THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Doyet A. Early, Circuit Court Judge

C.A. No.: 2018-CP-40-02425
Appellate Case No. 2019-000648

Jefferson Davis, Jr. .....Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1–40 .....Respondents.

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REQUESTED BY RESPONDENT ECENC FUND: Jefferson Davis, Jr. v. South Carolina Educational Credit for Exceptional Needs Children Fund (Civil Action No. 2017-CP~23-04748/2017-CP-40-06976)

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CERTIFICATE OF COUNSEL / APPELLANT

ELECTRONICALLY FILED - 2018 Oct 29 11:38 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Jefferson Davis Jr.,	)	Civil Action No. 2018-CP-40-02425
Plaintiff,	)	
vs.	)	**ORDER**
Ellen Weaver, individually, Palmetto Institute & John Does 1-20,	)	
Defendants.	)	

THIS MATTER came before this Court on October 1, 2018 pursuant to Defendant's 12(b)(6) Motion to Dismiss. After hearing the arguments of the parties, this Court finds the allegations in the plaintiff's complaint were sufficient for purposes of Rule 12(b)(6), SCRCP. Several motions to dismiss were before the court. The court addressed each claim separately.

BRIEF PROCEDURAL HISTORY

In February of 2017, Plaintiff saw Defendant Weaver give a presentation at a school choice conference. After the event, Plaintiff alleges Defendant Weaver made disparaging remarks about him to another individual. Specifically, Plaintiff alleges Weaver stated Plaintiff lost his license to practice law. Later, Plaintiff confronted Defendant Weaver at her presentation booth at another convention. There, Weaver is alleged to have threatened to call the police. Separately, Plaintiff claims to have approached two individuals affiliated with Defendant Palmetto Promise Institute, a non-profit to which Defendant Weaver serves as President and CEO, who turned away and refused to speak to him. More broadly, Plaintiff alleges Defendants maintains a politically motivated scheme to undermine his "brand" of school choice advocacy.

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Additionally, Plaintiff alleges Defendants' actions demonstrate an elaborate civil conspiracy against him.

DISCUSSION

In the instant case, Plaintiff has nine causes of action, including: (1) defamation, (2) false light publicity, (3) invasion of privacy through publicity, (4) negligence, (5) intentional infliction of emotional distress, (6) tortious interference with prospective contractual relations, (7) unfair trade practices, (8) piercing the corporate veil, and (9) civil conspiracy.

The first claim is defamation, this claim was sufficiently stated and therefore the court denies the Motion to dismiss pertaining to defamation. The second claim is false light publicity, it is not recognized in the state of South Carolina thus the court grants this motion to dismiss. The third claim is invasion of privacy through publicity. Plaintiff has not pled facts sufficient to constitute any cause of action for invasion of privacy because Plaintiff failed to allege that the information was publicized in any way. The court will allow Plaintiff the opportunity to amend the complaint to detail the element of publicity, if plaintiff is unable to do so, this motion to dismiss will be granted. The fourth claim is negligence, Plaintiff's allegations are sufficient and therefore Plaintiff's Motion to Dismiss as to this claim is denied. The fifth claim is intentional infliction of emotional distress, Plaintiff's allegations are sufficient and therefore Plaintiff's Motion to Dismiss as to this claim is denied. The sixth claim is tortious interference with contractual relations, based on the arguments of counsel this matter does not involve any contracts, therefore this motion to dismiss is granted. The seventh claim is unfair trade practice, based on the allegations and arguments of counsel this matter does not involve trade or commerce under the South Carolina Unfair Trade Practice Act, therefore this motion to

dismiss is granted. The eighth claim is piercing the corporate veil, this motion to dismiss is denied to preserve the argument for a later time. The final claim is civil conspiracy. Plaintiff has not pled facts sufficient to constitute a cause of action of civil conspiracy. Plaintiff is allowed to amend the complaint to detail special damages, if none exist, this motion to dismiss will be granted.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part.

IT IS THEREFORE ORDERED each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

October 18, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Oct 29 11:38 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

ELECTRONICALLY FILED - 2018 Oct 29 11:38 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2018CP4002425

Jefferson Davis Jr.	**Ellen Weaver, individually, Palmetto Institute & John Does 1-20**
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Judge DeAndrea G. Benjamin	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

		10/18/2018
Circuit Court Judge	**Judge Code**	**Date**

ELECTRONICALLY FILED - 2018 Oct 29 11:38 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs Ellen Weaver , defendant, et al

Case Number: 2018CP4002425

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-10-29 11:14:41 page 5 of 5

ELECTRONICALLY FILED - 2018 Oct 30 2:01 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Jefferson Davis Jr.,	)	Civil Action No. 2018-CP-40-02425
Plaintiff,	)	
vs.	)	**AMENDED ORDER**
Ellen Weaver, individually, Palmetto Institute & John Does 1-20,	)	
Defendants.	)	

THIS MATTER came before this Court on October 1, 2018 pursuant to Defendant's 12(b)(6) Motion to Dismiss. After hearing the arguments of the parties, this Court finds the allegations in the plaintiff's complaint were sufficient for purposes of Rule 12(b)(6), SCRCP. Several motions to dismiss were before the court. The court addressed each claim separately.

BRIEF PROCEDURAL HISTORY

In February of 2017, Plaintiff saw Defendant Weaver give a presentation at a school choice conference. After the event, Plaintiff alleges Defendant Weaver made disparaging remarks about him to another individual. Specifically, Plaintiff alleges Weaver stated Plaintiff lost his license to practice law. Later, Plaintiff confronted Defendant Weaver at her presentation booth at another convention. There, Weaver is alleged to have threatened to call the police. Separately, Plaintiff claims to have approached two individuals affiliated with Defendant Palmetto Promise Institute, a non-profit to which Defendant Weaver serves as President and CEO, who turned away and refused to speak to him. More broadly, Plaintiff alleges Defendants maintains a politically motivated scheme to undermine his "brand" of school choice advocacy.

ELECTRONICALLY FILED - 2018 Oct 30 2:01 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Additionally, Plaintiff alleges Defendants' actions demonstrate an elaborate civil conspiracy against him.

DISCUSSION

In the instant case, Plaintiff has nine causes of action, including: (1) defamation, (2) false light publicity, (3) invasion of privacy through publicity, (4) negligence, (5) intentional infliction of emotional distress, (6) tortious interference with prospective contractual relations, (7) unfair trade practices, (8) piercing the corporate veil, and (9) civil conspiracy.

The first claim is defamation, this claim was sufficiently stated and therefore the court denies the Motion to dismiss pertaining to defamation. The second claim is false light publicity, it is not recognized in the state of South Carolina thus the court grants this motion to dismiss. The third claim is invasion of privacy through publicity. Plaintiff has not pled facts sufficient to constitute any cause of action for invasion of privacy because Plaintiff failed to allege that the information was publicized in any way. The court will allow Plaintiff the opportunity to amend the complaint to detail the element of publicity, if plaintiff is unable to do so, this motion to dismiss will be granted. The fourth claim is negligence, Plaintiff's allegations are sufficient and therefore Plaintiff's Motion to Dismiss as to this claim is denied. The fifth claim is intentional infliction of emotional distress, Plaintiff's allegations are sufficient and therefore Plaintiff's Motion to Dismiss as to this claim is denied. The sixth claim is tortious interference with contractual relations, based on the arguments of counsel this matter does not involve any contracts, therefore this motion to dismiss is granted. The seventh claim is unfair trade practice, based on the allegations and arguments of counsel this matter does not involve trade or commerce under the South Carolina Unfair Trade Practice Act, therefore this motion to

dismiss is granted. The eighth claim is piercing the corporate veil, this motion to dismiss is denied to preserve the argument for a later time. The final claim is civil conspiracy. Plaintiff has not pled facts sufficient to constitute a cause of action of civil conspiracy. Plaintiff is allowed to amend the complaint to detail special damages, if none exist, this motion to dismiss will be granted.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part.

IT IS THEREFORE ORDERED each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

October 29, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Oct 30 2:01 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

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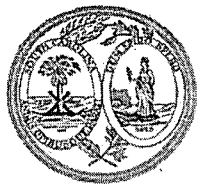

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs Ellen Weaver , defendant, et al

Case Number: 2018CP4002425

Type: Order/Amend

So Ordered

s/DeAndrea Gist Benjamin, #2161

ELECTRONICALLY FILED - 2019 Feb 19 1:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1–40, Defendants.	)	C.A. No.: 2018-CP-40-02425 **ORDER**

This matter comes before the Court on multiple defendants' Motions to Dismiss. The Complaint was originally filed on May 3, 2018, and asserted nine causes of action against an individual defendant (Ellen Weaver), a corporate defendant (Palmetto Promise Institute or "PPI") and 20 pseudonymous defendants (Does 1–20). On June 7, 2018, counsel for Weaver and PPI filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP.

ELECTRONICALLY FILED - 2019 Feb 19 1:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Judge DeAndrea Benjamin heard arguments on the motion on October 1, 2018. On October 29, 2018, Judge Benjamin filed an Order granting in part the Motion to Dismiss. The following day Judge Benjamin filed an Amended Order that, among other things, ordered plaintiff to amend his Complaint to name and serve each of the pseudonymous "John Doe" defendants, and gave him 15 days to do so. Plaintiff did not move to alter or amend that ruling, nor did he request any extension of the time period ordered by Judge Benjamin.

On November 19, 2018, plaintiff filed an Amended Complaint naming 31 new defendants in addition to Weaver and PPI. He did not, however, serve the new defendants within the time period established by Judge Benjamin's Amended Order. The newly-named defendants filed Motions to Dismiss raising numerous bases for dismissal. The Court heard arguments on the motions on February 12, 2019.[1] At the hearing, the Court noted the requirement in Judge Benjamin's Amended Order that plaintiff serve the newly-added defendants within 15 days of the Amended Order, and inquired whether plaintiff had done so. Plaintiff acknowledged none of the new defendants had been served within the time period set by Judge Benjamin's Amended Order.[2]

The timely service of a Summons and Complaint is a prerequisite to the commencement of a civil action. *See generally* Rule 3, SCRCP. In the absence of service within the time period ordered by Judge Benjamin, no civil action was commenced against the new defendants. *See Doe v. City of Duncan*, 417 S.C. 277, 286, 789 S.E.2d 602, 606 (Ct. App. 2016) (noting that where

[1] Thirteen motions were scheduled to be argued at this hearing. Many other of the new defendants' Motions to Dismiss had not yet been set for argument. As explained more fully above, however, the basis upon which this Court is ruling applies to all the newly-added defendants, including those whose motions had not yet been scheduled for hearing, and renders the remaining Motions to Dismiss moot.

[2] Even allowing for an additional five days provided by Rule 6(e), SCRCP when an Order is served by mail, none of the new defendants were served within 20 days after the date of Judge Benjamin's Amended Order.

ELECTRONICALLY FILED - 2019 Feb 19 1:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

the plaintiff had failed timely to serve the summons and complaint, "Doe failed to commence a civil action and dismissal was warranted"); *see also Sealy v. Dodge*, 289 S.C. 543, 544, 347 S.E.2d 504, 505 (1986) (noting that in a prior proceeding, "Appellants failed to timely amend their complaints and the actions were dismissed").

At the hearing on the instant motions, plaintiff acknowledged he had not complied with Judge Benjamin's Amended Order, but he argued the time limits imposed by that order were insufficient for the task at hand. His argument that more time was needed, however, falls short. Plaintiff did not seek to alter or amend Judge Benjamin's Amended Order, nor did he move for an extension of time to comply with it. Accordingly, the time limit imposed by the Amended Order is the law of the case, and it is well established that a judge of this Court cannot reverse or overrule a prior order of another judge of this Court. *See Charleston Cnty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another.").

CONCLUSION

Because the Amended Complaint was not timely served in compliance with Judge Benjamin's Amended Order, this Court strikes the Amended Complaint and dismisses this suit with prejudice as to all the defendants who were first named in the Amended Complaint. Because dismissal is warranted for the foregoing reason, the Court does not address the other arguments for dismissal made by the moving defendants, and any pending motions they have filed are now moot.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early

February 13, 2019
Columbia, South Carolina

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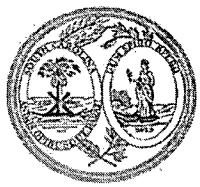

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs Ellen Weaver , defendant, et al

Case Number: 2018CP4002425

Type: Order/Dismissal

So Ordered

s/D.A. Early III 2136

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4002425

Jefferson Davis, Jr
PLAINTIFF(S)

Ellen Weaver et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's motion for reconsideration filed on March 6, 2018 is denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/26/2019 .

Jason Bedrick
Bill Wilson
Neil J Mellen
Chad Connelly
Access Opportunity South Carolina
John Doe 1-20
Jefferson Davis, Jr for Jefferson Davis, Jr
Ellen Weaver
Palmetto Promise Institute
Jefferson Davis, Jr for Jefferson Davis, Jr
John Doe
Nate Leupp
John Mccormick
Susan Thomas

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Mar 27 8:45 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Court Reporter:

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

ELECTRONICALLY FILED - 2019 Mar 27 8:45 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

ELECTRONICALLY FILED - 2019 Mar 27 8:45 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs Ellen Weaver , defendant, et al

Case Number: 2018CP4002425

Type: Order/Electronic Form 4

So Ordered

s/D.A. Early III 2136

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JEFFERSON DAVIS, JR.)
Plaintiff(s))
)
vs.)
ELLEN WEAVER, individually, PALMETTO PROMISE INSTITUTE & JOHN DOE(S) 1-20)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018CP4002425

Submitted By: Jefferson Davis, Jr., Pro Se
Address: 403 McCarter Avenue
Greenville, SC 29615

SC Bar #: N/A - Pro Se
Telephone #: 843-901-8036 (cell)
Fax #:
Other:
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

FILED
2018 MAY -3 PM 4:51
CLERK OF COURT
RICHLAND CO. S.C.

DOCKETING INFORMATION *(Check all that apply)*

If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION *(Check One Box Below)*

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] General (130)
- [ ] Breach of Contract (140)
- [ ] Fraud/Bad Faith (150)
- [ ] Failure to Deliver/ Warranty (160)
- [ ] Employment Discrim (170)
- [ ] Employment (180)
- [ ] Other (199)_____

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- [ ] Notice/ File Med Mal (230)
- [ ] Other (299) _____

Torts – Personal Injury
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Assault/Battery (370)
- [X] Slander/Libel (380)
- [ ] Other (399)_____

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499) _____

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

_____

Administrative Law/Relief
- [ ] Reinstate Drv. License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture—Consent Order (850)
- [ ] Other (899)

_____

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Confession of Judgment (770)
- [ ] Petition for Workers Compensation Settlement Approval (780)
- [ ] Incapacitated Adult Settlement (790)
- [ ] Other (799) _____

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Comm. (990)
- [ ] Employment Security Comm (991)
- [ ] Other (999)

_____

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699) _____
- [ ] Sexual Predator (510)
- [ ] Permanent Restraining Order (680)
- [ ] Interpleader (690)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Out-of State Depositions (650)
- [ ] Motion to Quash Subpoena in an Out-of-County Action (660)
- [ ] Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 5-3-2018

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

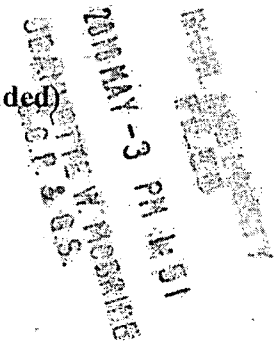
    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, individually, Palmetto Promise Institute & John Doe 1–20, Defendants.	)	**SUMMONS** **(Jury Trial Demanded)**



TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF

May 3, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2018-CP- 40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, individually, Palmetto Promise Institute & John Doe(s) 1–20, Defendants.	)	**COMPLAINT** **(Jury Trial Demanded)**

2018 MAY -3 PM 12:51
JEANNETTE W. WAMPLER
C.C.P. & G.S.

Jefferson Davis, Jr. (herein "Plaintiff") states his complaint as follows:

1. Plaintiff Jefferson Davis, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

2. Defendant Ellen Weaver ("Weaver") is President, CEO and a Board Member of defendant Palmetto Promise Institute, a resident of Richland County and a citizen of the State of South Carolina.

3. Defendant Palmetto Promise Institute ("PPI") is a South Carolina non-profit, and Internal Revenue Service approved 501(c)(3) charity, and have an office in Richland County. Weaver is the registered agent of PPI with an address of 1612 Marion Street, Suite 312, Columbia, SC 29201.

4. At this time, the true identities of the John Doe(s) 1 through 20, be them individuals and / or entities, ("John Doe(s)"), are unknown and / or unconfirmed to Plaintiff at this time. Therefore, Plaintiff sues the John Doe(s) by fictitious name. Upon

information and belief, the John Doe(s) fund and direct the operations and activities of Weaver, PPI and others.

5. All Defendants herein are sued jointly and severally.

JURISDICTION AND VENUE

6. This court has jurisdiction of the subject matter of this complaint and of the parties. Venue is proper.

FACTUAL ALLEGATIONS
(*Specific Documented Event & Follow-up*)

7. On Saturday February 25, 2017, Weaver, in her official capacity representing PPI, spoke on the topic of school choice at the annual Palmetto Panel Conference in Clemson, SC.

8. Plaintiff Davis attended the February 25, 2017 Palmetto Panel Conference in Clemson, SC, and heard Weaver's presentation.

9. After Weaver's presentation, she was approached by a political grassroots advocate to further discuss her topic of school choice.

10. During the above conversation, Weaver made specific reference to Plaintiff Davis in the audience, knowing Davis has a different opinion on school choice advocacy.

11. Weaver made several disparaging, false light and defamatory comments about Plaintiff Davis and his advocacy work to said political grassroots advocate.

12. Weaver proceeded to make disparaging, false light and defamatory remarks about Davis, his wife, and the 501(c)(3) nonprofit organization she runs and that Davis volunteers with as an Advisory Board Member.

13. **In addition to the above, Weaver proceeded to state that Davis had lost his license to practice law – said statement is not true.**

14. **Plaintiff Davis is an Active Member in Good Standing of the State Bar of Georgia with no disciplinary action since first admitted to the practice of law in 1994.**

15. Upon information and belief, this was not the first time Weaver / PPI (and the John Doe(s)) had made defamatory and false light statements such as the above regarding Plaintiff Davis.

16. On March 24, 2017, Plaintiff Davis sent a letter to an individual board member of PPI detailing the above defamatory statements. Davis did not receive a reply, and the defamatory and false light statements did not stop.

17. On May 13, 2017, Plaintiff Davis approach Weaver at her "booth" at the SC Republican Party State Convention in Columbia, SC, to clear up any misunderstanding. Weaver refused to talk to Davis, proceeded to tell him he was the most destructive factor to school choice in South Carolina, and that he should move

out of the state. Weaver them proceeded to threaten to call the police if Davis did not leave her "booth".

18. On December 4th, 2017, Plaintiff Davis approached the above referenced PPI board member and a "Senior Fellow" with PPI. After introducing himself, both individuals turned around refusing to speak to Davis and the "Senior Fellow" yelled at Davis saying he was the source of "corruption" in the SC school choice tax credit program. The entire interaction lasted less than 30 seconds.

19. After the December 4th, 2017 interaction above, Defendant told others that Davis had accosted the PPI board member.

20. On multiple occasions, before and after the above incidents, Plaintiff Davis and others supporting his advocacy efforts, including parents of children with "special needs" benefiting from South Carolina's K-12 school choice tax credit program have requested a public or private meeting with Defendants to clear up any misunderstandings. Defendants have refused any meeting, obviously wanting to continue to perpetrate their plan.

FACTUAL ALLEGATIONS
(Additional Background)

21. Plaintiff Davis is a volunteer grassroots advocate for private school choice for South Carolina's K-12 children with special needs, children in a low-income situation, homeschooled children, and ultimately all children in SC. Plaintiff specifically advocates for ***private / free-market K-12 school choice solutions***.

22. Defendants Weaver & PPI advocate for K-12 school choice solutions in SC as well. However, Weaver & PPI specifically advocate for ***government run K-12 school choice solutions***.

23. There is a distinct policy and practical difference between K-12 school choice solutions that are ***#1 government run solutions*** vs. ***#2 private / free-market solutions***.

24. Weaver & PPI politically oppose the grassroots advocacy of Plaintiff Davis. Upon information and belief, this opposition is due to Weaver & PPI's political and financial interest as well as the political and financial interest of certain John Doe(s).

25. PPI received tax deductible contributions totaling **$551,443** in 2016, **$490,420** in 2015, **$356,105** in 2014 & **$514,847** in 2013 under Weaver and certain other individuals newly involved in the nonprofit organization and PPI's 2013 "relaunch".

26. PPI (under a former name) received tax deductible contributions of **$62,800** in 2012, the first part year Weaver and certain other individuals became involved in the nonprofit organization.

27. PPI (under a former name) only received tax deductible contributions of **$7,500** in 2011, **$13,000** in 2010 & **$30,000** in 2009 prior to Weaver and certain other individuals became involved in the nonprofit organization.

28. PPI's website (as of 5/3/2018) states:

> **"Palmetto Promise Institute (PPI) is an independent, nonpartisan, nonprofit, 501(c)(3) educational organization. PPI conducts public policy research dedicated to creating a free and flourishing South Carolina, where every individual has the opportunity to reach their full potential. PPI does not perform contract research and does not accept government grants. Permission to reprint material on this site is granted provided that PPI is properly cited. Nothing written here is to be considered an attempt to aid or hinder the passage of any specific legislation."**

29. Upon information and belief, PPI is a nonprofit "front organization" for certain John Doe(s) with financial interest in ***government run K-12 school choice solutions*** (including charter schools) which Weaver & PPI claim to be advocating for as an independent, nonpartisan, nonprofit, 501(c)(3) educational organization.

30. Upon information and belief, Weaver and PPI advocate for ***government run K-12 school choice solutions*** (including charter schools) as a paid contract research and advocacy group benefiting certain John Doe(s) with financial interest in the success and expansion of ***government run K-12 school choice solutions***.

31. Weaver, PPI and the John Doe(s) have produced false and misleading reports(s) and other defamatory and false light information about the activities of Davis and his work with organizations he has volunteered for to further their own financial interest and the financial interest of their benefactors.

32. Upon information and belief, Defendants Weaver, PPI and John Doe(s) worked together and conspired to further their mutual interests and disguise their activities.

A FIRST CAUSE OF ACTION
(DEFAMATION Per Se & Per Quod)

33. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

34. The Defendants, individually and collectively, made false and defamatory statements about Defendant.

35. The Defendants, individually and collectively, stated both verbally and (upon information and belief) in writing to third parties that Plaintiff had been disbarred from the practice of law.

36. These statements were false and the Defendants knew or should have known that the statements were false.

37. As the direct and proximate result of the Defendants' defamatory statements which were made with malice and with the specific intent to harm Defendant and others, Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact resulted.

A SECOND CAUSE OF ACTION
(FALSE LIGHT PUBLICITY)

38. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

39. The Defendants, individually and collectively, made misleading innuendo and statements about Defendant which placed him in a false light.

40. As the direct and proximate result of the Defendants' false light statements which were made with malice and with the specific intent to harm Defendant and others,

Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact.

A THIRD CAUSE OF ACTION
(INVASION OF PRIVACY)

41. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

42. The Defendant's individually and in concert with each other engaged in wrongful acts that constitute an unwarranted invasion and trespass upon Plaintiffs privacy.

43. Defendant's, armed with the personal knowledge gained from unwarranted invasion and trespass upon Plaintiffs privacy, used such knowledge improperly and sought additional private knowledge (irrelevant to the matters at hand) to improperly use against Plaintiff in furtherance of Defendant's financial and political interest.

44. Such wrongful acts perpetrated by the Defendants have inflicted great and irreparable harm upon Plaintiff.

45. Certain John Doe Defendants acquiesced to the improper actions of their agents, Defendant's Weaver, PPI and other John Doe(s) in furtherance of their scheme.

A FORTH CAUSE OF ACTION
(NEGLIGENCE)

46. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

47. Defendants were negligent, careless, reckless and willfully acted with actual malice in that they had a duty to ensure the truthfulness of their statements but they knew their

statements were false and nevertheless acted with reckless disregard for the truth by publishing their statements to third parties.

A FIFTH CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

48. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

49. Defendants conduct was intended to inflict emotional distress on the Plaintiff and was outrageous beyond the bounds of conduct expected by members of society; the outrageous conduct caused Plaintiffs to suffer severe emotional distress, which resulted in Plaintiffs incurring expense for medical treatment.

A SIXTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS)

50. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

51. Defendants directed others to not do business with Plaintiff and associated entities by making false and defamatory statements and innuendo.

52. As a direct and proximate result of the Defendant's actions, Plaintiff was damaged.

A SEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

53. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

54. This cause of action is brought pursuant to "South Carolina Unfair Trade Practices Act.", S.C. Code Ann 39-5-10 *et seq.* ("SCUTPA")

55. The public has an interest in ensuring that non-profit organizations operating in South Carolina, as well as their volunteers and beneficiaries, are not hindered in their charitable mission.

56. Defendants violated the SCUTPA through their actions herein discussed.

57. Plaintiff is entitled to injunctive relief, treble damages, and attorneys' fees as allowed by statute.

A EIGHTH CAUSE OF ACTION
(PIERCE THE CORPORATE VEIL)

58. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

59. Upon information and belief, the Corporate Defendants were operated as the alter-ego or instrumentality of Defendant Weaver and/or one or more of the individual Defendants / John Doe(s) for their own personal benefit and financial gain and as such perpetuated the complained actions on Plaintiff.

60. Upon information and belief, Defendant Weaver and/or one of more of the individual Defendants / John Doe(s) exercised dominion and control over the Corporate Defendants' finances and operations, and used such for their own personal benefit.

61. Upon information and belief, the Corporate Defendants disregarded basic corporate and non-profit formalities. This disregard includes, but is not limited to, operating the Corporate Defendants in such a way that the same no longer has a corporate personality that is separate and distinct from Defendant Weaver and/or one or more of the individual Defendants / John Doe(s).

A NINETH CAUSE OF ACTION
(CONSPIRACY)

62. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

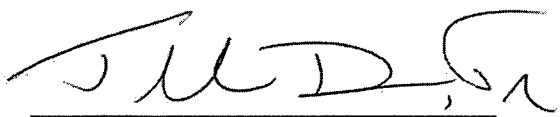
63. Defendants conspired and colluded together and amongst themselves to execute the above stated Cause of Actions.

64. Defendant was damaged as a direct and proximate result of this conspiracy and collusion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters alleged and render a judgment for actual and punitive damages in an amount to be determined by a jury. Plaintiff further prays for costs and attorney's fees against the Defendants and any such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
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PLAINTIFF

May 3, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1–40, Defendants.	**FIRST AMENDED COMPLAINT** **(Jury Trial Demanded)**

RICHLAND COUNTY
FILED
2018 NOV 19 PM 4:07
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Jefferson Davis, Jr. (herein "Plaintiff") states his complaint as follows:

PLAINTIFF

1. Plaintiff **Jefferson Davis, Jr.** is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

DEFENDANTS

2. Defendant **Ellen Weaver** ("Weaver") is President, CEO and a Board Member of defendant Palmetto Promise Institute, a resident of Richland County and a citizen of the State of South Carolina residing at 4207 Devereaux Road, Columbia, South Carolina 29205.

3. Defendant **Chad Connelly** ("Connelly") is a Board Member of Defendant Palmetto Family Council and Defendant Palmetto Family Alliance, a former Board Member of Defendant South Carolinians for Responsible Government and Defendant SCRG Foundation. Defendant Connelly is the current Executive Director of Defendant South Carolina Educational Credit for Exceptional Needs Children Fund, a resident of Newberry County and a citizen of the State of South Carolina residing at 107 Connelly Drive, Prosperity, South Carolina 29217.

4. Defendant **Oran P. Smith** ("Smith") is a current / former board member and Executive Director of Defendant Palmetto Promise Institute, Defendant Palmetto Family Council and Defendant Palmetto Family Alliance. Defendant Smith is currently listed as a "Senior Fellow" at both Defendant Palmetto Promise Institute and Defendant Palmetto Family Council. Defendant Smith is a resident of Lexington County and a citizen of the State of South Carolina residing at 466 E Columbia Avenue, Leesville, South Carolina 29070.

5. Defendant **Neil J. Mellen** ("Mellen") is President, CEO and a Board Member of Defendant Access Opportunity South Carolina, the former President of Defendant South Carolinians for Responsible Government, a resident of Richland County and a

citizen of the State of South Carolina residing at 3416 Devereaux Road, Columbia, South Carolina 29205.

Source of Funding

6. Defendant **Howard S. Rich** ("Rich") is a citizen of Pennsylvania, a Board Member of Defendant Cato Institute and a former Board Member of Defendant Friedman Foundation for Educational Choice. Upon information and belief Defendant Rich funds and directs the operations and activities of Defendants AOSC, SCRG, SCRG Foundation, PPI, PFC, PFA, Weaver, Connelly, Smith, Mellen and others.

Political Targeting & Professional Ethic Violations

7. Defendant **Rick Reames, Esq**. ("Reames") is the former Director of Defendant South Carolina Department of Revenue and a current partner at the law firm Nexsen Pruet. Defendant Reames is a resident of Kershaw County, a citizen of the State of South Carolina residing at 411 Pine Street, Camden, South Carolina 29020.

8. Defendant **Stephen D. Kirkland, CPA, CMC** is the Board Chairman of Defendant Palmetto Family Council and a Board Member of Palmetto Family Alliance. Defendant Kirkland is a resident of Richland County, a citizen of the State of South Carolina residing at 2724 Canterbury Road, Columbia South Carolina 29204.

Non-Profit Entities (Shell / "Front" Entities)

9. Defendant **Palmetto Promise Institute** ("PPI") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3) charity, and has an office in Richland County.

10. Defendant **Palmetto Family Council** ("PFC") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County.

11. Defendant **Palmetto Family Action** ("PFA") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(4), and has an office in Richland County.

12. Defendant **South Carolinians for Responsible Government** ("SCRG") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(4), and has an office in Richland County.

13. Defendant **SCRG Foundation** ("SCRG Foundation") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County. The name of SCRG Foundation has been changed legally to Donors Enriching Students Knowledge ("DESK").

14. Defendant **Access Opportunity South Carolina** ("AOSC") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County.

15. Defendant **Friedman Foundation for Educational Choice, Inc.** ("Friedman Foundation") is an Indiana non-profit, and an Internal Revenue Service approved

501(c)(3). Upon information and belief Defendant Friedman Foundation funds and directs the operations and activities of the SC Defendants and/or John Doe(s). The name of Friedman Foundation has been changed to EdChoice ("EdChoice").

16. Defendant **Cato Institute** ("Cato") is a non-profit organization headquartered in Washington D.C., and an Internal Revenue Service approved 501(c)(3). Upon information and belief Defendant Cato funds and directs the operations and activities of the SC Defendants and/or John Does.

Governmental Entities

17. Defendant **South Carolina Educational Credit for Exceptional Needs Children Fund** ("ECENC Fund") is a South Carolina legislatively created non-profit organization formed by the State of South Carolina having its operations administered by Defendant South Carolina Department of Revenue. The ECENC Fund does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County. Defendant Rick Reames is the registered agent of Defendant ECENC Fund with an address of 1201 Main St., Suite 985, Columbia, South Carolina 29201.

18. Defendant **South Carolina Education Oversight Committee** ("EOC") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

19. Defendant **South Carolina Department of Revenue** ("DOR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

20. Defendant **South Carolina Department of Labor, Licensing and Regulation** ("LLR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

Political "Consulting" Firms

21. Defendant First Impressions, Inc. d/b/a **Richard Quinn & Associates** ("RQA") is a South Carolina corporation and has an office in Richland County. Richard Quinn is the registered agent of RQA with an address of 1620 Gervais Street, Columbia, SC 29201.

22. Defendant **First Tuesday Strategies, LLC** ("First Tuesday") is a South Carolina limited liability company with an office in Richland County. J. Warren Tompkins is the registered agent of First Tuesday with an address of 807 Gervais Street, Suite 202, Columbia, South Carolina 29201.

Individual & Other Participants

23. Defendant **Bill Wilson** ("Wilson") is the "handler" for Defendant Rich's affairs in South Carolina. Defendant Wilson is upon information and belief a resident and citizen of the State of Virginia.

24. Defendant **Jason Bedrick** ("Bedrick") was a school choice policy analyst for Defendant Cato and is currently the Director of Policy at Defendant Friedman Foundation.

25. Defendant **Jim DeMint** ("DeMint") is the Founding Chairman of Defendant PPI and a citizen of the State of South Carolina.

26. Defendant **Randy Page** ("Page") is a Board Member of Defendant PFC and Defendant PFA. Defendant Page is a former Board Member of Defendant SCRG and Defendant SCRG Foundation. Defendant Page is a resident of Greenville County and a citizen of the State of South Carolina.

27. Defendant **Tony Denny** ("Denny") is a Board Member of Defendant AOSC, a registered lobbyist for Defendant SCRG, a resident of Richland County and citizen of the State of South Carolina residing at 3328 Devereaux Road, Columbia, South Carolina 29205.

28. Defendant **Phillip Cease** ("Cease") is President and Board Member of Defendant SCRG, a former Board Member of Defendant SCRG Foundation and Defendant AOSC and a citizen of the State of South Carolina.

29. Defendant **Melanie Barton** ("Barton") is the Executive Director of Defendant EOC and a citizen of the State of South Carolina.

30. Defendant **Doris Cubitt, CPA** ("Cubitt") is the former head Administrator for the South Carolina Board of Accountancy at Defendant LLR and a citizen of South Carolina.

31. Defendant PPI produced a "Legislative Analysis" about the switch in the program the was incorrect and caused damage to Plaintiff Davis and his group.

32. Defendant **Dr. Susan Thomas** ("Thomas") is the former Head of School of Glenforest School and a citizen of the State of South Carolina.

33. Defendant **John McCormick** ("McCormick") is the former Head of School of Hidden Treasure Christian School and a citizen of the State of South Carolina.

34. Defendant **Nate Leupp** ("Leupp") is a resident of Greenville County and a citizen of the State of South Carolina.

35. Defendant **Institute of Management Consultants USA** ("IMCUSA") is a New York non-profit with offices in the State of Florida.

John Doe(s)

36. At this time, the true identities of the John Doe(s) 1 through 40, be them individuals and / or entities, ("John Doe(s)"), are unknown and / or unconfirmed to Plaintiff. Therefore, Plaintiff sues the John Doe(s) by fictitious name. Upon information and belief, the John Doe(s) fund, direct and/or participate in the operations and activities

of Defendants and/or have participated in other matters which are the subject of this Complaint.

Joint & Several

37. All Defendants herein are sued jointly and severally.

JURISDICTION AND VENUE

38. This court has jurisdiction of the subject matter of this complaint and of the parties. Venue is proper.

FACTUAL ALLEGATIONS
(Specific Documented Event & Follow-up)

39. In June 2013, the South Carolina Legislature passed the original budget proviso entitled the Educational Credit for Exceptional Needs Children providing for a small $8 million K-12 school choice tax credit program for children with "special needs". The budget proviso was to be effective July 1, 2013, followed by a scheduled time period for preparation, and finally starting on January 1, 2014 with authorized SFOs starting to accept donations and issuing scholarship grants.

40. Although Plaintiff Davis did monitor the subject legislation, he was not involved in passage of the original budget proviso.

41. Upon passage of the subject legislation, Plaintiff Davis contacted Defendants Mellen and SCRG to inquire if there was an implementation plan for the legislation that Defendants had been lobbying for since approximately 2004. No such plan existed and Defendants had no idea what to do next, indicating they have no plan to actually succeed.

42. Plaintiff Davis is a tax attorney and CPA, active and licensed in the State of Georgia. Plaintiff had returned to his home state of South Carolina in 2011. In 2008 Plaintiff Davis was the founding trustee of an independent 501(c)(3) non-profit under the newly introduced $50 million program in the State of Georgia. As such Plaintiff had the knowledge and experience to help with the implementation of the program in South Carolina and offered his assistance for which Defendants Mellen and SCRG were grateful.

43. Plaintiff Davis is a native of South Carolina, graduated from The Citadel as a member of the Class of 1989, and later graduated with a law degree and MBA from the University of South Carolina in December 1993.

44. Plaintiff Davis, along with his wife **Olga Lisinska** and several associates including two fellow classmates from The Citadel, founded **Palmetto Kids FIRST Scholarship Program, Inc.** ("Palmetto Kids FIRST"). Plaintiff Davis' wife Olga Lisinska was the Director of Operations managing the day-to-day operations. No one else in the State of South Carolina had any plan or implementation experience with these type of K-12 education tax credit programs.

45. Over the ensuing few months, Plaintiff Davis, as the contact person representing his group, conversed in detail with Defendants Mellen, SCRG and Cease. Over those few months Plaintiff was told about numerous troubling and potentially unethical and illegal actions involved in the political process here in South Carolina, and specifically actions by Defendants Mellen, SCRG, Cease, Rich, and others. Plaintiff Davis was very troubled by this realization that he may have gotten himself and his group with a set of bad people. We may have agreed on policies as it relates to school choice at that time, but Plaintiff Davis and his group certainly did not agree with Defendants unethical and likely illegal tactics.

46. As a political novice and not wanting to be involved with "bad actors", Plaintiff Davis informed Mellen and SCRG that he and his group would operate separately and did not want to participate in the political "games" of Defendants. Plaintiff Davis thought that would be the end of the quasi "working partnership" and each group would do their own thing advocating for the program's success separately.

47. During that time period Palmetto Kids FIRST had been approved by Defendant Barton and Defendant EOC as an authorized entity to operate under the program starting January 1, 2014 – otherwise called an authorized Scholarship Funding Organization ("SFO"). Palmetto Kids FIRST was listed on the EOC website and Palmetto Kids FIRST was lining up donor pledges (standard operating procedure for these programs) to begin on January 1, 2014.

48. It was also during this time that Plaintiff Davis informed Mellen and SCRG that Palmetto Kids FIRST had already lined up approximately $2 million in donor pledges

for January 1, 2014 and that he hoped to have $6 million or perhaps the full $8 million of pledged donors by the January 1, 2014 fundraising start. Plaintiff naively though self-professed program supporters like Defendants would be pleased since said news would only mean children in need would get help as fast as possible and supporters would be demonstrating to legislators that the program worked so that they would potentially expand the funding during the Jan – June 2014 legislative session.

49. Unfortunately, Plaintiff did not understand at the time that Defendants, particularly Mellen, did not want Palmetto Kids FIRST to raise the money quickly. Defendant Mellen self-interestedly stated he wanted it to take three (3) years for the SFOs to reach the $8 million legislative cap, thus allowing him to keep his job and $100,000 +/- paycheck for an extended period. Apparently if Palmetto Kids FIRST raised the funding too quickly that would prove Mellen was not needed and his out of state funding (from individuals like Defendant Rich) would dry up. This confirmed Plaintiff's initial suspicions that our group did not want to work with Defendants Mellen, SCRG and Cease.

50. At that time, which was approximately Thanksgiving 2013, Plaintiff Davis informed Defendant Mellen that Palmetto Kids FIRST would NOT slow down the collection of fundraising pledges and speedy 2014 scholarship distribution plans. Children and schools were in need and Palmetto Kids FIRST again did not want to participate in Defendants self-interested games at the expense of children.

51. It was at that point the personal attacks began.

52. In early December 2013 Mellen met with Defendant Barton at EOC. That afternoon the previously approved SFO list on the EOC website was removed – as such Palmetto Kids FIRST was no longer listed as an approved SFO. If Plaintiff and Palmetto Kids FIRST would not voluntarily do what Mellen and his group wanted, they would apparently use the government Defendants to force compliance.

53. The program budget proviso (i.e., the law) required Defendant EOC to post the list of approved SFOs in August 2013 and Palmetto Kids FIRST had complied with every requirement to be listed as an approved entity / SFO.

54. Plaintiff Davis and his wife Olga Lisinska both informed EOC and Defendant Barton that if the approved list was not re-posted as soon as possible, and in any case before the January 1st, 2014 start date as required by law, Palmetto Kids FIRST would lose all of the pledged donors to other South Carolina tax credit programs and it would be a devastating blow to the program and the children / schools hoping for scholarship funding as soon as possible. This was of course the intent of the program supposedly – to fund the children.

55. Furthermore, the program budget proviso (i.e., the law) required Defendant EOC to start the acceptance of donations and distribution of scholarships on January 1st, 2014. Defendant Barton departed for her New Year's holiday without fulfilling this responsibility as she obviously had not intent to do so at the direction of Defendant Mellen and others.

56. Defendant Barton and Defendant EOC only posted the approved SFO list again (including Palmetto Kids FIRST) after pressure from reporter Jamie Self and The State Newspaper.

57. Defendant Barton, in a January 7, 2014 email, informed Defendant / DOR Director Reames' former (and future) law partner, with cc to Defendant Mellen, that "Jamie Self from *The State* will have an article running in the paper tomorrow about how the EOC is dragging its feet on this."

58. Defendant Barton, in that same January 7, 2014 email continued to say "I'm not worried about being accountable and neither are the key legislators with whom I have talked."

59. The "fix was in" and Defendant Mellen was orchestrating the entire matter and directing the actions of Defendant Barton, EOC, and the John Doe legislators and others to slow the program at any cost.

60. We / Palmetto Kids FIRST lost all $2 million in January 1, 2014 pledged donations (except for approximately $70,000) to other SC tax credit programs. Palmetto Kids FIRST was not able to secure any additional fundraising pledges after EOC removed the approved names – thus losing the reasonably expected additional $4 - $6 million in additional expected pledged donations for January 1, 2014.

61. Worse, the K-12 children with "special needs", their parents / families, and the independent schools that serve these children lost millions.

62. Palmetto Kids FIRST was not able to recover fundraising until May 2014. It required an extreme amount of additional work, effort, stress and other pain & suffering to recover from this blow from Defendants but we did it for the kids.

63. One of the numerous unethical and potentially illegal activities Defendants Mellen, SCRG and Cease detailed to Plaintiff Davis in 2013 was the "smear campaigns" they and other related parties ran against politicians. Although Plaintiff Davis and everyone associated in our group were not politicians in any way, and had no desire to be, Defendants then proceeded to run a political "spear campaign" against Plaintiff Davis, his wife Olga Lisinska, and Palmetto Kids FIRST.

64. Defendants, including Mellen & AOSC, sent mailers to school officials suggesting false issues about Davis / Palmetto Kids FIRST.

65. Embarrassing information was "fed" to press outlets about a business related bankruptcy Plaintiff Davis had filed following the 2008 financial crisis. The bankruptcy related solely to a $5 million investment loan Davis had personally guaranteed, the proceeds of which were invested in a closely held private bank. The bank eventually failed during the global financial crisis and the investment was worthless, thus precipitating a nasty legal battle between Davis and his business partners (a married couple who was also a close family friend / client of Davis). This matter was totally unrelated to "school choice", the SC tax credit program, or the tax credit program and non-profit Davis successfully founded in Georgia and was the 2nd largest in Georgia at the time.

66. Defendant Mellen and Defendant AOSC also ran a misleading "ad" in the South Carolina Association of CPAs ("SCACPA") magazine making it appear Palmetto Kids FIRST was not an approved SFO. The SCACPS's apologized for letting the misleading ad slip through and refused to run the add in the future.

67. Defendant's had misleading information on their various websites which were available globally and cast dispersions on Plaintiff Davis and his group.

68. Defendant Mellen also sought out individuals in Georgia to tarnish Davis' reputation.

69. Defendant Mellen somehow arranged for an individual from the Catholic Diocese SFO in Georgia to visit the Charleston Catholic Diocese leadership to trash Davis. Plaintiff Davis had never had any interaction with this individual or group other than to help (at their request) and actually transfer donated funds (without retaining any fees) that we received and the donor that wanted the funds to go to a specific Catholic school.

70. Plaintiff Davis' wife is a Catholic from Poland. As such she has a strong affinity for her Catholic Church here in South Carolina. Since no-one at the Charleston Diocese had any actual experience with these K-12 tax credit scholarship programs, we offered to assist our local Charleston neighbor in any way with their SC Catholic school SFO.

71. Defendant Barton & EOC, under pressure from The State Newspaper article finally started the program late and all EOC required was a Certificate of Existence from the SC Secretary of State's Office for the SFOs to put them on the EOC website.

72. Millions in pledge donations were lost due to the only additional requirement EOC "made up" at the last minute being to provide a $10 Certificate of Existence from the South Carolina Secretary of State – next door to the EOC offices.

73. Plaintiff Davis, always offering to help and work cooperatively with other SFOs, volunteered to drive from Charleston to Columbia and, in fact did, and purchased the Certificate for both Palmetto Kids FIRST and the Catholic Diocese and hand deliver them next door to the EOC office so each organization could start fundraising as soon as possible for the children.

74. Plaintiff Davis made this same offer to do this for all the SFO candidates. Only the Catholic Diocese took Davis up on his offer making it obvious and clear that the others did not trust Plaintiff because of false and defamatory stories Mellen had told them. Another blow to Plaintiff due to Defendant's bad actions.

75. Aside from driving to Columbia to purchase the Certificate of Existence for the Catholic Diocese SFO (without asking or receiving any compensation or refund of the $10 out of pocket cost of the Diocese's Certificate), other offers to help the Catholic Diocese SFO were met with a "get lost" letter received in the mail from the Vicar from the Charleston Diocese. Further fallout due to Defendant Mellen's efforts to tarnish our names. This was a terrible personal blow to Plaintiff's wife as a Catholic and Plaintiff Davis since all we were doing was offering help. It created great confusing and questioning as to "why"?

76. In the years to come Plaintiff was told by an official of the Charleston Diocese that they completely supported our positions, but could not say so publicly because they "did not want Mellen doing to us what he has done to you guys."

77. Everyone knew what Defendants, particularly Mellen, were doing, but people were afraid to stand up for fear of retribution.

78. After the first article broadcasting Davis' bankruptcy filing to the entire state (it ran in multiple papers all across South Carolina as well as online), a second article was "placed" by Defendants claiming Plaintiff Davis was "pressuring" parents to donate. Nothing could be further from the truth, but the truth does not matter to Defendants. This was a humiliating article that took substantial "damage control" to overcome. The article of course had to repeat the bankruptcy disclosure as well in case someone might have missed the initial disclosure to the world.

79. The claims of "pressuring" parents were falsely made by Defendant Thomas.

80. Defendant Thomas was a vocal opponent to the ECENC program before it even started. Thomas tried to rally other school leaders to march against the program at the SC State House. That effort flopped so she tried other methods.

81. Defendant Mellen worked very closely with Defendant Thomas in an effort to attack Plaintiff Davis and his group. Why an espoused supporter of the program would be working with an opponent of the program was confusing.

82. Eventually, when no resolution could be found, Plaintiff Davis, Palmetto Kids FIRST, and their group refused to work with Defendant Thomas' Glenforest School.

83. After a complaint was filed with Defendant EOC and Defendant Barton alleging falsification of scholarship amounts by Glenforest School, Defendant Thomas was appointed to the program's advisory board. EOC and Barton rewarded parties averse to Davis and the program.

84. However the CFO of Glenforest School quietly "disappeared" and refused future calls / contact. No refund of the fraudulent scholarship amounts was ever received by Palmetto Kids FIRST from Glenforest School and no feedback was ever received from EOC or Barton as they "swept" the matter under the rug.

85. After another complaint about a parent who had obviously falsified a medical eligibility form was submitted to EOC and Barton, that parent was appointed to the same advisory board. Again EOC and Barton rewarded parties averse to Davis and the program.

86. Plaintiff Davis and his group continued to work triple hard to overcome Defendants dirty tricks. Plaintiff Davis had to forgo a planned extended trip to Europe so that he could "remain behind" while his wife Olga went to Poland for a month. We could both not go out of town and leave the children hanging. This was difficult personally since Plaintiff and his wife had never been separated for an extended period previously. This sacrifice would not have been needed but for the actions of Defendants.

87. Since the newspaper articles and avers efforts by Defendant EOC and Barton were not as effective as Defendants expected given Plaintiff and his group worked extra hard (at substantial out of pocket cost as well), Defendants had legislatively "added"

to the renewal program proviso in June 2014 a prohibition against a "bankruptcy filer" from participating in or even volunteering for an SFO. This provision was specifically targeted at Plaintiff Davis to exclude him from the program and exclude him from working for any SFO on any basis. This substantially interfered with Plaintiff Davis' ability to contract / work and earn any income for the provision of services.

88. This "bankruptcy exclusion" was unconstitutional as it violates the 14th Amendment of the US Constitution. It also violated the specific terms of Bankruptcy Code Section 525 which prohibits discrimination against bankruptcy filers.

89. The bankruptcy exclusion provision was submitted overnight during the State House Budget Conference Committee at the very end of the legislative session. There was no opportunity for public discussion to have it removed as the session was over.

90. It should be noted that former Rep. Jim Harrison, and then current Code Commissioner (and thus responsible for this type of activity "not" happening) was recently criminally convicted for doing the bidding of RQA and upon information and belief this simple wording change was slipped into the legislation by Defendants and/or John Doe(s).

91. Plaintiff Davis and his wife learned about this illegal change when reviewing the final language of the Conference Committee Report while at the Mayo Clinic in Jacksonville Florida. Such added additional stress and pain & suffering while Plaintiff and his wife were dealing with Lisinska's serious medical condition which eventually required major surgery.

92. Plaintiff Davis' wife had multiple medical incidents over the length of the time period caused by Defendants and John Doe(s) which also added additional financial expense and pain & suffering for Plaintiff Davis.

93. Plaintiff's wife, Olga Lisinska, eventually had to have her entire colon removed at the Mayo Clinic in Jacksonville directly related to the stress caused by this matter.

94. Since Plaintiff Davis was unable to work in the program, additional stress and responsibility was added to his wife Olga Lisinska. Such was not good for her medical condition and as such cause additional stress and pain & suffering for Plaintiff Davis as well since he could not help out over the fear Palmetto Kids FIRST would be shut down which was the Defendant's apparent goal.

95. Plaintiff's wife was able to maintain (at great additional effort and financial cost – causing stress for Plaintiff financially and emotionally) the stellar fundraising momentum started prior to the "bankruptcy exclusion" of Plaintiff Davis.

96. Since Defendants could still not halt the fundraising efforts and success of Plaintiff's group, in October 2014 Plaintiff Davis, his wife and Palmetto Kids FIRST were "politically targeted" by Defendant DOR for a tax audit.

97. Plaintiff Davis opened his mailbox one October 2014 day to discover three audit notices – one for Palmetto Kids FIRST, one for his wife Olga Lisinska, and one for himself personally. (Davis and his wife filed their taxes separately.)

98. Defendant Reames was at the time the Director of Defendant DOR.

99. Defendant Reames personally ordered and directed the tax audits of Plaintiff Davis, his wife Olga Lisinska, and non-profit Palmetto Kids FIRST Scholarship Program, Inc.

100. Senior DOR officials, at the direction of Defendant Reames, refused to close Davis' or Lisinska's individual audits when requested after just a few weeks by the DOR audit manager.

101. Defendant's wanted to hold the "audits" open as long as possible to further tarnish the image and reputation of Plaintiff Davis and his group. Defendants kept the audits open an additional year.

102. After an extended audit period, said tax audits resulted in "no change" letters for both Plaintiff Davis and his wife Olga Lisinska. A result that was known a year earlier but Defendants would not tell Plaintiff.

103. After an extended audit period, said tax audit of Palmetto Kids FIRST Scholarship Program, Inc. resulted in zero changes to any numbers. No money was unaccounted for and DOR refused to do any enforcement actions against Palmetto Kids FIRST.

104. DOR had complete authority to shut down Palmetto Kids FIRST, but they refused to do so since that would mean going to court and it being revealed their audit was fraudulent as Plaintiff Davis and many others claimed.

105. After the "bankruptcy exclusion" of Davis failed to slow fundraising, Defendants – including Defendant DOR – added an exclusion to prevent the spouse of a

bankruptcy filer from working or even volunteering for an SFO. This provision was specially targeted at Plaintiff Davis' wife Olga Lisinska.

106. That "spouse of a bankruptcy filer exclusion" make the newspapers, again, and was removed from the proposals (as was the unconstitutional and illegal bankruptcy exclusion targeting Plaintiff Davis).

107. The political targeting was clear.

108. In fact the Palmetto Kids FIRST tax partner at the McNair Law Firm also agreed that we were being politically targeted but he was too scared to do anything.

109. A Freedom of Information Act ("FOIA") requested by Plaintiff Davis reveled senior DOR officials making sexual statements about Plaintiff Davis' wife in emails. This was devastating to read about ones spouse and further devastating to Plaintiff's wife.

110. Plaintiff, nor Plaintiff's wife have ever received an apology from Defendant DOR or Reames.

111. This incident of misconduct by these senior DOR officials was reported on the FRONT PAGE of The State Newspaper, above the fold.

112. This new statewide and global (via the internet) article brought a new round of embarrassment for Plaintiff and his wife (causing more pain and suffering for Plaintiff Davis).

113. Defendant Reames, prior to joining the DOR, was a tax partner at Nexsen Pruet.

114. Defendant Mellen's wife was a tax associate at Nexsen Pruet and worked with Defendant Reames.

115. Defendant Reames former (and now current) law partner was at the time representing Defendant EOC, Barton and other Defendants / John Does with conflicted interest with this program.

116. Defendant Reames is the currently the subject of a professional ethics investigation by the SC Supreme Court's Office of Disciplinary Council (ODC) involving his actions surrounding this Complaint.

117. Plaintiff Davis filed said professional ethics complaint against Defendant Reames at the direction of the South Carolina State Bar Association. In fact the SC Bar stated that Plaintiff Davis may very well have a proactive ethical duty to file his complaint.

118. Both the ODC and the South Carolina State Bar have recommended and/or suggested the actions of Defendant Reames should be referred to applicable law enforcement agency for criminal investigation.

119. Such criminal discussions with law enforcement are moving forward at this time.

120. Following the FOIA discovery of sexual comments by senior DOR officials about Plaintiff Davis' wife (and front page news article), Defendant Reames promise Plaintiff and the press that an 3rd party professional review of the audit would be conducted to make sure Plaintiff and his group was not politically targeted and were treated fairly by DOR.

121. Defendant Reames personally hired for some unknown at the time reason the CPA for the third party professional review.

122. It was unusual for the Director of DOR to handle such a matter personally.

123. The third party that Defendant Reames hired was none other than Defendant Stephen Kirkland, CPA, CMA.

124. Defendant Kirkland was not only conflicted; he was likely the most conflicted professional in South Carolina. Kirkland's PFC and PFA was advocating at the time for a different version of school choice and actively opposed the efforts of Plaintiff Davis, Palmetto Kids FIRST and his group.

125. Said opposition by Defendants PFC and PFA were known to both Kirkland and Reames.

126. Reames personally handled the matter so that he could ensure the result by picking a third party adverse (and professional conflicted) to get his desired result – complete agreement with the DOR's wrongdoing and fraudulent audit report.

127. Defendant Kirkland is currently under investigation by the South Carolina State Board of Accountancy ("Board of Accountancy"), under LLR, for this professional conflict.

128. Defendant Kirkland is currently under investigation by the Institute of Management Consultants USA ("IMCUSA") for his professional conflict as well.

129. Plaintiff expects that Defendant Kirkland will lose both his CPA and CMC licenses over this matter when the investigation is completed.

130. Defendant DOR, under the new leadership of Director Hartley Powell, has continued to refuse to provide the promised third party review of their "fraudulent" audit report on Palmetto Kids FIRST in an effort to continue to cast dispersions on Plaintiff Davis and his group.

131. Defendant DOR refuses to provide the promised third party review of their "fraudulent" audit report as part of a cover-up of their bad deeds.

132. Defendant DOR illegally made the "fraudulent" audit report on Palmetto Kids FIRST subject to the SC Freedom of Information Act ("FOIA").

133. Defendant DOR has refused to provide any legal basis for making any taxpayers audit report subject to public disclosure via FOIA.

134. Defendant Cease printed the DOR "fraudulent" audit report on heavy bond paper and hand delivered it to legislators' offices at the SC State House to tarnish the reputation of Plaintiff Davis, Palmetto Kids FIRST and his group.

135. Defendant DOR made the "fraudulent" audit report subject to FOIA so that Defendant Cease and/or others could distribute it as part of their civil conspiracy and in furtherance of their objectives.

136. In fact Defendant PPI posted the "fraudulent" audit report on their website and widely distribute it knowing that it is "fraudulent" and completely disputed by Plaintiff, Palmetto Kids FIRST and legal and tax professionals.

137. The DOR "fraudulent" audit report has blatantly false and misleading information and conclusions specifically designed to cast Plaintiff Davis and his group in a negative light.

138. The conclusions in the Defendant DORs "fraudulent" audit report are most importantly legally incorrect.

139. Again, like the prior year, without public discussion, the SC State Legislature in the last 43 minutes of the 2016 legislative session "gave" the entire program to the SC Department of Revenue to administer in conjunction with a five (5) person legislatively appointed board.

140. South Carolina is the nation's only state in the nation with a government administered K-12 tax credit program.

141. Government administration of a K-12 tax credit scholarship program such as we have in South Carolina defeats the entire purpose of the program and makes the program technically unconstitutional.

142. LLR is a Defendant as well in this matter because the now former head administrator of the Board of Accountancy, Defendant Cubitt illegally interfered with the investigation of Kirkland and personally threatened Plaintiff with a Cease and Desist Order.

143. Upon investigation, information and belief, it appears Defendant Cubitt has personal relationships with other Defendants and potential John Does.

