rescission is appropriate only if both parties can be returned to the status quo prior to the contract.") (citing *Rice and Santos, Inc. v. Jones*, 279 S.C. 201, 305 S.E.2d 74 (1983); *Hester v. New Amsterdam Casualty Co.*, 268 F. Supp. 623 (D.S.C. 1967)).²⁵ Indeed, controlling South Carolina precedent holds the ability to return the parties "to the status quo prior to the contract" as a "fundamental prerequisite for rescission." *Rice and Santos, Inc. v. Jones*, 279 S.C. at 204. "This includes the requirement that [Anderson County,] the party seeking rescission[,] must restore [Preston,] the opposite party[,] the benefits received" from Preston. *Id.* Applying such principles to the case *sub judice* renders rescission unavailable as an equitable remedy.

Here, returning the parties to the *status quo* prior to the Severance Agreement's adoption proves fundamentally impossible. The Court cannot return Preston to his position of County Administrator; someone else now holds the position and the parties' relationship has deteriorated such that Preston's restoration to his prior position is impossible. Preston's employment contract has now lapsed and, thus, no longer remains in force and effect. (See Pl. Ex. 1, Preston Master Employment Agreement, § 2.) Nor can the Court reinstate the elected Anderson County Council present in November of 2008. Furthermore, the South Carolina Retirement System has used and invested portions of the severance proceeds, while Preston has substantially depleted the

²⁴ The Court notes an exception to this rule is fraud. However, consistent with the Court's Order, Plaintiff has failed to prove fraud, constructive fraud, or even negligent misrepresentation in this case. Accordingly, the exception does not apply.

²⁵ See also *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (Ct. App. 2004) ("Rescission, as a remedy, returns the parties to the status quo ante.") (citing *Gov't Emps. Ins. Co. v. Chavis*, 254 S.C. 507, 516, 176 S.E.2d 131, 135 (1970)).

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remaining funds. (See, e.g., Pl. Ex. 90; Pl. Ex. 91; Preston's Tr. Test.; see also Preston Depo.)

Accordingly, the Court finds rescission proves unavailable as a viable remedy in this case.

B. The Doctrine of Unclean Hands And The Availability of Adequate Remedies at Law Bar Plaintiff from Invoking the Court's Equitable Jurisdiction.

Invoked by Preston as a fifth affirmative defense, the doctrine of unclean hands likewise bars Anderson County from seeking the equitable remedy of rescission in this case. "An action to rescind a contract is in equity." *Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993) (citing *Davis v. Cordell*, 237 S.C. 88, 100, 115 S.E.2d 649, 655 (1960)). In turn, "The doctrine of unclean hands precludes a plaintiff from recovering in equity if [it] acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Straight v. Goss*, 383 S.C. 180, 206, 678 S.E.2d 443, 457 (Ct. App. 2009) (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998)). Here, the Court finds Anderson County has unclean hands and, therefore, it cannot invoke the Court's equitable powers.

It is axiomatic: "[h]e who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945)). It is well understood that unclean hands will preclude rescission of a contract. See *Fattorusso v. Urbanowicz*, 774 N.Y.S.2d 658, 662 (Sup. Ct. 2004) (holding that where the plaintiff came to court with unclean hands and was not entitled to rescind the purchase of a racehorse); *Schenck v. Ebby Halliday Real Estate, Inc.*, 803 S.W.2d 361, 366 (Tex. App. 1990) (holding that where a plaintiff was found negligent or guilty of wrongful conduct, the plaintiff was precluded from the remedy of rescission).

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The requirement that a party seeking the aid of equity, such as rescission, must do so with clean hands is often referred to by the equitable maxim: “[h]e who seeks equity must do equity.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 259, 715 S.E.2d 348, 358 (Ct. App. 2011) (quoting *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994)). “This principle applies to one who affirmatively seeks equitable relief.” *Id.* “In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity.” *Id.* Consequently, the Court finds the County lacks clean hands and cannot invoke equitable relief. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff’s request for specific performance where the plaintiff misled the defendants); *Shumaker v. Shumaker*, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) (“Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties.”); *Anderson v. Purvis*, 211 S.C. 255, 266, 44 S.E.2d 611, 616 (1947) (discussing the maxim that he who seeks equity should do equity).

The record proves replete with evidence of the County’s unclean hands. An illustrative, but non-exhaustive list of actions by sitting councilmen whose legal fees for actions surrounding the following were later paid by the county, includes the following:

- Waldrep and C. Wilson cast votes against Preston’s Severance Agreement when this court has found they should have recused themselves under the Anderson County Code. (*See supra.*)
- A series of meetings occurred at sitting Council member Bob Waldrep’s office (“Waldrep Meetings”) starting in July of 2008 and extending through January of 2009 wherein two sitting Council members (Waldrep and C. Wilson) met with three Council-elects (Allen, Moore, and Dunn) to plot the course of Anderson County Council in 2009, including adverse employment actions against Joey Preston. The Court has little doubt the group attending the Waldrep Meetings had prejudged the issue of Preston’s employment and had decided to pursue his dismissal. (Waldrep Tr. Test.; Allen Tr. Test. (Depo.), 49:1-52:25; Moore Tr. Test. (Depo.), 100:23-106:17.)

- Allen, Moore, and Waldrep all testified that specific County employees were discussed during the Waldrep Meetings. Waldrep conceded on the witness stand that the group of employees discussed during the Waldrep meetings have subsequently left County employment. Allen, Moore, and Waldrep conceded Preston was discussed during the Waldrep Meetings. (*See, e.g.*, Allen Tr. Test. (Depo.), 49:14-55:21; Moore Tr. Test. (Depo.), 100:23-106:17; Waldrep Tr. Test. (Day 1).)
- While outwardly denied by the attendees of the Waldrep meetings, a series of E-mails from Council-elect, Eddie Moore, reflect the true intent of the group with regard to Joey Preston. (*See* Def. Ex. 46, 8/14/08 E-mail (Preston "is desperate and just wants to freeze everything so we can't run him off."); Def. Ex. 87, 08/04/08 Moore E-mail to Trammel ("Hopefully we can get [Preston] run out of Anderson County soon..."); Def. Ex. 89, 08/13/06, Stan Welch (reporter) E-mail to Moore ("If you can get the witchhunters to understand what should be done, you are the man!"); Def. Ex. 91, 10/20/08 E-mail from Moore to reporter Welch and WAIM Radio ("Well, I told radio hog Saturday that they had been trying to get rid of Joey for 10 years and we did by just winning a primary"); *see also* Def. Ex. 20, Bright Notes 10/13/08 ("[H]e's heard her say 'let's fire him.'"))
- In early fall of 2008, Joey Preston sued Bob Waldrep and Cindy Wilson individually for interfering with his duties as County Administrator. (*See* Ex. 50, 12/29/08, Order Granting Preliminary Injunction.) At the time, both Waldrep and C. Wilson were sitting County Council members. Among a host of other findings, the court determined: "The County Administrator's duty to supervise his employees is being intentionally and purposefully thwarted by [Waldrep and C. Wilson]." (Ex. 50, ¶27.) The Court also found: "The actions of [Waldrep and C. Wilson] have interfered with the County Administrator's ability to do his job." (Ex. 50, ¶29.) Finding Preston was likely to win on the merits of his suit, the Court issued a preliminary injunction against Waldrep and C. Wilson. (Ex. 50.) According to Waldrep, the County later paid his attorney's fees ratifying his actions as within his official scope of duties, despite being found by the Court as contrary to South Carolina law. Cindy Wilson confirmed this was consistent with her recollection but, unlike Waldrep, did not seek reimbursement of her personal attorney's fees from public funds. (Tr. Test. C. Wilson (Depo.), 68: 2-15.) Thus, Plaintiff has accepted Waldrep's actions, which violated Home Rule and interfered with Preston's duties, as official conduct attributable to Plaintiff. Such conduct occurred in the months just prior to the Severance Agreement's approval.
- On November 17, 2008, Council members Bob Waldrep and Cindy Wilson and Council-elect Tommy Dunn, Eddie Moore, and Tom Allen sent a letter to Preston directing him to freeze County hiring effective immediately. (*See* Ex. 71, 11/17/08 Letter.) At that time, Dunn, Moore, and Allen had not been sworn-in, nevertheless, the correspondence was sent on Anderson County letterhead and copied to: "All Media Outlets." (*Id.*) No action on this subject had been taken by the sitting County Council.

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- Eddie Moore testified that the group met at Bob Waldrep's office on the Sunday directly prior to the January 6, 2009 meeting. That meeting would have occurred on January 4, 2009. During the meeting the group discussed agenda items and probably looked at "some of the resolutions." (Moore Tr. Test. (Depo.), 271: 7-25.)
 - Gracie Floyd testified that Cindy Wilson used FOIA information requests as a club to harass Preston, over and over again. Indeed, Defense Exhibit 34, which is an opinion from the Supreme Court of South Carolina confirms this tactic. As of 2005, Wilson had already requested over 59,000 pages of documents from Preston. (Ex. 34, p. 5, 2008 Opinion of *Wilson v. Preston*.) Thereafter, the evidence at trial indicated C. Wilson's information requests were unending.
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- See Exhibit "A" for additional matters which were not considered by this Court in reaching these conclusions since they were done by persons who were not yet county officials when they took these actions, and therefore, their actions should not be attributed to the county on this issue. However, these do matters do serve as a basis for the atmosphere that surrounded the actors in this case and as a basis for Preston's claim of anticipatory breach of contract as mentioned earlier.

Accordingly, when taken in its totality, the evidence of record firmly establishes that the County, by and through certain of its sitting Council members acting with members of the Council-elect, engaged in a pattern of conduct intended to harass and interfere with Preston's ability to execute his duties as County Administrator.

The Court finds such behavior prejudiced Preston in the execution of his duties, prompting his assertion of the anticipatory breach claim and tort claims in the first instance. The above described conduct is at the very least conduct that this Court finds to be ethically questionable, if not illegal. Accordingly, the Court finds the County lacks clean hands in this case and cannot invoke the Court's equitable powers to rescind the Severance Agreement, even if it could otherwise supply a basis for doing so, which it cannot. *See Straight*, 383 S.C. at 206, 678 S.E.2d at 457.

The County has stated in this action it wished to question the legality of the Severance Agreement. If that was the County's intention, that goal could have been accomplished by the bringing of a declaratory judgment action questioning the legality of the actions of the former

council, without suing Mr. Preston directly for rescission. In the current case, allegations are advanced in direct violation of Paragraph Eight of the Severance Agreement since they are based on matters that are "relating to Mr. Preston's employment with the county or his actions as an employee on behalf of the County, expressly, including but not limited to, all action taken by Mr. Preston within the scope and course of his employment as County Administrator." This Court finds that an adequate remedy at law does exist. Generally, in South Carolina "equitable relief is unnecessary when an adequate remedy ... is available at law. *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250, 251 (1939); *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("[E]quitable relief is generally available where there is no adequate remedy at law...."); *Carolina Park Associates, LLC v. Marino*, 2012 WL 4711857 (S.C. 2012)

IX. Preston's Counterclaim for the Breach of Paragraph Eight of the Severance Agreement.

The Court finds Anderson County breached the unambiguous terms of Paragraph Eight of the Severance Agreement by bringing this action. Paragraph Eight states as follows:

The County agrees and hereby covenants irrevocably never to make any claim or demand, or to commence, cause or permit to be instituted or prosecuted, any claim, charge, proceeding or action at law or in equity against Mr. Preston, his heirs, legal representatives, or assigns, by reason of any claim, demand or cause of action which the County may now have, or may hereinafter acquire, relating to Mr. Preston's employment with the County or his actions as an employee on behalf of the County, expressly including, but not limited to, all actions taken by Mr. Preston within the scope and course of his employment as County Administrator. (Pl. Ex. 7, p. 3, ¶8.)²⁶

²⁶ Similarly, Paragraph Six of the Severance Agreement states in material part:

The parties expressly covenant for themselves, their legal representatives, their heirs, and assigns, that this Agreement may be treated as a complete defense to any legal, equitable, or administrative action that may be brought, instituted, or taken by Employee against the County, related to Employee's employment, and/or the termination of his employment, or the conditions of his employment, and shall forever be a complete bar to the prosecution of any action, suit, charge, claim, or legal proceeding relating in any way to Employee's employment or termination of employment.

(Pl. Ex. 7, p. 2, ¶6.)



Having found Preston's Severance Agreement valid and enforceable by virtue of its adoption by the remaining untainted votes of County Council, and hearing no argument that the agreement was not legally entered into other than the issues raised in the Complaint, the Court finds Plaintiff's initiation and prosecution of the instant action breached Paragraph Eight of the Severance Agreement.

According to the County, the instant lawsuit merely attacks the Severance Agreement, not Preston's actions while County Administrator. The Court rejects this argument. It is clear the County based the instant lawsuit upon actions taken by Preston while performing his job as Administrator. (See, e.g., Am. Compl., ¶¶12, 13, & 17 (Preston's attempted hiring of Thompson); *Id.* at ¶¶25-28 (renewing Services Contract with R. Wilson's daughter); *Id.* at ¶¶30-33 (challenging Preston's processing of McAbee's travel reimbursements); *Id.* at ¶¶11(a)-(c) (Preston's back-dating of memos regarding Jones' employment).) In fact, several of Plaintiff's causes of action attempt, albeit unsuccessfully, to invoke Preston's employment as a predicate to stating a claim. (See Am. Compl., Fifth Cause of Action (Constructive Fraud); Sixth Cause of Action (Negligent Misrepresentation); Seventh Cause of Action (Breach of Fiduciary Duty); Ninth Cause of Action (Breach of Fiduciary Duty other grounds).

Had the County wanted the courts to determine the validity of the Severance Agreement itself and make it the focus of the litigation, it could have done so by instituting a declaratory judgment action focusing solely on the contract and its validity.²⁷ Instead, the County brought

²⁷ The County also attempts to draw the distinction that the Severance Agreement is beyond the covenant not to sue, which should not be construed as what it characterizes as an "incontestability clause." The Court rejects this analysis. The covenant not to sue is clear and unambiguous. (See Pl. Ex. 8, p. 2, ¶6.) The covenant not to sue does not, as the County suggests, contain an exception to challenge the actions taken by Preston while County Administrator, so long as those challenges are raised in contesting the Severance Agreement's validity. (*Id.*) Thus, the Court finds the County breached the covenant not to sue when it

this action against Preston and the Retirement System as named defendants seeking rescission of the Severance Agreement and the return of all monies and costs.

Accordingly, the Court finds the County's filing of the instant lawsuit constitutes a breach of the Severance Agreement's covenant not to sue provisions as contained in Paragraph Eight of that Agreement. Numerous Courts examining the issue have ruled that obvious breaches of covenants not to sue support the award of damages in the amount of attorney's fees incurred as a result of the breach. *See S&D Mech. Contractors, Inc. v. Enting Water Conditioning Systems, Inc.*, 71 Ohio App.3d 228, 241, 593 N.E.2d 354, 363 (Ohio Ct. App. 1991); *Anchor Motor Freight, Inc. v. Int'l Bd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 377*, 700 F.2d 1067, 1072 (6th Cir. 1983); *Prospect Energy Corp. v. Dallas Gas Partners, LP*, 761 F. Supp. 2d 579, 592 (S.D. Tex. 2011). *See, e.g., Lubrizol Corp. v. Exxon Corp.*, 957 F.2d 1302, 1306 (5th Cir. 1992) (holding that where an action is brought in obvious breach of covenant not to sue, court has wide discretion to impose liability for litigation expenses, including attorney's fees); *McKissick v. Gemstar-TV Guide Int'l, Inc.*, Ca. No. 04-262, 2006 WL 211950, at *2 (N.D. Okla. Jan. 27, 2006) (granting summary judgment in favor of defendant where plaintiff's suit was "in violation of a broad and unambiguous covenant not to sue"), *aff'd in part, vacated in part on other grounds, and remanded*, 618 F.3d 1177 (10th Cir. 2010), *Cefali v. Buffalo Brass Co., Inc.*, 748 F. Supp. 1011, 1027 (W.D.N.Y. 1990) (holding party is entitled to attorney's fees for "suits brought in obvious breach or otherwise in bad faith" where plaintiffs' allegations arose directly from events surrounding the settlement agreement and were in obvious breach of the covenant); *Quill Co., Inc. v. A.T. Cross Co.*, 477 A.2d 939, 943 (R.I. 1984) ("In the absence of contrary evidence, sufficient effect is given the usual covenant not to sue if, in addition to its service as a defense, it challenged the Severance Agreement's validity based upon conduct allegedly occurring during Preston's tenure as Administrator. To hold otherwise would render the provision meaningless.

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is read as imposing liability only for suits brought in *obvious breach or otherwise in bad faith*") (emphasis added).

A similar result was reached in a recent South Carolina Court of Appeals decision filed on October 24, 2012. In *Benedict College v. National Credit Systems, Inc. v. Ford*, 400 S.C. 538, 735 S.E.2d 518 (Ct. App. 2012), the South Carolina Court of Appeals analyzed whether attorney's fees and costs could be pursued as special damages in a civil conspiracy claim where certain parties conspired to alter previously existing contract rights. The *Benedict* Court allowed the claim for special damages in the form of attorney's fees and costs arising out of the pending action.

The *Benedict* decision supports the general proposition underlying the decisions cited above, namely, that attorney's fees and costs can form an element of recoverable damages—if—as in this case, they flow from the complained of wrong. Here, Plaintiff plainly violated a clear and unambiguous covenant not to sue and the damages incurred by Preston proximately flowing from the same are the fees and costs of this action.

The above cited cases represent a common law approach to the awarding of attorney's fees. It appears that there is no case law from South Carolina directly on point which establishes a common law right to attorney's fees involving breach of a covenant not to sue. This especially true for cases in which the State or one of its political subdivisions is a moving party. However, the Court does find that the legislature has provided a statutory right to collect attorney's fees in cases which are initiated by governmental entities, as was done in this case. This statute sets forth the basis for the award of attorney's fees and also sets the prerequisites which must be followed by the Courts in making such an award. The statutory authority for the awarding of attorney's fees is S.C. Code 15-77-300 which provides:

§ 15-77-300. Allowance of fees

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(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

(B) Attorney's fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

(1) the nature, extent, and difficulty of the case;

(2) the time devoted;

(3) the professional standing of counsel;

(4) the beneficial results obtained; and

(5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney's fees. However, in no event shall a prevailing party be allowed to shift attorney's fees pursuant to this section that exceed the fees the party has contracted to pay counsel personally for work on the litigation.

(C) The provisions of this section do not apply to civil actions relating to the establishment of public utility rates, disciplinary actions by state licensing boards, habeas corpus or post conviction relief actions, child support actions, except as otherwise provided for herein, and child abuse and neglect actions.

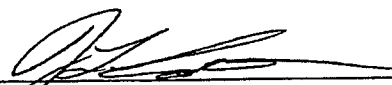
This Court finds that this statute is in derogation of the common law on the award of damages against a sovereign body. "If the statute is in derogation of a common law right, it must be strictly construed and not extended in application beyond clear legislative intent." *Jade Street, LLC v. R. Design Const. Co.*, 398 S.C. 338 (2012)(quoting *Doe v. Marion*, 361 S.C. 463, 473 (Ct. App. 2004). This Court finds that S.C. Code § 15-77-310 provides the method that should be followed by a claimant seeking attorney's fees in this case. Section 15-77-310 states "The party shall petition for the attorney's fees within thirty days following final disposition of the case. The petition must be supported by an affidavit setting forth the basis for the request."

Accordingly, the Court finds that the issue concerning an award of attorney's fees in this matter should be held in abeyance pending the final disposition of this case and the filing of the petition as required by law.

CONCLUSION

The Court finds the witnesses supporting the Severance Agreement, specifically Gracie Floyd, Larry Greer, and Bill McAbee, to be the more credible witnesses in the trial. Other testimony at trial was evasive and not credible concerning issues surrounding the meetings held at councilman Bob Waldrep's office. This Court further finds testimony concerning the emails between those parties that did not support the approval of the severance package untrustworthy (See exhibit A and Finding of Facts). Therefore, as to all causes of action asserted by Plaintiff, the Court finds in favor of Defendant Preston and enters judgment consistent with this decision. As to Preston's counterclaim, the Court finds in favor of Defendant Preston and holds the question of attorney's fees in abeyance until the final disposition of this case and any petition filed according to statute.

IT IS SO ORDERED.


The Honorable Roger L. Couch
Circuit Court Judge

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MAY - 3 2013

May 3, 2013

TABLE A

EXHIBIT NUMBERS	DESCRIPTION	COURT'S RULING
Pl. Ex. 33	3/21/06 Council Mtg. Transcript	Admitted.
Pl. Ex. 92	Jones screen print and memo to Preston Re/ Germany Trip	Admitted.
Pl. Ex. 93	Jones screen print and memo to Preston Re/ ed. reimb. 11/26/08 and 10/16/06	Admitted.
Def. Ex. 121	Agt. Donohue SLED Memo. Interviewed C. Wilson, Morgan & Poliakoff Re/ lawsuit against Big Creek Landfill.	Admitted.
Def. Ex. 122	Statement by Cole to SLED. Re/ Conversation with C. Wilson, Polk Re/ allegations Preston used public money to buy people drinks	Excluded. Irrelevant & Hearsay.
Def. Ex. 123	12/3/05 Preston Statement, Re/ Felton Meeting with C. Wilson.	Excluded: Hearsay.
Def. Ex. 125	10/6/05 letter to Preston. Re: Extramarital affairs in Anderson and Lt. Briggs	Excluded: Hearsay.
Def. Ex. 126	Kelly Nichols letter to County Council Re/ Cindy Wilson slandering her	Excluded: Nichols denied its truth and testified Cunningham & Preston authored.
Def. Ex. 132	2/15/2005 Preston v. Wilson <i>et al.</i> Judg. Re/ Award to Preston for \$ 3,500.00	Admitted: Public Record & Preston Statement.
Def. Ex. 134	3/27/06 SLED memo by special agent Kindley Re/ Threats received by C. Wilson	Excluded: Relevance & Hearsay.
Def. Ex. 139	Allen email to Dunn from 12/24/08	Admitted.
Kelly Nichols' Testimony concerning her affair with Joey Preston		Excluded as Irrelevant; Information was not available to Council when the vote occurred and did not enter into the decision-making process. The Court further finds that Preston was not untruthful to County Council on this subject, so testimony would be impeachment on a collateral matter and thus inadmissible.

Handwritten signature/initials

Anderson County vs. Joey Preston
09-CP-04-4482
May 1, 2013
Exhibit A

- Brooks Brown testified Tom Allen, current County Council Chairman, told him in July of 2008 (at the Waldrep campaign victory party) that the incoming Council knew how to get rid of “his boy”—the new Council intended to give Preston a command he could not obey and fire him for insubordination. (*See also* Def. Ex. 26, Bright Notes 11/04/08 (“[M]eeting held—they would give him something to do that he could not perform and that he would be fired for insubordination.”)) Brown further testified that when Allen learned Brown had divulged his comments to Preston, Allen threatened him with an investigation. Notably, at the time of such threat, Allen served as the Chairman of Anderson County’s investigative subcommittee and C. Wilson also served on the subcommittee. (Allen Tr. Test. (Depo.), 47: 3-25.)
- Council-elect Moore sent correspondence to Preston about a paper shred day for the public on November 13, 2008 at 9:24 AM requesting that Preston “hold off on doing any shredding of any kind of documents from Anderson County at the present time” and “that no financial records be part of this action.” (Ex. 92, 11/13/08 Moore E-mail to Preston). However, Exhibit 93 reflects that Moore already knew no County documents would be shredded as of 6:58 AM the same morning. (Ex. 93, 11/13/08 Moore E-mail to King.) Moore blind-copied both Council-elect Tom Allen and Council member Bob Waldrep on the earlier E-mail to Gail King with Anderson County, which stated: “Thanks for the quick response. We new council members just want to make sure no county documents are destroyed at all before our auditors examine them.” (*Id.*) As reflected in Preston’s response in Exhibit 92, WAIM Radio had been misreporting that county documents were being shredded. Exhibit 92, which blind-copies Allen, Waldrep, the County Council Clerk, and WAIM Radio, reflects a further response from Moore: “Thanks for your quick response...I have always been a no nonsense guy.” (Ex. 92, 11/13/08 Moore E-mail to Preston). Then, Moore again writes to Rick Driver at WAIM Radio, who had been misreporting county documents were being shredded when they were not, as had been clarified by Preston, and states; “Rick, keep Preston’s response confidential...” (Ex. 94, 11/13/08 Moore E-mail to Rick Driver at WAIM Radio.) So, in essence, Moore sent an E-mail simply to harass Preston and then instructed WAIM Radio to keep Preston’s response confidential so the public would remain misled about county documents being shredded.
- On November 25, 2008, before taking office, and before the County ever conducted any investigation, Council-elect Moore wrote to the Attorney General requesting an investigation of Preston’s buyout. (Ex. 101, 11/25/08 Moore E-mail to Attorney General.) Moore copied Tom Allen and Council member Bob

Waldrep. Moore blind-copied the County Council clerk, Rick Freemantle, reporter Stan Welch, and WAIM Radio. On 12/01/08, Williamston Journal reporter, Stan Welch, wrote to Moore asking if he could run the story for publication. (Ex. 102, 12/01/08 Welch E-mail to Moore.) On 12/01/08, Eddie Moore forwarded the Attorney General's response to his correspondence to Tom Allen and Bob Waldrep. Moore again blind-copied WAIM Radio, Rick Freemantle, Jenna Trammell, and reporter Stan Welch. Later on 12/01/08, Moore wrote to Stan Welch stating: "Ask Rusty about it. I have to tread gingerly on this until next week. I don't want to play our hand just quite yet. But if Rusty thinks we need to go public we can." (Ex. 104, 12/01/08 E-mail from Moore to reporter Stan Welch.) During his deposition, Moore confirmed the "Rusty" referred to is current County Administrator, Rusty Burns. (Moore Tr. Test. (Depo.), 257: 18-20.) On 12/01/08, reporter Stan Welch wrote to Moore, "I spoke with Rusty. We agree there is nothing to be lost by running with this story..." (Ex. 105, 12/01/08 Welch E-mail to Moore). So, before the County ever spent the first dime on its multi-million dollar investigation, Moore had already begun manipulating the media by leaking "news" about an Attorney General investigation into Preston.

- Allen, under oath, adamantly denied drafting an E-mail on December 24, 2008, attaching a draft agenda of fourteen (14) items, which mirrored exactly what the newly constituted County Council did in its first meeting on January 6, 2009. (Compare Def. Ex. 111, 12/24/08 E-mail with attached agenda with Def. Ex. 138, 1/6/09 Council Meeting Minutes with Allen Tr. Test. (Dep.), 109-114; 119-141 (Testifying E-mail is "100 forgery" and then going through every item on "forged" agenda and locating them on Meeting Minutes).) Importantly, Allen's E-mail was produced from the work E-mail account of Eddie Moore by the Fluor Corporation; from its server, pursuant to a subpoena; and was first produced, by Court Order, to counsel for Eddie Moore, before production to Preston. By contrast, Eddie Moore was questioned about the same E-mail. Moore testified he in no way fabricated or manipulated Allen's E-mail stating: "If it come from Fluor Daniel, that the way it come." (Moore Tr. Test. (Depo.), 267: 2-6.) The documents confirm the resolve of the group attending the Waldrep Meetings to implement a detailed course of action, which at one time included Preston's suspension and dismissal, once they were seated.
- Council-elect Moore repeatedly leaked information to WAIM Radio to cause baseless problems for Preston as County Administrator. (See, e.g., Ex. 97, 9/23/08 Moore E-mail to WAIM Radio; Ex. 101, 11/25/08 E-mail blind-copying WAIM Radio; Ex. 103, 12/01/08 Moore E-mail blind-copying WAIM Radio.)

FILED CLERK'S OFFICE
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON Civil Action No. 2009-CP-04-4482

Anderson County,
Plaintiff,
vs.
Joey Preston and the South Carolina
Retirement System,
Defendants.

ORDER A TRUE COPY
NOV 25 2013
Peta D.S. Lewis
CLERK OF COURT

This matter comes before the Court on three motions. They include: a post-judgment motion to amend ("Motion to Amend") filed by Anderson County ("Plaintiff" or "the County"); a motion to intervene filed by putative intervenor, Richard Freemantle ("Intervention Motion"); and a motion to reconsider ("Reconsideration Motion") filed by the County. For the reasons stated herein, the Court denies all three (3) motions.

The County's Motion to Amend

The Motion to Amend seeks to add a new claim for relief bottomed on a theory that the severance agreement ("Severance Agreement"), executed by the County and Preston in November of 2008, arose from a vote where Plaintiff now contends no quorum ("Quorum Claim") of County Council existed. The County filed its Motion to Amend on July 15, 2013: nine (9) months after trial, two (2) months after the Court issued its judgment in this case, and two (2) months after the County filed its Reconsideration Motion.

The County failed to preserve the proposed Quorum Claim, as the issue was never presented to the Court. At trial, Plaintiff actually argued the exact opposite position concerning the votes of Waldrep and C. Wilson instead contending such votes were properly cast. Allowing

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Plaintiff to amend its pleading, at this stage, would impermissibly allow the County to try the instant case twice using discrepant legal and factual theories of relief, the latter of which the County only raised after the Court issued judgment on May 3, 2013.

Even if the Quorum Claim had merit, which the Court rejects *infra*, the County unduly delayed in seeking the Quorum Claim amendment. The County had more than adequate opportunity to pursue the amendment: from the case's inception; during the three (3) years leading up to trial; following Waldrep's and C. Wilson's depositions; in connection with the previous amendment of Plaintiff's Complaint (which was by consent on March 29, 2012). The County could also have pursued the amendment: on or before the first day of trial; during the trial; contemporaneous with the submittal of its November 16, 2012 written summation following trial; or during the six (6) month window between trial and issuance of judgment. The County failed to identify any legitimate basis, legally or factually, for its delay in pursuing the Quorum Claim.

Permitting the County's proposed amendment—following a lengthy trial and after judgment issued—would require the Court to re-open proof in this case. Such result would highly prejudice Preston. Absent re-opening proof, Preston would lose:

- The opportunity to develop facts and introduce evidence of prior usage and to assert the same as an affirmative defense (Third Davis Aff., ¶¶12-14);
- The opportunity to develop facts and introduce evidence regarding other affirmative defenses such as (*inter alia*) the rule of necessity doctrine, ratification, waiver, and estoppel (*Id.* at ¶¶30-31);
- The opportunity to develop facts and introduce evidence refuting the non-existence of a quorum (*Id.* at ¶¶14-19);
- The opportunity to introduce expert testimony concerning the Quorum Claim (*Id.* at ¶¶20-21);

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- The opportunity to pursue different litigation and trial strategies, based upon claims actually asserted (*Id.* at ¶¶22-24);
- The opportunity to develop and introduce evidence pertaining to counter-theories that the entirety of the lawsuit constituted an unauthorized act. (*Id.* at ¶¶33-39.)

By contrast, if the Court allowed the County to re-litigate the case by re-opening proof, Preston would:

- Re-incur duplicative discovery and trial expense after trial (*Id.* at ¶¶17-19);
- Incur an unfair disadvantage inasmuch as it would allow the County to try the case under one theory, absent certain risks, and upon losing, re-open the record to re-try the case under a new theory (*Id.* at ¶¶17-19, 33-36);
- Incur an unfair disadvantage as to litigation decisions, trial strategies, and the presentation of evidence which Preston showed were made based upon the framing of the issues (as then framed), which cannot now be undone (*Id.* at ¶¶23-28);
- The loss of the procedural right under Rule 15(b), SCRCF, which would have permitted Preston to seek a continuance during trial, had the County timely pursued the instant amendment (*Id.* at ¶¶37-38).

Accordingly, due to the County's undue delay and the resulting prejudice to Preston, the Court denies Plaintiff's Motion to Amend.¹

The Court also finds the County's proposed amendment proves futile.² First, the Court finds the County's position errs as Anderson County's Code itself establishes what constitutes a

¹ See Rule 15(a), SCRCF (disallowing amendment resulting in "prejudice [to] any other party"); 6 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE, §1488 (2011) ("[I]n keeping with the purpose of Rule 15(a), which is to facilitate a determination of the action on the merits, a motion to amend should be made as soon as the necessity for altering the pleading becomes apparent."); see also *McCann v. Hall & Co., Inc.*, 109 F.R.D. 363, 364-65 (N.D. Ill. 1986); *United States ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161, 1167 (10th Cir. 2009) (denying motion to amend because delay in asserting new allegations would re-open discovery and render prior filings of the defendant as "worthless."); *Royal Indem. Co. v. King*, 532 F. Supp. 2d 404, 417 (D. Conn. 2008) ("[A]n amendment clearly will not be allowed when the moving party has been guilty of delay in requesting leave to amend and, as a result of the delay, the proposed amendment, if permitted, would have the effect of prejudicing another party.")

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quorum based upon presence at the meeting site and not on voting ability.³ Second, as to Preston's Severance Agreement, the County's Code did not require a majority of Council to vote on an issue for the vote to be a valid vote, but rather a majority of those present and voting to carry the question.⁴

Third, the County's prior interpretation and usage under its own Code (which the Code, in turn, obligates the County to follow) allowed votes to be taken despite the disqualification of certain members, so long as present at the meeting site.⁵ Fourth, the County Code expressly incorporated FOIA and the State Ethics Act—both of which define quorum without reference to

² The County's quorum argument heavily relies upon the decision of *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48 (1998). However, the County's Motion omitted the following operative language from *Garris*: "In the absence of any statutory or other controlling provision . . ." *Id.* at 453, 511 S.E.2d at 59. As explained below, the Court finds positive law, controlling provisions (*i.e.*, the Anderson County Code, FOIA, and the State Ethics Act) exist with respect to defining a quorum of Anderson County Council.

³ See ACC §2-37(d) ("Should sufficient members leave during a meeting, the chairperson shall immediately declare a recess and attempt to obtain a quorum.") Thus, consistent with other provisions cited herein, the only instances wherein the Anderson County Code contemplates the loss of a quorum relate to the physical absence of members, not their voting qualification or recusal issues. See also *Rainey v. Haley*, 404 S.C. 320, 325, 745 S.E.2d 81, 84 (2013) (Noting the canon of construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius*; the express inclusion of one thing implies the exclusion of another).

⁴ See ACC §2-37(g)(3)("[A] majority vote of those members present and voting shall decide all questions, motions, and other votes.") Inclusion of this less onerous voting formula evidences an intent to permit governmental action on a vote less than a majority of a quorum, which the County Code uses elsewhere. See, *e.g.*, ACC §2-36.

⁵ Compare ACC §2-37(g)(12) (Interpretation of County Code "shall be guided by the previous usage of county council. . .") with First Davis Aff., Ex. F (Anderson County Meeting Minutes August 19, 2009), 13:33-40) (County Attorney: "Under the County Code it...requires a majority of the council to be present for there to be a quorum"; disqualified voters could "still be present...and we would have a quorum of council at that point..."; "then it would require a majority of those present and voting to carry the motion."); see also ACC §1-2 (Defining the term shall: "The word 'shall' is mandatory.")

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voting disqualification--into County meeting procedures.⁶ Accordingly, the Court denies the County's Motion to Amend, as the proposed amendment is futile.⁷

The County alternatively seeks to amend pursuant to Rule 15(b), SCRPC contending the Parties tried the Quorum Claim by consent during trial. As noted above, the Court rejects the County's contention that the Quorum Claim was raised during trial or even before judgment issued. The County's argument improperly conflates the issue concerning the disqualification of C. Wilson's and Waldrep's votes under ethics provisions with the issue of whether a quorum existed. The issues are legally and factually distinct, as they involve different provisions of the

⁶ Compare ACC §2-37(d) ("A quorum shall consist of a majority of the council"), ACC §2-37(a) ("County council will conduct its meetings in accordance with the South Carolina Freedom of Information Act, as amended, and the state ethics laws, as amended, and the requirements of those acts and laws, as amended, shall apply to all notices, agenda, minutes, and other aspects of such meetings."); ACC §2-676 (Mandating compliance with FOIA); ACC §2-352 ("[S]hall comply with the provisions of the South Carolina Freedom of Information Act") with S.C. Code §30-4-20(e) ("'Quorum' unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body."); South Carolina Ethics Opinion, SEC AO98-002 (Nov. 19, 1997) (Analyzing substantially similar facts and concluding: "[D]isqualification under the Ethics Reform Act does not affect the existence of a quorum."); see also *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 500, 685 S.E.2d 600 (2009) (South Carolina courts accord substantial deference to the State Ethics Commission's interpretation of its own enabling legislation.); South Carolina Municipal Association, Frequently Asked Questions, <http://www.masc.sc/newsroom/uptown/June%202012/Pages/Frequently-asked-questions-Quorums.aspx> (last visited on Oct. 30, 2013) ("How would a recusal or abstention affect the quorum? The quorum is unaffected. Once established, the recusal or abstention of one or more council members in attendance at the meeting does not break the quorum. In such a case, a simple majority of the voting members governs the vote's outcome.")

⁷ See *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997) (disallowing amendment due to futility); see also *Coral Gables v. Palmetto Brick Co.*, 183 S.C. 478, 191 S.E. 337, 339 (1937) ("The court will not do a useless and futile thing, by allowing an opportunity for setting up a new cause of action by amendment, which is barred by the statute of limitations.")

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Anderson County Code and concern different factual inquiries.⁸ While the former issue was raised at trial and before,⁹ the Quorum Claim was not.

The County's arguments fail under Rule 15(b), SCRPC for two additional reasons. First, as noted *supra* and incorporated by reference, amendment of Plaintiff's Complaint to add the Quorum Claim would highly prejudice Preston if allowed. See *Nat'l Time Shares, Inc. v Maritime Ltd. P'ship*, 297 S.C. 43, 47, 374 S.E.2d 678, 680 (1988) (Rule 15(b) allows "amendment of the pleadings to conform to the proof where the opposing party is not prejudiced.") Second, even if amendment under Rule 15(b) otherwise proved proper, such amendment was clearly not express and "implied consent will not be found if all the parties did not recognize [the issue] as an issue at trial, even if evidence in the record exists to support the amendment." *Armstrong v. Collins*, 366 S.C. 204, 227-228, 621 S.E.2d 368, 380 (Ct. App. 2005); see also *Davis Aff.*, ¶¶41-42 (County never raised any argument causing Preston to conclude it was asserting quorum issues as basis for relief). Accordingly, the Court denies the County's Motion to Amend under Rule 15, SCRPC.

FREEMANTLE'S MOTION TO INTERVENE

As an initial matter, Freemantle's Intervention Motion proves facially defective for four (4) reasons. They include: (1) the Intervention Motion violated Rule 11(a), SCRPC; (2) the Intervention Motion violated Rule 7(b), SCRPC; (3) the Intervention Motion violated Rule 24(c), SCRPC; and (4) granting the Intervention Motion would violate Rule 12(b)(8), SCRPC. The Court addresses each in turn.

⁸ If, as the County contends but the Court otherwise rejects, the disqualification of Waldrep's and C. Wilson's votes standing alone implicated quorum requirements, the County's position, in this regard, confirms Plaintiff had an opportunity to raise the issue during trial but did not. As noted above, the County instead elected to pursue a different theory altogether.

⁹ See Order, 6, n. 4 (May 3, 2013).

First, Freemantle failed to comply with Rule 11(a), SCRCP, as Freemantle neither consulted with Preston's counsel before filing nor did he attach to the Intervention Motion a certification confirming consultation would serve no useful purpose. See Rule 11(a), SCRCP (Non-compliant motion "shall be stricken unless it is signed promptly after the omission is called to the attention of the . . . movant") (emphasis added); Second Davis Aff., ¶144.¹⁰ Accordingly, the Court must deem the Intervention Motion, as stricken, and not properly before the Court. *Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 761 (1997) ("The penalty for noncompliance [with Rule 11(a), SCRCP] is to strike the motion . . .").

Second, pursuant to Rule 24(c), SCRCP, Freemantle was required, but did not, attach a proposed "pleading setting forth the claim or defense for which intervention is sought." Rule 24(c), SCRCP.¹¹ Without a proposed pleading, Freemantle procedurally failed to interpose a proper motion under which intervention could be granted. Thus, even if the Court were so inclined, it could not grant Freemantle's Motion.

Third, Freemantle's Intervention Motion violates Rule 7(b)(1), SCRCP, as it fails to state the grounds supporting the same. Rule 7(b)(1), SCRCP (Motion "shall state with particularity the grounds therefor . . ."); see also *Summer Place of Myrtle Beach Homeowners Ass'n, Inc. v*

¹⁰ Preston raised Freemantle's non-compliance with Rule 11(a), SCRCP in his July 25, 2013 response. Freemantle thereafter failed to take any action to cure the deficiency during the ensuing forty-five (45) day period leading up to the September 9, 2013 hearing on his motion. Accordingly, Freemantle failed to promptly cure the deficiency.

¹¹ See H. Lightsey & J. Flanagan, *South Carolina Civil Procedure*, (2d ed. 1985) ("Since [South Carolina's] Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure."); *Dillard v. City of Foley*, 166 F.R.D. 503, 506 (M.D. Ala. 1996) (denying intervention motion for purposes of pursuing an appeal of Court Order due to ninety (90) day delay and failure to attach proposed pleading and noting, "The purpose of requiring an intervenor to file a pleading is to place the other parties on notice of the claimant's position, the nature and basis of the claim asserted, and the relief sought by the intervenor.") (citing *WJA Realty Ltd P'ship v Nelson*, 708 F. Supp. 1268, 1272 (S.D. Fla. 1989).)

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Knight, 298 S.C. 241, 243, 379 S.E.2d 724, 725 (Ct. App. 1989).¹² In this regard, the Court finds the Intervention Motion's vagueness substantially prejudices Preston.¹³ The resulting prejudice is further compounded due to Freemantle's decision to delay filing the Motion for nearly forty (40) months after learning of the County's lawsuit. *See infra*. Accordingly, the Court denies the Intervention Motion, as violative of Rule 7(b)(1), SCRCF.

Fourth, Rule 12(b)(8), SCRCF similarly bars Freemantle from intervening in this case. Rule 12(b)(8) disallows litigants from pursuing more than one action, for the same claim, between the same parties. Freemantle previously asserted a claim under the South Carolina Freedom of Information Act in another, pending lawsuit. *See Freemantle v. Preston, et al.*, No. 2009-CP-04-4528 ("Freemantle Lawsuit").¹⁴ The South Carolina Supreme Court has previously

¹² Among other things, Freemantle's Intervention Motion fails: to specify whether Freemantle sought to intervene as a matter of right or permissively; to specify what claims Freemantle sought to assert against Preston; to specify what relief Freemantle seeks against Preston; to specify what personal interests Freemantle possessed as to the County's claims; to specify how the County's lawsuit impaired or impeded his personal interests; to specify what questions of law and fact are in common with the County's claims; to specify whether Freemantle sought to intervene as a Plaintiff or Defendant; to attach a proposed pleading delineating the particulars of his putative claims; and to identify why the County's efforts to do not already protect the public interest. (*See Freemantle Mot. to Intervene.*)

¹³ Such prejudice includes: preventing Preston from discerning the claims Freemantle seeks to assert (Second Davis Aff., ¶¶42-44); preventing Preston from discerning whether Freemantle seeks to intervene of right or permissively (*Id.*); preventing Preston from discerning what relief Freemantle seeks in this case (*Id.*); preventing Preston from discerning whether Freemantle seeks to join as a Plaintiff or Defendant (*Id.*); preventing Preston from discerning why Freemantle contends the County cannot protect its interests (*Id.*); preventing Preston from discerning what interests Freemantle claims in the County's lawsuit (*Id.*); preventing Preston from discerning what common legal questions and factual issues Freemantle contends exist (*Id.*); causing Preston to defend against a "moving target" and creating an unfair disadvantage (*Id.*); causing Preston to incur undue expense and delay in final adjudication (*Id.*).

¹⁴ Freemantle also cannot now assert new FOIA claims arising from allegations occurring in 2008, as such claims would prove untimely under FOIA's one year time limit. *See* S.C. Code Ann. §30-4-100(a) (requiring action to commence "no later than one year following the date on which the alleged violation occurs.").

determined Freemantle lacked standing to assert claims relating to Preston's Severance Agreement, other than those arising under FOIA's declaratory and injunctive relief provisions. *Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012). Freemantle cannot intervene in this lawsuit to allege the identical claim he has already asserted in the Freemantle Lawsuit—the only claim for which he has standing to bring--without violating Rule 12(b)(8), SCRPC.

Freemantle's Intervention Motion also suffers from a series of substantive defects. As an initial matter, Freemantle's Motion proves untimely. Regardless of whether of right or permissively, under "Rule 24, SCRPC, a party may intervene only upon timely application." *State v. ex rel. Wilson*, 391 S.C. 565, 580, 707 S.E.2d 402, 410 (2011). South Carolina Courts utilize a "four-part test for determining timeliness: (1) the time that has passed since the applicant knew or should have known of his interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial."¹⁵

Freemantle's Intervention Motion fails all four (4) criteria. The evidence of record confirms (and Freemantle does not contest) that he knew of the County's Lawsuit for over forty (40) months before pressing the instant Motion.¹⁶ Freemantle also waited approximately eight (8) months after trial and sixty days after judgment before filing his Motion.¹⁷ No legal or factual

¹⁵ See also *Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

¹⁶ See Second Davis Aff., Attach. Ex. A (Motion to Dismiss (January 19, 2010) (seeking its dismissal from Freemantle Lawsuit, in part, due to the County's Lawsuit)).

¹⁷ Freemantle thereafter refrained from serving the Intervention Motion on either Preston or the County until July 22, 2013. (Second Davis Aff., ¶10.)

bases justify Freemantle's delay in seeking intervention nor has Freemantle offered any. Accordingly, the Court finds Freemantle's Motion fails the first three (3) timeliness criteria. *Id.*

As to the last criterion, the Court finds Preston would incur substantial prejudice if Freemantle's untimely intervention were permitted.¹⁸ The County did not assert FOIA-based claims in the case *sub judice* and, as such, Preston did not allege defenses to FOIA claims. None of the discovery, which Preston and the County conducted for over three (3) years before trial commenced, related to un-alleged FOIA claims. (Davis Aff., ¶¶23-45.) For Freemantle to interject such claims into the instant lawsuit—after judgment—would unfairly and improperly deprive Preston of the right to defend himself regarding claims never alleged by the County, including the right to assert additional affirmative defenses, to assert counterclaims, to pursue different discovery, to pursue different trial strategies, to cross-examine witnesses, and to present different trial evidence. (*Id.* at ¶40.) Granting Freemantle's Motion would also result in undue delay and needless expense. (*Id.* at ¶¶40-41.)

Similarly, no basis exists for Freemantle to intervene as a matter of right pursuant to Rule 24(a), SCRCPP. No statute confers upon Freemantle "an unconditional right to intervene," *see* Rule 24(a)(1), SCRCPP, and Freemantle cannot demonstrate any particularized interest arising out of Preston's Severance Agreement. *See Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (rejecting Freemantle's claims, other than under FOIA, due to a lack of particularized interest and therefore no standing).¹⁹ Under South Carolina law, only a party with standing *and*

¹⁸ "The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." 7C Wright & Miller, §1916.

¹⁹ The doctrine of collateral estoppel bars Freemantle from re-litigating the standing and real party in interest issues. *See Crosby v. Prysmian Commc'ns Cables & Sys USA, LLC*, 397 S.C. 101, 109, 723 S.E.2d 813, 817 (Ct. App. 2012).

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who constitutes the real party in interest can properly intervene in a lawsuit. *Bailey v. Bailey*, 312 S.C. 454, 458 (1994) ("Therefore, we hold that respondents lack standing to intervene in appellants' lawsuit.");²⁰ *see also* Rule 17(a), SCRPC (requiring: "Every action shall be prosecuted in the name of the real party in interest.")²¹ Accordingly, Freemantle cannot intervene as a matter of right in this case.²²

²⁰ *See also Beaufort Realty Co., Inc. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2001) ("A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests.")

²¹ Ample authority supports such analysis. *See, e.g., Envtl. Def. v. Leavitt*, 329 F.Supp.2d 55, 66 (D.D.C. 2004) ("[A]pplicant for intervention as of right must demonstrate that it has standing by showing injury-in-fact."); *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 316-17 (6th Cir. 2005) (Party could not intervene to appeal negotiated settlement because it had no cognizable legal interest in the subject matter of the zoning litigation.); *Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1513 (11th Cir. 1996) (*cert denied*) (An interest in the collateral estoppel effect of an action, in which a party is not a party in interest to the transactions underlying the action, is not a sufficient interest in the action to support intervention as of right); *Hawaii-Pacific Venture Capital Corp. v. Rothbard*, 564 F.2d 1343 (9th Cir. 1977) (A person with a potential claim against a party in a class action has no right to intervene simply because the outcome of the suit may increase or decrease the collectability of his claim.); *In re Franklin Nat'l Bank Secs. Litig.*, 92 F.R.D. 468, 470-71 (D.C.N.Y. 1981) (The nonprofit group was not entitled to intervene as of right in an action brought by FDIC to challenge order of confidentiality relating to settlement, as it had "no 'significantly protectable interest' in the [] litigation."); *Liberty Mut. Ins. Co. v. Pac. Indem. Co.*, 76 F.R.D. 656, 660 (D. Pa. 1977) (Plaintiff could not intervene in declaratory action relating to insurance coverage as plaintiff had not yet obtained a judgment.)

²² Freemantle, in part, contends he should be allowed to intervene in the instant case so as to preserve his remedies in the Freemantle Lawsuit. However, South Carolina precedent expressly disallows intervention bids for purposes of preserving a possible, future remedy. *See Ex parte Reichlyn v. Columbia Organic Chem. Co., Inc.*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993) (Merely claiming a general interest in a lawsuit so as to preserve remedy in another lawsuit is not a "direct or legally protectable interest" in the subject of the lawsuit in which intervention is sought) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 285 (4th Cir. 1989) (merely claiming an interest in a lawsuit to preserve potential indemnification rights fails to support intervention)). *See also Washington Elec. Coop, Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d. Cir 1990) ("An interest that is remote from the subject matter of the proceeding, or that is contingent upon the occurrence of a sequence of events before it becomes colorable will not satisfy the rule" (internal citations omitted)).

Freemantle's Intervention Motion likewise fails to show, as required, that the County has failed to protect the legal interests relating to the Severance Agreement. Rule 24(a), SCRCPP (providing intervention of right is disallowed if "applicant's interest is adequately represented by existing parties.") To the contrary, the County, to date, has expended well over double the amount of severance monies paid to Preston in seeking the Severance Agreement's rescission. (See Order, at 22 (May 3, 2013).) Merely because Freemantle may have a "difference of opinion concerning the tactics with which litigation should be handled does not [render] inadequate the representation" of the County as to the interests embraced by the instant lawsuit. 7C Wright and Miller, Fed. Practice and Procedure: Civil §1909. And, even a decision not to take an appeal falls within the County's discretion and would not render the representation inadequate.²³

Freemantle similarly fails to satisfy permissive intervention requirements. No statute affords Freemantle the "conditional right to intervene," see Rule 24(b)(1), SCRCPP,²⁴ nor does any "claim or defense" of Freemantle involve a "common" "question of law or fact" with the instant action. Rule 24(b)(2), SCRCPP. As noted *supra*, the County has alleged no claims arising under FOIA in this case. No issues, then, overlap with the sole remaining claims (*i.e.*, the FOIA claims) in the Freemantle Lawsuit.

²³ See, e.g., *Little Rock School Dist. v. North Little Rock School Dist.*, 378 F.3d 774, 780–81 (8th Cir. 2004) ("We presume that the government entity adequately represents the public . . . It is not sufficient that the party seeking intervention merely disagrees with the litigation strategy or objectives of the party representing its interests . . . [T]hat the Bollen Group has asserted its interest with arguably greater fervor than has the state and would have made different procedural choices, including a decision to appeal, does not" change the analysis.); *Dekalb Cnty. v. Post Props., Inc.*, 245 Ga. 214, 219, 263 S.E.2d 905, 909 (1980) ("[W]here the interest of the intervenor is identical to that of a governmental body or officer who is a named party, it will be assumed that the intervenor's interests are adequately represented, absent a 'concrete showing of circumstances in the particular case that make the representation inadequate' . . . Even a decision not to take an appeal" falls "within the discretion of the representative" body. (quoting 7A Wright & Miller, Fed. Practice and Procedure: Civil 519, 529–32, § 1909)).

²⁴ Freemantle has not cited any statute for purposes of intervention under Rule 24(b), SCRCPP.

Rule 24(b), SCRCP requires the Court to "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b)(2), SCRCP. Here, for the reasons cited above, the Court finds Freemantle's intervention will both unduly delay the adjudication of the instant case and prejudice Preston. Accordingly, the Court denies Freemantle's Intervention Motion under Rule 24(b), SCRCP.

Finally, during the September 9th, 2013 hearing, Freemantle's counsel articulated certain motivations prompting the filing of the Intervention Motion. Freemantle's counsel indicated the Motion was intended, in part, to obstruct or prevent a potential settlement of the case by the County and Preston. Counsel also expressed Freemantle's desire to appeal the case if County Council, in its discretion as a governing body, elected not to do so. The Court finds such motivations are improper reasons to seek intervention and the Court will not allow intervention for those reasons. Accordingly, for the reasons set forth above, the Court denies Freemantle's Intervention Motion.

The County's Motion to Reconsider

Plaintiff's Reconsideration Motion raises fifteen (15) grounds asking the Court to reconsider its Order dated May 3, 2013 (hereinafter as "Order").²⁵ Both the County and Preston

²⁵ In ruling upon the Reconsideration Motion, the Court incorporates by reference its factual and legal findings from its Order dated May 3, 2013, which further militate in favor of denying the Motion. In addition, the Order notes: "To the extent an argument has not been deemed worthy of discussion by the Court, it should be deemed as having been fully reviewed and rejected by the Court as without legal basis under the facts *sub judice*." (Order, at 4 n. 2.)

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filed lengthy submittals in connection with the Motion. After careful review, the Court denies the County's Motion.

Issue 1:

As to the Court's finding of unclean hands, the County first questions whether the Court properly distinguished Plaintiff from Council members. (Pl.'s Mot. at 2, ¶1.)²⁶ In raising the issue, Plaintiff cites page 4 of the Order and pages 32 through 34. Addressing the cited passages in turn, page 4 only relates to the factors supporting the Court's finding that a toxic political environment existed in Anderson County in the months leading up to the November 18, 2008 vote, a fact which Plaintiff conceded both before and at trial. (See Order, at 3-5 (discussing political environment in Anderson County).)²⁷

Pages 32-34 contain eight bullet points supporting the Court's finding of unclean hands in this case. Each bullet point outlines conduct involving either sitting County Council members acting alone or acting in concert with Council-elect in an effort to interfere with Preston's role as County Administrator in violation of the Home Rule Act.²⁸ Moreover, in a ninth bullet point, the Court referenced a series of actions (appearing in Exhibit A to the Order), which the Court found did not constitute conduct properly attributable to the Plaintiff. (Order, at 34.) The County's Motion overlooks that the Court, in fact, made such distinctions, which were the exact distinctions Plaintiff asserts as unmade. In so doing, the County's Motion fails to explain why

²⁶ In its first argument, the County also references issues relating to its contentions Preston's Severance Agreement was arbitrary and capricious. The Court addresses such issues below.

²⁷ No exception to the doctrine of *respondeat superior* exists merely because the entity constitutes a public entity. Moreover, in the tort context, the Tort Claims Act mandates the substitution of the public entity as the named defendant when individual public officials and employees are named as a defendant. See S.C. Code Ann. §15-78-70(c).

²⁸ Notably, Bullet Point 5 discusses improper conduct expressly ratified by Anderson County in ACC Resolution 2009-63. (See First Davis Aff., Ex. F, at 17.)

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the distinctions made by the Court were improperly drawn. After careful review, the Court finds the distinctions were properly made.

Issue 2:

The County's second ground urging reconsideration relates to the Quorum Claim addressed *supra* at pp. 1-6.²⁹ As noted *supra*, before filing its Reconsideration Motion, the County failed to preserve the quorum issue as the issue was not presented to the Court.³⁰ Indeed, the County argued the exact opposite position of what it now posits in both its Reconsideration Motion and Motion to Amend.³¹ Accordingly, the County has waived this issue and cannot purport to change the complexion of this case, after judgment, by interjecting a new claim for relief requiring additional discovery and proof.³²

²⁹ The Court incorporates its prior discussion of the quorum issue (above) herein by reference.

³⁰ The County's Motion appears to suggest it raised the quorum issue in its written summation. (See Pl.'s Mot., at 5.) The Court has reviewed the passage cited by the County and it does not relate to the quorum issue. The actual argument, which the Court rejected (*see* Order, at 11 n.6) contended that all Council members received the same release conferring the same benefit and, as a result, if Preston's argument was accepted "no one should have voted." (Pl.'s Post-Trial Memo., at 17.) After searching the County's written summation, the Court notes the word "quorum" appears nowhere in the submittal, nor was the issue otherwise raised.

³¹ Notably, the County's Reconsideration Motion suggests, "The prospect of destruction of a quorum was not present in this case until the Order invalidated four votes." (Pl.'s Mot. to Recons., at 5.) By contrast, the County's Motion to Amend simultaneously suggests the Court tried the issue by consent. (Pl.'s Mot. to Am., at 5.) The Court rejects both contentions. As noted above, the issue of the disqualification of Waldrep's and C. Wilson's votes is factually and legally distinct from the issue of whether a quorum existed. However, to the extent the County predicates its quorum analysis on the disqualification of Waldrep's and C. Wilson's votes, the Court heard such issues at trial but the County failed to raise the Quorum Claim when they arose.

³² See *MailSource, LLC v. M.A. Bailey & Assocs., Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003) ("A party cannot raise an issue for the first time in a Rule 59(e), SCRCP motion which could have been raised at trial."); *Anderson Mem'l Hosp., Inc v Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not."); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (issue not preserved where party raised argument for the first time in motion for reconsideration); *Wilder Corp. v. Wilke*, 330 S.C.

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As to the substantive merits of the County's quorum analysis, the Court rejects the same. The Court analyzed such issues above and expressly incorporates its previous findings herein. (See *supra* at 3-5.) Accordingly, the Court rejects the second ground raised by the County as substantively incorrect.

The County also incorrectly urges the disqualification issue of Waldrep's and C. Wilson's votes were not properly raised and preserved. (Pl.'s Mot. to Recons., at 4, n.4.) The Court disagrees for the following reasons:

- The County's own pleading first put the voting disqualification of the 2008 Council's members at issue. (See Am. Compl., ¶135; see also Order, at 6.)³³
- Preston's Ninth Affirmative Defense specifically pleads the decision of *Baird v. Charleston Cnty.*, 333 S.C. 519, 535, 511 S.E.2d 69, 79 (1999) (treated as "Baird").(See Order, at 6 n.4.)³⁴
- The disqualification of Waldrep's and C. Wilson's votes do not even implicate a true affirmative defense, but rather form part of Plaintiff's *prima facie* proof of the claims the County alleged in seeking to invalidate Council action.
- The Parties otherwise tried the issue of disqualifying Waldrep's and C. Wilson's votes pursuant to Rule 15(b), SCRPC. (See Pl.'s Mot. to Am., at 5.) The Court allowed the evidence at trial and addressed the same on page 6 of its Order.³⁵

71, 76 497 S.E.2d 731, 733 (1998); see also Jean Hofer Toal *et al.*, *Appellate Practice in South Carolina* 57 (2d ed. 2002) (outlining requirements for preserving issues at trial: the issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised with sufficient specificity.)

³³ Having placed the issue in contention, the County cannot complain when the Court's decision embraces and decides what it has raised by contention at its own hand. See *State v. Brown*, 344 S.C. 70, 76, 543 S.E.2d. 552, 555 (2001) (petitioner cannot complain of prejudice from evidence he has brought before the jury); *State v. Robinson*, 305 S.C. 469, 474, 409 S.E.2d. 404, 408 (1991) (a party will be unsuccessful in opposing the admission of evidence if that party was the one who opened the door).

³⁴ The *Baird* holding specifically requires an analysis of whether disqualified votes would cause a vote to fail. Analyzing how many votes were cast and analyzing what votes warrant disqualification when tallying whether a disputed measure passed by majority vote falls squarely beneath the *Baird* holding and squarely beneath Preston's Ninth Affirmative Defense.

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Accordingly, the Court rejects the County's contention that the disqualification of Waldrep's and C. Wilson's votes were not properly raised and preserved.

Issue 3:

Under its third issue, the County asserts the Court failed to "address the county's showing of a business connection between McAbee and Amy Plummer, and of the travel and commission benefits she received and operated to disqualify him." (Pl.'s Mot. to Recons., at 6.) The Court rejects the County's third contention as unfounded. The County neglects the following findings in the Order:

- "After considering all evidence of record...McAbee did not possess a financial interest in Preston's Severance Agreement or the vote approving the same." (Order, at 7.)
- "[N]either the allegations nor the record evidence concerning McAbee's vote gave rise to a substantial appearance of impropriety." (Order, at 7.)
- "No evidence linked McAbee's travel to Preston's Severance Agreement or the surrounding issues." (Order, at 8.)

³⁵ The Court notes that if the County believed the issues were not raised by the pleadings, it could have moved for a continuance pursuant to Rule 15(b), SCRPC. No such motion was made. Moreover, the evidence of record reflects the issue had arisen and was factually developed during the discovery phase. During her deposition, C. Wilson was examined about: the tort claims asserted by Preston, which she confirmed referred to her and Waldrep (C. Wilson Tr. Test. (Depo.) 59:14-18; 60:13-18); the scope of the release in the Severance Agreement (*Id.* at 65:20-25; 66:1-11); the lawsuit brought by Preston and the injunction granted against C. Wilson (*Id.* at 70:1-25); C. Wilson's understanding that she could not vote on an item where her personal interest exceeds that of the general public, which she confirmed (*Id.* at 74:24-25; 1-24); whether C. Wilson voted on the Severance Agreement containing a release when she previously was put on notice of tort claims personally against her, which she admitted (*Id.* at 75:1-14); and C. Wilson's provision of a confidential settlement agreement to Rick Freemantle in violation of ACC §2-288, which she confirmed. (*Id.* at 75:23-25; 76:1-77:8; 81:1-15.) The County also called Waldrep and C. Wilson in their case-in-chief and elected not to question either about potential disqualification issues.

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- "The evidence established McAbee's economic development travel occurred over an extended period of time and did not relate to Preston's Severance Agreement." (Order, at 8.)

The Court notes that by finding no evidence linked McAbee's travel to the Severance Agreement, any allegations concerning Plummer are necessarily subsumed by the Order's finding, since only McAbee, not Plummer, served on Council. Throughout the trial, the County broadly referenced a "business connection" between McAbee and Plummer but failed to introduce any evidence establishing a connection between such a relationship and Preston's Severance Agreement. The lack of evidence introduced by the County, in this regard, warranted no further discussion beyond what is found in the Order.³⁶ Indeed, the Court cannot discuss evidence the County did not present.

Issue 4:

According to the County, the Court failed to address the fact "that Preston was aware—at the very moment [County Council voted] for his Severance Package—that Thompson and Ron Wilson should have been disqualified." (Pl.'s Mot., at 6, ¶4.) Yet, even though the County shouldered the burden to prove the same by clear and convincing evidence, the County introduced no such evidence.³⁷

³⁶ Notably, the only commission McAbee ever received occurred in April of 2008, over five (5) months before Preston's employment dispute arose in September of 2008 and over seven months before the Severance Agreement vote in November of 2008. (Order, at 8.) The trial testimony and exhibits further revealed McAbee recused himself from every vote relating to the transaction, which arose out of a real estate contract originating years before. (Order, at 8; Def. Ex. 58; Def. Ex. 59; Def. Ex. 60.) No evidence of record reflected Preston had anything to do with the commission received by McAbee. (Order, at 8.) And, the trial testimony failed to establish McAbee received any part of any commission from the properties listed by Plummer or involving the County.

³⁷ See *Kahn Constr. Co. v. S.C. Nat'l. Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980); *Baptist Found. for Christian Educ. v. Baptist College*, 282 S.C. 53, 59–60, 317 S.E.2d 453, 458 (Ct. App. 1984); *Smothers v. Richland Mem'l Hosp.*, 328 S.C. 566, 570, 493 S.E.2d 107, 109 (Ct. App. 1997).

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In raising this issue, the County's Motion improperly attempts to convert factual knowledge into knowledge of a "legal conclusion." According to the County, Preston had knowledge that the alleged interests of Thompson and Wilson disqualified their votes by operation of law (*i.e.*, the Anderson County Code of Ordinances and the State Ethics Act). The County's analysis errs for three (3) reasons:

- First, the County presented no evidence showing Preston knew Thompson's and Wilson's votes warranted disqualification due to legal constraints. In fact, the only testimony at trial about the same (that of Preston) showed the exact opposite.
- Second, as stated in the Order, "impacted elected officials possessed positive legal duties to disclose any issues implicating ethical matters." (Order, at 25.) The Anderson County Code expressly confers such duty, first on the individual Council member, and then if doubts persist, on the County Attorney.³⁸ Neither at trial nor in its Reconsideration Motion does the County explain or present evidence why Preston, a lay person, possessed a duty as County Administrator to furnish legal opinions concerning ethics laws during County Council meetings.³⁹
- Simultaneously, the County seeks to transfer a duty conferred to the County Attorney on Preston under factual circumstances where Preston was represented by counsel and openly adverse to the County. (*See* Order, at 25.)

For these reasons, the Court rejects the fourth ground raised by the County's Motion.⁴⁰

³⁸ Anderson County Code §2-352(b) states: "It shall be the responsibility of members, individually and collectively, to become familiar with the provisions of [the Ethics Act] and conduct themselves accordingly." (ACC §2-352(b).) In turn, ACC § 2-289 states in material part: "When an official . . . has doubt as to the applicability of a provision of this division to a specific situation or definition of terms used in the Code, he shall apply to the county attorney for an advisory opinion and be guided by that opinion when given." ACC §2-289.

³⁹ Moreover, misrepresentations as to matters of law cannot support claims for constructive fraud or fraud. *See Barber v. Barber*, 291 S.C. 399, 400, 353 S.E.2d 882, 883 (Ct. App. 1987); *First Nat'l Bank of Greenville v. U.S. Fid & Guar. Co.*, 207 S.C. 15, 30, 35 S.E.2d 47, 59 (1945).

⁴⁰ The County's argument is also misplaced since it overlooks a number of findings in the Court's Order, including: "As to Thompson and R. Wilson, the County failed to introduce any evidence linking the alleged improprieties to Preston's Severance Agreement." (Order, at 25.); "Plaintiff failed to prove such disclosures were material to the outcome . . . even if made." (Order, at 25.); "[T]his Court has invalidated any tainted votes and the result of the voting remains unchanged." (Order, at 25.); "No evidence proved the [Schaum] Contract's renewal was in any way material or related to the County Council's decision to approve Preston's Severance Agreement." (Order,



Issue 5:

As a fifth ground, the County contends two passages in the Order concerning R. Wilson are inconsistent. (Pl.'s Mot. to Recons., at 6-7.) The two passages appear on page 9 of the Order and on pages 26 and 27 respectively. The passage on page 9 relates to R. Wilson's knowledge of the Services Contract's extension when he voted, while the passage on pages 26 and 27 discusses the fact that it was well known Schaum had a Services Contract before any contract extension and well before Preston asserted any claims against the County. The Court finds the passages do not conflict.⁴¹

As to the passage from page 9, the County did fail to prove Wilson had knowledge of the "Services Contract's *extension* when he voted." The only evidence introduced about the issue came from Allison Schaum, who testified she never told her father of the Services Contract's extension. No evidence of record demonstrated otherwise and the Court rejects the County's contention that a reasonable inference could otherwise be drawn.

As to the passage from pages 26 to 27, the Services Contract was a public file, *see* S.C. Code §30-4-40(a)(5)(A), which the County nowhere disputes Preston had a duty to disclose.⁴²

at 27.); "The evidence further failed to prove County Council would not have approved the Severance Agreement, regardless. Indeed, the Court finds the evidence of record proves otherwise." (Order, at 27.)

⁴¹ Compare Order, at 9 ("No evidence establishes R. Wilson knew of the Services Contract's extension when he voted.") with Order, at 26-27 ("[T]he Court finds the Services Contract was a public file and Preston had no duty to inform Council of public information. *See, e.g.*, S.C. Code Ann. §30-4-40(a)(5)(A). It had been widely known that Schaum had a Services Contract with the County long before Preston asserted any claims against the County. Schaum's relationship with R. Wilson was likewise known.")

⁴² The fact that the file was public does not prove R. Wilson knew about the Services Contract's extension when he voted.

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Moreover, the evidence of record established it had "been widely known that Schaum had a Services Contract with the County long before Preston asserted any claims against the County."⁴³ (Order, at 26-27.) The trial evidence similarly confirmed it was widely known that Schaum was R. Wilson's daughter. Accordingly, the Court finds both passages are accurate, supported by the evidence at trial, and consistent.

Issue 6:

As to the sixth ground, the County contends the Court failed to address "the available inference of knowing impropriety" arising out of Preston's subsequent investment of severance proceeds. The Order does not address the issue because no such available inference exists. No trial evidence demonstrated R. Wilson contemplated soliciting an investment from Preston at the time of the Severance Agreement vote.⁴⁴

Preston's testimony was the only evidence introduced at trial regarding the issue. Preston testified he did not consider investing with R. Wilson until months after he left his post as County Administrator. Moreover, Preston testified that he had been duped, just like countless other investors. The County introduced no evidence to suggest otherwise and its Motion cites none.

Issue 7:

The County next contends the Court failed to address the factors the County argues as distinguishing this case from the holding in *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999). (Pl.'s Mot. to Recons. at 7.) The Court analyzed the *Baird* decision at length in its Order and finds no error in *Baird's* application to the instant case. (See Order, at 12-16.)

⁴³ The sentence does not relate to the Services Contract's extension but rather to the fact that Schaum had a contract with the County, which had existed since September 4, 2007. (See Am. Compl., ¶126.)

⁴⁴ Moreover, the Order discounted R. Wilson's vote on other grounds. (Order, at 9.)



Moreover, the County overlooks the numerous decisions cited by the Order, which also support its findings. (See Order, at 13 n.10). The County also overlooks the Court's analysis discussing the superiority of the approach adopted by *Baird*. (Order, at 14 n.12 (noting the County's urged approach would up-end the finality of legislative action and injure the public interest.)) By contrast, the distinctions the County attempts to draw have no foundation in South Carolina law, prove unpersuasive, and simply ignore South Carolina law as stated in *Baird's* holding.