144. Defendant Cubitt was a long term head Administrator of the Board of Accountancy – at least 20 years in the position.

145. Within a very short time of Plaintiff Davis raising the issue and complaining about Defendant Cubitt stalling the investigation and making personal threats toward Plaintiff, Defendant Cubitt was "gone" from LLR and the Board of Accountancy.

146. Defendant LLR has refused any comment after multiple requests for information related to the sudden departure of Defendant Cubbit from the Board of Accountancy and LLR.

147. Defendant IMCUSA has unusually been slow in the investigation of Defendant Kirkland's ethic complaint as well.

148. Defendant IMCUSA is under pressure from what is obviously very powerful and influential Defendant's and John Doe(s).

149. Upon information and belief IMCUSA has become complicit in the civil conspiracy given the above referenced pressure from other Defendant's and John Doe(s).

150. It has been widely rumored and reported by Defendants and/or John Doe(s) that Plaintiff Davis is "not from around here" when in fact his family lineage has been exclusive South Carolina natives since the 1600's.

151. It has been widely rumored and reported by Defendants and/or John Doe(s) that Plaintiff Davis and his wife "bankrupted" the $100 million K-12 tax credit scholarship program in Georgia and only moved to South Carolina to do the same thing to our program. This is not true.

152. Plaintiff Davis' wife has been widely rumored and reported to be a member of the "Russian Mob" which is not true.

153. Plaintiff Davis has been widely rumored and reported to be sending tax credit donations raised out of the country to places such as the Cayman Islands.

154. It has been widely rumored and reported that Plaintiff Davis and his wife were only doing this to "get rich" which is not true. We do it for the children and someone has to stand up to Defendants and John Doe(s) corruption.

155. Defendant DOR, as confirmed by Defendant Kirkland, in its report showed falsely that 100% of revenue was attributed to personal income. This highly false conclusion was deliberate so that other Defendants and/or John Doe(s) could use that statement to defame and injure Plaintiff and his group.

156. Defendants and / or John Doe(s) have mailed anonymous letters to Plaintiff Davis' neighbors with private, embarrassing and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

157. Defendants and / or John Doe(s) have mailed anonymous letters to parents and school officials all across South Carolina (and beyond) with private, embarrassing

and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

158. Defendants and / or John Doe(s) have created a public and globally available website with private, embarrassing and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

159. Upon information and belief, Defendant Leupp and other John Doe(s) are responsible for the public website about Plaintiff Davis

160. Defendant Leupp has upon information and belief done similar things to other parties in the past.

161. Defendant Leupp is a pawn of Defendant Weaver and Defendant DeMint.

162. Defendant Bedrick has at Cato and Freidman Foundation made false and defamatory statements about Plaintiff Davis and his group.

Campaign Money Laundering

163. In 2015 the State of California's Fair Political Practices Commission ("FPPC") found Defendant Rich guilty of Campaign Money Laundering.

164. The mission of the State of California's FPPC is to increase transparency of top contributors and combat so-called "Dark Money".

165. Defendant Rich has contributed tens of millions to a "web" of South Carolina non-profits, South Carolina politicians and other South Carolina entities / business, including several Defendants and other John Doe(s).

166. As a CPA, Plaintiff Davis is able to track Defendant Rich's web of "Dark Money" here in South Carolina.

167. Defendant Rich upon information and belief directly and/or indirectly is a client of and substantially funds work done by the South Carolina based law firm Nexsen Pruet, specifically attorney and Defendant Rick Reames and others.

168. Defendant Rich has directly or indirectly contributed to schools hostile to the program and Plaintiff Davis and his group at the direction of Mellen in order to curry favor and support – specifically Glenforest School, Trident Academy and Hidden Treasure Christian School.

169. The namesake of Defendant Friedman Foundation is the late Dr. Milton Friedman.

170. Dr. Milton Friedman was an advocate for free markets and in particular private school choice with limited government intervention.

171. Defendant Friedman Foundation now primarily advocates for private school choice **administered by government entities**. This is the **opposite** of what Dr. Friedman would have wanted or espoused.

172. Upon information and belief, Defendant Friedman Foundation receives substantial annual funding from special interest groups who will financially benefit from government run private school choice – specifically new and experimental Education Savings Accounts ("ESAs").

173. Defendant Friedman Foundation's existence is dependent on annual fundraising from special interest groups.

174. Defendant Friedman Foundation no longer follows its original mission of free market and limited government and instead is pushing the agenda of special interest.

175. Defendant RQA has entered a criminal corporate plea for engaging in illegal lobbying from 2008 through 2016. Upon information and belief said activities involve other Defendants herein.

176. Defendant RQA unlawfully sold political influence and access according to the South Carolina State Grand Jury Report issued on or about October 9, 2018.

177. Upon information and belief, Defendant RQA received compensation from Defendants and John Doe(s).

178. Upon information and belief, Defendant RQA also illegally used / sold political influence and access to Defendants and John Doe(s).

179. Upon information and belief, Defendant First Tuesday has picked up where RQA left off with respect to Defendants and John Doe(s).

180. Defendant First Tuesday provides services to Defendant ECENC Fund and Defendant DOR.

181. Defendant First Tuesday provides services to charter school groups.

182. Although charter schools are a form of school choice, they are one of the primary opponents to private school choice such as this K-12 tax credit scholarship program which is the subject of this Complaint.

183. It is a common perception among grassroots and experts that charter schools, who once fought for "school choice", now do not want competition from private independent schools such as the ones that benefit from K-12 tax credit scholarship programs. This is the reasoning for their opposition.

184. Defendant First Tuesday has a natural conflict representing both charter schools and the ECENC program – plus the obvious issues of political access and influence that comes with their representation of legislators and campaign consulting business.

185. Upon information and belief, First Tuesday assisted Defendant ECENC Fund with fundraising.

186. Defendant First Tuesday had an employee on their website who was also working on the ECENC Fund program. When exposed by Plaintiff Davis, that individual was removed from the First Tuesday website and has now been listed officially as the "Administrator" at Defendant ECENC Fund.

187. Defendant Weaver is a legislatively appointed member of Defendant South Carolina Education Oversight Committee ("EOC").

188. Defendant Weaver was appointed as a member of Defendant EOC by then South Carolina State Senator John E. Courson of Richland County.

189. Former Senator Courson has never supported the ECENC program.

190. On June 4, 2018, Senator John E. Courson resigned from office, pled guilty to one count of willful misconduct in office and agreed to cooperate with an ongoing investigation into public corruption at the South Carolina State House.

191. Former Senator John E. Courson's above referenced guilty plea centered around his relationship with Defendant Richard Quinn & Associates.

192. Defendant Richard Quinn & Associates has also entered into a criminal corporate plea involving public corruption at the South Carolina State House.

Defamation – Weaver & PPI

193. On Saturday February 25, 2017, Weaver, in her official capacity representing PPI, spoke on the topic of school choice at the annual Palmetto Panel Conference in Clemson, SC.

194. Plaintiff Davis attended the February 25, 2017 Palmetto Panel Conference in Clemson, SC, and heard Weaver's presentation.

195. After Weaver's presentation, she was approached by a political grassroots advocate to further discuss her topic of school choice.

196. During the above conversation, Weaver made specific reference to Plaintiff Davis in the audience, knowing Davis has a different opinion on school choice advocacy.

197. Weaver made several disparaging, false light and defamatory comments about Plaintiff Davis and his advocacy work to said political grassroots advocate.

198. Weaver proceeded to make disparaging, false light and defamatory remarks about Davis, his wife, and the 501(c)(3) nonprofit organization she runs and that Davis volunteers with as an Advisory Board Member.

199. In addition to the above, Weaver proceeded to state that Davis had lost his license to practice law – said statement is not true.

200. **Plaintiff Davis is an Active Member in Good Standing of the State Bar of Georgia with no disciplinary action since first admitted to the practice of law in 1994.**

201. Upon information and belief, this was not the first time Weaver / PPI (and the John Doe(s)) had made defamatory and false light statements such as the above regarding Plaintiff Davis.

202. On March 24, 2017, Plaintiff Davis sent a letter to an individual board member of PPI detailing the above defamatory statements. Davis did not receive a reply, and the defamatory and false light statements did not stop.

203. On May 13, 2017, Plaintiff Davis approach Weaver at her "booth" at the SC Republican Party State Convention in Columbia, SC, to clear up any

misunderstanding. Weaver refused to talk to Davis, proceeded to tell him he was the most destructive factor to school choice in South Carolina, and that he should move out of the state. Weaver them proceeded to threaten to call the police if Davis did not leave her "booth".

204. On December 4th, 2017, Plaintiff Davis approached the above Defendant DeMint and Defendant Smith with PPI. After introducing himself, both individuals turned around refusing to speak to Davis and Defendant Smith yelled at Davis saying he was the source of "corruption" in the SC school choice tax credit program. The entire interaction lasted less than 30 seconds.

205. After the December 4th, 2017 interaction above, Defendant DeMint and Smith told others that Davis had accosted the PPI board member.

206. On multiple occasions, before and after the above incidents, Plaintiff Davis and others supporting his advocacy efforts, including parents of children with "special needs" benefiting from South Carolina's K-12 school choice tax credit program have requested a public or private meeting with Defendants to clear up any misunderstandings. Defendants have refused any meeting, obviously wanting to continue to perpetrate their plan.

FACTUAL ALLEGATIONS
(Additional Background)

207. Plaintiff Davis is a volunteer grassroots advocate for private school choice for South Carolina's K-12 children with special needs, children in a low-income

situation, homeschooled children, and ultimately all children in SC. Plaintiff specifically advocates for ***private / free-market K-12 school choice solutions***.

208. Defendants Weaver & PPI advocate for K-12 school choice solutions in SC as well. However, Weaver & PPI specifically advocate for ***government run K-12 school choice solutions***.

209. There is a distinct policy and practical difference between K-12 school choice solutions that are ***#1 government run solutions*** vs. ***#2 private / free-market solutions***.

210. Weaver & PPI politically oppose the grassroots advocacy of Plaintiff Davis. Upon information and belief, this opposition is due to Weaver & PPI's political and financial interest as well as the political and financial interest of certain John Doe(s).

211. PPI received tax deductible contributions totaling **$551,443** in 2016, **$490,420** in 2015, **$356,105** in 2014 & **$514,847** in 2013 under Weaver and certain other individuals newly involved in the nonprofit organization and PPI's 2013 "relaunch".

212. PPI (under a former name) received tax deductible contributions of **$62,800** in 2012, the first part year Weaver and certain other individuals became involved in the nonprofit organization.

213. PPI (under a former name) only received tax deductible contributions of **$7,500** in 2011, **$13,000** in 2010 & **$30,000** in 2009 prior to Weaver and certain other individuals became involved in the nonprofit organization.

214. PPI's website (as of 5/3/2018) states:

"Palmetto Promise Institute (PPI) is an independent, nonpartisan, nonprofit, 501(c)(3) educational organization. PPI conducts public policy research dedicated to creating a free and flourishing South Carolina, where every individual has the opportunity to reach their full potential. PPI does not perform contract research and does not accept government grants. Permission to reprint material on this site is granted provided that PPI is properly cited. Nothing written here is to be considered an attempt to aid or hinder the passage of any specific legislation."

215. Upon information and belief, PPI is a nonprofit "front organization" for certain John Doe(s) with financial interest in ***government run K-12 school choice solutions*** (including charter schools) which Weaver & PPI claim to be advocating for as an independent, nonpartisan, nonprofit, 501(c)(3) educational organization.

216. Upon information and belief, Weaver and PPI advocate for ***government run K-12 school choice solutions*** (including charter schools) as a paid contract research and advocacy group benefiting certain John Doe(s) with financial interest in the success and expansion of ***government run K-12 school choice solutions***.

217. Weaver, PPI and the John Doe(s) have produced false and misleading reports(s) and other defamatory and false light information about the activities of Davis and his work with organizations he has volunteered for to further their own financial interest and the financial interest of their benefactors.

218. Upon information and belief, Defendants Weaver, PPI and John Doe(s) worked together and conspired to further their mutual interests and disguise their activities.

A FIRST CAUSE OF ACTION
(DEFAMATION Per Se & Per Quod)

220. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

221. The Defendants, individually and collectively, made false and defamatory statements about Defendant.

222. The Defendants, individually and collectively, stated both verbally and (upon information and belief) in writing to third parties that Plaintiff had been disbarred from the practice of law.

223. These statements were false and the Defendants knew or should have known that the statements were false.

224. As the direct and proximate result of the Defendants' defamatory statements which were made with malice and with the specific intent to harm Defendant and others, Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact resulted.

A SECOND CAUSE OF ACTION
(Defamation by innuendo)

225. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

226. The Defendants, individually and collectively, made misleading innuendo and statements about Defendant which placed him in a false light.

227. As the direct and proximate result of the Defendants' statements which were made with malice and with the specific intent to harm Defendant and others, Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact.

A THIRD CAUSE OF ACTION
(INVASION OF PRIVACY)

228. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

229. The Defendants individually and in concert with each other engaged in wrongful acts that constitute an unwarranted invasion and trespass upon Plaintiff's privacy.

230. Defendants, armed with the personal knowledge gained from unwarranted invasion and trespass upon Plaintiff's privacy, used such knowledge improperly and sought additional private knowledge (irrelevant to the matters at hand) to improperly use against Plaintiff in furtherance of Defendants' financial and political interest.

231. Such wrongful acts perpetrated by the Defendants have inflicted great and irreparable harm upon Plaintiff.

232. Certain Defendants acquiesced to the improper actions of their agents and other Defendants in furtherance of their scheme.

A FORTH CAUSE OF ACTION
(NEGLIGENCE)

233. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

234. Defendants were negligent, careless, reckless and willfully acted with actual malice in that they had a duty to ensure the truthfulness of their statements but they knew their statements were false and nevertheless acted with reckless disregard for the truth by publishing their statements to third parties.

A FIFTH CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

235. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

236. Defendants conduct was intended to inflict emotional distress on the Plaintiff and was outrageous beyond the bounds of conduct expected by members of society; the outrageous conduct caused Plaintiff to suffer severe emotional distress, which resulted in Plaintiff incurring expense for medical treatment.

A SIXTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS)

237. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

238. Defendants directed others (including other Defendants) to not do business with Plaintiff and associated entities by making false and defamatory statements and innuendo.

239. As a direct and proximate result of the Defendant's actions, Plaintiff was damaged.

A SEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

240. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

241. This cause of action is brought pursuant to "South Carolina Unfair Trade Practices Act.", S.C. Code Ann 39-5-10 *et seq.* ("SCUTPA")

242. The public has an interest in ensuring that non-profit organizations operating in South Carolina, as well as their volunteers and beneficiaries, are not hindered in their charitable mission.

243. Defendants violated the SCUTPA through their actions herein discussed.

244. Plaintiff is entitled to injunctive relief, treble damages, and attorneys' fees as allowed by statute.

A EIGHTH CAUSE OF ACTION
(PIERCE THE CORPORATE VEIL)

245. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

246. Upon information and belief, the Corporate Defendants were operated as the alter-ego or instrumentality of one of more of the individual Defendants / John Doe(s) for their own personal benefit and financial gain and as such perpetuated the complained actions on Plaintiff.

247. Upon information and belief, the one or more of the individual Defendants / John Doe(s) exercised dominion and control over the Corporate Defendants' finances and operations, and used such for their own personal benefit.

248. Upon information and belief, the Corporate Defendants disregarded basic corporate and non-profit formalities. This disregard includes, but is not limited to, operating the Corporate Defendants in such a way that the same no longer has a corporate personality that is separate and distinct from one or more of the individual Defendants / John Doe(s).

A NINTH CAUSE OF ACTION
(CONSPIRACY)

249. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

250. Defendants conspired and colluded together and amongst themselves to execute the above stated Cause of Action.

251. Plaintiff was damaged as a direct and proximate result of this conspiracy and collusion.

252. Defendants are senior political figures. Given the stature and position of Defendants in the community both locally and nationally, Plaintiff sustained substantial embarrassment and pain & suffering over this matter.

253. Plaintiff Davis and his wife were dealing with some major medical issues and substantial expenses due to the additional stress incurred because of Defendants civil conspiracy. But for their civil conspiracy Plaintiff would not have had this additional stress and pain & suffering or additional medical expenses.

254. Plaintiff also had to incur additional out of pocket expenses and personal time to more closely follow the legislative process in Columbia to try to combat Defendants' civil conspiracy.

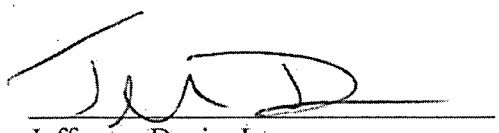
255. Plaintiff Davis was and remains unable to seek outside employment and business opportunities due to the constant requirement to stay 110% attentive to any efforts to further tarnish the image and reputation of Plaintiff and any members of his group.

256. Plaintiff Davis has had at least $50,000 - $100,000 plus in out of pocket special damages directly related to Defendants' civil conspiracy, plus and additional compensation for pain & suffering and lost income and wages to be calculated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters alleged and render a judgment for actual and punitive damages in an amount to be determined by a jury. Plaintiff further prays for costs and attorney's fees against the Defendants and any such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Jefferson Davis, Jr.
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Greenville, SC 29615
843-901-8036 (cell)
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PLAINTIFF

November 19, 2018
Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Dec 19 12:53 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Range Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1 – 40, Defendants.	)	**ANSWER TO FIRST AMENDED COMPLAINT ON BEHALF OF ELLEN WEAVER, ORAN P. SMITH, PALMETTO PROMISE INSTITUTE AND JIM DEMINT**

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Defendants, Ellen Weaver, Oran P. Smith, Palmetto Promise Institute and Jim DeMint (hereinafter collectively referred to as "these Defendants") hereby answer the First Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. These Defendants admit the allegations of Paragraph 1 upon information and belief.

2. These Defendants admit the allegations of Paragraph 2.

3. The allegations of Paragraph 3 are directed at another Defendant, and, therefore, no response is required. To the extent one is required, the allegations are denied and strict proof is demanded thereof.

4. These Defendants deny the allegations of Paragraph 4 and demand strict proof thereof.

5. The allegations of Paragraphs 5, 6, 7 and 8 are directed at another Defendant, and, therefore, no response is required. To the extent one is required, the allegations are denied and strict proof is demanded thereof.

6. These Defendants admit the allegations of Paragraph 9.

7. The allegations of Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 are directed at another Defendant and, therefore, no response is required. To the extent one is required, the allegations are denied and strict proof is demanded thereof.

8. These Defendants admit only so much of Paragraph 25 to include that Defendant DeMint is a citizen of South Carolina. The remaining allegations are expressly denied and strict proof is demanded thereof.

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9. The allegations of Paragraphs 26, 27, 28, 29 and 30 are directed at another Defendant and, therefore, no response is required. To the extent one is required, the allegations are denied and strict proof is demanded thereof.

10. These Defendants deny the allegations of Paragraph 31 and demand strict proof thereof.

11. The allegations of Paragraphs 32, 33, 34 and 35 are directed at another Defendant and, therefore, no response is required. To the extent one is required, the allegations are denied and strict proof is demanded thereof.

12. These Defendants deny the allegations of Paragraph 36.

13. These Defendants deny the allegations of Paragraph 37.

14. These Defendants deny the allegations of Paragraph 38.

15. These Defendants are without information sufficient to form a belief as to the truth of the allegations of Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50. As such, those allegations are denied and strict proof is demanded thereof.

16. These Defendants deny the allegations of Paragraph 51 and demand strict proof thereof.

17. These Defendants are without information sufficient to form a belief as to the truth of the allegations of Paragraphs 52 through 160. As such, those allegations are denied and strict proof is demanded thereof.

18. These Defendants deny the allegations of Paragraph 161 and demand strict proof thereof.

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19. These Defendants are without information sufficient to form a belief as to the truth of the allegations of Paragraph 162 through 186. As such, those allegations are denied and strict proof is demanded thereof.

20. These Defendants deny the allegations of Paragraph 187 and demand strict proof thereof.

21. These Defendants deny the allegations of Paragraph 188 and demand strict proof thereof.

22. These Defendants are without information sufficient to form a belief as to the truth of the allegations of Paragraph 189, 190, 191, and 192. As such, those allegations are denied and strict proof is demanded thereof.

23. These Defendants deny the allegations of Paragraph 193 and demand strict proof thereof.

24. These Defendants deny the allegations of Paragraph 194 and demand strict proof thereof.

25. These Defendants deny the allegations of Paragraph 195 and demand strict proof thereof.

26. These Defendants deny the allegations of Paragraph 196 and demand strict proof thereof.

27. These Defendants deny the allegations of Paragraph 197 and demand strict proof thereof.

28. These Defendants deny the allegations of Paragraph 198 and demand strict proof thereof.

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29. These Defendants deny the allegations of Paragraph 199 and demand strict proof thereof.

30. These Defendants deny the allegations of Paragraph 200 and demand strict proof thereof.

31. These Defendants deny the allegations of Paragraph 201 and demand strict proof thereof.

32. These Defendants deny the allegations of Paragraph 202 and demand strict proof thereof.

33. These Defendants deny the allegations of Paragraph 203 and demand strict proof thereof.

34. These Defendants deny the allegations of Paragraph 204 and demand strict proof thereof.

35. These Defendants deny the allegations of Paragraph 205 and demand strict proof thereof.

36. These Defendants deny the allegations of Paragraph 206 and demand strict proof thereof.

37. These Defendants deny the allegations of Paragraph 207 and demand strict proof thereof.

38. These Defendants deny the allegations of Paragraph 208 and demand strict proof thereof.

39. These Defendants are without information sufficient to form a belief as to the truth of the allegations of Paragraph 209. As such, those allegations are denied and strict proof is demanded thereof.

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40. These Defendants deny the allegations of Paragraph 210 and demand strict proof thereof.

41. These Defendants deny the allegations of Paragraph 211 and demand strict proof thereof.

42. These Defendants deny the allegations of Paragraph 212 and demand strict proof thereof.

43. These Defendants deny the allegations of Paragraph 213 and demand strict proof thereof.

44. These Defendants deny the allegations of Paragraph 214 and demand strict proof thereof.

45. These Defendants deny the allegations of Paragraph 215 and demand strict proof thereof.

46. These Defendants deny the allegations of Paragraph 216 and demand strict proof thereof.

47. These Defendants deny the allegations of Paragraph 217 and demand strict proof thereof.

48. These Defendants deny the allegations of Paragraph 218 and demand strict proof thereof.

49. These Defendants deny the allegations of Paragraph 220 and demand strict proof thereof.

50. These Defendants deny the allegations of Paragraph 221 and demand strict proof thereof.

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51. These Defendants deny the allegations of Paragraph 222 and demand strict proof thereof.

52. These Defendants deny the allegations of Paragraph 223 and demand strict proof thereof.

53. These Defendants deny the allegations of Paragraph 224 and demand strict proof thereof.

54. These Defendants deny the allegations of Paragraph 225 and demand strict proof thereof.

55. These Defendants deny the allegations of Paragraph 226 and demand strict proof thereof.

56. These Defendants deny the allegations of Paragraph 227 and demand strict proof thereof.

57. These Defendants deny the allegations of Paragraph 228 and demand strict proof thereof.

58. These Defendants deny the allegations of Paragraph 229 and demand strict proof thereof.

59. These Defendants deny the allegations of Paragraph 230 and demand strict proof thereof.

60. These Defendants deny the allegations of Paragraph 231 and demand strict proof thereof.

61. These Defendants deny the allegations of Paragraph 232 and demand strict proof thereof.

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62. These Defendants deny the allegations of Paragraph 233 and demand strict proof thereof.

63. These Defendants deny the allegations of Paragraph 234 and demand strict proof thereof.

64. These Defendants deny the allegations of Paragraph 235 and demand strict proof thereof.

65. These Defendants deny the allegations of Paragraph 236 and demand strict proof thereof.

66. These Defendants deny the allegations of Paragraph 237 and demand strict proof thereof.

67. These Defendants deny the allegations of Paragraph 238 and demand strict proof thereof.

68. These Defendants deny the allegations of Paragraph 239 and demand strict proof thereof.

69. These Defendants deny the allegations of Paragraph 240 and demand strict proof thereof.

70. These Defendants deny the allegations of Paragraph 241 and demand strict proof thereof.

71. These Defendants deny the allegations of Paragraph 242 and demand strict proof thereof.

72. These Defendants deny the allegations of Paragraph 243 and demand strict proof thereof.

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73. These Defendants deny the allegations of Paragraph 244 and demand strict proof thereof.

74. These Defendants deny the allegations of Paragraph 245 and demand strict proof thereof.

75. These Defendants deny the allegations of Paragraph 246 and demand strict proof thereof.

76. These Defendants deny the allegations of Paragraph 247 and demand strict proof thereof.

77. These Defendants deny the allegations of Paragraph 248 and demand strict proof thereof.

78. These Defendants deny the allegations of Paragraph 249 and demand strict proof thereof.

79. These Defendants deny the allegations of Paragraph 250 and demand strict proof thereof.

80. These Defendants deny the allegations of Paragraph 251 and demand strict proof thereof.

81. These Defendants deny the allegations of Paragraph 252 and demand strict proof thereof.

82. These Defendants deny the allegations of Paragraph 253 and demand strict proof thereof.

83. These Defendants deny the allegations of Paragraph 254 and demand strict proof thereof.

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84. These Defendants deny the allegations of Paragraph 255 and demand strict proof thereof.

85. These Defendants deny the allegations of Paragraph 256 and demand strict proof thereof.

86. These Defendants expressly deny each and every type of relief sought in Plaintiff's prayer for relief and pray the Court dismiss the case in its entirety and award other such relief as may be requested.

FOR A SECOND DEFENSE

87. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

88. Some or all of Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

FOR A FOURTH DEFENSE

89. No defamatory statement has been published by either of the Defendants.

FOR A FIFTH DEFENSE

90. To the extent that these Defendants made any allegedly defamatory statements about the Plaintiff, which Defendants expressly deny, any such statements were made subject to an absolute and/or qualified privilege.

FOR A SIXTH DEFENSE

91. To the extent these Defendants made allegedly defamatory statements about the Plaintiff, which Defendants expressly deny, all such statements were demonstrably true.

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FOR A SEVENTH DEFENSE

92. Plaintiff self-published statements and as a result of his self-publication, Plaintiff is barred from recovery as to these Defendants.

FOR AN EIGHTH DEFENSE

93. The imposition and awarding of punitive damages in this case is unconstitutional and a denial of these Defendants' constitutional rights and is contrary to the Fifth, Eighth and Fourteenth Amendments of the Constitution of the United States of America, and Article I, Sections 3, 13 and 15 of the Constitution of the State of South Carolina.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed with prejudice, that judgment be entered in favor of these Defendants, and that Defendants be rewarded such relief as permitted under law and as the Court may deem necessary and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

December 19, 2018

By: s/Bettis C. Rainsford, Jr.

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ATTORNEYS FOR DEFENDANTS ELLEN WEAVER, ORAN P. SMITH, PALMETTO PROMISE INSTITUTE AND JIM DEMINT

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CERTIFICATE OF SERVICE

I hereby certify that on December 19 2018, a copy of **Defendants' Answer to Plaintiff's First Amended Complaint** has been served upon Plaintiff by mailing same, addressed to the following:

Jefferson Davis, Jr.
Plaintiff, *Pro Se*
403 McCarter Avenue
Greenville, SC 29615

Renee B. Burckhalter

ELECTRONICALLY FILED - 2018 Dec 21 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-40-02425

Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1-40, Defendants.	ANSWER TO FIRST AMENDED COMPLAINT ON BEHALF OF DEFENDANTS PALMETTO FAMILY COUNCIL AND PALMETTO FAMILY ALLIANCE (IMPROPERLY NAMED AS PALMETTO FAMILY ACTION)

Defendants Palmetto Family Council (hereinafter referred to as "PFC") and Palmetto Family Alliance (improperly named as Palmetto Family Action) (hereinafter referred to as "PFA") hereby answer the First Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Upon information and belief this Defendants admit the allegations of Paragraph 1 of Plaintiff's First Amended Complaint.

2. The allegations contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 of Plaintiff's First Amended Complaint are directed at other Defendants, and therefore, no response is required. To the extent one is required, the allegations are denied, and strict proof is demanded thereof.

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3. These Defendants admit the allegations contained in Paragraph 10 of Plaintiff's First Amended Complaint.

4. The allegations contained in Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 of Plaintiff's First Amended Complaint are directed at other Defendants, and therefore, no response is required. To the extent one is required, the allegations are denied, and strict proof is demanded thereof.

5. These Defendants deny the allegations contained in Paragraph 31 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

6. The allegations contained in Paragraphs 32, 33, 34, 35, and 36 of Plaintiff's First Amended Complaint are directed at other Defendants, and therefore, no response is required. To the extent one is required, the allegations are denied, and strict proof is demanded thereof.

7. These Defendants deny the allegations contained in Paragraph 37 of Plaintiff's First Amended Complaint.

8. These Defendants deny the allegations contained in Paragraph 38 of Plaintiff's First Amended Complaint.

9. These Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 of Plaintiff's First Amended Complaint. As such, those allegations are denied, and strict proof is demanded thereof.

10. These Defendants deny the allegations contained in Paragraph 51 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

11. These Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 52 - 160 of Plaintiff's First Amended Complaint. As such, those allegations are denied, and strict proof is demanded thereof.

12. These Defendants deny the allegations contained in Paragraph 161 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

13. These Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 162 - 186 of Plaintiff's First Amended Complaint. As such, those allegations are denied, and strict proof is demanded thereof.

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14. These Defendants deny the allegations contained in Paragraph 187 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

15. These Defendants deny the allegations contained in Paragraph 188 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

16. These Defendants lack information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 189 - 218 of Plaintiff's First Amended Complaint. As such, those allegations are denied, and strict proof is demanded thereof.

17. These Defendants deny the allegations contained in Paragraphs 220 - 224 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

18. These Defendants deny the allegations contained in Paragraphs 225 - 227 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

19. These Defendants deny the allegations contained in Paragraphs 228 - 232 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

20. These Defendants deny the allegations contained in Paragraphs 233 - 234 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

21. These Defendants deny the allegations contained in Paragraphs 235 - 236 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

22. These Defendants deny the allegations contained in Paragraphs 237 - 239 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

23. These Defendants deny the allegations contained in Paragraphs 240 - 244 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

24. These Defendants deny the allegations contained in Paragraphs 245 - 248 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

25. These Defendants deny the allegations contained in Paragraphs 249 - 256 of Plaintiff's First Amended Complaint, and demand strict proof thereof.

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FOR A SECOND DEFENSE

26. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

27. Some or all of Plaintiff's claims are barred by the Doctrines of Waiver and/or Estoppel.

FOR A FOURTH DEFENSE

28. No defamatory statement has been published by these Defendants.

FOR A FIFTH DEFENSE

29. To the extent that these Defendants made any allegedly defamatory statements about the Plaintiff, which these Defendants expressly denies, any such statements were made subject to an absolute and/or qualified privilege.

FOR A SIXTH DEFENSE

30. To the extend these Defendants made allegedly defamatory statements about the Plaintiff, which these Defendants expressly denies, all such statements were demonstrably true.

FOR A SEVENTH DEFENSE

31. Plaintiff self-published statements and as a result of his self-publication, Plaintiff is barred from recovery as to these Defendants.

FOR A EIGTH DEFENSE

32. The imposition and awarding of punitive damages in this case is unconstitutional and a denial of these Defendants' constitutional rights and is contrary to the Fifth, Eighth and Fourteenth Amendments of the Constitution of the United States of America, and Article I, Sections 3, 13 and 15 of the Constitution of the State of South Carolina.

WHEREFORE, having fully answered, these Defendants pray that the Plaintiff's Complaint be dismissed with prejudice, that judgment be entered in favor of these Defendants, and that these Defendants be rewarded such relief as permitted under law and as the Court may deem necessary and proper.

SWEENY, WINGATE & BARROW, PA

s/Mark S. Barrow
Mark S. Barrow
Martin S. Driggers, Jr.
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Hartsville, SC 29550
P: (843) 878-0390
F: (843) 878-0393

ATTORNEYS FOR DEFENDANTS
PALMETTO FAMILY COUNCIL
AND PALMETTO FAMILY ALLIANCE

Hartsville, SC
December 21, 2018

ELECTRONICALLY FILED - 2018 Dec 21 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-40-02425

Jefferson Davis, Jr.,
Plaintiff,
vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1-40,
Defendants.

CERTIFICATE OF MAILING

I, the undersigned, Lynn G. Bottenus, Paralegal to Martin S. Driggers, Jr., Sweeny, Wingate & Barrow, P.A., do hereby certify that the document hereinbelow specified has this day been served upon opposing counsel and all interested parties in this action by depositing same in the United States mail, postage prepaid, this 21st day of December, 2018, addressed as follows:

DOCUMENT: ANSWER TO FIRST AMENDED COMPLAINT ON BEHALF OF DEFENDANTS PALMETTO FAMILY COUNCIL AND PALMETTO FAMILY ALLIANCE

COPY TO: JEFFERSON DAVIS, JR.
403 MCCARTER AVENUE
GREENVILLE, SC 29615
PLAINTIFF, *PRO SE*

s/Lynn G. Bottenus
Lynn G. Bottenus
Paralegal to Martin S. Driggers, Jr.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NUMBER: 2018-CP-40-02425

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of management Consultants USA & John Doe(s) 1-40,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT ON BEHALF OF DEFENDANT SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION AND DEFENDANT DORIS CUBITT

(Jury Trial Demanded)

1. Upon current information and belief, the undersigned hereby answers the Plaintiff's Amended Complaint on behalf of these Defendants, South Carolina Department of Labor, Licensing and Regulation and Doris Cubitt, as follows:

2. Except as is hereinafter specifically admitted, each and every allegation contained in said Amended Complaint is denied.

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3. All admissions which these Defendants make in answering the Plaintiff's Amended Complaint are made subject to and are qualified by these Defendants' defenses, and to the extent that any allegation contained in the Plaintiff's Amended Complaint or any inference therefrom is inconsistent with the defenses pleaded herein, it is specifically denied.

FOR A FIRST DEFENSE

4. These Defendants are "governmental entities" as that term is defined by the South Carolina Tort Claims Act, § 15-78-10 et seq., Code of Laws of South Carolina (1976), as amended. Therefore, this action is governed by the S.C. Tort Claims Act, and these Defendants plead any and all immunities and limitations of liability under the S.C. Tort Claims Act as potential defenses.

FOR A SECOND DEFENSE

5. This action is governed by the terms and conditions of the South Carolina Tort Claims Act, which provides a limit on the amount of actual damages that these Defendants may be liable, and specifically exempts these Defendants from punitive damages, and these Defendants plead this limitation as a cap on any actual damages that may be recoverable by the Plaintiff.

FOR A THIRD DEFENSE

6. This action can only be maintained against these Defendants pursuant to the S.C. Tort Claims Act; and in particular, the Defendant, upon information and belief, pleads S. C. Code Ann. Sections 15-78-60, and other relevant portions thereto as an absolute bar to the within action.

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FOR A FOURTH DEFENSE AND BY WAY OF MOTION

7. The Amended Complaint fails to state facts sufficient to constitute a cause of action against these Defendants, and therefore, it should be dismissed as a matter of law.

FOR A FIFTH DEFENSE

8. Upon current information and belief, these Defendants admit the allegations contained in Paragraph One (1) of the Amended Complaint.

9. The allegations contained in Paragraphs Two (2) through Nineteen (19) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

10. Upon current information and belief, these Defendants admit the allegations contained in Paragraph Twenty (20) of the Amended Complaint except, however, the LLR is located in Lexington County, South Carolina.

11. The allegations contained in Paragraphs Twenty-One (21) through Twenty-Nine (29) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

12. Upon current information and belief, these Defendants admit the allegations contained in Paragraph Thirty (30) of the Amended Complaint.

13. The allegations contained in Paragraphs Thirty-One (31) through Thirty-Six (36) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these

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Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

14. The allegations contained in Paragraph Thirty-Eight (38) of the Amended Complaint calls for a legal conclusion, and therefore, these Defendants can neither admit nor deny the same.

15. The allegations contained in Paragraphs (40) through (126) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

16. Under S.C. Code Ann. 40-2-80(E), these Defendants neither confirm nor deny Paragraph One Hundred Twenty Seven (127) of Plaintiff's Amended Complaint.

17. The allegations contained in Paragraphs (128) through (141) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

18. These Defendants deny the allegations of Paragraphs One Hundred Forty Two (142) and One Hundred Forty Three (143) of Plaintiff's Amended Complaint.

19. In response to Paragraphs One Hundred Forty-Four (144), One Hundred Forty-Five (145) and One Hundred Forty-Six (146) of Plaintiff's Amended Complaint, these Defendants would assert that Doris Cubitt was a long-term Administrator of the Board of

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Accountancy from December 2001 until her retirement in October 2018. These Defendants deny any allegations contained in these paragraphs pertaining to Ms. Cubitt's actions and are not aware of any official requests for information about Ms. Cubitt's retirement nor are they aware of any reason why her retirement would be relevant.

20. The allegations contained in Paragraphs (147) through (218) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that these Paragraphs of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

21. In response to Paragraph (220) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

22. These Defendants deny the allegations contained in Paragraphs (221) through (224) of the Amended Complaint to the extent that the allegations relate to these Defendants. These Defendants further deny the Plaintiff is entitled to any relief requested.

23. In response to Paragraph (225) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

24. These Defendants deny the allegations contained in Paragraphs (226) and (227) of the Amended Complaint to the extent that the allegations relate to these Defendants. These Defendants further deny the Plaintiff is entitled to any relief requested.

25. In response to Paragraph (228) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

26. These Defendants deny the allegations contained in Paragraphs (229) and (232) of the Amended Complaint to the extent that the allegations relate to these Defendants.

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27. In response to Paragraph (233) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

28. These Defendants deny the allegations contained in Paragraph (234) of the Amended Complaint to the extent that the allegations relate to these Defendants.

29. In response to Paragraph (235) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

30. These Defendants deny the allegations contained in Paragraph (236) of the Amended Complaint to the extent that the allegations relate to these Defendants.

31. In response to Paragraph (237) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

32. These Defendants deny the allegations contained in Paragraphs (238) and (239) of the Amended Complaint to the extent that the allegations relate to these Defendants.

33. In response to Paragraph (240) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

34. These Defendants are without information or knowledge sufficient to form a belief as to the allegations of Paragraph (241) of Plaintiff's Amended Complaint and, therefore, deny same and demand strict proof thereof.

35. The allegations contained in Paragraph (242) of the Plaintiff's Amended Complaint are not applicable to these Defendants, and therefore these Defendants neither admit nor deny same. To the extent that this Paragraph of the Plaintiff's Amended Complaint can be construed as alleging liability, negligence, breach of contract or warranty, and/or fault on the part of these Defendants, same are denied.

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36. These Defendants deny the allegations contained in Paragraph (243) of the Amended Complaint to the extent that the allegations relate to these Defendants.

37. In response to Paragraph (244), these Defendants further deny the Plaintiff is entitled to any relief requested.

38. In response to Paragraph (245) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

39. These Defendants deny the allegations contained in Paragraphs (246) and (248) of the Amended Complaint to the extent that the allegations relate to these Defendants.

40. In response to Paragraph (249) these Defendants reallege and incorporate by reference the allegations of all of the Defenses outlined above as if fully set forth herein.

41. These Defendants deny the allegations contained in Paragraphs (250) and (256) of the Amended Complaint to the extent that the allegations relate to these Defendants. These Defendants further deny the Plaintiff is entitled to any relief requested.

FOR A SIXTH DEFENSE

42. To the extent that the Plaintiff's Complaint is construed to include any claim of negligence or other tort claims, any state law causes of action are barred by the South Carolina Tort Claims Act, including, but not limited to, S.C. Code Ann. §15-78-60(1), (2), (4), (5), (12) and (20).

FOR A SEVENTH DEFENSE

43. Defendant Cubitt is not a proper party defendant pursuant to the South Carolina Tort Claims Act, including, but not limited to, S.C. Code Ann. §15-78-70, and therefore should be dismissed.

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FOR AN EIGHTH DEFENSE

44. The conduct of these Defendants was not the proximate cause of the Plaintiff's injuries, if any, under any theory advanced by the Plaintiff for any relief sought in the Amended Complaint.

FOR AN NINTH DEFENSE

45. Any injuries and damages sustained by the Plaintiff arising out of the incident referred to in the Amended Complaint, resulted solely, upon information and belief, from the sole acts and omissions of a third party, which sole acts or omissions or intervening acts or omissions were the proximate cause of any injuries or damages sustained by the Plaintiff.

FOR A TENTH DEFENSE

46. That the Plaintiff was fully aware of the risk arising out of and connected with his actions at the time of the incident referred to in the Complaint and under the circumstances, which risk was assumed by the Plaintiff, and by reason of which this Defendant pleads assumption of the risk as a bar to this action.

FOR AN ELEVENTH DEFENSE

47. The Defendant affirmatively alleges that the applicable statute of limitations has expired, therefore the Complaint should be dismissed with prejudice.

FOR A TWELFTH DEFENSE

48. This Defendant is entitled to Qualified Immunity, and therefore affirmatively pleads qualified immunity as a complete bar to Plaintiff's Complaint.

FOR A THIRTEENTH DEFENSE

49. That Plaintiff's own conduct was the sole cause of his injuries, if any.

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FOR A FOURTEENTH DEFENSE

50. Any injuries and damages as were allegedly sustained by the Plaintiff at the time and place alleged in the Complaint, if any, upon information and belief, were due to and proximately caused by the negligence, recklessness, willfulness and wantonness of the Plaintiff, which contributed more than fifty (50%) percent to cause the incident and the Plaintiff's resulting injuries and damages, if any, and therefore these Defendants have no liability to the Plaintiff.

FOR A FIFTEENTH DEFENSE

51. Any and all statements that Plaintiff alleges these Defendants made, if any, are true statements of fact as to Plaintiff, and therefore, these Defendants plead truth of those alleged statements as an affirmative defense.

FOR AN SIXTEENTH DEFENSE

52. Any and all statements that Plaintiff alleges these Defendants made are immune from liability because they were absolutely, conditionally, and/or qualifiedly privileged communications; therefore, these Defendants plead immunity by way of absolute, conditional, and qualified privilege as an affirmative defense.

FOR A SEVENTEENTH DEFENSE

53. Plaintiff has failed to plead or prove publication of any alleged defamatory statements or communications on the part of these Defendants, and therefore, this action should be dismissed.

FOR AN EIGHTEENTH DEFENSE

54. These Defendants' affirmatively plead consent and self-publication as affirmative defenses to Plaintiff's action, as Plaintiff voluntarily assented to any alleged statements or

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communications with these Defendants, and/or voluntarily publicized any alleged statements or communications.

FOR A NINETEENTH DEFENSE

55. Defendants affirmatively plead the doctrines of unclean hands, laches, estoppel, mistake and/or waiver, which bar Plaintiff from relief.

FOR A TWENTIETH DEFENSE

56. Any claim on behalf of the Plaintiff for punitive damages is barred by the provisions of the United States and the South Carolina Constitutions.

57. That Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

58. That Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

59. That the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of Defendants.

60. That the Plaintiff's claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason

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that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A TWENTY-FIRST DEFENSE

61. These Defendants also reserve their right to plead by motion or by amended or supplemental pleading any other defenses which may be or may become available to them under the law, rules, or facts of this case.

FOR A TWENTY-SECOND DEFENSE

62. These Defendants hereby incorporates the defenses of other Defendants as they may be applicable to Defendant Cubitt and/or the Defendant SCLLR.

FOR A TWENTY-THIRD DEFENSE

63. These Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, these Defendants pray that the Amended Complaint of the Plaintiff be dismissed, with costs, and for such other and further relief as this Court deems just and proper. These Defendants further deny the Plaintiff is entitled to any relief requested.

HOWSER, NEWMAN & BESLEY, L.L.C.

/s/ Kelley Cannon

Kelley Shull Cannon (SC Bar #8532)
1508 Washington Street
Post Office Box 12009
Columbia, SC 29211
(803) 758-6000
ATTORNEYS FOR THE DEFENDANTS
SCLLR AND DORIS CUBITT

January 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NUMBER: 2018-CP-40-02425

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of management Consultants USA & John Doe(s) 1-40,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT ON BEHALF OF DEFENDANT SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION AND DEFENDANT DORIS CUBITT

(Jury Trial Demanded)

I, the undersigned employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing filed copy of ***Answer to First Amended Complaint on Behalf of Defendant South Carolina Department of Labor, Licensing and Regulation and Defendant Doris Cubitt*** in the above-captioned case, by causing a copy of the same to be personally delivered via U.S. Mail to the pro se Plaintiff as indicated on the following page:

PRO SE PLAINTIFF
Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

Chelsea M. Thorne

January 10, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
	)	
Plaintiff,	)	
	)	
vs.	)	**ANSWER OF FIRST TUESDAY STRATEGIES, LLC**
	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40	)	
	)	
Defendants.	)	
	)	

Defendant, First Tuesday Strategies, LLC (hereinafter "First Tuesday"), hereby files this Answer to the First Amended Complaint and alleges the following:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Except as specifically admitted herein, each and every allegation in the First Amended Complaint is expressly denied.

2. Answering paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the First Amended Complaint, First Tuesday has no sufficient information or knowledge as to the truth or falsity of the jurisdictional allegations and therefore denies same.

3. Answering paragraph 22 of the First Amended Complaint, First Tuesday admits it is a South Carolina limited liability company with an office in Richland County, South Carolina. It further admits that J. Warren Tompkins is the registered agent of First Tuesday. Any remaining allegations are denied.

4. Answering paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the First Amended Complaint, First Tuesday has no sufficient information or knowledge as to the truth or falsity of the jurisdictional allegations and therefore denies same.

5. Answering paragraph 37 of the First Amended Complaint, no response is required as Plaintiff is asserting a legal conclusion. To the extent a response is required, First Tuesday denies that it is liable to Plaintiff in any way whatsoever.

6. Answering paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116,

117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, and 178 of the First Amended Complaint, the allegations do not relate to First Tuesday. As such, First Tuesday lacks sufficient information and has no knowledge as to the truth or falsity of the allegations and therefore denies same.

7. First Tuesday demands the vague and ambiguous allegations in paragraphs 179 and 180 be made more definite and certain and until then, denies same.

8. Answering paragraph 181 of the First Amended Complaint, First Tuesday admits only that it has performed charter school work. Any remaining allegations are denied.

9. Answering paragraphs 182 and 183 of the First Amended Complaint, these are opinion allegations for which First Tuesday has no sufficient information or knowledge as to the truth or falsity of the allegations and therefore denies same.

10. First Tuesday denies the allegations set forth in paragraphs 184 and 185 of the First Amended Complaint and demands strict proof thereof.

11. Answering paragraph 186 of the First Amended Complaint, First Tuesday admits only that it had an employee who provided limited administrative assistance for a limited period of time to ECENC. First Tuesday denies the remaining allegations and demands strict proof thereof.

12. Answering paragraphs 187, 188, 189, 190, 191, and 192 of the Complaint, the allegations do not relate to First Tuesday. As such, First Tuesday has no sufficient

information or knowledge as to the truth or falsity of the allegations and therefore denies same.

FOR A SECOND DEFENSE
AND BY WAY OF ANSWER
(Defamation as to Defendants Weaver and PPI)

13. Answering paragraphs 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, and 206 of the First Amended Complaint, the allegations do not relate to First Tuesday. As such, First Tuesday has no sufficient information or knowledge as to the truth or falsity of the remaining allegations and therefore denies same.

FOR A THIRD DEFENSE
AND BY WAY OF ANSWER

14. Answering paragraphs 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, and 219 of the First Amended Complaint, the allegations do not relate to First Tuesday. As such, First Tuesday has no sufficient information or knowledge as to the truth or falsity of the remaining allegations and therefore denies same.

FOR A FOURTH DEFENSE
AND BY WAY OF ANSWER

15. First Tuesday has responded to the allegations referenced in paragraph 220 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

16. First Tuesday denies the allegations set forth in paragraphs 221, 222, 223, and 224 of Plaintiff's First Amended Complaint and demands strict proof thereof.

FOR A FIFTH DEFENSE AND BY WAY OF ANSWER

17. First Tuesday has responded to the allegations referenced in paragraph 225 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

18. First Tuesday denies the allegations set forth in paragraphs 226 and 227 of Plaintiff's First Amended Complaint and demands strict proof thereof.

FOR A SIXTH DEFENSE AND BY WAY OF ANSWER

19. First Tuesday has responded to the allegations referenced in paragraph 228 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

20. First Tuesday denies the allegations set forth in paragraphs 229, 230, 231, and 232 of the First Amended Complaint and demands strict proof thereof.

FOR A SEVENTH DEFENSE AND BY WAY OF ANSWER

21. First Tuesday has responded to the allegations referenced in paragraph 233 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

22. First Tuesday denies the allegations set forth in paragraph 234 of the First Amended Complaint, denies any duty of care, and demands strict proof thereof.

FOR AN EIGHTH DEFENSE AND BY WAY OF ANSWER

23. First Tuesday has responded to the allegations referenced in paragraph 235 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

24. First Tuesday denies the allegations set forth in paragraph 236 of the First Amended Complaint and demands strict proof thereof.

FOR A NINTH DEFENSE
AND BY WAY OF ANSWER

25. First Tuesday has responded to the allegations referenced in paragraph 237 of Plaintiff's First Amended Complaint. Any remaining allegations are denied.

26. First Tuesday denies the allegations set forth in paragraphs 238 and 239 of the First Amended Complaint and demands strict proof thereof.

FOR A TENTH DEFENSE
AND BY WAY OF ANSWER

27. First Tuesday has responded to the allegations referenced in paragraph 240 of Plaintiff's First Amended Complaint and demands strict proof thereof. Any remaining allegations are denied.

28. First Tuesday denies the allegations set forth in paragraphs 241, 242, 243, and 244 of the First Amended Complaint and demands strict proof thereof.

FOR A ELEVENTH DEFENSE
AND BY WAY OF ANSWER

29. First Tuesday has responded to the allegations referenced in paragraph 245 of Plaintiff's First Amended Complaint and demands strict proof thereof. Any remaining allegations are denied.

30. First Tuesday denies the allegations set forth in paragraphs 246, 247, and 248 of the First Amended Complaint and demands strict proof thereof.

FOR A TWELFTH DEFENSE
AND BY WAY OF ANSWER

31. First Tuesday has responded to the allegations referenced in paragraph 249 of Plaintiff's First Amended Complaint and demands strict proof thereof. Any remaining allegations are denied.

32. First Tuesday denies the allegations set forth in paragraphs 250, 251, 252, 253, 254, 255, and 256 of the First Amended Complaint and demands strict proof thereof.

FOR A THIRTEENTH DEFENSE
AND BY WAY OF ANSWER
(Failure to State a Claim)

33. Plaintiff's First Amended Complaint fails to state facts sufficient to constitute a cause of action for which relief can be granted.

FOR A FOURTEENTH DEFENSE
(Equitable Estoppel, Consent Waiver, Laches, and Unclean Hands)

34. Should discovery so show, First Tuesday pleads the Doctrines of Estoppel, Consent, Waiver, Laches, and Unclean Hands as defenses to Plaintiff's claims.

FOR A FIFTHTEENTH DEFENSE

35. No defamatory statement has been published by First Tuesday.

FOR A SIXTEENTH DEFENSE

36. To the extent that this Defendant made any allegedly defamatory statements, which is denied, any such statements were made subject to an absolute and/or qualified privilege and/or were truthful.

FOR A SEVENTEENTH DEFENSE

37. Plaintiff self-published the alleged defamatory statements and as such, he is barred from recovery.

FOR AN EIGHTEENTH DEFENSE

38. Defendants would show that, to the extent they are alleged, Plaintiffs are not entitled to an award for punitive damages because an award of punitive damages violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution. With respect to Plaintiffs' demands for punitive damages, Defendants specifically incorporate herein by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of No. America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mut. Auto Ins. Co. v. Campbell*, No. 01-1289, 2003 WL 1791206 (U.S. Sup. Ct. Apr. 7, 2003).

FOR A NINETEENTH DEFENSE

39. Plaintiff has failed to plead facts in furtherance of a conspiracy as to this Defendant and is not entitled to maintain the cause of action.

First Tuesday further denies the prayer for relief in the WHEREFORE paragraph of Plaintiff's First Amended Complaint, denies that the Plaintiff is entitled to any amount sued for, and further denies that the Plaintiff is entitled to recover from First Tuesday in any sum whatsoever.

WHEREFORE, having fully moved for dismissal and answered, First Tuesday requests that Plaintiff's First Amended Complaint be dismissed with prejudice, with costs, and for such further relief as the Court may deem just and proper.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)

McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
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ATTORNEYS FOR DEFENDANT,
FIRST TUESDAY STRATEGIES, LLC

Columbia, South Carolina
this 7th day of January, 2019.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	)	Civil Action No. 2018-CP-40-02425 **CERTIFICATE OF MAILING**

I, the undersigned paralegal to Joseph McCulloch, McCulloch & Schillaci, Attorneys at Law, do hereby certify that ANSWER OF FIRST TUESDAY STRATEGIES, LLC has this day been served upon opposing counsel by electronic service AND first-class, United States Mail, postage prepaid, addressed to:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

I further certify that I have served all parties appearing in this matter by electronic service.

By: Elizabeth Yates

Columbia, South Carolina

January 7, 2019

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Jefferson Davis, Jr., *Plaintiff,* Versus Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Does(s) 1-40, *Defendants.*	)	C/A No. 2018-CP-40-02425 **DEFENDANT INSTITUTE OF MANAGEMENT CONSULTANTS USA'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** ***(Jury Trial Requested)***

Defendant Institute of Management Consultants USA (IMC USA) (hereinafter "this Defendant"), by and through the undersigned counsel, hereby respond to the allegations in the Plaintiff's Amended Complaint, subject to all affirmative defenses and motions as follows:

1. This Defendant denies each and every allegation of the Plaintiff's Amended Complaint which is not specifically admitted herein.

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AS TO PLAINTIFF

2. This Defendant is without information sufficient to admit or deny the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint, and therefore deny the same.

AS TO DEFENDANTS

3. The allegations contained in Paragraphs 2 through 34 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 2 through 34 of the Plaintiff's Amended Complaint.

4. This Defendant admits the allegations contained in Paragraph 35 of the Plaintiff's Amended Complaint.

5. The allegations contained in Paragraph 36 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 36 of the Plaintiff's Amended Complaint.

6. The allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint are conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint.

AS TO JURISDICTION AND VENUE

7. The allegations contained in Paragraph 38 of the Plaintiff's Amended Complaint are conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraph 38 of the Plaintiff's Amended Complaint.

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AS TO THE FACTUAL ALLEGATIONS
(Specific Documented Event & Follow-up)

8. The allegations contained in Paragraphs 39 through 127 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 39 through 127 of the Plaintiff's Amended Complaint.

9. Paragraph 128 of the Plaintiff's Amended Complaint is not a proper inquiry and does not require a response. To the extent a response is required, this Defendant denies the allegations of Paragraph 128 of the Plaintiff's Amended Complaint. Further responding, this Defendant refers to S.C. Code Ann. § 40-71-20(A).

10. Paragraph 129 of the Plaintiff's Amended Complaint is not a proper inquiry and does not require a response. To the extent a response is required, this Defendant denies the allegations of Paragraph 129 of the Plaintiff's Amended Complaint.

11. The allegations contained in Paragraphs 130 through 146 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 130 through 146 of the Plaintiff's Amended Complaint.

12. Paragraph 147 of the Plaintiff's Amended Complaint is not a proper inquiry and does not require a response. To the extent a response is required, this Defendant denies the allegations of Paragraph 147 of the Plaintiff's Amended Complaint. Further responding, this Defendant refers to S.C. Code Ann. § 40-71-20(A).

13. This Defendant denies the allegations contained in Paragraphs 148 and 149 of the Plaintiff's Amended Complaint including, specifically, any allegation that a civil conspiracy exists and/or that this Defendant had any role, in any way, in any civil conspiracy.

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14. This Defendant is without information sufficient to admit or deny the allegations contained in Paragraphs 150 through 154 of the Plaintiff's Amended Complaint, and therefore deny the same.

15. The allegations contained in Paragraphs 155 through 206 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 155 through 206 of the Plaintiff's Amended Complaint.

AS TO THE FACTUAL ALLEGATIONS
(Additional Background)

16. This Defendant is without sufficient information upon which to form a belief as to the allegations contained in Paragraph 207 of the Plaintiff's Amended Complaint and therefore denies the same.

17. The allegations contained in Paragraphs 208 through 218 of the Plaintiff's Amended Complaint are not directed at this Defendant, and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 208 through 218 of the Plaintiff's Amended Complaint.

18. Plaintiff's Amended Complaint does not contain a paragraph numbered 219.

AS TO THE FIRST CAUSE OF ACTION
(Defamation Per Se & Per Quod)

19. In response to the allegations contained in Paragraph 220 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

20. This Defendant denies the allegations contained in Paragraphs 221 through 224 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent

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they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 221 through 224 of the Plaintiff's Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Defamation by innuendo)

21. In response to the allegations contained in Paragraph 225 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

22. This Defendant denies the allegations contained in Paragraphs 226 and 227 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 226 and 227 of the Plaintiff's Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Invasion of Privacy)

23. In response to the allegations contained in Paragraph 228 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

24. This Defendant denies the allegations contained in Paragraphs 229 through 232 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 229 through 232 of the Plaintiff's Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Negligence)

25. In response to the allegations contained in Paragraph 233 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

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26. This Defendant denies the allegations contained in Paragraph 234 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraph 234 of the Plaintiff's Amended Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

27. In response to the allegations contained in Paragraph 235 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

28. This Defendant denies the allegations contained in Paragraph 236 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraph 236 of the Plaintiff's Amended Complaint.