Nonetheless, contrary to the County's assertions, the Order did address and rejected the distinctions the County misreports as overlooked:

- "No South Carolina authority supports the County's premise wherein it argues that South Carolina courts should weigh the potential sway of participating individuals when reviewing the validity of governmental votes. To the contrary, here, all elected officials owed the same legal duties to their constituents. The Court treats each public official equally and finds their respective votes warrant equal weight and independence." (Order, at 14.)
- "The County characterizes County Council's approval of the Severance Agreement as judicial in nature. The Court rejects the County's distinction in this regard. The 'appointment and removal of a public officer is a governmental function' *Piedmont Pub. Serv. Dist. v. Cowart*, 324 S.C. 239, 241, 478 S.E.2d 836, 837 (1996). Indeed, it is a statutory power conferred upon County bodies to exercise within their legislative discretion. S.C. Code Ann. §4-9-620." (Order, at 14 n.13.)
- "In addition, the County also characterizes the Severance Agreement as conferring solely an 'individual benefit.' The Court likewise rejects this characterization. The evidence at trial confirmed those Council members who appropriately voted in favor of the Severance Agreement did so in hopes of promoting the public good. Some of the rationales included *inter alia*: a desire to avoid a significant downside risk to the County, to avoid further political infighting that had proved deleterious to the County, to help the County move forward with County business, which had been stymied, and to help ensure the County could hire competent County Administrators later." (Order, at 15.)
- "The Court, therefore, rejects Plaintiff's premise that because Thompson (as Chairman of Council) and R. Wilson (as Chairman of the Personnel Committee) supported the Severance Agreement, their influence overwhelmed the independent judgment of the County Council's remaining elected officials. Indeed, even if such inquiry proved appropriate, the evidence of record establishes otherwise." (Order, at 15.)

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- As discussed at length above and below, Preston testified he believed no conflicts existed. None could be kept hidden because no conflicts were believed to exist. Moreover, the Court specifically found the County failed to prove the existence of such conflicts was material: "Plaintiff has not shown such disclosures, even, if made, would have changed the votes of McAbee, Greer, and Floyd. Indeed, the evidence of record supports an opposite conclusion." (Order, at 25.) The Court discounted those votes for which it found an appearance of impropriety existed. And, the measure still passed.
- "*See also Griggs v. Hodge*, 229 S.C. 245, 251, 92 S.E.2d 654, 657 (1956) ("As a general rule, the courts will not attempt to interfere with the exercise of discretionary powers by a public board or subordinate governmental agency."); *Schroeder v. O'Neill*, 179 S.C. 310, 184 S.E.2d 679, 684 (1936) ("The court will not interfere with discretionary powers of a municipal body, except in cases of fraud or clear abuse of power, or where unreasonable or capricious"); *Plunkett v. City of Aiken*, 159 S.C. 97, 108-09, 156 S.E. 245, 249 (1931) ("The exercise of that discretion, so long as it is not unreasonable or capricious, is a matter of policy with which the courts are not concerned. There was not sufficient evidence to show any exercise of arbitrary power or caprice upon the part of the city council, and we cannot sustain the decree of the circuit judge on this additional ground, as urged by the respondents.')." (Order, at 16 n.14.)
- "Consistent with their votes throughout, the trial testimony from voting Council members reflected that additional debate on the Motion to Reconsider would not have changed their ultimate vote. (*See, e.g., McAbee Tr. Test.; Greer Tr. Test.; Floyd Tr. Test.*) The County has not introduced any evidence to the contrary. Second, had such members felt that additional debate could materially change their ultimate vote, they could have voted against the final vote adopting the Severance Agreement. As noted above, this did not occur, as the Second Vote on the Severance Agreement passed with a vote of 5-1-1. Third, adverse parliamentary rulings can be appealed under the Anderson County Code. *See ACC § 2-37(g)(1)*. Here, no appeal occurred. (*See Pl.'s Ex. 5.*) Finally, South Carolina Courts do not review the parliamentary processes of legislative bodies. *See State v. Lewis*, 181 S.C. 10, 186 S.E. 625, 631 (1936) ("That is merely a matter of parliamentary procedure, which each body, by special rule, may, and usually does, regulate for itself."); *Smith v. Jennings*, 67 S.C. 324, 328, 45 S.E. 821, 822-23 (1903) ("That is merely a matter of parliamentary procedure, which each body, by special rule, may, and usually does, regulate for itself."); *see also MASON'S MANUAL OF LEGISLATIVE PROCEDURES § 71*, at 72 (1975) ("[C]ourts will not disturb a ruling on a parliamentary question made by a legislative . . . body having authority necessary to make rules for its government . . .")." (Order, at 17 n.15.)

Thus, the Order did address the distinctions drawn by the County, despite their lack of footing under South Carolina law. Accordingly, the Court rejects the County's seventh ground seeking reconsideration.

Issue 8:

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As to the eighth ground, the County contends the Court did not address Plaintiff's argument that the Severance Agreement was arbitrary and capricious and violated public policy. (Pl.'s Mot. to Recons., at 8.) However, the Order discusses in detail both the County's arbitrary and capricious and public policy arguments for five (5) pages. (See Order, at 18-22.) The Order analyzed the trial evidence through the correct legal standards for evaluating whether the 2008 County Council's decision-making was arbitrary and capricious, which the County does not contest or cite any authority to the contrary. (Order, at 18-22.)

The County's eighth ground is misplaced as it overlooks the actual findings of fact made by the Court in concluding the 2008 Council amply satisfied the "fairly debatable" standard.⁴⁵

⁴⁵ The County's Motion simply overlooks the numerous factual findings made by the Court in the Order. The Court incorporates such factual findings herein by reference. (See, e.g., Order, at 18-22: ("[T]he Court finds Anderson County Council's approval of the Severance Package fell within the advice of counsel and has proven a reasonable choice." (Order, at 20)); ("The reasonability of County Council's decision-making proves especially true in light of the steps the Council-elect had leaked to the public as their intended course of action upon taking office." (Order, at 20)); ("[I]t is worth noting that Preston's claims, as articulated in correspondence from his attorney dated October 23, 2008, included potential tort claims and exceeded severance claims arising strictly from the four corners of his Master Employment Agreement." (Order, at 20 n.16)); ("Thus, contrary to Plaintiff's suggestions, County Council's mere approval of a Severance Agreement providing for severance amounts exceeding the strict operation of Preston's Master Employment Agreement does not render the Severance Agreement arbitrary and capricious." (Order, at 20 n.16)); ("By November of 2008, the evidence at trial demonstrated that the issue of whether to suspend and dismiss Preston had already been made by Council-elect without giving Preston the right to present evidence at a fair and impartial hearing before the entire 2009 Council." (Order, at 21)); ("To follow such course could very well have resulted in the costly litigation feared by the County's employment lawyer. The County's employment lawyer estimated potential exposure, including attorney's fees and costs, of up to two million (\$2,000,000.00) dollars." (Order, at 21)) ("Each of the Council members who the Court has found properly voted for the Severance Agreement provided independent and lucid reasons supporting their votes." (Order, at 21 n.18)); ("Also, it is noted that the *Cunningham* case has been allowed to go forward toward trial on issues relating to his wrongful discharge. These are some of the same issues that may have been asserted by Preston had the plan developed by the councilmen and councilmen-elect in the time leading up to this vote been allowed to proceed as had been planned." (Order, at 21)) ("It is noteworthy that, upon that upon taking office, Council-elect did take actions to initiate this litigation on similar issues facing the 2008 Council in the litigation averted by the Severance Agreement. The resulting costs to Anderson County for this

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The County instead complains the Court failed to address Plaintiff's arguments concerning the arbitrary and capricious nature of the Severance Agreement because it was "based on an asserted claim for 'anticipatory breach' that could not exist as a matter of law."⁴⁶ (Pl.'s Mot., at 8.) The Court rejects the County's contention for three reasons.

First, the Order did address the issue. After hearing all of the trial testimony and weighing the credibility of the same, the Court found, "[T]he issue of whether to suspend and dismiss Preston had already been made by Council-elect without giving Preston the right to present evidence at a fair and impartial hearing before the entire 2009 Council. It is clear to this Court that the matter had been prejudged by the majority of Council-elect." (Order, at 21.) The 2008 Council took reasonable actions to safeguard against imminent litigation, for which they had received notice and for which their employment attorney opined would expose the County to

litigation and the underlying investigation have exceeded the County employment attorney's 2008 estimate of two million dollars (\$2,000,000.00)." (Order, at 22)) ("The Court finds the witnesses supporting the Severance Agreement, specifically Gracie Floyd, Larry Greer and Bill McAbee, to be the more credible witnesses in the trial. Other testimony at trial was evasive and not credible concerning the emails between those parties that did not support the approval of the severance package untrustworthy." (Order, at 40)).

⁴⁶The only authority the County has cited to support its argument is that of *Collins Holding Corp. v. Wasau Underwriters Ins. Co.*, 204 Fed. Appx. 208 (4th Cir. 2006). *Collins* was an unpublished opinion having no precedential value in this Court. *Council v. Catoe*, 359 S.C. 120, 127, 597 S.E.2d 782, 785 (2004) ("Further, as an unpublished opinion, *Locklair* has no precedential value." (citing Rule 220(a), SCACR)); *Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000) ("However, it should be noted unpublished opinions have no precedential value.") Moreover, *Collins* bears no resemblance to facts *sub judice*. *Collins* involved a dispute under an insurance contract between two private entities. The insurer paid Collins the sum of two hundred and ninety-six thousand dollars (\$296,000.00) and informed Collins no additional replacement cost amounts would be paid unless Collins completed repairs by a slated date. Collins did not make the repairs by the date specified by the insurer. Under such facts, the Court found no anticipatory breach of contract existed.

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"estimated potential exposure, including attorney's fees and costs, of up to two million dollars (\$2,000,000.00)."⁴⁷ (Order, at 21.)

No authority exists to support the notion that elected officials must standby and idly watch as the County becomes entrenched in litigation. Legislative bodies routinely address issues in prospective fashion. Indeed, such is the very nature of the obligation to constituents.

Second, the County's argument misstates the reasoning expressed by the 2008 Council members for voting in favor of the Severance Agreement. Contrary to the trial evidence, the County attempts to reduce the basis for the 2008 Council's vote in favor of the Severance Agreement to a solitary issue—the "anticipatory breach" claimed by Preston. Yet, as discussed in the Order, the 2008 Council members expressed a host of interrelated reasons explaining their votes.⁴⁸ The Order correctly examined the evidence introduced at trial in its totality. (Order, at 18-22.)

Third, as the Order points out, Preston's demand letter also referenced tort claims against two members. (Order, at 20 n.16.) While the County now argues, "there was no evidence any such other claim was ever identified or could be valid," both Waldrep and C. Wilson confirmed

⁴⁷ If potential liability proved as speculative as the County's Motion suggests, the "County's employment attorney would not have identified a potential downside risk of up to two million dollars (\$2,000,000.00)." (Order, at 22 n.19.) Moreover, "the County's employment lawyer alluded to subsequent events before County Council acted upon the Severance Agreement." (Order, at 17 n.17.) And, the County's employment lawyer also conceded during trial testimony that public officials had to take into consideration additional factors relating to the public, which fell beyond his scope of knowledge and expertise.

⁴⁸ (Order, at 21, n.18) (hoping political infighting would end that had impaired the County's ability to do business for years; sought to avoid the potential downside risk of two million (\$2,000,000,00) dollars; sought to avoid risk to economic development; deemed it important to treat the County Administrator fairly so as not to impair County's ability to find another Administrator; believed the Severance Agreement was the honest and fair thing to do; believed it was important for the County to treat Preston honestly and fairly; sought to avoid deleterious situation to County; sought to remove impediment to County Council's ability to move forward.)

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Preston's demand letter referenced the assertion of tort claims against them personally. (See Waldrep, Tr. Test. (Day 1); Tr. Test. C. Wilson (Depo.), 59: 14-18; 75:1-8; Pl. Ex. 22.) Moreover, Preston introduced an unappealed Order from *Preston v. Waldrep & C. Wilson*, No. 2008-CP-04-2776, wherein the Court found, among thirty-one (31) findings in all, that: "The County Administrator's duty to supervise his employees is being intentionally and purposefully thwarted by [Waldrep and C. Wilson]," and "[t]he actions of Defendants have interfered with the County Administrator's ability to do his job." (Def. Ex., ¶¶27 & 29.)⁴⁹ Despite such evidence, the County asks the Court to reconsider its Order contending "no evidence" exists showing the tort claims referenced by Preston were "ever identified" or "could be valid." (Pl.'s Mot., at ¶8.)⁵⁰ Accordingly, the Court rejects the County's position as unfounded.⁵¹

The County next complains the Court Order does not address its allegations the Severance Agreement "violated public policy." (Pl.'s Mot., at 8.) However, the Order specifically finds: "As to the second cause of action, the Court finds that public policy renders

⁴⁹ At the time of the November 18, 2008 meeting, the Parties had already submitted filings and had participated in a hearing on the issues prompting the Court's Order.

⁵⁰ The Court rejects the County's arguments, in this regard, as without basis. As County Administrator, Preston did file a lawsuit against Waldrep and Wilson in their individual capacities seeking an injunction, attorney's fees and costs for interfering with his job. And, in his individual capacity, Preston gave notice of tort claims against Waldrep and C. Wilson in their individual capacities for interfering with his job. In both instances, the claims against Waldrep and C. Wilson were against them in their individual capacities, which is why the release operated to confer an economic benefit on them personally but not the other Council members.

⁵¹ The County also disregards the Court's finding that: "County Council's mere approval of a Severance Agreement providing for severance amounts exceeding the strict operation of Preston's Master Employment Agreement does not render the Severance Agreement arbitrary and capricious." (Order, at 20 n.16.) The Court cited three reasons for the same: Preston's demand asserted tort claims exceeding the four corners of the Master Employment Agreement; the release contained in the Severance Agreement exceeded the scope of the release contemplated by the Master Employment Agreement; and the Master Employment Agreement contained an indemnity provision, which survived the Agreement, but was terminated under the Severance Agreement. (Order, at 20 n.16.) The County's Motion does not refute any of the Court's findings in this regard.

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neither the Severance Agreement nor the vote adopting the same as void as against public policy." (Order, at 18.) The Court also noted, "[P]aragraphs 37 through 39 of the Amended Complaint never specify how the Severance Agreement's approval violated public policy..." (Order, at 18.) Accordingly, the County's eighth exception to the Order has no merit.

The Order rejected the County's unspecified public policy claims, finding the exact opposite proved true. "The Court [found] greater harm would exist by virtue of South Carolina's courts disturbing the decision of a legislative body." (Order, at 18.) As the Court correctly found, "South Carolina courts accord deference to the discretionary decision-making conferred upon legislative bodies by statute." (Order, at 18.) South Carolina law mandates such deference so as to preserve the integrity of duly elected legislative bodies and proper observance of Separation of Powers constraints. (See Order, at 15, 18-19.)

Issues 9 & 10:

As to grounds nine and ten, the County contends the Order misapprehended its breach of fiduciary duty claim and the duty Preston owed to the County. The Court rejects the County's contentions in this regard. Whether and to what extent a party owes a fiduciary duty to another constitutes "an equitable issue for the judge to decide," *see Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004), and requires the Court to "look to the particulars of the relationship between the parties." *Armstrong v. Collins*, 366 S.C. 204, 222, 621 S.E.2d 368, 377 (Ct. App. 2005); *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (Ct. App. 2002).

To impose a fiduciary obligation to the matter under consideration, "the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the party so reposing." *Moore*, 360 S.C.

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at 251, 599 S.E.2d at 472. Applying such principles to the case *sub judice*, the Order correctly found the facts and circumstances, as they related to the Severance Agreement, failed to support the imposition of a fiduciary duty. (See Order, at 23) ("[N]o evidence [exists] supporting Plaintiff's contention that Preston breached a fiduciary duty...")⁵²

The Court correctly found and the County does not dispute, "It is clear to this Court that by October and November of 2008, Preston and County Council had assumed positions adverse to each other." (Order, at 25.)⁵³ Under these particular facts, the Order correctly concluded, Preston did not owe County Council a duty to furnish information adverse to his position. (Order, at 26; *see also supra*.) Plaintiff failed to introduce any plausible evidence entitling it to contend Preston should have acted on behalf of the County and not "his own behalf" as related to his employment claims. *Moore*, 360 S.C. at 251, 599 S.E.2d at 472.⁵⁴ Accordingly, the Order correctly found, as an adverse party, Preston owed no duty to the County.

⁵² The Court specifically incorporated such analysis into its discussion of the County's breach of fiduciary duty claim. (Order, at 23 n.20.)

⁵³ As the Order reflects, Preston had: sued C. Wilson and Waldrep individually; retained personal counsel; furnished notice of his claim against the County; and furnished notice of tort claims he intended to bring against individual Council members. (Order, at 25.) Like Preston, the County, C. Wilson, and Waldrep had retained their own attorneys to protect their interests. (Order, at 25.) Thus, at the time of the Severance Agreement vote and earlier, "Preston was a claimant against certain Council members and Council itself" and the parties' "adversarial positions" were both "open and known" to both parties, as the parties had actively engaged in negotiations adverse to each other. (Order, at 25.)

⁵⁴ Moreover, while South Carolina courts have not yet addressed the issue, those courts from other jurisdictions addressing the issue have reached the same conclusion as this Court. *See e.g.*, *Boaz v. Boaz*, 221 S.W.3d 126, 133 (Tex. Ct. App. 2006) ("[A]dverse parties who have retained professional counsel . . . do not owe fiduciary duties to one another."); *Gray v. Caldwell*, 904 So.2d 212, 215 (Miss. Ct. App. 2005) ("[I]n transactions of sale of their interests, cotenants do not stand in a relationship of mutual trust and confidence toward each other, but deal as adverse parties."); *Bender v. Wise*, Ca. No. 04-0521, 695 N.W.2d 335, at *3 (Iowa Ct. App. Dec. 22, 2004) (Unpublished Opinion) ("Nothing in the relationship between adverse parties suggests the existence of a fiduciary duty."); *Smalley v. Smalley*, No. 09-11-00261, 2012 WL 1448433, at 5-6 (Tex. Ct. App. Apr. 26, 2012) ("[A]dverse parties who have retained professional counsel . . . do

Moreover, as discussed above and incorporated herein by reference, what the County contends Preston should have disclosed constitutes a legal opinion under State and local ethics laws. *See supra* at 19-20. Yet, under Anderson County Ordinance, such duties are expressly conferred to Council members and, if necessary, to the County Attorney, not the County Administrator. (*See* ACC §§2-352 & 2-289; Order, at 25.)

Finally, as discussed *supra* and incorporated herein, the Order correctly found no evidence supported Plaintiff's contention that Preston had knowledge of potential violations of ethics provisions. (Order, at 23; *see also supra* at 19-20.) The only testimony at trial concerning the issue came from Preston, who testified he did not realize Thompson, R. Wilson, or McAbee had a conflict of interest. No evidence demonstrated he believed otherwise. Accordingly, the Court rejects the County's ninth and tenth grounds for reconsideration.

Issue 11:

As to the eleventh ground, the County contends the Order fails to address the argument that Preston "continued to act" with respect to "the Heather Jones memoranda after he left office." (Pl.'s Mot., at 10.) The County is incorrect. The last sentence on page 27 of the Order (continuing on page 28) states: "Moreover, the County failed to prove that Preston executed any memoranda on or after December 1, 2008, as alleged." (*Compare* Order, at 27-28 *with* Am. Compl., at ¶¶11(a), (b), & (c).) Preston's Severance Agreement provided that Preston would serve as County Administrator through November 30, 2008. (Pl.'s Ex. 1.)

The County's eleventh ground also mischaracterizes certain evidence of record. For example, the County cites the Jones' memoranda as "Preston's forgery" completed "for the obvious purpose of deceiving his employer." (Pl.'s Mot., at 10.) The actual evidence at trial

not owe fiduciary duties to one another . . .") The County has supplied no legal authority to the contrary.

showed the memoranda simply replaced employment memoranda that previously existed in Jones' employment file but could not be found.⁵⁵

Issue 12:

As to the twelfth ground, the County seeks reconsideration of the Order because the Court did not address its contention that Retirement System funds could be used in fashioning a remedy for constructive trust. (Pl.'s Mot. to Recons., at 10.) The County's argument overlooks page 29 of the Order where the Court specifically rejected Plaintiff's claim for a constructive trust. The Order states: "Given the remaining findings of the Court, as set forth in this decision, Plaintiff's cause of action for constructive trust no longer remains viable." (Order, at 29.) No reason existed for the Court to analyze a remedy under a claim the County failed to prove.

Notably, the County was required, but did not, prove fraud, as an "essential element" to establish a constructive trust. *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559 (1987). The County failed to introduce any evidence establishing fraud let alone by "clear, definite,

⁵⁵ The eleventh ground of the County's Motion is also misplaced since it ignores the Order's factual findings regarding Jones. (Order, at 27) ("No evidence of record demonstrates that any document executed by Preston changed the County's existing contractual obligations to Jones."); (Order, at 27) (citing Jones Tr. Test. (Depo.) (relating to SUV allegations: 125: 9-19; 127: 20-25; 128: 1-13; 128: 24-25; 129: 1-5; 129: 18-25; 130: 1-4 Def. Ex. 66; Def. Ex. 138); (relating to Educational Reimbursements: 122: 5-20; 123: 10-12; 123: 17-25; 124: 14-25) ("The documents in question simply memorialized agreements that had been previously made and acted upon by all parties."); (Order, at 28) ("[T]he County failed to prove that Preston executed any memoranda on or after December 1, 2008, as alleged.") (Order, at 28.) ("[T]he Court finds none of the allegations relating to Jones breached the Severance Agreement, nor did the execution of Jones' employment memoranda harm the County in any way."); (Order, at 28) ("Even if Preston somehow breached the Severance Agreement, which is rejected as unsupported, the Court finds that any such breaches would not rise to the level of justifying a rescission of the contract."); (Order, at 28 n.23) ("The Court notes that the evidence demonstrated Jones had use of a County vehicle from December of 2006 until her departure in 2009, which was standard and necessary for her job."); (Order, at 28. n.23) ("Jones never submitted any educational reimbursements."); (Order, at 28 n.23 (citing Jones Tr. Test. (Depo.), 117:22-23) ("As to the travel memorandum, Preston never executed the memorandum and Jones never took the contemplated trip."); (Order, at 28 n.23) ("None of the Jones' allegations impacted the County whatsoever.")

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unequivocal, and satisfactory evidence." *See Singleton v. Mullins Lumber Co.*, 234 S.C. 330, 350-351, 108 S.E.2d 414, 424 (1959); *see also Whitmire v. Adams*, 273 S.C. 453, 458, 257 S.E.2d 160, 163 (1979) (Evidence must leave "no reasonable doubt as to the existence of the trust."); *McNair v. Rainsford*, 330 S.C. 332, 357, 499 S.E.2d 488, 501 (Ct. App. 1998).⁵⁶ Accordingly, the Court rejects the County's twelfth ground.

Issue 13:

As to the thirteenth ground, the County complains the Order fails to address the availability of rescission due to "Preston's own culpability." (Pl.'s Mot., at 11.) The County thus concludes: "the changed circumstances" defense to rescission is not available where the one invoking the defense is at fault." (Pl.'s Mot., at 11.) However, the Court rejects the County's premise, as it failed to prove any of its claims and, thus, failed to prove the "culpability" it directs at Preston. The Court, therefore, rejects the County's twelfth ground as it again errantly assumes a conclusion it failed to prove.

Moreover, the Order cited ample South Carolina law to support the unavailability of rescission in this case. (Order, at 30-31.) Under South Carolina law, "In the absence of fraud which would justify shifting the loss to party who opposes rescission, rescission is appropriate

⁵⁶ The Order's finding regarding the unavailability of rescission proves entirely consistent with the law concerning constructive trust. As the Order correctly notes: "In the absence of fraud which would justify shifting the loss to the party who opposes rescission, rescission is appropriate only if both parties can be returned to the status quo prior to the contract." *King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 129 (Ct. App. 1984). Moreover, the County appears to suggest that it can simultaneously abrogate the Severance Agreement, a fully integrated contract acknowledging the Parties' respective obligations are conditioned upon performance of the covenants stated therein in (*see* Pl. Ex. 7, at 4, ¶¶14 & 17), while simultaneously preserving monies paid to the state retirement system but re-directing such payments to Plaintiff. But, the County neither pled partial rescission and "[i]t is a generally applied rule that an integrated or indivisible contract cannot be rescinded in part." *See BHP Petroleum Co., Inc. v. Okie*, 836 P.2d 873, 883 (Wyo. 1992); 17A Am.Jur. 2d *Contracts* §548 (1991)). Of course, the Court's Order did not need to pursue such in depth analysis, as the Court found the County failed to prove its claim for constructive trust.

only if both parties can be returned to the status quo prior to the contract." (Order, at 30 (citing *King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 129 (Ct. App. 1984)). In turn, the Court specifically found the County failed to prove both its claims for fraud and constructive fraud. (Order, at 24-27.)

Citing *Griggs v. E.I. DuPont de Nemours & Co.*, 385 F.3d 440, 452 (4th Cir. 2004), the County argues rescission can occur even if restoration to the status quo *ante* proves impossible. The Court rejects this contention. First, *Griggs* does not apply South Carolina law and has no bearing on this case. Second, *Griggs* actually supports the Court's Order as it confirms the general rule disallows rescission unless the parties can be restored to their prior positions. *Id.* (citing Dan B. Dobbs, *Handbook on Remedies* § 9.4 at 622 (West 1973) ("The general rule . . . is that the adult plaintiff must make restoration of what he got under the contract in order to get rescission, and his inability to do so will not excuse such restoration. In such a case, he may be permitted to recover damages, but rescission will be barred by his inability to make restoration to the defendant.")).

Third, the *Griggs* decision does state: "rescission may be granted if the court can balance the equities and fashion an appropriate remedy that would do equity to both parties and afford complete relief." *Id.* Yet, precisely for the reasons stated in the Order on pages 30 and 31, rescission (even if Plaintiff had proved its non-fraud based claims) cannot be granted in this case in a manner that does equity to both parties. Nor has the County ever explained how rescission could occur and do equity to both parties. The County seeks to retain all the benefit conferred by the Severance Agreement (*i.e.*, termination of employment, release, etc.) but Preston alone would return all benefits he received. This would not be equitable to both Parties. Accordingly, the Order amply addresses the rescission issues raised by the County.

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Finally, the County repeats rescission as appropriate due to the public nature of the contract. The County cites no South Carolina authority to support its contention that a Court in equity should elevate a public body to a higher status than a private citizen. In its written summation, the County cited the decision of *Thompson v. City of Atlantic City*, 921 A.2d 427 (N.J. 2007) for the proposition that rescission is the proper remedy when "a public act has been taken improperly." As noted *supra* and incorporated herein, however, the Order found the holding of *Baird* controlling. (See Order, at 12-14; see also *supra* at 22-24.)⁵⁷ As a result, the Court rejects the County's thirteenth ground seeking reconsideration.

Issue 14:

As to issue 14, the County contends the Order misstates that a declaratory judgment action provides "an adequate remedy at law." (Pl.'s Mot. to Recons., at 12.) The Court rejects the County's contention. Not only does the declaratory judgment statute furnish litigants with a useful statutory vehicle to resolve disputes arising under contracts, it also enables South Carolina Courts to fashion further relief after a declaration of the parties' respective rights has been reached. South Carolina Code §15-53-120 states:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

S.C. Code Ann. § 15-53-120. Moreover, a declaratory judgment action proves inherently neither legal nor equitable in nature, but instead assumes the nature of the underlying issue. See, e.g., *Travelers Indem. Co. v. Auto World of Orangeburg, Inc.*, 334 S.C. 137, 140, 511 S.E.2d 692, 693

⁵⁷ Moreover, the *Thompson* decision involved unique issues under New Jersey's Faulkner Act, which have no application to the case at bar or under South Carolina law.



(Ct. App. 1999); *Elias v. Firemen's Ins. Co. of Newark, N.J.*, 309 S.C. 129, 132, 420 S.E.2d 504, 505 (1992). As the Order states, simply nothing prevented the County from pursuing a declaratory action and then, if appropriate, petitioning the Court for proper equitable relief consistent with the rights adjudicated by the declaratory judgment. (Order, at 36.)

Issue 15:

As to ground 15, the County takes exception that the Order did not note the 2009 County Council subsequently voted to dismiss the lawsuit Preston initiated against Waldrep and C. Wilson. What occurred after the 2009 County Council took office in January of 2009 has no bearing on whether Waldrep and C. Wilson had a special interest at stake when voting in November of 2008. Accordingly, the Court rejects the County's fifteenth ground.

The County again argues Waldrep and C. Wilson had no special interest in the Severance Agreement vote. (Pl.'s Mot. to Recons., at 12.) The Order addressed this issue for several pages, which the Court incorporates by reference. (Order, at 10-13) (finding Waldrep and C. Wilson had both direct financial interests and a substantial appearance of impropriety.) The Court also addressed the special interests of Waldrep and C. Wilson *supra* at 27-28, which the Court also incorporates by reference. The Court declines to restate its holding for a third time as the same analysis, incorporated herein, applies.⁵⁸


⁵⁸ The County's Reconsideration Motion does misstate two items worthy of correction. First, the County suggests Preston's lawsuit "was premised on actions that took place years before..." (Pl.'s Mot., at 12.) The evidence of record at trial demonstrated Waldrep's and C. Wilson's interference with Preston's duties had begun several years prior but had continued to increase and peaked on or about the time of the Severance Agreement vote. Second, the County argues "the injunction awarded in that case gave Preston a remedy that undermines his claims in negotiating for a Severance Agreement of other 'unspecified torts.'" (Pl.'s Mot. to Recons., at 12.) This is inaccurate. At the time of the Severance Agreement vote the injunction had not even issued. So, the County's argument in this regard is misplaced. Moreover, while the subsequent injunction may have abated Waldrep's and C. Wilson's continued interference with Preston's contract, it



CONCLUSION

For the reasons stated above, the Court denies the County's Motion to Amend, Freemantle's Motion to Intervene, and the County's Motion to Reconsider.

IT IS SO ORDERED.



The Honorable Roger L. Couch
Circuit Court Judge

November 7, 2013

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CLERK'S OFFICE
GENERAL SESSIONS

would not have afforded Preston relief for harms he had already sustained and would not foreclose potential tort liability for the same.

MOTION FOR

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Anderson County,)
Plaintiff,)

Civil Action No. 2009-CP-04-4482


vs.)

ORDER

Joey Preston and the South Carolina)
Retirement System,)
Defendants.)

The parties' joint motion to designate the above-captioned case as complex is hereby granted.

IT IS SO ORDERED.


The Honorable J. Cordell Maddox, Jr.

12/7/11, 2011
Anderson, South Carolina

FILED
2009 NOV 19 11:39 AM
CLERK OF COURT

DEC 11 2011

Common Pleas
100 South Main Street
Po Box 8002
Anderson, SC 29622

February 28, 2012

NOTICE

James Theodore Gentry
Wyche Burgess Freeman & Parham, PA
P.O. Box 728
Greenville, SC 29602-0728

RE: **2009CP0404482, Anderson County vs. Joey Preston**

MOTION(S) FILED. Motion for Protective Order
 Motion to Quash
 Motion to Compel

The above referenced case was scheduled for hearings on February 29, 2012 at 10:00 am and 10:15 am and on March 12, 2012 at 4:30 PM.

Due to conflicts, it has been necessary to cancel the hearing listed above. CASE DESIGNATED COMPLEX AND ASSIGNED TO JUDGE COUCH. If your case is settled, please notify us in writing immediately. If you have any communication regarding this case, please do NOT call this office. Please send it in writing, via fax (864) 260-4715 or e-mail at jpruitt@andersoncountysc.org.

Current position of this case on the roster can be checked by contacting me using the information below or searching the Public Access System located at www.andersoncountysc.org.

Thank you,
Jennifer Pruitt
Anderson County
Civil Court Coordinator
(864) 260-4298 Docket Line
(864) 260-4621 Docket Fax
jpruitt@andersoncountysc.org

A TRUE COPY

OCT 23 2012

Richard A. Huley
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Anderson County,)
)
Plaintiff,)
)
vs.)
)
Joey Preston and the South Carolina)
Retirement System,)
)
Defendants)

Civil Action No. 2009-CP-04-4482

ORDER

2012 OCT 23 11:20 AM
 COMMON PLEAS & JUDICIAL
 GENERAL SESSIONS
 ANDERSON COUNTY
 CLERK OF COURT

Summary Judgment is a drastic remedy which “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” Doe v. Batson, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 1999), Doe ex rel. Doe v. Batson, 345 S.C. 316, 521, 548 S.E.2d 854, 857 (2001). Pursuant to Rule 56(c) summary judgment must be rendered if it is proven that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C.R. Civ. P. 56(c). In order to determine whether Summary Judgment is proper this Court must view all evidence in the light most favorable to the non-moving party. Silvester v. Spring Valley Country Club, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001). The Court’s duty on a motion for summary judgment is not to try issues of fact, but to determine whether there are genuine issues of material fact to be tried, and once finding triable issues exist, the Court must leave those issues for determination at trial. Thomas Sand Co v. Colonial Pipeline Co., 349 S.C. 402, 408, 563 S.E.2d 109, 112 (Ct. App. 2002)

“Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004).


“However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Ellis v Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App.2004). Here, the Court finds genuine issues of material facts exist as to both the Plaintiff and the Defendants Motions for Summary Judgment.

[Handwritten Signature]

1. The Court finds genuine issues of material facts exist in regards to the Plaintiff Anderson County's Motion for Summary Judgment as to the Severance Claims. The Motion is therefore DENIED.
2. The Court finds genuine issues of material facts exist in regards to Plaintiff Anderson County's Motion for Summary Judgment as to Preston's Counterclaims. The Motion is therefore DENIED.
3. The Court finds genuine issues of material facts exist in regards to Defendant Preston's Motion for Summary Judgment. The Motion is therefore DENIED.
4. The Court finds genuine issues of material facts exist in regards to Defendant Preston's Motion for Partial Summary Judgment as to Preston's Counterclaims. The Motion is therefore DENIED.
5. The South Carolina Retirement System's Motion for Summary Judgment is DENIED. The Court has determined the South Carolina Retirement System's liability should be limited. However, it is a question of fact as to how much their liability will be limited and they will remain a party to the case to allow for proof of liability, if any.

IT IS SO ORDERED.

SPARTANBURG, SOUTH CAROLINA
October 19, 2012


Roger L. Couch, Judge

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anderson County, South Carolina,

Plaintiff,

v

Joey Preston and the South Carolina
Retirement System,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH CIRCUIT

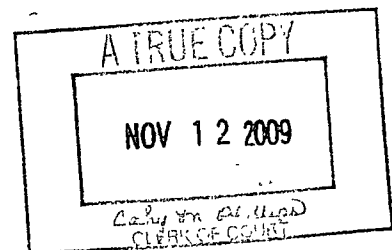
C.A. NO. 2009-CP-04- 4482

COMPLAINT

Jury Trial Demanded

The plaintiff, Anderson County, South Carolina complaining of the defendants, shows the Court as follows:

- 1 The plaintiff is the County of Anderson, a body politic and corporate and a political subdivision of the State of South Carolina, established and existing pursuant to the Constitution and laws of South Carolina
- 2 The defendant Joey Preston is, upon information and belief, a resident of Anderson County, South Carolina.
- 3 The defendant South Carolina Retirement System (the "System") is a state agency or entity with its principal place of business in Columbia, South Carolina. It is made a defendant only for the purposes of recovering funds paid to it by Anderson County on behalf of the defendant Preston.
- 4 For a period of time on and before November 30, 2008, Preston was the county administrator for Anderson County.



5. After challengers won elections for county council in Anderson County in 2008, the defendant Preston presented claims to Anderson County, making the contention that his contract as county administrator had been "anticipatorily breached."

6. On October 21, 2008, Anderson County Council referred Preston's claims to a personnel committee chaired by County Councilman Ron Wilson. Under Chairman Wilson's leadership, the Personnel Committee negotiated through legal counsel with Preston's attorney.

7. At a County Council meeting on November 18, 2008, prior to the new County Council majority taking office in January 2009, Councilman Wilson made a motion that the Council approve a Severance Agreement and Release of All Claims (the "Severance Agreement") with Preston awarding him over \$1.1 million. Of that sum \$ 780,575.00 was paid to Preston directly (and/or to tax authorities on his behalf) and \$359,258.00 was paid to the System on his behalf. A video of the relevant portions of the County Council meeting is attached as Exhibit A

8. The Chair of Anderson County Council was Michael Thompson. He presided over the consideration and debate of Mr. Wilson's motion and related motions and made rulings related to the debate and motions.

9. The Anderson County Council approved the Severance Agreement and the payment of \$1.1 million to and for Preston by a divided vote. Both the Chair, Mr. Thompson, and the Chair of the Personnel Committee, Mr. Wilson, voted for the Severance Agreement and the payment of over \$1.1 million to and for Preston. They also voted for additional motions favorable to the approval of the Severance Agreement.

10. The Severance Agreement provided that Preston would no longer be Anderson County administrator as of November 30, 2008, and Preston agreed to relinquish that position at the end

of business on November 30, 2008. Thereafter, until December 31, 2008, Preston was to continue as a full-time consultant assisting the acting/interim administrator

11. As shown by the attached email correspondence (Exhibit B), Preston breached the Severance Agreement and his fiduciary duties to Anderson County by falsely back-dating Anderson County records relating to financial benefits for Heather Jones, then the assistant county administrator for economic development, and by acting as county administrator on December 1, 2008:

a. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that she would be provided a county SUV for her use, including personal uses, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use;

b. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that Anderson County would pay for the cost of Heather Jones' attending certain classes, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use;

c. On December 1, 2008, Preston participated with Heather Jones in creating a back-dated letter approving travel to Germany by Heather Jones at Anderson County's expense.

12. Unbeknownst to the public and at least some members of Anderson County Council, during 2008 and while the Anderson County Council was considering Preston's claims for severance payments in excess of \$1 million, Preston was engaged in conversations with Chairman Thompson about hiring him as a county employee.

13. Further, during 2008, Preston granted Thompson special consideration in connection with his desire to be hired as a county employee.

14. Thompson had not planned to run for re-election, but at Preston's request, ran for re-election. He was defeated. He continued to pursue with Preston his desire for a county job.

15. During 2008, Preston approved Thompson's attending training for his anticipated county job at Anderson County's expense, including hotels, meals, and mileage, both before and after County Council's consideration of Preston's claims and Severance Agreement.

16. In June of 2008, Thompson falsely told the Anderson Independent newspaper that he had no intention of becoming a county employee. Preston did not correct that false statement.

17. Thompson was under consideration by Preston for county employment at the time the County Council considered Preston's claims for over \$1 million, at the time the County Council considered and voted to enter into the Severance Agreement, at the time Chairman Thompson presided over the consideration of Preston's Severance Agreement by County Council, and at the time that Chairman Thompson voted for the Severance Agreement, for the payments to and for Preston, and for related motions.

18. Thompson voted for this Severance Agreement and payments of over \$1.1 million to and for Preston without ever reading the Severance Agreement.

19. On November 19, the day following the County Council vote granting Preston payments of over \$1.1 million, Thompson went to county administrator-designate Michael Cunningham to be hired as a county employee. Cunningham refused to hire Thompson, stating that his hiring would constitute a conflict of interest because Thompson had voted for Preston's Severance Agreement.

20. Preston, however, was still the Anderson County administrator. He rejected Cunningham's conclusion and informed Thompson that he would be hired.

21. On November 26, 2008, Thompson received an advance of over \$2700 from Anderson County, personally approved by Preston four days before Preston's employment as county administrator ended.
22. Subsequently, after Thompson ceased to be a member of Anderson County Council, then-County Administrator Cunningham personally paid for Thompson's health insurance premiums.
23. After the County Council vote on November 18, 2008, Thompson received training at Anderson County expense, with Preston's approval.
24. Preston did not inform the entire Council of his dealings with Thompson while Thompson was considering the claims Preston made against Anderson County, while he was presiding over County Council during the consideration, the debate, and the voting concerning Preston's Severance Agreement, and when Thompson voted in favor of the Severance Agreement and payments to and for Preston of over \$1.1 million and in favor of related motions.
25. Councilman Wilson was Chair of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. Under Councilman Wilson's leadership, the Personnel Committee oversaw the negotiation of Preston's Severance Agreement. Councilman Wilson made the motion that the County Council approve Preston's Severance Agreement, Councilman Wilson voted for approval of the Severance Agreement, and Councilman Wilson voted for other motions favorable to the Severance Agreement.
26. On September 4, 2007, on behalf of Anderson County, Preston signed a contract with the consulting company of the daughter of Councilman Wilson for consulting services related to agricultural programs. That contract provided that it was a month-to-month contract and that the rate of payment was a fixed hourly rate of \$65.

27. On November 1, 2008, while Preston's claims were before the Council, and under consideration and negotiation by Councilman Wilson's Personnel Committee, and before Councilman Wilson proposed the Severance Agreement and payments of more than \$1.1 million to and for the benefit of Preston, Preston entered into a new contract with the consulting company of Councilman Wilson's daughter that significantly improved the benefits to the consulting company of Councilman Wilson's daughter.

28. Specifically, the new contract increased the hourly rate to \$75 per hour, provided yearly increases in the hourly rate so that it increased to \$95 per hour, provided for payments for additional employees of the consultant, and provided that it was a contract with a definite term of three years, instead of a month-to-month contract. In addition, the November 1, 2008 contract provided for liquidated damages in case Anderson County terminated the contract before the end of three years. If Anderson County had decided to terminate the contract, it could have resulted in liquidated damages of over \$300,000 to the consulting company of Mr. Wilson's daughter.

29. A copy of the contract is attached as Exhibit C.

FOR A FIRST CAUSE OF ACTION

30. The prior allegations of this Complaint are realleged as if they were stated fully herein

31. The Severance Agreement was adopted by Anderson County Council in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code § 2-37(g), and in violation of the common law.

32. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SECOND CAUSE OF ACTION

33. The prior allegations of this Complaint are realleged as if they were stated fully herein.

34. The Severance Agreement is void for being contrary to the public policy of South Carolina and Anderson County.

35. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A THIRD CAUSE OF ACTION

36. The prior allegations of this Complaint are realleged as if they were stated fully herein.

37. As County Administrator, Preston had fiduciary duties to Anderson County and the Anderson County Council.

38. Preston took actions to cause the negotiation, consideration, and approval of the Severance Agreement by Anderson County Council and two of its members in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code § 2-37(g), and in violation of the common law

39. Preston failed to inform the entire County Council of his dealings with Mr. Thompson and Mr. Wilson's daughter prior to the presentation to, negotiation of, consideration of, and approval of his Severance Agreement by Anderson County Council

40. Preston also did not correct the false public statement that Mr. Thompson made, claiming he had no intention of seeking employment with Anderson County

41. Preston breached his fiduciary duties to Anderson County and Anderson County Council.

42. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A FOURTH CAUSE OF ACTION

43. The prior allegations of this Complaint are realleged as if they were stated fully herein.

44. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

45. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

46. Preston had knowledge of the information he did not disclose, and these omissions were material.

47. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information; Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information, Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented. Preston sought to benefit, and did benefit, from the omissions.

48. Preston committed fraud.

49. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A FIFTH CAUSE OF ACTION

50. The prior allegations of this Complaint are realleged as if they were stated fully herein.

51. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur

52. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

53. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information; Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose, Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

54. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

55. Preston gained an advantage by failing to disclose the information set out above.

56. Preston committed constructive fraud.

57. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SIXTH CAUSE OF ACTION

58. The prior allegations of this Complaint are realleged as if they were stated fully herein.

59. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

60. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

61. Preston breached his duty of due care in failing to make disclosure.

62. Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; that information was material; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

63. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

64. Preston gained an advantage by failing to disclose the information set out above

65. Preston committed a negligent misrepresentation

66. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SEVENTH CAUSE OF ACTION

67. The prior allegations of this Complaint are realleged as if they were stated fully herein.

68. The action of Anderson County Council in approving the Severance Agreement was capricious, unreasonable, and a result of fraud

69. The action of Anderson County Council in approving the Severance Agreement is invalid.

70. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR AN EIGHTH CAUSE OF ACTION

71. The prior allegations of this Complaint are realleged as if they were stated fully herein.

72. Alternatively, Preston committed a fundamental and substantial breach of the Severance Agreement when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

73. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A NINTH CAUSE OF ACTION

74. The prior allegations of this Complaint are realleged as if they were stated fully herein

75. Alternatively, Preston breached his fiduciary duties to Anderson County when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

76. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A TENTH CAUSE OF ACTION

77. The prior allegations of this Complaint are realleged as if they were stated fully herein.

78. The amounts paid to the System pursuant to the Severance Agreement were wrongfully paid, for the reasons set forth herein

79. It would therefore be inequitable for those amounts to remain in possession of the System, or to be held for the benefit of Preston.

80. A constructive trust should be imposed on those amounts, and they should be held by the System in trust for Anderson County and repaid to Anderson County.

FOR AN ELEVENTH CAUSE OF ACTION

81. The prior allegations of this Complaint are realleged as if they were stated fully herein.

82. Preston has been unjustly enriched by the Severance Agreement, at the expense of Anderson County and its taxpayers.

83. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

WHEREFORE, Anderson County asks that the Court.

1. Rescind the Severance Agreement and direct and order Preston to return to Anderson County all funds paid to him or paid on his behalf in connection with the Severance Agreement;
2. Rescind the Severance Agreement, impose a trust on the amounts paid to the System pursuant to the Severance Agreement, and direct and order the System to return to Anderson County all funds paid to it on Preston's behalf in connection with the Severance Agreement;
3. Award Anderson County pre-judgment interest;
4. Enter judgment against the defendants and in favor of Anderson County consistent herewith;
5. Grant Anderson County such other relief as the Court considers just and appropriate.

Respectfully submitted,



Carl F. Muller (No. 4131)
Frank S. Holleman III (No. 2564)
J. Theodore Gentry (No. 64038)
WYCHE, BURGESS, FREEMAN & PARHAM, P.A.
Post Office Box 728
Greenville, SC 29602-0728
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Facsimile: 864-235-8900
E-Mail: fholleman@wyche.com;
wlightsey@wyche.com; tgentry@wyche.com;

ATTORNEYS FOR PLAINTIFF

Date: November 12, 2009
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	
)	
Anderson County, South Carolina.	)	Civil Action No 2009-CP-04-4482
)	
Plaintiffs,)	
)	
vs.	)	Defendant South Carolina Retirement
	)	System's Answer and Cross-Claim Against
Joey Preston and the South Carolina	)	Defendant Joey Preston
Retirement System.)	
)	
Defendants)	

Defendant South Carolina Retirement System, named by Plaintiff's complaint only for the purposes of recovering funds paid to it by Plaintiff on behalf of Defendant Preston, answers the complaint of the Plaintiff and alleges as follows

GENERAL RESPONSE

1 Each and every allegation of Plaintiff's complaint not specifically admitted, qualified, or explained is denied with strict proof demanded thereof

**ANSWERING GENERAL ALLEGATIONS
(Denial)**

2 The allegations contained in paragraph 1 of the complaint are admitted

3 Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraph 2 of the complaint and must, therefore, deny them at this time

4 The allegations contained in paragraph 3 of the complaint are admitted

5. The allegations contained in paragraphs 4 through 6 are not directed at Defendant. Thus, no answer is necessary. However, to the extent an answer may be required, Defendant hereby, denies said allegations at this time

6. As to the allegations contained in paragraph 7 of the complaint, Defendant admits only that \$355,848.95 was paid to Defendant South Carolina Retirement System by or on behalf of Defendant Joey Preston. The remainder of the allegations in paragraph 7 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary.

7. The allegations in paragraphs 8 through 28 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary.

8. Paragraph 29 is not an allegation and, therefore, no answer is necessary. In any event, to the extent that it is intended to be an allegation, Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraph 29 of the complaint and must, therefore, deny them at this time.

**FOR A FIRST DEFENSE AS TO
PLAINTIFF'S FIRST CAUSE OF ACTION
(Denial)**

9. In response to the allegations of paragraph 30 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 29 of the complaint, where relevant.

10. The allegations contained in paragraphs 31 and 32 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary.

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Denial)**

11. In response to the allegations of paragraph 33 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 32 of the complaint, where relevant.

12. The allegations in paragraphs 34 and 35 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Denial)**

13 In response to the allegations of paragraph 36 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 35 of the complaint, where relevant

14 The allegations in paragraphs 37 through 42 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Denial)**

15 In response to the allegations of paragraph 43 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 42 of the complaint, where relevant

16. The allegations in paragraphs 44 through 49 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary.

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(Denial)**

17. In response to the allegations of paragraph 50 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 49 of the complaint, where relevant

18. The allegations in paragraphs 51 through 57 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Denial)**

19. In response to the allegations of paragraph 58 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 57 of the complaint, where relevant

20. The allegations in paragraphs 59 through 66 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Denial)**

21. In response to the allegations of paragraph 67 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 66 of the complaint, where relevant

22. The allegations in paragraphs 68 through 70 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Denial)**

23. In response to the allegations of paragraph 71 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 70 of the complaint, where relevant

24. The allegations in paragraphs 72 and 73 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S NINTH CAUSE OF ACTION
(Denial)**

25. In response to the allegations of paragraph 74 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 73 of the complaint, where relevant

26. The allegations in paragraphs 75 and 76 of the complaint are denied as Defendant lacks sufficient information to form an opinion as to their truthfulness or the allegations are not directed at Defendant South Carolina Retirement System and no answer is necessary.

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S TENTH CAUSE OF ACTION
(Denial)**

27 In response to the allegations of paragraph 77 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 76 of the complaint, where relevant

28 Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraph 78 of the complaint and must, therefore, deny them at this time

29 The allegations in paragraph 79 are denied

30 Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraph 80 of the complaint and must, therefore, deny them at this time

**FOR A FIRST DEFENSE AS
TO PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Denial)**

31 In response to the allegations of paragraph 81 of the complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 80 of the complaint, where relevant

32. Defendant lacks sufficient information regarding the truthfulness of the allegations contained in paragraph 82 of the complaint and must, therefore, deny them at this time

33. The Defendant denies the allegations contained paragraph 83 to the extent it alleges that Defendant South Carolina Retirement System should return any money received from either Plaintiff or Defendant Joey Preston. As to any and all other allegations contained in paragraph 83. Defendant lacks sufficient information regarding their truthfulness and must, therefore, deny them at this time.

**FOR A SECOND DEFENSE AS
TO ALL CAUSES OF ACTION
(Failure To State a Claim)**

34 Each and every allegation of Defendant's answer is realleged herein as if set forth verbatim.

35 Plaintiff's complaint fails to state sufficient facts to constitute a cause of action against Defendant.

**FOR A THIRD DEFENSE AS
TO ALL CAUSES OF ACTION
(sovereign immunity)**

36. Each and every allegation of Defendant's answer is realleged herein as if set forth verbatim

37. Plaintiff's complaint fails to state sufficient facts to constitute a cause of action against Defendant because the claims are barred as a matter of law by the doctrine of sovereign immunity.

**FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION
AND BY WAY OF A FIRST CROSS-CLAIM AGAINST DEFENDANT JOEY PRESTON
(S.C. Code Ann. Section 9-1-1510)**

38 Defendant is an agency of the State of South Carolina administering the retirement plans for employees of state agencies, political subdivisions and other governmental bodies participating as employers in the retirement plans.

39 The Plaintiff Anderson County, a body politic and corporate and a political subdivision of the State of South Carolina, established and existing pursuant to the Constitution and laws of South Carolina

40 Upon information and belief, Defendant Joey Preston is a resident and citizen of Anderson County, South Carolina

41. This Court has jurisdiction over the parties and subject matter of this action.

42. Defendant Joey Preston is a retired member of the Defendant South Carolina Retirement System.

43. Defendant Joey Preston's date of retirement with the Defendant South Carolina Retirement System is January 3, 2009, and Defendant Joey Preston retired with 29 years, 9 months and 10 days of service credit with the Defendant South Carolina Retirement System.

44. Defendant Joey Preston has received a monthly retirement benefit from the Defendant South Carolina Retirement System of approximately \$7,300.00 per month since his retirement date and he will continue to receive said benefit, plus cost of living adjustments for life assuming Defendant Joey Preston's status with Defendant South Carolina Retirement System remains unchanged

45. Defendant Joey Preston's retirement benefit received from the Defendant South Carolina Retirement System is based, in large part, on the amount of service credit he has with the Defendant South Carolina Retirement System

46. From November 19, 2008 through December 23, 2008, Defendant Joey Preston purchased a total of 7 years 7 months and 23 days of service credit with the Defendant South Carolina Retirement System at a total cost of \$355,848.95. Upon information and belief, the

purchase cost of \$355,848.95 was paid by Plaintiff on Defendant Joey Preston's behalf as is specifically allowed by S.C. Code Ann. Section 9-1-1140(I)

47. The 7 years, 7 months and 23 days of service credit purchased on Defendant Joey Preston's behalf are included in his 29 years, 9 months and 10 days of service credit upon which his monthly retirement benefit is based. In fact, if the 7 years, 7 months and 23 days of service credit purchased on Defendant Joey Preston's behalf were removed from his total, Defendant Joey Preston would not have the 28 years of service credit necessary for retirement at his age as required by S.C. Code Ann. Section 9-1-1510

48. Upon information and belief, the \$355,848.95 paid by the Plaintiff on Defendant Joey Preston's behalf for the purchase of 7 years, 7 months and 23 days of service credit is included in the sum sought to be recovered from the Defendant South Carolina Retirement System by the Plaintiff in this matter

49. Should the Plaintiff prevail in this matter and Defendant South Carolina Retirement System be required to repay the Plaintiff, the Defendant's service purchase of 7 years, 7 months and 23 days of service credit will be rescinded. Upon such a rescission, Defendant Joey Preston's service credit with the Defendant South Carolina Retirement System will be reduced by 7 years, 7 months and 23 days and he will no longer be eligible to retire pursuant to S.C. Code Ann. Section 9-1-1510 and receive a retirement benefit and, in fact, will have been ineligible since his retirement date of January 3, 2009

50. Upon the rescission of the above mentioned service credit purchase, the Defendant Joey Preston will have been ineligible to retire and will have improperly received a monthly retirement benefit from the Defendant South Carolina Retirement System of approximately \$7,300.00 per month from his retirement date of January 3, 2009

51. Defendant South Carolina Retirement System asks that, should the Court grant the Plaintiff's requested relief, the Court also direct the Defendant Joey Preston to return to the Defendant South Carolina Retirement System all retirement benefits improperly received, plus interest

**FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION
AND BY WAY OF A SECOND CROSS-CLAIM AGAINST DEFENDANT JOEY
PRESTON
(S.C. Code Ann. Section 9-1-1670)**

52 Defendant South Carolina Retirement Systems repeats and re-alleges the allegations of the First Cross-Claim as if repeated herein verbatim.

53 Should the Plaintiff prevail necessitating the rescission of the above mentioned service credit purchase on Defendant Joey Preston's behalf, the Defendant Joey Preston will have been ineligible to retire and will have improperly received a monthly retirement benefit from the Defendant South Carolina Retirement System of approximately \$7,300.00 per month from his retirement date of January 3, 2009.

54. Section 9-1-1670 of the South Carolina Code of Laws provides that, should an error or change in a member's record result in that member receiving more of a benefit than he would have been entitled to receive but for the error, the South Carolina State Budget and Control Board, acting through the South Carolina Retirement Systems, shall correct the error.

55. Defendant South Carolina Retirement System asks that, should the Court grant the Plaintiff's requested relief, the Court also direct, pursuant to S.C. Code Ann Section 9-1-1670, the Defendant Joey Preston to return to the Defendant South Carolina Retirement System all retirement benefits improperly received, plus interest

**FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION
AND BY WAY OF A THIRD CROSS-CLAIM AGAINST DEFENDANT JOEY
PRESTON
(Unjust Enrichment)**

56. Defendant South Carolina Retirement Systems repeats and re-alleges the allegations of the First and Second Cross-Claims as if repeated herein verbatim.

57. Should the Plaintiff prevail necessitating the rescission of the above mentioned service credit purchase on Defendant Joey Preston's behalf, the Defendant Joey Preston will have been unjustly enriched as he will have been ineligible to retire and will have improperly received a monthly retirement benefit from the Defendant South Carolina Retirement System of approximately \$7,300.00 per month from his retirement date of January 3, 2009.

58. Defendant South Carolina Retirement System asks that, should the Court grant the Plaintiff's requested relief, the Court also direct the Defendant Joey Preston to return to the Defendant South Carolina Retirement System all retirement benefits improperly received, plus interest

WHEREFORE. Defendant prays that Plaintiff's complaint be dismissed, or, if Plaintiff's relief should be granted, that Defendant be awarded judgment on its Cross-Claim as follows.

1. Defendant Joey Preston be ordered to return to the Defendant South Carolina Retirement System all retirement benefits improperly received, plus interest
2. For such other relief as the Court may deem just and proper.



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January 13, 2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON)

Anderson County,) Civil Action No. 2009-CP-04-4482
)

Plaintiff,)
)

vs.)

Joey Preston and the South Carolina)
 Retirement System,)
)
 Defendants.)

**ANSWER & COUNTERCLAIMS TO
 PLAINTIFF'S COMPLAINT
 & CO-DEFENDANT'S CROSSCLAIMS**

The Defendant, Joey Preston ("Preston"), responding to the Complaint of Anderson County ("County") and bringing counterclaims against the County would show the Court as follows:

FOR A FIRST DEFENSE
(In Response to the Allegations Contained in the Complaint)

1. Preston denies all allegations in Plaintiff's Complaint, which are not specifically answered or modified. Preston admits the allegations contained in Paragraph 1 of the Complaint.
2. Preston admits the allegations contained in Paragraph 2 of the Complaint.
3. Preston admits so much of the allegations contained in Paragraph 3 of the Complaint, without conceding the truth of such statement, that the County's stated purpose for joining the System is as described in Paragraph 3 of the Complaint. The rest of the allegations of Paragraph 3 are denied.
4. Preston admits the allegations contained in Paragraph 4 of the Complaint.
5. In response to Paragraph 5, Preston admits the County did anticipatorily breach his contract as County Administrator, that Preston pursued his legal options, and such claims were presented to the County by Preston, through counsel

6. In response to Paragraph 6, Preston admits, upon information and belief, the County referred his claims to the Personnel Committee. In further response, Preston has insufficient information to admit or deny allegations concerning the inner workings of the County's Personnel Committee. However, Preston admits the County retained and was represented by outside legal counsel. All remaining allegations are, therefore, denied.

7. In response to Paragraph 7, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent Paragraph 7's allegations differ from the same, they are denied.

8. In response to Paragraph 8, Preston admits Michael Thompson served, for a period, as the Chair of Anderson County Council. In relation to the balance of Paragraph 8, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent Paragraph 8's allegations differ from the same, they are denied.

9. In response to Paragraph 9, Preston admits the County, by a majority vote, duly and validly approved the Severance Agreement and Release of all Claims ("the Severance Agreement") cited in the paragraph. As to the paragraph's remaining allegations, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent the allegations differ from the same, they are denied.

10. In response to Paragraph 10, Preston craves reference to the Severance Agreement cited in the paragraph. To the extent the allegations contained in the paragraph differ from the same, they are denied.

11. Preston denies the allegations contained in Paragraph 11 of the Complaint, including subparts (a) through (c).

12. Preston denies the allegations contained in Paragraph 12 of the Complaint.

13. Preston denies the allegations contained in Paragraph 13 of the Complaint.

14. Preston has no way of knowing Thompson's state of mind or intent. Preston admits Thompson was defeated in his run for re-election but denies, upon information and belief, the remaining allegations contained in Paragraph 14 of the Complaint.

15. In response to Paragraph 15, Preston admits that certain expenses submitted by Thompson were approved for payment by the County, as they were with all council members. With respect to the specific time, date, and purpose of those expenses, Preston craves reference to the documents supporting the requested reimbursement, which are in the County's possession. To the extent the County's allegations differ from the same, they are denied.

16. In response to Paragraph 16, Preston has no way of knowing Thompson's state of mind or intent with respect to comments he may or may not have made to the media. Preston, therefore, cannot admit or deny whether Thompson made false statements to the Anderson Independent Mail. To the extent a response is required, Preston denies the allegations. In further response, Preston does admit that he would not have corrected Thompson's statements to the media, assuming he had even known about them, because he would not be in a position to ascertain the veracity of the same.

17. In response to Paragraph 17, Preston admits Thompson submitted several applications for County employment at differing times. Preston denies Thompson's potential employment by the County had any relationship to his Severance Agreement. To the extent the allegations in Paragraph 17 differ from the same, they are denied.

18. In response to Paragraph 18, Preston has insufficient information to admit or deny whether Thompson had read the Severance Agreement or not prior to voting on the same. As

such, Preston can neither admit nor deny the allegations contained in Paragraph 18. To the extent a response is required, Preston denies the same due to a lack of personal information.

19. In response to Paragraph 19, Preston admits Thompson applied to be hired as a County employee. With respect to the dates of such applications, Preston craves reference to the corresponding employment applications and postings. To the extent the Plaintiff's allegations differ from the same, they are denied. Preston further admits that Michael Cunningham later expressed reservations about hiring Thompson. All remaining allegations contained in Paragraph 19 are denied.

20. In response to Paragraph 20, Preston admits Thompson was hired by the County. All remaining allegations contained in Paragraph 20 are denied.

21. In response to Paragraph 21, Preston admits he approved a training advance to Thompson, consistent with the treatment of all council members.

22. In response to Paragraph 22, Preston has insufficient information to admit or deny the allegations contained in the same. To the extent a response is required, the allegations contained in Paragraph 22 are denied.

23. In response to Paragraph 23, Preston admits the County paid for training for Thompson beginning in August of 2008. As to the specific date and type of training, Preston craves reference to the documents supporting the reimbursement, which are in the County's possession. To the extent the County's allegations differ from the same, they are denied.

24. In response to Paragraph 24, Preston did not specifically inform Council of Thompson's reimbursements or the reimbursements of any council member or employee. Thompson's employment application and reimbursements have no relationship to Preston's

Severance Agreement. Further, such documents were readily available to the Council and the public.

25. In response to Paragraph 25, Preston is informed and believes Councilman Wilson was the Chair of the Personnel Committee. Preston has insufficient information to admit or deny the inner workings of the Personnel Committee. To the extent Paragraph 25 relates to the same, and to the extent a response is required, Preston denies the same. With respect to Councilman Wilson's votes and participation in public meetings, Preston craves reference to the record of those meetings. To the extent the allegations contained in Paragraph 25 differ from the same, they are denied.

26. In response to Paragraph 26, Preston craves reference to the contract referenced in the paragraph. To the extent the paragraph's allegations differ from the same, they are denied.

27. In response to Paragraph 27, Preston craves reference to the contract cited in the paragraph. To the extent the allegations contained in the paragraph differ from the same, they are denied. Preston denies any relationship existed between the contract (with the company of Wilson's adult daughter) and his Severance Agreement or the negotiation thereof.

28. In response to Paragraph 28, Preston craves reference to the contract cited in the paragraph. To the extent the paragraph's allegations differ from the same, they are denied.

29. Preston admits the allegations contained in Paragraph 29 of the Complaint.

30. In response to Paragraph 30, Preston's prior responses are realleged as if they were stated fully herein.

31. Preston denies the allegations contained in Paragraph 31 of the Complaint.

32. Preston denies the allegations contained in Paragraph 32 of the Complaint.

33. In response to Paragraph 33, Preston's prior responses are realleged as if they were stated fully herein.

34. Preston denies the allegations contained in Paragraph 34 of the Complaint.

35. Preston denies the allegations contained in Paragraph 35 of the Complaint.

36. In response to Paragraph 36, Preston's prior responses are realleged as if they were fully stated herein.

37. In response to Paragraph 37, Preston admits that as County Administrator, he owed various duties to Anderson County. The scope and contours of such duties are matters of law. To the extent the paragraph's allegations differ from the same, they are denied.

38. Preston denies the allegations contained in Paragraph 38 of the Complaint.

39. In response to Paragraph 39, Preston denies that any of the allegations pertaining to Thompson or the company of Wilson's daughter had any relationship to the approval of his Severance Agreement.

40. In response to Paragraph 40, Preston admits that he did not correct any statements made by Thompson to any media outlet and would further show that, had he known about the statements at the time, he would not have known the veracity of such statements.

41. Preston denies the allegations contained in Paragraph 41 of the Complaint.

42. Preston denies Paragraph 42 of the Complaint.

43. In response to Paragraph 43, Preston's prior responses are realleged as if they were fully stated herein.

44. Preston denies the allegations contained in Paragraph 44 of the Complaint.

45. Preston denies the allegations contained in Paragraph 45 of the Complaint.

46. Preston denies the allegations contained in Paragraph 46 of the Complaint.

47. Preston denies the allegations contained in Paragraph 47 of the Complaint.
48. Preston denies the allegations contained in Paragraph 48 of the Complaint.
49. Preston denies the allegations contained in Paragraph 49 of the Complaint.
50. In response to Paragraph 50, Preston's prior responses are realleged as if they were fully stated herein.

51. Preston denies the allegations contained in Paragraph 51 of the Complaint
52. Preston denies the allegations contained in Paragraph 52 of the Complaint
53. Preston denies the allegations contained in Paragraph 53 of the Complaint.
54. Preston denies the allegations contained in Paragraph 54 of the Complaint.
55. Preston denies the allegations contained in Paragraph 55 of the Complaint.
56. Preston denies the allegations contained in Paragraph 56 of the Complaint.
57. Preston denies Paragraph 57 of the Complaint.
58. In response to Paragraph 58, Preston's prior responses are realleged as if they were fully stated herein.

59. Preston denies the allegations contained in Paragraph 59 of the Complaint
60. Preston denies the allegations contained in Paragraph 60 of the Complaint.
61. Preston denies the allegations contained in Paragraph 61 of the Complaint.
62. Preston denies the allegations contained in Paragraph 62 of the Complaint.
63. Preston denies the allegations contained in Paragraph 63 of the Complaint.
64. Preston denies the allegations contained in Paragraph 64 of the Complaint.
65. Preston denies the allegations contained in Paragraph 65 of the Complaint.
66. Preston denies Paragraph 66 of the Complaint

67. In response to Paragraph 67, Preston's prior responses are realleged as if they were fully stated herein.

68. Preston denies the allegations contained in Paragraph 68 of the Complaint.

69. Preston denies the allegations contained in Paragraph 69 of the Complaint.

70. Preston denies the allegations contained in Paragraph 70 of the Complaint.

71. In response to Paragraph 71, Preston's prior responses are realleged as if they were fully stated herein.

72. Preston denies the allegations contained in Paragraph 72 of the Complaint.

73. Preston denies the allegations contained in Paragraph 73 of the Complaint.

74. In response to Paragraph 74, Preston's prior responses are realleged as if they were fully stated herein.

75. Preston denies the allegations contained in Paragraph 75 of the Complaint.

76. Preston denies the allegations contained in Paragraph 76 of the Complaint.

77. In response to Paragraph 77, Preston's prior responses are realleged as if they were fully stated herein.

78. Preston denies the allegations contained in Paragraph 78 of the Complaint.

79. Preston denies the allegations contained in Paragraph 79 of the Complaint.

80. Preston denies the allegations contained in Paragraph 80 of the Complaint.

81. In response to Paragraph 81, Preston's prior responses are realleged as if they were fully stated herein.

82. Preston denies the allegations contained in Paragraph 82 of the Complaint.

83. Preston denies the allegations contained in Paragraph 83 of the Complaint.

84. Preston denies the allegations contained in the prayer for relief.

FOR A SECOND DEFENSE

(As to All Claims Alleged by the South Carolina Retirement System)

85. Preston denies all allegations in Co-Defendant South Carolina Retirement System's ("SCRS") Answer which relate to him and which are not specifically answered or modified or which conflict with any of Preston's responses to the County's Complaint. Preston admits the allegations contained in Paragraph 38 of SCRS' Answer.
86. Preston admits the allegations contained in Paragraph 39 of the SCRS' Answer.
87. Preston admits the allegations contained in Paragraph 40 of the SCRS' Answer.
88. Preston admits the allegations contained in Paragraph 41 of the SCRS' Answer.
89. Preston admits the allegations contained in Paragraph 42 of the SCRS' Answer.
90. Preston admits the allegations contained in Paragraph 43 of the SCRS' Answer.
91. Preston admits the allegations contained in Paragraph 44 of the SCRS' Answer.
92. Preston admits the allegations contained in Paragraph 45 of the SCRS' Answer.
93. Preston admits the allegations contained in Paragraph 46 of the SCRS' Answer.
94. Preston admits the allegations contained in Paragraph 47 of the SCRS' Answer.
95. Preston denies the allegations contained in Paragraph 48 of the SCRS' Answer as the County is not entitled to relief against Preston.
96. Preston denies the allegations contained in Paragraph 49 of the SCRS' Answer.
97. Preston denies the allegations contained in Paragraph 50 of the SCRS' Answer.
98. Preston denies the allegations contained in Paragraph 51 of the SCRS' Answer.
99. In response to Paragraph 52 of SCRS' Answer, Preston's prior responses are realleged as if they were stated fully herein.
100. Preston denies the allegations contained in Paragraph 53 of SCRS' Answer.

101. In response to Paragraph 54 of SCRS' Answer, Preston craves reference to the statute cited in the paragraph. To the extent the allegations contained in Paragraph 54 differ from the same, they are denied.

102. Preston denies the allegations contained in Paragraph 55 of SCRS' Answer.

103. In response to Paragraph 56 of SCRS' Answer, Preston's prior responses are realleged as if they were stated fully herein.

104. Preston denies the allegations contained in Paragraph 57 of the SCRS' Answer.

105. Preston denies the allegations contained in Paragraph 58 of the SCRS' Answer.

106. Preston denies the allegations contained in the SCRS' prayer for relief.

FOR A THIRD DEFENSE
(Failure to State a Claim)

107. Preston's prior responses are realleged as if they were stated fully herein.

108. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE
(Estoppel)

109. Preston's prior responses are realleged as if they were stated fully herein.

110. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(Unclean Hands)

111. Preston's prior responses are realleged as if they were stated fully herein.

112. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE
(Ratification)

113. Preston's prior responses are realleged as if they were stated fully herein.

114. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of ratification.

FOR A SEVENTH DEFENSE
(Release)

115. Preston's prior responses are realleged as if they were stated fully herein.

116. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of release.

FOR AN EIGHTH DEFENSE
(No Private Right of Action)

117. Preston's prior responses are realleged as if they were stated fully herein.

118. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are predicated upon statutes which do not create a private right of action.

FOR A NINTH DEFENSE
(Baird Doctrine)

119. Preston's prior responses are realleged as if they were stated fully herein.

120. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the holding of Baird et al v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract Against the County)

121. Preston's responses are realleged as if they were stated fully herein.

122. The County and Preston executed a Severance Agreement.

123. The Severance Agreement was duly authorized and executed on behalf of the County.

124. The Severance Agreement constituted a valid and binding contract between the parties.

125. The County breached the Severance Agreement by filing the instant lawsuit. In pertinent part, the Severance Agreement states:

The County agrees and hereby covenants irrevocably never to make any claim or demand, or commence, cause or permit to be instituted or prosecuted, any claim, charge, proceeding, or action at law or in equity against Mr. Preston, his heirs, legal representatives, or assigns, by reason of any claim, demand, or cause of action which the County may now have, or may hereinafter acquire, relating to Mr. Preston's employment with the County or his actions as an employee on behalf of the County, expressly including, but not limited to, all actions taken by Mr. Preston within the scope and course of his employment as County Administrator.