AS TO THE SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

29. In response to the allegations contained in Paragraph 237 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

30. This Defendant denies the allegations contained in Paragraphs 238 and 239 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 238 and 239 of the Plaintiff's Amended Complaint.

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AS TO THE SEVENTH CAUSE OF ACTION
(Unfair Trade Practices)

31. In response to the allegations contained in Paragraph 240 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

32. This Defendant denies the allegations contained in Paragraphs 241 through 244 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 241 through 244 of the Plaintiff's Amended Complaint.

AS TO THE EIGHTH CAUSE OF ACTION
(Pierce the Corporate Veil)

33. In response to the allegations contained in Paragraph 245 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

34. This Defendant denies the allegations contained in Paragraphs 246 through 248 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 246 through 248 of the Plaintiff's Amended Complaint.

AS TO THE NINTH CAUSE OF ACTION
(Conspiracy)

35. In response to the allegations contained in Paragraph 249 of the Plaintiff's Amended Complaint, this Defendant reasserts and realleges the above Paragraphs as if fully restated herein verbatim.

36. This Defendant denies the allegations contained in Paragraphs 250 through 256 of the Plaintiff's Amended Complaint to the extent they are directed to this Defendant. To the extent

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they are not directed at this Defendant, no response is required and this Defendant denies the allegations contained in Paragraphs 250 through 256 of the Plaintiff's Amended Complaint.

AS TO THE PRAYER FOR RELIEF

37. As to the WHEREFORE Paragraph, this Defendant also requests a trial by jury. All remaining and inconsistent allegations contained in the WHEREFORE Paragraph of the Plaintiff's Amended Complaint are denied, such being the remaining allegations of the Plaintiff's Amended Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Failure to State a Claim)

38. The allegations contained in Plaintiff's Amended Complaint fail to state a claim upon which relief may be granted against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Failure to Timely Commence)

39. That this Defendant was not named and served with the Amended Complaint within the Court's ordered deadline and therefore this action has not been timely commenced against this Defendant; as such, the Amended Complaint should be dismissed with prejudice.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Failure to Properly Plead)

40. That this Complaint is improperly pled and in violation of the Judge's orders as to the original Complaint and permission to Amend the Complaint.

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FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(No Proximate Cause)

41. That even if this Defendant was negligent, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Limitation of Punitive Damages)

42. Any punitive damages awarded in this case would be subject to the limitations described in S.C. Code § 15-32-530.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

43. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

44. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and is consistent with the applicable Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint and asserting these affirmative defenses, this Defendant, Institute of Management Consultants USA, prays that

the Complaint be dismissed with prejudice and that they be awarded the costs and reasonable fees associated with defending this action or other such relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ Jennifer F. Nutter
Jennifer F. Nutter (SC#69348)

Attorneys for Defendant
Institute of Management Consultants USA

January 11, 2019
Charleston, South Carolina

Certificate of Service

I certify that on January 11, 2019, a copy of this pleading was served on each party or counsel of record by NEF electronic filing *or* U.S. Mail in the manner prescribed by the applicable Rule of Civil Procedure.

s/ Jennifer F. Nutter

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2018-CP-40-02425 **ANSWER OF DEFENDANT FIRST IMPRESSIONS, INC. D/B/A RICHARD QUINN & ASSOCIATES**

Defendant First Impressions, Inc. d/b/a Richard Quinn & Associates (hereinafter, "RQ&A") answering the Amended Complaint of Plaintiff says as follows:

FOR A FIRST DEFENSE

Each and every allegation of Plaintiffs' Amended Complaint not herein specifically admitted, modified, qualified, or otherwise responded to by Defendant RQ&A is hereby denied. Defendant RQ&A answers the following portions of the allegations set forth in the Amended Complaint.

1. The allegations of Paragraphs 1 through 20 are related to the Plaintiff or other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 20 of the Amended Complaint, and therefore denies the allegations.

2. Answering Paragraph 21, Defendant RQ&A admits only that First Impressions, Inc. is incorporated in the state of South Carolina and maintains an office in Richland County, South Carolina. RQ&A further admits that Richard Quinn is the registered agent of First Impressions, Inc. with an address of 1620 Gervais Street, Columbia, South Carolina 29201. Defendant RQ&A denies any remaining allegations of Paragraph 21 and denies that Defendant RQ&A is liable to Plaintiff in any way.

3. The allegations of Paragraphs 22 through 36 are related to the other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 22 through 36 of the Amended Complaint and therefore denies the allegations.

4. The allegations contained in Paragraph 37 constitute legal conclusions which Defendant RQ&A is required to neither admit nor deny. To the extent that a response is required, Defendant RQ&A denies the same.

5. Defendant RQ&A denies the allegations of Paragraph 38.

6. The allegations of Paragraphs 39 through 89 are related to the other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 39 through 89 of the Amended Complaint and therefore denies the allegations.

7. Defendant RQ&A denies the allegations of Paragraph 90 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 90 and therefore denies the remaining allegations.

8. The allegations of Paragraphs 91 through 174 are related to the other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 91 through 174 of the Amended Complaint and therefore denies the allegations.

9. Defendant RQ&A denies the allegations of Paragraphs 175 through 176 and denies that Defendant RQ&A is liable to Plaintiff in any way.

10. As to Paragraph 177, Defendant RQ&A asserts that the allegations are too vague and ambiguous to reasonably require a response and therefore denies the same. Defendant RQ&A also denies that Defendant RQ&A is liable to Plaintiff in any way

11. Defendant RQ&A denies the allegations of Paragraph 178 and denies that Defendant RQ&A is liable to Plaintiff in any way.

12. The allegations of Paragraphs 179 through 190 are related to the other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 179 through 190 of the Amended Complaint and therefore denies the allegations.

13. Defendant RQ&A denies the allegations of Paragraph 191 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to

the truth of the remaining allegations of Paragraph 191 and therefore denies the remaining allegations.

14. Defendant RQ&A denies the allegations of Paragraph 192 and denies that Defendant RQ&A is liable to Plaintiff in any way.

15. The allegations of Paragraphs 193 through 218 are related to the other Defendants and, therefore, no response is required. To the extent a response is required, Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 193 through 218 of the Amended Complaint and therefore denies the allegations.

16. The Amended Complaint omits Paragraph 219.

17. Paragraph 220 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

18. Defendant RQ&A denies the allegations of Paragraphs 221 through 224 to the extent that the allegations relate to Defendant and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 221 through 224 and therefore denies the remaining allegations.

19. Paragraph 225 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

20. Defendant RQ&A denies the allegations of Paragraphs 226 through 227 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form

a belief as to the truth of the remaining allegations of Paragraphs 226 through 227 and therefore denies the remaining allegations.

21. Paragraph 228 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

22. Defendant RQ&A denies the allegations of Paragraphs 229 through 232 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 229 through 232 and therefore denies the remaining allegations.

23. Paragraph 233 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

24. Defendant RQ&A denies the allegations of Paragraph 234 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 234 and therefore denies the remaining allegations.

25. Paragraph 235 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

26. Defendant RQ&A denies the allegations of Paragraph 236 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in

any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 236 and therefore denies the remaining allegations.

27. Paragraph 237 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

28. Defendant RQ&A denies the allegations of Paragraphs 238 through 239 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 238 through 239 and therefore denies the remaining allegations.

29. Paragraph 240 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

30. Paragraph 241 contains Plaintiff's characterization of the Amended Complaint and conclusions of law to which no response is required. To the extent a response is required, Defendant RQ&A denies that it is in any way liable to Plaintiff and denies any allegations inconsistent therewith.

31. Defendant RQ&A denies the allegations of Paragraphs 242 through 244 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 242 through 244 and therefore denies the remaining allegations.

32. Paragraph 245 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

33. Defendant RQ&A denies the allegations of Paragraphs 246 through 248 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 246 through 248 and therefore denies the remaining allegations.

34. Paragraph 249 requires no response by Defendant RQ&A. To the extent a response is required, Defendant denies the allegations. Defendant RQ&A hereby reincorporates the answers to the preceding and subsequent paragraphs by reference.

35. Defendant RQ&A denies the allegations of Paragraphs 250 through 256 to the extent that the allegations relate to Defendant RQ&A and denies that Defendant RQ&A is liable to Plaintiff in any way. Defendant RQ&A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 250 through 256 and therefore denies the remaining allegations.

36. The remainder of the Amended Complaint constitutes a prayer for relief and does not contain allegations of fact that require a response from Defendant RQ&A. To the extent that a response is required, Defendant RQ&A denies the same and denies that Defendant RQ&A is liable to Plaintiff in any way.

FOR A SECOND DEFENSE
(Lack of Subject Matter Jurisdiction)

37. This Court lacks subject matter jurisdiction over this matter and, as a result, the Amended Complaint should be dismissed.

FOR A THIRD DEFENSE
(Failure to State a Claim)

38. Plaintiff's Amended Complaint fails to state a claim for relief against Defendant RQ&A and, as a result, should be dismissed.

FOR A FOURTH DEFENSE
(No Justiciable Controversy)

39. The allegations in the Amended Complaint fail to establish any justiciable controversy between Plaintiff and Defendant RQ&A.

FOR A FIFTH DEFENSE
(No Defamation)

40. No defamatory statement has been published by Defendant RQ&A and Plaintiff has failed to plead or allege publication of any alleged defamatory statements or communications by Defendant RQ&A.

FOR A SIXTH DEFENSE
(Truthful or Privileged Statements)

41. To the extent Defendant RQ&A made any allegedly defamatory statements, which is denied, any such statements were truthful or were made subject to an absolute or qualified privilege.

FOR A SEVENTH DEFENSE
(Consent and Self-Published Statements)

42. Plaintiff is barred from recovery from Defendant RQ&A as a result of his consent to and/or self-publication of any allegedly defamatory statements.

FOR AN EIGHTH DEFENSE
(No Proximate Cause)

43. The conduct of Defendant RQ&A was not the proximate cause of Plaintiff's injuries, if any, under any theory advanced by Plaintiff for any relief sought.

FOR A NINTH DEFENSE
(No Damages)

44. Plaintiff has suffered no damages.

FOR A TENTH DEFENSE
(Intervening Cause)

45. The damages allegedly suffered by Plaintiff, if any, were proximately caused by actions of others or events separate, distinct, unrelated, and remote to any alleged action or inaction of Defendant RQ&A and Defendant RQ&A therefore is not liable for any of Plaintiffs' alleged damages.

FOR A ELEVENTH DEFENSE
(Statute of Limitations)

46. Plaintiff's claims are barred, in whole or in part, by the applicable limitations period provided by statute or common law.

FOR A TWELFTH DEFENSE
(No Justiciable Controversy)

47. The allegations in the Amended Complaint fail to establish any justiciable controversy between Plaintiff and Defendant RQ&A.

FOR AN THIRTEENTH DEFENSE
(Laches, Equitable Estoppel, Consent, Waiver, and Unclean Hands)

48. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, equitable estoppel, consent, waiver, and/or unclean hands.

FOR A FOURTEENTH DEFENSE
(No Punitive Damages)

49. Plaintiffs cannot maintain a claim for punitive damages because Defendant RQ&A did not commit any malicious, willful, wanton, or reckless act.

FOR A FIFTEENTH DEFENSE
(Imposition of Punitive Damages Unconstitutional)

50. Plaintiffs' claims to recover punitive damages should be dismissed because the imposition of punitive damages against Defendant RQ&A would violate the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution, and other provisions of the United States and South Carolina Constitutions.

FOR A SIXTEENTH DEFENSE
(Eighth Amendment Bars Award of Punitive Damages)

51. Plaintiffs' claims to recover punitive damages from Defendant RQ&A are precluded by the Eighth Amendment to the United States Constitution and by Article I, Section 15 of the South Carolina Constitution, all of which prohibit the imposition of excessive fines.

FOR A SEVENTEENTH DEFENSE
(Punitive Damages Laws Unconstitutionally Vague)

52. The statutes and common law of the State of South Carolina that authorize the imposition of aggravated, exemplary, or punitive damages are impermissibly vague, imprecise, and inconsistent and, thus, are contrary to the United States and South Carolina Constitutions.

FOR AN EIGHTEENTH DEFENSE
(Incorporation of Other Defenses)

53. Defendant RQ&A hereby incorporates the defenses of other Defendants as they may be applicable to Defendant RQ&A.

FOR A NINETEENTH DEFENSE
(Right to Add Additional Affirmative Defenses)

54. Defendant RQ&A reserves the right to amend this Answer to include additional affirmative defenses that may become apparent throughout the course of further investigation and/or discovery.

WHEREFORE, having fully answered the Amended Complaint, Defendant RQ&A prays that the Amended Complaint will be dismissed with prejudice, that Defendant RQ&A be awarded all costs and expenses that arise in defending this action, including reasonable attorneys' fees, and for such other further relief as the Court may deem just and proper.

Respectfully submitted,

s/Benjamin P. Mustian
Benjamin P. Mustian, Esq.
S.C. Bar No. 68269
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Attorney for Defendant First Impressions, Inc. d/b/a Richard Quinn & Associates

January 29, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	**FILE NO. 2018-CP-40-02425** **CERTIFICATE OF SERVICE**

This is to certify that I, Emily Cartwright, a Legal Assistant with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **Answer of Defendant First Impressions, INC. D/B/A Richard Quinn & Associates and Motion to Dismiss of Defendant First Impressions, Inc. D/B/A Richard Quinn and Associates** in the above-captioned matter via first class mail delivery as follows:

Jefferson Davis, Jr.
403 McCarter Ave.
Greenville, SC 29615

Emily Cartwright
Emily Cartwright

Columbia, South Carolina
January 29, 2019

ELECTRONICALLY FILED - 2019 Feb 15 2:34 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2018-CP-40-02425
JEFFERSON DAVIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ELLEN WEAVER, CHAD CONNELLY, ORAN P. SMITH, NEIL J. MELLEN, HOWARD S. RICH, RICK REAMES, STEPHEN D. KIRKLAND, PALMETTO PROMISE INSTITUTE, PALMETTO FAMILY COUNCIL, PALMETTO FAMILY ACTION, SOUTH CAROLINIANS FOR RESPSONSIBLE GOVERNMENT, SCRG FOUNDATION, ACCESS OPPORTUNITY SOUTH CAROLINA, FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, INC., CATO INSTITUTE, SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND, SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE, SOUTH CAROLINA DEPARTMENT OF REVENUE, SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION, FIRST IMPRESSIONS, INC. D/B/A RICHARD QUINN & ASSOCIATES, FIRST TUESDAY STRATEGIES, LLC, BILL WILSON, JASON BEDRICK, JIM DEMINT, RANDY PAGE, TONY DENNY, PHILLIP CEASE, MELANIE BARTON, DORIS CUBITT, SUSAN THOMAS, JOHN MCCORMICK, NATE LEUPP, INSTITUTE OF MANAGEMENT CONSULTANTS USA, & JOHN DOE(S) 1-40,	)	**ANSWER OF DEFENDANT TONY DENNY (Jury Trial Demanded)**
	)	
Defendants.	)	

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Defendant Denny answers and respectfully shows unto the Court:

FOR A FIRST DEFENSE

1. Defendant admits the allegations of Paragraph 1, upon information and belief.

2. The allegations of Paragraphs 2 through 26 are directed to the other Defendants in this matter, and do not require any response from this Defendant. Should any portions of Paragraphs 2 through 26 be construed as making factual allegations against Defendant Denny, all such allegations are denied.

3. Defendant admits the allegations of Paragraph 27.

4. The allegations of Paragraphs 28 through 36 are directed to the other Defendants in this matter, and do not require any response from this Defendant. Should any portions of Paragraphs 28 through 36 be construed as making factual allegations against Defendant Denny, all such allegations are denied.

5. Paragraph 37 states a legal conclusion not requiring any response from this Defendant. To the extent that any portion of Paragraph 37 is construed as making any factual allegations against this Defendant, all such allegations are denied.

6. Paragraph 38 states a legal conclusion not requiring any response from this Defendant. To the extent that any portion of Paragraph 38 is construed as making any factual allegations against this Defendant, all such allegations are denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations of Paragraphs 39 through 87 and, on that basis, denies the same.

8. Paragraph 88 states a legal conclusion not requiring any response from this Defendant. To the extent that any portion of Paragraph 88 is construed as making a factual allegation against this Defendant, all such allegations are denied.

9. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations of Paragraphs 89 through 256 and, on that basis, denies the same.

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10. Defendant denies everything not hereinbefore specifically admitted, and denies Plaintiff is entitled to his prayer for relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

11. FURTHER ANSWERING, the allegations of the Complaint do not state facts sufficient to constitute a cause of action, and this Court should dismiss the lawsuit.

FOR A THIRD DEFENSE
(Waiver and Estoppel)

12. FURTHER ANSWERING, the doctrines of waiver and estoppel bar the claims.

FOR A FOURTH DEFENSE
(Improper Service)

13. FURTHER ANSWERING, Defendant alleges Plaintiff has not properly served the Summons and Complaint for this lawsuit; therefore, Defendant moves pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure to dismiss the lawsuit.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

14. FURTHER ANSWERING, Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE
(Imposition of Punitive Damages in this Case is Unconstitutional)

15. FURTHER ANSWERING, The imposition and awarding of punitive damages in this case is unconstitutional and a denial of Defendant's constitutional rights and is contrary to the Fifth, Eighth and Fourteenth Amendments to the

Constitution of the United States of America, and Article I, Sections 3, 13, and 15 of the Constitution of the State of South Carolina.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

Turner Padget Graham & Laney, P.A.

s/James Goldin
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Columbia, South Carolina
February 13, 2019

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ELECTRONICALLY FILED - 2018 Jun 07 3:26 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2018-CP-40-2425
	)	
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**Motion to Dismiss**
Ellen Weaver, individually, Palmetto Promise Institute & John Does 1-20,	)	
	)	
Defendants.	)	
	)	

Defendants Ellen Weaver, Palmetto Promise Institute and John Does 1-20 ("Defendants") hereby deny any and all wrongdoing and liability to Plaintiff Jefferson Davis, Jr. ("Plaintiff") and respectfully move for an order dismissing Plaintiff's Complaint with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiff failed to state facts sufficient to constitute any of his nine purported causes of action against any of the Defendants.

Specifically, Plaintiff's Complaint failed to allege any facts that would subject Defendant Ellen Weaver to any liability in her individual capacity. Second, Plaintiff's Complaint failed to state facts sufficient to constitute any of his nine purported causes of action with regard to Palmetto Promise Institute. Finally, Plaintiff's Complaint failed to allege anything beyond conclusory allegations with regard to any of the fictitiously-named John Doe defendants.

This motion is based upon the Complaint and such other materials as may be submitted prior to any hearing as well as a memorandum in support of the same.

[signature block to follow]

Turner, Padget, Graham & Laney, P.A.

June 7, 2018

By: s/ Bettis C. Rainsford, Jr.

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ELECTRONICALLY FILED - 2018 Sep 26 2:32 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2018-CP-40-2425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, individually, Palmetto Promise Institute & John Does 1-20, Defendants.	)	**Memorandum in Support of Defendants' Motion to Dismiss**

I. Introduction

Defendants Ellen Weaver, Palmetto Promise Institute and John Does 1-20 ("Defendants") respectfully submit this memorandum in support of their Motion for an order dismissing Plaintiff's Complaint with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiff failed to state facts sufficient to constitute any of his nine purported causes of action against any of the Defendants.

II. Factual Allegations[1]

Defendant Palmetto Promise Institute ("PPI") is a South Carolina non-profit that is located in Richland County. (Compl. ¶ 3). Defendant Ellen Weaver ("Weaver") is the President and CEO of PPI. (Compl. ¶ 2). The fictitiously-named John Does 1-20 ("Does") are, according to the Plaintiff, the funders of both Weaver and PPI and dictate their operations. (Compl. ¶ 4).

In February of 2017, Plaintiff saw Defendant Weaver give a presentation at a school choice conference. (Compl. ¶¶ 7-8). After the event, Plaintiff alleges that he heard Defendant

[1] The factual allegations made in Plaintiff's Complaint are accepted as true for purposes of this motion only. Defendants fiercely contest nearly all of the allegations and hereby expressly reserve the right to deny them if required to file an answer to this Complaint.

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Weaver make disparaging remarks about him to another individual. (Comp. ¶ 8). Specifically, Plaintiff claims Weaver stated that Plaintiff lost his license to practice law. (Compl.¶¶ 11-13). Later, Plaintiff confronted Defendant Weaver at her presentation booth at another convention. (Compl. ¶¶ 16-17). There, Weaver is alleged to have yelled at Plaintiff and threatened to call the police. (Compl. ¶ 17). Separately, Plaintiff claims to have approached two individuals affiliated with PPI who turned away and refused to speak to him. (Compl. ¶ 18). Plaintiff alleges these individual then began yelling at him. (Compl. ¶ 18).

More broadly, Plaintiff claims that Defendants maintain a scheme to undermine his "brand" of school choice advocacy. (Compl. ¶ 24). Plaintiff believes said scheme is politically motivated. (Compl. ¶ 24). Plaintiff further believes that Defendant PPI is a front for certain unspecified and fictitiously-named John Does who he claims benefit financially from its activities. (Compl. ¶ 29). According to Plaintiff, Defendants' alleged actions demonstrate an elaborate conspiracy – all against Plaintiff. (Compl. ¶ 32).

In the instant case, Plaintiff has nine causes of action, including: (1) defamation, (2) false light publicity, (3) invasion of privacy through publicity, (4) negligence, (5) intentional infliction of emotional distress, (6) tortious interference with prospective contractual relations, (7) unfair trade practices, (8) piercing the corporate veil, and (9) conspiracy. (Compl. ¶¶ 33-64). Plaintiff seeks compensatory and punitive damages. (Compl. ¶ Prayer For Relief).

III. Legal Standard

A motion to dismiss a claim pursuant to Rule 12(b)(6) must be based "solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). A motion to dismiss should be granted if the facts and inferences therefrom would not entitle a

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plaintiff to "any relief on any theory of the case." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). "'The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.'" *Doe*, 373 S.C. at 395, 645 S.E.2d at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). Causes of action based on conclusory allegations without supporting facts are subject to dismissal under Rule 12(b)(6). *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

IV. Argument

Plaintiff's Complaint should be dismissed because, even in a light most favorable to Plaintiff, it fails to state facts sufficient to constitute causes of action. This brief will specifically address the claims for False Light, Invasion of Privacy, Intentional Interference with Prospective Contractual Relations, Unfair Trade Practices, Veil Piercing, and Civil Conspiracy as well as the claims against Ellen Weaver, individually, and the John Does.

A. False Light

Plaintiff's claim for "False Light" should be dismissed because South Carolina recognizes no such tort. *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997) ("[N]o South Carolina case has recognized this tort."); *see also* F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts 453 (1990) (same). Accordingly, Plaintiff's claim for False Light should be dismissed.

B. Invasion of Privacy

Plaintiff has not pled facts sufficient to constitute any cause of action for invasion of privacy because Plaintiff failed to allege that the information was publicized in any way. In South Carolina, the elements of invasion of privacy by publicity include: (1) publicizing, (2)

absent any waiver or privilege, (3) private matters in which the public has no legitimate concern, (4) so as to bring shame or humiliation to a person of ordinary sensibilities. *Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 477–78, 514 S.E.2d 126, 130 (1999).* Here, Plaintiff has not alleged that Defendants "publicized" anything.

Our Supreme Court has addressed this issue squarely. *See Swinton Creek Nursery, supra.* In that case, the Court held that the *publicity* element could not be met by mere *publication. Id.* at 479 ("communication to a single individual or to a small group of people will not give rise to an invasion of privacy claim.") (citing *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (emphasis added); *Snakenberg v. Hartford Cas. Ins. Co., Inc.*, 299 S.C. 164, 383 S.E.2d 2 (Ct. App. 1989); *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989); *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984).

South Carolina, like many other jurisdictions, follows the Restatement (Second) of Torts, which contains the following:

> The form of invasion of the right of privacy covered in this Section depends upon publicity given to the private life of the individual. "Publicity," as it is used in this Section, differs from "publication," as that term is used in sec. 577 in connection with liability for defamation. "Publication," in that sense, is a word of art, which includes any communication by the defendant to a third person. "Publicity," on the other hand, means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication, which may be oral, written or by any other means. It is one of a communication that reaches, or is sure to reach, the public.
>
> Thus it is not an invasion of the right of privacy, within the rule stated in this Section, to communicate a fact concerning the plaintiff's private life to a single person or even to a small group of persons. On the other hand, any publication in a newspaper or a magazine, even of small circulation, or in a handbill distributed to a large number of persons, or any broadcast over the radio, or statement made in an address to a large audience, is sufficient to give publicity within the meaning of the term as it is used in this Section. The distinction, in other words, is one between private and public communication.

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The Restatement (Second) of Torts, § 652D cmt. a, at 383 (1977).

Plaintiff's Complaint does not allege that Defendants were "publicizing" anything. Rather, Defendant Weaver was alleged to have spoken to "***a*** political grassroots advocate." Compl. ¶ 9 (emphasis added). Weaver was also alleged to "tell [***Plaintiff***]" that "he was the most destructive factor." Compl. ¶ 17 (emphasis added). A "Senior Fellow" was alleged to have "yelled ***at [Plaintiff]***." (emphasis added). Also, some unspecified "Defendant" is alleged to have told "others" about this yelling. Neither "Defendant" nor "others" is defined. Regardless, none of these verbal publications were directed to the public. Therefore, they do not constitute "publicity" within this context.

Accordingly, Plaintiff's claim for invasion of privacy should be dismissed with prejudice.

C. Intentional Interference with Prospective Contractual Relations

Plaintiff's claims for intentional interference with prospective contractual relations should be dismissed because Plaintiff has failed to allege the existence of any identifiable contracts or any identifiable benefits therefrom.

In order to recover for the tort of intentional interference with prospective contractual relations, the plaintiff must prove: (1) the intentional interference with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; and (3) causing injury to the plaintiff. *United Educ. Distributors, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002); *Brown v. Stewart*, 348 S.C. 33, 55, 557 S.E.2d 676, 688 (Ct. App. 2001); *Love v. Gamble*, 316 S.C. 203, 214, 448 S.E.2d 876, 882 (Ct. App. 1994).

A cause of action for intentional interference with prospective contractual relations generally stands following *the loss of an identifiable contract or expectation.* See, e.g., *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 395 S.E.2d 179 (1990) (alleged interference

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with a verbal parts and labor supply contract); *Love*, 316 S.C. at 205-07, 448 S.E.2d at 877-78 (alleged interference with pickle supply contract); *Williams v. Riedman*, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 2000) (asserted as a counterclaim by employer in a wrongful termination case where the former employee allegedly solicited the employer's current clients); *Edens & Avant Inv. Props., Inc. v. Amerada Hess Corp.*, 318 S.C. 134, 456 S.E.2d 406 (Ct. App. 1995) (alleging interference with an option contract; nevertheless, the action is dismissed because plaintiff has no right to recover damages); *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994) (alleged interference with a subcontracting agreement); *Gailliard v. Fleet Mortgage Corp.*, 880 F.Supp. 1085 (D. S.C. 1995) (alleged interference with a mortgage contract dismissed by summary judgment motion). "That is, '*Crandall* and other authority discussing this tort usually require the aggrieved party to have been unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions.'" *United Educ. Distributors, LLC* 350 at 14 (quoting *Egrets Pointe Townhouses Prop. Owners Ass'n v. Fairfield Cmtys., Inc.*, 870 F.Supp. 110, 116 (1994)).

Thus, the "plaintiff must actually demonstrate, *at the outset*, that he had a truly prospective (or potential) contract with a third party." *Id.* (emphasis added). This does not require plaintiff to prove the tort in his initial pleadings; rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts. *Id.*

This requirement is nearly universal among jurisdictions. *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 563 A.2d 31, 36 (N.J. 1989) ("What is actionable is the luring away, by devious, improper and unrighteous means, of the customer of another."); *Democratic State Comm. v. Bebchick*, 706 A.2d 569, 573 (D.C.1998) ("In order to survive a motion to dismiss on a claim of intentional interference with prospective economic advantage a plaintiff

must allege business expectancies, not grounded on present contractual relationships, but which are commercially reasonable to anticipate."); *Walker v. Sloan*, 137 N.C. App. 387, 529 S.E.2d 236, 242 (N.C. 2000) ("[T]o state a claim for wrongful interference with prospective advantage, the plaintiffs must allege facts to show that the defendants acted without justification in inducing a third party from entering into a contract with them which contract would have ensued but for the interference.").

In this case, Plaintiff's conclusory allegations read simply:

A SIXTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS)

50. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

51. Defendants directed others to not do business with Plaintiff and associated entities by making false and defamatory statements and innuendo.

52. As a direct and proximate result of the Defendant's actions, Plaintiff was damaged.

This summary allegation fails to identify either "a truly prospective (or potential) contract with a third party" or "some reasonable expectation of benefits from the alleged lost contracts." *See United Educ. Distributors, LLC v. Educ. Testing Serv.*at 15, 564 S.E.2d at 329 (affirming trial court's dismissal pursuant to Defendant's Rule 12(b)(6) motion).

Accordingly, it should be dismissed.

D. Unfair Trade Practices

Plaintiff's claim under the South Carolina Unfair Trade Practice Act should be dismissed because the allegations do not involve a trade or commerce. Section 39-5-20 provides "Unfair methods of competition and unfair or deceptive acts or practices ***in the conduct of any trade or***

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commerce are hereby declared unlawful." S.C. Code Ann. § 39-5-20 (emphasis added). The terms "trade" and "commerce" are defined by the statute:

> the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

S.C. Code Ann. § 39-5-10 (b).

In this case, none of Plaintiff's allegations involve any advertising, offering for sale, or distribution of any services or property, nor did Defendants purchase or buy anything or engage in trade or commerce with Plaintiff. The Unfair Trade Practice Act simply does not apply.

Accordingly, Plaintiff's claims under the Unfair Trade Practice Act should be dismissed.

E. Veil Piercing

Plaintiff's claim for veil piercing should be dismissed because the Plaintiff has not set forth any facts as to how he would be subject to any fundamental unfairness that would justify the disregard of the corporate form. Moreover, any such claim is not ripe at this stage.

"If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." *Sturkie v. Sifly*, 280 S.C. 453, 456–57, 313 S.E.2d 316, 318 (Ct. App. 1984); *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007).

South Carolina courts use the two-pronged *Sturkie* test to determine whether a corporate veil should be pierced. *Mid-S. Mgt. Co. Inc.* at 597. The first part of the test requires a rigorous eight-factor analysis to analyze the observance of the corporate formalities by the dominant shareholders, and the second requires the party seeking to pierce the corporate veil to prove

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injustice or fundamental unfairness if the corporate veil is not pierced. *Id.* The burden of proof is on the party asserting that the corporate veil should be pierced. *Id.*

Here, Plaintiff has failed to make even conclusory allegations regarding any "injustice or fundamental unfairness" that would result from the disregard of the corporate form. Moreover, even if he had, such an action or remedy would be woefully premature as no liability has been established.

Accordingly, Plaintiff's claim for veil piercing should be dismissed.

F. Civil Conspiracy

Plaintiff has not pled facts sufficient to constitute a cause of action for civil conspiracy. In South Carolina, the tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009); *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. *Id.* (citing *Vaught*); see also *Pye v. Estate of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006) ("The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination *per se*.").

Further, "[a] claim for civil conspiracy *must allege additional acts* in furtherance of a conspiracy rather than reallege other claims within the complaint. *Hackworth* at 115 (citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190,

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336 S.E.2d 472 (1985) (emphasis added). Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, *the damages alleged must go beyond the damages alleged in other causes of action. Id.* (citing *Vaught*, 300 S.C. at 209) (emphasis added).

Here, Plaintiff has done nothing more than allege that the Defendants "conspired and colluded together and amongst themselves to execute the above stated Causes of Action [sic]." (Pl.'s Compl. ¶ 63.) Plaintiff does not even attempt to allege "additional acts" as contemplated by the Supreme Court. Similarly, Plaintiff merely alleges that he "was damaged" as a result of the collusion, but fails to allege those damages went "beyond the damages alleged in the other causes of action." (Pl.'s Compl. ¶ 64.) As to both, Plaintiff is attempting blur the distinction between criminal and civil conspiracy by placing the gravamen on the agreement rather than the damages.

Accordingly, Plaintiff's conspiracy claim should be dismissed.

G. John Doe Defendants

Plaintiff's claims against the John Doe Defendants should be dismissed because his claims are nothing more than conclusory innuendo concerning some alleged "financial interest" they supposedly have in PPI. Paragraph Nos. 39-42 of Plaintiff's Complaint contain the only factual allegations related the John Doe Defendants. There, they are alleged to be people with a "financial interest" related to school choice advocacy and to have benefitted from the actions of Defendants Weaver and PPI. However, absent are any factual actual allegations that could constitute any of Plaintiff's causes of actions. As such, the John Does should be dismissed.

H. Ellen Weaver, Individually

Ellen Weaver, individually, should be dismissed because Plaintiff's allegations are that she was acting as an agent for PPI. "A master is subject to liability for defamatory statements

made by a servant acting within the scope of his employment, or, as to those hearing or reading the statement, within his apparent authority." Restatement (Second) of Agency § 247 (1958). All allegations are that Weaver was acting in her official capacity. As such, she should be dismissed in her individual capacity.

V. Conclusion

For all the foregoing reasons, Defendants request the Court dismiss Plaintiff's Complaint with prejudice.

Turner, Padget, Graham & Laney, P.A.

September 26, 2018

By: s/ Bettis C. Rainsford, Jr.

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Attorneys for Defendants

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, individually, Palmetto Promise Institute & John Doe 1–20, Defendants.	)	**PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS & ALTERNATIVE MOTION**

COME NOW, Plaintiff Jefferson Davis, Jr. (hereinafter referred to as **"Plaintiff"** or "**Davis**"). appearing ***Pro Se*** and specially for purposes of this Response in Opposition to Defendants Ellen Weaver, individually, Palmetto Promise Institute & John Doe 1-20 (hereinafter referred to as the "Defendants") Motion to Dismiss, showing this Court as follows:

INTRODUCTION

The Defendants in their perfunctory Motion to Dismiss seek to dismiss Plaintiff's Complaint on the following grounds:

- Rule 12(b)(6) of the South Carolina Rules of Civil Procedure: "failure to state facts sufficient to constitute a cause of action".

ALTERNATIVE MOTION - AMEND COMPLAINT

Defendants furthermore request that this Court dismiss the Complaint "with prejudice". If this Court for any reason deems Plaintiff's original Complaint to be deficient, Plaintiff hereby moves this Court to allow him to (1) AMEND his Complaint in an attempt to correct any deficiencies or (2) alternatively to incorporate by reference the allegations in Plaintiffs August 28, 2018 "Notice of Related Matter" filing and add additional named Defendants / John Does.

STANDARD OF REVIEW – *PRO SE* FILINGS

Plaintiff would like to remind the Court that he is a *pro se* litigant. Pro se complaints are held to a less stringent standard than those drafted by attorneys. Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). In fact, a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow for the development of a potentially meritorious case. See, e.g., Erickson v. Pardus, 551 U.S. 89, 94 (2007). This mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so.

STANDARD OF REVIEW – 12(B)(6) MOTION

"Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. The court should not dismiss a complaint merely because the court doubts the plaintiff will prevail in the action. Id.

Analysis of Rule 12(b)(6) Motion

Pro Se Plaintiff has provided this Court and the Defendants with an eleven-page Complaint with 64 paragraphs in order to comply with the pleading requirements of Rule 8. Rule 8(a)(2)

specifically mandates "a short and plain statement of the facts showing that the pleader is entitled to relief". If anything, *Pro Se* Plaintiff has provided too many facts in his Complaint in an effort to place Defendants on notice of the breadth of his claims. Plaintiff's facts are detailed and specific and certainly sufficient to place the Defendants (and others) on notice as to Plaintiffs claims so that the litigation can be engaged. This is not a frivolous lawsuit with no connection or set of facts to lead to a dispute between the parties. The Defendants have engaged continually in actions which have damaged Plaintiff, and Plaintiff has detailed those actions in his complaints.

Defendants move for dismissal with the perfunctory claim that none of the allegations or facts presented would cause any liability to any Defendant. Plaintiff made very specific allegations that the parties had divergent views on "school choice". Plaintiff alleged Defendants Weaver and Palmetto Promise Institute are "paid" by yet identified third parties (John Doe) to advocate for their opposing view. Defendant has alleged a multi-party conspiracy to further Defendants bad acts. A complaint is as Rule 8 outlines, a "short and plain statement" in order to place Defendants on notice. Defendants should now be on notice of the extent of Plaintiff case.

Defendants also make claim that the Complaint "failed to allege any facts that would subject Defendant Ellen Weaver to any liability in her individual capacity." Plaintiff has specifically alleged that Defendant Weaver told at least one party that he had been disbarred. See Paragraph 13. Such statements are defamation per se whereby damages are assumed. The statement is legally equivalent to accusing someone of having a sexually transmitted disease when in fact they do not. Plaintiff also alleged that this was not the only time Defendant Weaver and the other Defendants had made such defamatory and false light claims. See Paragraph 15. No further facts or allegations would put Defendants on notice more than they are today.

No Removal of listed Causes of Action. Defendants may have a desire to eliminate certain causes of action. Nine causes of action are listed in the Complaint. The facts within the Complaint and new / supplemental filings (see August 28, 2018, Notice of Related Matter) allege and contemplate all nine causes of action. Perhaps more will be discovered during the course of litigation as is expected in cases of this nature. As such, no individual cause of action should be removed at this point in the litigation.

No Removal of Defendants. Defendants may desire to excuse certain parties, specifically Defendant Ellen Weaver individually as well as the yet to be identified and named John Doe(s). Currently all defendants are represented by the same counsel. However, it is believed and the facts alleged in the Complaint certainly contemplate that the Defendants will have very divergent interest as the litigation proceeds and after discovery is engaged. As such, no Defendant should be removed at this point in the litigation.

Totality of the Complaint. A 12(b)(6) motion is not the appropriate time or motion to remove individual causes of action or defendants. A 12(b)(6) motion considers the totality of the Complaint, not individual causes of action or defendants. As such the 12(b)(6) must be granted in total with a complete dismissal, or DENIED allowing the Complaint to stand in full and the litigation to be engaged.

NOTICE OF RELATED MATTER

On August 28th, 2018, Plaintiff filed with this Court a Notice of Related Matter (Ethics Complaint – Rick Reames). The facts and circumstances in that complaint are related to this Case. Although it should be clear to Defendants the breadth of this matter, Plaintiff is doing his best to make sure Defendants and this Court are fully aware of the extent of Plaintiff's claims.

The referenced Ethics Complaint was filed after consultation with and at the direction of the SC Bar Ethics Advisory group. See Attached Declaration #7. The SC Bar also identified to Plaintiff potential criminal implications of the fact scenario. See Attached Declaration #7. The SC Supreme Court Office of Disciplinary Counsel (ODC) has also instructed Plaintiff to refer the matter to the applicable "law enforcement agency". See Attached Declaration #6. The facts alleged appear sufficient for the SC Bar and the ODC, and as such should be sufficient for Defendants to be placed on notice as to the breadth of this litigation.

CONCLUSION

Defendant's Rule 12(b)(6) motion should clearly be **DENIED** and the litigation to be engaged.

Alternatively, *Pro Se* Plaintiff moves this Court to allow him to (1) AMEND his Complaint in an attempt to correct any deficiencies or (2) alternatively to incorporate by reference the allegations in Plaintiffs August 28, 2018 "Notice of Related Matter" filing and add additional named Defendants / John Does.

Respectfully submitted this **25th day of September, 2018**.

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF, *PRO SE*

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Ellen Weaver, individually, Palmetto Promise Institute & John Doe 1–20,	)	
	)	
Defendants.	)	

DECLARATION OF JEFFERSON DAVIS, JR.

1. My name is Jefferson Davis, Jr. I am more than eighteen (18) years of age and competent to testify to the matters stated in this Declaration. The facts provided in this declaration are based upon my personal knowledge.
2. I am the *Pro Se* Plaintiff in the above captioned case.
3. As a *Pro Se* party, I am barred from filing pleadings electronically and am thus required to file conventional paper pleadings by mail.
4. On Tuesday August 28th, 2018, I mailed **Plaintiff's Notice of Related Matter (Ethics Complaint – Rick Reames)** to the Richland County Clerk of Court. The document was stamped filed by the Clerk on Friday August 31, 2018.
5. **Plaintiff's Notice of Related Matter (Ethics Complaint – Rick Reames)** noted above is a true and correct copy of the ethics complaint I filed with the **South Carolina Supreme Court's Commission on Lawyer Conduct**.

6. The attached exhibit "A" is a true and correct copy of the response dated September 5, 2018, that I received from the **Office of Disciplinary Counsel** with their belief the more appropriate forum would be "applicable law enforcement agency."
7. I have consulted with the **SC Bar Ethics Advisory group** on the facts in the above referenced Ethics Complaint. I was advised that I may have a professional ethics obligation to file an ethics complaint and that there may also be criminal implication from the fact scenario.

I hereby declare under the penalty of perjury that the foregoing is true and correct according to my personal knowledge, and if called as a witness, I could and would testify truthfully about the information contained in this Declaration.

This 25th day of September, 2018.

JEFFERSON DAVIS, JR.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF, *PRO SE*

COPY

"A"

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

John S. Nichols
Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Facsimile: (803) 734-1964

September 5, 2018

PERSONAL AND CONFIDENTIAL

Jeff Davis
403 McCarter Avenue
Greenville, SC 29615

RE: Your Correspondence of August 27, 2018

Dear Mr. Davis:

We recently received your complaint alleging improprieties by employees of the South Carolina Department of Revenue. This office believes that the more appropriate forum for an inquiry into these allegations would be with the South Carolina State Ethics Commission and/or the applicable law enforcement agency.

Feel free to contact me if you have any questions or concerns.

Sincerely,

COPY

C. Tex Davis Jr.

CTD/

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Ellen Weaver, individually, Palmetto Promise Institute & John Doe 1–20,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **25th day of September, 2018**, as follows:

PLEADINGS: **PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS & ALTERNATIVE MOTION**

PARTIES SERVED: Bettis C. Rainford, Jr., Esq.
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff	)	
vs.	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, et al.,	)	
Defendants.	)	

PROOF OF SERVICE
South Carolina Educational Credit for Exceptional Needs Children Fund
("ECENC Fund")
(Acceptance)

Please find attached the ACCEPTANCE OF SERVICE for the above named Defendant as of December 4th, 2018 .

Respectfully submitted this **5th day of December, 2018.**

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF, *PRO SE*

Gmail by Google

Jeff Davis <jdavis@apogeetax.com>

Case No. 2018-cp-40-02425 Acceptance of Service

Geoffrey Chambers <g.k.chambers@gmail.com> Wed, Dec 5, 2018 at 12:25 PM
To: Jeff Davis <jdavis@apogeetax.com>
Cc: rreames@nexsenpruet.com

Mr. Davis,
ECENCF was contacted by Rick Reames, our agent of service, yesterday (December 4, 2018). Mr. Reames stated he received a copy of the summons and complaint on December 4th.

As counsel for ECENCF, I accept service of the summons and complaint in case number 2018-CP-40-02425 on behalf of Educational Credit for Exceptional Needs Children Fund (ECENCF).

To prove service with the court, you simply need to print this email and file it with the court.

Geoffrey Chambers
Counsel for ECENCF

ELECTRONICALLY FILED - 2018 Dec 14 2:18 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Case No.: 2018-CP-40-02425
Plaintiff	)	
v.	)	Motion to Dismiss
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40,	)	
Defendants	)	

To: Jefferson Davis, Jr.

Please take notice that Defendant South Carolina Educational Credit for Exceptional Needs Children Fund hereby respectfully moves this Honorable Court as soon as practicable to dismiss this action pursuant to South Carolina Rules of Civil Procedure 8(a), 12(b)(6) and 12(b)(8).

Signature on Next Page

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 14th day of December, 2018.
Jacksonville, Florida

ELECTRONICALLY FILED - 2018 Dec 14 2:18 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Case No.: 2018-CP-40-02425
Plaintiff	)	
v.	)	Certificate of Service
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40,	)	
Defendants	)	

On December 28, 2018, the Motion to Dismiss pursuant to Rule 12(b) on behalf of ECENCF was served upon Jefferson Davis by placing a copy in the US Mail addressed to 403 McCarter Ave., Greenville, SC 29615

(Signature on Next Page)

Respectfully Submitted:

s/Geoffrey Chambers

Geoffrey Chambers
Counsel for ECENCF
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043

This 28th day of December, 2018.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Dec 14 2:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40, Defendants	Case No.: 2018-CP-40-02425 Motion for Protective Order

To: Jefferson Davis, Jr.

Please take notice that Defendant South Carolina Educational Credit for Exceptional Needs Children Fund (ECENCF) hereby respectfully moves this Honorable Court as soon as practicable for a Protective Order pursuant to South Carolina Rules of Civil Procedure 26(c).

ELECTRONICALLY FILED - 2018 Dec 14 2:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

Defendant ECENCF has filed a Motion pursuant to SCRCP 12(b). Plaintiff Jefferson Davis, Jr. has served a discovery request entitled "Plaintiffs First Request for Production of Documents and Things To Defendant" dated December 7, 2018.

Defendant ECENCF requests this Honorable Court grant a Protective Order holding the time for response to this discovery and any future discovery served prior to answer of Defendant ECENCF in abeyance until 30 days after submitting an answer and subjecting itself to the jurisdiction of this Honorable Court under the above captioned civil action. This request for Protective Order is made in the interest of protecting Defendant ECENCF from annoyance and undue burden and expense.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 14th day of December, 2018.
Jacksonville, Florida

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Case No.: 2018-CP-40-02425
Plaintiff	)	
v.	)	Certificate of Service
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40,	)	
Defendants	)	

On December 28, 2018, the Motion for Protection from Discovery on behalf of ECENCF was served upon Jefferson Davis by placing a copy in the US Mail addressed to 403 McCarter Ave., Greenville, SC 29615

(Signature on Next Page)

Respectfully Submitted:

s/Geoffrey Chambers

Geoffrey Chambers
Counsel for ECENCF
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043

This 28th day of December, 2018.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Dec 18 11:04 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc., d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No. 2018-CP-40-02425 **AFFIDAVIT OF SERVICE FOR DEFENDANT SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE AND DEFENDANT BARTON**

WHEREAS the undersigned represents Defendant South Carolina Education Oversight Committee ("EOC") and Defendant Barton in this action;

WHEREAS Defendant EOC received the Amended Complaint in this action on November 30, 2018 by certified mail;

ELECTRONICALLY FILED - 2018 Dec 18 11:04 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

WHEREAS receipt by Defendant EOC did not constitute effective service of process on either Defendant EOC or Defendant Barton under Rule 4(d)(5) of the South Carolina Rules of Civil Procedure;

NOW THEREFORE, the undersigned counsel for Defendant EOC and Defendant Barton hereby accepts service of Plaintiff's Amended Complaint on behalf of Defendant EOC and Defendant Barton in my legal capacity as their attorney as of the 14th day of December, 2018. As such, I acknowledge that the responsive pleading is due on or before January 13, 2019.

s/Christopher S. Elliott
Charles J. Boykin
Kenneth A. Davis
Christopher S. Elliott

Boykin & Davis, LLC
220 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

cjboykin @boykinlawsc.com
kdavis@boykinlawsc.com
celliott@boykinlawsc.com

Attorneys for Defendant South Carolina Education Oversight Committee and Defendant Barton

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** Jefferson Davis, Jr., Plaintiff, v. Ellen Weaver, Chad Connelly, Iran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Education Credit for Exceptional Needs Children Fund, South Carolina Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	**IN THE COURT OF COMMON PLEAS** Civil Action No. 2018-CP-40-02425 **MOTION TO DISMISS ON BEHALF OF DEFENDANTS RICK REAMES AND SOUTH CAROLINA DEPARTMENT OF REVENUE**

TO: JEFFERSON DAVIS, JR., PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Defendants Rick Reames ("Reames") and South Carolina Department of Revenue ("SCDOR") will move before

the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, at such time and place as may be set by the Court, for an Order pursuant to Rule 12(b)(1)(2)(4)(5) and (6) of the South Carolina Rules of Civil Procedure dismissing Defendants Reames and SCDOR from this action with prejudice. The grounds for this motion are as follows:

1. The First Amended Complaint, filed on November 19, 2018, has not been properly served on the Defendants Reames and SCDOR pursuant to Rule 4, SCRCP, and therefore, the Defendants should be dismissed pursuant to Rule 12(b)(2),(4), and (5), SCRCP.

2. The Plaintiff's claims as against Defendants Reames and SCDOR are barred by the applicable two year statute of limitations, pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-110.

3. The individual Defendant Reames is entitled to employee immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, as to the allegations asserted in the Plaintiff's Amended Complaint, and as such, this Defendant should be dismissed with prejudice from this action.

4. Punitive damages are not recoverable as against Defendants Reames and SCDOR in this action, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-120, and South Carolina common law and, therefore, should be dismissed from the Plaintiff's Amended Complaint.

This Motion is based upon the pleadings filed in this case, the Rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing.

[Signature page to follow]

DAVIDSON, WREN & PLYLER, P.A.

BY: *s/ Michael B. Wren*

William H. Davidson, II, #1558
Michael B. Wren, #69669
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: 803-806-8222
F: 803-806-8855
E-Mail: wdavidson@dml-law.com
mwren@dml-law.com

ATTORNEYS FOR DEFENDANTS REAMES AND SCDOR

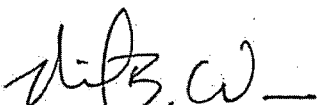
Columbia, South Carolina
December 21, 2018

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS**
Jefferson Davis, Jr., Plaintiff, v. Ellen Weaver, Chad Connelly, Iran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Education Credit for Exceptional Needs Children Fund, South Carolina Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	Civil Action No. 2018-CP-40-02425 **CERTIFICATE OF SERVICE**

The undersigned employee of Davidson, Wren & Plyler, P.A., attorneys for the Defendants Rick Reames and South Carolina Department of Revenue, does hereby certify that service of the

Motion To Dismiss on Behalf of Defendants Rick Reames and South Carolina Department of Revenue in the above-captioned action was made upon the *pro se* Plaintiff of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 21st day of December, 2018, addressed as follows:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, South Carolina 29615



s/Michael B. Wren

ELECTRONICALLY FILED - 2018 Dec 21 3:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	CASE NO.: 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	**MOTION TO DISMISS**

COMES NOW, Defendant Stephen D. Kirkland, by and through the undersigned counsel, and hereby moves this Court for an Order granting his Motion to Dismiss pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure.

This Motion is based on the following grounds: Plaintiff has failed to properly serve Mr. Kirkland with the Amended Summons and the Amended Complaint. It appears he attempted to serve Mr. Kirkland by Certified Mail; however, Mr. Kirkland never received and did not sign the return receipt. Further, no one authorized to sign on behalf of Mr. Kirkland signed the return

receipt. In addition, Plaintiff has failed to state facts sufficient to constitute a cause of action against Mr. Kirkland, and therefore, Mr. Kirkland is entitled to a dismissal with prejudice.

This Motion is supported by the Affidavit of Stephen D. Kirkland, filed with this motion as Exhibit A, and will be further supported by a Memorandum of Law to be filed prior to a hearing on the Motion. It is further supported by the South Carolina Rules of Civil Procedure, applicable statutory and case law, and any other evidence properly submitted prior to the hearing of this Motion.

WHEREFORE, Mr. Kirkland prays the Court dismiss the Complaint with Prejudice and with all costs taxed against the Plaintiff.

This 21st day of December, 2018.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP.

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
WILLIAM J. FARLEY, III
State Bar No.: 101033
Attorney for Defendant Stephen D. Kirkland

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@carlockcopeland.com
wfarley@carlockcopeland.com
Ph: 843-727-0307

ELECTRONICALLY FILED - 2018 Dec 21 3:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-40-02425 **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within and foregoing ***Defendant Stephen D. Kirkland's Motion to Dismiss*** upon all parties to this matter via ECF notification to counsel of record on the date of filing the Motion, and/or regular U.S. Mail, proper postage prepaid, addressed to *pro se* Plaintiff via regular United States mail upon receipt of the file-stamped Motion, as follows:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
jdavis@apogeetax.com
Pro se Plaintiff

Mark S. Barrow, Esq.
Martin S. Driggers, Jr., Esq.
Sweeny, Wingate & Barrow, PA
115 Cargill Way, Suite B
Hartsville, SC 29550

Counsel for Def. Palmetto Family Council; Palmetto Family Alliance; and Palmetto Family Action
Geoffrey K. Chambers, Esq.
411 Walnut Street No. 10646
Green Cove Springs, FL 32043
Counsel for Defs. South Carolina Educational Credit forExceptional Needs Childrens Fund; and Randy Page

Miles E. Coleman, Esq.
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 10084
Greenville, SC 29603
Counsel for Defendant SCRG Foundation n/k/a Enriching Students' Knowledge

Michael B. Wren, Esq.
P.O. Box 8568
Columbia, SC 20202
Counsel for Defs. South Carolina Dept. of Revenue; and Rick Reames

Christopher S. Elliott, Esq.
P.O. Box 11844
Columbia, SC 29211
Counsel for Counsel for Defs. South Carolina Education Oversight Committee; and Melanie Barton

This 31st day of December, 2018.

Teri Rowt
Secretary to Douglas W. MacKelcan and William J. Farley, III

Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Ph: (843) 329-8346

ELECTRONICALLY FILED - 2018 Dec 21 10:28 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40, Defendants	Case No.: 2018-CP-40-02425 Motion to Dismiss

To: Plaintiff Jefferson Davis, Jr.

Please take notice that Defendant Randy Page hereby respectfully moves this Honorable Court as soon as practicable to dismiss this action pursuant to South Carolina Rules of Civil Procedure 8(a), 12(b)(5), 12(b)(6) and 12(b)(7). Defendant reserves the right to support this Motion with additional materials and exhibits.

Signature on Next Page

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 21st day of December, 2018.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Dec 21 10:28 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Case No.: 2018-CP-40-02425
Plaintiff	)	
v.	)	Certificate of Service
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Childrens Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA And John Does 1-40,	)	
Defendants	)	

On December 28, 2018, the Motion to Dismiss pursuant to Rule 12(b) of Defendant Randy Page was served upon Jefferson Davis by placing a copy in the US Mail addressed to 403 McCarter Ave., Greenville, SC 29615

(Signature on Next Page)

Respectfully Submitted:

s/Geoffrey Chambers

Geoffrey Chambers
Counsel for ECENCF
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043

This 28th day of December, 2018.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Dec 26 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-40-02425

Jefferson Davis, Jr.,
Plaintiff,
vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1-40,
Defendants.

MOTION TO DISMISS BY DEFENDANTS PALMETTO FAMILY COUNCIL AND PALMETTO FAMILY ALLIANCE

TO: Plaintiff Jefferson Davis, Jr.

COMES NOW, Defendants Palmetto Family Council and Palmetto Family Alliance, by and through the undersigned counsel, and hereby move this Court for an Order granting their Motion to Dismiss pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure.

This Motion is based on the following grounds:

1. Plaintiff has failed to properly serve Defendants Palmetto Family Council and Palmetto Family Alliance with the Amended Summons and the Amended Complaint. It appears he attempted to serve Stephen D. Kirkland on behalf of Defendants Palmetto Family Council and Palmetto Family Alliance by Certified Mail, Return Receipt Requested; however, Mr. Kirkland never received and did not sign the return receipt. Further, no one authorized to sign on behalf of Mr. Kirkland signed the return receipt.

2. In addition Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendants Palmetto Family Council and Palmetto Family Alliance, and therefore Palmetto Family Council and Palmetto Family Alliance are entitled to a dismissal with prejudice.

This Motion will be supported by a Memorandum of Law to be filed prior to a hearing on the Motion. It is further supported by the South Carolina Rules of Civil Procedure, applicable statutory and case law, and any other evidence properly submitted prior to the hearing of this motion.

WHEREFORE, Defendants Palmetto Family Council and Palmetto Family Alliance pray the Court dismiss the Complaint with Prejudice and with all costs taxes against the Plaintiff.

This 21st day of December, 2018.

Respectfully submitted,

SWEENY, WINGATE & BARROW, PA

w/Mark S. Barrow

Mark S. Barrow
Martin S. Driggers, Jr.
115 Cargill Way, Suite B
Hartsville, SC 29550
P: (843) 878-0390
F: (843) 878-0393

ATTORNEYS FOR DEFENDANTS
PALMETTO FAMILY COUNCIL
AND PALMETTO FAMILY ALLIANCE

ELECTRONICALLY FILED - 2018 Dec 26 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

ELECTRONICALLY FILED - 2018 Dec 26 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-40-02425

Jefferson Davis, Jr.,
Plaintiff,
vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1-40,
Defendants.