(Severance Agreement, ¶8.)

126. The County's lawsuit breached Paragraph 8 of the Severance Agreement causing Preston to sustain significant damages including the costs, attorney's fees, and other expenses reasonably attributable to the defense of this action.

127. The County's breach of Paragraph 8 of the Severance Agreement has also impaired Preston's ability to gain alternate employment, which has legally and factually caused him to sustain substantial damages.

128. Accordingly, Preston is entitled to recover all actual, consequential, and other damages proximately flowing from the County's breach of the Severance Agreement.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Employment Agreement Against the County)

129. Preston's responses are realleged as if they were fully stated herein.

130. Alternatively, if the Court rules the Severance Agreement as unenforceable for some reason, then such agreement lacks effect and Preston should be entitled to recover for the County's prior anticipatory breach of his employment contract.

131. The County and Preston entered into an Employment Agreement in 1998.

132. The Employment Agreement constituted a valid and binding contract.

133. In August of 2008, the County, by and through some of its sitting council members acting in concert with council members-elect, decided that they would discharge Preston from his position as County Administrator.

134. No cause supported a discharge of Preston from his position as County Administrator. At the time, Preston's Employment Agreement did not expire for another several years.

135. The County anticipatorily breached Preston's employment contract by virtue of these actions. The anticipatory breach of Preston's contract caused Preston to execute the Severance Agreement with the County

136. The County now claims the Severance Agreement constitutes a null and void agreement.

137. If for some reason the Court accepts this position, which it should not, Preston is entitled to recover on his original breach of contract claim against the County.

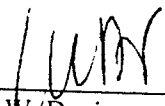
138. Preston has sustained substantial damages as a result of the County's breach of both his Employment Agreement and Severance Agreement.

WHEREFORE, having fully answered the Plaintiff's Complaint and SCRS' cross-claims, Preston would respectfully request that an Order be entered which provides for the following relief:

- A. For the Complaint to be dismissed as to Preston, with prejudice;
- B. For actual, consequential, incidental and special damages incurred due to the County's actions;
- C. For the costs, fees, and expenses associated with Preston's defense against this civil action, including a reasonable amount of attorneys' fees; and,
- D. For such other legal or equitable relief as the Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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8/10, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Anderson County, South Carolina,
Plaintiff,
v.
Joey Preston and the South Carolina
Retirement System,
Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2009-CP-04-4482

REPLY TO COUNTERCLAIM

Jury Trial Demanded

Plaintiff Anderson County, South Carolina ("Plaintiff") hereby replies to the Counterclaims of defendant Joey Preston ("Preston") as follows. Paragraph references are to the paragraph numbers of Defendant's Answer and Counterclaims to Plaintiff's Complaint & Co-Defendant's Crossclaims ("Counterclaim").

FOR A FIRST DEFENSE

1. Plaintiff denies each and every allegation of the Counterclaim except as specifically and expressly admitted herein.
2. In response to the allegations of Paragraph 121, Plaintiff reiterates the allegations of its Complaint.
3. Plaintiff admits so much of Paragraph 122 as alleges that both Preston and persons purporting to act on behalf of Plaintiff executed a document dated November 18, 2008 and entitled "Severance Agreement and Release of Claims." Plaintiff denies the remaining allegations of Paragraph 122
4. Plaintiff denies the allegations of Paragraphs 123-128.

A TRUE COPY
SEP - 7 2010
Monthe de Preston
CLERK OF COURTS

5. In response to the allegations of Paragraph 129, Plaintiff reiterates the allegations of its Complaint and the foregoing responses.
6. Plaintiff denies the allegations of Paragraph 130, and specifically denies that Preston is entitled to any recovery and that his employment contract was anticipatorily breached.
7. In response to Paragraph 131, Plaintiff admits Anderson County and Preston signed a document styled as an employment agreement for Preston. Plaintiff denies the remaining allegations of Paragraph 131.
8. Plaintiff denies the allegations of Paragraphs 132-135.
9. In response to Paragraph 136, Plaintiff admits that it contends the Severance Agreement is null and void. Plaintiff denies the remaining allegations of Paragraph 136.
10. Plaintiff denies the allegations of Paragraphs 137-138.
11. Plaintiff denies that Preston is entitled to the relief sought in the Prayer or elsewhere in the Answer and Counterclaim.

FOR A SECOND DEFENSE

12. The Counterclaims fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

13. Preston's Counterclaim for Breach of Employment Agreement is not ripe for resolution.

FOR A FOURTH DEFENSE

14. The Severance Agreement is void and unenforceable, and should be rescinded, for the reasons set forth in Plaintiff's Complaint.

FOR A FIFTH DEFENSE

15. Plaintiff's conduct in obtaining and inducing the Severance Agreement violated his Employment Agreement and was in bad faith, and otherwise constituted unclean hands and bars any recovery under his employment agreement.

FOR A SIXTH DEFENSE

16. Plaintiff did not terminate Preston's employment. Instead, Preston voluntarily resigned in exchange for the Severance Agreement, which was obtained through his misconduct. Plaintiff did not breach the Employment Agreement.

FOR A SEVENTH DEFENSE

17. Preston's own conduct, as alleged in the Complaint and in this Reply, estops him from recovering under his Employment Agreement, and waives any such recovery.

FOR AN EIGHTH DEFENSE

18. The Employment Agreement between Preston and Anderson County was illegal, void or voidable for violation of public policy, and unenforceable because its term exceeded the maximum term allowed by law. In the further alternative, that Employment Agreement was terminable at will.

FOR A NINTH DEFENSE

19. To the extent that Preston has damages – which Plaintiff expressly denies – Preston has failed to mitigate his damages.

WHEREFORE, having fully answered Preston's Counterclaims, Plaintiff respectfully requests:

- (1) That Preston's Counterclaims be dismissed with costs;
- (2) that Plaintiff be awarded attorneys' fees; and
- (3) such other and further relief as the Court deems just and proper.

Respectfully submitted,

J. Theodore Gentry

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tgentry@wyche.com;

ATTORNEYS FOR PLAINTIFF

Date: September 7, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anderson County, South Carolina,

Plaintiff,

v.

Joey Preston and the South Carolina
Retirement System,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH CIRCUIT

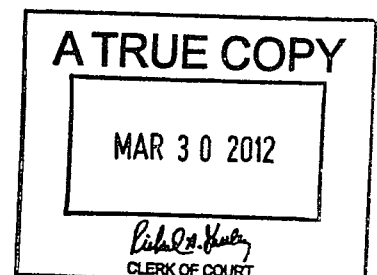
C.A. NO. 2009-CP-04-4482

**AMENDED
COMPLAINT**

Jury Trial Demanded

The plaintiff, Anderson County, South Carolina complaining of the defendants, shows the Court as follows:

1. The plaintiff is the County of Anderson, a body politic and corporate and a political subdivision of the State of South Carolina, established and existing pursuant to the Constitution and laws of South Carolina.
2. The defendant Joey Preston is, upon information and belief, a resident of Anderson County, South Carolina.
3. The defendant South Carolina Retirement System (the "System") is a state agency or entity with its principal place of business in Columbia, South Carolina. It is made a defendant only for the purposes of recovering funds paid to it by Anderson County on behalf of the defendant Preston.
4. For a period of time on and before November 30, 2008, Preston was the county administrator for Anderson County.



5. After challengers won elections for county council in Anderson County in 2008, the defendant Preston presented claims to Anderson County, making the contention that his contract as county administrator had been “anticipatorily breached.”

6. On October 21, 2008, Anderson County Council referred Preston’s claims to a personnel committee chaired by County Councilman Ron Wilson. Council Member Willie Horton McAbee was also a member of the personnel committee. Under Chairman Wilson’s leadership, the Personnel Committee negotiated through legal counsel with Preston’s attorney.

7. At a County Council meeting on November 18, 2008, prior to the new County Council majority taking office in January 2009, Councilman Wilson made a motion that the Council approve a Severance Agreement and Release of All Claims (the “Severance Agreement”) with Preston awarding him over \$1.1 million. Of that sum \$ 780,575.00 was paid to Preston directly (and/or to tax authorities on his behalf) and \$359,258.00 was paid to the System on his behalf. A video of the relevant portions of the County Council meeting is attached as Exhibit A.

8. The Chair of Anderson County Council was Michael Thompson. He presided over the consideration and debate of Mr. Wilson’s motion and related motions and made rulings related to the debate and motions.

9. The Anderson County Council approved the Severance Agreement and the payment of \$1.1 million to and for Preston by a divided vote. The Chair, Mr. Thompson, the Chair of the Personnel Committee, Mr. Wilson, and Mr. McAbee voted for the Severance Agreement and the payment of over \$1.1 million to and for Preston. They also voted for additional motions favorable to the approval of the Severance Agreement.

10. The Severance Agreement provided that Preston would no longer be Anderson County administrator as of November 30, 2008, and Preston agreed to relinquish that position at the end

of business on November 30, 2008. Thereafter, until December 31, 2008, Preston was to continue as a full-time consultant assisting the acting/interim administrator.

11. As shown by the attached email correspondence (Exhibit B), Preston breached the Severance Agreement and his fiduciary duties to Anderson County by falsely back-dating Anderson County records relating to financial benefits for Heather Jones, then the assistant county administrator for economic development, and by acting as county administrator on December 1, 2008:

a. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that she would be provided a county SUV for her use, including personal uses, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use,

b. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that Anderson County would pay for the cost of Heather Jones' attending certain classes, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use;

c. On December 1, 2008, Preston participated with Heather Jones in creating a back-dated letter approving travel to Germany by Heather Jones at Anderson County's expense.

12. Unbeknownst to the public and at least some members of Anderson County Council, during 2008 and while the Anderson County Council was considering Preston's claims for severance payments in excess of \$1 million, Preston was engaged in conversations with Chairman Thompson about hiring him as a county employee

13. Further, during 2008, Preston granted Thompson special consideration in connection with his desire to be hired as a county employee.

14. Thompson had not planned to run for re-election, but at Preston's request, ran for re-election. He was defeated. He continued to pursue with Preston his desire for a county job.

15. During 2008, Preston approved Thompson's attending training for his anticipated county job at Anderson County's expense, including hotels, meals, and mileage, both before and after County Council's consideration of Preston's claims and Severance Agreement.

16. In June of 2008, Thompson falsely told the Anderson Independent newspaper that he had no intention of becoming a county employee. Preston did not correct that false statement.

17. Thompson was under consideration by Preston for county employment at the time the County Council considered Preston's claims for over \$1 million, at the time the County Council considered and voted to enter into the Severance Agreement, at the time Chairman Thompson presided over the consideration of Preston's Severance Agreement by County Council, and at the time that Chairman Thompson voted for the Severance Agreement, for the payments to and for Preston, and for related motions.

18. Thompson voted for this Severance Agreement and payments of over \$1.1 million to and for Preston without ever reading the Severance Agreement.

19. On November 19, the day following the County Council vote granting Preston payments of over \$1.1 million, Thompson went to county administrator-designate Michael Cunningham to be hired as a county employee. Cunningham refused to hire Thompson, stating that his hiring would constitute a conflict of interest because Thompson had voted for Preston's Severance Agreement.

20. Preston, however, was still the Anderson County administrator. He rejected Cunningham's conclusion and informed Thompson that he would be hired.

21. On November 26, 2008, Thompson received an advance of over \$2700 from Anderson County, personally approved by Preston four days before Preston's employment as county administrator ended.

22. Subsequently, after Thompson ceased to be a member of Anderson County Council, then-County Administrator Cunningham personally paid for Thompson's health insurance premiums.

23. After the County Council vote on November 18, 2008, Thompson received training at Anderson County expense, with Preston's approval.

24. Preston did not inform the entire Council of his dealings with Thompson while Thompson was considering the claims Preston made against Anderson County, while he was presiding over County Council during the consideration, the debate, and the voting concerning Preston's Severance Agreement, and when Thompson voted in favor of the Severance Agreement and payments to and for Preston of over \$1.1 million and in favor of related motions.

25. Councilman Wilson was Chair of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. Under Councilman Wilson's leadership, the Personnel Committee oversaw the negotiation of Preston's Severance Agreement. Councilman Wilson made the motion that the County Council approve Preston's Severance Agreement, Councilman Wilson voted for approval of the Severance Agreement, and Councilman Wilson voted for other motions favorable to the Severance Agreement.

26. On September 4, 2007, on behalf of Anderson County, Preston signed a contract with the consulting company of the daughter of Councilman Wilson for consulting services related to agricultural programs. That contract provided that it was a month-to-month contract and that the rate of payment was a fixed hourly rate of \$65.

27. On November 1, 2008, while Preston's claims were before the Council, and under consideration and negotiation by Councilman Wilson's Personnel Committee, and before Councilman Wilson proposed the Severance Agreement and payments of more than \$1.1 million to and for the benefit of Preston, Preston entered into a new contract with the consulting company of Councilman Wilson's daughter that significantly improved the benefits to the consulting company of Councilman Wilson's daughter.

28. Specifically, the new contract increased the hourly rate to \$75 per hour, provided yearly increases in the hourly rate so that it increased to \$95 per hour, provided for payments for additional employees of the consultant, and provided that it was a contract with a definite term of three years, instead of a month-to-month contract. In addition, the November 1, 2008 contract provided for liquidated damages in case Anderson County terminated the contract before the end of three years. If Anderson County had decided to terminate the contract, it could have resulted in liquidated damages of over \$300,000 to the consulting company of Mr. Wilson's daughter.

29. A copy of the contract is attached as Exhibit C.

30. Councilman McAbee was a member of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. The Personnel Committee oversaw the negotiation of Preston's Severance Agreement. Councilman McAbee voted for approval of the Severance Agreement, and Councilman McAbee voted for other motions favorable to the Severance Agreement.

31. In his capacity as County Administrator, Preston routinely approved reimbursement from County funds of travel expenditures for Councilman McAbee and a companion. Those reimbursements were improper, among other reasons because they were not for County business,

they were for the promotion of Councilman McAbee's personal and/or private commercial benefit, and they exceeded County expenditure limits.

32. These improper reimbursements included, but were not limited to, reimbursements that occurred in or around October 2008, which was the same time Preston's Severance Agreement was being considered by the Personnel Committee and the Council as a whole.

33. Preston also advocated for and made County decisions that would result in personal benefit to Councilman McAbee and to his business associates, including but not limited to the County's approval of an incentive package relating to the purchase of a tract of real estate including approximately 38 acres located at Lewis Drive by a company called B&B Properties, for which Allison Properties received a real estate brokerage commission, a portion of which went to McAbee personally, certain purchases of real property by the County, and the closure or abandonment of Lewis Drive.

FOR A FIRST CAUSE OF ACTION

34. The prior allegations of this Complaint are realleged as if they were stated fully herein.

35. The Severance Agreement was adopted by Anderson County Council in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code §§ 2-37(g) and 2-288, and in violation of the common law.

36. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SECOND CAUSE OF ACTION

37. The prior allegations of this Complaint are realleged as if they were stated fully herein.

38. The Severance Agreement is void for being contrary to the public policy of South Carolina and Anderson County.

39. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A THIRD CAUSE OF ACTION

40. The prior allegations of this Complaint are realleged as if they were stated fully herein.

41. As County Administrator, Preston had fiduciary duties to Anderson County and the Anderson County Council.

42. Preston took actions to cause the negotiation, consideration, and approval of the Severance Agreement by Anderson County Council and three of its members in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code §§ 2-37(g) and 2-288, and in violation of the common law.

43. Preston failed to inform the entire County Council of his dealings with Mr. Thompson, Mr. McAbee and Mr. Wilson's daughter prior to the presentation to, negotiation of, consideration of, and approval of his Severance Agreement by Anderson County Council.

44. Preston also did not correct the false public statement that Mr. Thompson made, claiming he had no intention of seeking employment with Anderson County.

45. Preston breached his fiduciary duties to Anderson County and Anderson County Council.

46. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest

FOR A FOURTH CAUSE OF ACTION

47. The prior allegations of this Complaint are realleged as if they were stated fully herein.

48. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

49. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

50. Preston had knowledge of the information he did not disclose, and these omissions were material.

51. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information, Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented. Preston sought to benefit, and did benefit, from the omissions.

52. Preston committed fraud.

53. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A FIFTH CAUSE OF ACTION

54. The prior allegations of this Complaint are realleged as if they were stated fully herein.

55. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

56. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

57. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information; Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

58. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

59. Preston gained an advantage by failing to disclose the information set out above.

60. Preston committed constructive fraud.

61. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SIXTH CAUSE OF ACTION

62. The prior allegations of this Complaint are realleged as if they were stated fully herein.

63. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

64. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

65. Preston breached his duty of due care in failing to make disclosure.

66. Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; that information was material; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

67. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

68. Preston gained an advantage by failing to disclose the information set out above.

69. Preston committed a negligent misrepresentation.

70. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest

FOR A SEVENTH CAUSE OF ACTION

71. The prior allegations of this Complaint are realleged as if they were stated fully herein.

72. The action of Anderson County Council in approving the Severance Agreement was capricious, unreasonable, and a result of fraud.

73. The action of Anderson County Council in approving the Severance Agreement is invalid.

74. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR AN EIGHTH CAUSE OF ACTION

75. The prior allegations of this Complaint are realleged as if they were stated fully herein.

76. Alternatively, Preston committed a fundamental and substantial breach of the Severance Agreement when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

77. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A NINTH CAUSE OF ACTION

78. The prior allegations of this Complaint are realleged as if they were stated fully herein.

79. Alternatively, Preston breached his fiduciary duties to Anderson County when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

80. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest

FOR A TENTH CAUSE OF ACTION

81. The prior allegations of this Complaint are realleged as if they were stated fully herein.

82. The amounts paid to the System pursuant to the Severance Agreement were wrongfully paid, for the reasons set forth herein.

83. It would therefore be inequitable for those amounts to remain in possession of the System, or to be held for the benefit of Preston.

84. A constructive trust should be imposed on those amounts, and they should be held by the System in trust for Anderson County and repaid to Anderson County.

FOR AN ELEVENTH CAUSE OF ACTION

85. The prior allegations of this Complaint are realleged as if they were stated fully herein

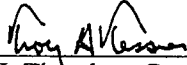
86. Preston has been unjustly enriched by the Severance Agreement, at the expense of Anderson County and its taxpayers.

87. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

WHEREFORE, Anderson County asks that the Court.

1. Rescind the Severance Agreement and direct and order Preston to return to Anderson County all funds paid to him or paid on his behalf in connection with the Severance Agreement;
2. Rescind the Severance Agreement, impose a trust on the amounts paid to the System pursuant to the Severance Agreement, and direct and order the System to return to Anderson County all funds paid to it on Preston's behalf in connection with the Severance Agreement;
3. Award Anderson County pre-judgment interest;
4. Enter judgment against the defendants and in favor of Anderson County consistent herewith;
5. Grant Anderson County such other relief as the Court considers just and appropriate.

Respectfully submitted,



J. Theodore Gentry (No. 64038)
Troy A. Tessier (No. 13354)
WYCHE, P.A.
Post Office Box 728
Greenville, SC 29602-0728
Telephone: 864-242-8200
Facsimile: 864-235-8900
E-Mail: tgentry@wyche.com; ttessier@wyche.com;

Tally Parham (No.13459)
WYCHE, P.A.
801 Gervais Street, Suite B
Columbia, South Carolina 29201
Telephone: 803-254-6542
Facsimile: 803-254-6544
E-Mail: tparham@wyche.com

Date: March 29, 2012
Greenville, South Carolina

Attorneys for Plaintiff Anderson County

EXHIBIT A

(Video)

EXHIBIT B

Eddie Tallon

From: Heather Jones
Sent: Wednesday, November 26, 2008 4:40 PM
To: Joey Preston
Subject: RE: Corrected date on vehicle memo

Sounds just like you. I learned from the best.

From: Joey Preston
Sent: Wednesday, November 26, 2008 4:36 PM
To: Heather Jones
Subject: Re: Corrected date on vehicle memo

Damn! Did I write this memo?

From: Heather Jones
To: Joey Preston
Sent: Wed Nov 26 13:58:51 2008
Subject: Corrected date on vehicle memo

<<vehicle memo.doc>>

Heather Simmons Jones, SCCED

Anderson County
Assistant County Administrator-
Economic Development
126 N. McDuffie Street
Anderson, SC 29621
(864) 260-1386 W
(864) 260-1369 F
hjones@andersoncountysc.org
www.andersonpartnership.com

Eddie Tallon

From: Heather Jones
Sent: Wednesday, November 26, 2008 1:59 PM
To: Joey Preston
Subject: Corrected date on vehicle memo



vehicle
memo.doc

Heather Simmons Jones, SCCED

Anderson County

Assistant County Administrator-

Economic Development

126 N. McDuffie Street

Anderson, SC 29621

(864) 260-4386 W

(864) 260-4369 F

hjones@andersoncountysc.org

www.andersonpartnership.com

TO: Heather Jones

FROM: Joey R. Preston

DATE: October 16, 2006

RE: County Vehicle

Per our conversation during your recent interview, this memo will serve as a record in your file to memorialize the following agreement between you as an employee of Anderson County and Anderson County through its Administrator, that being me, Joey R. Preston, or any such successors:

- you will be provided a County SUV for your use in the economic development efforts of Anderson County
- you will be allowed to drive this vehicle home
- you will be allowed to transport non-County employees in this vehicle to include, but not limited to, taking and dropping off your child/children at daycare, etc
- you will be allowed to travel to and from the office and other work related functions as needed after hours and on weekends in your County vehicle
- you will be expected to use good judgment in the adherence to County vehicle policy not addressed specifically by this memo

We are excited about the professionalism that you bring with you and look forward to having you on our team in Anderson County.

Eddie Tallon

From: Heather Jones
Sent: Wednesday, November 26, 2008 1:58 PM
To: Joey Preston
Subject: School memo for file

Same as last, only for school. Please note the dates should be 10-16-2006 on both and not 2008.

Heather Simmons Jones, SCCED

Anderson County
Assistant County Administrator-
Economic Development



school memo.doc

126 N. McDuffie Street
Anderson, SC 29621
(864) 260-1386 W
(864) 260-1369 F
hjones@andersoncountysc.org
www.andersonpartnership.com

TO: Heather Jones

FROM: Joey R. Preston

DATE: October 16, 2006

RE: County Vehicle

Per our conversation during your recent interview, this memo will serve as a record in your file to memorialize the following agreement between you as an employee of Anderson County and Anderson County through its Administrator, that being me, Joey R. Preston, or any such successors:

Anderson County for your willingness to develop yourself professionally and bring new skill sets to our county organization, agrees to pay 100% of the reimbursable costs associated with not more than two classes per given semester or four in any one year at an accredited university, provided an invoice and appropriate grade, as outlined in county policy, are achieved.

I look very forward to working with you in the years to come and the initiatives you will bring to fruition for our economic development division in Anderson County.

Eddie Tallon

From: Heather Jones
Sent: Wednesday, November 26, 2008 1:52 PM
To: Joey Preston
Subject: Vehicle Memo

JP-

You told me to draft a memo that you could put in my permanent file as well as give me a copy of that granted me use of a take-home vehicle. Here is a draft. You can make changes as needed and then print on letterhead with initials. If you would go ahead and forward a copy to Phyllis and to me, I would appreciate it.



vehicle
memo.doc

Thanks,

Heather Simmons Jones, SCCED

Anderson County
Assistant County Administrator-
Economic Development
126 N. McDullie Street
Anderson, SC 29621
(864) 260-4386 W
(864) 260-1369 F

hjones@andersoncountysc.org
www.andersonpartnership.com



Date: 12-1-08

To: Phyllis
From: JRP

PLEASE:

- | | |
|--|--|
| <input type="checkbox"/> HANDLE | <input type="checkbox"/> NOTE AND RETURN |
| <input type="checkbox"/> SEE OR PHONE ME | <input type="checkbox"/> FOR YOUR COMMENTS |
| <input type="checkbox"/> RE ATTACHED | <input type="checkbox"/> AND SUGGESTIONS |
| <input type="checkbox"/> PREPARE REPLY FOR | <input type="checkbox"/> FOR DISCUSSION WITH YOU |
| <input checked="" type="checkbox"/> MY SIGNATURE | <input type="checkbox"/> PREPARE DRAFT REPLY |
| <input type="checkbox"/> FOR YOUR INFORMATION | <input type="checkbox"/> AS REQUESTED |

COMMENTS: _____

ew, this memo will serve as a record in
ent between you as an employee of
h its Administrator, that being me, Joey R

your use in the economic development

home
nty employees in this vehicle to include,
ff your child/children at daycare, etc
the office and other work related

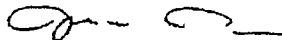
OFFICE OF THE ADMINISTRATOR
Post Office Box 8002, Anderson, SC 29622-8002
(864) 260-4031, Fax (864) 260-4106

- you will be expected to use good judgment in the adherence to County vehicle policy not addressed specifically by this memo

We are excited about the professionalism that you bring with you and look forward to having you on our team in Anderson County.

TO: Heather Jones

FROM: Joey R. Preston



DATE: October 16, 2006

RE: County Vehicle


Per our conversation during your recent interview, this memo will serve as a record in your file to memorialize the following agreement between you as an employee of Anderson County and Anderson County through its Administrator, that being me, Joey R. Preston, or any such successors:

- you will be provided a County SUV for your use in the economic development efforts of Anderson County
- you will be allowed to drive this vehicle home
- you will be allowed to transport non-County employees in this vehicle to include, but not limited to, taking and dropping off your child/children at daycare, etc
- you will be allowed to travel to and from the office and other work related functions as needed after hours and on weekends in your County vehicle
- you will be expected to use good judgment in the adherence to County vehicle policy not addressed specifically by this memo

We are excited about the professionalism that you bring with you and look forward to having you on our team in Anderson County.

TO: Heather Jones

FROM: Joey R. Preston



DATE: October 16, 2006

RE: County Vehicle

Per our conversation during your recent interview, this memo will serve as a record in your file to memorialize the following agreement between you as an employee of Anderson County and Anderson County through its Administrator, that being me, Joey R. Preston, or any such successors:

Anderson County for your willingness to develop yourself professionally and bring new skill sets to our county organization, agrees to pay 100% of the reimbursable costs associated with not more than two classes per given semester or four in any one year at an accredited university, provided an invoice and appropriate grade, as outlined in county policy, are achieved.

I look very forward to working with you in the years to come and the initiatives you will bring to fruition for our economic development division in Anderson County.

Eddie Tallon

From: Heather Jones
Sent: Monday, December 01, 2008 2:35 PM
To: Joey Preston
Subject: RE: Last request

yes

From: Joey Preston
Sent: Monday, December 01, 2008 2:33 PM
To: Heather Jones
Subject: RE: Last request

did you get it?

-----Original Message-----
From: Heather Jones
Sent: Monday, December 01, 2008 2:33 PM
To: Joey Preston
Subject: RE: Last request

There was no response in your former message re: Steve.

From: Joey Preston
Sent: Monday, December 01, 2008 2:31 PM
To: Heather Jones
Subject: RE: Last request

-----Original Message-----
From: Heather Jones
Sent: Monday, December 01, 2008 2:30 PM
To: Joey Preston
Subject: RE: Last request

Got it Thanks.

Oh, and Phyllis called me to say that Steve Newton was marked "not rehirable" or "ineligible for rehire" in his permanent file and that I could not hire him

From: Joey Preston
Sent: Monday, December 01, 2008 2:27 PM
To: Heather Jones
Subject: RE: Last request

get me the letter to approve...date it early last week .

-----Original Message-----
From: Heather Jones
Sent: Monday, December 01, 2008 1:19 PM
To: Joey Preston
Subject: Last request

Mr. P-

I forgot one thing

Upstate Alliance is going to Germany in Spring of 2009 to call on automotive OEM's, suppliers, and existing industries. Provided I have travel money remaining, I would like approval to attend this mission trip. I will probably be able to get a grant again from Innovate Anderson for some assistance.

Thanks,

Heather Simmons Jones, SCCED

Anderson County

Assistant County Administrator-

Economic Development

126 N. McDuffie Street

Anderson, SC 29621

(864) 260-4386 W

(864) 260-4369 F

hjones@andersoncountysc.org

www.andersonpartnership.com

EXHIBIT C

COPY

SERVICES AGREEMENT

Palmetto Agricultural Consultants, LLC and Anderson County

This Agreement is entered into by and between Palmetto Agricultural Consultants, LLC and Anderson County. The effective date of this Agreement is November 1, 2008 and shall expire three years from the date of this agreement.

RECITALS

Palmetto Agricultural Consultants, LLC agrees to provide consulting services to Anderson County.

AGREEMENT

1. TERM OF AGREEMENT

Palmetto Agricultural Consultants, LLC hereby contracts with Anderson County for services as defined herein, such contract commencing on the Effective Date of this Agreement and terminating on the last performance day of the contract, unless extended by mutual Agreement of both parties or terminated as hereinafter provided

GENERAL PROVISIONS:

- 1.1.1 LEGAL REPRESENTATION. Each party acknowledges right to separate legal counsel in relation to this Agreement.
- 1.1.2 COMPLETE AGREEMENT OF THE PARTIES. This document represents the complete Agreement of the parties and it supersedes any agreement that may have been made prior to this Agreement. This Agreement may be amended in writing by mutual consent of the parties to this Agreement.
- 1.1.3 ASSIGNMENT. This Agreement may not be assigned unless such assignment is mutually agreed to by the parties to this Agreement.
- 1.1.4 BINDING. This Agreement shall be binding upon both of the parties hereto.
- 1.1.5 GOVERNING LAW. The parties hereby expressly acknowledge and agree that this Agreement is entered into in the State of SOUTH CAROLINA and,

to the extent permitted by law, the Agreement shall be construed and enforced according to the laws of the State of SOUTH CAROLINA.

- 1.1.6 FAILURE TO OBJECT NOT A WAIVER. The failure of a party to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach or of any future violation, breach, or wrongful conduct.
- 1.1.7 UNENFORCEABLE TERMS. Any provision hereof prohibited or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- 1.1.8 EXECUTION IN PARTS OR PHASES. This Agreement may be executed in parts or phases as may be defined in this Agreement and when so executed shall constitute one agreement binding on all parties.
- 1.1.9 FURTHER ASSISTANCE. From time to time each party shall execute and deliver such further instruments and shall take such other action as the other party may reasonably request in order to discharge and perform their obligations and agreements hereunder and to give effect to the intentions expressed in this Agreement.
- 1.1.10 INCORPORATION BY REFERENCE. All exhibits and attachments referred to in this Agreement are incorporated herein in their entirety by such reference.
- 1.1.11 CROSS-REFERENCES. All cross-references in this Agreement, unless specifically directed to another agreement or document, refer to provisions in this Agreement, and shall not be deemed to be references to any other transaction, agreement, or document.
- 1.1.12 MISCELLANEOUS PROVISIONS. The various headings and numbers herein and the grouping of provisions of this Agreement are for the purpose of convenience only. The language in all parts of this Agreement shall in all cases be construed in accordance to its fair meaning as if prepared by all parties to the Agreement and not strictly for or against any of the parties.
- 1.1.13 CONFIDENTIALITY OF INFORMATION. Both Parties agree to protect and to require all personnel to protect to the fullest extent required by law the confidentiality of the other party of information received in connection with the services provided.

2. SERVICES TO BE PROVIDED: Palmetto agrees to provide the following services:

Begin the steps to implement the Farm to School program in Anderson County schools.

Implement/grow the Farm to Institution programs in Anderson County.

Begin the steps to create an Anderson County Food Cooperative including local farmers, local restaurant proprietors, institutional leaders and school officials.

Attempt to grow the number of Community Supported Agriculture systems in Anderson County beyond its current number (1-2 at present).

Coordinate farm sales to local restaurants through a constant stream of communication.

2.1 ACCESS. Palmetto Agricultural Consultants, LLC shall be provided access to County facilities as required in performance of its duties.

2.2 VITAL SERVICES. Anderson County recognizes that the services under this Agreement are vital to Palmetto Agricultural Consultants, LLC and must be continued without interruption.

3. COMPENSATION.

In consideration for the services required herein, Anderson County agrees to compensate Palmetto Agricultural Consultants, LLC as follows: Palmetto shall perform and shall be paid by County for the services of its employee, Allison Schaum the rate of \$75.00 per hour for the first twelve months, and shall increase by \$10.00 per hour each succeeding year (year 1. \$75, year 2: \$85, year 3: \$95). Anderson County understands that Palmetto shall bill and Anderson County shall pay ½ the hourly rate for each additional employee of Palmetto beyond Allison Schaum.

Travel and out of pocket expenses incurred in relation to agreed project activities will be reimbursed by the County.

Palmetto shall invoice County monthly. Palmetto ensures that it shall properly document all work and expenses and such documentation shall be timely provided to County upon request.

4. INDEPENDENT CONTRACTOR.

In performing services and duties hereunder, Palmetto and any person acting on Palmetto's behalf shall do so as independent contractors and are not to be deemed employees or agents of Anderson County.

5. REMEDY FOR BREACH.

5.1 Each party acknowledges that the services to be rendered by it hereunder are of a special, unique, and extraordinary character which gives this Agreement a peculiar value to each. If County should terminate this agreement liquidated damages shall be immediately due and shall be computed as follows: by multiplying that year's and each following year's remaining months of the three year contract as if thirty hours per week had been invoiced for the work of employee Allison Schaum.

6. TERMINATION

6.1 CAUSES FOR TERMINATION. This Agreement shall terminate immediately upon the occurrence of any one of the following events:

- 6.1.1 The written agreement of the parties;
- 6.1.2 Either party commits a breach of duties hereunder, unless waived by the other party or cured by the breaching party within 10 days after the aggrieved party having given written notice thereof.

IN WITNESS WHEREOF, the parties have executed the Agreement.

PALMETTO AGRICULTURAL CONSULTANTS, LLC:

SIGNATURE: Allison Schaum
TITLE: Consultant owner
DATE: November 1, 2008

ANDERSON COUNTY:

SIGNATURE: [Signature]
TITLE: County Administrator
DATE: November 1, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS

Anderson County,) Civil Action No. 2009-CP-04-4482

Plaintiff,)

vs.)

Joey Preston and the South Carolina)
Retirement System,)

Defendants.)

**ANSWER & COUNTERCLAIMS TO
PLAINTIFF'S AMENDED COMPLAINT
& CO-DEFENDANT'S CROSSCLAIMS**

The Defendant, Joey Preston ("Preston"), responding to the Amended Complaint (treated herein simply as "Complaint") of Anderson County ("County") and the crossclaims of South Carolina Retirement System ("SRS") and further bringing counterclaims against the County would show the Court as follows:

FOR A FIRST DEFENSE
(In Response to the Allegations Contained in the Complaint)

1. Preston denies all allegations in Plaintiff's Complaint, including attachments, which are not specifically answered or modified. Preston admits the allegations contained in Paragraph 1 of the Complaint.
2. Preston admits the allegations contained in Paragraph 2 of the Complaint.
3. Preston admits so much of the allegations contained in Paragraph 3 of the Complaint, without otherwise conceding the truth of such statement, that the County's stated purpose for joining the System is as described in Paragraph 3 of the Complaint. The rest of the allegations of Paragraph 3 are denied.
4. Preston admits the allegations contained in Paragraph 4 of the Complaint.

5. In response to Paragraph 5, Preston admits the County did anticipatorily breach his contract as County Administrator, that Preston pursued his legal options, and such claims were presented to the County by Preston, through counsel.

6. In response to Paragraph 6, Preston admits, upon information and belief, the County referred his claims to the Personnel Committee, whose membership constitutes a matter of public record. In further response, Preston has insufficient information to admit or deny allegations concerning the inner workings of the County's Personnel Committee. However, Preston admits the County retained and was represented by outside legal counsel. All remaining allegations are, therefore, denied.