CERTIFICATE OF MAILING

I, the undersigned, Lynn G. Bottenus, Paralegal to Martin S. Driggers, Jr., Sweeny, Wingate & Barrow, P.A., do hereby certify that the document hereinbelow specified has this day been served upon opposing counsel and all interested parties in this action by depositing same in the United States mail, postage prepaid, this 21st day of December, 2018, addressed as follows:

DOCUMENT: MOTION TO DISMISS ON BEHALF OF DEFENDANTS PALMETTO FAMILY COUNCIL AND PALMETTO FAMILY ALLIANCE

COPY TO: JEFFERSON DAVIS, JR.
403 MCCARTER AVENUE
GREENVILLE, SC 29615
PLAINTIFF, *PRO SE*

s/Lynn G. Bottenus
Lynn G. Bottenus
Paralegal to Martin S. Driggers, Jr.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1–40, Defendants.	)	C.A. No.: 2018-CP-40-02425 **DEFENDANT SCRG FOUNDATION'S MOTION TO DISMISS**

COMES NOW Defendant SCRG Foundation, n/k/a Donors Enriching Students' Knowledge ("DESK"), by and through undersigned counsel, and reserving its rights to plead otherwise and without waiving any argument not expressly made herein, hereby moves to dismiss Plaintiff's claims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"). Dismissal of the instant lawsuit is required because the Amended Complaint never even mentions SCRG Foundation / DESK other than in the caption and the

introductory section naming the defendants; it never makes a factual allegation against SCRG Foundation / DESK; it never asserts a cause of action against SCRG Foundation / DESK with anything approaching the degree of specificity necessary to assert a plausible claim; and it never asserts any cause of action upon which relief could be granted against SCRG Foundation / DESK. Further, the Amended Complaint reasserts several causes of action that were previously explicitly dismissed *without leave to amend* by Judge Benjamin's Amended Order dated October 30, 2018.

For the foregoing reasons, as well as those to be asserted and more fully stated in any memorandum of law filed by SCRG Foundation / DESK in support of this motion and by any arguments made at a hearing on the motion, and without waiving any arguments, SCRG Foundation / DESK respectfully requests this Court dismiss SCRG Foundation / DESK from the instant proceeding.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Miles E. Coleman

Miles E. Coleman
SC Bar No. 78264
E-mail: miles.coleman@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorney for Defendant SCRG Foundation n/k/a Donors Enriching Students' Knowledge

Greenville, South Carolina
December 26, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, Defendants.	)	C.A. No.: 2018-CP-40-02425 **CERTIFICATE OF SERVICE**

I, the undersigned counsel of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel who have appeared in this action with a copy of the pleading specified below by e-filing, and by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading:	Defendant SCRG Foundation's Motion to Dismiss
Pro se party served:	Jefferson Davis, Jr. 403 McCarter Avenue Greenville, SC 29615

In light of the burden of serving this pleading by mail on the numerous defendants who have not yet appeared in this action and on whom it is not yet clear if the Amended Complaint has been served, undersigned counsel has not served said co-defendaants but, rather, has filed simultaneously with SCRG Foundation / DESK's Motion to Dismiss a motion pursuant to Rule 5(c), SCRCP for an order that the service of this responsive pleading need not be made on co-defendants who have not yet appeared in this action.

s/Miles E. Coleman
Miles E. Coleman

December 26, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc., d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No. 2018-CP-40-02425 **DEFENDANTS' SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE AND MELANIE BARTON'S NOTICE OF MOTION AND MOTION TO DISMISS**

TO: PRO SE PLAINTIFF JEFFERSON DAVIS, JR.

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant South Carolina Education Oversight Committee ("EOC") and Defendant Barton, by and through their undersigned counsel, hereby move the Court for dismissal in this matter. Defendants assert:

1. Plaintiff's causes of action against Defendant EOC and Defendant Barton should be dismissed for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP;

2. Based upon a review of only the Complaint, Plaintiff fails to state facts sufficient to constitute a cause of action against Defendants because Plaintiff's Complaint as plead is barred by the statute of limitations prescribed by S.C. Code Ann. § 15-78-110; and

3. Plaintiff's Complaint alleges acts by Defendant Barton which were performed in the scope of her employment as the Executive Director of Defendant EOC. Accordingly, Defendant Barton should be dismissed from this action pursuant to S.C. Code Ann. § 15-78-70.

As set forth in the supporting Memorandum of Law, to be filed at a later date and incorporated herein, Defendants move the Court for an Order dismissing the case. This motion is based upon the pleadings in this action, together with all applicable statutory and case law.

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: s/ Christopher S. Elliott
Charles J. Boykin, Esq.
Kenneth A. Davis, Esq.
Christopher S. Elliott, Esq.

220 Stoneridge Drive, Suite 100
P.O. Box 11844 (29211-1070)
Columbia SC 29210
Telephone: 803-254-0707
Facsimile: 803-254-5609

cjboykin@boykinlawsc.com
kdavis@boykinlawsc.com
celliott@boykinlawsc.com

Attorneys for Defendants South Carolina Education Oversight Committee and Defendant Barton

December 28, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc., d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-02425

CERTIFICATE OF SERVICE

The undersigned of Boykin & Davis, L.L.C., hereby certifies that he has served the *Pro Se* Plaintiff, Clarence B. Jenkins, Jr., with the foregoing **DEFENDANTS SOUTH CAROLINA EDUCATION OVERSIGHT COMMITTEE AND MELANIE BARTON'S NOTICE OF MOTION AND MOTION TO DISMISS,** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 28th day of December, 2018:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

Kiara Lewis, Paralegal

ELECTRONICALLY FILED - 2019 Jan 07 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
	)	
Plaintiff,	)	
	)	
vs.	)	**MOTION TO DISMISS OF FIRST TUESDAY STRATEGIES, LLC**
	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40	)	
	)	
Defendants.	)	

TO THE PLAINTIFF, JEFFERSON DAVIS, JR:

Please take notice that the Defendant, First Tuesday Strategies, LLC (hereinafter "First Tuesday"), hereby files this Motion to Dismiss to the First Amended Complaint and moves this Honorable Court as soon as practicable to dismiss this action pursuant to South Carolina Rules of Civil Procedure 8(a), 12(b)(4), 12(b)(5), and

ELECTRONICALLY FILED - 2019 Jan 07 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

12(b)(6). Plaintiff has failed to state facts sufficient to constitute any causes of action against First Tuesday. Plaintiff has failed to make any factual allegations against First Tuesday with the degree of specificity necessary for asserting any valid and plausible cause of action. First Tuesday also craves reference to this Court's October 29, 2018 Order which dismissed certain claims. Plaintiff has also failed to sufficiently serve First Tuesday as it appears Plaintiff attempted service on the registered agent by email.

This motion is based upon the First Amended Complaint, the Amended Order, the Rules of Court, and such other materials as may be properly submitted to the Court at the time of hearing.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666
joe@mccullochlaw.com
kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT,
FIRST TUESDAY STRATEGIES, LLC

Columbia, South Carolina
this 7th day of January, 2019.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	)	Civil Action No. 2018-CP-40-02425 **CERTIFICATE OF MAILING**

I, the undersigned paralegal to Joseph McCulloch, McCulloch & Schillaci, Attorneys at Law, do hereby certify that MOTION TO DISMISS OF FIRST TUESDAY STRATEGIES, LLC has this day been served upon opposing counsel by electronic service AND first-class, United States Mail, postage prepaid, addressed to:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

I further certify that I have served all parties appearing in this matter by electronic service.

By: Elizabeth Gunter

Columbia, South Carolina

January 7, 2019

ELECTRONICALLY FILED - 2019 Jan 11 9:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Jefferson Davis, Jr.,	)	C/A No. 2018-CP-40-02425
	)	
Plaintiff,	)	**DEFENDANT INSTITUTE OF MANAGEMENT CONSULTANTS USA'S NOTICE OF MOTION AND MOTION TO DISMISS**
	)	
Versus	)	
	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Does(s) 1-40,	)	
Defendants.	)	

TO: JEFFERSON DAVIS, JR., PRO SE:

Defendant Institute of Management Consultants USA (hereinafter "this Defendant"), by and through the undersigned counsel, respectfully submits this motion, pursuant to South Carolina Rules of Civil Procedure 12(b)(6), to dismiss the Plaintiff's Amended Complaint on the grounds that the Plaintiff has failed to set forth facts sufficient to state a cause of action upon which relief can be granted.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings filed herein, and any and all affidavits which may be served on or before the date of hearing hereon.

HOOD LAW FIRM, LLC
172 Meeting Street/Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435/Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ Jennifer F. Nutter
Jennifer F. Nutter (SC#69348)

Attorneys for Defendant
Institute of Management Consultants USA

January 11, 2019
Charleston, South Carolina

Certificate of Service

I certify that on January 11, 2019, a copy of this pleading was served on each party or counsel of record by NEF electronic filing *or* U.S. Mail in the manner prescribed by the applicable Rule of Civil Procedure.

s/ Jennifer F. Nutter

ELECTRONICALLY FILED - 2019 Jan 11 9:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT PHILLIP CEASE'S MOTION TO DISMISS**
	)	
Ellen Weaver, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant Phillip Cease ("Defendant") moves to dismiss the Amended Complaint with prejudice in its entirety as to him. Defendant's motion to dismiss is based upon the following grounds:

1. The Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant for (a) defamation, (b) defamation by innuendo, (c) invasion of privacy, (d) negligence, (e) intentional infliction of emotional distress, (f) tortious interference with prospective contractual relations, (g) unfair trade practices, (h) piercing the corporate veil, or (i) conspiracy. Plaintiff has failed to make any factual allegations against Defendant with the degree of specificity necessary to assert a valid and plausible claim for relief.

2. The causes of action asserted against Defendant seek redress for political activity that is protected by the constitutions of the United States of America and the State of South Carolina.

3. The causes of action asserted against Defendant are barred by the statute of limitations.

This motion is based upon the Complaint and such other and further materials as may be submitted prior to any hearing on this motion. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty to consult on this motion to dismiss.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: s/William H. Jordan
William H. Jordan (SC Bar No. 76172)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Phillip Cease

Columbia, South Carolina
January 15, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Ellen Weaver, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

I, the undersigned legal assistant of the law offices of Robinson Gray Stepp & Laffitte, LLC, attorneys for defendant Phillip Cease, do hereby certify that I have the *pro se* Plaintiff, in this action with a copy of the document specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Document: Motion to Dismiss

Served: Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, South Carolina 29605

Valerie N. Hampton

January 15, 2019

ELECTRONICALLY FILED - 2019 Jan 15 9:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1–40, Defendants.	)	C.A. No.: 2018-CP-40-02425 **MOTION TO DISMISS OF DEFENDANTS CATO INSTITUTE AND HOWARD S. RICH**

COME NOW Defendants Cato Institute and Howard S. Rich, by and through undersigned counsel, and reserving their rights to plead otherwise and without waiving any argument not expressly made herein, and hereby move to dismiss Plaintiff's claims pursuant to Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP").

Dismissal of any and all claims against Cato Institute is required because the Amended Complaint never even mentions Cato Institute other than in the caption, the introductory section

ELECTRONICALLY FILED - 2019 Jan 15 9:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

naming the defendants, and as a former employer of Co-Defendant Bedrick; it never makes a factual allegation against Cato Institute; it never asserts any claim or allegation of vicarious liability or respondeat superior against Cato Institute; it never asserts a cause of action against Cato Institute with anything approaching the degree of specificity necessary to assert a plausible claim; any claims as against Cato Institute are barred by the statute of limitations; and the Amended Complaint never asserts any cause of action upon which relief could be granted against Cato Institute.

Dismissal of any and all claims against Howard S. Rich is required because none of the sparse factual allegations against him are sufficient to support a plausible claim under any of the causes of action asserted in the Amended Complaint; none of the causes of action are asserted against him with anything approaching the degree of specificity necessary to assert a plausible claim; any claims against him are barred by the statute of limitations; and the Amended Complaint never asserts any cause of action upon which relief could be granted against Howard S. Rich.

Furthermore, dismissal of several of the causes of action in the Amended Complaint is required as to both Cato Institute and Howard S. Rich (and the other Co-Defendants) because the Amended Complaint reasserts several causes of action that were previously explicitly dismissed *without leave to amend* by Judge Benjamin's Amended Order dated October 30, 2018.

In addition, dismissal of the entire lawsuit is warranted as to both Cato Institute and Howard S. Rich (and the other Co-Defendants) because Judge Benjamin's Amended Order gave Plaintiff 15 days to amend the Complaint, and Plaintiff failed timely to do so.

For the foregoing reasons, as well as those to be asserted and more fully stated in any memorandum of law filed by Cato Institute and/or Howard S. Rich in support of this motion, by any arguments made at a hearing on the motion, by any applicable arguments made by Co-

Defendants, and without waiving any arguments, Cato Institute and Howard S. Rich independently and respectfully request this Court dismiss each of them from the instant proceeding. **They further request that this motion be argued with other Co-Defendants' Motions to Dismiss, which are scheduled to be heard on February 12, 2019 at 9:30 a.m.**

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Miles E. Coleman
Miles E. Coleman
SC Bar No. 78264
E-mail: miles.coleman@nelsonmullins.com
104 South Main Street / Ninth Floor
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(864) 250-2300

Attorney for Defendant Cato Institute and Howard S. Rich

Greenville, South Carolina
January 15, 2019

ELECTRONICALLY FILED - 2019 Jan 15 9:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

ELECTRONICALLY FILED - 2019 Jan 15 9:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, Defendants.	)	C.A. No.: 2018-CP-40-02425 **CERTIFICATE OF SERVICE**

I, the undersigned counsel of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel who have appeared in this action with a copy of the pleading specified below by e-filing, and by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading:	Defendant Cato Institute and Howard S. Rich's Motion to Dismiss
Pro se party served:	Jefferson Davis, Jr. 403 McCarter Avenue Greenville, SC 29615

In light of a Co-Defendant's prior-filed motion seeking to forego serving defendants who have not yet appeared in this action and on whom it is not yet clear if the Amended Complaint has been served, undersigned counsel has not served Co-Defendants who have not yet appeared nor apparently been served with the Amended Complaint.

s/Miles E. Coleman
Miles E. Coleman

January 15, 2019

ELECTRONICALLY FILED - 2019 Jan 15 9:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
Plaintiff,	)	
	)	
vs.	)	**DEFENDANT SOUTH CAROLINIANS FOR RESPONSIBLE GOVERNMENT'S MOTION TO DISMISS**
	)	
Ellen Weaver, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant South Carolinians for Responsible Government ("Defendant") moves to dismiss the Amended Complaint with prejudice in its entirety as to it. Defendant's motion to dismiss is based upon the following grounds:

1. The Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant for (a) defamation, (b) defamation by innuendo, (c) invasion of privacy, (d) negligence, (e) intentional infliction of emotional distress, (f) tortious interference with prospective contractual relations, (g) unfair trade practices, (h) piercing the corporate veil, or (i) conspiracy. Plaintiff has failed to make any factual allegations against Defendant with the degree of specificity necessary to assert a valid and plausible claim for relief.

2. The causes of action asserted against Defendant seek redress for political activity that is protected by the constitutions of the United States of America and the State of South Carolina.

3. The causes of action asserted against Defendant are barred by the statute of limitations.

This motion is based upon the Complaint and such other and further materials as may be submitted prior to any hearing on this motion. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty to consult on this motion to dismiss.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: s/William H. Jordan
William H. Jordan (SC Bar No. 76172)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant South Carolinians for Responsible Government

Columbia, South Carolina
January 17, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr.,	)	Civil Action No. 2018-CP-40-02425
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Ellen Weaver, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

I, the undersigned legal assistant of the law offices of Robinson Gray Stepp & Laffitte, LLC, attorneys for Defendant South Carolinians for Responsible Government, do hereby certify that I have the *pro se* Plaintiff, in this action with a copy of the document specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Document: Motion to Dismiss

Served: Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, South Carolina 29605

Valerie N. Hampton

January 17, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NUMBER: 2018-CP-40-02425

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of management Consultants USA & John Doe(s) 1-40,

Defendants.

MOTION TO DISMISS ON BEHALF OF DEFENDANT DORIS CUBITT

PLEASE TAKE NOTICE that the Defendant, Doris Cubitt, by and through her undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10^{th}) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting this Defendant's Motion to Dismiss. Ms. Cubitt so moves because she is not a proper party to the instant action under the South Carolina Tort Claims Act, S.C. Code Ann 15-78-10, *et seq.*

Section 15-78-70(a) provides that the Tort Claims Act constitutes the exclusive remedy for any tort committed by an employee of a governmental entity while acting within the scope of

[the employee's] official duty." *See also SC Code Ann. 15-78-200.* The Tort Claims Act provides that:

> "...a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency... for which the employee was acting and is not required to name the employee individually... In the event that the employee is individually named, the agency...for which the employee was acting must be substituted as the party defendant."

At all times outlined in the Plaintiff's Complaint, Ms. Cubitt was acting in the scope of her official duties as an employee of the SCLLR and, therefore, should be dismissed from this lawsuit as the Complaint fails to state a claim against her upon which relief can be granted.

This motion is further based upon the pleadings and /or memorandum of law to be filed by the Defendant.

Respectfully Submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: /s/ Kelley Cannon

Kelley Shull Cannon (SC Bar #8532)
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29201
(803) 758-6000
ATTORNEY FOR THE DEFENDANTS
DORIS CUBITT and SCLLR

January 25, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NUMBER: 2018-CP-40-02425

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of management Consultants USA & John Doe(s) 1-40,

Defendants.

MOTION TO DISMISS ON BEHALF OF DEFENDANT SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

PLEASE TAKE NOTICE that the Defendant, South Carolina Department of Labor, Licensing and Regulations (hereinafter "SCLLR"), by and through its undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10^{th}) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting this Defendant's Motion to Dismiss. The SCLLR so moves because the facts as set forth in Plaintiff's Amended Complaint, even when taken in the light most favorable to Plaintiff, fail to establish a cause of action against this Defendant upon which relief can be granted.

The South Carolina Tort Claims Act, S.C. Code Ann 15-78-10, *et seq.* provides the sole mechanism whereby a Plaintiff can seek a waiver of the governmental immunity of a state agency, such as the SCLLR.

The S.C. Tort Claims Act provides as follows in Section 15-78-60:

"The governmental entity is not liable for a loss resulting from:

(1) Legislative, judicial, or quasi-judicial action or inaction;

(2) Administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

...

(4) adoption, enforcement, or compliane with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

...

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner..."

Out of Plaintiff's 45 page Amended Complaint, his factual allegations against the SCLLR and its employee are contained in only five paragraphs. Essentially, all of the facts stem from an alleged complaint filed with the SCLLR Board of Accountancy against another individual's CPA license.

The allegations of Plaintiff's Amended Complaint against the SCLLR, even when taken in the light most favorable to the Plaintiff, fail to establish liability under the SC Tort Claims Act and, therefore, this Defendant should be dismissed from this lawsuit as the Complaint fails to state a claim against it upon which relief can be granted.

This motion is further based upon the pleadings and /or memorandum of law to be filed by the Defendant.

Respectfully Submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: /s/ Kelley Cannon

Kelley Shull Cannon (SC Bar #8532)
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29201
(803) 758-6000
ATTORNEY FOR THE DEFENDANTS
DORIS CUBITT and SCLLR

January 25, 2019

ELECTRONICALLY FILED - 2019 Jan 29 1:08 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2018-CP-40-02425 **MOTION TO DISMISS OF DEFENDANT FIRST IMPRESSIONS, INC. D/B/A RICHARD QUINN & ASSOCIATES**

TO: PLAINTIFF JEFFERSON DAVIS, JR.

PLEASE TAKE NOTICE that Defendant First Impressions, Inc. d/b/a Richard Quinn & Associates ("RQ&A"), by and through undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Courthouse, Columbia, South Carolina, on the tenth (10^{th}) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Amended Complaint against it in the above-titled cause of action pursuant to Rule

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12 of the South Carolina Rules of Civil Procedure and other applicable law. In support of this motion, RQ&A would respectfully show as follows:

1. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant RQ&A.

2. Plaintiff has failed to make any factual allegations against Defendant RQ&A with the degree of specificity necessary to assert a valid and plausible claim for relief.

3. Plaintiff claims against Defendant RQ&A are barred by the applicable statute of limitations.

This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, applicable law, a memoranda or memorandum of law to be submitted by RQ&A at or before a hearing on this motion, and any other matters the Court may permit to be presented at the hearing on this matter.

Respectfully submitted,

s/Benjamin P. Mustian
Benjamin P. Mustian, Esq.
S.C. Bar No. 68269
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
bmustian@willoughbyhoefer.com

Attorney for Defendant First Impressions, Inc. d/b/a Richard Quinn & Associates

January 29, 2019

ELECTRONICALLY FILED - 2019 Jan 29 2:44 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, v. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,	)	**MOTION TO DISMISS OF DEFENDANT EDCHOICE, INC. (formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc.) FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM**

TO: PLAINTIFF JEFFERSON DAVIS, JR., PRO SE:

Defendant EdChoice, Inc. ("EdChoice"), formerly known as and incorrectly identified in the First Amended Complaint as The Friedman Foundation for Educational Choice, Inc., pursuant to South Carolina Rules of Civil Procedure 12(b)(2) and 12(b)(6), moves to dismiss the claims against it set forth in plaintiff's First Amended Complaint. This motion is based on the

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statutory and common law of South Carolina, the South Carolina Rules of Civil Procedure, First Amended Complaint, the Affidavit of Carey E. Folco, being submitted contemporaneously herewith, and such other materials as may be properly submitted to the Court at the time of hearing. Specific grounds for this motion include:

1. EdChoice, an Indiana nonprofit corporation with its offices in Indianapolis, Indiana, does not have the required contacts with South Carolina to support the exercise of either general or specific personal jurisdiction. Plaintiff has not nor can he allege facts sufficient to satisfy the requirement of South Carolina's long-arm statute, S.C. Code Ann. § 36-2-803 or due process. *See*, First Amended Complaint, attached as Exhibit A.

2. The U.S. Supreme Court's analysis in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549 (2017) precludes this Court from exercising general personal jurisdiction over EdChoice. First, EdChoice is not incorporated in South Carolina and does not maintain its principal place of business in South Carolina. *See*, Affidavit of Carey E. Folco, attached as Exhibit B, ¶ 4, 7. Thus, South Carolina is not a "paradigm all-purpose forum" in which EdChoice may be subject to general personal jurisdiction. *See*, *Daimler*, 571 U.S. at 137.

3. Plaintiff has not plead facts and cannot plead facts to show that EdChoice has such substantial contacts that it is "at home" in South Carolina. South Carolina is not the center of EdChoice's activities. EdChoice does not maintain consistent and substantial contacts in South Carolina sufficient for the assertion of general jurisdiction. *See generally*, Exhibit B.

4. To exercise specific jurisdiction over a nonresident defendant, the Court must make two determinations: (1) the nonresident's conduct must satisfy South Carolina's long-arm statute, S.C. Code Ann. § 36-2-803, and (2) the nonresident must have sufficient contacts with

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South Carolina such that exercising jurisdiction does not violate his constitutional rights to due process of law. White v. Stephens, 300 S.C. 241, 245, 387 S.E.2d 260, 262 (1990).

5. The sworn affidavit from Carey E. Folco confirms the lack of qualifying South Carolina contacts under the long arm statute as alleged by Plaintiff. Among other facts set forth in the affidavit, EdChoice confirms that it: (i) is not licensed to do business in South Carolina; (ii) does not engage in any commercial activities; (iii) has not contracted to supply services for profit or things in South Carolina; (iv) does not have any interests in, use, or possess real property in South Carolina; (v) has not contracted to insure any person, property, or risk in South Carolina; and (vi) has not engaged in any persistent course of conduct, derived substantial revenue from goods used or consumed or services rendered in South Carolina. *See*, Exhibit "B", and ¶¶ 7-12.

6. To the extent the Court finds that Plaintiff has alleged portions of the South Carolina long arm statute to extend to EdChoice, the Court must determine whether the exercise of personal jurisdiction would violate due process. Due process requires a two-step analysis.

7. First, the Court must determine whether minimum contacts exist between a defendant and the forum state "such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Moosally v. W.W. North & Co.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)). "A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992) *(emphasis added)*. Further, a defendant's minimum contacts must be such that "he could reasonably anticipate being haled into court" in South Carolina. *Id.* at 491-92, 611 S.E.2d at 508.

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(citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)). Without minimum contacts, the court lacks the power to adjudicate the action. *Id. (citing Southern Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131).

8. Second, the Court must find that the exercise of personal jurisdiction is "reasonable" or "fair." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Under the "fairness prong," the Court must consider four factors: "(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.*

9. Plaintiff's claims fail both the minimum contacts test and the fairness test. Most importantly, for this Court to exercise special personal jurisdiction over EdChoice, Plaintiff must show that his claims arose out of EdChoice's activities in South Carolina. *S Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 508. Plaintiff cannot satisfy that requirement. As set forth in the affidavit of Carey E. Folco, EdChoice has not transacted any business or other activities in South Carolina related to the event which forms the basis for Plaintiff's claim in this action. *See*, Exhibit B, ¶ 22. EdChoice has provided grants to South Carolina entities, but those grants are specifically restricted by agreement to charitable activities solely. Plaintiff has not pled facts showing that EdChoice's activities in South Carolina are connected in any way to the plaintiff's claims.

10. Moreover, having EdChoice litigate in South Carolina would be inconvenient and unduly burdensome for EdChoice. EdChoice is an Indiana charity. The costs of litigation in South Carolina would unduly burden it. "[T]he unique burdens place upon one who must defend

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oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987).

11. Finally, it would be unfair to have EdChoice defend a lawsuit in South Carolina.

12. Plaintiff's First Amended Complaint also fails to state facts sufficient to constitute a cause of action against EdChoice. See, Exhibit A, ¶¶ 169-174. None of the facts set forth in Plaintiff's First Amended Complaint concerning EdChoice relate to his claims for relief. Moreover, while Plaintiff references the Friedman Foundation and alleges what he believes this Defendant's mission may be, he does not make factual allegations against EdChoice or state facts against EdChoice that constitute a cause of action against this Defendant, or that approach the degree of specificity necessary for asserting any valid or plausible claim.

Based on the foregoing, EdChoice requests that the Court dismiss Plaintiff's claims against it because the Court lacks personal jurisdiction over EdChoice. Alternatively, Plaintiff's First Amended Complaint against EdChoice should be dismissed for failure to state a claim upon which relief could be granted.

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NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Christopher J. Daniels
Christopher J. Daniels
SC Bar No. 001538
E-Mail: chris.daniels@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorney for Defendant EdChoice, Inc. (formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc.)

Columbia, SC

January 29, 2019

ELECTRONICALLY FILED - 2019 Jan 29 2:44 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

EXHIBIT A

ELECTRONICALLY FILED - 2019 Jan 29 2:44 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1–40, Defendants.	**FIRST AMENDED COMPLAINT** **(Jury Trial Demanded)**

RICHLAND COUNTY
FILED
2018 NOV 19 PM 4:07
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Jefferson Davis, Jr. (herein "Plaintiff") states his complaint as follows:

PLAINTIFF

1. Plaintiff **Jefferson Davis, Jr.** is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

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DEFENDANTS

2. Defendant **Ellen Weaver** ("Weaver") is President, CEO and a Board Member of defendant Palmetto Promise Institute, a resident of Richland County and a citizen of the State of South Carolina residing at 4207 Devereaux Road, Columbia, South Carolina 29205.

3. Defendant **Chad Connelly** ("Connelly") is a Board Member of Defendant Palmetto Family Council and Defendant Palmetto Family Alliance, a former Board Member of Defendant South Carolinians for Responsible Government and Defendant SCRG Foundation. Defendant Connelly is the current Executive Director of Defendant South Carolina Educational Credit for Exceptional Needs Children Fund, a resident of Newberry County and a citizen of the State of South Carolina residing at 107 Connelly Drive, Prosperity, South Carolina 29217.

4. Defendant **Oran P. Smith** ("Smith") is a current / former board member and Executive Director of Defendant Palmetto Promise Institute, Defendant Palmetto Family Council and Defendant Palmetto Family Alliance. Defendant Smith is currently listed as a "Senior Fellow" at both Defendant Palmetto Promise Institute and Defendant Palmetto Family Council. Defendant Smith is a resident of Lexington County and a citizen of the State of South Carolina residing at 466 E Columbia Avenue, Leesville, South Carolina 29070.

5. Defendant **Neil J. Mellen** ("Mellen") is President, CEO and a Board Member of Defendant Access Opportunity South Carolina, the former President of Defendant South Carolinians for Responsible Government, a resident of Richland County and a

citizen of the State of South Carolina residing at 3416 Devereaux Road, Columbia, South Carolina 29205.

Source of Funding

6. Defendant **Howard S. Rich** ("Rich") is a citizen of Pennsylvania, a Board Member of Defendant Cato Institute and a former Board Member of Defendant Friedman Foundation for Educational Choice. Upon information and belief Defendant Rich funds and directs the operations and activities of Defendants AOSC, SCRG, SCRG Foundation, PPI, PFC, PFA, Weaver, Connelly, Smith, Mellen and others.

Political Targeting & Professional Ethic Violations

7. Defendant **Rick Reames, Esq.** ("Reames") is the former Director of Defendant South Carolina Department of Revenue and a current partner at the law firm Nexsen Pruet. Defendant Reames is a resident of Kershaw County, a citizen of the State of South Carolina residing at 411 Pine Street, Camden, South Carolina 29020.

8. Defendant **Stephen D. Kirkland, CPA, CMC** is the Board Chairman of Defendant Palmetto Family Council and a Board Member of Palmetto Family Alliance. Defendant Kirkland is a resident of Richland County, a citizen of the State of South Carolina residing at 2724 Canterbury Road, Columbia South Carolina 29204.

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Non-Profit Entities (Shell / "Front" Entities)

9. Defendant **Palmetto Promise Institute** ("PPI") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3) charity, and has an office in Richland County.

10. Defendant **Palmetto Family Council** ("PFC") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County.

11. Defendant **Palmetto Family Action** ("PFA") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(4), and has an office in Richland County.

12. Defendant **South Carolinians for Responsible Government** ("SCRG") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(4), and has an office in Richland County.

13. Defendant **SCRG Foundation** ("SCRG Foundation") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County. The name of SCRG Foundation has been changed legally to Donors Enriching Students Knowledge ("DESK").

14. Defendant **Access Opportunity South Carolina** ("AOSC") is a South Carolina non-profit, an Internal Revenue Service approved 501(c)(3), and has an office in Richland County.

15. Defendant **Friedman Foundation for Educational Choice, Inc.** ("Friedman Foundation") is an Indiana non-profit, and an Internal Revenue Service approved

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501(c)(3). Upon information and belief Defendant Friedman Foundation funds and directs the operations and activities of the SC Defendants and/or John Doe(s). The name of Friedman Foundation has been changed to EdChoice ("EdChoice").

16. Defendant **Cato Institute** ("Cato") is a non-profit organization headquartered in Washington D.C., and an Internal Revenue Service approved 501(c)(3). Upon information and belief Defendant Cato funds and directs the operations and activities of the SC Defendants and/or John Does.

Governmental Entities

17. Defendant **South Carolina Educational Credit for Exceptional Needs Children Fund** ("ECENC Fund") is a South Carolina legislatively created non-profit organization formed by the State of South Carolina having its operations administered by Defendant South Carolina Department of Revenue. The ECENC Fund does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County. Defendant Rick Reames is the registered agent of Defendant ECENC Fund with an address of 1201 Main St., Suite 985, Columbia, South Carolina 29201.

18. Defendant **South Carolina Education Oversight Committee** ("EOC") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

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19. Defendant **South Carolina Department of Revenue** ("DOR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

20. Defendant **South Carolina Department of Labor, Licensing and Regulation** ("LLR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

Political "Consulting" Firms

21. Defendant First Impressions, Inc. d/b/a **Richard Quinn & Associates** ("RQA") is a South Carolina corporation and has an office in Richland County. Richard Quinn is the registered agent of RQA with an address of 1620 Gervais Street, Columbia, SC 29201.

22. Defendant **First Tuesday Strategies, LLC** ("First Tuesday") is a South Carolina limited liability company with an office in Richland County. J. Warren Tompkins is the registered agent of First Tuesday with an address of 807 Gervais Street, Suite 202, Columbia, South Carolina 29201.

Individual & Other Participants

23. Defendant **Bill Wilson** ("Wilson") is the "handler" for Defendant Rich's affairs in South Carolina. Defendant Wilson is upon information and belief a resident and citizen of the State of Virginia.

24. Defendant **Jason Bedrick** ("Bedrick") was a school choice policy analyst for Defendant Cato and is currently the Director of Policy at Defendant Friedman Foundation.

25. Defendant **Jim DeMint** ("DeMint") is the Founding Chairman of Defendant PPI and a citizen of the State of South Carolina.

26. Defendant **Randy Page** ("Page") is a Board Member of Defendant PFC and Defendant PFA. Defendant Page is a former Board Member of Defendant SCRG and Defendant SCRG Foundation. Defendant Page is a resident of Greenville County and a citizen of the State of South Carolina.

27. Defendant **Tony Denny** ("Denny") is a Board Member of Defendant AOSC, a registered lobbyist for Defendant SCRG, a resident of Richland County and citizen of the State of South Carolina residing at 3328 Devereaux Road, Columbia, South Carolina 29205.

28. Defendant **Phillip Cease** ("Cease") is President and Board Member of Defendant SCRG, a former Board Member of Defendant SCRG Foundation and Defendant AOSC and a citizen of the State of South Carolina.

29. Defendant **Melanie Barton** ("Barton") is the Executive Director of Defendant HOC and a citizen of the State of South Carolina.

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30. Defendant **Doris Cubitt, CPA** ("Cubitt") is the former head Administrator for the South Carolina Board of Accountancy at Defendant LLR and a citizen of South Carolina.

31. Defendant PPI produced a "Legislative Analysis" about the switch in the program the was incorrect and caused damage to Plaintiff Davis and his group.

32. Defendant **Dr. Susan Thomas** ("Thomas") is the former Head of School of Glenforest School and a citizen of the State of South Carolina.

33. Defendant **John McCormick** ("McCormick") is the former Head of School of Hidden Treasure Christian School and a citizen of the State of South Carolina.

34. Defendant **Nate Leupp** ("Leupp") is a resident of Greenville County and a citizen of the State of South Carolina.

35. Defendant **Institute of Management Consultants USA** ("IMCUSA") is a New York non-profit with offices in the State of Florida.

John Doe(s)

36. At this time, the true identities of the John Doe(s) 1 through 40, be them individuals and / or entities, ("John Doe(s)"), are unknown and / or unconfirmed to Plaintiff. Therefore, Plaintiff sues the John Doe(s) by fictitious name. Upon information and belief, the John Doe(s) fund, direct and/or participate in the operations and activities

of Defendants and/or have participated in other matters which are the subject of this Complaint.

Joint & Several

37. All Defendants herein are sued jointly and severally.

JURISDICTION AND VENUE

38. This court has jurisdiction of the subject matter of this complaint and of the parties. Venue is proper.

FACTUAL ALLEGATIONS
(Specific Documented Event & Follow-up)

39. In June 2013, the South Carolina Legislature passed the original budget proviso entitled the Educational Credit for Exceptional Needs Children providing for a small $8 million K-12 school choice tax credit program for children with "special needs". The budget proviso was to be effective July 1, 2013, followed by a scheduled time period for preparation, and finally starting on January 1, 2014 with authorized SFOs starting to accept donations and issuing scholarship grants.

40. Although Plaintiff Davis did monitor the subject legislation, he was not involved in passage of the original budget proviso.

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41. Upon passage of the subject legislation, Plaintiff Davis contacted Defendants Mellen and SCRG to inquire if there was an implementation plan for the legislation that Defendants had been lobbying for since approximately 2004. No such plan existed and Defendants had no idea what to do next, indicating they have no plan to actually succeed.

42. Plaintiff Davis is a tax attorney and CPA, active and licensed in the State of Georgia. Plaintiff had returned to his home state of South Carolina in 2011. In 2008 Plaintiff Davis was the founding trustee of an independent 501(c)(3) non-profit under the newly introduced $50 million program in the State of Georgia. As such Plaintiff had the knowledge and experience to help with the implementation of the program in South Carolina and offered his assistance for which Defendants Mellen and SCRG were grateful.

43. Plaintiff Davis is a native of South Carolina, graduated from The Citadel as a member of the Class of 1989, and later graduated with a law degree and MBA from the University of South Carolina in December 1993.

44. Plaintiff Davis, along with his wife **Olga Lisinska** and several associates including two fellow classmates from The Citadel, founded **Palmetto Kids FIRST Scholarship Program, Inc.** ("Palmetto Kids FIRST"). Plaintiff Davis' wife Olga Lisinska was the Director of Operations managing the day-to-day operations. No one else in the State of South Carolina had any plan or implementation experience with these type of K-12 education tax credit programs.

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45. Over the ensuing few months, Plaintiff Davis, as the contact person representing his group, conversed in detail with Defendants Mellen, SCRG and Cease. Over those few months Plaintiff was told about numerous troubling and potentially unethical and illegal actions involved in the political process here in South Carolina, and specifically actions by Defendants Mellen, SCRG, Cease, Rich, and others. Plaintiff Davis was very troubled by this realization that he may have gotten himself and his group with a set of bad people. We may have agreed on policies as it relates to school choice at that time, but Plaintiff Davis and his group certainly did not agree with Defendants unethical and likely illegal tactics.

46. As a political novice and not wanting to be involved with "bad actors", Plaintiff Davis informed Mellen and SCRG that he and his group would operate separately and did not want to participate in the political "games" of Defendants. Plaintiff Davis thought that would be the end of the quasi "working partnership" and each group would do their own thing advocating for the program's success separately.

47. During that time period Palmetto Kids FIRST had been approved by Defendant Barton and Defendant EOC as an authorized entity to operate under the program starting January 1, 2014 – otherwise called an authorized Scholarship Funding Organization ("SFO"). Palmetto Kids FIRST was listed on the EOC website and Palmetto Kids FIRST was lining up donor pledges (standard operating procedure for these programs) to begin on January 1, 2014.

48. It was also during this time that Plaintiff Davis informed Mellen and SCRG that Palmetto Kids FIRST had already lined up approximately $2 million in donor pledges

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for January 1, 2014 and that he hoped to have $6 million or perhaps the full $8 million of pledged donors by the January 1, 2014 fundraising start. Plaintiff naively though self-professed program supporters like Defendants would be pleased since said news would only mean children in need would get help as fast as possible and supporters would be demonstrating to legislators that the program worked so that they would potentially expand the funding during the Jan – June 2014 legislative session.

49. Unfortunately, Plaintiff did not understand at the time that Defendants, particularly Mellen, did not want Palmetto Kids FIRST to raise the money quickly. Defendant Mellen self-interestedly stated he wanted it to take three (3) years for the SFOs to reach the $8 million legislative cap, thus allowing him to keep his job and $100,000 +/- paycheck for an extended period. Apparently if Palmetto Kids FIRST raised the funding too quickly that would prove Mellen was not needed and his out of state funding (from individuals like Defendant Rich) would dry up. This confirmed Plaintiff's initial suspicions that our group did not want to work with Defendants Mellen, SCRG and Cease.

50. At that time, which was approximately Thanksgiving 2013, Plaintiff Davis informed Defendant Mellen that Palmetto Kids FIRST would NOT slow down the collection of fundraising pledges and speedy 2014 scholarship distribution plans. Children and schools were in need and Palmetto Kids FIRST again did not want to participate in Defendants self-interested games at the expense of children.

51. It was at that point the personal attacks began.

52. In early December 2013 Mellen met with Defendant Barton at EOC. That afternoon the previously approved SFO list on the EOC website was removed – as such Palmetto Kids FIRST was no longer listed as an approved SFO. If Plaintiff and Palmetto Kids FIRST would not voluntarily do what Mellen and his group wanted, they would apparently use the government Defendants to force compliance.

53. The program budget proviso (i.e., the law) required Defendant EOC to post the list of approved SFOs in August 2013 and Palmetto Kids FIRST had complied with every requirement to be listed as an approved entity / SFO.

54. Plaintiff Davis and his wife Olga Lisinska both informed EOC and Defendant Barton that if the approved list was not re-posted as soon as possible, and in any case before the January 1st, 2014 start date as required by law, Palmetto Kids FIRST would lose all of the pledged donors to other South Carolina tax credit programs and it would be a devastating blow to the program and the children / schools hoping for scholarship funding as soon as possible. This was of course the intent of the program supposedly – to fund the children.

55. Furthermore, the program budget proviso (i.e., the law) required Defendant EOC to start the acceptance of donations and distribution of scholarships on January 1st, 2014. Defendant Barton departed for her New Year's holiday without fulfilling this responsibility as she obviously had not intent to do so at the direction of Defendant Mellen and others.

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56. Defendant Barton and Defendant EOC only posted the approved SFO list again (including Palmetto Kids FIRST) after pressure from reporter Jamie Self and The State Newspaper.

57. Defendant Barton, in a January 7, 2014 email, informed Defendant / DOR Director Reames' former (and future) law partner, with cc to Defendant Mellen, that "Jamie Self from *The State* will have an article running in the paper tomorrow about how the EOC is dragging its feet on this."

58. Defendant Barton, in that same January 7, 2014 email continued to say "I'm not worried about being accountable and neither are the key legislators with whom I have talked."

59. The "fix was in" and Defendant Mellen was orchestrating the entire matter and directing the actions of Defendant Barton, EOC, and the John Doe legislators and others to slow the program at any cost.

60. We / Palmetto Kids FIRST lost all $2 million in January 1, 2014 pledged donations (except for approximately $70,000) to other SC tax credit programs. Palmetto Kids FIRST was not able to secure any additional fundraising pledges after EOC removed the approved names – thus losing the reasonably expected additional $4 - $6 million in additional expected pledged donations for January 1, 2014.

61. Worse, the K-12 children with "special needs", their parents / families, and the independent schools that serve these children lost millions.

62. Palmetto Kids FIRST was not able to recover fundraising until May 2014. It required an extreme amount of additional work, effort, stress and other pain & suffering to recover from this blow from Defendants but we did it for the kids.

63. One of the numerous unethical and potentially illegal activities Defendants Mellen, SCRG and Cease detailed to Plaintiff Davis in 2013 was the "smear campaigns" they and other related parties ran against politicians. Although Plaintiff Davis and everyone associated in our group were not politicians in any way, and had no desire to be, Defendants then proceeded to run a political "spear campaign" against Plaintiff Davis, his wife Olga Lisinska, and Palmetto Kids FIRST.

64. Defendants, including Mellen & AOSC, sent mailers to school officials suggesting false issues about Davis / Palmetto Kids FIRST.

65. Embarrassing information was "fed" to press outlets about a business related bankruptcy Plaintiff Davis had filed following the 2008 financial crisis. The bankruptcy related solely to a $5 million investment loan Davis had personally guaranteed, the proceeds of which were invested in a closely held private bank. The bank eventually failed during the global financial crisis and the investment was worthless, thus precipitating a nasty legal battle between Davis and his business partners (a married couple who was also a close family friend / client of Davis). This matter was totally unrelated to "school choice", the SC tax credit program, or the tax credit program and non-profit Davis successfully founded in Georgia and was the 2nd largest in Georgia at the time.

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66. Defendant Mellen and Defendant AOSC also ran a misleading "ad" in the South Carolina Association of CPAs ("SCACPA") magazine making it appear Palmetto Kids FIRST was not an approved SFO. The SCACPS's apologized for letting the misleading ad slip through and refused to run the add in the future.

67. Defendant's had misleading information on their various websites which were available globally and cast dispersions on Plaintiff Davis and his group.

68. Defendant Mellen also sought out individuals in Georgia to tarnish Davis' reputation.

69. Defendant Mellen somehow arranged for an individual from the Catholic Diocese SFO in Georgia to visit the Charleston Catholic Diocese leadership to trash Davis. Plaintiff Davis had never had any interaction with this individual or group other than to help (at their request) and actually transfer donated funds (without retaining any fees) that we received and the donor that wanted the funds to go to a specific Catholic school.

70. Plaintiff Davis' wife is a Catholic from Poland. As such she has a strong affinity for her Catholic Church here in South Carolina. Since no-one at the Charleston Diocese had any actual experience with these K-12 tax credit scholarship programs, we offered to assist our local Charleston neighbor in any way with their SC Catholic school SFO.

71. Defendant Barton & EOC, under pressure from The State Newspaper article finally started the program late and all EOC required was a Certificate of Existence from the SC Secretary of State's Office for the SFOs to put them on the EOC website.

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72. Millions in pledge donations were lost due to the only additional requirement EOC "made up" at the last minute being to provide a $10 Certificate of Existence from the South Carolina Secretary of State – next door to the EOC offices.

73. Plaintiff Davis, always offering to help and work cooperatively with other SFOs, volunteered to drive from Charleston to Columbia and, in fact did, and purchased the Certificate for both Palmetto Kids FIRST and the Catholic Diocese and hand deliver them next door to the EOC office so each organization could start fundraising as soon as possible for the children.

74. Plaintiff Davis made this same offer to do this for all the SFO candidates. Only the Catholic Diocese took Davis up on his offer making it obvious and clear that the others did not trust Plaintiff because of false and defamatory stories Mellen had told them. Another blow to Plaintiff due to Defendant's bad actions.

75. Aside from driving to Columbia to purchase the Certificate of Existence for the Catholic Diocese SFO (without asking or receiving any compensation or refund of the $10 out of pocket cost of the Diocese's Certificate), other offers to help the Catholic Diocese SFO were met with a "get lost" letter received in the mail from the Vicar from the Charleston Diocese. Further fallout due to Defendant Mellen's efforts to tarnish our names. This was a terrible personal blow to Plaintiff's wife as a Catholic and Plaintiff Davis since all we were doing was offering help. It created great confusing and questioning as to "why"?

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76. In the years to come Plaintiff was told by an official of the Charleston Diocese that they completely supported our positions, but could not say so publicly because they "did not want Mellen doing to us what he has done to you guys."

77. Everyone knew what Defendants, particularly Mellen, were doing, but people were afraid to stand up for fear of retribution.

78. After the first article broadcasting Davis' bankruptcy filing to the entire state (it ran in multiple papers all across South Carolina as well as online), a second article was "placed" by Defendants claiming Plaintiff Davis was "pressuring" parents to donate. Nothing could be further from the truth, but the truth does not matter to Defendants. This was a humiliating article that took substantial "damage control" to overcome. The article of course had to repeat the bankruptcy disclosure as well in case someone might have missed the initial disclosure to the world.

79. The claims of "pressuring" parents were falsely made by Defendant Thomas.

80. Defendant Thomas was a vocal opponent to the ECENC program before it even started. Thomas tried to rally other school leaders to march against the program at the SC State House. That effort flopped so she tried other methods.

81. Defendant Mellen worked very closely with Defendant Thomas in an effort to attack Plaintiff Davis and his group. Why an espoused supporter of the program would be working with an opponent of the program was confusing.

82. Eventually, when no resolution could be found, Plaintiff Davis, Palmetto Kids FIRST, and their group refused to work with Defendant Thomas' Glenforest School.

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83. After a complaint was filed with Defendant EOC and Defendant Barton alleging falsification of scholarship amounts by Glenforest School, Defendant Thomas was appointed to the program's advisory board. EOC and Barton rewarded parties averse to Davis and the program.

84. However the CFO of Glenforest School quietly "disappeared" and refused future calls / contact. No refund of the fraudulent scholarship amounts was ever received by Palmetto Kids FIRST from Glenforest School and no feedback was ever received from EOC or Barton as they "swept" the matter under the rug.

85. After another complaint about a parent who had obviously falsified a medical eligibility form was submitted to EOC and Barton, that parent was appointed to the same advisory board. Again EOC and Barton rewarded parties averse to Davis and the program.

86. Plaintiff Davis and his group continued to work triple hard to overcome Defendants dirty tricks. Plaintiff Davis had to forgo a planned extended trip to Europe so that he could "remain behind" while his wife Olga went to Poland for a month. We could both not go out of town and leave the children hanging. This was difficult personally since Plaintiff and his wife had never been separated for an extended period previously. This sacrifice would not have been needed but for the actions of Defendants.

87. Since the newspaper articles and avers efforts by Defendant EOC and Barton were not as effective as Defendants expected given Plaintiff and his group worked extra hard (at substantial out of pocket cost as well), Defendants had legislatively "added"

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to the renewal program proviso in June 2014 a prohibition against a "bankruptcy filer" from participating in or even volunteering for an SFO. This provision was specifically targeted at Plaintiff Davis to exclude him from the program and exclude him from working for any SFO on any basis. This substantially interfered with Plaintiff Davis' ability to contract / work and earn any income for the provision of services.

88. This "bankruptcy exclusion" was unconstitutional as it violates the 14th Amendment of the US Constitution. It also violated the specific terms of Bankruptcy Code Section 525 which prohibits discrimination against bankruptcy filers.

89. The bankruptcy exclusion provision was submitted overnight during the State House Budget Conference Committee at the very end of the legislative session. There was no opportunity for public discussion to have it removed as the session was over.

90. It should be noted that former Rep. Jim Harrison, and then current Code Commissioner (and thus responsible for this type of activity "not" happening) was recently criminally convicted for doing the bidding of RQA and upon information and belief this simple wording change was slipped into the legislation by Defendants and/or John Doe(s).

91. Plaintiff Davis and his wife learned about this illegal change when reviewing the final language of the Conference Committee Report while at the Mayo Clinic in Jacksonville Florida. Such added additional stress and pain & suffering while Plaintiff and his wife were dealing with Lisinska's serious medical condition which eventually required major surgery.

92. Plaintiff Davis' wife had multiple medical incidents over the length of the time period caused by Defendants and John Doe(s) which also added additional financial expense and pain & suffering for Plaintiff Davis.

93. Plaintiff's wife, Olga Lisinska, eventually had to have her entire colon removed at the Mayo Clinic in Jacksonville directly related to the stress caused by this matter.

94. Since Plaintiff Davis was unable to work in the program, additional stress and responsibility was added to his wife Olga Lisinska. Such was not good for her medical condition and as such cause additional stress and pain & suffering for Plaintiff Davis as well since he could not help out over the fear Palmetto Kids FIRST would be shut down which was the Defendant's apparent goal.

95. Plaintiff's wife was able to maintain (at great additional effort and financial cost – causing stress for Plaintiff financially and emotionally) the stellar fundraising momentum started prior to the "bankruptcy exclusion" of Plaintiff Davis.

96. Since Defendants could still not halt the fundraising efforts and success of Plaintiff's group, in October 2014 Plaintiff Davis, his wife and Palmetto Kids FIRST were "politically targeted" by Defendant DOR for a tax audit.

97. Plaintiff Davis opened his mailbox one October 2014 day to discover three audit notices -- one for Palmetto Kids FIRST, one for his wife Olga Lisinska, and one for himself personally. (Davis and his wife filed their taxes separately.)

98. Defendant Reames was at the time the Director of Defendant DOR.

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99. Defendant Reames personally ordered and directed the tax audits of Plaintiff Davis, his wife Olga Lisinska, and non-profit Palmetto Kids FIRST Scholarship Program, Inc.

100. Senior DOR officials, at the direction of Defendant Reames, refused to close Davis' or Lisinska's individual audits when requested after just a few weeks by the DOR audit manager.

101. Defendant's wanted to hold the "audits" open as long as possible to further tarnish the image and reputation of Plaintiff Davis and his group. Defendants kept the audits open an additional year.

102. After an extended audit period, said tax audits resulted in "no change" letters for both Plaintiff Davis and his wife Olga Lisinska. A result that was known a year earlier but Defendants would not tell Plaintiff.

103. After an extended audit period, said tax audit of Palmetto Kids FIRST Scholarship Program, Inc. resulted in zero changes to any numbers. No money was unaccounted for and DOR refused to do any enforcement actions against Palmetto Kids FIRST.

104. DOR had complete authority to shut down Palmetto Kids FIRST, but they refused to do so since that would mean going to court and it being revealed their audit was fraudulent as Plaintiff Davis and many others claimed.

105. After the "bankruptcy exclusion" of Davis failed to slow fundraising, Defendants – including Defendant DOR – added an exclusion to prevent the spouse of a

bankruptcy filer from working or even volunteering for an SFO. This provision was specially targeted at Plaintiff Davis' wife Olga Lisinska.

106. That "spouse of a bankruptcy filer exclusion" make the newspapers, again, and was removed from the proposals (as was the unconstitutional and illegal bankruptcy exclusion targeting Plaintiff Davis).

107. The political targeting was clear.

108. In fact the Palmetto Kids FIRST tax partner at the McNair Law Firm also agreed that we were being politically targeted but he was too scared to do anything.

109. A Freedom of Information Act ("FOIA") requested by Plaintiff Davis reveled senior DOR officials making sexual statements about Plaintiff Davis' wife in emails. This was devastating to read about ones spouse and further devastating to Plaintiff's wife.

110. Plaintiff, nor Plaintiff's wife have ever received an apology from Defendant DOR or Reames.

111. This incident of misconduct by these senior DOR officials was reported on the FRONT PAGE of The State Newspaper, above the fold.

112. This new statewide and global (via the internet) article brought a new round of embarrassment for Plaintiff and his wife (causing more pain and suffering for Plaintiff Davis).

113. Defendant Reames, prior to joining the DOR, was a tax partner at Nexsen Pruet.

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114. Defendant Mellen's wife was a tax associate at Nexsen Pruet and worked with Defendant Reames.

115. Defendant Reames former (and now current) law partner was at the time representing Defendant EOC, Barton and other Defendants / John Does with conflicted interest with this program.

116. Defendant Reames is the currently the subject of a professional ethics investigation by the SC Supreme Court's Office of Disciplinary Council (ODC) involving his actions surrounding this Complaint.

117. Plaintiff Davis filed said professional ethics complaint against Defendant Reames at the direction of the South Carolina State Bar Association. In fact the SC Bar stated that Plaintiff Davis may very well have a proactive ethical duty to file his complaint.

118. Both the ODC and the South Carolina State Bar have recommended and/or suggested the actions of Defendant Reames should be referred to applicable law enforcement agency for criminal investigation.

119. Such criminal discussions with law enforcement are moving forward at this time.

120. Following the FOIA discovery of sexual comments by senior DOR officials about Plaintiff Davis' wife (and front page news article), Defendant Reames promise Plaintiff and the press that an 3rd party professional review of the audit would be conducted to make sure Plaintiff and his group was not politically targeted and were treated fairly by DOR.

121. Defendant Reames personally hired for some unknown at the time reason the CPA for the third party professional review.

122. It was unusual for the Director of DOR to handle such a matter personally.

123. The third party that Defendant Reames hired was none other than Defendant Stephen Kirkland, CPA, CMA.

124. Defendant Kirkland was not only conflicted; he was likely the most conflicted professional in South Carolina. Kirkland's PFC and PFA was advocating at the time for a different version of school choice and actively opposed the efforts of Plaintiff Davis, Palmetto Kids FIRST and his group.

125. Said opposition by Defendants PFC and PFA were known to both Kirkland and Reames.

126. Reames personally handled the matter so that he could ensure the result by picking a third party adverse (and professional conflicted) to get his desired result – complete agreement with the DOR's wrongdoing and fraudulent audit report.

127. Defendant Kirkland is currently under investigation by the South Carolina State Board of Accountancy ("Board of Accountancy"), under LLR, for this professional conflict.

128. Defendant Kirkland is currently under investigation by the Institute of Management Consultants USA ("IMCUSA") for his professional conflict as well.

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129. Plaintiff expects that Defendant Kirkland will lose both his CPA and CMC licenses over this matter when the investigation is completed.

130. Defendant DOR, under the new leadership of Director Hartley Powell, has continued to refuse to provide the promised third party review of their "fraudulent" audit report on Palmetto Kids FIRST in an effort to continue to cast dispersions on Plaintiff Davis and his group.

131. Defendant DOR refuses to provide the promised third party review of their "fraudulent" audit report as part of a cover-up of their bad deeds.

132. Defendant DOR illegally made the "fraudulent" audit report on Palmetto Kids FIRST subject to the SC Freedom of Information Act ("FOIA").

133. Defendant DOR has refused to provide any legal basis for making any taxpayers audit report subject to public disclosure via FOIA.

134. Defendant Cease printed the DOR "fraudulent" audit report on heavy bond paper and hand delivered it to legislators' offices at the SC State House to tarnish the reputation of Plaintiff Davis, Palmetto Kids FIRST and his group.

135. Defendant DOR made the "fraudulent" audit report subject to FOIA so that Defendant Cease and/or others could distribute it as part of their civil conspiracy and in furtherance of their objectives.

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136. In fact Defendant PPI posted the "fraudulent" audit report on their website and widely distribute it knowing that it is "fraudulent" and completely disputed by Plaintiff, Palmetto Kids FIRST and legal and tax professionals.

137. The DOR "fraudulent" audit report has blatantly false and misleading information and conclusions specifically designed to cast Plaintiff Davis and his group in a negative light.

138. The conclusions in the Defendant DORs "fraudulent" audit report are most importantly legally incorrect.

139. Again, like the prior year, without public discussion, the SC State Legislature in the last 43 minutes of the 2016 legislative session "gave" the entire program to the SC Department of Revenue to administer in conjunction with a five (5) person legislatively appointed board.

140. South Carolina is the nation's only state in the nation with a government administered K-12 tax credit program.

141. Government administration of a K-12 tax credit scholarship program such as we have in South Carolina defeats the entire purpose of the program and makes the program technically unconstitutional.

142. LLR is a Defendant as well in this matter because the now former head administrator of the Board of Accountancy, Defendant Cubitt illegally interfered with the investigation of Kirkland and personally threatened Plaintiff with a Cease and Desist Order.

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143. Upon investigation, information and belief, it appears Defendant Cubitt has personal relationships with other Defendants and potential John Does.

144. Defendant Cubitt was a long term head Administrator of the Board of Accountancy – at least 20 years in the position.

145. Within a very short time of Plaintiff Davis raising the issue and complaining about Defendant Cubitt stalling the investigation and making personal threats toward Plaintiff, Defendant Cubitt was "gone" from LLR and the Board of Accountancy.