7. In response to Paragraph 7, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent Paragraph 7's allegations differ from the same, they are denied.

8. In response to Paragraph 8, Preston admits Michael Thompson served, for a period, as the Chair of Anderson County Council. In relation to the balance of Paragraph 8, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent Paragraph 8's allegations differ from the same, they are denied.

9. In response to Paragraph 9, Preston admits the County, by a majority vote, duly and validly approved the Severance Agreement and Release of all Claims ("the Severance Agreement") cited in the Paragraph. As to the Paragraph's remaining allegations, Preston craves reference to the record of the November 18, 2008 council meeting. To the extent the allegations differ from the same, they are denied.

10. In response to Paragraph 10, Preston craves reference to the Severance Agreement cited in the paragraph. To the extent the allegations contained in the Paragraph differ from the same, they are denied.

11. Preston denies the allegations contained in Paragraph 11 of the Complaint, including subparts (a) through (c).

12. Preston denies the allegations contained in Paragraph 12 of the Complaint.

13. Preston denies the allegations contained in Paragraph 13 of the Complaint.

14. Preston has no way of knowing Thompson's state of mind or intent. Preston admits Thompson was defeated in his run for re-election but denies, upon information and belief, the remaining allegations contained in Paragraph 14 of the Complaint.

15. In response to Paragraph 15, Preston admits that certain expenses submitted by Thompson were approved for payment by the County, as they were with all council members. With respect to the specific time, date, and purpose of those expenses, Preston craves reference to the documents supporting the requested reimbursement, which are in the County's possession. To the extent the County's allegations differ from the same, they are denied.

16. In response to Paragraph 16, Preston has no way of knowing Thompson's state of mind or intent with respect to comments he may or may not have made to the media. Preston, therefore, cannot admit or deny whether Thompson made false statements to the Anderson Independent Mail. To the extent a response is required, Preston denies the allegations. In further response, Preston does admit that he would not have corrected Thompson's statements to the media, assuming he had even known about them, because he would not be in a position to ascertain the veracity of the same.

17. In response to Paragraph 17, Preston admits Thompson submitted several applications for County employment at differing times. Preston denies Thompson's potential employment by the County had any relationship to his Severance Agreement. To the extent the allegations in Paragraph 17 differ from the same, they are denied.

18. In response to Paragraph 18, Preston has insufficient information to admit or deny whether Thompson had read the Severance Agreement prior to voting on the same. As such, Preston can neither admit nor deny the allegations contained in Paragraph 18. To the extent a response is required, Preston denies the same due to a lack of personal information.

19. In response to Paragraph 19, Preston admits Thompson applied to be hired as a County employee. With respect to the dates of such applications, Preston craves reference to the corresponding employment applications and postings. To the extent the Plaintiff's allegations differ from the same, they are denied. Preston further admits that Michael Cunningham later expressed reservations about hiring Thompson. All remaining allegations contained in Paragraph 19 are denied.

20. In response to Paragraph 20, Preston admits Thompson was hired by the County. All remaining allegations contained in Paragraph 20 are denied.

21. In response to Paragraph 21, Preston admits he approved a training advance to Thompson, consistent with the treatment of all council members.

22. In response to Paragraph 22, Preston has insufficient information to admit or deny the allegations contained in the same. To the extent a response is required, the allegations contained in Paragraph 22 are denied.

23. In response to Paragraph 23, Preston admits the County paid for training for Thompson beginning in August of 2008. As to the specific date and type of training, Preston

craves reference to the documents supporting the reimbursement, which are in the County's possession. To the extent the County's allegations differ from the same, they are denied.

24. In response to Paragraph 24, Preston did not specifically inform Council of Thompson's reimbursements or the reimbursements of any council member or employee. Thompson's employment application and reimbursements have no relationship to Preston's Severance Agreement. Further, such documents were readily available to the Council and the public.

25. In response to Paragraph 25, Preston is informed and believes Councilman Wilson was the Chair of the Personnel Committee. Preston has insufficient information to admit or deny the inner workings of the Personnel Committee. To the extent Paragraph 25 relates to the same, and to the extent a response is required, Preston denies the same. With respect to Councilman Wilson's votes and participation in public meetings, Preston craves reference to the record of those meetings. To the extent the allegations contained in Paragraph 25 differ from the same, they are denied.

26. In response to Paragraph 26, Preston craves reference to the contract referenced in the Paragraph. To the extent the Paragraph's allegations differ from the same, they are denied.

27. In response to Paragraph 27, Preston craves reference to the contract cited in the Paragraph. To the extent the allegations contained in the Paragraph differ from the same, they are denied. Preston denies any relationship existed between the contract (with the company of Wilson's adult daughter) and his Severance Agreement or the negotiation thereof.

28. In response to Paragraph 28, Preston craves reference to the contract cited in the Paragraph. To the extent the Paragraph's allegations differ from the same, they are denied.

29. Preston admits the allegations contained in Paragraph 29 of the Complaint.

30. Preston is informed and believes Councilman McAbee was a member of the Personnel Committee. Preston is further informed and believes Council referred the negotiation of his employment issues to the Personnel Committee. Preston has insufficient information to admit or deny the inner workings of the Personnel Committee. To the extent the Paragraph's allegations relate to the same and require an answer, they are denied. With respect to Councilman McAbee's votes and participation in public meetings, Preston craves reference to the record of those meetings. To the extent the allegations contained in Paragraph 30 differ from the public record, they are denied.

31. In his capacity as County Administrator, Preston routinely processed travel expenditures for all Council members. Preston craves reference to the paperwork supporting any reimbursements made to Councilman McAbee. All allegations in Paragraph 31 differing from the same are denied. All remaining allegations are denied.

32. With respect to reimbursements made to McAbee, Preston craves reference to the paperwork relating to the same. To the extent the allegations in Paragraph 32 differ from the same, they are denied. All remaining allegations are denied. Preston specifically denies any relationship existed between his Severance Agreement and reimbursements made to McAbee.

33. Preston denies the allegations set forth in Paragraph 33 of the Complaint. Preston specifically denies any relationship existed between the purchase of property on Lewis Drive and the vote of Council on his Severance Agreement

34. In response to Paragraph 34, Preston's prior responses are realleged as if they were stated fully herein.

35. Preston denies the allegations contained in Paragraph 35 of the Complaint.

36. Preston denies the allegations contained in Paragraph 36 of the Complaint.

37. In response to Paragraph 37, Preston's prior responses are realleged as if they were stated fully herein.

38. Preston denies the allegations contained in Paragraph 38 of the Complaint.

39. Preston denies the allegations contained in Paragraph 39 of the Complaint.

40. In response to Paragraph 40, Preston's prior responses are realleged as if they were fully stated herein.

41. In response to Paragraph 41, Preston admits that as County Administrator, he owed various duties to Anderson County. The scope and contours of such duties are matters of law. To the extent the paragraph's allegations differ from the same, they are denied.

42. Preston denies the allegations contained in Paragraph 42 of the Complaint.

43. In response to Paragraph 43, Preston denies that any of the allegations pertaining to Thompson, McAbee or the company of Wilson's daughter had any relationship to the approval of his Severance Agreement.

44. In response to Paragraph 44, Preston admits that he did not correct any statements made by Thompson to any media outlet and would further show that, had he known about the statements at the time, he would not have known the veracity of such statements.

45. Preston denies the allegations contained in Paragraph 45 of the Complaint.

46. Preston denies Paragraph 46 of the Complaint.

47. In response to Paragraph 47, Preston's prior responses are realleged as if they were fully stated herein.

48. Preston denies the allegations contained in Paragraph 48 of the Complaint.

49. Preston denies the allegations contained in Paragraph 49 of the Complaint.

50. Preston denies the allegations contained in Paragraph 50 of the Complaint.

51. Preston denies the allegations contained in Paragraph 51 of the Complaint.
52. Preston denies the allegations contained in Paragraph 52 of the Complaint.
53. Preston denies the allegations contained in Paragraph 53 of the Complaint.
54. In response to Paragraph 54, Preston's prior responses are realleged as if they were fully stated herein.

55. Preston denies the allegations contained in Paragraph 55 of the Complaint.
56. Preston denies the allegations contained in Paragraph 56 of the Complaint.
57. Preston denies the allegations contained in Paragraph 57 of the Complaint.
58. Preston denies the allegations contained in Paragraph 58 of the Complaint.
59. Preston denies the allegations contained in Paragraph 59 of the Complaint.
60. Preston denies the allegations contained in Paragraph 60 of the Complaint.
61. Preston denies Paragraph 61 of the Complaint.

62. In response to Paragraph 62, Preston's prior responses are realleged as if they were fully stated herein.

63. Preston denies the allegations contained in Paragraph 63 of the Complaint.
64. Preston denies the allegations contained in Paragraph 64 of the Complaint.
65. Preston denies the allegations contained in Paragraph 65 of the Complaint.
66. Preston denies the allegations contained in Paragraph 66 of the Complaint.
67. Preston denies the allegations contained in Paragraph 67 of the Complaint.
68. Preston denies the allegations contained in Paragraph 68 of the Complaint.
69. Preston denies the allegations contained in Paragraph 69 of the Complaint.
70. Preston denies Paragraph 70 of the Complaint.

71. In response to Paragraph 71, Preston's prior responses are realleged as if they were fully stated herein.
72. Preston denies the allegations contained in Paragraph 72 of the Complaint.
73. Preston denies the allegations contained in Paragraph 73 of the Complaint.
74. Preston denies the allegations contained in Paragraph 74 of the Complaint.
75. In response to Paragraph 75, Preston's prior responses are realleged as if they were fully stated herein.
76. Preston denies the allegations contained in Paragraph 76 of the Complaint.
77. Preston denies the allegations contained in Paragraph 77 of the Complaint.
78. In response to Paragraph 78, Preston's prior responses are realleged as if they were fully stated herein.
79. Preston denies the allegations contained in Paragraph 79 of the Complaint.
80. Preston denies the allegations contained in Paragraph 80 of the Complaint.
81. In response to Paragraph 81, Preston's prior responses are realleged as if they were fully stated herein.
82. Preston denies the allegations contained in Paragraph 82 of the Complaint
83. Preston denies the allegations contained in Paragraph 83 of the Complaint.
84. Preston denies the allegations contained in Paragraph 84 of the Complaint.
85. In response to Paragraph 85, Preston's prior responses are realleged as if they were fully stated herein.
86. Preston denies the allegations contained in Paragraph 86 of the Complaint.
87. Preston denies the allegations contained in Paragraph 87 of the Complaint.
88. Preston denies the allegations contained in the prayer for relief

FOR A SECOND DEFENSE

(As to All Claims Alleged by the South Carolina Retirement System)

89. Preston denies all allegations in Co-Defendant South Carolina Retirement System's ("SCRS") Answer which relate to him and which are not specifically answered or modified or which conflict with any of Preston's responses to the County's Complaint. Preston admits the allegations contained in Paragraph 38 of SCRS' Answer.

90. Preston admits the allegations contained in Paragraph 39 of the SCRS' Answer.

91. Preston admits the allegations contained in Paragraph 40 of the SCRS' Answer.

92. Preston admits the allegations contained in Paragraph 41 of the SCRS' Answer.

93. Preston admits the allegations contained in Paragraph 42 of the SCRS' Answer.

94. Preston admits the allegations contained in Paragraph 43 of the SCRS' Answer.

95. Preston admits the allegations contained in Paragraph 44 of the SCRS' Answer.

96. Preston admits the allegations contained in Paragraph 45 of the SCRS' Answer

97. Preston admits the allegations contained in Paragraph 46 of the SCRS' Answer.

98. Preston admits the allegations contained in Paragraph 47 of the SCRS' Answer.

99. Preston denies the allegations contained in Paragraph 48 of the SCRS' Answer as the County is not entitled to relief against Preston.

100. Preston denies the allegations contained in Paragraph 49 of the SCRS' Answer.

101. Preston denies the allegations contained in Paragraph 50 of the SCRS' Answer.

102. Preston denies the allegations contained in Paragraph 51 of the SCRS' Answer.

103. In response to Paragraph 52 of SCRS' Answer, Preston's prior responses are realleged as if they were stated fully herein.

104. Preston denies the allegations contained in Paragraph 53 of SCRS' Answer

105. In response to Paragraph 54 of SCRS' Answer, Preston craves reference to the statute cited in the paragraph. To the extent the allegations contained in Paragraph 54 differ from the same, they are denied.

106. Preston denies the allegations contained in Paragraph 55 of SCRS' Answer.

107. In response to Paragraph 56 of SCRS' Answer, Preston's prior responses are realleged as if they were stated fully herein.

108. Preston denies the allegations contained in Paragraph 57 of the SCRS' Answer.

109. Preston denies the allegations contained in Paragraph 58 of the SCRS' Answer.

110. Preston denies the allegations contained in the SCRS' prayer for relief. Preston denies SCRS is entitled to any relief.

FOR A THIRD DEFENSE
(Failure to State a Claim)

111. Preston's prior responses are realleged as if they were stated fully herein.

112. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims fail to state a claim upon which relief can be granted.

113. Some or all of the claims asserted in the County's Complaint or in SCRS's cross-claims likewise fail to allege their basis sufficient specificity.

FOR A FOURTH DEFENSE
(Estoppel)

114. Preston's prior responses are realleged as if they were stated fully herein.

115. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(Unclean Hands)

116. Preston's prior responses are realleged as if they were stated fully herein.

117. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of unclean hands

FOR A SIXTH DEFENSE
(Ratification)

118. Preston's prior responses are realleged as if they were stated fully herein.

119. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of ratification.

FOR A SEVENTH DEFENSE
(Release)

120. Preston's prior responses are realleged as if they were stated fully herein.

121. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the doctrine of release.

FOR AN EIGHTH DEFENSE
(No Private Right of Action)

122. Preston's prior responses are realleged as if they were stated fully herein.

123. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are predicated upon statutes which do not create a private right of action.

FOR A NINTH DEFENSE
(Baird Doctrine)

124. Preston's prior responses are realleged as if they were stated fully herein.

125. Some or all of the claims asserted in the County's Complaint or in SCRS' cross-claims are barred by the holding of Baird et al v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).

FACTUAL BACKGROUND SUPPORTING COUNTERCLAIMS

126. Preston's responses are realleged as if they were stated fully herein.
127. The County and Preston executed a Severance Agreement in November of 2008.
128. Duly authorized and executed on behalf of the County, the Severance Agreement constitutes a valid and binding contract.

Covenant to Forgo Claims, Demands, and Charges

129. Paragraph 8 of the Severance Agreement states:

The County agrees and hereby covenants irrevocably never to make any claim or demand, or commence, cause or permit to be instituted or prosecuted, any claim, charge, proceeding, or action at law or in equity against Mr. Preston, his heirs, legal representatives, or assigns, by reason of any claim, demand, or cause of action which the County may now have, or may hereinafter acquire, relating to Mr. Preston's employment with the County or his actions as an employee on behalf of the County, expressly including, but not limited to, all actions taken by Mr. Preston within the scope and course of his employment as County Administrator.

(Severance Agreement, ¶8.)

130. The County breached Paragraph 8 of the Severance Agreement by filing a civil action against Preston on November 13, 2009.
131. Discovery from the civil action, over the past two years, reflects the County's allegations wholly lack merit.
132. Before filing the instant lawsuit, in further breach of Paragraph 8 of the Severance Agreement, the County initiated an "investigation" into Preston in January of 2009.
133. At all times, the "investigation" was politically motivated, biased, result-oriented, and tainted with misrepresentation and fraud.

Affidavit Falsified By Anderson County

134. During the course of the "investigation," County "investigators," who were employees and/or agents, acting in furtherance of the County's interests, actively falsified evidence.

135. The "investigators" interviewed an individual named Steve Ebbeler ("Ebbeler") in May of 2009.

136. According to his sworn deposition testimony, Ebbeler testified, the "investigators" told Ebbeler if he would "help" with the Preston investigation, the "investigators," in exchange, would "take care" of an investigation, where Ebbeler believed he had "a quarter of a million dollars worth of restitution coming." (Ex. A, p. 18, ll. 16-24.)

137. The "investigators" thereafter prepared a false affidavit for Ebbeler's signature and presented the false affidavit for execution.

138. The affidavit, as falsified by the "investigators," swore that:

- a. While Ebbeler was working on the Anderson County Civic Center ("Civic Center") fencing, Preston approached him about installing fencing at his home;
- b. Ebbeler quoted a price of Four Thousand Dollars (\$4,000.00) to Preston and began installing fencing at his home;
- c. Preston only paid Ebbeler One Thousand Dollars (\$1,000.00) but promised him more work;
- d. Ebbeler later completed the Civic Center project;
- e. Preston told him to continue installing fencing on the Civic Center after completing the fencing at Preston's home; and
- f. Ebbeler told a man named Rick Skoog about his work at Preston's house.

139. Yet, while under sworn oath, Ebbeler confessed he never told the "investigators" any such information and --further-- testified he never said any of the things written in the false

affidavit. (Ex. A, p. 114, ll 15-21 ("They typed that up someplace else and that got nothin' go do with me. I did not say that...I'm saying you got a crooked cop. Anderson County's full of 'em."))

140. Indeed, the affidavit prepared by the County's "investigators," which they induced to Ebbeler to sign, proves demonstrably false.

141. Apparently unbenownst to the "investigators" who falsified the affidavit, Preston did not even buy his home until June of 2001, nearly ten (10) months *after* Ebbeler received final payment for work completed on the Civic Center. (See Ex. A, p. 47, ll. 4-10.)

142. As a consequence, the affidavit's contents are demonstrably false.

143. Contrary to the affidavit falsified by the County, Ebbeler likewise testified Preston wrote him a check for the entire amount owed. (See Ex. A, p. 23, ll. 4-6) (\$4,000..."That's what I got paid.")

144. Contrary to the affidavit falsified by the County, Ebbeler testified Preston never promised him more work and the statement about his being underpaid was untrue. (Ex. A, p. 33, ll. 11-25; Ex. A, p. 77, ll. 10-14 ("Number 5's [paragraph 5 in the affidavit] not true."); Ex. A, p. 99, ll. 1-5 ("I didn't say I sold him the fence for a thousand dollars. I'm not no fool. You can't even eat on a thousand dollars.").

145. Even though the affidavit references a man named Rick Skoog, public records reflect Rick Skoog was born on September 4, 1987 and would have been thirteen years old (or younger) when the Civic Center was built.

146. During the course of discovery in this lawsuit, the County withheld Ebbeler's affidavit until July of 2011 despite Preston's requests for documents.

147. Documents produced in response to subpoenas reflect, one or more members of Council, even before being sworn into office, and before any "investigation" ever began, heavily

lobbied for the commencement of a state grand jury proceeding against Preston—all while secretly leaking to the media of the possibility of a grand jury proceeding.

148. Thereafter, the "investigators" who procured the false Ebbeler affidavit played a primary role in the "investigation."

149. Upon information and belief, the "investigators" submitted the false Ebbeler affidavit to the state grand jury in hopes of improperly procuring an indictment of Preston.

150. Upon information and belief, the "investigators" have submitted other manipulated information and materials to the grand jury in hopes of improperly procuring an indictment of Preston.

151. At all times the County has refused to divulge the contents of its "investigation," although the "investigation" has, according to one official, long since concluded.

152. Such documents also reflect efforts to commence a grand jury proceeding were being manipulated from the inception, through disclosure to the media, for political purposes. (Compare Ex. B with Ex. C (Councilman E. Moore in 12/01/08 (before being sworn-in) writing to reporter for Williamston Journal and referring to grand jury proceeding he sought pre-investigation: "Ask Rusty about it. I have to tread gingerly on this until next week. I don't want to play our hand just quite yet. But if Rusty thinks we need to go public we can.")

153. Upon information and belief, documents produced in response to subpoenas also reflect that Russell Burns, even before being hired as Interim County Administrator, participated in the decision-making process as to when information regarding the grand jury would be leaked to the public for tactical purposes in December of 2008. (Ex. C.)

154. The County later hired Russell Burns as interim County Administrator, a position he has now held for several years.

False Arrest and Imprisonment Designed to Gain Advantage in Lawsuit

155. After filing the lawsuit against Preston, on May 6, 2010, the County, by and through employees and agents of the Sheriff's Department, falsely arrested Preston for Driving Under the Influence (1st offense).

156. The arresting officer was Deputy Sheriff L.B. Moore ("Moore").

157. Deputy Sheriff J. Crawford accompanied Moore during Preston's traffic stop for some period of time.

158. Prior to Preston's arrest on May 6, 2010, the County knew of prior misconduct on the part of Moore occurring as early as December of 2005.

159. In fact, the County previously terminated Moore on or about December 12, 2005. (See Ex. D.)

160. Sheriff John Skipper rehired Moore.

161. A police report from the Anderson City Police Department dated December of 2005 reflects Moore threatened a man who was dating a woman named Shanon Russell Burns. (See Ex. E.)

162. The report reflects Moore also had a relationship with Shanon R. Burns. (See Ex. E.)

163. Shanon R. Burns is, upon information and belief, the daughter of Interim County Administrator Rusty Burns, while Moore is the officer who wrongfully arrested Preston for DUI.

164. Anderson City Police discovered Moore waiting in the parking lot of the victim with a weapon in his vehicle. (See Ex. E.)

165. In July of 2010, Moore was suspended without pay from the Anderson Sheriff's Department for gross and/or illegal misconduct relating to his handling of traffic stops before, during, and after the time period when Preston was arrested. (See Ex. F.)

166. Moore was later indicted for his misconduct and criminal charges remain pending. (See Ex. G.)

167. Upon information and belief, the County knew or should have known of Moore's ongoing misconduct at the time of Preston's arrest.

168. On the evening of May 6, 2010, while Moore still had Preston pulled over on the side of the road, phone records (produced by the County) reflect phone calls between Moore and Crawford to their supervisor, Lieutenant M. Binninger.

169. Phone records (produced by the County) also reflect Binninger directly called Sheriff Skipper at 11:17 PM at night, while Preston still remained on the side of the road with Moore.

170. Eight minutes later, while Preston still remained on the road side, phone records (produced by the County) reflect, *in highly irregular fashion*, that Interim County Administrator Rusty Burns directly phoned Sheriff Skipper at 11:25 PM at night.

171. A dash cam video from Moore's car existed from the night of May 6, 2010.

172. On May 25, 2010, Moore executed an affidavit stating that he had not produced the videotape because, "The video tape ran out prior to arriving at the Anderson County Jail " (Ex. H.)

173. The County was later served with a Freedom of Information Act request asking for the full video and a version was produced.

174. Upon information and belief, however, different versions of the dash cam video from Moore's car exist.

175. As a consequence, Preston asked to inspect the original video from Moore's vehicle.

176. By responsive correspondence dated September 7, 2011, the County informed Preston that the original video had been destroyed. (*See Exhibit I.*)

177. On the night of the May 6, 2010, Moore conducted a DataMaster test (breathalyzer) of Preston and Preston scored a .03, which is far below the legal limit of .08. (*See Ex. J.*)

178. Notwithstanding his passing of the breathalyzer, Moore arrested Preston and detained him over night.

179. Records produced by the County further reflect that by 3:37 AM, the County released Preston's arrest information to the media then knowing his blood alcohol levels were so far below the legal limit that Preston was presumptively sober.

180. Urine tests of Preston were also administered and confirmed the absence of any other impairing substance. (*See Ex. K.*)

181. No legitimate basis or probable cause supported the County's arrest of Preston for DUI.

182. Indeed, on June 1, 2010, Solicitor Adams dismissed the charges against Preston noting that, at his blood alcohol content ("BAC") level, Preston was conclusively unimpaired at the time of his arrest. (*See Ex. L.*)

183. Such BAC level was the same level that Preston registered when the County determined Preston should be arrested and detained against his will.

184. Upon information and belief, Preston's arrest was completed in an attempt to embarrass Preston, to gain an advantage in the civil lawsuit brought by the County, and to exact political payback against Preston.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract Against the County)

185. The prior allegations are realleged as if they were stated fully herein.

186. The County and Preston executed a Severance Agreement.

187. The Severance Agreement was duly authorized and executed on behalf of the County.

188. As referenced above, Paragraph 8 of the Severance Agreement contains a covenant not to sue Preston or to pursue baseless charges against him.

189. The County's lawsuit breached Paragraph 8 of the Severance Agreement causing Preston to sustain significant damages including the costs, attorney's fees, and other expenses reasonably attributable to the defense of this action.

190. The County's "investigation" of Preston included the manufacturing of false evidence for purposes of procuring criminal charges without basis and lacking probable cause.

191. Such conduct further breaches Paragraph 8 of the Severance Agreement.

192. The County further breached Paragraph 8 by procuring the wrongful arrest of Preston for DUI when no legal basis or probable cause supported the same.

193. Upon information and belief, the County's arrest of Preston was completed in an effort to gain tactical advantage in the civil lawsuit brought by the County in further breach of Paragraph 8 of the Severance Agreement.

194. The County's breaches of Paragraph 8 of the Severance Agreement have also impaired Preston's ability to gain alternate employment, which has legally and factually caused him to sustain substantial damages.

195. The County's breaches of Paragraph 8 of the Severance Agreement have caused damage to Preston's reputation and standing in the community.

196. Accordingly, Preston is entitled to recover all actual, consequential, and other damages proximately flowing from the County's breaches of the Severance Agreement.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(False Arrest & Imprisonment)

197. The prior allegations are realleged as if they were stated fully herein.

198. The County, by and through members of the Sheriff's Department and other employees, restrained Preston by arresting him on May 6, 2010 and then placing him in detention.

199. The County's restraint of Preston was, at all times, intentional.

200. Preston's arrest and restraint were unlawful and unsupported by probable cause.

201. Preston sustained substantial injuries as a consequence of the County's false arrest and imprisonment of him, including but not limited to, a loss of freedom, embarrassment, anguish, and a further impairment of Preston's ability to gain alternate employment

FOR A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

202. The prior allegations are realleged as if they were fully stated herein.

203. The County initiated the grand jury process and the DUI arrest of Preston for an ulterior purpose, namely to gain tactical advantage in the above-captioned civil litigation and to exact political payback against Preston.

204. As set forth above, the County engaged in willful acts in both the "investigation" and the DUI arrest that were improper in the regular conduct of such proceedings.

205. As set forth above, Preston has sustained significant damages as a consequence of the County's abuse of process.

FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Supervision)

206. The prior allegations are realleged as if they were fully stated herein.

207. At all times during Preston's DUI arrest, Moore was using chattel owned by the County.

208. The County knew of its ability to control Moore and, in fact, possessed such ability.

209. Based upon prior incidents involving Moore, including the the events occurring in December of 2005 and the misconduct involving other motorists occurring both before, during, and after Preston's arrest, the County should have known of the necessity to control Moore's conduct while on duty and serving the County.

210. The County had knowledge of some or all of Moore's prior misconduct.

211. To the extent the County did not know all of Moore's prior misconduct, it should have known about the same.

212. The County's failure to supervise Moore, while on duty, in light of such prior misconduct constitutes gross negligence on the part of the County.

213. The County's failure to supervise Moore caused Preston to sustain significant harms, as set forth above and incorporated herein by reference.

FOR A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Malicious Prosecution)

214. The prior allegations are realleged as if they were fully stated herein.
215. The County instituted criminal proceedings against Preston by way of his arrest for DUI.
216. The criminal proceedings were resolved in Preston's favor.
217. The DUI arrest was instituted against Preston out of malice.
218. No probable cause existed in support of Preston's arrest for DUI.
219. The DUI arrest was terminated in Preston's favor by the Solicitor such that it cannot be revived.
220. Preston sustained significant actual damages as a consequence of the County's malicious prosecution of the DUI arrest including loss of freedom, anguish, and injury to reputation and person.
221. Preston sustained significant special damages as a consequence of the County's malicious prosecution of the DUI arrest, including reasonable attorney's fees, and financial losses in relation to prospective employment.

WHEREFORE, having fully answered the Plaintiff's Complaint and SCRS' cross-claims, Preston would respectfully request that an Order be entered which provides for the following relief:

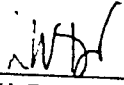
- A. For the Complaint to be dismissed as to Preston with prejudice along with an award of costs resulting therefrom in Preston's favor;
- B. For actual, consequential, incidental and special damages incurred due to the County's actions, as set forth in the above counterclaims;

C. For the costs, fees, and expenses including a reasonable amount of attorneys' fees resulting from the County's misconduct as outlined above; and,

D. For such other legal or equitable relief as the Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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SC Bar No. 68796
E-Mail: lane.davis@nelsonmullins.com
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UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, SC 29640
(864) 855-3114

Attorneys for Defendant Joey Preston

Greenville, South Carolina

5/3, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA)
: COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Anderson County,)

Plaintiff,)

-vs-)

Joey Preston and the South
Carolina Retirement System,)

Defendants.)

C.A. No.: 2009-CP-04-4482

DEPOSITION OF STEVE EBBELER

PURSUANT to Notice, the deposition of Steve EbbeJer, called by the Plaintiff, was taken commencing at the hour of 2:15 p.m. on Friday, August 12, 2011, in the offices Wyche, P.A., Attorneys at Law, 44 East Camperdown Way, Greenville, South Carolina.

IRVETA J. SHOUSE, Reporter

G. W. Coleman Associates

Post Office Box 9177 • Greenville, South Carolina 29604
864/233-2341

EXHIBIT A

Ebbeler Deposition Excerpts:

Page 18: ll. 16-24.

16 A. They told me they were gonna make sure that my arson
17 thing got investigated. But it turned out the people that ---
18 the people that burnt my place and stole the equipment out of
19 my building got a lot of money. And it never went anyplace.
20 They told me, they said I help 'em out, why, if I'd help with
21 this, they'd take care of that, and I got a quarter of a
22 million dollars worth of restitution coming. Not a penny.
23 They haven't done a thing and I can't even get 'em to answer
24 the phone.

P. 23: ll. 4-6.

4 Q. Four thousand it what you quoted him or what he paid
5 you?
6 A. That's what I got paid.
7 Q. That's what you got paid?
8 A. I believe. And that's a guess. I'm thinking it was
9 four thousand. But I can't even remember how many feet it was.

P. 33: ll. 11-17

11 Q. Now, it says here in your affidavit that Mr. Preston
12 paid you a thousand dollars for the fence. Is that what you
13 recall?

14 A. Naw, he paid me four --- I think --- I'm sure he
15 gave me a check for four thousand dollars. Yeah, I believe he
16 paid me four thousand dollars. I don't know about all that
17 there. I signed this thing, but... Naw.

P. 47: ll. 4-11:

4 Q. Here's Exhibit 5, Mr. Ebbeler. Do you recognize
5 that check?

6 A. Yes, ma'am.

7 Q. That is dated August 31, 2000; right?

8 A. Uh-huh.

9 Q. Was that the last payment you received for the ---

10 A. Yes.

11 Q. --- for the work on the Civic Center?

P. 77, ll. 10-14:

10 Q. Please take a hard look at this (Exhibit 1) and go
11 through it one by one. And I want you to tell me what facts in
12 here you believe are no longer true.

13 MR. DAVIS: Object to the form.

14 A. Number 5's not true.

P. 99: ll. 1-5:

1 Q. Do you believe your prior handwritten statement was
2 different from this?

3 A. Absolutely. I didn't say I sold him the fence for a
4 thousand dollars. I'm not no fool. You can't even eat on a
5 thousand dollars.

P. 114: ll. 15-25:

15 A. I didn't sign that --- I didn't make --- I didn't do
16 that statement. I didn't write that statement. They typed
17 that up someplace else and that ain't got nothin' to do with
18 me. I did not say that.

19 Q. Just so I understand: Are you saying that ---

20 A. I'm saying you got a crooked cop. Anderson County's
21 full of 'em.

22 Q. Which cop is crooked?

23 A. I don't know. Whichever one of them wrote that
24 statement and put number five in there and said I give a fence
25 up for a thousand dollars. You know, they can check. They can

P. 112: ll. 21-25:

21 | Q. But you believe that that handwritten statement said
22 | something different than Exhibit 1?

23 | A. I know I never said that. This number 5? Never
24 | happened. Didn't happen. You know? I didn't say that. And
25 | number 7, where it says --- I never said --- I never told Joey

EXHIBIT B

Eddie Moore
12/01/2008 03 54 AM

To thomas9976@charter.net, kellr@waldreplaw.com
cc
bcc Hayniehouse@bellsouth.net; waimradio@yahoo.com;
rickfreemantle@Charter.net; tombeckwith@bellsouth.net;
jtrammell66@msn.com; suthrnboy@charter.net
Subject Fw: Anderson County Administrator Buy-out on Nov. 16

— Forwarded by Eddie Moore/GV/FD/FluorCorp on 12/01/2008 06.51 AM —



"Office of Attorney General
user"
<info@scattorneygeneral.co
m>
11/26/2008 11 20 AM

To <Eddie.Moore@Fluor.com>
cc "Garden Frampton" <AGGFRAMPTO@ag.state.sc.us>
Subject Re: Anderson County Administrator Buy-out on Nov. 16

Dear Councilman Moore,

Thank you for your email on November 25. It is our understanding that a recording of the November 16, 2008, council meeting is being forwarded to this office for review. As of this date, however, we have not yet received that recording or any other information regarding that council meeting.

We are happy to receive any recordings or documents relevant to this matter. Once they are reviewed, we will determine what action – if any – is required by this office.

Please know that this office does not investigate except in the area of Medicare fraud. If our attorneys determine from the facts that a criminal investigation is warranted, we will contact SLED and request that they investigate.

The Attorney General would be happy to meet with you and any other members of council concerning this matter. However, we would appreciate the opportunity to review the facts of the matter before that meeting. Such a review will acquaint us with the facts and better equip us as we determine what our role in this matter would be and to discuss it with you from an informed prospective.

I will have the Attorney General's scheduler contact you next week to determine a mutually acceptable date for a meeting here.

Sincerely,

Len Williams

FEI00071

000191

EXHIBIT C

Eddie Moore
12/01/2008 04 23 AM

To "Stan Welch" <suthrnboy@charter.net>
cc
bcc
Subject Re. Anderson County Administrator Buy-out on Nov 16

HEY STAN,

ASK RUSTY ABOUT IT. I HAVE TO TREAD GINGERLY ON THIS UNTIL NEXT WEEK. I DON'T WANT TO PLAY OUR HAND JUST QUITE YET. BUT IF RUSTY THINKS WE NEED TO GO PUBLIC WE CAN

EDDIE

FEI00193

000193

EXHIBIT D

68 Wednesday, December 14, 2005, Anderson Independent-Mail

ANDERSON COUNTY

Sheriff's deputy fired

BY MERYL DILLMAN
Anderson Independent-Mail

Ali Anderson County Sheriff's Office deputy was let go Monday.

Anderson County Sheriff's Chief Deputy Tim Busha confirmed that Larry Brent Moore's employment was terminated Monday. Chief Busha said he wouldn't comment on why.

According to a city of Anderson Police Department report, in a possibly unrelated incident, officers were called to Raintree Apartments, 2420 Marchbanks Ave. in Anderson, about 10 p.m. Monday for the violation com-

plaints. The report said Mr. Moore, 31, was banging on a man's door. According to the report, the man was dating a woman Mr. Moore was also dating.

According to the incident report, Mr. Moore had called the man's cell phone seven times Sunday. The report added that Mr. Moore had been to the residence about three other times in the past and banged on the door for about an hour each time.

Meryl Dillman can be reached at (864) 260-1269 or by e-mail at dillmanmk@independentmail.com.