146. Defendant LLR has refused any comment after multiple requests for information related to the sudden departure of Defendant Cubbit from the Board of Accountancy and LLR.

147. Defendant IMCUSA has unusually been slow in the investigation of Defendant Kirkland's ethic complaint as well.

148. Defendant IMCUSA is under pressure from what is obviously very powerful and influential Defendant's and John Doe(s).

149. Upon information and belief IMCUSA has become complicit in the civil conspiracy given the above referenced pressure from other Defendant's and John Doe(s).

150. It has been widely rumored and reported by Defendants and/or John Doe(s) that Plaintiff Davis is "not from around here" when in fact his family lineage has been exclusive South Carolina natives since the 1600's.

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151. It has been widely rumored and reported by Defendants and/or John Doe(s) that Plaintiff Davis and his wife "bankrupted" the $100 million K-12 tax credit scholarship program in Georgia and only moved to South Carolina to do the same thing to our program. This is not true.

152. Plaintiff Davis' wife has been widely rumored and reported to be a member of the "Russian Mob" which is not true.

153. Plaintiff Davis has been widely rumored and reported to be sending tax credit donations raised out of the country to places such as the Cayman Islands.

154. It has been widely rumored and reported that Plaintiff Davis and his wife were only doing this to "get rich" which is not true. We do it for the children and someone has to stand up to Defendants and John Doe(s) corruption.

155. Defendant DOR, as confirmed by Defendant Kirkland, in its report showed falsely that 100% of revenue was attributed to personal income. This highly false conclusion was deliberate so that other Defendants and/or John Doe(s) could use that statement to defame and injure Plaintiff and his group.

156. Defendants and / or John Doe(s) have mailed anonymous letters to Plaintiff Davis' neighbors with private, embarrassing and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

157. Defendants and / or John Doe(s) have mailed anonymous letters to parents and school officials all across South Carolina (and beyond) with private, embarrassing

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and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

158. Defendants and / or John Doe(s) have created a public and globally available website with private, embarrassing and misleading / false information about Plaintiff Davis causing substantial emotional distress and pain & suffering.

159. Upon information and belief, Defendant Leupp and other John Doe(s) are responsible for the public website about Plaintiff Davis

160. Defendant Leupp has upon information and belief done similar things to other parties in the past.

161. Defendant Leupp is a pawn of Defendant Weaver and Defendant DeMint.

162. Defendant Bedrick has at Cato and Freidman Foundation made false and defamatory statements about Plaintiff Davis and his group.

Campaign Money Laundering

163. In 2015 the State of California's Fair Political Practices Commission ("FPPC") found Defendant Rich guilty of Campaign Money Laundering.

164. The mission of the State of California's FPPC is to increase transparency of top contributors and combat so-called "Dark Money".

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165. Defendant Rich has contributed tens of millions to a "web" of South Carolina non-profits, South Carolina politicians and other South Carolina entities / business, including several Defendants and other John Doe(s).

166. As a CPA, Plaintiff Davis is able to track Defendant Rich's web of "Dark Money" here in South Carolina.

167. Defendant Rich upon information and belief directly and/or indirectly is a client of and substantially funds work done by the South Carolina based law firm Nexsen Pruet, specifically attorney and Defendant Rick Reames and others.

168. Defendant Rich has directly or indirectly contributed to schools hostile to the program and Plaintiff Davis and his group at the direction of Mellen in order to curry favor and support – specifically Glenforest School, Trident Academy and Hidden Treasure Christian School.

169. The namesake of Defendant Friedman Foundation is the late Dr. Milton Friedman.

170. Dr. Milton Friedman was an advocate for free markets and in particular private school choice with limited government intervention.

171. Defendant Friedman Foundation now primarily advocates for private school choice **administered by government entities**. This is the **opposite** of what Dr. Friedman would have wanted or espoused.

172. Upon information and belief, Defendant Friedman Foundation receives substantial annual funding from special interest groups who will financially benefit from government run private school choice – specifically new and experimental Education Savings Accounts ("ESAs").

173. Defendant Friedman Foundation's existence is dependent on annual fundraising from special interest groups.

174. Defendant Friedman Foundation no longer follows its original mission of free market and limited government and instead is pushing the agenda of special interest.

175. Defendant RQA has entered a criminal corporate plea for engaging in illegal lobbying from 2008 through 2016. Upon information and belief said activities involve other Defendants herein.

176. Defendant RQA unlawfully sold political influence and access according to the South Carolina State Grand Jury Report issued on or about October 9, 2018.

177. Upon information and belief, Defendant RQA received compensation from Defendants and John Doe(s).

178. Upon information and belief, Defendant RQA also illegally used / sold political influence and access to Defendants and John Doe(s).

179. Upon information and belief, Defendant First Tuesday has picked up where RQA left off with respect to Defendants and John Doe(s).

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180. Defendant First Tuesday provides services to Defendant ECENC Fund and Defendant DOR.

181. Defendant First Tuesday provides services to charter school groups.

182. Although charter schools are a form of school choice, they are one of the primary opponents to private school choice such as this K-12 tax credit scholarship program which is the subject of this Complaint.

183. It is a common perception among grassroots and experts that charter schools, who once fought for "school choice", now do not want competition from private independent schools such as the ones that benefit from K-12 tax credit scholarship programs. This is the reasoning for their opposition.

184. Defendant First Tuesday has a natural conflict representing both charter schools and the ECENC program – plus the obvious issues of political access and influence that comes with their representation of legislators and campaign consulting business.

185. Upon information and belief, First Tuesday assisted Defendant ECENC Fund with fundraising.

186. Defendant First Tuesday had an employee on their website who was also working on the ECENC Fund program. When exposed by Plaintiff Davis, that individual was removed from the First Tuesday website and has now been listed officially as the "Administrator" at Defendant ECENC Fund.

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187. Defendant Weaver is a legislatively appointed member of Defendant South Carolina Education Oversight Committee ("EOC").

188. Defendant Weaver was appointed as a member of Defendant EOC by then South Carolina State Senator John E. Courson of Richland County.

189. Former Senator Courson has never supported the ECENC program.

190. On June 4, 2018, Senator John E. Courson resigned from office, pled guilty to one count of willful misconduct in office and agreed to cooperate with an ongoing investigation into public corruption at the South Carolina State House.

191. Former Senator John E. Courson's above referenced guilty plea centered around his relationship with Defendant Richard Quinn & Associates.

192. Defendant Richard Quinn & Associates has also entered into a criminal corporate plea involving public corruption at the South Carolina State House.

Defamation – Weaver & PPI

193. On Saturday February 25, 2017, Weaver, in her official capacity representing PPI, spoke on the topic of school choice at the annual Palmetto Panel Conference in Clemson, SC.

194. Plaintiff Davis attended the February 25, 2017 Palmetto Panel Conference in Clemson, SC, and heard Weaver's presentation.

195. After Weaver's presentation, she was approached by a political grassroots advocate to further discuss her topic of school choice.

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196. During the above conversation, Weaver made specific reference to Plaintiff Davis in the audience, knowing Davis has a different opinion on school choice advocacy.

197. Weaver made several disparaging, false light and defamatory comments about Plaintiff Davis and his advocacy work to said political grassroots advocate.

198. Weaver proceeded to make disparaging, false light and defamatory remarks about Davis, his wife, and the 501(c)(3) nonprofit organization she runs and that Davis volunteers with as an Advisory Board Member.

199. In addition to the above, Weaver proceeded to state that Davis had lost his license to practice law – said statement is not true.

200. **Plaintiff Davis is an Active Member in Good Standing of the State Bar of Georgia with no disciplinary action since first admitted to the practice of law in 1994.**

201. Upon information and belief, this was not the first time Weaver / PPI (and the John Doe(s)) had made defamatory and false light statements such as the above regarding Plaintiff Davis.

202. On March 24, 2017, Plaintiff Davis sent a letter to an individual board member of PPI detailing the above defamatory statements. Davis did not receive a reply, and the defamatory and false light statements did not stop.

203. On May 13, 2017, Plaintiff Davis approach Weaver at her "booth" at the SC Republican Party State Convention in Columbia, SC, to clear up any

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misunderstanding. Weaver refused to talk to Davis, proceeded to tell him he was the most destructive factor to school choice in South Carolina, and that he should move out of the state. Weaver them proceeded to threaten to call the police if Davis did not leave her "booth".

204. On December 4th, 2017, Plaintiff Davis approached the above Defendant DeMint and Defendant Smith with PPI. After introducing himself, both individuals turned around refusing to speak to Davis and Defendant Smith yelled at Davis saying he was the source of "corruption" in the SC school choice tax credit program. The entire interaction lasted less than 30 seconds.

205. After the December 4th, 2017 interaction above, Defendant DeMint and Smith told others that Davis had accosted the PPI board member.

206. On multiple occasions, before and after the above incidents, Plaintiff Davis and others supporting his advocacy efforts, including parents of children with "special needs" benefiting from South Carolina's K-12 school choice tax credit program have requested a public or private meeting with Defendants to clear up any misunderstandings. Defendants have refused any meeting, obviously wanting to continue to perpetrate their plan.

FACTUAL ALLEGATIONS
(Additional Background)

207. Plaintiff Davis is a volunteer grassroots advocate for private school choice for South Carolina's K-12 children with special needs, children in a low-income

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situation, homeschooled children, and ultimately all children in SC. Plaintiff specifically advocates for ***private / free-market K-12 school choice solutions***.

208. Defendants Weaver & PPI advocate for K-12 school choice solutions in SC as well. However, Weaver & PPI specifically advocate for ***government run K-12 school choice solutions***.

209. There is a distinct policy and practical difference between K-12 school choice solutions that are ***#1 government run solutions*** vs. ***#2 private / free-market solutions***.

210. Weaver & PPI politically oppose the grassroots advocacy of Plaintiff Davis. Upon information and belief, this opposition is due to Weaver & PPI's political and financial interest as well as the political and financial interest of certain John Doe(s).

211. PPI received tax deductible contributions totaling **$551,443** in 2016, **$490,420** in 2015, **$356,105** in 2014 & **$514,847** in 2013 under Weaver and certain other individuals newly involved in the nonprofit organization and PPI's 2013 "relaunch".

212. PPI (under a former name) received tax deductible contributions of **$62,800** in 2012, the first part year Weaver and certain other individuals became involved in the nonprofit organization.

213. PPI (under a former name) only received tax deductible contributions of **$7,500** in 2011, **$13,000** in 2010 & **$30,000** in 2009 prior to Weaver and certain other individuals became involved in the nonprofit organization.

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214. PPI's website (as of 5/3/2018) states:

> **"Palmetto Promise Institute (PPI) is an independent, nonpartisan, nonprofit, 501(c)(3) educational organization. PPI conducts public policy research dedicated to creating a free and flourishing South Carolina, where every individual has the opportunity to reach their full potential. PPI does not perform contract research and does not accept government grants. Permission to reprint material on this site is granted provided that PPI is properly cited. Nothing written here is to be considered an attempt to aid or hinder the passage of any specific legislation."**

215. Upon information and belief, PPI is a nonprofit "front organization" for certain John Doe(s) with financial interest in ***government run K-12 school choice solutions*** (including charter schools) which Weaver & PPI claim to be advocating for as an independent, nonpartisan, nonprofit, 501(c)(3) educational organization.

216. Upon information and belief, Weaver and PPI advocate for ***government run K-12 school choice solutions*** (including charter schools) as a paid contract research and advocacy group benefiting certain John Doe(s) with financial interest in the success and expansion of ***government run K-12 school choice solutions***.

217. Weaver, PPI and the John Doe(s) have produced false and misleading reports(s) and other defamatory and false light information about the activities of Davis and his work with organizations he has volunteered for to further their own financial interest and the financial interest of their benefactors.

218. Upon information and belief, Defendants Weaver, PPI and John Doe(s) worked together and conspired to further their mutual interests and disguise their activities.

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A FIRST CAUSE OF ACTION
(DEFAMATION Per Se & Per Quod)

220. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

221. The Defendants, individually and collectively, made false and defamatory statements about Defendant.

222. The Defendants, individually and collectively, stated both verbally and (upon information and belief) in writing to third parties that Plaintiff had been disbarred from the practice of law.

223. These statements were false and the Defendants knew or should have known that the statements were false.

224. As the direct and proximate result of the Defendants' defamatory statements which were made with malice and with the specific intent to harm Defendant and others, Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact resulted.

A SECOND CAUSE OF ACTION
(Defamation by innuendo)

225. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

226. The Defendants, individually and collectively, made misleading innuendo and statements about Defendant which placed him in a false light.

227. As the direct and proximate result of the Defendants' statements which were made with malice and with the specific intent to harm Defendant and others, Defendant is entitled to special damages, actual damages, incidental damages, and punitive damages, all in an amount to be determined by the trier of fact.

A THIRD CAUSE OF ACTION
(INVASION OF PRIVACY)

228. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

229. The Defendants individually and in concert with each other engaged in wrongful acts that constitute an unwarranted invasion and trespass upon Plaintiff's privacy.

230. Defendants, armed with the personal knowledge gained from unwarranted invasion and trespass upon Plaintiff's privacy, used such knowledge improperly and sought additional private knowledge (irrelevant to the matters at hand) to improperly use against Plaintiff in furtherance of Defendants' financial and political interest.

231. Such wrongful acts perpetrated by the Defendants have inflicted great and irreparable harm upon Plaintiff.

232. Certain Defendants acquiesced to the improper actions of their agents and other Defendants in furtherance of their scheme.

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A FORTH CAUSE OF ACTION
(NEGLIGENCE)

233. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

234. Defendants were negligent, careless, reckless and willfully acted with actual malice in that they had a duty to ensure the truthfulness of their statements but they knew their statements were false and nevertheless acted with reckless disregard for the truth by publishing their statements to third parties.

A FIFTH CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

235. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

236. Defendants conduct was intended to inflict emotional distress on the Plaintiff and was outrageous beyond the bounds of conduct expected by members of society; the outrageous conduct caused Plaintiff to suffer severe emotional distress, which resulted in Plaintiff incurring expense for medical treatment.

A SIXTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS)

237. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

238. Defendants directed others (including other Defendants) to not do business with Plaintiff and associated entities by making false and defamatory statements and innuendo.

239. As a direct and proximate result of the Defendant's actions, Plaintiff was damaged.

A SEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

240. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

241. This cause of action is brought pursuant to "South Carolina Unfair Trade Practices Act.", S.C. Code Ann 39-5-10 *et seq.* ("SCUTPA")

242. The public has an interest in ensuring that non-profit organizations operating in South Carolina, as well as their volunteers and beneficiaries, are not hindered in their charitable mission.

243. Defendants violated the SCUTPA through their actions herein discussed.

244. Plaintiff is entitled to injunctive relief, treble damages, and attorneys' fees as allowed by statute.

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A EIGHTH CAUSE OF ACTION
(PIERCE THE CORPORATE VEIL)

245. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

246. Upon information and belief, the Corporate Defendants were operated as the alter-ego or instrumentality of one of more of the individual Defendants / John Doe(s) for their own personal benefit and financial gain and as such perpetuated the complained actions on Plaintiff.

247. Upon information and belief, the one or more of the individual Defendants / John Doe(s) exercised dominion and control over the Corporate Defendants' finances and operations, and used such for their own personal benefit.

248. Upon information and belief, the Corporate Defendants disregarded basic corporate and non-profit formalities. This disregard includes, but is not limited to, operating the Corporate Defendants in such a way that the same no longer has a corporate personality that is separate and distinct from one or more of the individual Defendants / John Doe(s).

A NINTH CAUSE OF ACTION
(CONSPIRACY)

249. Plaintiff repeats and re-alleges each allegation and paragraph already stated above.

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250. Defendants conspired and colluded together and amongst themselves to execute the above stated Cause of Action.

251. Plaintiff was damaged as a direct and proximate result of this conspiracy and collusion.

252. Defendants are senior political figures. Given the stature and position of Defendants in the community both locally and nationally, Plaintiff sustained substantial embarrassment and pain & suffering over this matter.

253. Plaintiff Davis and his wife were dealing with some major medical issues and substantial expenses due to the additional stress incurred because of Defendants civil conspiracy. But for their civil conspiracy Plaintiff would not have had this additional stress and pain & suffering or additional medical expenses.

254. Plaintiff also had to incur additional out of pocket expenses and personal time to more closely follow the legislative process in Columbia to try to combat Defendants' civil conspiracy.

255. Plaintiff Davis was and remains unable to seek outside employment and business opportunities due to the constant requirement to stay 110% attentive to any efforts to further tarnish the image and reputation of Plaintiff and any members of his group.

256. Plaintiff Davis has had at least $50,000 - $100,000 plus in out of pocket special damages directly related to Defendants' civil conspiracy, plus and additional compensation for pain & suffering and lost income and wages to be calculated.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters alleged and render a judgment for actual and punitive damages in an amount to be determined by a jury. Plaintiff further prays for costs and attorney's fees against the Defendants and any such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF

November 19, 2018
Greenville, South Carolina

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EXHIBIT B

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	CIVIL ACTION NO. 2018-CP-40-02425
Jefferson Davis, Jr.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,	)	**AFFIDAVIT OF CAREY E. FOLCO**

1. I am the Vice President of Operations of EdChoice, Inc. I am over twenty-one years of age and am competent to make this affidavit.

2. I have personal knowledge of the facts set forth in this affidavit.

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3. I have reviewed the First Amended Complaint filed in the above captioned matter and am familiar with its contents.

4. EdChoice, Inc. is a nonprofit corporation organized under the laws of the State of Indiana. EdChoice was formerly known as The Friedman Foundation for Educational Choice, Inc. and is incorrectly identified in the First Amended Complaint. EdChoice maintains one office at 111 Monument Circle, Suite 2650, Indianapolis, Indiana 46204.

5. EdChoice is a 501(c)(3) nonprofit, nonpartisan organization. Its mission is to advance a K-12 education system where all families, regardless of race, origin or family income, are free to choose a learning environment – public or private, near or far, religious or secular – that works best for their children.

6. EdChoice helps educate on school choice around the nation.

7. EdChoice is not licensed to do business in South Carolina and does not engage in any commercial activities.

8. EdChoice does not contract to provide services for profit or products in South Carolina.

9. EdChoice does not have any interest in, use, or possess real property in South Carolina.

10. EdChoice does not have personal property in South Carolina. It does not have any assets, offices, or employees located in South Carolina.

11. EdChoice does not maintain any bank accounts in South Carolina and does not pay taxes in South Carolina.

12. EdChoice has never contracted to insure any person, property, or risk in South Carolina.

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13. Since the beginning of 2014, EdChoice has provided grants to three different nonprofit entities in South Carolina. Every grant agreement EdChoice enters into mandates that the grantee shall not use or allow the use of any portion of the grant for any purpose other than a charitable, educational, scientific or literary purpose (as such terms are defined in section 501(c)(3) of the Internal Revenue Code) that is consistent with the basis on which the particular grantee was recognized as tax exempt by the IRS. All grants are for charitable purposes and all grant agreements are to be interpreted in accordance with the laws of the State of Indiana.

14. EdChoice did not and does not control or direct the operations and activities of any of the South Carolina defendants identified in the First Amended Complaint.

15. EdChoice did not and does not control or direct the operations and activities of any of the nonprofit entities, governmental entities, political consulting firms or other entities identified in the First Amended Complaint.

16. EdChoice did not and does not employ of the individual defendants identified in the First Amended Complaint, except for Jason Bedrick. Mr. Bedrick currently works for EdChoice from his home in Arizona. Other than identifying Mr. Bedrick as the Director of Policy at EdChoice (paragraph 24 of the First Amended Complaint), plaintiff makes no specific allegations against Mr. Bedrick and does not allege that Mr. Bedrick conducted any activities in South Carolina.

17. None of the individual defendants identified in the complaint have acted as agents of EdChoice in South Carolina.

18. EdChoice has never made, issued, or published any statements about the plaintiff.

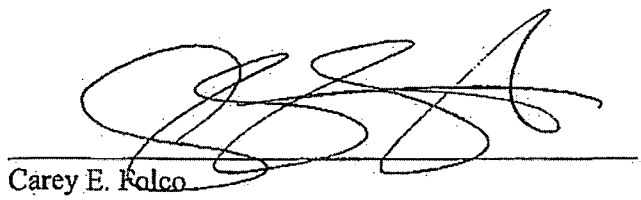
19. EdChoice has never done business with the plaintiff.

20. EdChoice has never directed anyone not to do business with the plaintiff.

21. EdChoice was served with process in Indiana, not South Carolina.

22. EdChoice has not transacted any business or other activities in South Carolina related to the events which form the basis for the plaintiff's claims in this action.

23. I declare under the penalty of perjury that the foregoing facts are true and accurate.



Carey E. Folco

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, this 28th day of January, 2019, personally appeared Carey E. Folco to me well known, who acknowledged the execution of the foregoing instrument as her free act and deed.

Karen B. Philogene
Notary Public

Karen B. Philogene
Printed Name

KAREN B. PHILOGENE
Notary Public, State of Indiana
Marion County
Commission Number 649823
My Commission Expires
December 18, 2021

My Commission Expires: December 18, 2021

County of Residence: Marion

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for EdChoice, Inc. (formerly known as Friedman Foundation for Educational Choice, Inc.), do hereby certify that I have served pro se plaintiff in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss of Defendant EdChoice, Inc. (formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc.) for Lack of Personal Jurisdiction and Failure to State a Claim

Counsel Served:

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615

Pro Se Plaintiff

Linda Silvey
Administrative Assistant

Jan. 30, 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc., d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doc(s) 1-40,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-02425

DEFENDANT EDUCATIONAL OVERSIGHT COMMITTEE AND DEFENDANT MELANIE BARTON'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

INTRODUCTION

Defendant Education Oversight Committee ("EOC") and Defendant Melanie Barton ("Barton") (collectively, "Defendants"), by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion to Dismiss in the above-captioned action. This motion is based on Plaintiff's failure to allege facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) SCRCP. As a separate ground for its motion, Plaintiff has only alleged

conduct on the part of Defendants which occurred outside of all applicable statute of limitations periods and is therefore barred from bringing suit based on this conduct.

FACTUAL BACKGROUND

Plaintiff filed his original Complaint in this action on May 3, 2018. This Complaint did not name Defendant EOC or Defendant Barton. Plaintiff filed an Amended Complaint on November 19, 2018, in which Defendants first appeared as parties.

Plaintiff's Amended Complaint appears to allege nine (9) causes of action against Defendants: 1) defamation per se and per quod; 2) defamation by innuendo; 3) invasion of privacy; 4) negligence; 5) intentional infliction of emotional distress; 6) tortious interference with prospective contractual relations; 7) unfair trade practices; 8) pierce the corporate veil; and 9) conspiracy.

As alleged by Plaintiff, Defendant EOC is a governmental agency for the State of South Carolina. *Am. Compl. ¶ 18.* Defendant Barton is the Executive Director for the EOC and held this same position at all times relevant to this action. *Am. Compl. ¶ 29.* Plaintiff alleges that he is a founder of Palmetto Kids FIRST Scholarship Program, Inc. ("Palmetto Kids FIRST"), a nonprofit corporation incorporated in the State of South Carolina which engaged in the business of accepting donations, which were used to facilitate school choice for special needs children. *Am. Compl. ¶ 44.*

As alleged by Plaintiff, in the summer of 2013, the South Carolina Legislature passed a proviso to give tax credits to persons or organizations which donated to programs like Palmetto Kids FIRST. *Am. Compl. ¶ 39.* These tax credits were first authorized in 2014. *Id.* Pursuant to the proviso which created these tax credits, the legislature gave the EOC the responsibility of

authorizing entities like Palmetto Kids FIRST (called "Scholarship Funding Organizations" or "SFOs") to begin accepting donations. *Am. Compl. ¶ 39.*

The crux of Plaintiff's specific allegations against Defendants appear in paragraph 52 of Plaintiff's Amended Complaint. Plaintiff alleges that in December of 2013, Defendants listed Palmetto Kids FIRST as an approved SFO on the EOC website, but then removed Palmetto Kids FIRST from the website after Defendant Barton allegedly consulted with Defendant Neil Mellen. *Am. Compl. ¶ 52.* Plaintiff alleges that Palmetto Kids FIRST lost millions of dollars in donations as a result of its name being removed as an authorized SFO on January 1, 2014. *Am. Compl. ¶ 60.* Plaintiff further alleged that Palmetto Kids FIRST was placed back on the EOC website after pressure from the local news. *Am. Compl. ¶* 56.

For the reasons set forth below, Defendants are entitled to an order dismissing all of Plaintiff's claims.

STANDARD OF REVIEW

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." Plyer v. Burns, 373 S.C. 637, 644, 647 S.E.2d 188, 192 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). "The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (2001) (citing Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987)). "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." Williams, 353 S.E.2d at 499 (citing Toussaint v. Ham, 292 S.C. 415, 416 (1987)).

ARGUMENT

I. Plaintiff's claims against Defendant EOC are barred by the applicable statute of limitations as set forth in the South Carolina Tort Claims Act.

South Carolina governmental entities may only be sued in tort pursuant to the terms of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq*. S.C. Code Ann. § 15-78-110 provides the applicable statute of limitations for actions brought pursuant to the Tort Claims Act. A claim is forever barred unless an action is commenced within two (2) years after the date the loss was or should have been discovered.[1] *Id.*

While Rule 8(c) lists statute of limitations as an affirmative defense, "[m]ost courts allow [affirmative] defenses to be raised in a motion to dismiss under Rule 12(b) 'when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing can be developed by pretrial discovery or a trial on the issue raised by the defense.'" Spence v. Spence, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (quoting 5 Wright and Miller, Federal Practice and Procedure Civil 3d, § 1277 (2004). As courts are required to base their 12(b)(6) rulings solely on allegations set forth in the complaint, an affirmative defense may be asserted in a 12(b)(6) motion to dismiss if the allegations of the complaint demonstrate the existence of the affirmative defense. *Id.* at 874.

Because Defendant EOC is state agency, Plaintiff's Amended Complaint which alleges causes of action based in tort should have been brought within the two-year statute of limitations prescribed by the Tort Claims Act.[2]

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[1] This two-year period can be extended to three years if a plaintiff has filed a "verified complaint" within one year following the injury. See S.C. Code Ann. §§ 15-78-80; 15-78-110; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

[2] Because Plaintiff does not allege that he filed a "verified complaint" regarding his alleged claims, the three-year statute of limitations is inapplicable in this instance.

Plaintiff's Amended Complaint only alleges acts by Defendant EOC which occurred in December of 2013 when Plaintiff's organization was removed from the EOC website as an approved SFO. Plaintiff's Amended Complaint was filed in November of 2018. Because Plaintiff relies on conduct which occurred prior to November 2016 to support his claims against Defendant EOC, his Complaint is untimely and Defendant EOC is entitled to an order dismissing Plaintiff's claims brought against it.

II. Plaintiff has failed to bring his claims against Defendant Barton within any applicable statute of limitations period.

As outlined above, the only allegations against Defendant Barton in Plaintiff's Amended Complaint occurred in December of 2013, almost five years prior to the filing of Plaintiff's Amended Complaint first naming Defendant Barton. The longest statute of limitations period for any of Plaintiff's claims against Defendant Barton is three years. Because Plaintiff relies on conduct which occurred prior to November 2015 to support his claims against Defendant Barton, his Complaint is untimely and Defendant Barton is entitled to an order dismissing Plaintiff's claims brought against her.

III. Alternatively, Plaintiff's claims against Defendant Barton should be dismissed as Plaintiff has failed to allege conduct by Defendant Barton which was outside the scope of her official duties or conduct which constituted actual fraud, actual malice, an intent to harm, or a crime involving moral turpitude.

Pursuant to the Tort Claims Act, an employee of a governmental entity who commits a tort while acting within the scope of her official duty is immunized from suit. S.C. Code Ann. § 15-78-70(a). Governmental employees may only be sued in their individual capacity if it is proven that the employee's conduct was not within the scope of her official duties or that the employee's conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(b).

As alleged by Plaintiff, Defendant Barton was the Executive Director for the EOC at all relevant times in this action; and, thus, a governmental employee as defined by the Tort Claims Act. *Am. Compl.* ¶ *29.*

The acts allegedly committed by Defendant Barton were squarely within the scope of her employment, as these acts were in furtherance of her job duties. Specifically, the acts alleged by Defendant Barton were performed to carry out the responsibilities placed on the EOC by the legislative proviso outlined in Plaintiff's Amended Complaint. *Am. Compl.* ¶ *39.* These duties involved implementing the process of authorizing SFOs to receive donations. See Exhibit A.[3] The conduct of Defendant Barton alleged by Plaintiff in his Amended Complaint were acts which carried out this approval process.

Because Plaintiff has failed to allege any conduct by Defendant Barton which was not within the scope of her official duties or that constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Defendant Barton should be dismissed as a party to this lawsuit.

IV. Notwithstanding the above, Plaintiff does not have standing to bring the present action against Defendants.

Plaintiff's actions against Defendants are subject to dismissal as all damages allegedly incurred as a result of Defendants' actions were sustained by Palmetto Kids FIRST, and not Plaintiff.

[3] Pursuant to 2013-2014 General Appropriations Act 101, Section 1.85(G)(2)(a), the legislature granted Defendant EOC the responsibility of determining which nonprofit corporations were to appear on the EOC website as approved SFOs. In analyzing a 12(b)(6) motion, a court may consider documents incorporated into the complaint by reference as well as matters of which a court may take judicial notice. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). For these reasons, Defendants offer the proviso for the Court's consideration.

Standing to sue is a fundamental requirement in instituting an action. Blandon v. Coleman, 285 S.C. 472, 475, 330 S.E.2d 298, 299 (1985). As a general rule, to have standing, one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland Cty. Historic Pres. Comm'n, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000). A shareholder may maintain an individual action against a third party for an injury if the shareholder can show that the wrongdoer owed him a special duty or that his injury is separate and distinct from any damage suffered by the corporation. See generally Rice-Marko v. Wachovia Corp., 398 S.C. 301, 728 S.E.2d 61 (Ct. App. 2012).

As discussed above, Plaintiff's causes of action against Defendants emanate from the removal of Palmetto Kids FIRST as an approved SFO from the EOC website. *Am. Compl. ¶ 52.* As alleged by Plaintiff, Palmetto Kids FIRST lost donations during the time it was removed from the EOC website. *Am. Compl. ¶ 52.* Conversely, Plaintiff does not assert that he, individually, was approved to accept donations as an SFO, nor does he assert he applied to become an authorized SFO.

Because Plaintiff has failed to allege how he, individually, incurred damages as a result of the alleged wrongful actions of Defendants or that the Defendants owed him a special duty distinct from that allegedly owed to Palmetto Kids FIRST, Plaintiff does not have standing to maintain any of his causes of action against Defendants.

V. Plaintiff has failed to allege a cause of action for defamation per se or defamation per quod against Defendants.

The plaintiff in a defamation action must prove "1) a false and defamatory statement was made; 2) the unprivileged publication was made to a third party; 3) the publisher was at fault; and 4) either actionability of the statement irrespective of special harm or the existence of special harm

caused by the publication." Paradis v. Charleston Cty. Sch. Dist., 424 S.C. 603, 609, 819 S.E.2d 147, 150 (Ct. App. 2018).

Plaintiff's Amended Complaint fails to allege any of the above elements against either Defendant. Specifically, Plaintiff has failed to allege any statement made by either Defendant about the Plaintiff which could be construed as defamatory. Plaintiff has failed to allege that any statement by either Defendant was unprivileged, nor has he set forth with any specificity what the alleged false statements were. These deficiencies entitle Defendants to an order of dismissal of Plaintiff's defamation claim. See generally, McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 195, 743 S.E.2d 843, 848 (Ct. App. 2013); see also Odom v. CVS Caremark Corp., 2014 U.S. Dist. LEXIS 181471 No. 3:14-456-MGL-SVH *11 (finding that a plaintiff must identify the individual who made the false statement, the contents of such false statement, and to whom such statement was allegedly published).

Accordingly, Plaintiff's defamation claim against Defendants should be dismissed.

VI. Plaintiff's action for defamation by innuendo is not a recognized cause of action.

In Plaintiff's original Complaint, he alleged a cause of action for "false light publicity." By way of his Amended Complaint, Plaintiff renamed this claim as "defamation by innuendo." Defendants assert that Plaintiff's restyled "false light" claim is unrecognized in South Carolina. See Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997) (citing F. Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* 453 (1990)). Accordingly, Plaintiff's false light claim is subject to dismissal.

Notwithstanding the above, should Plaintiff's cause of action for defamation by innuendo be a recognized claim, Defendants assert that it is subsumed in his first cause of action which is subject to dismissal for all reasons previously stated.

VII. Plaintiff has failed to plead facts sufficient to allege a cause of action for invasion of privacy.

For Plaintiff to succeed in his claim for invasion of privacy, he must demonstrate the 1) publicizing, 2) absent any waiver or privilege, 3) private matters in which the public has no legitimate concern, 4) so as to bring shame or humiliation to a person of ordinary sensibilities. Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 478, 514 S.E.2d 126, 131 (1999).

Plaintiff's Amended Complaint fails to allege any conduct by Defendants which could be construed as meeting any of the above elements. As such, Defendants are entitled to an order of dismissal regarding Plaintiff's claim for invasion of privacy.

VIII. Plaintiff has failed to plead facts sufficient to allege a cause of action for negligence.

To establish a cause of action for negligence, a plaintiff must prove the following three elements: 1) a duty owed by defendant to plaintiff; 2) breach of that duty by a negligent act or omission; and 3) damages proximately resulting from the breach. Shaw v. City of Charleston, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence. The existence of a duty owed is a question of law for the courts." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

Plaintiff's Amended Complaint fails to allege any facts which support his claim for negligence. Specifically, Plaintiff has failed to allege how Defendants owed Plaintiff, individually (and not Palmetto Kids FIRST), a legal duty which could serve as a basis for his negligence claim. As alleged by Plaintiff, Palmetto Kids FIRST was undergoing the SFO approval process, not Plaintiff. Consequently, any duty which may have arisen during the approval process would have been owed to Palmetto Kids FIRST alone.

As Plaintiff has failed to allege facts to support his claim for negligence, Defendants are entitled to an order of dismissal regarding this claim.

IX. Plaintiff has failed to plead facts sufficient to support his cause of action for intentional infliction of emotional distress.

To establish the tort of intentional infliction of emotional distress or outrage, the plaintiff must establish the following: 1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; 2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; 3) the actions of the defendant caused the plaintiff's emotional distress; and 4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Hainer v. Am. Med. Int'l, 320 S.C. 316, 324, 465 S.E.2d 112, 117 (Ct. App. 1995).

Plaintiff's Amended Complaint fails to allege any facts which support this claim. Specifically, Plaintiff has failed to allege any conduct by Defendants which was "so extreme and outrageous" as to exceed all possible bounds of decency. Due to Plaintiff's pleading deficiency regarding this cause of action, this claim is subject to dismissal.

X. Plaintiff has failed to plead facts sufficient to support a cause of action for tortious interference with prospective contractual relations.

To recover on a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: 1) the defendant intentionally interfered with the plaintiff's potential contractual relations; 2) for an improper purpose or by improper methods; 3) causing injury to the plaintiff. Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990). A plaintiff must demonstrate, at the outset, that he had a truly prospective contract with a third party by alleging some reasonable expectation of benefits from the alleged

lost contract. United Educ. Distribs., L.L.C. v. Educ. Testing Serv., 350 S.C. 7, 15, 564 S.E.2d 324, 329 (Ct. App. 2002) (dismissing claim based on plaintiff's failure to allege a reasonable probability of entering into a specific contract).

Plaintiff has failed to meet the first element in this cause of action as he does not allege that he, individually, was party to potential contractual relations; rather, Plaintiff's Amended Complaint asserts that Palmetto Kids FIRST engaged in potential contractual relations with potential donors.[4] *Am. Compl.* ¶ 60. Plaintiff has not alleged that he, individually, reasonably expected to personally benefit from such pledges nor how he individually was injured. Instead, Plaintiff's asserts that Palmetto Kids FIRST lost almost all of its previously pledged donations and the reasonably expected additional pledges. As previously discussed, assuming Defendants' conduct is actionable, Palmetto Kids FIRST, and not Plaintiff, is the true injured party.

Because Plaintiff has failed to allege how he was individually injured by the loss of donations to his organization, his claim for tortious interference is subject to dismissal.

XI. Plaintiff has failed to plead sufficient facts to support his cause of action for unfair trade practices.

Plaintiff's claims against Defendants for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") should be dismissed as Defendants are immune from suit under the SCUPTA.

The SCUTPA declares as unlawful any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. S.C. Code Ann. § 39-5-20(a).

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[4] Because Plaintiff does not have standing to bring this cause of action, Defendants forego the opportunity to distinguish the concepts of a promise to make a charitable donation and the formation of a binding contract. For the purposes of this motion only, Defendants concede the pledged donations were potential contracts but preserve the argument for a later juncture in these proceedings if necessary.

Persons aggrieved by an unfair trade practice may bring a civil action for damages pursuant to S.C. Code Ann. § 39-5-140(a). As defined by the SCUPTA, "trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. S.C. Code Ann. § 39-5-10(b).

Certain transactions, however, are exempt from the SCUPTA's provisions. Notably, the SCUPTA is inapplicable to actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law. S.C. Code Ann. § 39-5-40(a).

Assuming Defendants were engaging in transactions, these transactions would be exempt from any action brought under the SCUPTA as Defendants are a State agency and its Executive Director and are thus immune from claims brought under the SCUPTA. Further, as Defendants were not engaged in "trade" or "commerce" as defined by the SCUPTA, Defendants are not subject to suits brought pursuant to the SCUPTA.

Accordingly, Plaintiff's claims brought pursuant to the SCUPTA are subject to dismissal.

XII. Plaintiff's claim for piercing the corporate veil should be dismissed as Defendants do not possess a corporate form.

The remedy of piercing the corporate veil is administered by the Court when the corporate form is used to protect fraud, justify wrong, or defeat public policy. See Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984).

In the present case, Defendants do not possess a corporate form, but are a State agency and its executive director. As such, the remedy of piercing the corporate veil is inapplicable as to these Defendants.

XIII. Plaintiff's claim for civil conspiracy is subject to dismissal as Plaintiff has failed to allege that he incurred special damages.

Civil conspiracy is defined as 1) a combination of two or more persons, 2) for the purpose of injuring the plaintiff, and 3) causing plaintiff special damage. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "[B]ecause the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.* Similarly, plaintiffs are required to allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. *Id.*

In the present case, Plaintiff has failed to allege how he incurred special damages beyond the damages alleged in his other causes of action. Further, as previously discussed, any damages which would have been suffered as a result of Defendants' acts were suffered by Palmetto Kids FIRST, and not Plaintiff. Additionally, Plaintiff failed to allege actions by the Defendants which are "separate and independent from other wrongful acts alleged in the complaint." *Id.* at 115. Instead, in support of his conspiracy claim, Plaintiff merely states, "[d]efendants conspired and colluded together and amongst themselves to execute the above stated Cause of Action" indicating his reliance on acts which are the basis for his other causes of actions to support the claim. *Am. Compl.* ¶ 250. Consequently, Plaintiff's claim for civil conspiracy should be dismissed as to these Defendants.

XIV. Notwithstanding the above, Plaintiff's claims against Defendant EOC for defamation per se & per quod, defamation by innuendo, intentional infliction of emotional distress, tortious interference with prospective contractual relations, and civil conspiracy are subject to dismissal as these claims require a showing of conduct by an employee outside the scope of their employment or conduct which evidences actual malice or an intent to harm.

Plaintiff's claims against Defendant EOC for defamation per se and per quod, defamation by innuendo, intentional infliction of emotional distress, tortious interference with prospective contractual relations, and civil conspiracy are subject to dismissal as these claims involve conduct by an employee outside the scope of their employment or conduct which evidences actual malice or an intent to harm.

Pursuant to the Tort Claims Act, governmental entities cannot be held liable for "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). Accordingly, Defendant EOC is entitled to dismissal of these claims.

Intentional infliction of emotion distress requires a showing that an EOC employee "intentionally or recklessly inflicted severe emotional distress." Hainer, 320 S.C. at 324, 465 S.E.2d at 117. Tortious interference with prospective contractual relations requires a showing that an EOC employee "intentionally interfered with the plaintiff's potential contractual relations" which caused "injury to the plaintiff." Crandall Corp., 302 S.C. at 266, 395 S.E.2d at 180. Civil conspiracy requires a showing that an EOC employee conspired with one or more other persons "for the purpose of injuring the plaintiff." Hackworth, 385 S.C. at 115, 682 S.E.2d at 874. Lastly, in regard to Plaintiff's two defamation claims, Plaintiff alleges that Defendant EOC made defamatory statements "with malice and with the specific intent to harm" the Plaintiff.

Because Plaintiff cannot succeed in these claims without proving conduct by an EOC employee which constitutes actual malice or which evidences an intent to harm, Defendant EOC cannot be held liable for these claims.

CONCLUSION

Based on the foregoing, Defendants would ask this Court for an Order dismissing all of Plaintiff's claims alleged against them in Plaintiff's Amended Complaint.

Respectfully submitted,

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February 6, 2019
Columbia, South Carolina

EXHIBIT A

1.85. (SDE: Educational Credit for Exceptional Needs Children) (A) As used in this proviso:

(1) 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

(2) 'Parent' means the natural or adoptive parent or legal guardian of a child.

(3) 'Qualifying student' means a student who is a South Carolina resident and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the current school year.

(4) 'Resident public school district' means the public school district in which a student resides.

(5) 'Tuition' means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school and school-related transportation.

(6) 'Eligible school' means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws; and

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools or the South Carolina Independent Schools Association.

(7) 'Nonprofit scholarship funding organization' means a charitable organization that:

(a) is exempt from federal tax under Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of the Code;

(b) allocates, after its first year of operation, at least ninety-five percent of its annual contributions and revenue received during a particular year to provide grants for tuition, transportation, or textbook expenses (collectively hereinafter referred to as tuition) or any combination thereof to children enrolled in an eligible school meeting the criteria of this section, and incurs administrative expenses annually, after its first year of operation, of not more than five percent of its annual contributions and revenue for a particular year;

(c) allocates all of its funds used for grants on an annual basis to children who are 'exceptional needs' students as defined herein;

(d) does not provide grants solely for the benefit of one school, and if the Department of Revenue determines that the nonprofit scholarship funding organization is providing grants to one particular school, the tax credit allowed by this section may be disallowed;

(e) does not have as a member of its governing board any parent, legal guardian, or member of their immediate family who has a child or ward who is currently receiving or has received a scholarship grant authorized by this section from the organization within one year of

the date the parent, legal guardian, or member of their immediate family became a board member; and

(f) does not have as a member of its governing board any person who has been convicted of a felony, or who has declared bankruptcy within the last seven years.

(8) 'Person' means an individual, partnership, corporation, or other similar entity.

(9) 'Transportation' means transportation to and from school only.

(B) A person is entitled to a tax credit for the amount of money the person contributes to a nonprofit scholarship funding organization up to the limits of this proviso if:

(1) the contribution is used to provide grants for tuition, transportation, or textbook expenses or any combination thereof to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this proviso; and

(2) the person does not designate a specific child or school as the beneficiary of the contribution.

(C) Grants may be awarded by a scholarship funding organization in an amount not exceeding ten thousand dollars or the total cost of tuition, whichever is less, for students with 'exceptional needs' to attend an independent school. An 'exceptional needs' child is defined as a child who has been designated by the South Carolina Department of Education to meet the requirements of CFR Part A Section 300.8 and the child's parents or legal guardian believe that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

(D) (1) The tax credits authorized by subsection (B) may not exceed cumulatively a total of eight million dollars for contributions made on behalf of 'exceptional needs' students. If the Department of Revenue determines that the total of such credits claimed by all taxpayers exceeds this amount, it shall allow credits only up to those amounts on a first come, first serve basis.

(2) A taxpayer may not claim more than sixty percent of their total tax liability for the year in contribution towards the tax credit authorized by subsection (B). This credit is not refundable.

(3) If a husband and wife file separate returns, they each may only claim one-half of the tax credit that would have been allowed for a joint return for the year.

(4) The person shall apply for a credit under subsection (B) on or with the tax return for the period for which the credit is claimed.

(5) The Department of Revenue shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (B). Also, the department shall develop a method of informing taxpayers if either of the credit limits are met at any time during the 2013 tax year.

(6) A person may claim a credit under subsection (B) for contributions made on or after January 1, 2014.

(E) A corporation or entity entitled to a credit under subsection (B) may not convey, assign, or transfer the deduction or credit authorized by this section to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(F) Except as otherwise provided, neither the Department of Education, the Department of Revenue, nor any other state agency may regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this proviso.

(G) (1) The Education Oversight Committee, as established in Chapter 6, Title 59, is responsible for determining if an eligible school meets the criteria established by subsection (A)(6), and shall publish an approved list of such schools meeting this criteria below. For this purpose, it also shall promulgate regulations further enumerating the specifics of this criteria. In performing this function, the Education Oversight Committee shall establish an advisory committee made up of not more than nine members including parents, and representatives of

independent schools and independent school associations. The advisory committee shall provide recommendations to the Education Oversight Committee on the content of these regulations and any other matters requested by the Education Oversight Committee.

(2) (a) By the first day of August for the current fiscal year, the Education Oversight Committee, on its website available to the general public, shall provide a list with addresses and telephone numbers of nonprofit scholarship funding organizations in good standing which provide grants under this proviso, and a list of approved independent schools which accept grants for eligible students and which in its determination are in compliance with the requirements of subsection (A)(6).

(b) Student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by an eligible school receiving or entitled to receive scholarship grants under this proviso must be transmitted to the Education Oversight Committee which in turn shall publish this information on its website with the most recent scores by category included.

(3) Any independent school not determined to be an eligible school under the provisions of this proviso may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court's rules of procedure.

(4) The Education Oversight Committee, after consultation with its nine-member advisory committee, may exempt an independent school having students with exceptional needs who receive scholarship grants pursuant to this proviso from the curriculum requirements of subsection (A)(6)(d).

(H) (1) Every nonprofit scholarship funding organization providing grants under subsection (C), shall cause an outside auditing firm to conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles and shall furnish the same within thirty days of its completion and acceptance to the Secretary of State and Department of Revenue which must be made available by them on their website for public review.

(2) Every independent school accepting grants for eligible students shall cause to be conducted a compliance audit by an outside entity or auditing firm examining its compliance with the provisions of this proviso, and shall furnish the same within thirty days of its completion and acceptance to the Secretary of State and Department of Revenue which must be made available by them on their website for public review.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit fo Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc., d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-02425

CERTIFICATE OF SERVICE

The undersigned of Boykin & Davis, L.L.C., hereby certifies that he has served the *Pro se* Plaintiff, Jefferson Davis, Jr., with the foregoing **DEFENDANT EDUCATIONAL OVERSIGHT COMMITTEE AND DEFENDANT MELANIE BARTON'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS,** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 6th day of February, 2019:

Jefferson Davis, Jr., Pro se
403 McCarter Avenue
Greenville, SC 29615

Timothy J. Boykin, Paralegal

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1–40, Defendants.	)	C.A. No.: 2018-CP-40-02425 **MEMORANDUM IN SUPPORT OF DEFENDANTS CATO INSTITUTE and HOWARD RICH's MOTION TO DISMISS**

Defendants Cato Institute ("Cato") and Howard S. Rich, by and through undersigned counsel, file this memorandum in support of their Motion to Dismiss Plaintiff's claims pursuant to Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"). As explained more fully below, dismissal of the claims against Cato and Mr. Rich is warranted for multiple reasons, any one of which would be a sufficient, and which collectively compel their summary dismissal from this proceeding.

RELEVANT BACKGROUND

Mr. Davis—a graduate of the University of South Carolina School of Law licensed to practice law in Georgia—filed his *pro se* Complaint on May 3, 2018. The Complaint named an individual defendant (Ellen Weaver), a corporate defendant (Palmetto Promise Institute or "PPI") and 20 pseudonymous defendants (Does 1–20). The Complaint alleged Weaver and PPI had disparaged, defamed, and produced allegedly false and misleading reports regarding Plaintiff. The Complaint asserted nine causes of action:

(1) Defamation per se and per quod;
(2) False light publicity;
(3) Invasion of privacy;
(4) Negligence;
(5) Intentional infliction of emotional distress;
(6) Tortious interference with prospective contractual relations;
(7) Unfair trade practices;
(8) Pierce the corporate veil; and
(9) Conspiracy.

On June 7, 2018, counsel for Weaver, PPI, and the pseudonymous defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP. The defendants supported their motion with a memorandum of law filed on September 26, 2018. On October 29, 2018, Judge Benjamin granted the motion in part. The Amended Order, filed on October 30, 2018, expressly dismiss the following claims *and did not give Plaintiff leave to amend or replead them*: false light publicity, tortious interference with contractual relations, and unfair trade practice. *See* Amended Order at 2–3. The Amended Order declined to dismiss the claims for defamation, negligence, intentional infliction of emotional distress, and piercing the corporate veil; and gave Plaintiff leave to replead his claims for invasion of privacy and conspiracy. *Id.*

Judge Benjamin's Amended Order gave Plaintiff 15 days to amend the pleadings and to name and serve each of the "John Doe" defendants. *Id.* at 3. Fifteen days came and went, and no amended pleading was forthcoming. Not until 20 days later, on November 19, 2018, did Plaintiff file his Amended Complaint, which added 31 new named defendants.[1] The Amended Complaint again asserted the three causes of action already dismissed by Judge Benjamin. Though the 40-page Amended Complaint is prolix, its factual assertions against many of the newly-named defendants are sparse. Cato and Mr. Rich filed a Motion to Dismiss on December 26, 2018.

ARGUMENT

I. The Amended Complaint was untimely filed.

As noted above, Judge Benjamin's Amended Order allowed Plaintiff 15 days in which to file an amended complaint. He failed to timely do so. This failure warrants dismissal of his suit. *See Sealy v. Dodge*, 289 S.C. 543, 544, 347 S.E.2d 504, 505 (1986) (noting that in a prior proceeding, "Appellants failed to timely amend their complaints and the actions were dismissed"). Though courts are, in general, solicitous to *pro se* plaintiffs, Mr. Davis is no layman. He is a graduate of this State's leading law school and is a licensed attorney in a sister State. He has exhausted the grace that is often afforded to *pro se* litigants, and his baseless and insufficiently-pled claims against Cato and Mr. Rich (and the other Defendants) should be summarily dismissed.

II. The Amended Complaint fails to make *any* factual allegations of wrongdoing by Cato.

Dismissal of any and all claims against Cato is required because the Amended Complaint never even mentions Cato other than in the caption, the introductory section naming the defendants, and as a former employer of Defendant Bedrick. *See* Amend. Compl. at ¶¶ 6, 16, 24,

[1] Notwithstanding Judge Benjamin's Amended Order that the new defendants be named and served within 15 days, it was not until much later still that some of them were served. Indeed, some have apparently not yet been served today.

and 162. Neither in those paragraphs nor anywhere else does the Complaint assert any factual allegations about *any* of Cato's actions, much less any allegation of wrongdoing by Cato that were directed against Plaintiff. In the absence of any factual allegation of *any* action (much less wrongdoing) by Cato, the Complaint fails to state any claims upon which relief can be granted, and summary dismissal is warranted. *See Newkirk v. Circuit Court*, No. 3:14CV372–HEH, 2014 WL 4072212 (E.D. Va. Aug.14, 2014) (complaint subject to summary dismissal where no factual allegations against named defendants within the body of the pleading) (citing *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) ("Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.")).

III. The Amended Complaint fails to plead any basis upon which Cato could be vicariously liable for the allegedly wrongful actions of its employees or directors.

As noted above, the Amended Complaint does not include any factual allegations regarding any action performed at any time by Cato, much less a wrongful action directed against Plaintiff. Neither does the Amended Complaint plead any basis upon which Cato could be vicariously liable for the actions of others. A corporate entity cannot be held liable for the wrongdoing of another except in certain limited situations not present here. The sole—and exceedingly tenuous—connection alleged between Cato and any alleged wrongdoer is the assertion that Defendant Jason Bedrick previously served as "a school choice policy analyst for Defendant Cato" and that "Bedrick has at Cato . . . made false and defamatory statements about Plaintiff Davis and his group." *See* Amend. Compl. at ¶¶ 24 and 162. But even assuming *arguendo* the truth of these allegations (which Cato and Mr. Rich do not concede), they fail to assert a basis upon which Cato can be liable for Mr. Bedrick's alleged actions. "[A]n employer is vicariously liable for injuries to a third party resulting from torts its employee commits *within the*

scope of employment." *Froneburger v. Smith*, 406 S.C. 37, 52, 748 S.E.2d 625, 633 (Ct. App. 2013) (emphasis added). The Amended Complaint does not allege that Mr. Bedrick's alleged false and defamatory statements were made in the scope of his employment with Cato, nor is it reasonable to infer that the intended scope of his employment was to engage in tortious conduct. Accordingly, because the Amended Complaint fails to allege vicarious liability and fails to plead facts sufficient to support a claim of vicarious liability, Cato cannot be liable for Mr. Bedrick's or anyone else's alleged wrongdoing.

IV. The Amended Complaint's sparse factual allegations regarding Mr. Rich are not sufficient to support a plausible claim under any of the causes of action asserted.

Dismissal of any and all claims against Mr. Rich is required because even assuming that the Amended Complaint's *de minimis* references to him were true (which is not conceded), they are insufficient to establish Plaintiff's entitlement to relief. *See* Rule 8(a), SCRCP (requiring a pleading to contain "a short and plain statement of the facts showing that the pleader is entitled to relief"). The allegations against Mr. Rich assert only that (a) he "funds and directs the operations and activities" of various other defendants, (b) that prior to 2014, Mr. Rich and other Defendants were engaged in undefined but supposedly "troubling" activities, (c) that in 2015, a state commission in California found he failed to comply with a campaign finance disclosure requirement, (d) that he has contributed money to South Carolina non-profits and entities including several independent schools, and (e) he is or was allegedly a client of the Nexsen Pruet law firm. *See* Amend. Compl. at ¶¶ 6, 45, and 163–68. Even assuming *arguendo* the truth of these allegations, none of them alleges any specific wrongdoing by Mr. Rich that affected Plaintiff, and none of them are sufficient bases upon which any liability could be imposed on Mr. Rich.

V. The Amended Complaint fails to allege any basis on which Mr. Rich should be liable for the alleged wrongdoing of others.

As noted above, the Amended Complaint fails to allege any wrongdoing by Mr. Rich that affected Plaintiff. Neither does the Amended Complaint sufficiently allege any basis on which he can be liable for the alleged wrongs that others supposedly inflicted on Plaintiff. The pleading does not allege that Mr. Rich controlled any of the alleged wrongdoers or compelled their alleged wrongdoing. In the absence of such an allegation, Plaintiff has failed to assert any claim upon which relief could be granted against Mr. Rich.

VI. The Amended Complaint reasserts causes of action previously dismissed without leave to amend.

As noted in the background section above, Plaintiff's Amended Complaint reasserts several causes of action previously dismissed by Judge Benjamin without leave to re-plead them. This warrants dismissal of the Amended Complaint or, at minimum, re-dismissal of the causes of action that were already dismissed. *See Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 91, 399 S.E.2d 16, 18 (Ct. App. 1990) (dismissing plaintiff's amended complaint where plaintiff failed to follow a court order limiting the causes of action to be asserted).

CONCLUSION

For the foregoing reasons, as well as those asserted in the Motion to Dismiss filed by Cato and Mr. Rich, those to be made in any hearing before the Court, and any applicable arguments asserted by co-defendants in support of dismissal, Cato and Mr. Rich independently and respectfully request this Court dismiss them from the instant proceeding.

[*SIGNATURE PAGE ATTACHED*]

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Attorney for Defendant Cato Institute and Howard S. Rich

Greenville, South Carolina
February 6, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, Defendants.	))))

In light of a Co-Defendant's prior-filed motion seeking to forego serving defendants who have not yet appeared in this action and on whom it is not yet clear if the Amended Complaint has been served, undersigned counsel has not served Co-Defendants who have not yet appeared nor apparently been served with the Amended Complaint.

s/Miles E. Coleman
Miles E. Coleman

February 6, 2019

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-40-02425 **MEMORANDUM IN SUPPORT OF DEFENDANT STEPHEN D. KIRKLAND'S MOTION TO DISMISS**

NOW COMES Defendant Stephen D. Kirkland ("Kirkland"), by and through the undersigned counsel, and hereby presents this Memorandum in Support of his Motion to Dismiss the Amended Complaint. As detailed below, this Court should enter an Order granting Defendant's Motion to Dismiss pursuant to Rules 12(b)(5) and 12(b)(6), SCRCP.

BACKGROUND

This lawsuit broadly arises from the South Carolina Legislature's approval of the Educational Credit for Exceptional Needs Children Fund and Plaintiff's involvement with the

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same. Among the various and wide-ranging factual allegations purportedly giving rise to the causes of action, there are few allegations specific to Kirkland. First, the Amended Complaint alleges Defendant South Carolina Department of Revenue and/or Defendant Rick Reames hired Kirkland to conduct an audit to "make sure Plaintiff and his group was not politically targeted and were treated fairly by DOR." *See* Amended Complaint, Paragraph 120. Plaintiff further alleges Kirkland was "conflicted" in this engagement due to his status as Board Member for Defendant Palmetto Family Council and Defendant Palmetto Family Alliance. *See* Amended Complaint, Paragraph 124. Of the 192 factual allegations in the Amended Complaint, Plaintiff's causes of action against Kirkland apparently arise from this "conflicted" engagement.