ACSO 000235

000195

EXHIBIT E

AGENCY I.D.
SC0040100

INCIDENT REPORT

CASE NUMBER 05-30633
ACIC
INC ID

EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PRESERVE TYPE	LUNTS ENTERED	TYPE VICTIM						
	Intimidation (13C)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	Residence/Home		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Home Organ. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.						
EVENT	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)			ZIP CODE	WEAPON TYPE							
	INCIDENT DATE	24 HR CLOCK	TO DATE	24 HR CLOCK	DISPATCH DATE/TIME	24 HR CLOCK	LOCATION NO.					
	12/12/2005	09:00	12/12/2005	10:00	12/12/2005	10:00:00 AM	10:02:00 AM	2				
VICTIM NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE			
	HERNANDEZ, JOSEPH	(J) SOU					N					
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE	
	HERNANDEZ, JOSEPH DIEGO			AQ	(J) SOU	W	M	19	N			
SUBJECT NO. 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	510	130										
SUBJECT NO. 1	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	MOORE, LARRY BRENT			W	M	31	N			600	220	
ADMINISTRATIVE	OFFICER NARRATIVE - Description of Incident Begins Here											
	<p>ON ABOVE DATE AND TIMES, R/O DID RESPOND TO A CIVIL DISTURBANCE AT ABOVE INCIDENT LOCATION. UPON ARRIVAL AT SCENE, R/O DID SPEAK WITH VICTIM HERNANDEZ WHO STATED THAT OFFENDER MOORE HAS BEEN AT HIS RESIDENCE FOR ABOUT AN HOUR BANGING ON THE DOOR WANTING TO SPEAK WITH VICTIM OR WITNESS BURNS. VICTIM STATED TO R/O THAT OFFENDER HAS BEEN CALLING HIM REPEATEDLY FOR ABOUT 2 MONTHS NOW ANO THAT THE VICTIM HAS ASKED MOORE TO STOP. VICTIM STATED THAT OFFENDER HAS BEEN TO HIS RESIDENCE ABOUT 3 TIMES IN THE PAST AT WHICH TIME OFFENDER BEATS ON THE DOOR FOR ABOUT AN HOUR EACH TIME. VICTIM HERNANDEZ STATED THAT OFFENDER DID CALL VICTIMS CELL PHONE ABOUT 7 TIMES ON 12-11-2005. VICTIM STATED THAT EACH</p>											
PROPERTY TEST	TYPE(GROUP)			JURISDICTION OF THEFT				JURISDICTION OF RECOVERY				
	STOLEN											
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ADM. CLOSED		ARRESTED UNDER 18		EX-CLEAR UNDER 18			
	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE												
1 OFFENDER DEATH 2 NO PROSECUTION 3 EXTRAJURISDICTION 4 VICTIM DECLINES COOPERATION 5 JUVENILE NO CUSTODY												
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER			DATE	UNIT NUMBER				
LESTER CHRISTOPHER LEE		12/12/2005	071	MITCHELL TERRY LEE			12/12/2005	038				
				FOLLOW-UP OFFICER								
				INVESTIGATION			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	CAMBERLIN JOHN				

EXHIBIT
4
BURNING

AGENCY I.D.
SC0040100

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER NO END
05-30633

ORIGINAL REPORT SUPPLEMENTAL REPORT ADDITIONAL VICTIMS ADDITIONAL STOLEN PROPERTY
 MODIFIES ORIGINAL CASE STATUS CHANGE ADDITIONAL OFFENDERS ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 3 PAGES

VICTIM OVERFLOW

COMPLAINT NAME (LAST, FIRST, MIDDLE) **BURNS, SHANON RUSSELL - WITNESS** VICTIM RELATIONSHIP TO SUBJECT
 VICTIM # RESIDENT RACE SEX AGE DOB ETH
 SUBJECT # (J) S O U W F 24 N
 RUNAWAY HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
 WANTED ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE
 WARRANT ARREST
 JAIL VICTIM NO. VISIBLE INJURY YES NO COMPLAINT OF NON-VISIBLE INJURIES YES NO VICTIM USING ALCOHOL, DRUGS, OR DRUGS YES NO UNK. TYPE TWO-MAN VEH. DETECTIVE/SPLASMT ALONE
 SUMMONS EXPLAIN ONE-MAN VEH. OTHER ASSISTED
 SUBJECT NO. USING ALCOHOL YES NO USING DRUGS YES NO UNK. TYPE

VICTIM OVERFLOW

COMPLAINT NAME (LAST, FIRST, MIDDLE) **WILLIAMS, TRAVIS L - WITNESS** VICTIM RELATIONSHIP TO SUBJECT
 VICTIM # RESIDENT RACE SEX AGE DOB ETH
 SUBJECT # (J) S O U W M 18 N
 RUNAWAY HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
 WANTED ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE
 WARRANT ARREST
 JAIL VICTIM NO. VISIBLE INJURY YES NO COMPLAINT OF NON-VISIBLE INJURIES YES NO VICTIM USING ALCOHOL, DRUGS, OR DRUGS YES NO UNK. TYPE TWO-MAN VEH. DETECTIVE/SPLASMT ALONE
 SUMMONS EXPLAIN ONE-MAN VEH. OTHER ASSISTED
 SUBJECT NO. USING ALCOHOL YES NO USING DRUGS YES NO UNK. TYPE

NARRATIVE

TIME OFFENDER CALLS HIS PHONE THAT HE ASKS IF HERNANDEZ AND BURNS ARE SEEING EACH OTHER.
 VICTIM HERNANDEZ STATED TO R/O THAT HE IS SCARED OF OFFENDER MOORE AND THAT HE THINKS THAT MOORE WILL TRY TO HURT HIM. WITNESS BURNS WAS ASKED OF ANYTHING HAPPENING AT WHICH TIME SHE DID STATE THAT OFFENDER MOORE HAS MADE SEVERAL COMMENTS TO HER THAT HE (OFFENDER MOORE) WAS GOING TO KILL VICTIM. OFFICER FULLER DID LOCATE MOORE IN HIS TRUCK IN THE PARKING LOT OF THE APARTMENTS LOCATED NEXT-DOOR BEING TANGLEWOOD APTS. OFFICER FULLER DID ASK MOORE IF HE HAD ANY WEAPONS IN THE VEHICLE AT WHICH TIME OFFENDER MOORE STATED YES AND THAT IT WAS LOCATED IN THE DOOR OF THE VEHICLE. OFFENDER MOORE WAS PLACED ON TRESPASS NOTICE FOR RAINTREE APTS. AND ALSO TANGLEWOOD APTS. VICTIM AND WITNESS BURNS HAVE BEEN BOYFRIEND AND GIRLFRIEND FOR AROUND 3 MONTHS NOW. BURNS STATED SHE HAS BEEN SEEING MOORE

JURISDICTION OF THEFT JURISDICTION OF RECOVERY

VEHICLE/ETC 1

STATUS TYPE VIN AND/OR LICENSE NO. BOAT HULL NO. AND/OR REG. NO.
 STOLEN VEHICLE SERIAL AND/OR OWNER AFFIDAVIT NO. STATE
 RECOVERED GUN YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE
 FOUND BOAT MODEL STYLE COLOR BRAND NAME CALIBER
 TOWED LICENSE PLATE VNC NO. DENOMINATION ISSUER SECURITIES DATE
 SUSPECT SEC. WRITES/BONDS STOCKS MISCELLANEOUS
 VICTIM ARTICLE

PROPERTY EST.

TYPE (GROUP)					TOTAL VALUE
STOLEN					
DAMAGED					
BURNED					
RECOVERED					
SEIZED					
FORGED					

ADMINISTRATIVE

SUBJECT IDENTIFIED YES NO SUBJECT LOCATED YES NO ACTIVE ADM. CLOSED UNFOUNDED ARRESTED UNDER 18 YES NO EX-CLEAR UNDER 18 YES NO

REASON FOR EXCEPTIONAL CLEARANCE 1 OFFENDER DEATH 2 NO PROSECUTION 3 EXTRADITION DENIED 4 VICTIM DECLINES COOPERATION 5 JUVENILE/NO CUSTODY

REPORTING OFFICER(S) DATE UNIT NUMBER APPROVING OFFICER DATE UNIT NUMBER
 GETSINGER, CHRISTOPHER LEE 12/12/2005 271 MITCHELL, TERRY LEE 12/12/2005 038
 FOLLOW-UP OFFICER INVESTIGATION YES NO ZAMBERLIN, CHN 12/17/2005 093

AGENCY I.D.
SC0040100

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	NOIC	
05-30633	NO	ENID

<input type="checkbox"/> ORIGINAL REPORT	<input type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY
<input type="checkbox"/> COPIES ORIGINAL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY

PAGE 3 of 3 PAGES

NARRATIVE

FOR SOME TIME ALSO. VICTIM ADVISED OF RIGHTS. INVESTIGATION CONTINUES. VICTIM HAS BEEN INTERVIEWED AND HAS DECLINED CRIMINAL PROSECUTION. CASE IS CLEARED.

		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		ACTIVE <input type="checkbox"/> ADM CLOSED <input type="checkbox"/> UNFOUNDED	
REASON FOR EXCEPTIONAL CLEARANCE		1 <input type="checkbox"/> OFFENDER DEATH		2 <input checked="" type="checkbox"/> NO PROSECUTION	
REPORTING OFFICER(S)		3 <input type="checkbox"/> EXTRADITION DENIED		4 <input type="checkbox"/> VICTIM DECLINES COOPERATION	
GETS HIGER CHRISTOPHER LEE		5 <input type="checkbox"/> JUVENILE NO CUSTODY			
DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
12/12/2005	271	MITCHELL FERRY LEE	12/12/2005	036	
FOLLOW UP		OFFICER		DATE	UNIT NUMBER
INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		JAMBERL N JOHN		12/11/2005	093

EXHIBIT F

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Former deputy indicted on bribery, misconduct charges

By Mike Ellis

Posted November 30, 2010 at 8.06 p m

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Documents

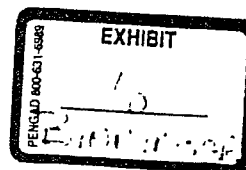
Moore indictments

ANDERSON — A former Anderson County sheriff's deputy was indicted by a grand jury Tuesday on three charges each of misconduct in office and taking bribes.

Larry Brent Moore, 36, accepted money or services from three individuals in exchange for dismissing traffic violations, according to the indictments.

Moore was suspended without pay July 30 and fired Aug. 10

He worked at the sheriff's office for more than four and a half years and was one of two deputies specializing in enforcement of laws against drunken driving.



Moore handled 43 percent of the sheriff office's DUI cases from January 2010 through May 15, according to information obtained through a Freedom of Information Act request from earlier this year

The indictments say that one of the alleged incidents of bribery happened in March and the other two happened on July 28 and July 29.

There are no details in the indictments about the amount of money or specific circumstances involved.

Moore's attorney, Druanne White, said that a grand jury, as a matter of procedure, does not hear evidence from defense lawyers.

"We look forward to the trial and to presenting our case, the truth," she said

Sheriff John Skipper said his office received a citizen complaint about Moore earlier this year. The complaint was forwarded to the sheriff's internal affairs division, which brought the case to South Carolina Law Enforcement Division officers and then to the South Carolina Attorney General's Office for prosecution.

"Any complaints about our deputies, we take very seriously and will investigate them," Skipper said. The sheriff said that he could not comment on details of the case out of consideration for the prosecutors and state law enforcement investigators.

Skipper emphasized that his deputies are held to high standards, as evidenced by the strong effort at investigating complaints about Moore.

Mark Plowden, a spokesman for the attorney general's office, confirmed that Moore had been indicted on three counts of misconduct in office and three counts of accepting a bribe. Plowden said Moore will be arraigned in December, but additional details would not be available from the attorney general's office until then.

Moore had worked at the sheriff's office since October 2006 and worked there for two previous stints of less than six months, from January 2005 to June 2005 and August 2005 to December 2005, according to personnel records provided by the office Tuesday in response to a Freedom of Information Act request

Pf



Fir
scl

W

Bl

Moore was hired and rehired by Skipper's predecessor, David Crenshaw. Moore was rehired by Skipper in December 2008. Deputies serve at the sheriff's pleasure and when a new sheriff comes in, all existing deputies need to be rehired, so Moore was rehired along with almost every other deputy who was working in late 2008, Skipper said

Moore worked as a Pendleton city police officer from 2003 to 2005 and also worked as a Pendleton officer between his sheriff's stints in 2005.

Moore has not been arrested, White said.

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Moore's career as deputy hit highs, lows

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Comments » 42

Hide

November 30 2010 8:59 p.m.

colobuff writes:

why's everybody so quiet?????

Suggest removal

EXHIBIT G

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

TRUE BILL
ACTION OF GRAND JURY
 NOV 30 2010
A. W. Humphrey

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04 *02456*

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November *30* 2010 TERM

THE STATE
v.

Larry Brent Moore
[REDACTED]

Indictment for

**Taking of consideration or the like by
sheriff or other officer for not
performing duties**

SC Code: 16-9-240
CDR Code: 1160

A TRUE COPY
 MAY - 2 2012
Richard H. Harty
 CLERK OF COURT

000206

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

TRUE BILL
ACTION OF GRAND JURY

NOV 30 2010

BN [Signature]

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04-

02455

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November ~~NOV 9 0 2010~~ 2010 TERM

THE STATE
v.

Larry Brent Moore
[Redacted]

Indictment for

Misconduct In Office

SC Code Ann. § 17-25-0030
CDR Code: 0819

A TRUE COPY

MAY - 2 2012

Richard D. [Signature]
CLERK OF COURT

000208

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
Taking of consideration or the like by sheriff or other officer for not
performing duties

At a Court of General Sessions, convened on November 30, 2010, the Grand Jurors of
Anderson County present upon their oath:

**Taking of consideration or the like by sheriff or other officer for not performing
duties**

That Larry Brent Moore did in Anderson County, on or about July 28, 2010,
receive money or other valuable thing as a consideration, reward or inducement
for omitting or delaying to arrest a defendant or to carry him before a magistrate.
To Wit: Larry Brent Moore accepted from Jose Hernandez a sum of money
and/or performance of a valuable service in exchange for not being arrested for
traffic violations, in violation of §16-9-240 of the Code of Laws of South Carolina,
(1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


HENRY MCMASTER (mlw)
ATTORNEY GENERAL

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

TRUE BILL
ACTION OF GRAND JURY

NOV 30 2010

R. H. [Signature]

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04-02454

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November 30 2010 TERM

THE STATE
v.

Larry Brent Moore
[REDACTED]

Indictment for

**Taking of consideration or the like by
sheriff or other officer for not
performing duties**

SC Code: 16-9-240
CDR Code: 1180

A TRUE COPY

MAY - 2 2012

[Signature]
CLERK OF COURT

000210

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

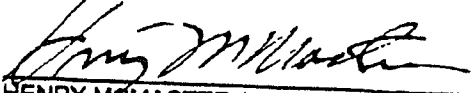
INDICTMENT FOR
MISCONDUCT IN OFFICE

At a Court of General Sessions, convened on November 30, 2010, the Grand Jurors of Anderson County present upon their oath:

MISCONDUCT IN OFFICE

That Larry Brent Moore did in Anderson County, on or about July 29, 2010, willfully, dishonestly, and with bad-faith and corrupt intent, engage in acts and omissions of misconduct in office, in the form of malfeasance, misfeasance, and nonfeasance. To Wit: Larry Brent Moore required that Crispin Reynoso-Lugo pay a sum of money in exchange for not being arrested for traffic violations, in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


HENRY MCMASTER (mlw)
ATTORNEY GENERAL

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

THE STATE
CLERK OF GRAND JURY
 NOV 30 2010
[Signature]
 Foreperson of Grand Jury
 Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04-02453

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November 30 2010 TERM

THE STATE
v.

Larry Brent Moore
[Redacted]

Indictment for

Misconduct In Office

SC Code Ann. § 17-25-0030
CDR Code: 0819

A TRUE COPY
 MAY - 2 2012
[Signature]
 CLERK OF COURT

000212

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

TRIP OF GRAND JURY

NOV 30 2010

R. H. Hampton

Foreperson of Grand Jury
Date:

VERDICT -

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04-02452

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November 30 2010 TERM

THE STATE
v.

Larry Brent Moore
[REDACTED]

Indictment for

Taking of consideration or the like by
sheriff or other officer for not
performing duties

SC Code: 16-9-240
CDR Code: 1160

A TRUE COPY
MAY - 2 2012
Richard Hampton
CLERK OF COURT

000214

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
MISCONDUCT IN OFFICE

At a Court of General Sessions, convened on November 30, 2010, the Grand Jurors of Anderson County present upon their oath:

MISCONDUCT IN OFFICE

That Larry Brent Moore did in Anderson County, on or about March, 2010, willfully, dishonestly, and with bad-faith and corrupt intent, engage in acts and omissions of misconduct in office, in the form of malfeasance, misfeasance, and nonfeasance. To Wit: Larry Brent Moore required that J-Douglas Robinson pay a sum of money in exchange for pending traffic violations being dismissed, in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


HENRY MCMASTER (mlw)
ATTORNEY GENERAL

WITNESSES

SLED Agent Dean Brown

ARREST WARRANT NUMBER

TRUE BILL
 NOV 30 2010
[Signature]
 Foreperson of Grand Jury
 Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-04-02451

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

November 30 2010 TERM

THE STATE
v.

Larry Brent Moore
[REDACTED]

Indictment for

Misconduct in Office

SC Code Ann. § 17-25-0030
CDR Code: 0819

A TRUE COPY
 MAY -2 2012
[Signature]
 CLERK OF COURT

000216

EXHIBIT H



**SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT FOR FAILURE TO PRODUCE VIDEOTAPE**

I hereby affirm that I cannot produce a videotape from the vehicle I was operating because:

- A. At the time of the defendant's arrest the vehicle I was operating had not yet been equipped with a videotaping device and therefore pursuant to Section 18 of Act 434 of 1998, the videotaping requirement regarding vehicles is not applicable.
- B. At the time of the defendant's arrest or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.
- C. It was physically impossible to produce a videotape from the vehicle I was operating of the defendant at the time of the arrest or probable cause determination because:
 - The defendant needed emergency medical treatment, or
 - Exigent circumstances existed which are outlined below:

D. Other valid reasons existed for failing to produce the videotape based on the totality of the circumstances. These reasons are outlined below:

The video Tape ran out prior to arriving at the Anderson County Jail.

L B Moor
Signature of Officer

Date *5/25/2010*

State of South Carolina
County of

Sworn to and subscribed before me this *25th* day of *May*, 2010
Louisa B. McGee Notary Public for the State of South Carolina.
My commission expires: *05/25/2010*

DPS-LE-033
Rev 7/00

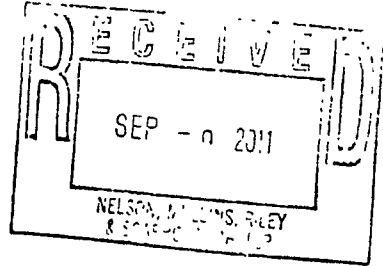
ACSO 000038

EXHIBIT I

Collins & Lacy
ATTORNEYS AT LAW

3/268/1501
C

Michael S. Pitts | Direct Dial: 864.282.9119 | E-Mail: mpitts@collinsandlacy.com
Also Admitted in North Carolina



September 7, 2011

Lane W. Davis, Esq.
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 10084
Greenville, South Carolina 29603

**Re: Anderson County v. Preston and the South Carolina Retirement System
C.A. No. 2009-CP-04-4482**

Dear Lane:

I am in receipt of your letter dated April 26, 2011. Kindly allow this letter to serve as Anderson County's response.

When you originally made your request pursuant to the South Carolina Freedom of Information Act over one year ago, the County fully complied and responded appropriately. One of the items you were provided with at that time was a copy of the dash cam video from the night in question. The original no longer exists in light of the fact the charges against Mr. Preston were fully disposed of sometime ago. See S.C. Code Ann. § 56-5-2953 (C) (1976, as amended) ("A video recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.") Last, I am informed there are no chain of custody records.

Please call with any questions or concerns you may have.

With kind regards, I am

Sincerely,

Michael S. Pitts

MSP:lah

cc:
Theodore James Gentry, Esq
Wyche Burgess Freeman & Parham, P.A.
P O. Box 728
Greenville, South Carolina 29602-0728

EXHIBIT J

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Prestan Joey Ray Anderson
Last Name First Name Middle Name County of Arrest
Subject's Address: _____
Driver's License Number: _____ State: SC DOB: _____ Sex: M Race: W
Arresting Officer: L.B. Moore Agency: ACSO
Arresting Officer's Address: _____
Date of Arrest: 5/07/2010 Time of Arrest: 23:53 AM/PM Traffic Ticket Number: 71296 ET
Date of Test: 5/07/2010 Time of Test: 0145 AM/PM Location of Collection: Accord Lab

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-285 of the 1976 South Carolina Code of Laws as amended.
- Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- Subject had a DataMaster reading of less than 0.08%, and a urine sample is requested. DataMaster reading: .03 (optional)
- Subject is unconscious or otherwise incapable of refusal and is considered informed, therefore, a blood sample is requested.
- A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
- Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel: N/A
(Please Print)

Signature of Licensed Medical Personnel: N/A

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Melody M. Turner CLT
(Please Print)

Signature of Licensed or Trained Collector: Melody M. Turner

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- Sample collection was under my direct supervision.
- Sample container is properly labeled with the subject's name and time of collection.
- Sample is properly sealed and ready for transport.

Signature of Officer: L.B. Moore Date: 5/7/2010

[Signature] received a copy of this report on _____ Date _____
(Subject's Signature)

White Copy: Arresting Officer Canary Copy: Hospital Pink Copy: Subject Goldenrod Copy: SLED

ACSO 000037

EXHIBIT K

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT**

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Deputy L. B. Moore
Anderson County Sheriff's Office
P.O. Box 5497
Anderson, SC 29623-5497

TOXICOLOGY DEPARTMENT
May 27, 2010
SLED No: L10-05104
Your Case No: 201022594
Incident Date: 05/06/2010

[S] Joey Ray Preston

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 Sample Type: Urine - labeled "Preston Joey R"

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Amphetamine/Methamphetamine	Negative	mg/L	1.00
Benzodiazepines	Negative	mg/L	0.20
Cannabinoids	Negative	mg/L	0.10
Cocaine Metabolite	Negative	mg/L	0.30
Opiates	Negative	mg/L	0.10

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ibuprofen	Positive		

Synonyms: Advil®, Motrin®, Nuprin®

A comprehensive drug screen utilizing gas chromatography/mass spectrometry was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 898-7300 Fax (803) 898-7351

ACSO 000040

SLED No :L10-05104

5/27/10

Page 2 of 2

Megan Mebane

Megan B. Mebane
Forensic Toxicologist

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of the analysis and then destroyed unless otherwise notified.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

ACSO 000041

000225

EXHIBIT L

Office of Solicitor

TENTH JUDICIAL CIRCUIT
ANDERSON & OCONEE COUNTIES

ANDERSON COUNTY COURTHOUSE
PO BOX 8002
ANDERSON SC 29622
TELEPHONE 864-280-4048
FAX 864-280-4187

OCONEE COUNTY COURTHOUSE
115 SOUTH PINE STREET
WALHALLA, SC 29691
TELEPHONE 864-638-4294
FAX 864-638-4295

CHRISST ADAMS
SOLICITOR

**EVIDENCE DOES NOT WARRANT
PROSECUTION OF PRESTON DUI
CHARGES**

June 1, 2010

Contact: pressinfo@sol10th.com

(Anderson, SC). The charge against Mr. Joey Preston for Driving Under the Influence has been dismissed.

The chemical analysis of Mr. Preston's breath (Datamaster reading) registered a .03%, below the threshold level of .05% that is necessary to prosecute an individual for DUI.

Mr. Preston also submitted to a urine sample to test for the presence of any drugs. The SLED analysis came back negative for all drugs tested except for ibuprofen (Advil, Motrin, Nuprin), which is not recognized to be an impairing drug.

For your information, the applicable law is cited below.

Section 56-5-2930 of the SC Code of Laws states, in part:

- (A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined

influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.

Section 56-5-2950 of the SC Code of Laws states, in part:

(G) In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol.

###

7. In response to Paragraph 132, Plaintiff admits that commencing in early 2009, the County made appropriate inquiries into past financial and management dealings of the County.

8. Plaintiff denies the allegations in Paragraphs 133-134.

9. In response to Paragraph 135, Plaintiff admits that an individual named Steve Ebbeler was interviewed as part of the inquiries described above.

10. Answering the allegations in Paragraph 136, Plaintiff would admit that on August 12, 2011, the deposition of Steve Ebbeler was taken and would crave reference to the deposition for the statements contained therein.

11. Plaintiff denies the allegations in Paragraphs 137.

12. Plaintiff denies the allegations of Paragraph 138 and expressly denies falsification of an affidavit; as to the contents of the Affidavit, Plaintiffs would crave reference to the Affidavit.

13. Answering the allegations in Paragraph 139, Plaintiff would admit that on August 12, 2011, the deposition of Steve Ebbeler was taken and would crave reference to the deposition for the statements contained therein.

14. Plaintiff denies the allegations in Paragraph 140.

15. Plaintiff is without sufficient information as to the allegations in Paragraph 141 and therefore denies the same.

16. Plaintiff denies the allegations in Paragraph 142.

17. Answering the allegations in Paragraphs 143-144, Plaintiff denies that it falsified an affidavit. Plaintiff would crave reference to Steve Ebbeler's August 12, 2011 deposition.

18. Plaintiff is unable to admit or deny the allegations in Paragraph 145, and so denies the same, and would crave reference to the Affidavit as to its statements.

19. Plaintiff admits Ebbeler's affidavit was produced in discovery and denies any implication of impropriety contained in Paragraph 146.

20. Plaintiff is unable to admit or deny the allegations in Paragraph 147 and would crave reference to the documents described therein. Plaintiff denies the interpretations contained in Paragraph 147.

21. The allegations of Paragraph 148 are vague and unintelligible, and therefore denied.

22. Whether or not materials are submitted to the grand jury is privileged and confidential, and accordingly no response may be made to the allegations of Paragraphs 149-150. Plaintiff expressly denies falsifying or manipulating any documents. Plaintiff is without knowledge as to what investigators' hopes were, and therefore denies the same.

23. Plaintiff has met all discovery and other obligations, and any materials withheld or otherwise not disclosed were privileged or otherwise exempt from disclosure, and so Plaintiff denies the allegations of Paragraph 151.

24. Answering Paragraph 152, Plaintiff is without sufficient information as to the matters stated therein as the phrase "such documents" is too vague and ambiguous, and therefore denies the allegations in Paragraph 152. Plaintiff would crave reference to Exhibit B and Exhibit C as to the statements contained in them. Plaintiff denies the interpretations and implications set forth in Paragraph 152.

25. Answering Paragraph 153, Plaintiff would crave reference to Exhibit C as to the statements contained in it. Plaintiff denies the interpretations and implications set forth in Paragraph 153. Plaintiff is unable to determine what Defendant Preston means by "documents" and is therefore unable to admit or deny the remaining allegations.

26. Answering Paragraph 154, Plaintiff admits that it hired Russell Burns as interim County Administrator and that he remains in that position.

27. Answering Paragraph 155, Plaintiff admits that Defendant Preston was arrested on May 6, 2010. Plaintiff denies the remaining allegations in Paragraph 155.

28. Answering Paragraph 156, Plaintiff admits that Deputy Sheriff L.B. Moore arrested Defendant Preston on May 6, 2010.

29. Answering Paragraph 157, Plaintiff admits that Deputy Sheriff J. Crawford arrived on the scene of the traffic stop.

30. Answering Paragraph 158, Plaintiff would admit that it knew of conduct as set forth in Moore's employment file.

31. Plaintiff admits the allegations in Paragraphs 159.

32. Answering Paragraph 160, as a matter of policy for Anderson County Sheriff's Office, Sheriff John Skipper rehired Moore, as he did all the other officers, who continued their employment with the Anderson County Sheriff's Office after Sheriff John Skipper became sheriff. Sheriff David Crenshaw rehired Moore after his termination.

33. Plaintiff denies the allegations in Paragraphs 161-162 and would crave reference to Exhibit E for the statements contained therein.

34. Answering the allegations in Paragraph 163, Plaintiff would admit upon information and belief that Shanon R. Burns is the daughter of interim County Administrator Rusty Burns, admits that Moore is the officer who arrested Defendant Preston for DUI, and denies the remaining allegations.

35. Answering Paragraph 164, Plaintiff would crave reference to Exhibit E for the statements contained therein.

36. Answering Paragraph 165, Plaintiff admits that Moore was suspended without pay from the Anderson Sheriff's Department in July 2010 for alleged misconduct in office.

37. Plaintiff admits the allegations in Paragraph 166.

38. Plaintiff denies the allegations in Paragraph 167.

39. Answering Paragraphs 168-170, Plaintiff would crave reference to the phone records as to calls made between telephone numbers. Plaintiff denies any irregularity.

40. Plaintiff admits the allegations in Paragraph 171.

41. Plaintiff admits the allegations in Paragraph 172.

42. Answering Paragraph 173, Plaintiff admits that in response to a FOIA request it produced a dash cam video from Moore's vehicle from May 6, 2010.

43. Plaintiff is without sufficient information to answer the allegations in Paragraphs 174-175, and therefore, denies the same.

44. Answering Paragraph 176, Plaintiff admits that counsel for Plaintiff informed counsel for Defendant Preston the original video no longer existed.

45. Answering Paragraph 177, Plaintiff admits that a Datamaster test indicted a reading of 0.03.

46. Answering Paragraph 178, Plaintiff admits that Defendant Preston was detained over night.

47. Answering Paragraph 179, Plaintiff would crave reference to the records for the statements contained therein.

48. Answering Paragraph 180, Plaintiff would crave reference to Exhibit K as to the results of the urine test.

49. Plaintiff denies the allegations in Paragraph 181.

50. Answering Paragraph 182, Plaintiff admits that the Solicitor dismissed the charges against Defendant Preston. Plaintiff would crave reference to Exhibit L as to the statements contained therein.

51. Answering Paragraph 183, Plaintiff admits that Defendant Preston had a Datamaster test reading of 0.03. The remaining allegations of Paragraph 183 are denied.

52. Plaintiff denies the allegations in Paragraph 184.

53. Answering Paragraph 185, Plaintiff incorporates its previous responses set forth herein.

54. Plaintiff admits so much of Paragraph 186 as alleges that both Preston and persons purporting to act on behalf of Plaintiff executed a document dated November 18, 2008 and entitled "Severance Agreement and Release of Claims." Plaintiff denies the remaining allegations of Paragraph 186.

55. Plaintiff denies the allegations in Paragraph 187.

56. Answering Paragraph 188, Plaintiff would crave reference to the document "Severance Agreement and Release of Claims" as to any statements contained therein.

57. Plaintiff denies the allegations in Paragraphs 189-196.

58. Answering Paragraph 197, Plaintiff incorporates its previous responses set forth herein.

59. Answering Paragraph 198, Plaintiff admits that the Sheriff's Department arrested Defendant Preston on May 6, 2010 and detained him for a period of time.

60. Plaintiff admits the allegations in Paragraph 199.

61. Plaintiff denies the allegations in Paragraphs 200-201.

62. Answering Paragraph 202, Plaintiff incorporates its previous responses set forth herein.

63. Plaintiff denies the allegations in Paragraphs 203-205.

64. Answering Paragraph 206, Plaintiff incorporates its previous responses set forth herein.

65. Plaintiff admits the allegations in Paragraph 207.

66. Answering Paragraph 208, Plaintiff admits that it employed Moore.

67. Plaintiff denies the allegations in Paragraph 209.

68. Answering Paragraph 210, Plaintiff admits that it had knowledge of Moore's alleged conduct as set forth in the December 12, 2005, Anderson County Personnel Action.

69. Answering Paragraph 211, Plaintiff admits it knows of action as described, and therefore allegations as to what it should have known are irrelevant.

70. Plaintiff denies the allegations in Paragraphs 212-213.

71. Answering Paragraph 214, Plaintiff incorporates its previous responses set forth herein.

72. Plaintiff admits the allegations in Paragraph 215.

73. Answering Paragraph 216, Plaintiff admits that the charges against Preston were dismissed.

74. Plaintiff denies the allegations in Paragraphs 217-218.

75. Plaintiff admits the allegations in Paragraph 219.

76. Plaintiff denies the allegations in Paragraphs 220-221.

SECOND DEFENSE

77. The relevant and consistent responses and allegations contained in the previous paragraphs of this Answer to Counterclaims are realleged and incorporated herein.

78. The Counterclaims fail to state a claim upon which relief can be granted.

THIRD DEFENSE

79. The relevant and consistent responses and allegations contained in the previous paragraphs of this Answer to Counterclaims are realleged and incorporated herein.

80. The Severance Agreement is void and unenforceable, and should be rescinded, for the reasons set forth in Plaintiff's Complaint.

FOURTH DEFENSE

81. The relevant and consistent responses and allegations contained in the previous paragraphs of this Answer are realleged and incorporated herein.

82. Defendant Preston's breach of the Severance Agreement bars recovery for any alleged breach.

FIFTH DEFENSE

83. The relevant and consistent responses and allegations contained in the previous paragraphs of this Answer are realleged and incorporated herein.

84. Plaintiff is a governmental entity within the meaning of the South Carolina Tort Claims Act.

85. Plaintiff asserts its rights, defenses, privileges, limitations, and immunities afforded under the South Carolina Tort Claims Act and available under the doctrine of sovereign immunity as retained by the Act, including but not limited to, subsections (1), (2), (3), (4), (5), (17), (20), and (23) of Section 15-78-60 of the South Carolina Code.

SIXTH DEFENSE

86. The relevant and consistent responses and allegations contained in the previous paragraphs of this Answer are realleged and incorporated herein.

87. Defendant Preston as County Administrator had authority to restrain Moore, but neglected to do so.

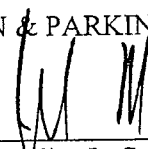
88. The negligence, gross negligence, willfulness, wantonness, and recklessness described above on the part of Defendant Preston, combined and concurred with any acts or omissions on the part of the Plaintiff, which are denied, and the same acted as the direct and proximate cause of the Defendant's injury and any damages sustained. Consequently, the Defendant Preston's claims are barred by the doctrine of comparative negligence.

89. In the alternative, Defendant Preston's claims are governed and limited by the doctrine of comparative negligence, and any recovery by Defendant Preston herein should be reduced in accordance with the doctrine of comparative negligence.

WHEREFORE, having fully answered Defendant Preston's Counterclaims, Plaintiff respectfully requests:

- (a) Defendant Preston's Counterclaims be dismissed with costs;
- (b) That Plaintiff be awarded attorney's fees; and
- (c) Such other and further relief as the Court deems just and proper.

DEVLIN & PARKINSON, P.A.



John R. Devlin, Jr. S.C. Bar No. 1667
Emily T. Whitney, S.C. Bar No. 70501
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile

June 29, 2012
Greenville, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Anderson County, South Carolina,	)	CASE NO. 2009-CP-04-4482
)	
Plaintiff,	)	DEFEDANT SOUTH CAROLINA
	)	RETIREMENT SYSTEM'S NOTICE
v.	)	OF MOTION AND MOTION FOR
	)	SUMMARY JUDGMENT
Joey Preston and the South Carolina)	
Retirement System,)	
)	
Defendants.)	

TO: J. THEODORE GENTRY AND TROY A. TESSIER, ATTORNEYS FOR PLAINTIFF
ANDERSON COUNTY

PLEASE TAKE NOTICE THAT Defendant South Carolina Retirement System ("SCRS" or "System"), by and through its undersigned counsel, hereby moves before the Court for an order granting summary judgment in the above-captioned matter in favor of SCRS pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. SCRS makes this motion on the grounds that there is no genuine issue as to any material fact with regard to the claims asserted against SCRS in this matter and that SCRS is entitled to a judgment in its favor regarding the extent of its liability, if any, on those claims as a matter of law.