Plaintiff initially filed the Complaint on May 3, 2018 against Defendants Ellen Weaver, Palmetto Institute and John Does 1-20 ("the Original Defendants"). The Complaint asserted the following causes of action: (1) Defamation; (2) False Light; (3) Invasion of Privacy; (4) Negligence; (5) Intentional Infliction of Emotional Distress; (6) Tortious Interference with Prospective Contractual Relations; (7) Unfair Trade Practices; (8) Piercing the Corporate Veil; and (9) Civil Conspiracy. Counsel for the Original Defendants previously filed a Motion to Dismiss.

On October 1, 2018, this Court heard arguments on the Motion, and, on October 30, 2018, entered an Amended Order granting in part, and denying in part, the Motion to Dismiss. Specifically, the Court granted the Original Defendants' Motion to Dismiss as to Plaintiff's causes of action for False Light, Tortious Interference with Prospective Contractual Relations, and Unfair Trade Practices, and the Court denied the Original Defendants' Motion to Dismiss as to Plaintiff's causes of action for Defamation, Negligence, Intentional Infliction of Emotional Distress, and Piercing the Corporate Veil. Finally, the Court granted Plaintiff leave to amend his

Complaint with additional facts supporting his causes of action for Invasion of Privacy and Civil Conspiracy.

Plaintiff subsequently filed an Amended Complaint, naming various additional Defendants (including Kirkland) while asserting the same nine causes of action originally included in the Complaint. Plaintiff allegedly served Kirkland via certified mail on or around November 26, 2018. Now, Kirkland seeks a dismissal of all causes of action set forth in the Amended Complaint for failure to state a claim and for insufficiency of service of process.

STANDARD

A defendant may move to dismiss a complaint based upon a failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP; *Spence v. Spence*, 368 S.C. 106-17, 628 S.E.2d 869, 874 (2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

ARGUMENT

A. PLAINTIFF'S AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED BY THIS COURT; THEREFORE, KIRKLAND MUST BE DISMISSED.

As a preliminary matter, this Court has previously granted the Original Defendants' Motion to Dismiss as to Plaintiff's causes of action for False Light, Tortious Interference with Contract, and Unfair Trade Practices, and there is no factual or legal basis for Plaintiff's inclusion of these causes of action in the Amended Complaint. However, to the extent this Court does not find the Amended Order controlling as to Plaintiff's claims against Kirkland, all causes of action in the Amended Complaint are addressed below.

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1. Defamation

Plaintiff's cause of action for defamation is based on the alleged representation that Plaintiff was disbarred from the practice of law. *See* Amended Complaint, Paragraph 222. While the cause of action generally refers to "Defendants" making said representation, the factual allegations of the Amended Complaint attribute this statement solely to Weaver. *See* Amended Complaint, Paragraph 199. In fact, the Amended Complaint is void of any alleged statement – verbal, written, or otherwise – by Kirkland regarding Plaintiff and sufficient to serve as the basis of a cause of action for defamation. In the absence of such allegation, Plaintiff's cause of action for defamation must be dismissed as to Kirkland.

2. False Light

The Amended Order previously entered by this Court confirms the State of South Carolina does not recognize false light as a viable cause of action. For this reason, Plaintiff's cause of action for false light must be dismissed as to Kirkland.

3. Invasion of Privacy

Plaintiff's cause of action for invasion of privacy is based on the allegation Defendants "improperly" gained and used personal knowledge regarding Plaintiff and used the same to further Defendants' financial and political interest. *See* Amended Complaint, Paragraph 230. In South Carolina, the elements of invasion of privacy include: (1) publicizing; (2) absent any waiver or privilege; (3) private matters in which the public has no legitimate interest; (4) so as to bring shame or humiliation to a person of ordinary sensibilities. *Swinton Creek Nursery v. Edisto Farm Credit, et al.*, 334 S.C. 469, 514 S.E.2d 126 (1999).

It is clear from the factual allegations in the Amended Complaint there is no basis for an invasion of privacy cause of action against Kirkland. First, the Amended Complaint is void of any allegation Kirkland ever possessed or improperly accessed private matters relative to

Plaintiff. Second, there is no allegation Kirkland ever publicized – as the term has been interpreted by South Carolina law – any information regarding Plaintiff. In the absence of such allegations, Plaintiff's cause of action for invasion of privacy must be dismissed as to Kirkland.

4. Negligence

Plaintiff's cause of action for negligence is based on the allegation that Defendants "had a duty to ensure the truthfulness of their statements but they knew their statements were false and nevertheless acted with reckless disregard for the truth by publishing their statements to third parties." *See* Amended Complaint, Paragraph 234. As noted above, the Amended Complaint is void of any "statements" attributed to Kirkland regarding Plaintiff. Instead, the only factual allegations specific to Kirkland relate to his engagement by Defendant South Carolina Department of Revenue and/or Defendant Rick Reames to conduct a limited audit. The Amended Complaint is void of any "statements" attributed to Kirkland. Accordingly, this cause of action must be dismissed as to Kirkland.

5. Intentional Infliction of Emotional Distress

To prevail on a cause of action for intentional infliction of emotional distress, a plaintiff must satisfy the following elements: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized society; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Upchurch v. New York Times Co.*, 314 S.C. 531, 431 S.E.2d 558 (1993).

Plaintiff's cause of action for intentional infliction of emotional distress is broadly based on Defendants' conduct, which "was intended to inflict emotional distress on the Plaintiff and

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was outrageous beyond the bounds of conduct expected by members of society" such that Plaintiff suffered severe emotional distress. *See* Amended Complaint, Paragraph 236. Not surprisingly, the allegations do not identify specific Defendants or specific conduct purportedly giving rise to this cause of action. Again, Defendant South Carolina Department of Revenue and/or Defendant Rick Reames retained Kirkland to conduct a limited audit. In doing so, Kirkland did not interact with Plaintiff or otherwise act (intentionally or recklessly) with the intent to harm Plaintiff, an individual he has never met and does not know. Accordingly, Plaintiff's cause of action for intentional infliction of emotional distress must be dismissed as to Kirkland.

6. Tortious Interference with Prospective Contract

To prevail on a cause of action for tortious interference with prospective contract, a plaintiff must prove: (1) the intentional interference with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; and (3) causing injury to the plaintiff. *United Educ. Distributors, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 564 S.E.2d 324 (Ct. App. 2002). As the Court acknowledged in its Amended Order, this matter "does not involve any contracts." *See* Amended Order, Page 2. That characterization of the factual allegations and causes of action is certainly applicable to Kirkland. Within the context of the limited allegations against Kirkland, there is no suggestion Kirkland interfered with a potential contract, knew of a potential contract, or that any potential contract ever existed. In the absence of such allegations, Plaintiff's cause of action for intentional interference with prospective contract must be dismissed as to Kirkland.

7. Unfair Trade Practices

To recover in an action under the UTPA, a plaintiff must show the defendant: (1) engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or

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deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 743 S.E.2d 808 (2013). "Trade" or "commerce" is defined by statute to include the "advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. *See* S.C. Code Ann. § 39-5-10(b).

As the Court previously acknowledged in its Amended Order, this lawsuit "does not involve trade or commerce under the South Carolina Unfair Trade Practices Act. This characterization is certainly applicable to Kirkland, who never engaged in "trade" or "commerce" as defined by the statute with Plaintiff. In the absence of such allegations, Plaintiff's cause of action for violation of the UTPA must be dismissed.

8. Piercing the Corporate Veil

This cause of action is directed to the "Corporate Defendants" and is not applicable to Kirkland.

9. Civil Conspiracy

To recover for a cause of action alleging civil conspiracy, a plaintiff must prove the following: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) which causes special damages. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). To satisfy the element of special damages when bringing a claim for civil conspiracy, plaintiff must allege special damages that occurred as a result of the conspiracy in addition to any alleged damages resulting from other claims. The alleged damages resulting for the civil conspiracy must not overlap or be a mere subset of damages allegedly arising from other claims set forth in a pleading. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d

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505 (2006). Additionally, a claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than re-allege other claims within the complaint. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009).

In this case, Plaintiff's claim for civil conspiracy is based on the allegation Defendants "conspired and colluded together and amongst themselves to execute the above stated Cause of Action." *See* Amended Complaint, Paragraph 250. There is no explanation of what Defendants "conspired and colluded together" or the specific acts taken in furtherance of this alleged civil conspiracy. Specific to Kirkland, there is no suggestion he conspired with any other Defendant for the purpose of harming Plaintiff. Kirkland was simply retained by Defendant South Carolina Department of Revenue and/or Defendant Rick Reames to perform a limited audit. In doing so, Kirkland did not interact with Plaintiff, did not make any representations regarding Plaintiff, and did not perform the audit with any other party to the present lawsuit. Additionally, Plaintiff's alleged damages arising from the civil conspiracy cause of action are indistinguishable from and overlap the damages allegedly incurred as a result of the prior causes of action. Accordingly, Plaintiff's cause of action for civil conspiracy must be dismissed as to Kirkland.

B. ALTERNATIVELY, PLAINTIFF HAS NOT COMPLIED WITH THE SERVICE OR PROCESS REQUIREMENTS SET FORTH IN RULE 12(B)(5), SCRCP.

Pursuant to Rule 4(d)(8), SCRCP, a plaintiff may serve an individual defendant by registered or certified mail, return receipt requested and delivery restricted to the addressee. Applied to the present case, Plaintiff attempted service of process on Kirkland via certified mail, return receipt requested. The return receipt (green card) indicates Plaintiff attempted service of the Amended Complaint on Kirkland at 2724 Canterbury Road, Columbia, South Carolina 29204. The return receipt suggests the certified mail was signed for on November 26, 2018. The "signature" is the handwritten last name, Kirkland.

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As set forth in the Affidavit of Stephen Kirkland, a copy of which was attached to Kirkland's Motion to Dismiss, Kirkland did not sign the return receipt (green card) and nobody present at the attempted service address signed the return receipt (green card) on his behalf. In fact, nobody was present at the attempted service address on the alleged date of service. To date, Kirkland has never signed the return receipt (green card) and has not otherwise been served with process in accordance with Rule 4, SCRCP. Accordingly, and to the extent this Court does not grant Kirkland's Motion to Dismiss as to all causes of action pursuant to Rule 12(b)(6), SCRCP, Kirkland hereby requests the Court grant his Motion to Dismiss pursuant to Rule 12(b)(5), SCRCP, for insufficiency of service of process.

CONCLUSION

Based on the foregoing, Kirkland respectfully requests this Court enter an Order dismissing all causes of action against him with all costs taxed against Plaintiff. Defendant Kirkland further seeks any additional relief this Court deems just and proper.

This 6th day of February, 2019.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, and John Doe(s) 1–40, Defendants.	)	C.A. No.: 2018-CP-40-02425 **MEMORANDUM IN SUPPORT OF DEFENDANT SCRG FOUNDATION'S MOTION TO DISMISS**

Defendant SCRG Foundation, n/k/a Donors Enriching Students' Knowledge ("DESK") files this memorandum in support of its Motion to Dismiss Plaintiff's claims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"). Dismissal of any and all claims against DESK is required because the Amended Complaint never even mentions DESK other than in the caption and the introductory section naming the defendants. Furthermore, in neither those few paragraphs nor anywhere else does the Complaint assert *any* factual allegations

about *any* action performed by DESK, much less any allegation of wrongdoing by DESK directed against Plaintiff. In the absence of any factual allegation of *any* action (much less wrongdoing) by DESK, the Complaint fails to state any claims upon which relief can be granted, and summary dismissal is warranted. *See Newkirk v. Circuit Court*, No. 3:14CV372–HEH, 2014 WL 4072212 (E.D. Va. Aug.14, 2014) (complaint subject to summary dismissal where no factual allegations against named defendants within the body of the pleading) (citing *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) ("Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.")).

CONCLUSION

For the foregoing reasons, as well as those asserted in DESK's Motion to Dismiss, those to be made in any hearing before the Court, and any applicable arguments asserted by co-defendants in support of dismissal, DESK independently and respectfully request this Court dismiss it from the instant proceeding.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorney for Defendant Cato Institute and Howard S. Rich

Greenville, South Carolina
February 6, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA, Defendants.	)	C.A. No.: 2018-CP-40-02425 **CERTIFICATE OF SERVICE**

I, the undersigned counsel of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel who have appeared in this action with a copy of the pleading specified below by e-filing, and by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading:	SCRG Foundation n/k/a Donors Enriching Students Knowledge's Memorandum in Support of the Motion to Dismiss
Pro se party served:	Jefferson Davis, Jr. 403 McCarter Avenue Greenville, SC 29615

In light of DESK's prior-filed motion seeking to forego serving defendants who have not yet appeared in this action and on whom it is not yet clear if the Amended Complaint has been served, undersigned counsel has not served Co-Defendants who have not yet appeared nor apparently been served with the Amended Complaint.

s/Miles E. Coleman
Miles E. Coleman

February 6, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Jefferson Davis, Jr.,	)	C/A No. 2018-CP-40-02425
	)	
Plaintiff,	)	**DEFENDANT INSTITUTE OF MANAGEMENT CONSULTANTS USA'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**
	)	
Versus	)	
	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Does(s) 1-40,	)	
Defendants.	)	

TO: JEFFERSON DAVIS, JR., PRO SE:

The Defendant Institute of Management Consultants USA (hereinafter "this Defendant" and/or "IMCUSA"), by and through its undersigned attorneys, respectfully submits this memorandum in support of its motion to dismiss the Plaintiff's Amended Complaint, pursuant to South Carolina Rule of Civil Procedure 12(b)(6). The basis for this motion is that the Plaintiff failed to set forth facts sufficient to state any cause of action upon which relief can be granted, and the Plaintiff's failure to timely amend the pleadings per court orders.

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PROCEDURAL AND FACTUAL BACKGROUND

The Plaintiff filed the Original Complaint in this Court on May 3, 2018. The Plaintiff did not name IMCUSA Defendant in the Original Complaint[1]. On October 18, 2018, this Court partially granted the Defendants' motion to dismiss the Original Complaint. In that Order, the Court instructed the Plaintiff to name and serve each John Doe and afforded the Plaintiff fifteen (15) days to do so. Eleven (11) days later, on October 29, 2018, this Court issued an Amended Order providing substantively the same. However, the Plaintiff was afforded fifteen (15) days from that date to amend the pleadings appropriately and to name each John Doe specifically.

On November 19, 2018 – almost a full week after the Court's deadline to amend the pleadings – Plaintiff filed the Amended Complaint, and in doing so named this Defendant, IMCUSA, as a party to this action. The relevant facts as to IMCUSA, as alleged in the Plaintiff's Amended Complaint, are as follows.

Defendant Stephen Kirkland was hired by the South Carolina Department of Revenue as a CPA to perform a third-party audit of Plaintiff's group, Palmetto Kids FIRST Scholarship Program, Inc. (Am. Compl. ¶ 120-23). Plaintiff alleges that Defendant Kirkland's appointment was improper as Defendant Kirkland was conflicted. (Am. Compl. ¶ 124). The Plaintiff filed ethics complaints against Defendant Kirkland with the South Carolina State Board of Accountancy and IMCUSA because of the conflict. (Am. Compl. ¶ 127-28). Plaintiff asserts that IMCUSA has been unusually slow in the ethics investigation of Defendant Kirkland, and alleges that IMCUSA is under pressure from "very powerful and influential [Defendants] and John Doe(s)." (Am. Compl.

[1] The Defendants to the Original Complaint were: Ellen Weaver, individually, Palmetto Institute & John Does 1-20.

¶ 147-48). The alleged pressure, according to the Plaintiff, has led to IMCUSA becoming complicit in an ongoing civil conspiracy. (Am. Compl. ¶ 149).

The Plaintiff's Amended Complaint asserts the following nine (9) causes of action against all Defendants: (1) Defamation Per Se & Per Quod; (2) Defamation by innuendo; (3) Invasion of Privacy; (4) Negligence; (5) Intentional Infliction of Emotional Distress; (6) Tortious Interference with Prospective Contractual Relations; (7) Unfair Trade Practices; (8) Pierce the Corporate Veil; and (9) Conspiracy.

LEGAL STANDARD

According to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss for failure to state facts sufficient to state a claim upon which relief can be granted. Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). A motion to dismiss under Rule 12(b)(6) must be based solely upon the well-pled allegations set forth on the face of the plaintiff's complaint. *Flateau*, 355 S.C. at 201-02. Furthermore, causes of action based on conclusory allegations without supporting facts are subject to dismissal under Rule 12(b)(6). Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

LEGAL ARGUMENT

Plaintiff's Amended Complaint should be dismissed as to this Defendant, IMCUSA, because it fails to state facts sufficient to constitute a cause of action. This memorandum in support of IMCUSA's Motion to Dismiss will address each of the nine causes of action asserted.

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A. THE COURT SHOULD DISMISS THE PLAINTIFF'S FIRST CAUSE OF ACTION FOR DEFAMATION PER SE & PER QUOD AND SECOND CAUSE OF ACTION FOR DEFAMATION AND INNUENDO BECAUSE HE FAILED TO ALLEGE FACTS TO SUPPORT THE CAUSES OF ACTION.

In Plaintiff's First Cause of Action, he asserts Defamation Per Se & Per Quod, while in the Second Cause of Action, he asserts Defamation by Innuendo. The Court should dismiss both claims as they fail to allege any to support the causes of action.

In South Carolina, the tort of defamation requires, at the very least, that the defendant communicate a false, defamatory message about the plaintiff to someone else. See Holtzscheiter v. Thomson Newspapers, 332 S.C. 502, 506 S.E.2d 497, 506 (1998). "The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory per se." Id at, 332 S.C. 502, 508-09, 506 S.E.2d 497, 501 (1998). "If the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, then the statement is defamatory per quod." Id. In cases involving defamation per quod, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning. Id.

In this case, the Plaintiff failed to allege any statements made by Defendant IMCUSA. In reality, the Plaintiff's allegations toward Defendant IMCUSA rest on an ethics complaint filed against Defendant Kirkland. If the Court is to take the allegations in the Plaintiff's Amended Complaint as true, which this Defendant summarily denied, the cause of action against Defendant IMCUSA must still be dismissed because the Plaintiff failed to allege any facts that IMCUSA communicated any false statements if any statements at all.

Therefore, because the Plaintiff has not alleged facts sufficient to state a cause of action for defamation of any kind against IMCUSA, Plaintiff's First and Second Causes of Action must be dismissed.

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B. THE COURT SHOULD DISMISS THE PLAINTIFF'S THIRD CAUSE OF ACTION FOR INVASION OF PRIVACY BECAUSE HE FAILED TO TIMELY FILE HIS AMENDED COMPLAINT AND FAILED TO AMEND THE PLEADINGS TO ALLEGE FACTS SUPPORTING THE CAUSE OF ACTION.

Plaintiff's Third Cause of Action asserts an invasion of privacy against all Defendants. It is not clear, however, whether Plaintiff alleges invasion of privacy by publicity or invasion of privacy for wrongful intrusion into private affairs; regardless, Plaintiff failed to plead facts sufficient to state a cause of action for either.

In South Carolina, the Plaintiff must show that Defendant IMCUSA: (1) publicized; (2) without waiver or privilege; (3) private matters to which the public has no concern; and (4) to bring shame or humiliation to a person of ordinary sensibilities. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 477-78, 514 S.E.2d 126, 130 (1990). In this case, the Plaintiff alleges no facts that suggest IMCUSA publicized any information. The Plaintiff's grievance against IMCUSA seems to be that IMCUSA refuses to disclose or provide *any* information. As such, the Plaintiff failed to plead facts sufficient to state a claim for invasion of privacy by publicity.

Further, in South Carolina, in an action for invasion of privacy for wrongful intrusion into private affairs, the following four elements must be pled: (1) An intrusion; (2) into that which is private; (3) that is substantial and unreasonable enough to be legally cognizable; and (4) that is intentional." Snakenberg v. Hartford Casualty Ins. Co., 299 S.C. 164, 171, 383 S.E.2d 2, 6 (Ct. App. 1989). In this case, the Plaintiff alleges no facts that suggest IMCUSA intentionally intruded into his privacy. As such, the Plaintiff has failed to state facts sufficient to allege an invasion of privacy against IMCUSA.

Additionally, in this Court's Amended Order dated October 29, 2018, the Court addressed a Motion to Dismiss the Third Cause of Action of the Original Complaint. The Third Cause of Action of the Original Complaint was also for Invasion of Privacy. The Court provided that

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"Plaintiff has not pled facts sufficient to constitute any cause of action for invasion of privacy because [the] Plaintiff failed to allege that the information was publicized in any way. The court will allow Plaintiff the opportunity to amend the complaint [within 15 days] to detail the elements of publicity, **and if [the] plaintiff is unable to do so, this motion to dismiss will be granted.**" (Am. Order) (emphasis added). Not only did the Plaintiff not follow this Court's instruction to detail the claim of invasion of privacy, but the Plaintiff also failed to amend the Third Cause of Action whatsoever. Lastly, the Plaintiff was unwilling to follow the Court's instruction to file his Amended Complaint within 15 days.

For the reasons mentioned above, the Plaintiff once again failed to plead facts sufficient to state a cause of action for invasion of privacy. Therefore, the Court must dismiss the Plaintiff's Third Cause of Action.

C. THE COURT SHOULD DISMISS THE PLAINTIFF'S FOURTH CAUSE OF ACTION FOR NEGLIGENCE BECAUSE HE FAILS TO ALLEGE FACTS TO SUPPORT THE CAUSE OF ACTION.

The Plaintiff's Fourth Cause of Action is for negligence against all Defendants. The Court should dismiss the Plaintiff's cause of action for negligence because he fails to point to any facts that support the claim.

To establish a cause of action for negligence, the plaintiff must plead the following essential elements: "(1) a duty of care owed by the defendant to plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998).

While the Plaintiff alleges a duty of care owed by the Defendants to Plaintiff, he does not allege any damages as a proximate result of the breach of those duties. Additionally, the duty Plaintiff alleges is that the Defendants had a duty to ensure the truthfulness of their statements

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before communicating them. However, the Plaintiff does not allege what false statements IMCUSA made and failed to contend that IMCUSA made any comments whatsoever. Therefore, because the Plaintiff failed to plead facts sufficient to state a claim for negligence, his Fourth Cause of Action must be dismissed.

D. THE COURT SHOULD DENY THE PLAINTIFF'S FIFTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE THE PLAINTIFF FAILED TO ALLEGE FACTS TO SUPPORT THE CAUSE OF ACTION.

Plaintiff's asserted a Fifth Cause of Action is for Intentional Infliction of Emotional against all Defendants. The Court should dismiss the Plaintiff's Fifth Cause of Action because the Plaintiff failed to support his conclusory allegations with any facts.

For the tort of intentional infliction of emotional distress, a plaintiff must show that "(1) the defendant intentionally or recklessly inflicted severe emotional distress ...; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' ...; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.'" Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In this case, the Plaintiff's only *factual* allegations made against IMCUSA are that "IMCUSA has unusually been slow in the investigation of Defendant Kirkland's ethic[s] complaint;" and that "IMCUSA is under pressure from what is obviously very powerful and influential [Defendants] and Jonn Doe(s)" (Am. Compl. ¶ 147-48). Even if we are to take the Plaintiff's allegations against IMCUSA as true, which Defendant IMCUSA denied, these factual allegations do not support the single conclusory allegation asserted against IMCUSA in the Fifth Cause of Action.

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Therefore, the Court must dismiss the Plaintiff's Fifth Cause of Action for intentional infliction of emotional distress.

E. THE COURT SHOULD DISMISS THE PLAINTIFF'S SIXTH CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS BECAUSE THE PLAINTIFF FAILED TO ALLEGE A REASONABLE EXPECTATION OF BENEFITS FROM A CONTRACT.

Plaintiff's Sixth Cause of Action is for tortious interference with prospective contractual relations and is asserted against all Defendants. The Plaintiff failed to state facts sufficient to establish a cause of action for the tort.

"The elements of [tortious interference with prospective contractual relations] are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff." United Educ. Distribs., LLC v. Educ. Testing Serv., 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002); *Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001); Love v. Gamble, 316 S.C. 203, 448 S.E.2d 876 (Ct. App. 1994).

To succeed on this cause of action, "[t]he plaintiff must actually demonstrate, at the outset, that he had a truly prospective ... contract with a third party." United Educ. Distribs., 348 S.C. at 15. The Court in United Educational Distributors held that, based on South Carolina precedent, a cause of action for intentional interference with prospective contractual relations will only stand following the loss of an "identifiable contract or expectation." Id. at 14; See Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 395 S.E.2d 179 (1990) (involving the interference with a verbal parts and labor supply contract); See also Love, 316 S.C. at 205-07 (involving interference with a pickle supply contract); Williams v. Riedman, 339 S.C. 251, 529 S.E.2d 28 (Ct. App. 2000)

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(involving a wrongful termination claim in which the former employee allegedly solicited the employer's current clients).

While South Carolina precedent does not require a plaintiff to prove intentional interference with prospective contractual relations in the pleadings, "the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts." United Educ. Distribs., 348 S.C. at 15.

In this case, the Plaintiff asserts no facts against IMCUSA that could give rise to any expectation of benefits from any lost contracts. Furthermore, the allegations contained within the Sixth Cause of Action fail to identify "a truly prospective ... contract," or a loss of an "identifiable contract or expectation." *Id.* at 14-15.

Additionally, in this Court's Amended Order dated October 29, 2018, the Court addressed a Motion to Dismiss the Sixth Cause of Action of the Original Complaint. The Sixth Cause of Action of the Original Complaint was also for Tortious Interference with Prospective Contractual Relations. The allegations contained within the Plaintiff's Amended Complaint as to the Sixth Cause of Action are the same as included within the Plaintiff's Original Complaint. In this Court's Amended Order, the Court granted the Defendants' Motion to Dismiss.

As noted above, in the Amended Complaint, the Plaintiff once again failed to plead facts sufficient to state a cause of action for tortious interference with prospective contractual relations. Therefore, the Court should dismiss the Plaintiff's Sixth Cause of Action.

F. THE COURT SHOULD DISMISS THE PLAINTIFF'S SEVENTH CAUSE OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT BECAUSE HE FAILED ALLEGE ANY FACTS THAT WOULD INVOKE THE STATUTE

The Plaintiff brought the Seventh Cause of Action under the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. § 39-5-10 *et seq.*, and has asserted it against all

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Defendants. The Plaintiff failed to allege that IMCUSA partook in any unfair or deceptive act, and was unable to point to any actionable trade practice.

SCUTPA provides that "... unfair or deceptive acts or practices in the conduct of any *trade or commerce* are ... unlawful." S.C. Code Ann. § 39-5-20(a) (emphasis added). The same act defines "trade" or "commerce" as "includ[ing] the advertising, offering for sale, sale or distribution of any services and any property, ... and any other article, commodity or thing of value wherever situate, ..." S.C. Code Ann. § 39-5-10(b). "To recover in an action under [SCUTPA], the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; ..." Maybank v. BB&T Corp., 416 S.C. 541, 569, 787 S.E.2d 498, 512 (2016) (citing RFT Mgmt. Co. v. Tinsley & Adams *L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012)).

In this case, not only does the Plaintiff not allege that IMCUSA engaged in any unfair or deceptive act, the Plaintiff does not even allege IMCUSA to have participated in any trade or commerce actionable under SCUTPA. Furthermore, IMCUSA is a non-profit organization that offers certifications to management consultants; it does not engage in any trade or commerce as defined by SCUTPA. Therefore, because Plaintiff has failed to plead facts sufficient to state a claim under SCUTPA, the Seventh Cause of Action must be dismissed.

Additionally, in this Court's Amended Order dated October 29, 2018, the Court addressed a Motion to Dismiss the Seventh Cause of Action of the Original Complaint. The Seventh Cause of Action of the Original Complaint was also for Unfair Trade Practices. Further, the allegations contained within the Plaintiff's Amended Complaint as to the Seventh Cause of Action are the same as the claims included within the Plaintiff's Original Complaint. In this Court's Amended Order, the Court provided that "this matter does not involve trade or commerce under the South

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Carolina Unfair Trade Practices Act;" as such, the Court granted the Motion to Dismiss the Seventh Cause of Action.

As noted above, the Plaintiff once again failed to plead facts sufficient to state a cause of action according to the South Carolina Unfair Trade Practices Act. Therefore, the Court should dismiss the Seventh Cause of Action, again.

G. THE COURT SHOULD DISMISS THE PLAINTIFF'S CAUSE OF ACTION TO PIERCE THE CORPORATE VEIL BECAUSE HE FAILED TO PLEAD ALLEGATIONS IN ACCORDANCE WITH SOUTH CAROLINA LAW.

Plaintiff's Eighth Cause of Action is to Pierce the Corporate Veil. The Plaintiff failed to allege facts sufficient to pierce the corporate veil. Additionally, the Plaintiff's request to pierce the corporate veil is premature as no Defendant-corporation, in this case, has been found liable for anything.

In South Carolina, Courts use the two-pronged Sturkie test to determine whether piercing the corporate veil is appropriate. See Mid-S. Mgmt. Co. v. Sherwood Dev. Corp., 374 S.C. 588, 649 S.E.2d 135 (Ct. App. 2007); see also Hunting v. Elders, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004). The first part of the test consists of an eight-fact analysis, while the "second part requires ... there be an element of injustice or fundamental unfairness." Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984). Additionally, the burden of proving the second part of the test requires the plaintiff to show (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property."

In this case, the Plaintiff's Eight Cause of Action is devoid of any conclusory allegation relating to any portion of the second prong of the Sturkie test – that there has been any fundamental

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unfairness. Furthermore, the Plaintiff failed to allege any facts in the Amended Complaint, as to IMCUSA, that would reasonably support any prong of the Sturkie test.

For the reasons as mentioned above, as well as because the request to pierce the corporate veil is premature, the Court should dismiss the Plaintiff's Eighth Cause of Action.

H. THE COURT SHOULD DISMISS THE PLAINTFF'S NINTH CAUSE OF ACTION FOR CIVIL CONSIPRACY BECAUSE HE FAILED TO ALLEGE ANY FACTS TO SUPPORT THE CAUSE OF ACTION

Plaintiff's Ninth Cause of Action is for civil conspiracy and should be dismissed because the Plaintiff failed to allege any facts to support his merely conclusory allegations.

In South Carolina, civil conspiracy requires "(1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006) (citing LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988)). Furthermore, the plaintiff must plead "additional acts in furtherance of the conspiracy," rather than simply incorporating allegations from elsewhere in the complaint and then alleging a civil conspiracy. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

The Plaintiff satisfied the first element by bringing this claim for civil conspiracy against over 30 named Defendants and anywhere between 1 and 40 John Doe(s). However, the Plaintiff has otherwise failed to allege facts to support any conclusory allegation contained within the Ninth Cause of Action. Specifically, the Plaintiff did not allege any additional acts in furtherance of the conspiracy, as required. He attempts to merely "repeat and re-allege[] each allegation ... already

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stated" elsewhere in the Amended Complaint. (Am. Compl. ¶ 249). Therefore, the Court should dismiss the Plaintiff's Ninth Cause of Action for civil conspiracy.

Additionally, in this Court's Amended Order dated October 29, 2018, the Court addressed a Motion to Dismiss the Ninth Cause of Action of the Original Complaint. The Ninth Cause of Action of the Original Complaint was also for Civil Conspiracy. In this Court's Amended Order, the Court provided that "Plaintiff has not pled facts sufficient to constitute a cause of action of civil conspiracy" because the Plaintiff failed to plead special damages. The Court afforded the Plaintiff a chance to amend the Complaint within 15 days to plead special damages. However, as noted above, Plaintiff failed to timely file the Amended Complaint. As such, the Plaintiff's amendment pleading special damages should be disregarded, at the very least.

For the reasons stated above, the Plaintiff once again failed to plead facts sufficient to state a cause of action for civil conspiracy. Therefore, the Court should dismiss the Ninth Cause of Action.

CONCLUSION

In conclusion, the Plaintiff has pled no facts sufficient to state a claim upon which relief can be granted for any of his nine asserted causes of action. Additionally, the Plaintiff repeatedly failed to adhere to the Court's order by not timely filing his Amended Complaint and including previously dismissed causes of Action verbatim. While the courts ordinarily give pro se Plaintiff's flexibility when it comes to pleadings, it is important to note that the Plaintiff is an educated attorney who, according to his Amended Complaint, is in good standing with the State of Georgia. The Plaintiff's conscious and continuous disregard for the Court's orders should forgo any additional leeway. For all of the reasons as mentioned earlier, these Defendants ask the Court to dismiss the Plaintiff's Amended Complaint.

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s/ Jennifer F. Nutter
Jennifer F. Nutter (SC#69348)

Attorneys for Defendant
Institute of Management Consultants USA

February 8, 2019
Charleston, South Carolina

Certificate of Service

I certify that on February 8, 2019, a copy of this pleading was served on each party or counsel of record by NEF electronic filing *or* U.S. Mail in the manner prescribed by the applicable Rule of Civil Procedure.

s/ Jennifer F. Nutter

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, v. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA & John Does 1-40, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017-CP-10-04371 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF DEFENDANT SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND**

Defendant South Carolina Educational Credit for Exceptional Needs Children Fund ("ECENCF"), by and through the undersigned counsel and specifically reserving the right to answer fully the allegations of the Complaint, moves this Court pursuant to Rules 8(a), 12(b)(6) and 12(b)(8), SCRCP, for an Order dismissing the causes of action asserted against ECENCF in the First Amended Complaint filed on November 19, 2018 ("Amended Complaint"), on the grounds that (1) Plaintiff's causes of action for tortious interference with prospective contractual relations and unfair trade practices are barred by the doctrines of res judicata and estoppel by record and Plaintiff's

causes of action for invasion of privacy and civil conspiracy are barred by waiver, (2) the Complaint fails to state facts sufficient to constitute any cause of action against ECENCF or show that Plaintiff is entitled to any relief from ECENCF, and (3) another action is currently pending between the same parties for the same claim. As a result, this Court should dismiss ECENCF from this action with prejudice.

ALLEGATIONS & PROCEDURAL HISTORY[1]

ECENCF is a domestic nonprofit entity incorporated in South Carolina on Jun 16, 2016. On November 13, 2017, Plaintiff filed a Complaint for FOIA Enforcement against ECENCF in the Court of Common Pleas for the County of Greenville ("FOIA Action"), in which Plaintiff sought certain remedies and damages for ECENCF's failure to respond to Plaintiff's requests for documents and information pursuant to the Freedom of Information Act ("FOIA"). After venue for the action was transferred to the Court of Common Pleas for Richland County, on December 21, 2018, the Honorable DeAndrea Benjamin dismissed the action by granting ECENCF's motions for judgment on the pleadings and for summary judgment. On January 7, 2019, Plaintiff filed a motion for reconsideration of the order dismissing the action. The FOIA Action is currently pending in the Court of Common Pleas for Richland County.

Plaintiff originally filed this action on May 3, 2018, against Ellen Weaver, Palmetto Promise Institute, and twenty unnamed parties referred to as John Doe 1-20. In the original complaint, Plaintiff asserted causes of action sounding in (1) defamation, (2) false light publicity, (3) invasion of privacy, (4) negligence, (5) intentional infliction of emotional distress, (6) tortious interference with prospective contractual relations, (7) unfair trade practices, (8) pierce the corporate veil, and (9) conspiracy. On October 30, 2018, the Honorable DeAndrea Benjamin dismissed the causes of

[1] By restating any allegations taken from the Complaint, ECENCF does not endorse their veracity. In fact, ECENCF specifically reserves the right to require Plaintiff to meet his burden of proving each allegation.

action for false light publicity, tortious interference with prospective contractual relations, and unfair trade practices, and allowed Plaintiff fifteen days to amend the original complaint to include additional facts to support the causes of action for invasion of privacy and civil conspiracy and name and serve each unnamed party.

On November 19, 2019, Plaintiff filed the First Amended Complaint ("Amended Complaint"), which includes, inter alia, ECENCF as a named defendant.[2] The Amended Complaint includes causes of action for (1) defamation, (2) defamation by innuendo, (3) invasion of privacy, (4) negligence, (5) intentional infliction of emotional distress, (6) tortious interference with prospective contractual relations, (7) unfair trade practices, (8) pierce the corporate veil, and (9) conspiracy.[3] In the Amended Complaint, however, Plaintiff fails to mention ECENCF other than to identify the entity, (Amend. Compl. ¶ 17) and its executive director, (id. at ¶ 3), and to allege that another defendant provides services to ECENCF, (id. at ¶ 180), assisted ECENCF with fundraising, (id. at ¶ 185), and formerly employed a current employee of ECENCF, (id. at ¶ 186). The Complaint does not otherwise refer to ECENCF nor specifically assert any cause of action against ECENCF.

ARGUMENT

I. Plaintiff's causes of action for tortious interference with prospective contractual relations and unfair trade practices are barred by the doctrines of res judicata and estoppel by record and Plaintiff's causes of action for invasion of privacy and civil conspiracy are barred by waiver

"A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action." Beall v. Doe, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189 n.1 (1984). A party is also precluded pursuant to the doctrine of

[2] Plaintiff failed to comply with the Amended Order by amending the pleadings on or before November 14, 2018.
[3] As noted above, the Honorable DeAndrea Benjamin previously dismissed the causes of action for tortious interference with prospective contractual relations and unfair trade practices.

estoppel by record "to deny the truth of matters set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction." Watson v. Goldsmith, 205 S. C. 215, 215, 31 S.E. 2d 317, 320 (1944).

The Amended Complaint includes causes of action for tortious interference with prospective contractual relations and unfair trade practices. On October 30, 2018, the Honorable DeAndrea Benjamin dismissed these causes of action. Although the court allowed Plaintiff fifteen days to amend the original complaint to include additional facts to support the causes of action for invasion of privacy and civil conspiracy, the court did not grant such leave to include additional facts to support the tortious interference with prospective contractual relations and unfair trade practices causes of action. Plaintiff did not challenge this ruling. As a result, these causes of action are barred by the doctrines of res judicata and estoppel by record and should be dismissed.

Although the court did allow Plaintiff time to amend the original complaint to include additional facts to support the causes of action for invasion of privacy and civil conspiracy, Plaintiff failed to do so within the period prescribed by the court's order. Accordingly, Plaintiff waived any right to re-assert these causes of action. Strickland v. Strickland, 375 S.C. 76, 83-86, 650 S.E.2d 465, 469-71 (2007) (discussing the doctrines of waiver and laches). As a result, these causes of action should also be dismissed.

II. The Complaint fails to state facts sufficient to constitute any cause of action against ECENCF or show that Plaintiff is entitled to any relief from ECENCF

"Rule 12(b)(6) requires the plaintiff to allege facts." Paradis v. Charleston County School District, 424 S.C. 603, 615, 819 S.E.2d 147, 153 (Ct. App. 2018). Rule 8(a)(2) further requires that the facts show that "the pleader is entitled to relief." Rule 8(a)(2), SCRCP. "'In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on

the face of the plaintiff's complaint.'" Paradis, at 609, 819 S.E.2d at 150 (quoting Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). "'In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRCP, th[e] court should consider whether [the plaintiff] has 'state[d] facts sufficient to constitute a cause of action.'" Id. at 609, 819 S.E.2d at 150 (quoting Gaskins v. S. Farm Bureau Cas. Ins., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000)). "'Rule 12(b)(6), SCRCP, 'retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the federal rules.'" Id. (quoting Gaskins, 343 S.C. at 671, 541 S.E.2d at 271. "When a plaintiff states nothing more than legal conclusions, a claim should fail." Id. (citing Talbott v. Padgett, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889)).

Plaintiff's Amended Complaint fails to provide any facts to support any causes of action against ECENCF. The Amended Complaint does not include any allegations that ECENCF made any defamatory statements about him nor any allegations of the content of any such statements or to whom any such statements were published, see Paradis, at 609-14, 819 S.E.2d at 150-53, nor any public disclosure by ECENCF of any private facts about Plaintiff, see McCormick v. England, 328 S.C. 627, 640, 494 S.E.2d 431, 438 (Ct. App. 1997). In addition, the Amended Complaint does not contain any allegations of any overt act by ECENCF in furtherance of any conspiracy that proximately caused damage to Plaintiff—let alone any damage beyond those alleged to have resulted from the other causes of action. See Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 874-75 (Ct. App. 2009). Furthermore, the Amended Complaint does not allege that ECENCF owed any duty of care to Plaintiff, that ECENCF breached any such duty, or that Plaintiff suffered any injury or damages arising from any such breach. See Doe v. Marion, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004). The Amended Complaint also does not allege any conduct on behalf of ECENCF, let alone any conduction so extreme and outrageous as to give rise

to a cause of action for intentional infliction of emotional distress. See Dye v. Gainey, 320 S.C. 65, 69, 463 S.E.2d 97, 99 (Ct. App. 1995). Moreover, the Amended Complaint does not allege anything to apply the doctrine of piercing the corporate veil to ECENCF. Jones ex rel. Jones v. Enterprise Leasing Company-Southeast, 383 S.C. 259, 678 S.E.2d 819 (Ct. App. 2009). As the Amended Complaint fails to state facts sufficient to constitute any cause of action against ECENCF or show that Plaintiff is entitled to any relief from ECENCF as required by Rules 8(a) and 12(b)(6), SCRCP, this Court should dismiss ECENCF from the action.

III. Another action is currently pending between the same parties for the same claim

"In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 105-06, 674 S.E.2d 524, 531-32 (Ct. App. 2009). Dismissal is appropriate where the claim is "precisely or substantially the same in both proceedings." Id. at 106, 674 S.E.2d 524, 532.

Another action is currently pending between the same parties in the Court of Common Pleas for the Richland County, in which Plaintiff seeks certain remedies and damages for ECENCF's failure to respond to Plaintiff's requests for documents and information pursuant to the Freedom of Information Act ("FOIA"). Plaintiff's Amended Complaint in the instant action fails to provide any facts to support any causes of action against ECENCF. Although Plaintiff will likely argue that the causes of action in the FOIA Action are not substantially similar to the causes of action in the instant action, the claims arise from the same facts and circumstances. Moreover, the addition of ECENCF to this action as a named defendant is merely a thinly disguised attempt to force ECENCF to produce through discovery the documents and information sought in the FOIA

Action. As a result, this Court should dismiss ECENCF from the instant action pursuant to Rule 12(b)(8), SCRCP.

CONCLUSION

For the foregoing reasons, this Court should dismiss with prejudice any causes of action against the South Carolina Educational Credit for Exceptional Needs Children Fund pursuant to Rules 8(a), 12(b)(6), and 12(b)(8), SCRCP. This motion is further based upon the pleadings, applicable South Carolina jurisprudence, and any other such matter as may be acceptable to the Court.

Respectfully submitted,

[Separate Signature Page Follows]

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February 8, 2019

ELECTRONICALLY FILED - 2019 Feb 11 12:03 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Jefferson Davis, Jr., Plaintiff, v. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Educational Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Nate Leupp, Institute of Management Consultants USA & John Does 1-40, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017-CP-10-04371 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF DEFENDANT RANDY PAGE**

Defendant Randy Page, by and through undersigned counsel, file this memorandum in support of his Motion to Dismiss Plaintiff's claims pursuant to Rules 8(a) 12(b)(5), 12(b)(6) and 12(b)(7) of the South Carolina Rules of Civil Procedure ("SCRCP"). Dismissal of the claims against Mr. Page are warranted for many reasons as explained below.

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RELEVANT BACKGROUND

Mr. Davis filed this Complaint on May 3, 2018. The Complaint named Ellen Weaver, Palmetto Promise Institute or "PPI" and 20 pseudonymous defendants. The Complaint alleged Weaver and PPI had disparaged, defamed, and produced allegedly false and misleading reports regarding Plaintiff. The Complaint asserted nine causes of action:

(1) Defamation;
(2) False light publicity;
(3) Invasion of privacy;
(4) Negligence;
(5) Intentional infliction of emotional distress;
(6) Tortious interference with prospective contractual relations;
(7) Unfair trade practices;
(8) Pierce the corporate veil; and
(9) Conspiracy.

Counsel for Weaver, PPI, and the pseudonymous defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP. On October 29, 2018, Judge Benjamin granted the motion in part. The Amended Order, filed on October 30, 2018, expressly dismisses the following claims without leave to amend: false light publicity, tortious interference with contractual relations, and unfair trade practice. *See* Amended Order at 2–3. The Amended Order gave Plaintiff leave to replead his claims for invasion of privacy and conspiracy within 15 days. The order did not to dismiss the claims for defamation, negligence, intentional infliction of emotional distress, and piercing the corporate veil. *Id.*

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ARGUMENT

I. The Amended Complaint was not timely filed.

Judge Benjamin's November 29th Order and November 30th Amended Order allowed Plaintiff 15 days to file an amended complaint. Plaintiff did not file an amended complaint until November 19th. This failure warrants dismissal of his suit. *See Sealy v. Dodge*, 289 S.C. 543, 544, 347 S.E.2d 504, 505 (1986) (noting that in a prior proceeding, "Appellants failed to timely amend their complaints and the actions were dismissed"). Mr. Davis is a licensed Georgia attorney and graduated from the University of South Carolina School of Law. As such, Mr. Davis has knowledge or constructive knowledge of when he must file his amended complaint. Even a lay person can clearly understand leave of 15 days to amend. Mr. Davis' claims and newly identified defendants should be summarily dismissed because the amended complaint was not timely filed.

II. The Amended Complaint fails to mention Defendant Randy Page other than the case caption and description of parties.

Mr. Page is only mentioned in the case caption and in the description of parties. *See* Amend. Compl. at ¶ 26. It is alleged that Mr. Page lives in Greenville County. It is further alleged that Mr. Page is or was on the board of South Carolinians for Responsible Growth, Palmetto Family Alliance and Palmetto Family Council. *Id.* Neither in paragraph 26 nor anywhere else does the Complaint assert any factual allegations about actions by Mr. Page. There are also no allegations of wrongdoing attributed to Mr. Page. In the absence of any factual allegation of wrongdoing or action, the Amended Complaint fails to state any causes of action upon which relief can be granted, and summary dismissal is warranted. *See Newkirk v. Circuit Court,*

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No. 3:14CV372–HEH, 2014 WL 4072212 (E.D. Va. Aug.14, 2014) (complaint subject to summary dismissal where no factual allegations against named defendants within the body of the pleading) (citing *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) ("Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed.")).

III. The Amended Complaint was never properly served on Defendant Page.

The Plaintiff sent complaints to Defendants by certified mail, however, delivery was not restricted to the addressee in any of the proof of service documents filed with this Court.

SCRCP Rule 4 requires service by mail be accomplished with restricted delivery.

Mr. Page and no one in Mr. Page's household was home when Mr. Davis' Summons and Complaint were placed in Defendant Page's mailbox. While Mr. Page is aware of the suit, he has not signed a green card as required by Rule 4 SCRCP. Service is insufficient pursuant to Rule 4 SCRCP because it did not require restricted delivery. As such, Defendant Page moves for a dismissal of this Complaint pursuant to Rule 12(b)(5) SCRCP.

IV. The Amended Complaint fails to allege any basis on which Mr. Page should be liable or vicariously liable.

As noted above, the Amended Complaint fails to allege any act or wrongdoing by Defendant Page. The complaint mentions Defendant Page only in the case caption and description of parties. Defendant Page is never mentioned or alluded

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to in the portions of the complaint providing background facts and laying out the causes of action. Defendant Page is never mentioned at any other point in the complaint and there is no indication of any wrongdoing or any alleged action by Defendant Page. "'In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint.'" Paradis, at 609, 819 S.E.2d at 150 (quoting Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRCP, the court should consider whether the plaintiff has stated facts sufficient to constitute a cause of action. Id. at 609, 819 S.E.2d at 150 (quoting Gaskins v. S. Farm Bureau Cas. Ins., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000)). "'Rule 12(b)(6), SCRCP, 'retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the federal rules.'" Id. (quoting Gaskins, 343 S.C. at 671, 541 S.E.2d at 271. "When a plaintiff states nothing more than legal conclusions, a claim should fail." Id. (citing Talbott v. Padgett, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889)).

No action or special relationship is plead regarding Defendant Page. The defamation cause of action is clearly against Defendant Weaver and no other defendant is alleged to have made statements. It is never alleged that Defendant Page held or used information that could be disparaging against the Plaintiff. It is never alleged that Defendant Page had a duty of care to Plaintiff or failed to perform any duty to Plaintiff. There is nothing in the complaint alleging that Defendant Page acted in any extreme way or caused any extreme harm that would cause emotional distress to a reasonable person. There is no allegation that Defendant Page controlled the actions of any other Defendant to support vicarious liability.

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This is the near perfect example of failure to state a cause of action for which relief can be granted. The Plaintiff is an attorney. If the Plaintiff had any knowledge of a specific action by Mr. Page, he is technically capable of pleading the wrongdoing and would have done so. The Plaintiff has seen Mr. Page twice in his life. Once was at a conference and the second was walking into a restaurant in Greenville. Nothing at either sighting would lead to a cause of action and nothing was plead regarding either interaction.

The only purpose for including Mr. Page in this Action appears to be obtaining press coverage for a political campaign in the Greenville News. Plaintiff is apparently the campaign manager for Pressley Stutts, who is running against Defendant Leupp for chair of the Greenville County GOP. Plaintiff was interviewed by the Greenville News and appears to have couched Defendant Page as controversy surrounding Bob Jones University. Mr. Page was the only Defendant listed in the Greenville News article other than Nathan Luepp who is running against Mr. Stutts and original defendant Ellen Weaver. Mr. Page and his employment by Bob Jones University was cited by the February 5th article on the front page of the Greenville News. Bob Jones University is not listed as a Defendant.

Defendant Page respectfully requests this Court dismiss him from this action for failure to plead any viable cause of action.

V. The Amended Complaint reasserts causes of action previously dismissed without leave to amend.

Plaintiff's Amended Complaint reasserts Unfair Trade Practices, False Light Publicity and Tortious Interference with Contract. These cause of action were

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dismissed by Judge Benjamin without leave to amend. This warrants dismissal of the Amended Complaint or, at minimum, re-dismissal of the causes of action that were already dismissed. *See Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 91, 399 S.E.2d 16, 18 (Ct. App. 1990) (dismissing plaintiff's amended complaint where plaintiff failed to follow a court order limiting the causes of action to be asserted).

VI. Veil piercing applies to corporations and not persons. .

Plaintiff's Amended Complaint lists veil piercing as a cause of action. Plaintiff is not a corporation. This cause of action is applicable only to corporate defendants. This cause of action must be dismissed against Defendant Page.

VII. The Amended Complaint does not support a cause of action for Civil Conspiracy.

Plaintiff's Amended Complaint lists civil conspiracy as a cause of action. A claim of civil conspiracy requires pleading of an action. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009). Plaintiff never made any allegation of an action by Defendant Page. There is nothing plead to substantiate an act to further any conspiracy. As such, this cause of action must be dismissed.

VIII. The Amended Complaint cites damages and actions barred by the Statute of Limitations.

Other than an Audit by the Department of Revenue and the alleged remarks by Defendant Weaver, the actions and damages pled in the Amended Complaint appear to have occurred in 2013 and 2014. This civil action was commenced in May 2018, four years after the alleged acts and damages.

South Carolina Code §15-3-530 and §15-3-550 provide either a three year or two year statute of limitations for the type of actions alleged in this complaint.

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It appears from the dates listed in the Amended Complaint that the alleged events and actions (newspaper articles, conversations, political maneuverings and delays by EOC) and most alleged damages occurred in the fall of 2013 or in 2014. *See* Amend. Compl. at ¶¶ 39, 50, 52, 53, 63, 87, 96 and 97. The causes of action based on these alleged damages and alleged actions are barred by the statute of limitations and must be dismissed for failure to state a cause of action for which relief can be granted.

IX. The Amended Complaint cites damages attributable to persons and entities not included as a Plaintiff.

In addition to damages being barred by the statute of limitations because they are alleged to have occurred in 2013 and 2014, the amended complaint also cites damages incurred by people or entities that are not listed as plaintiffs. Palmetto Kids First Scholarship Program is citied by the Amended Complaint as a damaged entity. See Amend. Compl. at ¶¶ 52, 53, 54, 60, 62, 63, 64, 66, 67, 84, 94, 96, 99 and 108. The Amended Complaint cites Olga Lisinska as a damaged person. See Amend. Compl. at ¶¶ 63, 93, 94 and 105. Plaintiff alleges damages specific to Palmetto Kids First and Olga Lisinska such as defamation of character, stress, loss of revenue and health impacts. Olga Lisinska and Palmetto Kids First Scholarship Program, Inc. are necessary parties. Causes of action attempting to collect for damages specific to non-parties should be dismissed pursuant to SCRCP 12(b)(7).

CONCLUSION:

For the foregoing reasons, as well as those asserted in the Motion to Dismiss filed by Mr. Page, those to be made in any hearing before the Court, and any

applicable arguments asserted by other parties in support of dismissal, Mr. Page respectfully requests this Court dismiss him from this Action.

Respectfully Submitted,

s/Geoffrey K. Chambers

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This 11th day of February, 2019
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing & Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 Defendants.	)	Civil Action No. 2018-CP-40-02425 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendant, First Tuesday Strategies, LLC, (hereinafter "First Tuesday") submits this Memorandum In Support of its Motion to Dismiss the Amended Complaint for the reasons set forth below.

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FACTUAL BACKGROUND

Plaintiff Davis first filed this action in May of 2018 against twenty (20) Defendants, not including First Tuesday. Following the filing of Motions to Dismiss by many of those original Defendants, the Court ruled and dismissed many of the complaints and causes of actions giving the Plaintiff leave to file an Amended Complaint. This Amended Complaint was filed November 19, 2018, adding multiple new Defendants, continuing to assert John Doe actions, all in contravention to the Court's order to articulate more details in support of the causes of action and to identify the John Does. Plaintiff, in his Amended Complaint, asserts nine (9) causes of action against all Defendants:

(1) defamation per se and per quod;

(2) defamation by innuendo (formerly asserted as false light);

(3) invasion of privacy;

(4) negligence;

(5) intentional infliction of emotional distress;

(6) tortious interference with contractual relations;

(7) unfair trade practices;

(8) pierce the corporate veil; and

(9) civil conspiracy;

Plaintiff, in contravention of the Court's order, included in this Amended Complaint previously asserted causes of action for defamation by innuendo (formerly styled in the initial complaint "false light") and claims for Tortious Interference with Contract and Unfair Trade Practices, all of which were dismissed by the Court for various reasons. Yet, Plaintiff determined to re-assert these claims with "complaint prose" similar to the initial Complaint. Plaintiff provided little to no greater detail or factual articulation, asserting these and all claims against

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various Defendants with no specific act or actions in support of the claims. Specifically, Plaintiff failed to allege any definite or certain allegations of any improper conduct by Defendant First Tuesday.

A review of the forty-five (45) page, two hundred-fifty (250) paragraph Amended Complaint is a veritable "trip through the looking glass" of Plaintiff's imagination. It constitutes a "mosh pit" of random facts, vague allegations, and negative characterizations of the numerous named Defendants, all more or less relating to the legislative creation of the ECENC Fund and charter school growth in South Carolina. Defendant First Tuesday is initially identified as an LLC and political consulting firm in paragraph twenty-two (22) of the Amended Complaint and thereafter mentioned in only six (6) paragraphs (179-181 and 184-186). See EXHIBIT A. These paragraphs which, in order to survive a Motion to Dismiss, must articulate acts in support of the various asserted causes of action, only describe this Defendant as:

- having "picked up where RQA (Richard Quinn and Associates) left off..." (Amended Complaint, ¶179);
- that this Defendant "provided services to Defendant ECENC Fund and Defendant DOR" (Id., ¶¶ 180, 182);
- that this Defendant "has a natural conflict representing both charter schools and the ECENC program," that this Defendant "assisted ECENC in fundraising" and that ECENC and Defendant First Tuesday had for a time an employee in common- though Defendant First Tuesday denies the allegations of paragraphs 184-185 and the essence of 186.

None of these factual allegations, even when considered by the Court in the light most favorable to the Plaintiff, come close to establishing valid causes of action against First Tuesday.

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ARGUMENT IN SUPPORT OF DISMISSAL OF AMENDED COMPLAINT

I. TORTIOUS INTERFERENCE WITH CONTRACT AND UFTP CLAIMS

The Court file will reflect the determination of this court in its consideration of the original Complaint to dismiss the claims of Tortious Interference with Contract and Unfair Trade Practices as unsupported and inapplicable under the facts asserted originally. The Amended Complaint provides no additional basis for these discredited and dismissed claims, and they should be dismissed as to all Defendants once more with prejudice.

II. DEFAMATION CLAIMS

The Court file will also reflect the dismissal of the claim for "false light" under the general aegis of the Right of Privacy, by reason of the Court's acknowledgment that South Carolina has failed to recognize that cause of action. Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 427, 484 (Ct. App. 1997). The Amended Complaint simply reasserts and re-labels that dismissed claim with the new name "defamation by innuendo." Additionally, as to all defamation claims, *per se*, per quod and innuendo, Plaintiff fails to assert any false statement, event of publication of false statement, or to whom published, as against this Defendant. See McNeil v. S.C. Department of Corrections, 404 S.C. 186, 195, 143 S.E. 2d 843, 848 (Ct. App. 2013); Odom v. CVS Carework Corp., 2014 U.S. Distr. LEXIS 181471 No. 3:14-456-MGL-SVH. By reason of this failure, these claims must be dismissed.

III. INVASION OF PRIVACY

This claim must be dismissed as Plaintiff has failed to allege any action by this Defendant in the publication or invasion of any private matter of Plaintiff so as to bring shame on Plaintiff, which are the classic elements of the cause of action. Swinton Creek Nursery v. Edisto Farm Credit, et. al., 334 S.C. 469, 514 S.E. 2d 126 (1999).

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IV. NEGLIGENCE

The Amended Complaint lacks any factual assertions of a duty owed by this Defendant to Plaintiff. Moreover, there is no assertion of a negligent act or omission to act by this Defendant. Shaw v. City of Charleston, 351 S.C. 32, 40, 567 S.E. 2d 530, 534 (Ct. App. 2002).

V. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The elements of the tort of emotional distress or outrage are well known to this Court, and the Amended Complaint fails to establish or assert any fact or action by this Defendant in support of any of the elements of the cause of action as described by our Court repeatedly. Hainer v. American Medical International , 320 S.C. 316, 324, 465 S.E. 2d 112, 117 (Ct. App. 1995).

VI. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

Plaintiff alleges interference with Palmetto Kids FIRST Scholarship Program, Inc., an entity in which he asserts his involvement, and contends it was a victim of contractual interference. However, Plaintiff has sued in his individual capacity and therefore renders this claim ineffective and invalid as lacking standing, more fully discussed below. As with other claims, the Amended Complaint totally lacks facts or actions by this Defendant which meet the test of this tort- no assertion of interference with PLAINTIFF'S contractual relations, for improper purposes or by improper methods, and causing injury. United Education Distributors, LLC v. Educational Testing Services, 350 S.C. 7, 564 S.E.2d 324 (Ct. App. 2002).

VII. UNFAIR TRADE PRACTICES

The Amended Complaint fails to allege that this Defendant engaged in any unfair methods of unfair competition or deceptive acts in trade or commerce as required by S.C. Code Ann. § 39-5-20(a), or as required by the well-developed case law. Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (2013).

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VIII. PIERCING THE CORPORATE VEIL

The assertion of this doctrine is premature under Sturkie v. Sifley, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984). Further, the Amended Complaint fails to assert any facts of wrongdoing by this Defendant.

IX. CIVIL CONSPIRACY

The elemental requirements of this tort are: 1) combination of two or more "persons"; 2) to achieve injury to Plaintiff, and 3) causing special damage to Plaintiff. Lamotte v. Punchline of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). No acts of this Defendant are alleged and no special damages are alleged. As such, this claim must be dismissed.

X. STANDING.

The entirety of this Amended Complaint brought by Plaintiff Davis IN HIS INDIVIDUAL CAPACITY is the assertion that an entity in which he was involved, Palmetto Kids FIRST, was injured as a result of acts of the many Defendants. One must be a real injured party to be a party in interest, and a shareholder or partner may only be a Plaintiff upon a showing that the Defendant owed him a special duty or damages separate from that allegedly suffered by the corporate entity. Evins v. Richland County Historic Preservation Commission, 341 S.C. 15, 21, 532 S.E. 2d 876, 879 (Ct. App. 2000). Plaintiff's factual allegations fail to support these fundamental necessities of standing, and the Amended Complaint must be dismissed.

CONCLUSION

Where a complaint alleges no specific act or conduct on the part of the defendant in support of the alleged causes of action, dismissal is the appropriate remedy pursuant to Rules 12(b)(5) and 12(b)(6), SCRCP. The Plaintiff, after "two tries" in his original and now Amended Complaint, has failed to state any facts upon which relief can be granted or to state any valid

cause of action against this Defendant. As such, the Amended Complaint should be summary dismissed as to First Tuesday Strategies, LLC.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)

McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666
joe@mccullochlaw.com
kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT,
FIRST TUESDAY STRATEGIES, LLC

Columbia, South Carolina
this 11th day of February, 2019.

ELECTRONICALLY FILED - 2019 Feb 11 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

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EXHIBIT A

ELECTRONICALLY FILED - 2019 Feb 11 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

19. Defendant **South Carolina Department of Revenue** ("DOR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

20. Defendant **South Carolina Department of Labor, Licensing and Regulation** ("LLR") is a duly authorized and created agency of the State of South Carolina and does conduct operations and activities throughout the State of South Carolina, including maintaining offices and headquarters in Richland County.

Political "Consulting" Firms

21. Defendant First Impressions, Inc. d/b/a **Richard Quinn & Associates** ("RQA") is a South Carolina corporation and has an office in Richland County. Richard Quinn is the registered agent of RQA with an address of 1620 Gervais Street, Columbia, SC 29201.

22. Defendant **First Tuesday Strategies, LLC** ("First Tuesday") is a South Carolina limited liability company with an office in Richland County. J. Warren Tompkins is the registered agent of First Tuesday with an address of 807 Gervais Street, Suite 202, Columbia, South Carolina 29201.

Individual & Other Participants

ELECTRONICALLY FILED - 2019 Feb 11 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

172. Upon information and belief, Defendant Friedman Foundation receives substantial annual funding from special interest groups who will financially benefit from government run private school choice – specifically new and experimental Education Savings Accounts ("ESAs").

173. Defendant Friedman Foundation's existence is dependent on annual fundraising from special interest groups.

174. Defendant Friedman Foundation no longer follows its original mission of free market and limited government and instead is pushing the agenda of special interest.

175. Defendant RQA has entered a criminal corporate plea for engaging in illegal lobbying from 2008 through 2016. Upon information and belief said activities involve other Defendants herein.

176. Defendant RQA unlawfully sold political influence and access according to the South Carolina State Grand Jury Report issued on or about October 9, 2018.

177. Upon information and belief, Defendant RQA received compensation from Defendants and John Doe(s).

178. Upon information and belief, Defendant RQA also illegally used / sold political influence and access to Defendants and John Doe(s).

179. Upon information and belief, Defendant First Tuesday has picked up where RQA left off with respect to Defendants and John Doe(s).

180. Defendant First Tuesday provides services to Defendant ECENC Fund and Defendant DOR.

181. Defendant First Tuesday provides services to charter school groups.

182. Although charter schools are a form of school choice, they are one of the primary opponents to private school choice such as this K-12 tax credit scholarship program which is the subject of this Complaint.

183. It is a common perception among grassroots and experts that charter schools, who once fought for "school choice", now do not want competition from private independent schools such as the ones that benefit from K-12 tax credit scholarship programs. This is the reasoning for their opposition.

184. Defendant First Tuesday has a natural conflict representing both charter schools and the ECENC program – plus the obvious issues of political access and influence that comes with their representation of legislators and campaign consulting business.

185. Upon information and belief, First Tuesday assisted Defendant ECENC Fund with fundraising.

186. Defendant First Tuesday had an employee on their website who was also working on the ECENC Fund program. When exposed by Plaintiff Davis, that individual was removed from the First Tuesday website and has now been listed officially as the "Administrator" at Defendant ECENC Fund.

ELECTRONICALLY FILED - 2019 Feb 11 3:45 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

ELECTRONICALLY FILED - 2019 Feb 15 2:34 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Civil Action No. 2018-CP-40-2425
Jefferson Davis, Jr.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Range Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1 – 40,)	**Defendant Tony Denny's Motion to Dismiss**
)	
Defendants.)	
)	

Defendant Tony Denny ("Defendant") hereby denies any and all wrongdoing and liability to Plaintiff Jefferson Davis, Jr. ("Plaintiff") and respectfully moves for an Order dismissing Plaintiff's Complaint with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiff failed to state facts sufficient to constitute any of his purported

causes of action against Defendant and because he failed to comply with this Court's 2018 Order requiring him to amend his defective complaint within an allotted period of time.

Specifically, Plaintiff's Complaint failed to allege any facts that would subject Defendant to any liability. Second, On October 30, 2018, Plaintiff was instructed by this Court to amend the deficiencies in his pleading within fifteen (15) days. Plaintiff failed to do so as to Defendant.

This motion is based upon the Complaint and such other materials as may be submitted prior to any hearing as well as a memorandum and oral argument in support of the same.

Turner, Padget, Graham & Laney, P.A.

February 15, 2019

By: s/ James H. "Jamey" Goldin

James H. "Jamey" Goldin
SC Bar No. 100092
1901 Main Street
Columbia, SC 29205
jgoldin@turnerpadget.com
Phone: (803) 227-4295
Fax: (803) 400-1466

Attorneys for Defendants

ELECTRONICALLY FILED - 2019 Feb 15 2:34 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff, vs. Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, *et al.*, Defendants.	)	**PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF ORDER**

RICHLAND COUNTY FILED
2019 MAR 6 P 4:11
JEANNETTE W. COPE
C.C.P.&G.S.

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff Jefferson Davis, Jr. hereby submits this motion for reconsideration of the Court's Order entered on **February 19, 2019** (the "Order")[1]. The Order was served on the Defendant by mail with a postage meter stamp dated **February 20, 2019**. Plaintiff raises the following exceptions to particular statements, findings, and conclusions in the Order and Plaintiff respectfully request that the Court reconsider the same.

South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Department of Transportation*, 602 SE 2d 772 (S. C. 2004).

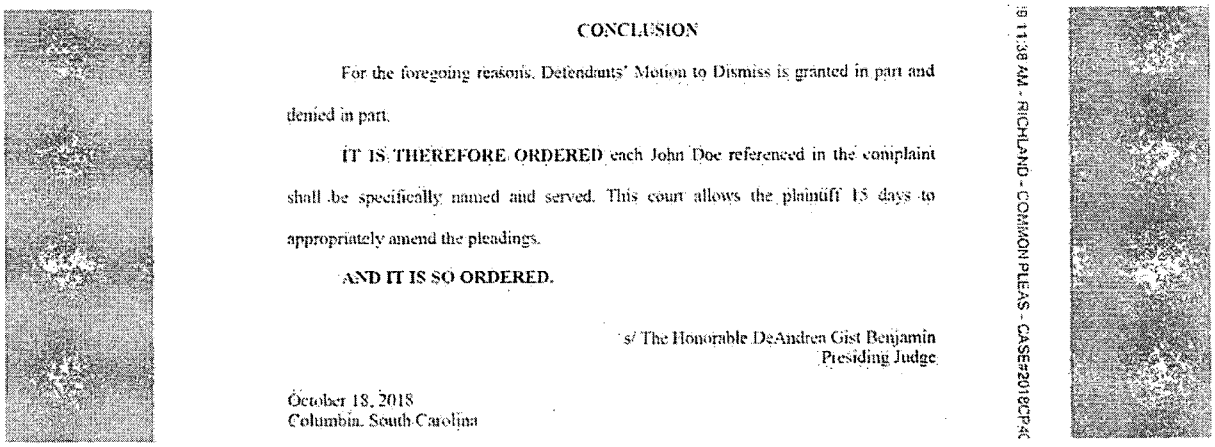
[1] The Order was "ELECTRONICALLY FILED - 2019 Feb 19 1:59 PM" and "Electronically signed on 2019-02-19 12:28:30". See page 4 of 4 of Order.

PROCEDURAL BACKGROUND & ARGUMENTS

This matter came before the Court on multiple defendants' Motions to Dismiss. The Complaint was originally filed on May 3, 2018, and asserted nine causes of action against an individual defendant (Ellen Weaver), a corporate defendant (Palmetto Promise Institute or "PPI") and 20 pseudonymous defendants (Does 1–20). On June 7, 2018, counsel for Weaver and PPI filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP.

On October 1, 2018, Judge DeAndrea Benjamin heard arguments on the motion.

On October 29, 2018, Judge Benjamin filed an Order (*dated October 18, 2018*) denying in part and granting in part the Motion to Dismiss.



CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part.

IT IS THEREFORE ORDERED each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings.

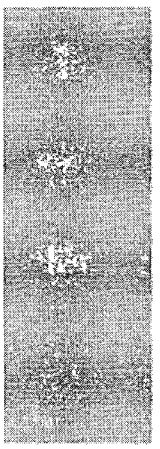
AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

October 18, 2018
Columbia, South Carolina

18 11:38 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4

On October 30, 2018, Judge Benjamin filed an Amended Order correcting the date to October 29, 2018. The only change on the Amended Order was this written date change.



CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part.

IT IS THEREFORE ORDERED each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

October 29, 2018
Columbia, South Carolina

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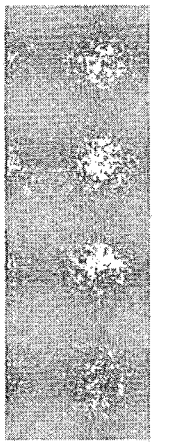

Judge Benjamin's original and Amended Order addressed two items.

1. Naming the John Doe defendants.

2. Amending Plaintiffs' third (*invasion of privacy*) and ninth (*civil conspiracy*) causes of action to detail publicity and special damages respectively.

NAMING DEFENDANTS: In regards to the first item, naming the "John Doe" defendants, Judge Benjamin ordered that **"each John Doe referenced in the complaint shall be specifically named and served."** The order was silent as to any time period within which to serve the newly named John Doe defendants. There was no discussion at the October 1, 2018 hearing or in the Order or Amended Order related to the timing of service on the to be named John Doe defendants. There was never any discussion as to any urgency to serve the newly named John Doe defendants within an expedited timeframe. As such the default period of Rule 3 of the SCRCP applies to the time permitted to serve these newly named John Doe Defendants.

AMENDING TWO CAUSES OF ACTION: In regards to the second item, amending Plaintiffs' third (*invasion of privacy*) and ninth (*civil conspiracy*) causes of action, Judge Benjamin ordered that **"[t]his court allows the plaintiff 15 days to appropriately amend the pleadings."**

"Appropriately" obviously referring to the Amended Orders above discussion related to detailing publicity and special damages respectively.

On November 19, 2018,[2] Plaintiff timely filed his Amended Complaint (#1) naming the then currently known John Doe defendants and (#2) appropriately amending Plaintiffs' third (*invasion of privacy*) and ninth (*civil conspiracy*) causes of action detailing publicity and special damages. Plaintiff fully complied in every respect with Judge Benjamin's Amended Order.

Several of the newly-named and properly served John Doe defendants filed Motions to Dismiss raising the standard boilerplate reasons for dismissal. ***None of the newly-named John Doe defendants, prior to our February 12, 2019 hearing, had raised the issue of timely service within a 15-day period in their written motions or supplemental memoranda***. This is true as well for all defense counsel present at the October 1, 2018 hearing before Judge Benjamin. It was apparent and obvious to all the parties, as it had been to Plaintiff and all third parties consulted since this Courts Order, that ***Judge Benjamin in no way intended for service to be within the same 15-day period provided to Plaintiff to amend his complaint***.

This Court heard arguments on the motions on February 12, 2019. At the hearing, counsel for one of the defendants ***initially and for the first time*** verbally raised the issue of serving the newly-added John Doe defendants within 15-days of the Amended Order. It was the proverbial "Hail Mary". Plaintiff acknowledges none of the new defendants had been served within that 15-day Amended Order time period and further notes that such was not required by a ***plain language reading*** of Judge Benjamin's Amended Order. The Court however was persuaded by the verbal

[2] This court correctly noted that Plaintiff, as a *pro se* party, is prohibited from participating in electronic filing and service. As such, Plaintiff is provided an additional 5 days to comply pursuant to Rule 6(e), SCRCP when an Order is served by mail.

onslaught of the dozen plus defense attorneys apparently all agreeing that service was required within 15-days of the Amended Order.[3] This is not the case to any individual that Plaintiff has consulted with related to this matter. The Order has been shared with thousands of South Carolina parents of children with "special needs", many of which are attorneys, and not one has contended Judge Benjamin's Order or Amended Order required a 15-day service on the newly named John Doe defendants.

Dismissal with prejudice was hash and excessive. If this court interprets Judge Benjamin's Amended Order to require service within 15 days, justice and fairness demands that *pro se* Plaintiff should be granted a reasonable time period to cure. None of the dozen plus highly experienced defense counsel even brought up the 15-day service argument before one lone defense attorney did so verbally at the hearing (*following an episode of not a single defense attorney, among a dozen plus, acknowledging the existence of SCRCP 6(e) and reflecting a lack of candor with the court*). As such, it is clear Plaintiff was reasonable in assuming a 15-day service period was not the intent of Judge Benjamin's Amended Order.

Alternatively, assuming Judge Early's hands were tied (*as the Court stated at the hearing*) and cannot overrule the order of another judge of this Court, dismissal should not have been with prejudice. *Pro se* Plaintiff should be afforded any available avenues to cure the matter in the interest of justice and fairness.

---

[3] It should also be noted that none of the dozen plus highly skilled defense attorneys appeared to have ever heard of the additional 5 days to comply pursuant to Rule 6(e), SCRCP when an Order is served by mail. There was an obvious lack of candor with the Court as to Civil Procedure 101 rules and apparently not with the plain language reading of Judge Benjamin's Amended Order.

CONCLUSION

There was no 15-day requirement to serve the newly named John Doe defendants in Judge Benjamin's Original or Amended Order. Furthermore, even if some stretched interpretation of Judge Benjamin's Amended Order led to a 15-day requirement to service, thus tying the hands of this Court, dismissal with Prejudice was harsh and excessive in the instant case.

THEREFORE, as set forth herein, Plaintiff respectfully submits that the Court reconsider its Order, reverse its rulings, and enter judgment in favor of Plaintiff on the Defendants Motion to Dismiss.

Plaintiff reserves the right to support this Motion with Memos and Affidavits which may be submitted at a later date.

Respectfully submitted this **6th day of March, 2019**.

Jefferson Davis, Jr.
Plaintiff, *Pro Se*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	
	)	C.A. NO. 2018-CP-40-02425
Jefferson Davis, Jr., Plaintiff,	)	
vs.	)	
Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, *et al.*,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2019 MAR -6 AM 11:34
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **6th day of March, 2019**, as follows:

PLEADINGS: **PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF ORDER**

PARTIES SERVED:

Miles Edward Coleman
104 South Main Street, Suite 900
Greenville SC 29601

Chad Connelly
107 Connelly Drive
Prosperity, SC 29217

Nate Leupp
114 Oak Drive
Greer, SC 29650

John McCormick
12 Vaughns Mill Ct
Simpsonville, SC 29681

William Hammond Jordan
1310 Gadsden Street
Columbia SC 29201

Tony Denny, AOSC
3329 Devereaux Road
Columbia, SC 29205

Neil Mellen
3416 Devereaux Road
Columbia, SC 29205

Douglas Walker MacKelcan, III &
William Joseph Farley, III
40 Calhoun St., Ste. 400
Charleston SC 29401

Geoffrey Kelly Chambers
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Green Cove Springs FL 32043-3443

M. Dawes Cooke, Jr. &
Justin Paul Novak
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J. Kenneth Carter, Jr. &
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Benjamin Parker Mustian
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William H. Davidson, II &
Michael Brian Wren
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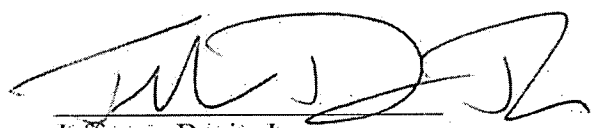
Columbia SC 292028568



Jefferson Davis, Jr.
Plaintiff, *Pro Se*

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2018-CP-40-2425

Jefferson Davis, Jr.,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
Ellen Weaver, Palmetto)
Institute, John Doe 1 - 20,)
)
Defendants.)

October 1, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

JEFFERSON DAVIS, JR., Pro Se Plaintiff

BETTIS C. RAINSFORD, JR., ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

(WHEREUPON, no witnesses were called during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

OCTOBER 1, 2018

THE COURT: 2018-CP-40-2425, Jefferson Davis Jr., versus Ellen Weaver, Palmetto Institute, and John Doe 1 - 20.

MR. DAVIS: Yes, Your Honor.

THE COURT: And this is a motion to dismiss filed by the Defendant.

MR. RAINSFORD: Thank you, Your Honor. Correct.

THE COURT: Yes, sir?

MR. RAINSFORD: May it please the Court? Bettis Rainsford, Your Honor, with Turner Padget, on behalf of the Defendants, Ellen Weaver, Palmetto Promise Institute, and John Doe 1 through 20.

I filed this motion with a 12(b)(6) to dismiss alleging the Plaintiffs failed to state facts sufficient to constitute any of these nine causes of action.

Your Honor, I filed a memo in support, which we filed last week and I served on the Plaintiff last week, but I did not realize until this morning I did not send to you until today. I have got a copy of that printed if you would like one.

THE COURT: Is it a motion to -- your memo?

MR. RAINSFORD: Memorandum in support.

THE COURT: I have it. I think she must have pulled it off. I may not have yours, I may have -- no, I do have yours. And Mr. Davis sent --

MR. DAVIS: I had filed before they filed their motion. I just filed some response in opposition to it, Your Honor, just for the record.

THE COURT: And I have yours.

All right. Yes, sir?

MR. RAINSFORD: Your Honor, the background of this case is that the Plaintiff, Mr. Davis, who is here, runs an organization that advocates on behalf of School Choice -- and I am speaking very broadly, I'm sure he can elaborate -- but the Defendants are also essentially an organization that advocate on behalf of School Choice.

There is apparently a difference between their respective brand of School Choice that I, quite frankly, haven't understood yet, but it is not necessarily germane to the motion.

The case boils down to the Plaintiff alleges that my clients have defamed or slandered him. The specific allegation is that my client, Ms. Weaver, told another individual that Mr. Davis had been disbarred, a fact which he claims is untrue and she did say it with intent to cause him harm.

There are some more allegations as laid out in the memo that my clients, the Defendants, acted in some conspiracy or in concert to do certain things that have negatively affected the Plaintiff.

Out of the nine causes of action, Your Honor, in all candor, three of them are fairly weak arguments for me -- that is, defamation, negligence, and intentional infliction of emotional distress. So I want to just focus on the six that I believe are very strong arguments in favor of dismissal. I'll take them in order, Your Honor.

THE COURT: You said defamation, intentional infliction of emotional distress, and which one?

MR. RAINSFORD: Negligence.

THE COURT: Okay.

MR. RAINSFORD: Again, in candor, my arguments there are weak, and for that reason I will focus on the other six.

THE COURT: Okay. And what -- okay.

MR. RAINSFORD: First is the allegation of the cause of action of false light.

THE COURT: Of what now?

MR. RAINSFORD: False light. We have moved to dismiss it, Your Honor, because it is a cause of action not recognized in South Carolina. The Brown

vs. Pearson case, which I cite, and I have a copy here for you if you would like it.

THE COURT: You can hand it up. That will be great.

MR. RAINSFORD: May I approach, Your Honor?

THE COURT: Yes, sir.

(Hands to Court.)

MR. RAINSFORD: On the fifth page of that case, the Court recognizes that no South Carolina case has recognized this tort. They cite Professor Hubbard for that proposition, who is of course deemed tort law in this state.

For that reason, we would ask that that cause of action be dismissed.

THE COURT: All right. You said you had six?

MR. RAINSFORD: Six of them.

THE COURT: All right. Five more. All right.

MR. RAINSFORD: We can take them, if he wants to go back and forth, or I can go all six.

THE COURT: Why don't we let him respond.

MR. DAVIS: Your Honor, I am aware of this case. I am aware of the issue of false light.

We are dealing with some of the most powerful people in our state. They are experts at what they do. The fact that they were foolish enough to sit

there and publicly tell individuals that I had been disbarred when that fact is clear that I am a member of the Georgia bar and went to USC -- I went to Citadel for undergrad and USC for law school, graduated early, took the bar -- in the old days you could take it six months before graduation, so I never took the South Carolina Bar, but I was a member of the Georgia bar, active member of the Georgia bar.

The fact that they took that on the defamation side is one issue, it is defamation per se, and it is equivalent to saying somebody has a venereal disease when they don't.

False light has not been looked at, recognized here in the State of South Carolina. There has not been a case to date. If there could be a case, this may be it. We are dealing with individuals who know how to skirt the law. They know how to defame someone without actually defaming them, which is what false light would be. So that is my contention of adding that in there.

As with the previous case, I am looking just to preserve these causes of action because, as we go through discovery -- I have already served the Defendants with a discovery request last week -- as

we go through discovery, there is no telling what we might be able to find.

THE COURT: All right. Thank you. Yes, sir?

MR. RAINSFORD: I will go next to the invasion of privacy, Your Honor.

Invasion of privacy, Your Honor, is a cause of action right now in South Carolina. It has four elements. The first is publicizing; the second is absent waiver or privilege; the third being private matters in which the public has no concern, such as to bring shame and humiliation to a person that a person of ordinary sensibility would do.

The first element is the most important. That is publicity, publicizing. The Courts have said -- this is the Swift Creek case, which I will hand up -- that publicizing for purposes of invasion of privacy is different than publication in terms of defamation.

And it is an interesting distinction, and frankly before this case not one that I was aware of. Publicity -- and I am quoting out of this case -- Publicity, as opposed to publication, is what is required to give rise to the cause of action for this branch of invasion of privacy. Quote: Communications to a single individual or to

a small group of people do not give rise to an invasion of privacy claim.

Taking what the Plaintiff has said as completely true, the allegation is that Ms. Weaver was discussing with an individual and made this claim about his having been disbarred to an individual. That is not publicizing for purposes of the statute.

I will point out that this case -- again, in all candor -- was at the directed verdict stage rather than the 12(b)(6) stage, but the allegation is still she is speaking with an individual.

And as the Court lays out in Swift Creek Nursery, that just doesn't give rise to a cause of action for invasion of privacy.

MR. DAVIS: Your Honor, I'm not debating that maybe -- I'm a tax attorney by trade, CPA. I get chastised for being too detailed. So in this case, looking at the rules, trying to be somewhat more abbreviated, 11 pages, 64 points, I am more than happy to concede the fact that perhaps I don't have the elements -- or allegations of each and every element of the invasion of privacy and the remaining I think four causes of action that Defense counsel is noting, but they exist.

And what I would like, as I relayed earlier, I am more than happy to detail with the allegations with more detail in regards to each and every element of invasion of privacy and the remaining causes of action that Defense counsel has set out.

THE COURT: So are you conceding that the -- are you conceding that the invasion of privacy -- are you conceding the invasion of privacy claim?

MR. DAVIS: I am not conceding the claim, I am conceding the fact that I have not pled it to the degree perhaps necessary to survive 12 -- you know, for a directed verdict.

Now, for a 12(b)(6), we need it in the totality. If the point is to let the Defendant be aware of what is going on and what the matter is and then the breadth, then I think we have sufficiently pled that. The Defendants have absolutely no issue with regards to how wide I believe this matter is.

So all I have asked for is the ability to amend the complaint, include my allegations for each and every one of these causes of action, and I do have the --

THE COURT: I guess what I'm asking, if I were to allow you to amend the complaint, is your

allegation that they publicized --

MR. DAVIS: Yes, Your Honor.

THE COURT: -- this to more than one person?

MR. DAVIS: They have publicized it all across the state. When I have somebody ask me when I'm going to address this issue because they have had four people say that I have been disbarred, then, yes, it has been pretty much publicized. And these are people who are not even involved in School Choice. These are people that I just happen to know that live in Greenville, South Carolina.

When a state legislature sitting on the Senate Finance on the Budget Conference Committee is going to vote against our particular proviso because they were told that I had bankrupt the School Choice Program in the State of Georgia, then they publicized it substantially, and all over the place.

The State of Georgia has a $100 million program, it is running great, it is fantastic. I founded the second largest program in that state. So I'm from South Carolina and I'm here and I'm trying to do everything we can to help these school children.

And these individuals are -- they have some

financial interests that are undermining me from helping these children, and I want to expose them.

THE COURT: Yes, sir?

MR. RAINSFORD: Your Honor, I don't know what he is talking about, bankrupting some program in Georgia. That is not what is in this complaint. What is in this complaint is, after Weaver's presentation, she was approached by a political grassroots advocate to further discuss her topic. A political grassroots advocate. If he would like to amend his pleadings to say that she was approached by multiple or that she did this publicly, then that is fine, but I am going to be able to cross-examine him on significant inconsistency there.

THE COURT: All right. What is your next one?

MR. DAVIS: Your Honor, I knew defamation was clear. I was clear on what she had said to this one particular individual, this one particular witness.

If I did not plead it to the degree for each one of these causes of action, I'm more than happy to add that, those claims in there.

THE COURT: All right. The next one?

MR. RAINSFORD: Thank you, Your Honor. The

next cause of action would be intentional interference with prospective contractual relations.

Your Honor, the elements of this cause of action, as I'm sure you are aware, the intentional interference, with respect to contractual relations for the purpose -- or improper method -- or improper purpose with improper method and causing injury to the Plaintiff.

There are two additional points the Courts make when looking at this cause of action. First they say that, quote, At the outset -- that is quoting, Your Honor, the United Educational Distributors, LLC, case for the proposition that, At the outset, the Plaintiff must show truly prospective contract for some reasonable expectation for the benefit and loss.

Now, that is very important in this case, Your Honor, because it is at the outset. United Distributors is a case that went on at the 12(b)(6) level. It is directly on point with what we are talking about.

THE COURT: Who is the contractual relationship with?

MR. RAINSFORD: That is a great question.

MR. DAVIS: Your Honor, there may be additional Plaintiffs that would be involved in this case. My wife runs -- I don't actually run the organization. My wife runs the non-profit. I would have to -- you know, it is --

THE COURT: I mean, but who is it -- who are you alleging there is a contractual relationship with?

MR. DAVIS: The program is run and administered by non-profits, independent non-profits. What the Defendants have done is advocated for the nation's only government-run private School Choice program. And that is where they are interfering with these non-profits, that contractual relationship.

MR. RAINSFORD: Your Honor, what we are talking about, it might helpful if you have a copy of the complaint. This allegation is on Page --

THE COURT: I have it up here.

MR. RAINSFORD: The allegation for the tortious interference, three paragraphs. The first paragraph just repeats, re-alleges each allegation already stated above. We always put that in everything we do. So there is really only two paragraphs. First is the Defendants directed

others not to do business with the Plaintiff by making false and defamatory statements and innuendo. As a proximate result of the Defendant's actions, the Plaintiff was damaged.

There is no identification of who the contracts were with. You know, we're -- he's talking about some organization he runs. That organization is not a Plaintiff in this case. The Plaintiff in this case is Mr. Davis. The Defendants in this case are who they are. But it doesn't make any allegations. There is no reference whatsoever to the reasonable expectation of the benefit and loss, as again discussed in this United Education Distributors case.

For that reason, Your Honor, we would ask that it be dismissed.

THE COURT: All right. The next one? Yes, sir?

MR. DAVIS: I was going to say, it is the same issue, Your Honor. I can add all this in there. I'm a tax attorney if you need help with your taxes or estate planning, I am more than happy, I can do -- that's what I can do. And I took this, obviously looking at some other complaints that had similar allegations -- similar causes of action,

and kind of followed that model.

Now that I'm aware of the fact that you need additional or maybe just -- the Defendant should know exactly what I'm speaking with, but if they want to have it detailed out, I am more than happy to detail it out. It will probably be 100 pages instead of 10.

That is my case. I would rest.

THE COURT: All right.

MR. RAINSFORD: Next, Your Honor, is the claim for unfair trade practices. I'm sure, as Your Honor has known before, the South Carolina Unfair Trade Practices Act outlawed the unfair methods in competition, unfair or deceptive acts or practices, quote, in the conduct of any trade or commerce.

Now, of course, the statute, which I have two statutes that are applicable here. I will hand you up a copy of both. The first is 39-5-20, which, again, was the language I just quoted you, setting forth the trade and commerce standard.

The second question -- the second statute, Your Honor, I'll hand you is the definitions where trade and commerce are specifically defined by the statute.

These allegations in this complaint encompass

an awful lot of things, but what they do not encompass is, quote, the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, in any other article, commodity, or thing of value, wherever situated, and shall include in trade or commerce, directly or indirectly affecting the people of this state.

At its heart, Your Honor, this is a political dispute. If we can go into the defamation, we can go into the slander, that is fine. That solves a lot things. But it is not unfair trade practices. It doesn't involve trade or commerce.

And for that reason, Your Honor, we would ask it be dismissed.

MR. DAVIS: Your Honor, you know, again, I spoke to an attorney about this. You know, there is a lot of parents that we deal with that are attorneys of children of special needs. And one of those attorneys, I don't particularly recall who, talked about unfair trade practices here. So that is when I added that cause of action in there to preserve that. I will look at it and see if I can't figure out exactly what they believe. They may have believed unfair trade practices were for

here. But I'd like to be able to preserve that and expand upon it. And then amend the complaint.

THE COURT: All right. Yes, sir?

MR. RAINSFORD: Thank you, Your Honor.

The next one is veil piercing, a very common thing we see all the time, piercing the corporate veil. Equitable action. South Carolina has adopted the Sturkey test, which is a 2-factor test.

The first factor deals with -- the first prong deals with eight factors that are all heavily evidentiary and not really relevant.

The second factor is that there be some fundamental unfairness to the Plaintiff such that the corporate form should be disregarded.

Your Honor, there is no fundamental unfairness. That is true at this point because we are at this point. There has been no judgment. There has been no finding of any liability. Piercing the corporate veil is not a cause of action, it is a remedy, equitable remedy.

If Mr. Davis down the road gets a giant Plaintiff's verdict in this case, and my Defendants try to hide behind their corporate form, I agree, at that time that is a remedy to consider, but it is certainly not relevant in a complaint as a

separate known cause of action.

The best case on veil piercing doesn't exactly stand for that proposition. What discusses it in detail is the Sturkey case that adopted our tests. And it discusses that fundamental unfairness and the true extent it takes to pierce the corporate veil.

MR. DAVIS: Your Honor, the entity that I am suing has changed names three times over the past five or six years. The individuals that are running this organization now currently came in or back to the state. They essentially took over this entity. They highly funded this entity. And they are using this entity to promote their particular political agendas. And it is hurting individuals in this state.

So I think it is not just the entity, I think it is the people behind the entity. And at some point the veil needs to be pierced, and that is why I have added that cause of action to this particular complaint.

MR. RAINSFORD: Your Honor, piercing the corporate veil is only applicable to entities. It is a corporate veil we are trying to pierce. You can't pierce the veil of an individual. An

individual is -- I mean, that is the base thing.

MR. DAVIS: Your Honor, one of the Defendants is Palmetto Promise Institute. They have changed their name three times, these individuals, over the past five years, so.

THE COURT: All right. The next one?

MR. RAINSFORD: Finally, Your Honor, is civil conspiracy. The Plaintiff alleges a claim for conspiracy, civil conspiracy. Civil conspiracy and criminal conspiracy are two different things. Very different. Civil conspiracy is a combination of two or more persons for the purpose of injuring the Plaintiff causing the Plaintiff special damage.

Additionally, Courts hold that to recover in a civil conspiracy you must allege additional acts in furtherance of the conspiracy rather than re-alleging other claims within the complaint. Further, damages must go beyond the damages alleged in the other causes of action.

Again, Your Honor, the Hackwood v. Greywood at Hammett, LLC, this is a case right out of a 12(b)(6) motion assessing the claims at the pleading stage. The Plaintiff must go beyond the allegation of -- simple allegation or the re-allegation of all underlying facts or other

causes of action. It is at the very back of the complaint, Your Honor.

THE COURT: On the conspiracy you have to show special damages.

MR. RAINSFORD: Damages beyond those caused by the ordinary. And then here the Plaintiff's claim of conspiracy is in three paragraphs, two really are substantive. The Defendants conspired and colluded together amongst themselves to execute the above-stated cause of action, thus these damages are a direct and proximate result of the conspiracy and conclusion.

The bottom allegation, Your Honor, it is a re-allegation of all the before-mentioned ones just to try to be applied to a conspiracy. And I don't think that cuts it, again, under that case I just passed up.

MR. DAVIS: Your Honor, again, it may not. That is for the Court to determine. I'm happy to amend the complaint, add more detail for it, and cover all the bases that Defense counsel would like for us to cover.

MR. RAINSFORD: I would make one other point, Your Honor. The complaint alleges a lot of things about Ellen Weaver, but I think in every

allegation -- I'm looking, for instance, in Paragraph 7, it says: Weaver, in her official capacity, representing PPI.

I think a lot of the allegations are that in anything Ms. Weaver did, she was acting in that capacity. For that reason, I would love to get her dismissed individually out of this lawsuit.

And a similar argument is on the John Doe Defendants. There is a lot of allegation -- or there is not a lot, there are several allegations about the John Does, but some of them is that the John Does are the donors or the funders of PPI, those people that are giving PPI money as a non-profit. I don't know that there is any specific allegation that those John Does have done anything beyond be associated with the allegations related to Ms. Weaver.

For that reason, Your Honor, we would ask that the John Does be dismissed because the allegations are merely conclusory and not tied to any specific facts.

MR. DAVIS: And, Your Honor, if I did put after Ms. Weaver's name, it was cut and paste, but it was in her individual capacity. There is other things that Ms. Weaver has done that maybe I have

not mentioned in here that I should have. In regards to the John Does being the funders, they also direct the activities of this organization and this individual. So that is why I include both of those -- both of those two sets of parties in this matter. Ellen Weaver is certainly a primary individual to whom -- if he is saying that Palmetto Promise itself is the one out there saying that I'm defamed, that is fantastic, but as far as that I have been disbarred from practicing law, that is fantastic, but it is also Ms. Weaver and what she has been doing on a personal level as well.

THE COURT: All right. Well, I am going to deny the motion. I think the evidence -- not the evidence -- I think the allegations are sufficient to leave Ms. Weaver in. The allegations are against her. In looking at the allegations where he says that after the presentation she approached, that she had conversations regarding they had a difference of opinion. I mean, her name is all through the complaint. And the allegations, for purpose of the 12(b)(6), are sufficient to leave her in -- well, I shouldn't say 12(b)(6), but for purposes of the motion to dismiss, I am going to leave her in.

I think the John Does have been named specifically. You don't have --

MR. DAVIS: Well, I don't have all the parties, but certainly if I amend the complaint I will be more than happy to add a substantial number. I think we will discover more as we go through discovery. That is why --

THE COURT: I am not sure how you are going to serve the John Does. Did you serve them by publication or --

MR. DAVIS: I have not.

MR. RAINSFORD: To my knowledge, I know of no service at all, Your Honor.

THE COURT: All right. I'll come back to that in a second.

All right. As to the first cause of action, defamation, a motion to dismiss pursuant to 12(b)(6) is denied.

As to the second cause of action, false light publicity, that motion is granted. That is not a cause of action in the State of South Carolina.

As to the third cause of action, invasion of privacy, I am going to allow the Plaintiff to amend the complaint, but it needs to detail what was publicity, which is the element of invasion of

privacy, it needs to detail the publicity. And as already stated, the case law says it is more than one or two people, it has to be publicity. If you can't do that, then it will be -- if he finds that he can't do it, I guess he is going to consent. I think he said earlier he would consent to it, but if he wants to amend it, I will allow him an opportunity to amend it to put that allegation in there.

As to the negligence claim, which is the fourth cause of action, it is denied.

Intentional infliction of emotional distress, denied.

Tortious interference with respective contractual relations, that cause of action will be granted. There is nothing in here regarding a contract.

Also, on the unfair trade practice, there is nothing in the complaint -- the complaint is pretty lengthy. I am going to grant that. It does not involve trade and commerce.

As to piercing the corporate veil, I am going to deny that. I am going to allow him to leave it in there so if he at one point wants to just preserve his right to make that claim at a later

time. So I will -- I am going to deny that portion, that motion to dismiss that.

And on the conspiracy, I am going to allow him to amend the complaint to add special damages. Sir, if there is no special damages, then it would be -- you cannot allege any special damages, then it is granted -- that will be granted.

The same thing with the invasion of privacy. If he cannot allege any publicity, then that will be granted also.

MR. DAVIS: Thank you, Your Honor.

MR. RAINSFORD: Thank you so much.

THE COURT: On the John Does 1 through 20, I think you need to name, since you are going to amend the complaint -- and those are the only things that I am granting you leave to amend the complaint on is the invasion of privacy, conspiracy, and the John Does, I think you need to name them and serve them, because I'm not sure -- you have them as a named Defendant, and unless you are going to do it by publication, I'm not sure.

MR. DAVIS: And do we have the time period for amending it? And also the discovery that I submitted to the Defendants, are we still in that 30-day time period that has been provided for

responding to discovery? Just so we are clear.

THE COURT: Well, I don't know. I mean, I assume --

MR. RAINSFORD: Your Honor, I do plan to respond to discovery within 30 days. Part of that discovery will be a very large motion for protective order. This discovery is some kind of broad and covers a whole lot of stuff that I don't think has anything to do with this case. So we will be responding to some of the discovery within 30 days or -- I'll be responding to that, and I do plan to move for a protective order at some point.

THE COURT: All right. It will be 15 days to amend.

MR. DAVIS: Thank you, Your Honor.

THE COURT: All right. Thank you. Now, of course, you know you have to serve him with the amended complaint, and then he will have to respond.

MR. RAINSFORD: And, of course, we will accept -- I will accept service on behalf of my two, but anybody else...

MR. DAVIS: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded at 3:27 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 1st day of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 26, 2018

s/*Deborah M. McCurdy, RPR*

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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State of South Carolina)	In The Court of Common Pleas
)	Fifth Judicial Circuit
County of Richland)	2018-CP-40-2425

Jefferson Davis, Jr.,

Plaintiff,

vs.

Ellen Weaver, et al.,

Defendants.

Transcript of Record

February 12, 2019
Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge

A P P E A R A N C E S:

Jefferson Davis, Jr., Esquire
Self-represented Plaintiff

Miles Edward Coleman, Esquire
Attorney for Defendant SCRG Foundation

Brian J. Kern, Esquire
Attorney for Defendant IMC USA

Joseph M. McCulloch, Jr., Esquire
Attorney for Defendant First Tuesday Strategies

ALSO PRESENT:

Joseph K. Carter, Jr., Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

No.	Description	Ev.

No exhibits introduced.

THE COURT: The first one I have is the motion to dismiss by the Institute of Management Consultants USA.

MR. KERN: That's me, Your Honor, Brian Kern here with the Hood Law Firm.

THE COURT: Brian what?

MR. KERN: Your Honor, the Institute of Management Consultants is a member of the second tier of defendants that were ultimately added to the lawsuit.

THE COURT: And you have a motion to dismiss. Is that correct?

MR. KERN: That is correct, Your Honor.

THE COURT: Well, let's hear your motion to dismiss, and it could very well be that the rest of the defendants may piggyback your argument

MR. KERN: As you might imagine, I spent some time reviewing the motions and memorandums of the other various defendants who filed a motion to dismiss, and they're all essentially the same. They, they, they have the same argument.

And the background is that my client, Institute of Management Consultants, was an original plaintiff -- defendant. On October -- the specific dates, Your Honor, are that on October 18, 2018, the court partially granted a motion to dismiss on the original complaint. And in that order, the court instructed plaintiff, Mr. Davis, ordered

Mr. Davis to name and serve each John Doe and afforded him fifteen days from that date to do so. Eleven days later on October 29th, this court issued an amended order providing the exact same thing: he has fifteen days from that date.

THE COURT: Fifteen days from the 29th of October?

MR. KERN: Yes, Your Honor, and that was to amend his pleadings and name John Doe specifically. On October -- on November 19th, which is about a week after the original -- that second deadline, he finally amended his complaint and in doing so named the Institute of Management Consultants. So, he missed the original deadline offered by the court for these issues that occurred between 2013 and 2015 to identify the Institute of Management Consultants as, as a John Doe specific, replacing John Doe, and adding them to the complaint. So, he missed the original deadline. That's the first basis for our motion to dismiss is that he's ---

THE COURT: Do you have Judge Benjamin's order? Does anybody have it?

MR. KERN: I don't have the order with me, Your Honor.

THE COURT: Anybody got a copy of it I can look at, Judge Benjamin's initial order?

MR. KERN: There's two orders.

THE COURT: And the supplemental order.

(A PAUSE.)

MR. KERN: I don't have Judge Benjamin's order, Your Honor. I'm not sure anybody has it.

MR. DAVIS: I've got a copy of the -- of that order, the amended order, Your Honor, and it was dated the October 29th, and I, I was very particular in following up with the court and with the -- with Judge Benjamin's clerk.

THE COURT: Okay. Can you hand it to the clerk? She'll make a copy for me real quick and hand yours back.

(A PAUSE.)

THE COURT: So, it's dated October 29th, the amended order.

MR. KERN: Yes, Your Honor.

THE COURT: And gives him fifteen days to appropriately amend the pleadings. When did he file his amended complaint?

MR. KERN: November 19th.

THE COURT: November 19th?

MR. KERN: Yes.

THE COURT: So, that's more than fifteen days since October 29th.

MR. KERN: Correct.

MR. DAVIS: Your Honor, Your Honor, I think based ---

THE COURT: Hold on. Hold on.

MR. DAVIS: --- on holidays ---

THE COURT: Sir, what I've read, you graduated from the University of South Carolina and are admitted to practice in Georgia.

MR. DAVIS: Yes, sir.

THE COURT: Our procedure on motions is the moving party has the opportunity to present his position. You have your opportunity to argue contrary to it. Then he has an opportunity to reply to your argument. So, you will get your say after he gets his say.

MR. KERN: Thank you, Your Honor.

THE COURT: All right.

MR. KERN: So, you have in front of you now the order which esablishes his deadline for amending his complaint to add IMC USA, my client, which he missed by approximately a week. I think you raise a good point in that he's a lawyer and a CPA, and so ---

THE COURT: Well, I just read that in somebody's brief. I'm not...

MR. KERN: It's accurate, to my knowledge. So, I think that's an important point. He's not, he's not a typical pro se plaintiff. He's a, he's a professional who's worked in various capacities in the finance industry in both Georgia and South Carolina. I think that a fifteen day deadline is reasonable for someone of his education and position in life. He missed that deadline.

Nevertheless, if we look at the facts against IMC USA, he's listed nine causes of action for defamation and defamation per se and per quod, defamation by innuendo -- which isn't recognized -- invasion of privacy, negligence, intentional infliction of emotional distress, tortious interference of prospective contract, unfair trade practices, and piercing the corporate veil, and finally conspiracy.

The factual allegations against IMC USA are as a management consulting institute, it dragged its feet in investigating a codefendant, Kirkland, in looking into certain ethical violations that the plaintiff himself is alleging. So, by virtue of, quote, dragging its feet on the investigation, is engaged in some sort of conspiracy and is now a co-conspirator in nine causes of action.

What's important to note is that the actual factual allegations against IMC USA constitute about four paragraphs on page 28 of his amended complaint. And then under the specific, the specific causes of action in the body of the complaint, there are no factual allegations under any of the nine causes of action to support any of the nine that he's alleged. So, not only has, has the complaint itself been unfactually how IMC USA could be a party to this lawsuit, the specific cause of action alleges no facts that support any of the nine causes of action.

There's nothing in the complaint that would allow us to even defend a lawsuit because it alleges nothing, no conduct other than we dragged our feet in some investigation.

THE COURT: All right. Thank you.

Mr. Jefferson.

MR. DAVIS: Yes, sir.

THE COURT: Let's address them one at the time. You'll do the timeliness and then other one.

MR. DAVIS: Yes, sir, the timeliness will be fine.

THE COURT: However you want to do them.

MR. DAVIS: The order came out on the 29th. I was given fifteen days. As a pro se plaintiff not receiving e-filing, my interpretation of, of the rules was I got an additional five days. That came up to the, to the 19th. I drove to, to Charleston -- or to Columbia and filed it in person on the 19th. That, that's ---

THE COURT: All right, why did you think you had an additional five days? Does the e-filing have something in it that says that?

MR. DAVIS: Yes, sir. Based on the, based on the rules, if you are not part of the e-filing or if it's, it's a mailed document, you get an additional five days. I don't get copies of the orders. I, I, I have to ---

THE COURT: Okay, I just need a, I need a -- I'm not

aware of that. I need to see it.

MR. DAVIS: I, I don't have the cite to it. I, I ---

THE COURT: That's fine. You can get it to me. All right, that's your position on that.

MR. DAVIS: Yes, sir.

THE COURT: You are timely under the e-filing rules.

MR. DAVIS: Yes, sir.

THE COURT: All right.

MR. DAVIS: You get an additional five days as a non-bar member. And as a tax attorney, I'm, I'm not a litigator, Your Honor, just so you know. This, this, I think, is my third time in a courtroom involved in a case.

THE COURT: All right, sir. So, your position is very simple on the timeliness: that you, under the rules as a pro se litigant, you get an additional five days.

MR. DAVIS: Yes, sir, and that's comparable to the federal rules. I definitely know it's in the federal rules, and it's in state rules as well, which are modeled after them.

THE COURT: All right. Now, as to the substantive part of the motion.

MR. DAVIS: As, as I stated earlier, Your Honor, I had fifteen days to amend this. This particular defendant I've had a lot of conversation with over the time period. They assured me this, this matter was going to be moved forward.

What then occurred is once I disclosed who the names of the parties were, their relations to different people, their relations to Senator DeMint, that is when they, they started and put whole total stop on this, this type of thing.

So, what I'm, what I'm alleging -- and my, in my complaint, it's not just they're all saying that, oh, this one or two, three, four paragraphs only applies to me. My complaint encompasses all defendants. I have information on this particular defendant that they're sitting there trashing me in a sense in part of the conspiracy to slow down this gentleman. We're all professionals. This gentleman was the independent CPA.

THE COURT: What gentleman?

MR. DAVIS: Stephen Kirkland, one of the other defendants.

THE COURT: Is he in the courtroom?

MR. DAVIS: Yes, sir. He is a certified management consultant. He is subject to professional ethics through the IMC USA. He is the board chairman of Palmetto Family Council, the number one opponent to our position on, on private school choice in the state of South Carolina.

The Department of Revenue audited me individually. I claimed it was political targeting. My -- and I discovered in FOIA documents that my wife -- that, that senior DOR

officials had made sexual comments about my wife. That, through the governor's office, got us an independent third-party review to make sure we were not being targeted and we were being treated fairly. The, the director of the Department of Revenue, Mr. Rick Reames, personally hired Stephen Kirkland to do the independent review to make sure we weren't targeted. They were the people targeting us, Your Honor. It is ethics 101.

I sat there -- and certainly on Mr. Reames -- and Mr. Reames, you know, and the Department of Revenue has a motion to dismiss today as well. I called the State Bar Association, explained the situation. They tell me I have an ethical duty to file a professional complaint against the director of the Department of Revenue, Mr. Reames who, after all this came to light, unexpectedly resigned from the Department of Revenue. I call and I deal with the state supreme court, the Commission on Lawyer Conduct. They send me back a letter saying based on your allegations, this needs to be submitted to a criminal -- South Carolina Ethics Commission and criminal investigators.

That's what I'm dealing with. IMC USA is part of it. The rest of them are part of it, and since I have actually named the other parties, information is coming out of the woodwork.

Now, I am more than happy to expand upon my complaint; it's forty-seven pages already. My interpretation or thought process was I need to state a claim. They should know what I'm looking for and what I, what I'm -- what my complaint is, I mean, and it's substantial. So, if I need to expand it and provide further allegations and evidence, I'm more than happy to do that. But they just can't say, well, just because -- well, certainly they can say -- but just because, oh, only these four paragraphs. All, the entire complaint, applies to IMC USA.

For some reason, good people have gotten involved in this matter to cover up for other bad people. When good people cover for bad people, those good people become bad people. Stephen Kirkland was an independent CPA and a certified management consultant. He's the board chairman of our largest political opponent, and he sits there and, and, and provides a report ---

THE COURT: Who is your ---

MR. DAVIS: --- to the Department of Revenue ---

THE COURT: Who is your political opponent? What is this is all about?

MR. DAVIS: It's about school choice. We believe in -- we, we all -- a lot of us here fight for school choice.

THE COURT: Who is we?

MR. DAVIS: We? Myself, my wife, you know, a lot of

other individuals. We worked with ---

THE COURT: You and your wife are the only two parties?

MR. DAVIS: Yes.

THE COURT: Only two plaintiffs?

MR. DAVIS: I'm sorry?

THE COURT: You and your wife are the only two plaintiffs?

MR. DAVIS: I'm the only plaintiff in this case, Your Honor.

THE COURT: You're the only plaintiff?

MR. DAVIS: Yes, sir, and I'm representing myself. So, it became very simple. When, when I'm getting reports back from individuals that Ellen Weaver, who is the president of Palmetto Promise who was just elected chairman of our Education Oversight Committee, was telling individuals that I have been disbarred and lost my CPA license, that's defamation per se. What -- how do you -- how are you supposed to feel when somebody is sitting there telling every individual in the state of South Carolina that you're disbarred? How are you supposed to feel when they're telling every individual in the state of South Carolina that, oh, he's not from South Carolina?

He -- they -- I've got legislators that will testify that they sat on committees that were told by individuals

that I and my wife -- and I'm the only plaintiff in this case -- I bankrupt the $100 million school choice program in the state of South -- in the state of Georgia. I didn't bankrupt the program. It's a $100 million. It's been around since 2008, but I've got, you know, literally legislators lined up that will sit there and tell, tell you the stories of all of the information that they've heard from us.

We now are backing and proposing, you know, advocating for a bill, Senator Tom Davis out of Beaufort, $60 million school choice bill. It's run by independent nonprofits, grassroots. That's what the issue is. All of these individuals are pushing a special interest, out-of-state, monied school choice program that, frankly, you get a debit card, you pay a 2.5 percent fee. Imagine we had 6 or $8 billion of state education funding going through a debit card and Visa, MasterCard, and the people backing these individuals are getting their 2 and half percent cut. That's what we're fighting. We are fighting a monstrosity of money.

I can track down through one of the defendants over $15 million that was pumped into this state from out-of-state special interests over a ten-year period to advocate for school choice. They're -- they -- you will hear the comments of, of the military industrial complex.

There is a nonprofit industrial complex. These individuals don't want to solve school choice in the sense of they don't want to solve, you know, your cancer because guess what? They solve school choice, they're out of a job. They -- they're out of that million to a million and a half dollars of out-of-state advocacy money. That's what we're trying to, to show what's going on in the world.

We just went through an investigation, classmate of mine from the Citadel. We went to law school together, David Pascoe, with Quinns and legislators and put -- it is the exact same thing, and I've been ---

THE COURT: What you mean we went through it?

MR. DAVIS: We, the state, the state of South Carolina.

THE COURT: Okay.

MR. DAVIS: Nobody really wants to have to deal with and point out, but when the chairman of House Ethics, or the now former chairman of House Ethics, you know, testifying at, at, at former representative Harrison's trial, the dirty little secret is all these politicians have consulting firms. They're being paid by these people.

In our particular case, that's why I have two of these John Does in here. It -- they used to be paying the Quinns. They were getting all the, the money to push and advocate for stuff. The Quinns got into dirt, and all of a

sudden it moved over to First Tuesday.

Why is First Tuesday, which is another political consulting group in the -- in this state -- Matt Moore, who is the GOP chairman of the state, he replaced, he replaced Chad Connelly, who, guess what? Chad Connelly was one of the board members of one of the defendants, South Carolinians for Responsible Government. They're -- I could track through their 990s one $15 million. Chad Connelly, after he's a fellow board member with Stephen Kirkland at Palmetto Family Council, after the government took over -- we are the only state in the nation that has a government-run tax credit scholarship program. The government took it over in 2016 because we were being accused of all kinds of defamatory things: bankrupting Georgia, we were criminals, all that type of stuff. Then all of a sudden guess who's running the government, government nonprofit that's doing school choice in this state? Chad Connelly, Mr. Kirkland's fellow board member. It is incestuous, and we have had to fight and fight our way.

We now have a $60 million bill. We have convinced and discussed this and exposed every dirty little secret we've got in our lives to legislators to let them know that we're not criminals. So, Senator Tom Davis has filed a $60 million bill for us. We got sixty cosponsors -- or, I'm

sorry, thirty cosponsors on it today. We have -- it's endorsed by various groups. You know who it's not endorsed by? Special interests. Anybody that's a special interest that's going to get paid, they're all sitting there pushing a government-run solution. It is -- it has mirrored exactly what the Alan Wilson, the David Pascoe investigation into corrupt legislators and corrupt outside entities with the Quinn investigation. That may be coming to an end. It may be not be.

But that's why I initially started this lawsuit. When Ellen Weaver was going around telling people I've been disbarred -- I went to law school here in the state of South Carolina. Went to the Citadel for undergrad. Went to law school at USC and got my law MBA. Back when I finished, you could, you could take the bar in Georgia six months before you graduated. I graduated early from USC, and I took the bar six months before I graduated. I was done. I, I, I, you know, I passed it. Didn't take the bar review, all that type of stuff.

I don't know if she sat there and looked on the state bar rolls and had heard I went to, you know, the University of South Carolina and didn't find my name and then started telling everybody I was disbarred, or she actually -- I think she actually knew I hadn't been disbarred, but she wanted to trash our names to all her special-interest

codefendants here to profit off of this.

That's what we're trying, trying -- I'm trying to expose. They're all aware of it. When I'm sitting there dealing with the head person at, at the Institute of Management Consultants USA, and he is telling me when I send him my complaint about Mr. Stephen Kirkland and he tells me it is the worst thing he has ever seen and he says, you know, when I first read it, I'm reading this. That's a no; that's a no; that's a bad one; that's a bad one.

They finally after three or four months, they provided me a written response, and I initially filed it as a, you know, just a John Doe. You know, what is -- you know, I'm not going to give you names, but this is the scenario. He called me up. He told me exactly what they were, they were going to rule. He sent me a written thing, and he said if you want to file an ethics complaint, a formal ethics complaint or if this is good enough for you, you know, just let me know. I said you know what? I'm going to file a formal ethics complaint. I filed it against Mr. Kirkland, and it disappeared.

When Jim DeMint is the founding board chair of Palmetto Promise Institute and probably -- and I got to find it -- Jim DeMint or somebody called these people and put pressure on them. I got legislators telling me they're

getting tons of pressure not to sponsor our bill.