BACKGROUND

As set forth in greater detail below, in this matter, Plaintiff Anderson County ("County") seeks to rescind a severance agreement entered into between the County and Defendant Joey R. Preston ("Preston") in connection with the termination of Preston's employment as the county administrator for the County in November 2008. As part of that severance agreement, the County agreed to, and did, pay a sum of money to SCRS to purchase service credit for Preston in the System. In its Amended Complaint, the County has named SCRS as a defendant in this matter as a stakeholder of the money used to make that service purchase and seeks the return of that money to the County.

Relevant Allegations

According to the County's Amended Complaint, Defendant Preston was employed by the County as county administrator "[f]or a period of time on and before November 30, 2008." (Am. Compl. ¶ 4.) At a county council meeting on November 18, 2008, the County approved a Severance Agreement and Release of All Claims between the County and Preston under which the County awarded Preston a \$1.1 million severance package in return for Preston relinquishing his position as county administrator as of November 30, 2008. (Am. Compl. ¶¶ 7, 10.) As part of the severance agreement, the County agreed to pay \$359,258.00 to SCRS in order to purchase service credit in the System for Preston so that he could retire. (Am. Compl. ¶ 7.)

In the first through ninth and the eleventh causes of action stated in the County's amended complaint, the County alleges that the severance agreement between the County and Preston should be invalidated and rescinded based upon various forms of alleged misconduct committed by members of the county council and Preston and that all monies paid to Preston and SCRS pursuant to the severance agreement should be returned to the County. (Am. Compl. ¶¶ 35-36, 38-39, 45-46, 52-53, 60-61, 69-70, 73-74, 76-77, 79-80, 86-87.) In the tenth cause of action, the County alleges that "[t]he amounts paid to [SCRS] pursuant to the Severance Agreement were wrongfully paid" by the County and that "[i]t would therefore be inequitable for those amounts to remain in the possession of the System, or to be held for the benefit of Preston." (Am. Compl. ¶¶ 82-83.) As relief for this cause of action, the County requests that a constructive trust be imposed on the amounts paid by the County to SCRS on Preston's behalf and that those amounts be repaid to the County. (Am. Compl. ¶ 84.) It is important to note that the County has not alleged that SCRS acted improperly or is otherwise responsible for any wrongdoing in connection with these transactions. To the contrary, in its complaint the County emphasizes that it has named SCRS as a defendant in this matter "only for the purposes of recovering funds paid to it by Anderson County on behalf of the defendant Preston." (Am. Compl. ¶ 3.)

Relevant Facts

Defendant Joey Preston is a 49-year-old retired member of the South Carolina Retirement System, who retired from the System on a service retirement allowance on January 3, 2009. (Nichols Aff. ¶ 3.) At the time of the termination of his employment with the County on December 30, 2008, Preston had accrued 21 years, 9 months, and 2 days of earned service credit in SCRS as a result of his employment with the County and several other local governmental entities, beginning with his enrollment in the System in April 1987. (Nichols Aff. ¶¶ 4, 5.) By checks dated November 19, 2008, and December 11, 2008, the County paid a total of \$355,848.95 to SCRS to purchase 7 years, 7 months, and 23 days of additional service credit in the System for Preston. (Nichols Aff. ¶ 6.) With the combination of his earned service, the service purchased for him by the County, and 4 months and 15 days of service credit for his unused sick leave, Preston had a total of 29 years, 9 months, and 10 days of credited service in SCRS at the time of his retirement. (Nichols Aff. ¶ 7.) Notably, without the service credit purchased for Preston by the County, Preston would not have been eligible to retire in January 2009, because he would not have had the 28 years of credited service required for retirement under SCRS at his age. (Nichols Aff. ¶ 8.)

As the result of the County's service purchase on Preston's behalf and his subsequent retirement, SCRS became legally obligated to pay a monthly retirement annuity to Preston for the rest of his life. (Nichols Aff. ¶ 9.) Upon his retirement in January 2009, Preston's monthly retirement benefit was \$7,371.16, and that monthly retirement benefit has now increased to \$7,688.07 as the result of cost-of-living adjustments awarded in the intervening years. (Nichols Aff. ¶ 10.) As of the date of this Motion, SCRS has paid Preston accumulated monthly benefits totaling \$329,561.24. (Nichols Aff. ¶ 11.) These benefits would not have been payable at this time and in this amount if not for the service credit purchased by the County for Preston. (Nichols Aff. ¶ 8.) Further, at Preston's current monthly benefit rate, by his December 2012 check SCRS will have paid more in retirement benefits to Preston than the County paid to SCRS

for the service purchase that made him eligible to retire. (Nichols Aff. ¶ 11.) Put simply, the funds that the County seeks to recover from SCRS in this matter will soon have been entirely transferred to Preston through his monthly retirement benefits. Accordingly, SCRS contends that the extent of any liability of SCRS to the County should be limited to the amount of the County's service purchase payment that has not been exhausted through the payment of retirement benefits to Preston, if any such amount remains.

DISCUSSION

The Court should grant summary judgment in favor of SCRS regarding the extent of its liability in this matter. Summary judgment is proper on a claim raised in a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment on that claim as a matter of law. Rule 56(c), SCRPC; *see also, e.g., Henderson v. Allied Signal Inc.*, 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007). As set forth below, there is no genuine issue as to any material fact regarding the amounts paid to SCRS by the County on Preston's behalf or the amounts paid by SCRS to Preston in retirement benefits, and SCRS is entitled to a judgment as a matter of law that its potential liability as a stakeholder in this matter is limited to the amount of the County's service purchase payment that has not been exhausted through retirement benefit payments to Preston.

Pursuant to the Retirement Code, a member of SCRS may retire if the member has twenty-eight or more years of creditable service in the System, including at least five years of earned service, and has terminated from covered employment under the System. S.C. Code Ann. § 9-1-1510 (Supp. 2011).¹ Upon such retirement, the retired member must be paid a lifetime service retirement benefit that annually "must be equal to one and eighty-two hundredths percent of his average final compensation, multiplied by the number of years of his creditable service," which is paid in monthly installments. S.C. Code Ann. §§ 9-1-1550(B)(1), 9-1-1615 (Supp.

¹ A member may also retire with less than twenty-eight years of credited service upon attaining age sixty. S.C. Code Ann. § 9-1-1510.

2011). The “creditable service” used to determine a member’s eligibility to retire under SCRS and the amount of his retirement benefit includes both the “earned service” the member accrued by making contributions to the System during his employment with a participating employer and any “purchased service” credit purchased by the member or his employer during his employment. S.C. Code Ann. § 9-1-10(7), (9), (24); see also S.C. Code Ann § 9-1-1140(A)-(G) (Supp. 2011) (setting out the types of service credit that may be purchased under SCRS). Importantly, the Retirement Code specifically authorizes that “[a]n employer, at its discretion, may pay to the system all or a portion of the cost for an employee’s purchase of service credit.” S.C. Code Ann. § 9-1-1140(I).

There is no dispute in this matter that the County remitted payments in the total amount of \$355,848.95 to SCRS in order to purchase 7 years, 7 months, and 23 days of service credit for Preston in SCRS, and there has been no allegation that SCRS acted improperly in accepting those payments and crediting Preston with the additional service credit in compliance with Section 9-1-1140. It is further uncontroverted that, as a result of that service purchase, Preston became eligible to, and did, retire from SCRS and that SCRS became legally obligated to pay retirement benefits to Preston upon his retirement. And, critically, there is no dispute that this obligation to pay benefits to Preston beginning in January 2009 would not have been incurred by SCRS at that time and in that amount but for the service purchase made on Preston’s behalf by the County. Finally, it is uncontroverted that, in fulfilling that obligation to pay benefits to Preston, SCRS has paid Preston, to date, a total of \$329,561.24 and will continue to pay Preston a monthly retirement benefit of \$7,688.07, plus applicable cost-of-living adjustments, for the rest of his life.

In this matter, the County has named SCRS as a defendant solely for the purpose of recovering funds paid to SCRS by the County on Preston’s behalf. (Am. Compl. ¶ 3; see also Am. Compl. ¶ 83 (alleging, in its tenth cause of action, that it would be inequitable for the amounts paid to SCRS for Preston’s service purchase “to remain in possession of the System”).)

However, as described above, the payment of those funds to SCRS triggered an obligation for SCRS to pay retirement benefits in excess of \$7,000 a month to Preston, such that, to date, over \$329,000 of the roughly \$355,000 paid by the County to SCRS has now, in effect, been transferred to Preston through his monthly retirement benefits. Much like a stakeholder in an impleader or escrow context, SCRS is an innocent third party in this dispute who has been included in this litigation solely because of the dispute between the County and Preston over the funds in its possession. Accordingly, as such a stakeholder, SCRS's potential liability in this matter to the County, if it prevails in its claims against Preston, should be limited to the amount of the County's funds that are still in the possession of SCRS. See, e.g., Lee v. West Coast Life Ins. Co., No. 11-55026, 2012 WL 3089382, at *5 (9th Cir. July 31, 2012) (holding, in an impleader action, that "[t]he stake marks the outer limits of the stakeholder's potential liability where the respective claimants' entitlement to the stake is the sole contested issue"); Southeastern Mobile Homes, Inc. v. Transit Homes, Inc., 192 So. 2d 53, 57 (Fla. Dist Ct. App. 1966) (holding that an attorney who was named as a defendant because he held certain escrowed funds in dispute between the parties was in the position "of a stakeholder, and his liability to the plaintiff can only be up to the amount he was holding"). Furthermore, once the amount paid by SCRS to Preston in retirement benefits exceeds the amount paid by the County to SCRS, SCRS should no longer be considered a stakeholder of the County funds in dispute in this matter and should be dismissed as a defendant in this action.

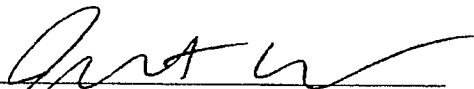
This limitation of liability is also supported by well-settled equitable principles. The County alleges that it would be inequitable for SCRS to retain possession of funds paid to it by the County on Preston's behalf because of misconduct on the part of both Preston and agents and officers of the County. However, SCRS has not been accused of any wrongdoing in this matter and should not be required to bear the loss that would occur if it were required to return funds to the County in excess of the retirement benefits that were required to be paid to Preston as a direct result of the County's service purchase on Preston's behalf. As South Carolina courts have long

recognized, “[w]hen ‘one of two innocent parties must suffer loss, it must fall on the party who, by incautious and misplaced confidence, has occasioned it or placed it in the power of a third party to perpetrate the fraud by which the loss has happened.’” Horry County v. Ray, 382 S.C. 76, 84, 674 S.E.2d 519, 524 (Ct. App. 2009) (quoting MI Co. v. McLean, 325 S.C. 616, 624, 482 S.E.2d 597, 601 (Ct. App. 1997)).

CONCLUSION

Therefore, for the reasons set forth above, SCRS requests that this Court issue an order granting summary judgment in favor of SCRS regarding the extent of its potential liability to the County. In particular, SCRS contends that there are no genuine issues of material fact regarding the claims asserted against SCRS in this matter, and that, as a matter of law, (1) the extent of any potential liability of SCRS to the County is limited to the amount of the County’s service purchase payment that has not been exhausted through the payment of retirement benefits to Preston, and (2) once that amount is exhausted in its entirety, SCRS should be dismissed as a party from this case because it would no longer be a stakeholder of the funds in dispute.

Respectfully submitted,



Justin R. Werner
Legal Counsel
David K. Avant
Managing Legal Counsel
South Carolina Retirement System
Post Office Box 11960
Columbia, South Carolina 29211-1960
Phone: (803) 737-6894
Fax: (803) 737-7746

September 12, 2012
Columbia, South Carolina

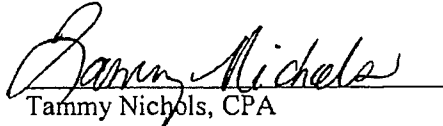
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Anderson County, South Carolina,	)	CASE NO. 2009-CP-04-4482
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT
)	
Joey Preston and the South Carolina)	
Retirement System,)	
)	
Defendants.)	

PERSONALLY appeared before me, Tammy Nichols, who first being duly sworn, deposes and says that:

1. She is the Program Director for Retirement Services Finance Department of the South Carolina Public Employee Benefit Authority, the agency responsible for the administration of the South Carolina Retirement System ("SCRS" or "System").
2. As Program Director, she is responsible for the department of the Public Employee Benefit Authority that pays benefits to retired members of SCRS.
3. Defendant Joey Preston ("Preston") is a 49-year-old retired member of SCRS, who retired from the System on a service retirement allowance on January 3, 2009.
4. Preston enrolled as a member of SCRS effective April 27, 1987.
5. As of December 30, 2008, Preston had accrued 21 years, 9 months, and 2 days of earned service credit in SCRS.
6. By checks dated November 19, 2008, and December 11, 2008, Plaintiff Anderson County ("County") paid a total of \$355,848.95 to SCRS to purchase 7 years, 7 months, and 23 days of additional service credit in the System for Preston.
7. With the combination of his earned service, the service purchased for him by the County, and 4 months and 15 days of service credit for his unused sick leave,

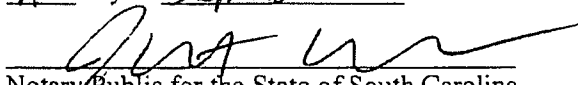
Preston had a total of 29 years, 9 months, and 10 days of credited service in SCRS at the time of his retirement.

8. Without the service credit purchased for Preston by the County, Preston would not have been eligible to retire in January 2009, because he would not have had the 28 years of credited service required for retirement under SCRS at his age.
9. Upon Preston's retirement, SCRS became legally obligated to pay a monthly retirement annuity to Preston for the rest of his life.
10. Upon his retirement in January 2009, Preston's monthly retirement benefit was \$7,371.16. As a result of cost-of-living adjustments awarded since 2009, Preston's current monthly retirement benefit has increased to \$7,688.07.
11. As of the date of this Affidavit, SCRS has paid Preston accumulated monthly benefits totaling \$329,561.24. By December 2012, SCRS will have paid \$360,313.52 in retirement benefits to Preston since January 2009.



Tammy Nichols, CPA
Program Director, Retirement Services Finance
South Carolina Public Employee Benefit Authority

Sworn to and subscribed before me this
11th day of September 2012.



Notary Public for the State of South Carolina

My commission expires: 7/23/2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	C.A. No. 2009-CP-04-4482
)	
Anderson County,)	
)	
Plaintiff,)	
)	
vs.	)	STIPULATION OF DISMISSAL AS TO
	)	CERTAIN COUNTERCLAIMS
)	
Joey Preston and the South Carolina)	
Retirement System,)	
)	
Defendants.)	
)	

Pursuant to SCRCP 43(k), the undersigned hereby stipulate that the Defendant Preston's Eleventh Defense and Counterclaim, Twelfth Defense and Counterclaim, and Thirteenth Defense and Counterclaim and Fourteenth Defense and Counterclaim are dismissed with prejudice and forever ended.

WE SO STIPULATE:

DEVLIN & PARKINSON, P.A.
 BY: *John R. Devlin Jr.*
 John R. Devlin Jr., Esq., S.C. Bar No.: 1667
 P. O. Box 10387
 Greenville, SC 29603

Attorneys for Plaintiff
 NELSON MULLINS RILEY & SCARBOROUGH, LLP

BY: *Lane W. Davis*
 Lane W. Davis, Esq., S. C. Bar No.: 68796
 P.O. Box 10084
 Greenville, SC 29603-0084

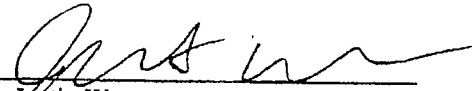
Attorneys for Defendant Joey Preston

Dated: October 23, 2012
 Greenville, SC

A TRUE COPY
 OCT 23 2012
Richard A. Huley
 CLERK OF COURT

WE SO STIPULATE:

S.C. BUDGET & CONTROL BOARD/SCRS

By: 

Justin Werner
PO Box 11960
Columbia, SC 29211
(803) 737-6898

Attorneys for Defendant South Carolina Retirement System

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Anderson County, South Carolina,	)	CASE NO. 2009-CP-04-4482
)	
Plaintiff,	)	STIPULATIONS AS TO EVIDENCE
	)	RELATED TO DEFENDANT SOUTH
v.	)	CAROLINA RETIREMENT SYSTEM
)	
Joey Preston and the South Carolina)	
Retirement System,)	
)	
Defendants.)	

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Plaintiff Anderson County ("County"), Defendant Joey Preston ("Preston"), and Defendant South Carolina Retirement System ("SCRS") hereby make the following stipulations concerning evidence related to Defendant South Carolina Retirement System in this matter:

1. That if called as a witness, Tammy Nichols would testify to the statements as set forth in the affidavit of Tammy Nichols dated September 11, 2012, which is attached hereto as Exhibit #1, and that the affidavit may be admitted into evidence in this matter and the statements contained therein shall be treated as if the affiant were present and testified to such at trial.

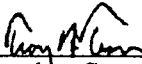
2. That if called as a witness, Sharon Graham would testify to the statements set forth in the affidavit of Sharon Graham dated October 5, 2012, and its attachments, which are attached hereto collectively as Exhibit #2, and that the affidavit and its exhibits may be admitted into evidence in this matter and the statements contained therein shall be treated as if the affiant were present and testified to such at trial.

3. The Court may take judicial notice that the return on the investments of the South Carolina Retirement Systems, as reported by the South Carolina Retirement Systems Investment Commission, was -19.3% for the fiscal year ending June 30, 2009, 13.8% for the fiscal year

ending June 30, 2010, 18.3% for the fiscal year ending June 30, 2011, and 0.6% for the fiscal year ending June 30, 2012.

4. As of October 31, 2012, the South Carolina Retirement System will have paid \$344,937.38 in retirement benefits to Defendant Preston since January 3, 2009.

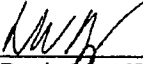
WE SO STIPULATE:



J. Theodore Gentry (No. 64038)
Troy A. Tessier (No. 13354)
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Greenville, SC 29602-0728
(864) 242-8200

10/26/2012
Date

Attorneys for Plaintiff Anderson County

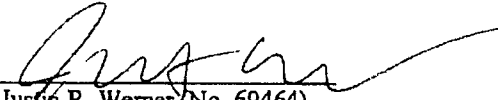


Lane W. Davis (No. 68796)
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(864) 250-2300

10/26/2012
Date

Candy M. Kern-Fuller (No. 011392)
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(864) 855-3114

Attorneys for Defendant Joey Preston



Justin R. Werner (No. 69464)
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Columbia, South Carolina 29211-1960
(803) 737-6894

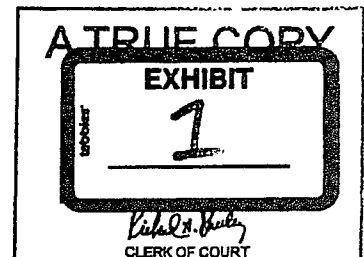
10/26/12
Date

Attorney for Defendant South Carolina Retirement System

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Anderson County, South Carolina,	)	CASE NO. 2009-CP-04-4482
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT
)	
Joey Preston and the South Carolina)	
Retirement System,)	
)	
Defendants.)	

PERSONALLY appeared before me, Tammy Nichols, who first being duly sworn, deposes and says that:

1. She is the Program Director for Retirement Services Finance Department of the South Carolina Public Employee Benefit Authority, the agency responsible for the administration of the South Carolina Retirement System ("SCRS" or "System").
2. As Program Director, she is responsible for the department of the Public Employee Benefit Authority that pays benefits to retired members of SCRS.
3. Defendant Joey Preston ("Preston") is a 49-year-old retired member of SCRS, who retired from the System on a service retirement allowance on January 3, 2009.
4. Preston enrolled as a member of SCRS effective April 27, 1987.
5. As of December 30, 2008, Preston had accrued 21 years, 9 months, and 2 days of earned service credit in SCRS.
6. By checks dated November 19, 2008, and December 11, 2008, Plaintiff Anderson County ("County") paid a total of \$355,848.95 to SCRS to purchase 7 years, 7 months, and 23 days of additional service credit in the System for Preston.
7. With the combination of his earned service, the service purchased for him by the County, and 4 months and 15 days of service credit for his unused sick leave,



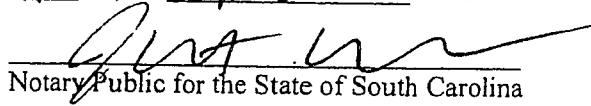
Preston had a total of 29 years, 9 months, and 10 days of credited service in SCRS at the time of his retirement.

8. Without the service credit purchased for Preston by the County, Preston would not have been eligible to retire in January 2009, because he would not have had the 28 years of credited service required for retirement under SCRS at his age.
9. Upon Preston's retirement, SCRS became legally obligated to pay a monthly retirement annuity to Preston for the rest of his life.
10. Upon his retirement in January 2009, Preston's monthly retirement benefit was \$7,371.16. As a result of cost-of-living adjustments awarded since 2009, Preston's current monthly retirement benefit has increased to \$7,688.07.
11. As of the date of this Affidavit, SCRS has paid Preston accumulated monthly benefits totaling \$329,561.24. By December 2012, SCRS will have paid \$360,313.52 in retirement benefits to Preston since January 2009.



Tammy Nichols, CPA
Program Director, Retirement Services Finance
South Carolina Public Employee Benefit Authority

Sworn to and subscribed before me this
11th day of September 2012.



Notary Public for the State of South Carolina

My commission expires: 7/23/2017

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anderson County, South Carolina,

Plaintiff,

v.

Joey Preston and the South Carolina Retirement System,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) TENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-04-4482

AFFIDAVIT

PERSONALLY appeared before me, Sharon Graham, who first being duly sworn, deposes and says that:

1. She is the Program Director for the Customer Claims Department of the South Carolina Public Employee Benefit Authority, the agency responsible for the administration of the South Carolina Retirement System ("SCRS" or "System").
2. As Program Director, she is responsible for the department of the Public Employee Benefit Authority that determines the eligibility of members of SCRS to receive retirement benefits from the System.
3. Defendant Joey Preston ("Preston") is a 49-year-old retired member of SCRS, who retired from the System on a service retirement allowance on January 3, 2009.
4. Preston enrolled as a member of SCRS in April 1987.
5. At the time of the termination of his employment with Plaintiff Anderson County ("County"), Preston had accrued 21 years, 9 months, and 2 days of earned service credit in SCRS, and, according to reporting by the County, had accrued 90 days of unused sick leave with the County.
6. At the time of the termination of his employment with the County, Preston had earned an Average Final Compensation ("AFC") of \$163,214.19 for the purposes of SCRS. A member's average final compensation under SCRS represents the average annual earnable compensation of the member during the twelve consecutive quarters of



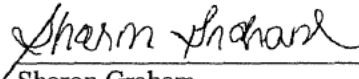
creditable service that produce the highest such average. See S.C. Code Ann. § 9-1-10(4) (Supp. 2011).

7. In order to be eligible to receive a service retirement benefit under SCRS, a member must have 5 or more years of earned service, must have reached age 60 or accrued at least 28 years of creditable service, and must have separated from service. See S.C. Code Ann. § 9-1-1510 (Supp. 2011).
8. Upon service retirement, a member of SCRS receives an annual retirement benefit equal to 1.82% of his average final compensation multiplied by his years of creditable service. However, if a member retires after age 60, but before age 65 and with less than 28 years of creditable service, his service retirement benefit is permanently reduced by 5% for each year by which his retirement date precedes his 65th birthday. See S.C. Code Ann. § 9-1-1550(B) (Supp. 2011). This retirement benefit is payable in monthly installments. See S.C. Code Ann. § 9-1-1615 (Supp. 2011).
9. Prior to July 1, 2012, retired members of SCRS received annual cost-of-living adjustments to their benefits that were based, in part, upon inflation and certain other conditions. See S.C. Code Ann. § 9-1-1810 (Supp. 2011). Based upon those provisions, Preston's retirement benefits were increased by 2% on July 1, 2010, and by 1.7% on July 1, 2011.
10. For July 1, 2012, and thereafter, retired members of SCRS will receive an annual increase in their benefits of the lesser of 1% or \$500. See S.C. Code Ann. § 9-1-1815 (added by Act 278 of 2012). Based upon that provision, Preston's annual retirement benefit was increased by \$500 effective July 1, 2012.
11. If no additional service credit had been purchased in Preston's account, he would not have been eligible to retire under SCRS at the time of the termination of his employment with the County, because he was under 60 years of age and did not have 28 years of creditable service in the System.
12. Under that scenario, without the purchase or accrual of additional service credit, Preston would not have been eligible to retire until his 60th birthday on [REDACTED]. At that time, he would have been eligible to draw a monthly retirement benefit of

approximately \$4,108.61 under the maximum payment option. See Exhibit A. If, under that scenario, he delayed retirement until age 65 to avoid the reduction of his benefit amount, he would have been eligible to receive a monthly retirement benefit of approximately \$5,478.30 under the maximum payment option beginning on [REDACTED]

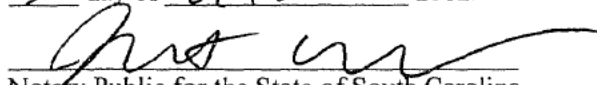
[REDACTED] See Exhibit B.

13. If, under a different scenario, only the 6 years, 2 months, and 28 days of service credit necessary for Preston to reach 28 years of creditable service had been purchased at the time of his termination from employment with the County, he would have been eligible to retire under SCRS on January 3, 2009, with an initial monthly retirement benefit of approximately \$7,023.99 under the maximum payment option. See Exhibit C.
14. Under the scenario under which Preston actually retired, the County paid a total of \$355,848.95 to SCRS to purchase 7 years, 7 months, and 23 days of additional service credit in the System for Preston. With the purchase of that service, Preston had a total of 29 years, 9 months, and 10 days of credited service in SCRS at the time of his retirement on January 3, 2009, and began receiving an initial monthly benefit of \$7,371.16. See Exhibit D. As a result of cost-of-living adjustments awarded since 2009, Preston's current monthly retirement benefit has increased to \$7,688.07.



Sharon Graham
Program Director, Customer Claims
South Carolina Public Employee Benefit Authority

Sworn to and subscribed before me this
5th day of October 2012.



Notary Public for the State of South Carolina

My commission expires: 7/23/2017

Oct 5, 2012
09:45 AM

**- SCSS Monthly Benefit Estimate -
SERVICE RETIREMENT**

Page: 1 of 2

Estimated Avg Final Compensation:	\$ 163,214.19	Social Security No:	[REDACTED]
Nondeferred Contributions:	\$ 2,126.64	Date of Retirement:	[REDACTED]
Total Contributions + Interest:	\$ 185,326.36	Birth Date:	[REDACTED]
		Age at Retirement:	[REDACTED]

BENEFICIARY INFORMATION

JOEY R PRESTON
2835 OLD WILLIAMSTON ROAD
ANDERSON SC 29621

SERVICE CREDIT

Class II:	21 Years 09 Mos 02 Days	Sick Leave Days:	90
Sick Leave:	04 Mos 15 Days	Early Ret. Svc Reduction:	25.00%
Total Service:	22 Years 01 Mos 17 Days		

PAYMENT PLANS

RETIREE LIFETIME BENEFITS		BENEFICIARY	REDUCTION
		PAYOUT	FROM MAX
\$ 4,108.61 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, If any.	
\$ 3,629.96 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 3,629.96	11.65%
\$ 3,854.29 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 1,927.15	6.19%

**** Important Notice ****

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NOTES: If benefit is \$0.00, then you may not select the payment plan indicated. 1st payment will be a partial payment.



SC Public Employee Benefit Authority ♦ South Carolina Retirement Systems
Fontaine Business Center ♦ 202 Arbor Lake Drive ♦ Post Office Box 11960 ♦ Columbia, South Carolina 29211
803-737-6800 ♦ 800-868-9002

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Oct 5, 2012
09:45 AM

**- SCAS Monthly Benefit Estimate -
SERVICE RETIREMENT**

Page: 2 of 2

Client Name: JOEY R PRESTON

SSN: [REDACTED]

TAX INFORMATION

Status: Married Federal Exemptions: 3 State Exemptions: 3

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	4,108.61	6.86	299.01	206.70	3,602.90
Option B	3,629.96	5.91	227.36	173.26	3,229.34
Option C	3,854.29	5.91	261.01	188.96	3,404.32

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 163214.19 calculated using:
AFC keyed by User

The estimated Average Final Compensation (AFC) used in this benefit estimate is comprised of quarterly contribution amounts that have not yet been audited. Upon receipt of final information and verification from your employer, adjustments may be required to the amounts used for AFC purposes.

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Oct 5, 2012
09:48 AM

- **SC** Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 1 of 2

Estimated Avg Final Compensation: \$ 163,214.19
Nondeferred Contributions: \$ 2,126.64
Total Contributions + Interest: \$ 185,326.36

Social Security No:
Date of Retirement:
Birth Date:
Age at Retirement:



BENEFICIARY INFORMATION



JOEY R PRESTON
2835 OLD WILLIAMSTON ROAD
ANDERSON SC 29621

SERVICE CREDIT

Class II: 21 Years 09 Mos 02 Days
Sick Leave: 04 Mos 15 Days Sick Leave Days: 90

Total Service: 22 Years 01 Mos 17 Days

PAYMENT PLANS

RETIREE LIFETIME BENEFITS

		BENEFICIARY PAYOUT	REDUCTION FROM MAX
\$ 5,478.30 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, If any.	
\$ 4,662.03 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 4,662.03	14.90%
\$ 5,037.30 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 2,518.65	8.05%

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NOTES: If benefit is \$0.00, then you may not select the payment plan indicated.
1st payment will be a partial payment.



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09:48 AM

- SC's Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 2 of 2

Client Name: JOEY R PRESTON

SSN: [REDACTED]

TAX INFORMATION

Status: Married Federal Exemptions: 3 State Exemptions: 3

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	5,478.30	8.18	504.27	302.49	4,671.54
Option B	4,662.03	6.86	382.02	245.44	4,034.57
Option C	5,037.30	6.86	438.31	271.71	4,327.28

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 163214.19 calculated using:
AFC keyed by User

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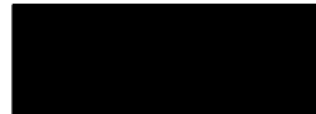
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**- SCRS Monthly Benefit Estimate -
SERVICE RETIREMENT**

Page: 1 of 2

Estimated Avg Final Compensation: \$ 163,214.19
Nondeferred Contributions: \$ 2,126.64
Total Contributions + Interest: \$ 185,326.36

Social Security No:
Date of Retirement:
Birth Date:
Age at Retirement:



BENEFICIARY INFORMATION



JOEY R PRESTON
2835 OLD WILLIAMSTON ROAD
ANDERSON SC 29621

SERVICE CREDIT

Class II: 28 Years 00 Mos 00 Days
Sick Leave: 04 Mos 15 Days Sick Leave Days: 90

Total Service: 28 Years 04 Mos 15 Days

PAYMENT PLANS

RETIREE LIFETIME BENEFITS

		BENEFICIARY PAYOUT	REDUCTION FROM MAX
\$ 7,023.99 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, if any.	
\$ 6,637.67 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 6,637.67	5.50%
\$ 6,825.21 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 3,412.61	2.83%

**** Important Notice ****

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NOTES: If benefit is \$0.00, then you may not select the payment plan indicated. 1st payment will be a partial payment.



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Oct 5, 2012
09:50 AM

**- SCSS Monthly Benefit Estimate -
SERVICE RETIREMENT**

Page: 2 of 2

Client Name: JOEY R PRESTON

SSN: [REDACTED]

TAX INFORMATION

Status: Married Federal Exemptions: 3 State Exemptions: 3

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	7,023.99	5.91	736.46	410.84	5,876.69
Option B	6,637.67	5.19	678.62	383.85	5,575.20
Option C	6,825.21	5.19	706.75	396.98	5,721.48

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 163214.19 calculated using:
AFC keyed by User

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Fontaine Business Center ♦ 202 Arbor Lake Drive ♦ Post Office Box 11960 ♦ Columbia, South Carolina 29211
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Mark Sanford, Chairman
Governor

Converse A. Chellis, III, CPA
State Treasurer

Richard Eckstrom, CPA
Comptroller General

State Budget and Control Board South Carolina Retirement Systems

Peggy G. Boykin, CPA
Director

Hugh K. Leatherman, Sr.
Chairman,
Senate Finance Committee

Daniel T. Cooper
Chairman,
Ways and Means Committee

Frank W. Fusco
Executive Director

Retiring South Carolina's Public Workforce For Life

January 8, 2010

JOEY R PRESTON
2835 OLD WILLIAMSTON ROAD
ANDERSON SC 29621

RE: [REDACTED]
South Carolina Retirement System

Dear Payee:

We are pleased to provide information regarding the monthly benefit check you are to receive from the South Carolina Retirement Systems. Your retirement account has been updated and current information is listed below.

The check you receive this month may be more, or less, than the normal monthly benefit amount you are to receive. Your normal monthly benefit amount is \$7,371.16.

Following is a summary of current information regarding your retirement benefits.

Status of Account:	Finalized Benefits
Type of Retirement:	Service
Date of Retirement:	01-03-2009
Service Credit:	29 years, 9 months, 10 days
Monthly Benefit:	\$7,371.16

You selected the maximum benefit formula which provides the largest monthly benefit available to be paid to you as a retired member for your life. If you should die prior to recovering the total amount of your contributions plus interest, the balance of your account will be refunded in one payment to the designated beneficiary(ies).

Contributions-Tax Paid:	2,126.64
Contributions-Deferred	123,199.40
Interest:	<u>60,000.32</u>
Total Contributions plus Interest	\$ 185,326.36



FORM 7320 - RCOPS070 8/28/2009
Location Address:
202 Arbor Lake Drive
Columbia, South Carolina 29223

(800) 868-9002 (in SC only)
(803) 737-8600
www.retirement.sc.gov

Mailing Address:
Post Office Box 11960
Columbia, South Carolina 29211-1960

000262

██████████ JOEY R PRESTON

Your AFC reflects the 12 highest consecutive quarters of salary posted through your date of termination, including the dollar amount of unused annual leave as permitted by law and reported by your employer.

QTR	Year	Full Time Equivalent	Salary	Annualized		
Dec	2008	1.0000	\$ 38,731.86	\$ 38,731.86	Current Salary	\$167,838.06
Sep	2008	1.0000	44,811.11	44,811.11	Paid Leave Days	45.00
Jun	2008	1.0000	38,648.22	38,648.22	Leave allowed	\$ 29,048.40
Mar	2008	1.0000	41,521.11	41,521.11		
Dec	2007	1.0000	34,769.94	34,769.94		
Sep	2007	1.0000	40,564.93	40,564.93		
Jun	2007	1.0000	34,769.94	34,769.94		
Mar	2007	1.0000	40,564.93	40,564.93		
Dec	2006	1.0000	34,769.94	34,769.94		
Sep	2006	1.0000	39,004.77	39,004.77		
Jun	2006	1.0000	33,432.66	33,432.66		
Mar	2006»	1.0000	39,004.77	39,004.77		

A F C \$ 163,214.19

Beneficiary selection for lump sum payment:
BARBARA PRESTON

Beneficiary selection for retiree Group Life Insurance payment:
BARBARA PRESTON

For federal and state tax purposes, \$5.91 of your monthly benefit is tax free until your tax paid contributions are recovered after which all amounts, including cost-of-living increases, will be fully taxable.

The Retirement Systems is committed to serving members promptly and efficiently. If you have any questions or need additional information regarding your retirement benefits, you may call our Customer Service at (803) 737-6800 or toll free in SC at (800) 868-9002.

Sincerely,

Benefit Payments Department