You know, partially it's political -- in political world. I'm not asking the court to fix a political battle, but what I'm asking the court to do is, is -- political battles are out there, but when they start using government and that type of it -- we were audited by the Department of Revenue. I was audited. I didn't have a filing requirement in the state of South Carolina, and it took them fourteen months to clear my name. They did that. They did it to my wife, and they did it to the nonprofit organization we were, we were working with to tarnish our name, to slow down our fund raising because these people didn't want us to fund raise and give the money out to the kids.

That's where the breakdown with these types, these types of people broke. I told them we had the money lined up to raise it day number one and give it out to kids. I'm a tax attorney; I'm a CPA. I know where to go for -- I know who's paying taxes. I know where to go to talk to them, and I can talk to their financial advisors and say, hey, here's a good little program. Look how it works everywhere else. You can help these children. 97 percent of the money will go, go to help kids. You got a choice. Mail the money to, to Department of Revenue or give it to this nonprofit and take it off your taxes. It doesn't

matter. It's a wash, and we were very successful at it.

These people didn't want us to be successful. They wanted to drag out school choice. They literally said you shouldn't be able to raise 8 million a year for at least three years because if you do it too fast, I'm out of a job. I want to put them out of a job, and I want to expose them. And the legislators we talked to, they all know it's special interests.

Who's funding Palmetto Promise? I'm a, I'm a, I'm a numbers guy. I can track the money; that's what I do. I'm not a litigator and I, you know, I know the rules to a certain extent and I got five extra days, you know, to file this, the amended complaint, but I can track the money and I can expose what they're doing, and that's what I'm trying to do. They all know it, and they're all desperate to stop it. It's a room full of the most -- the chair -- I mean, the state bar president, for god sakes, is one of the, one of the, one of the attorneys for one of the defendants. This guy, Mr. Kirkland, he went for the big boys to sit there and ---

THE COURT: Let's don't ---

MR. DAVIS: --- and protect him.

THE COURT: Let's don't get personal. Come on now.

MR. DAVIS: No, I'm just saying he went, you know, for really good, high-powered -- none of these people want to

talk. I'm happy to talk with them. I'm happy to give them the opportunity. Y'all want to come together and kumbaya and figure this out, I'm more than willing to do it, but I have a grievance. I have a problem. I had the Department of Revenue attack me. I've had these guys doing things.

I've got the head person -- she's now, interestingly enough, retired. I, I exposed this. I say I'm going to file a complaint. She ends up -- she's the head administrator at the State Board of Accountancy. She's not involved in the ethics investigation of Mr. Kirkland. She calls me up and threatens me with a restraining order. She tells me Mr. Kirkland, he supports school choice; he can't have an ethics violation because he supports school choice. I'm, like, the definition of a ethics violation, conflict of interest, ethics violation is the fact he has anything to do with school choice. He shouldn't be opining on our audit if he has anything to do with school choice because the entire audit had to do with school choice. And she then goes into a diatribe, threatening me with a restraining order and I'm, like, really. And then lo and behold two months later she's taking early retirement. That's what we've been following through. That's how LLR got involved in it.

THE COURT: Well, let me ask you this. Having said all this, what you are asking me to do is to allow you to

amend your complaint to put all the stuff that you've just told me with specificity in it?

MR. DAVIS: I will -- it will be the longest complaint on the planet, Your Honor. I just wanted to get past this and get into discovery and start working through this. If my complaint needs to be longer and if it needs to be in more detail ---

THE COURT: Well, it needs to comply ---

MR. DAVIS: --- it needs to address ---

THE COURT: --- with the rules of South Carolina Civil Procedure and pleadings and if it doesn't ---

MR. DAVIS: Enough to provide notice ---

THE COURT: --- it can get dismissed.

MR. DAVIS: And I think they all have notice. If they didn't have notice, they have notice now. We've been claiming this for about six years. They know what my grievance is and ---

THE COURT: Let me ask you this.

MR. DAVIS: --- I apologize if the court doesn't.

THE COURT: What if I rule that you only had fifteen days and you can't even file the amended complaint that you filed? Where does that leave us? You have your suit against who?

MR. DAVIS: It would be Ellen Weaver and Palmetto Promise. I, I don't think Orin, Dr. Orin Smith and Jim

DeMint were on the original. I could be mistaken. I think it was just, it was just Ellen Weaver and Palmetto Promise.

Now, she's, she's the one that was out there on business at a conference in Clemson at an event I was at. It was a conservative conference; a lot of people I knew were at it. She's up there speaking about school choice. Some -- different people went and asked her why did the government take the program over? Why did y'all, as a conservative think tank in the state of South Carolina that promotes free markets and, you know, limited government, why did you sit there and, and advocate for the government takeover of the school choice program? We are the only one. So, people would ask that. She said you know that guy that was sitting over there -- pointed at me -- sitting next to his wife, because my wife is actually filming it with, with a iPad. You know that guy, that person that was filming me while I was speaking? That guy's been disbarred. He's a, he's a -- he's lost his CPA. He is a tarnish on school choice in this state, and we've got to get rid of him. That's why we took it over: because he had bankrupted the program in Georgia and came here to destroy school choice.

THE COURT: All right. Thank you.

Anything in reply?

MR. KERN: I heard, I heard a lot there.

THE COURT: So did I.

MR. KERN: I did not hear any specific allegations against my client except that they received an ethics complaint and maybe investigated it too slowly. That's a separate issue than all of the nine causes of action he's listed in his complaint, notwithstanding the fact that he missed the deadline under Judge Benjamin's order where she -- wherein she specifically said that if he misses the deadline, the complaint is dismissed.

THE COURT: Thank you.

All right.

(A PAUSE.)

THE COURT: I know when they put in e-filing, they sent out a lot of suggestions. I don't know if they were rules or what.

MR. McCULLOCH: Your Honor, I may be able to ---

THE COURT: Hold on. Rule 6 says ten days plus another five days, five as he was served by mail.

(A PAUSE.)

THE COURT: Who said they can clear it up?

MR. McCULLOCH: Maybe. Maybe not, Your Honor. I think I'm next.

THE COURT: Well, you can speak to it. Come on down. I mean, this is so many motions, and it all -- a lot of it revolves around this five -- this fifteen days that Judge

Benjamin signed in her order, and I assume it was e-filed on that date and if it were e-filed, he had fifteen days to comply with her order. Does he get an additional five days? This is not like a regular filing. It's a judge filing an order giving you fifteen days to answer. Does it get extended five days? I don't know the answer to that; I'm going to have to research that.

Hold on. I'll let you respond, Mr. McCulloch.

MR. McCULLOCH: Well, Your Honor, I did some quick research. This was not an argument that we raised in our motion or memorandum, but we certainly would join with it, having seen it articulated by numerous parties here now and those who will be here at 2:00.

Just -- I looked at Rule 6, which seems not to offer up -- obviously Rule 6 in the South Carolina Rules of Civil Procedure don't address e-filing. They do address the standard timeframes within which things have to happen.

The Supreme Court earlier established a pilot program which led to the e-filing policies and guidelines for that during that pilot program, which were then extended when the Supreme Court adopted its order January 23rd of this year. And in that guidelines adopted, it really -- well, it says in number 4(a) of these policy and guidelines:

> Any required -- Timeliness: Nothing in these policies and guidelines should be construed to

reduce or extend any filing of service deadlines set by statute, the South Carolina Rules of Civil Procedure, or orders of the court.

The -- these guidelines and policies allow for a party to file their pleading if they are not a lawyer. So, there is a caveat that allows for a nonlawyer -- I mean, the policies and guidelines say explicitly that a nonlawyer may not e-file but they, they have to abdicate back to or default back to the normal procedure of coming to the courthouse and filing it. And I would guess, Your Honor, since it does not elsewhere address this additional five days that he wouldn't have been entitled to that, but this is perhaps a novel issue. But I think you have to read all this together, as I've said, this 4(c) of the policies and guidelines.

THE COURT: Well, if he gets five extra days, he's within the time limit. If he doesn't, then he's not in compliance with Judge Benjamin's order, and then what? What's the result of that?

MR. McCULLOCH: And, Your Honor, because I was not involved in the case at that point, I don't know what Judge Benjamin did from the bench, whether there was any ---

THE COURT: All I know is ---

MR. McCULLOCH: --- order.

THE COURT: --- I've got, I've got her order. I know

what it says.

MR. McCULLOCH: I don't know whether there was a bench order that could affect the timeframes. I mean, it's complicated, and maybe some of the parties that were here -- but I wanted to at least provide you with that information, Your Honor. That was some quick research I did.

MR. MILES: Your Honor, if I may?

THE COURT: You are?

MR. MILES: I believe I can shed some light on that issue.

THE COURT: You are?

MR. MILES: I'm sorry. Miles Coleman. I represent SCRG Foundation, who has a motion, and I also represent the Cato Institute and Mr. Rich.

As to the issue of timing, Your Honor, I think if you'd look at the final paragraph of Judge Benjamin's order, which you have a copy of it, you will see it allowed Mr. Davis fifteen days not only to file his amended complaint but also to serve it. And I know as to my clients, and I believe as to many of the other newly added defendants, they were not served within those fifteen or even those twenty days. In fact, some of them have yet today not been served.

So, I think regardless of the complexities of the

rollout of the electronic filing system, regardless of the extra five days to file, I think the failure to serve the, the, the newly added defendants within Judge Benjamin's timeframe constitutes a violation of her order and, among other reasons, warrants dismissal.

MR. DAVIS: Your Honor.

THE COURT: Hand me Judge Benjamin's order one more time, please. Did I -- didn't I hand it back to you?

MR. DAVIS: I appreciate the creativity, but I don't think anybody would expect something to be filed and served within fifteen days, but...

MR. MILES: Respectfully, Your Honor, Judge Benjamin expected that when she ordered it.

THE COURT: Well, the last sentence of Judge Benjamin's order is: It is, therefore, ordered that each John Doe referenced in the complaint -- this is the amended order -- shall be specifically named and served. So, Judge Benjamin expected it, and that's the law of the case. So, I have to deal with that in listening to your argument as to whether or not you complied with her order in filing the -- and serving the amended complaint.

She set it out in her order. That was a condition allowing you to amend, which she has the discretion to do. So, she gave you the ten. I suspect you get five under this e-filing extra, but she also mandated that -- not

mandated. She ordered that you shall name and serve. So, that is a ---

MR. DAVIS: That's a, that's -- I, I, I find it hard to believe Judge Benjamin -- she never discussed that. I, I hear what ---

THE COURT: Well, you want to read the order?

MR. DAVIS: --- you're saying and reading, but you can't physically serve, find people and serve people. I've got -- a couple of the defendants are avoiding service. How do you serve them in fifteen days?

THE COURT: I don't know but ---

MR. DAVIS: Why would the rules give us six months to serve, serve ---

THE COURT: I don't know. If I'd had that order served on me and I was worried -- not served on me. If I'd had that order given to me as a party or a lawyer, but I think if I knew I was going to have problems serving them, I'd have made a motion to have her reconsider and give you a little more time to serve them, but I don't know. I'm just dealing with what she's, she's ordered. So, that's where we are. Thank you.

All right, who's got the next one?

MR. McCULLOCH: That's me, Your Honor, on your docket, on your roster.

THE COURT: I've got a motion to dismiss by

Strategies, LLC. Who represents Strategies?

MR. McCULLOCH: That would be me, Your Honor. First Tuesday Strategies, LLC.

THE COURT: All right, be glad to hear from you.

MR. McCULLOCH: Thank you.

THE COURT: You got a motion to dismiss?

MR. McCULLOCH: I do, Your Honor. As I mentioned, we would join in the, the grounds enumerated with respect to the service.

And while it is interesting, Your Honor -- if I may approach? I'm going to ask you to look at Exhibit A. This was filed with the court, but it may not have made it into your file. This is the short memorandum. Exhibit A is the sum total of the allegations made by Mr. Davis in his rather voluminous complaint, which runs forty-five pages and 250 paragraphs. And First Tuesday Strategies, LLC, was one of the John Does evidentially obliquely referred to in the original ---

THE COURT: Hold on before you start.

MR. McCULLOCH: Yes, sir.

(A PAUSE.)

THE COURT: Go ahead.

MR. McCULLOCH: All right, Your Honor. I'm going to be very brief, Your Honor, because there are so many motions to dismiss that are quite redundant in terms of the

underlying law.

I think that my argument in part, which is based upon the appendix or the exhibit I just provided you, it, it sets forth the sparse six paragraphs, I think, that even refer to First Tuesday Strategies, LLC.

This is, of course, Mr. Davis's second try. I mean, he had information. I suspect, I have to guess that First Tuesday Strategies was known to him at the beginning of this search of his, but there are nine causes of action that run the gamut of defamation, negligence, and they're all enumerated in the complaint. They're also enumerated on the second page of the, of the memorandum, Your Honor.

But as I go through the complaint trying to make sense of a whole bunch of Jack Straw allega -- or statements of fact as to First Tuesday, the only allegations are those that I have set there before you, and they don't support any cause of action. They don't allege acts or omissions in support of any of the nine enumerated causes of action, some of which were thrown out by Judge Benjamin and I would imagine not, in her brain, not allowed to be repled, but they were.

But I think the fact of the matter is under 12(b)(6), there is a clear failure to state a sufficient cause of action, to state facts supporting any of these nine causes of action. And to now allow Mr. Davis to go back to the

well and retool and maybe add another hundred paragraphs in an effort -- in a second or third try, which it would be -- is what I would ask the court not to allow him to do.

THE COURT: Thank you.

MR. DAVIS: Your Honor, it, it's my first try against First Tuesday. The gentleman just complained about my -- the volume of the complaint, but it's not enough for him.

So, it's not just another hundred paragraphs I'm asking the court to allow me to do. It's another thousand so we can get, get down to it and actually get into the litigation. We're just trying to get past the motion, survive the motion to dismiss from the main defendants here.

Yes, Judge Benjamin took out three of the nine complaints. I am repleading them against the new defendants. If those three are not applicable to the new defendants, I understand that. She didn't say I couldn't replead, I can't replead them against the current defendants, but it's against the new defendants. But this is my first try against First Tuesday. I've got more information I am more than happy to provide the court and provide the defendants about First Tuesday and their participation in this, in this mess.

THE COURT: Well, Mr. Davis, I think the most efficient way maybe to handle this, I need to make a ruling

on the application of Judge Benjamin's order to the amended complaint that you did, in fact, file and whether you served it or not, I don't -- some people say you didn't. I don't know. I don't know how I can not -- her order says what it says. I can't change her order. Did you comply with it? That's going to have to be my finding, and obviously you may have filed within the time period, but you didn't serve it. So, what does that do?

MR. DAVIS: Your Honor, a lot of parties didn't even bring up this service issue because nobody would have expected it to be served. I can't imagine ---

THE COURT: Well, Judge Benjamin expected it and you should ---

MR. DAVIS: It, it -- I -- it was a scrivener's error. It was written into the complaint. You know, file and, and serve it to the court. You, you can't physically serve people you can't get to in fifteen days. It, it's just -- it's un -- it's, it's so unreasonable to expect Judge Benjamin intended it. It was never a discussion within -- at that hearing. It was not something, oh, Mr. Davis, you need to, you need to. It was an afterthought. Oh, go ahead and name your, your, your extra -- your John Does. It wasn't like, oh, why are you dragging your feet?

I'm not dragging my feet. They're, they're dragging their -- I'm more than happy to pursue it. It was not --

never a discussion with Judge Benjamin in the sense of you need to hurry up and get this case going. It was go ahead and name them so you can serve them so they have notice of the, of this so we aren't bringing in John Does six months, twelve months, two years into the future. So, I named them. I did what she did -- what she asked me to do. And in -- with any amended complaint, you've got the requisite, you know, rule. I think it's six months or whatnot to, to serve these individuals, and I ---

THE COURT: Well, you would on a regular complaint, but when a judge allows you to amend, obviously the judge can put conditions on her allowing you to amend.

MR. DAVIS: But it was ---

THE COURT: I think the cleanest way to do is let me rule on that, all these motions to dismiss, because of -- all the added, added people would be moot unless an appellate court says I'm wrong, and then they would still have that right at that time to bring that up.

MR. DAVIS: And, and, Your Honor, I, I don't know what else to do other than to appeal. I can't imagine. I mean, even the other parties didn't bring that up, the service in fifteen days. I mean, we'd -- I'd have to ---

THE COURT: All right.

MR. Davis: --- do research on that, but it's ---

THE COURT: I appreciate it.

MR. DAVIS: Thank you, sir.

THE COURT: My ruling is this. I find that it is clear Judge DeAndrea Benjamin, who heard this matter and allowed you to amend your original complaint, through her order and amended order, it is plain as day that you had the right to amend, naming the additional individual defendants and serve. Finding that you did not serve those people within the time as ordered by Judge Benjamin, I will strike the amended complaint, which means that you now can -- you have two choices. You can proceed as your complaint was initially drawn against those defendants who are, who are left, or I suspect you can appeal. I'm not sure if this is an appealable issue or not, but anyway you can make a decision as to whether or not you want to appeal my order.

MR. McCULLOCH: Your Honor, not to belabor, but it is pertinent. There is one fact. We did indeed assert 12(b)(5), an insufficiency of service on behalf of First ---

THE COURT: Well, if I, if -- you're a new party and if I'm striking his amended complaint, you're out of it.

MR. McCULLOCH: Yes, sir. Just want that for appellate purposes if we get there.

THE COURT: Now.

MR. McCULLOCH: Thank you, sir.

THE COURT: Your name is what?

MR. PARKER: Greg Parker.

THE COURT: No. This young lawyer.

MR. MILES: Miles Coleman.

THE COURT: Coleman?

MR. MILES: Yes, sir, Coleman.

THE COURT: Who do you work with?

MR. MILES: Nelson Mullins.

THE COURT: Mr. Coleman.

MR. MILES: Your Honor.

THE COURT: My retirement date is February 28th.

MR. MILES: Congratulations, Your Honor. Thank you for your service.

THE COURT: I want you to prepare an order for me ASAP, very succinct, that I'm dismissing the amended complaint because it didn't comply with Judge Benjamin's order. I want it filed ASAP so if Mr. Davis wants to file a motion to reconsider, he can jump through that hoop before I leave, which he may have to do if he wants to appeal it. I'm not giving him advice, but I suppose he suspects he may have to do that. I don't know.

But what that does, then, is it leaves the case in the posture as when Judge Benjamin, when she ruled and dismissed, I think, three causes of action. It leaves it against the initial defendants who are named. The new ones

are gone. Now, you may get back in it. I don't know what the appellate court's going to do with it.

Mr. Davis.

MR. DAVIS: Your Honor, I completely understand. I mean, I know the position you're in. I understand. I will do a motion to reconsider.

THE COURT: Sure.

MR. DAVIS: And do the appeal and that process but...

THE COURT: I mean, I can't change her order. Judges don't change other judges' orders.

All right, do that for me. Do you want to email it to me?

MR. MILES: Yes, Your Honor. I'll be happy to. I'll do it immediately.

THE COURT: Please send a copy by email to Mr. Davis and to all the other lawyers in the room.

MR. MILES: Yes, Your Honor.

(A PAUSE.)

THE COURT: All right, thank y'all.

MR. DAVIS: Your Honor, we actually have one -- I don't know if -- Palmetto Promise, they had one other motion for a protective order. I don't know if that still stands.

THE COURT: You want to wait and see how it shakes out?

MR. CARTER: I think so, yeah. I think that's probably the best idea.

THE COURT: Just hold it in abeyance.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 12TH DAY OF FEBRUARY, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 16TH, 2019

ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2304748

Jefferson Davis Jr		**Educational Credit For Exceptional Needs Children Fund South**	

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Circuit Court Judge	2755 Judge Code	Date

For Clerk of Court Office Use Only

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

Jefferson Davis Jr 403 Mccarter Avenue Greenville, SC 29615

Geoffrey Kelly Chambers 403 Holly Berry Lane Green Cove Springs, FL 32043-3

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter:

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

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

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

This matter comes before the Court upon the Defendant's Motion to Dismiss. At the call of the Case, the attorney for Defendant withdrew his Motion to Dismiss under Rule 12(b)(6) and the parties consented to the case being transferred to Richland County as the Principal Place of Business for the Defendant. Therefore, venue is transferred to Richland County.

ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

ELECTRONICALLY FILED - 2017 Nov 07 8:48 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304748

Greenville Common Pleas

Case Caption: Jefferson Davis Jr vs. Educational Credit For Exceptional Needs Children Fund South

Case Number: 2017CP2304748

Type: Order/Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP400976

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2017-CP-40-06976
Jefferson Davis, Jr.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER**
	)	
South Carolina Educational Credit for Exceptional Needs Child Fund	)	
	)	
Defendant.	)	
	)	

This matter came before the court on October 3, 2018 pursuant to Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery, Plaintiff's Motion for Contempt, Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment.

BRIEF HISTORY

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STANDARD OF REVIEW

Any party may move for a judgment on the pleadings under Rule 12(C), SCRCP. "A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint, which if resolved in favor of the plaintiff, would entitle him to judgment." Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). "If, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Brown v. James, 389 S.C. 41, 47, 697 S.E.2d 604, 607 (Ct. App. 2010).

Summary judgment is appropriate when there is no genuine issue of material fact such that the nonmoving party must prevail as a matter of law. Rule 56(C), SCRCP. "When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the nonmoving party." Fleming v. Rose, 350 S.C. 448, 493, 567 S.E.2d 857, 860 (2002).

LEGAL ANALYSIS

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

> "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter. South Carolina Code Annotated 1976 § 30-4-20(a)

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

South Carolina Educational Credit for Exceptional Needs Children Fund is statutorily defined as a corporation that does not receive, have or spend public funds.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018).

In DomainsNewMedia.com, the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply.

Educational Credit for Exceptional Needs Children Fund registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive, like the Chamber of Commerce.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. South Carolina Code, Annotated 1976 Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants

must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act. [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings.

CONCLUSION

This Court finds there is no genuine issue of material fact, that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is not a "public body" as defined by South Carolina Freedom of Information Act. Therefore, FOIA does not apply to the defendant and the Defendant is entitled to summary judgment as a matter of law.

For the foregoing reasons, Plaintiff's Renewed Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Contempt are denied. Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment are granted.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

Columbia, South Carolina
December 21, 2018

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Dec 21 12:55 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-12-21 12:41:35 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006976

Jefferson Davis, Jr
PLAINTIFF(S)

S C Educational Credit For Exceptional Needs Children Fund
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration is denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/08/2019 .

Jefferson Davis, Jr for Jefferson Davis, Jr
Jefferson Davis, Jr for Jefferson Davis, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Court Reporter:

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

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2019 Jul 08 12:14 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs Children Fund

Case Number: 2017CP4006976

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2019-07-08 10:16:41 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

JEFFERSON DAVIS, JR.)
Plaintiff(s))

CIVIL ACTION COVERSHEET

2017 -CP- 23- 04748

vs.

SOUTH CAROLINA EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND)
Defendant(s))

ENTERED COMPUTER

FILED
2017 JUL 31 P 3:02
CLERK OF COURT
GREENVILLE, SC

Submitted By: Jefferson Davis, Jr., Pro Se
Address: 403 McCarter Avenue
Greenville, SC 29615

SC Bar #: N/A - Pro Se
Telephone #: 843-901-8036 (cell)
Fax #:
Other:
E-mail: jdavis@apogeetax.com

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

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete**

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)_____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

_____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

_____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

_____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

_____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) FOIA Freedom of Information Act
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: J. M. D. D. **Date:** 7/31/2017

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2017-CP-23-04748
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**SUMMONS**

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2017 JUL 31 PM 1:33

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF AND TAXPAYER

July 31, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. NO. 2017-CP-23-04748
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**COMPLAINT FOR FOIA ENFORCEMENT**

FILED-CLERK OF COURT
PAUL B. MCKENZIE
GREENVILLE CO. SC
2017 JUL 31 PM 1:33

Jefferson Davis, Jr. (herein "Plaintiff") states his complaint as follows:

1. Plaintiff Jefferson Davis, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

2. Defendant South Carolina Educational Credit for Exceptional Needs Children Fund is a public body of the State of South Carolina, operating in South Carolina with no known principal place of business, only a post office box with the address: P.O. Box 211847, Columbia, SC 29221.

3. As a public body, Defendant is subject to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* ("FOIA")

4. This Court has jurisdiction under FOIA.

5. Venue is properly placed in Greenville County. Plaintiff is a resident of Greenville County and upon information and belief, Defendant serves more K-12 students in Greenville County than any other county in the State of South Carolina.

FOIA VIOLATION #1 - Documents

6. On or about July 10, 2017, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (Exhibit A).

7. Also on or about July 10, 2017, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (Exhibit B).

8. The Dependent failed to respond to the July 10, 2017 FOIA request.

9. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons for it" within 10 business days. S.C. Code Ann. § 30-4-30(c) (effective 5/19/2017).

10. More than 10 days passed, excluding weekends and holidays, but Defendants failed to respond to the Plaintiff's request in violation of § 30-4-30(c) (effective 5/19/2017).

11. As a result of the foregoing failure, Plaintiff's "request must be considered approved." *Id.*

FOIA VIOLATION #2 – Meeting Notifications

12. On or about December 14, 2016, Plaintiff served a FOIA request on the Defendant via U.S. Mail, which was received shortly thereafter (Exhibit C).

13. Also on or about December 14, 2016, Plaintiff served the same FOIA request on the Defendant via Email, which was received shortly thereafter (Exhibit D).

14. The Dependent failed to respond to the December 14, 2016 request.

15. FOIA requires "All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings." S.C. Code Ann. § 30-4-80(e)

16. FOIA requires a "public body," in response to a request, to "notify" the Plaintiff "of its determination and the reasons therefor" within 15 business days. S.C. Code Ann. § 30-4-30(c) (pre 5/19/2017).

17. More than 15 days passed, excluding weekends and holidays, but Defendants failed to respond to the Plaintiff's request in violation of § 30-4-30(c) (pre 5/19/2017).

18. As a result of the foregoing failure, Plaintiff's "request must be considered approved." *Id.*

19. Plaintiff has received no notification from Defendant of any meetings.

20. Upon information and belief, meetings requiring notice to Plaintiff have in fact occurred.

21. FOIA states:

> (a) **Any citizen of the State** may apply to the circuit court for either or both a **declaratory judgment and injunctive relief** to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.
>
> S.C. Code Ann. § 30-4-100 (emphasis added).

WHEREFORE, Plaintiff prays the Court for an Order:

1. Declaring that the Defendant has violated FOIA;
2. Declaring that the request are deemed approved;
3. Enjoining Defendant to provide Plaintiff a copy of all requested documents.
4. Enjoining Defendant to provide Plaintiff notice of all future meetings as well as meeting minutes, notes, and board actions from all previous meetings.
5. Awarding the Plaintiff costs of litigation (including any third party attorney fees) pursuant to S.C. Code Ann. § 30-4-100(b); and
6. Granting Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

PLAINTIFF

July 31, 2017
Greenville, South Carolina

EXHIBIT A

JULY 10, 2017

FOIA VIA US MAIL

July 10, 2017

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Persons:

Pursuant to the South Carolina Freedom of Information Act, § 30-4, and 5 U.S.C. § 552, I request that you email me a copy of the following public records:

- **2016-2017 DOR "report" / CPA audit regarding the ECENC Fund.**

Section (B)(5) of the 2016-2017 Proviso 109.15 requires a Department of Revenue "report" (including an audit) by June 30th. I presume you have been provided a copy via email and can easily forward me the requested document.

This request for disclosure of these public records is primarily to benefit the general public; I request that you waive the fees, if any, pursuant to§ 30-4-30(b). I will pay the reasonable and direct costs of locating and reproducing the requested public records to the extent required by § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed $10.

Best,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com

cc Geoffrey K. Chambers, Esq. (*geoffrey@CPERLGroup.com*)

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615

PRIVATE & CONFIDENTIAL

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, *Chairman*
P.O. Box 211847
Columbia, SC 29221

EXHIBIT B

JULY 10, 2017

FOIA VIA EMAIL

Gmail by Google

Jeff Davis <jdavis@apogeetax.com>

ECENC - FOIA Request

1 message

Jeff Davis <jdavis@apogeetax.com> Mon, Jul 10, 2017 at 4:19 PM
To: Tom Persons <tepsr@att.net>, Tom Persons <tep@sctech.org>
Cc: geoffrey@cperlgroup.com, Administrator@exceptionalsc.org

Please Confirm Receipt

Dear Mr. Persons,

Please see the attached letter that was mailed to you today.

Best,

Jeff Davis

Jeff Davis, JD, MBA, CPA
403 McCarter Avenue | Greenville, SC 29615
843-901-8036 (cell) | *jdavis@apogeetax.com*

Attention: The information contained in this E-mail message is attorney privileged and confidential information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Active and licensed attorney and CPA in Georgia (not SC). Thank you.

2017-07-10 - ECENC FOIA request.pdf
531K

EXHIBIT C

DECEMBER 14, 2016

FOIA VIA US MAIL

December 14th, 2016

VIA US MAIL & email (tep@sctech.org)

ECENC Fund (*aka Exceptional SC*)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

RE: ECENC Fund Meeting Notification Request

Dear Mr. Persons:

For your reference, below is § 30-4-80 (e) of the South Carolina Freedom of Information Act. The italicized portion is from the Public Official's Guide to Compliance with South Carolina's Freedom of Information Act (August 2014).

Here's where some public bodies cross swords with citizens and the press. This area of the law requires that public bodies notify those who ask for notification and that they record, in their minutes, that such efforts were made and how they were made. Public bodies that ignore or forget this requirement can expect to hear from aggravated citizens and reporters.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

Pursuant to the above, I hereby request such notifications of any and all meetings involving the ECENC Fund. I request such notifications to be made as soon as possible and as required by law via email, phone and mail. Contact information below.

Thank you,

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615
843-901-8036 (cell)
jdavis@apogeetax.com & *jdavis@wtcarolina.org*

Jeff Davis, *JD, MBA, CPA*
403 McCarter Avenue
Greenville, SC 29615

ECENC Fund (aka Exceptional SC)
Attn: Tom Persons, Chairman
P.O. Box 211847
Columbia, SC 29221

2016-12-14 - Notify

EXHIBIT D

DECEMBER 14, 2016

FOIA VIA EMAIL

Gmail by Google

Jeff Davis <jdavis@wtcarolina.org>

ECENC Fund FOIA Request (#1 documents & #2 meetings)

Jeff Davis <jdavis@wtcarolina.org> Wed, Dec 14, 2016 at 8:25 AM
To: tep@sctech.org
Cc: Tom Persons <tepsr@att.net>, "Michael Acquilano Esq." <macquilano@catholic-doc.org>, Betsy Fanning <bfanning@tridentacademy.com>, Edward Earwood <eearwood@christianeducation.org>, "Dr. Spencer A. Jordan" <sjordan@lmaedu.org>, Tom Davis <tdavis@harveyandbattey.com>

Dear Mr. Persons,

The children of SC are hurting. I hope you of all people would work cooperatively in order to help our K-12 kids with "special needs". I implore you not to be the roadblock to innovation and improvement in education now that YOU are in power.

Please find attached 2 FOIA requests that were also mailed to you this morning:

#1. FOIA request for various ECENC Fund documentation.

#2. FOIA request for notification of meeting of the ECENC Fund.

Please confirm receipt.

Best,

Jeff Davis, JD, MBA, CPA
843-901-8036 (cell)

Working Together Carolina, Inc.
843-901-8036 (cell) | *jdavis@wtcarolina.org*
Website: *www.WorkingTogetherCarolina.org*

IMPORTANT NOTICE AND DISCLAIMER: Working Together Carolina, Inc. is a newly formed South Carolina nonprofit *(501(c)(3) application in process)* *which will serve as an independent and nonpartisan alternative to Access Opportunity South Carolina (aka IndependentED and now aka ECENC.org)*. The mission of Working Together Carolina is to assist schools, parents, donors, Scholarship Funding Organizations and any other interested parties in understanding and implementing South Carolina's Educational Credit for Exceptional Needs Children (ECENC). All information provided is for general informational purposes only, are the personal opinion of the writer, and should not be construed as legal or tax advice. Working Together Carolina does not provide legal or tax advice. All parties should consult their tax adviser or attorney.

2 attachments

2016-12-14 - ECENC FOIA for documents.pdf
1100K

2016-12-14 - ECENC FOIA re meetings.pdf
646K

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Answer

RICHLAND COUNTY
FILED
2017 NOV 20 PM 2:33
JEANETTE W. WALKER
C.C.P. & G.S.

Defendant South Carolina Educational Credit for Exceptional Needs Children Fund hereby answers the complaint of Jefferson Davis, Jr. and would show this Honorable Court as follows:

1. Defendant South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to the public record and neither admits nor denies the allegations of paragraph 1 of the complaint for lack of sufficient information to form a belief.
2. Admitted in part. Denied in part. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegation that it is a public body. South Carolina Educational Credit for Exceptional Needs Children admits that it has a post office box in Columbia, South Carolina. All other allegations of paragraph 2 are denied.
3. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 3 of the Complaint.
4. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law.
5. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of Paragraph 5.
6. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 6.
7. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 7.

8. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 8.
9. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law and neither admits nor denies the allegations of paragraph 9.
10. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 10.
11. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 11.
12. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 12.
13. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 13.
14. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 14.
15. South Carolina Educational Credit for Exceptional Needs Children Fund neither admits nor denies the allegations of paragraph 15, but would crave reference to applicable law.
16. South Carolina Educational Credit for Exceptional Needs Children Fund neither admits nor denies the allegations of paragraph 16, but would crave reference to applicable law.
17. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 17.
18. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 18.
19. South Carolina Educational Credit for Exceptional Needs Children Fund admits the allegations of paragraph 19.
20. South Carolina Educational Credit for Exceptional Needs Children Fund denies the allegations of paragraph 20.
21. The allegations of paragraph 21 are neither admitted or denied. South Carolina Educational Credit for Exceptional Needs Children Fund would crave reference to applicable law.
22. The relief sought is denied.

(Signature on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 17th day of November, 2017.
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr., Plaintiff v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Certificate of Service

RICHLAND COUNTY
FILED
2017 NOV 20 PM 2:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

On November 17, 2017, the Answer to the Summons and Complaint was served upon Jefferson Davis by placing a copy in the US Mail addressed to 403 McCarter Ave., Greenville, SC 29615

Respectfully Submitted:

Geoffrey K. Chapman
Marci Nations

Marci Nations

This 17th day of November, 2017.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Motion for Summary Judgment

Defendant hereby moves this Honorable Court Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56. Defendant reserves the right to support this motion with memos and affidavits submitted at a later date.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Memo in Support of Motion for Summary Judgment

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

Defendant moves for Summary Judgment that Defendant is not a Public Body as contemplated by FOIA, Defendant is exempt from holding open meetings subject to FOIA and Defendant is exempt by South Carolina Law from disclosing documents to FOIA requests relating to its normal operations.

ARGUMENTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce.* Opinion No. 27803, May 23, 2018, SC. Sup. Ct. In *DomainsNewMedia.com,* the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply. "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements as laid out by the budget proviso and by the subsequent bill recently signed into law. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Plaintiff has received copies of these reports.

Educational Credit for Exceptional Needs Children Fund or Exceptional SC is a 501(c)3 organization. It registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive. Like the Chamber of Commerce, Exceptional SC is a 501(c)3 organization that has extensive reporting requirements regarding its activities and use of funds. Exceptional SC is not a public body subject to FOIA because of the nearly similar extensive reporting requirements making the Hilton Head Chamber of Commerce not a public body pursuant to FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. *South Carolina Code, Annotated 1976* Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. The Defendant's operations are concerned only with the awarding of scholarships, including tasks such as qualifying students, confirming enrollment and tuition with schools, soliciting donations from South Carolina taxpayers, granting awards, and handling unique situations regarding these awards when they arise. All operations of the Defendant would be covered by the two types of information listed in the Act.

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Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings. *South Carolina Code, Annotated 1976* Title 30, Chapter 4, Article 70, Section a(1). All board meetings of Defendant involve review of scholarships, discussion of specific cases, procedures by which scholarships are awarded, and personnel issues, and are thus closed to the public.

The Plaintiff has filed an action seeking compliance with FOIA. The Defendant is not a public body as contemplated by FOIA. South Carolina Law prohibits Defendant from making the disclosures requested by the Plaintiff. South Carolina Freedom of Information Act law exempts Defendant from holding open meetings and exempts Defendant from FOIA. For these reasons the court should dismiss the Plaintiff's action with prejudice as he has failed to state a cause of action upon which relief can be granted and has requested relief that is inconsistent with South Carolina Law.

CONCLUSION

Because of the S.C. Supreme Court ruling in *DomainsNewsMedia.*com, the explicit and clear statutory expression of legislative intent, and the exemptions already existing in the South Carolina Freedom of Information Act, the Plaintiff has failed to state a cause of action for which relief can be granted. Clearly, FOIA does not apply to the Defendant. Therefore, we respectfully request this court dismiss this action with prejudice.

(Signatures on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018.
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Motion for Judgment on the Pleadings

Defendant hereby moves this honorable court to dismiss this case pursuant to South Carolina Rules of Civil Procedure Rule 12(c). Plaintiff has failed to bring a cause of action for which relief can be granted. SC Code 1976 Annotated section 12-6-3790(B)(4) prohibits the relief sought by Plaintiff. Furthermore, the Supreme Court has ruled that an entity is not a public body subject to FOIA when the Legislature prescribed more specific reporting requirements. Furthermore, Defendant is exempted from providing relief sought by South Carolina Law.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
Email: Geoffrey@CPERLgroup.com

This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Memo in Support of Motion for Judgment on the Pleadings

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

Defendant moves for Judgment on the Pleadings because Defendant is not a Public Body as contemplated by FOIA, Defendant is exempt from holding open meetings subject to FOIA and Defendant is exempt by South Carolina Law from disclosing documents relating to its normal operations.

ARGUMENTS IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce.* Opinion No. 27803, May 23, 2018, SC. Sup. Ct. In *DomainsNewMedia.com,* the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to "narrow and targeted" reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply. "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements as laid out by the budget proviso and by the subsequent bill recently signed into law. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Plaintiff has received copies of these reports.

Educational Credit for Exceptional Needs Children Fund or Exceptional SC is a 501(c)3 organization. It registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is

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not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive. Like the Chamber of Commerce, Exceptional SC is a 501(c)3 organization that has extensive reporting requirements regarding its activities and use of funds. Exceptional SC is not a public body subject to FOIA because of the nearly similar extensive reporting requirements making the Hilton Head Chamber of Commerce not a public body pursuant to FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. *South Carolina Code, Annotated 1976* Title 12, Chapter 6, Section 3790(B)(4):

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. The Defendant's operations are concerned only with the awarding of scholarships, including tasks such as qualifying students, confirming enrollment and tuition with schools, soliciting donations from South Carolina taxpayers, granting awards, and handling unique situations regarding these awards when they arise. All operations of the Defendant would be covered by the two types of information listed in the Act.

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Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings. *South Carolina Code, Annotated 1976* Title 30, Chapter 4, Article 70, Section a(1). All board meetings of Defendant involve review of scholarships, discussion of specific cases, procedures by which scholarships are awarded, and personnel issues, and are thus closed to the public.

The Plaintiff has filed an action seeking compliance with FOIA. The Defendant is not a public body as contemplated by FOIA. South Carolina Law prohibits Defendant from making the disclosures requested by the Plaintiff. South Carolina Freedom of Information Act law exempts Defendant from holding open meetings and exempts Defendant from FOIA. For these reasons the court should dismiss the Plaintiff's action with prejudice as he has failed to state a cause of action upon which relief can be granted and has requested relief that is inconsistent with South Carolina Law.

CONCLUSION

Because of the S.C. Supreme Court ruling in *DomainsNewsMedia.*com, the explicit and clear statutory expression of legislative intent, and the exemptions already existing in the South Carolina Freedom of Information Act, the Plaintiff has failed to state a cause of action for which relief can be granted. Clearly, FOIA does not apply to the Defendant. Therefore, we respectfully request this court dismiss this action with prejudice.

(Signatures on next page)

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
411 Walnut Street
Number 10646
Green Cove Springs, FL 32043
Phone: 864-508-0899
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This 16th day of August, 2018
Columbia, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 3:41 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Revised Memo in Support of Motion for Judgment on the Pleadings

PROCEDURAL BACKGROUND AND BACKGROUND FACTS

Plaintiff filed a lawsuit in the Circuit Court of Greenville County requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant. While Plaintiff did not title the action as a Motion for Declaratory Judgment, Plaintiff cites South Carolina Code § 30-4-100. This action should be construed as a Motion for Declaratory Judgment allowed to compel response to the South Carolina Freedom of Information Act (FOIA) pursuant to South Carolina Code § 30-4-100.

Defendant Educational Credit for Exceptional Needs Children Fund (ECENCF) filed a motion to dismiss for improper venue. At the hearing of the Motion to Dismiss it was agreed to allow transfer of the action to the proper venue, Richland County.

Possibly due to the Plaintiff's improper case title and selection of case classification, scheduling of a hearing within 10 days was not triggered. While waiting on a hearing to be scheduled, Plaintiff filed a Motion for Summary Judgment which was denied and sent numerous discovery requests.

Defendant ECENC responded to the discovery requests, but stopped short of providing documents. Because ECENCF asserts it is not a Public Body subject to the FOIA pursuant to § 30-4-20(a), any and all ECENCF documents are the subject matter of this case. As subject matter of the case ECENCF documents are not subject to discovery in an action to compel FOIA response. *City of Columbia v. American Civil Liberties Union of South Carolina, Inc.*, 475 S.E.2d 747, 323 S.C. 384 (S.C., 1995) citing *Giza v. Secretary of Health, Education, and Welfare*, 628 F.2d 748 (1st Cir.1980) (To the extent that discovery is allowed in a FOIA action, it is directed at determining whether complete disclosure has been made, e. g., whether a thorough search for documents has taken place, whether withheld items are exempt from disclosure.)

Plaintiff filed a Motion to Compel Discovery which was heard in July 2018. Judge Gravely ordered ECENCF to supply a response to the Request for Production which included specific objections. Upon receipt of production and objections, Plaintiff filed a second Motion to Compel Discovery which is pending before this Court.

Defendant, ECENCF, is a 501(C)3 corporation that does not receive or expend public funds. Defendant was created and specifically defined by a 2016-2017 budget proviso dealing with educational tax credits. A second budget proviso with the same definition of ECENCF was issued in 2017-2018 and then codified into permanent law in May 2018.

Defendant moves for Judgment on the Pleadings based upon and because Defendant is not a Public Body as contemplated by the FOIA, a more specific reporting statute exempts Defendant from the FOIA and statutory law exempts Defendant's information from the FOIA.

CAUSES OF ACTION AND REQUESTS FOR RELIEF IN THE PLAINTIFF'S MOTION

In his Motion for Declaratory Judgment, the Plaintiff's causes of action are Defendant's failure to comply with two FOIA requests. These FOIA requests were for production of an audit report and notification of any public meetings held by ECENCF.

Mr. Davis makes the following requests for relief:

1. Declaring that the Defendant has violated FOIA;

2. Declaring that the request [sic] are deemed approved;

3. Enjoining Defendant to provide Plaintiff a copy of all requested documents.

4. Enjoining Defendant to provide Plaintiff notice of all future meetings as well as meeting minutes, notes, and board actions from all previous meetings.

5. Awarding the Plaintiff costs of litigation (including any third party attorney fees) pursuant to S.C. Code Ann. § 30-4-100(b); and

6. Granting Plaintiff such other and further relief as the Court deems just and proper.

LEGAL STANDARD

A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).To state a sufficient cause of action under the Declaratory Judgment Act a party must demonstrate a justiciable controversy. *Brown v. Wingard*, 285 S.C. 478, 330

S.E.2d 301 (1985). A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute which is contingent, hypothetical, or abstract. *Guimarin & Doan, Inc. v. Georgetown Textile and Mfg. Co., Inc.*, 249 S.C. 561, 155 S.E.2d 618 (1967). A justiciable controversy exists where (1) a concrete issue is present, and (2) there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970). A party has stated a cause of action under the Declaratory Judgment Act if he states the existence of a controversy which should be decided even though he is ultimately on the wrong side of the controversy. *Dantzler v. Callison*, 227 S.C. 317, 88 S.E.2d 64 (1955). The Rule 12(c) motion admits the well pleaded facts in the complaint and the court must take those well pleaded factual allegations as true. The motion does not admit the inferences drawn by the plaintiff from the facts nor does it admit conclusions of law. *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct.App.1989). If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. *Brown v. James*, 389 S.C. 41, 47 n.5, 697 S.E.2d 604, 607 n.5 (Ct. App. 2010)

A MOTION FOR JUDGMENT ON THE PLEADINGS IS PROPER

Plaintiff's Motion for Declaratory Judgment should be dismissed pursuant to Rule 12(c) because Plaintiff fails to plead and cannot establish a duty of ECENCF to respond to FOIA requests and a legal right to the information requested through the FOIA. ECENCF does not have a duty to respond because: (1) ECENCF is defined by § 12-6-3790(B)1-4 (and prior budget provisos with identical language) as an entity that does not meet the definition of a Public Body;

(2) A more specific and targeted statutory reporting requirement applies instead of the FOIA; (3) §12-6-3790(B)4 exempts information used by ECENCF from the FOIA.

ECENCF is not a Public Body

While the Plaintiff states ECENCF is a "Public Body of the State of South Carolina", this is a conclusion of law and inconsistent with statutory provisions. Conclusions of law should not be admitted in a Motion for Judgment on the Pleadings. *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct.App.1989). Instead the Court should look to the South Carolina Code of Laws to determine if ECENCF is defined as a Public Body having a duty under the FOIA. It is clear and explicit the legislature did not intend ECENCF to be a public body when the statutory definition of ECENCF contained in South Carolina Code § 12-6-3790 is compared to the statutory definition of a Public Body in South Carolina Code §30-4-20(a).

The common law concept of "public" versus "private" is inconsistent with the FOIA's definition of "public body" and thus cannot be superimposed on the FOIA. *Weston v. Carolina Research and Development Corporation*, 401 S.E. 2d 161, 303 S.C. 398(S.C. 1990). When interpreting a statute, Courts should follow the definitions contained in the statute. *Bell Finance v. South Carolina Dept. of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (Ct. App. 1988)

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

> "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public

> funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.
>
> *South Carolina Code Annotated 1976* § 30-4-20(a)

ECENCF is statutorily defined as a corporation that does not receive, have or spend public funds. This statutory definition of ECENCF has remained unchanged since the creation of the Public Charity by proviso 109.15 of the 2016-2017 Appropriations Act.

§ 12-6-3790(B)1 specifies that ECENCF is a Public Charity pursuant to IRC §509(a)1-4. All public charities are 501(C)3 corporations. This is defined by IRC §509.

§ 12-6-3790(B)2 specifies that ECENCF is separate and apart from the State. "The assets managed by ECENCF are not property of the State and not public funds. The State has no claim to the funds. ECENCF funds cannot be comingled with those of the State. ECENCF's agreements, debts and contractual obligations are not the agreements, debts and contractual obligations of the State." *South Carolina Code Annotated 1976* § 12-6-3790(B)2.

§ 12-6-3790(B)4 provides that the Department of Revenue and ECENCF may not expend public funds to administer ECENCF.

§ 12-6-3790(B)1 provides that ECENCF may not receive an appropriation of public funds.

The statute clearly defines ECENCF as a corporation that does not receive, hold, use or spend public funds. South Carolina Code § 30-4-20(a) defines Corporate Public Bodies as only

those corporations that are supported by or expend public funds. It is not accidental the Legislature made ECENCF a corporation that is separate and apart from the State and included extensive statutory language prohibiting support by or expenditure of public funds. The legislature intended an entity reviewing special needs children scholarship applications not be subject to the FOIA.

By statutory definition, ECENCF is not a Public Body. The FOIA does not apply to ECENCF. As a result, Plaintiff has failed to plead a legal right to the audit report or notice of meetings requested pursuant to the FOIA. Plaintiff has also failed to plead a duty of Defendant to provide said documents.

The FOIA does not apply because of the presence of a more specific reporting statute.

Even if Plaintiff can somehow show that ECENCF meets the definition of a Public Body found in § 30-4-20(a), ECENCF is not required to comply with the FOIA because of the presence of a more specific narrow and targeted reporting statute.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend the FOIA to apply where a more specific reporting statute applies. *DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce*. Opinion No. 27803, May 23, 2018, SC. Sup. Ct. The court held that the Chamber of Commerce is not subject to the FOIA, that the governmental support received is subject to "narrow and targeted" reporting requirements outlined by statute, and that because of this specialized reporting, the more general FOIA requirements do not apply.

> "Following the passage of FOIA, the General Assembly enacted the more narrow and targeted A-Tax statute (and Proviso 39.2) to provide what it determined were the necessary accountability safeguards with regard to the expenditure of these

> specific funds while simultaneously protecting the private nature of the organizations selected to perform this marketing function. The General Assembly deemed these provisions sufficient to ensure that the funds are being properly expended, and Domains has presented no valid legal basis to contravene this legislative determination." *Id.*

The Defendant is subject to its own narrow and targeted reporting requirements found in South Carolina Code § 12-6-3790(B)5. These reports are made available to the legislature, the Secretary of State and the general public and a copy can be easily downloaded from the Defendant's website. These reports contain all the summary statistics on how the funds were spent, the schools which received the funds, and donations solicited that can be given without compromising donor or student personal information. Upon information and belief, Plaintiff has received copies of these reports.

ECENCF is not a public body subject to the FOIA because of the narrow and targeted reporting requirements found in both § 12-6-3790(B)5 and the A-tax statutes. The FOIA does not apply to ECENCF or the documents requested by Plaintiff pursuant to the FOIA. Therefore Plaintiff has failed to plead a legal right to the notice of meetings or audit report requested pursuant to the FOIA. Plaintiff also failed to plead a duty of Defendant to supply the requested documents pursuant to the FOIA.

ECENCF information is exempt from the FOIA pursuant to § 12-6-3790(B)4.

Even if Plaintiff were somehow able to show ECENCF were a Public Body, ECENCF has no duty to reply to FOIA requests because of a statutory exclusion from the FOIA.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. This law provides a clear and unambiguous exemption from the FOIA:

> In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. *Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.* [emphasis added]
>
> *South Carolina Code, Annotated 1976* § 12-6-3790(B)(4)

ECENCF and the South Carolina Department of Revenue have no duty to reply to FOIA requests for information regarding ECENCF's activities because that information is exempt. Plaintiff did not plead any legal right to the report and notice of meetings requested pursuant to the FOIA.

The FOIA exemption language is not included in proviso 109.15 of the 2016-2017 Appropriations Act or proviso 109.11 of the 2017-2018 Appropriations Act. However, its inclusion in § 12-6-3790 further and explicitly verifies the intent of the legislature that ECENCF not be subject to the FOIA.

CONCLUSION

As a pure matter of law, ECENCF has no duty to comply with the FOIA because it is not a Public Body, a more specific reporting statute applies instead of the FOIA and information contained in documents used by ECENCF is not subject to the FOIA. As a matter of law, the FOIA does not provide the Plaintiff a legal right to information from ECENCF. Plaintiff has

failed to plead the definite assertion of legal rights and positive legal duty required to sustain a Motion for Declaratory Judgment. Therefore, ECENCF respectfully requests this court dismiss this action with prejudice.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
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Number 10646
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This 29th day of September, 2018
Green Cove Springs, Florida

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	**PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF FINAL ORDER**

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff Jefferson Davis, Jr. hereby submits this motion for reconsideration of the Court's Final Order dated and entered on December 21, 2018 (the "Order"). Plaintiff raises the following exceptions to particular statements, findings, and conclusions in the Order and Plaintiff respectfully request that the Court reconsider the same.

DomainsNewMedia.com does not apply. On Page 2 the Court references the DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018). The trial court in DomainsNewMedia.com ruled in favor of the Plaintiff holding that the Chamber of Commerce was subject to the Freedom of Information Act (FOIA). This was due to the fact that the Chamber of Commerce had comingled public funds and its operations with those of their contract to manage the hospitality tax. It was a bad result and no one (including the legislature) ever intended the private operations of the Chamber of Commerce to be subject to FOIA. Private entities are not, nor should they, be subject to FOIA. It was a result that could have easily been avoided "if" the Chamber had managed the operations of the hospitality

tax in a separate entity, but they did not. The Chamber made a mistake by comingling the funds and operations and if the trial court ruling was allowed to stand it would have opened up a huge can of worms subjecting ALL of the operations (public and private) of the Chamber to public scrutiny. But, most legal observers, as well as the dissent of Justice Few, all agree it was a correct ruling by the trial court per the letter of the law.

So, in what has been a heavily criticized (in the legal community) 4 - 1 ruling by our Supreme Court, that bad result was corrected. DomainsNewMedia.com is a one-time anomaly, not a rule to be built on and expanded as this Order would do.

DomainsNewMedia.com is highly distinguishable. The facts and circumstances in the DomainsNewMedia.com case are completely distinguishable from the case at hand. The Chamber of Commerce is a private entity. Defendant was legislatively created. S.C. Code Ann. § 12-6-3790. The Chamber has members who select their board of directors. Defendants governing board is appointed by the Chairman of House Ways & Means, Chairman of Senate Finance and the Governor. S.C. Code Ann. § 12-6-3790(B)(3). The Chamber manages its own operations. Defendant by law has its operations managed by the SC Department of Revenue, specifically **"the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of grants"**. S.C. Code Ann. § 12-6-3790(B)(4) (emphasis added). Evidence was presented that Defendant was formed by employees of the SC Department of Revenue, on public time and at public expense. Evidence was even presented that the Secretary of State filing fee to actually create Defendant was paid by the SC Department of Revenue, at public expense. Actually cash outlay of public funds. Defendant presented no evidence to dispute this use of public funds.

Additionally, the Chamber of Commerce does its own fundraising. Plaintiff presented evidence that Defendants fundraising was done by employees of the South Carolina Department of Revenue, at public expense. Evidence was presented that in order for a member of the public to make a stock donation to Defendant, you had to call an employee at the SC Department of Revenue. Evidence was also presented that employees of the SC Department of Revenue picked up the mail for Defendant at Defendants P.O. Box, a round trip of 6 miles from DOR's offices. The Chamber of Commerce negotiates and engages its own credit card vendor. Plaintiff presented evidence that Defendants use (and enjoy the cost benefits of) the *SC.gov* South Carolina state government credit card system.[1] The Chamber of Commerce, nor any other private entity enjoys these government perks. There is no other legislatively created, government administered and government governed entity that enjoys these perks and is exempt from FOIA. Board member of the Chamber of Commerce, as a private entity, are not listed on the SC Secretary of State's Office website under State Boards & Commissions online search page. Pursuant to S.C. Code of Laws §1-5-40, the Secretary of State's Office has a duty to monitor positions on state boards and commissions. The Secretary has correctly listed Defendant, as a public entity, in their online database of State Boards & Commissions. This evidence was presented by Plaintiff. All of these items and more point directly to the fact Defendant is public body subject to FOIA.

Public Support - Funding via Tax Credits is irrelevant and moot. Regardless of whether we believe tax credits are public funds or not, the fact remains that Defendant is "administered" by the SC Department of Revenue and as such receives public support. Defendant clearly fits the statutory definition of a "public body" due to the fact it is a "corporation ...

[1] This is a strict violation of the terms of the vendor contract which states that only government entities are allowed to use the system. Defendant would not be entitled to this perk if it were not a public entity and governed by the State of South Carolina.

supported in whole or in part by public funds or expending public funds". S.C. Code Ann. § 30-4-20(a) (emphasis added). Even if the bulk of Defendants funds come from legislatively appropriated private funds, there is not debate, and Defendants did not contest or present any evidence to the contrary that public funds are being expended to administer Defendants operations.

No reference to FOIA exemption in applicable annual budget provisos. The Court makes reference to the FOIA language under the current permanent law (signed into law after the filing of this case). The FOIA request at issue were under previous annual budget provisos. There was no reference whatsoever to the Freedom of Information Act in the budget provisos or even under the original H. 4077. The now ratified H. 4077 permanent law (signed May 18, 2018) has nothing to do with compliance under the previous annual budget provisos. The reference to FOIA in H 4077 was only added to AFTER the filing of this lawsuit to clarify that tax return data and children's personally identifiable information and health records were not subject to FOIA. Again, it was only to CLARIFY in no uncertain terms, not to add a new exempt category, because that information was already exempt from FOIA.[2] The legislative intent was never to exempt the entire administrative operations from FOIA. If the legislature had intended for a blanket exemption, including an exemption of Defendants OPERATIONS, they would have specifically stated such, not mentioned tax return and health data. The legislature would have never passed a blanket exemption in Plaintiff's experience.

[2] It should be noted that no personal or confidential information has ever been sought by Plaintiff via FOIA or otherwise. The FOIA requests submitted exclusively dealt with the ***administrative operations*** of the Defendant. As a rule we do not exempt government agencies completely from FOIA simple because they handle confidential and exempt information. The OPERATIONS of said government entities are always subject to FOIA as should be the OPERATIONS of Defendant.

FOIA provides for "executive session". The Court makes reference to Defendants need to make specific ***individual*** scholarship decisions in private. Plaintiff agrees and that is why FOIA provides for executive session of public entity board meetings. However, evidence was presented that Defendant "claims" to award scholarship grants based on a formula. The discussion of a general formula and other administrative matters should not be private and behind closed door discussions.

Public policy - setting the path for a "shadow government". Finally, the Court must consider the demands of public policy. The Freedom of Information Act is the basis of a free society. If DomainsNewMedia.com is allowed to be expanded, we are only a short step to a system wide shadow government. The roadmap will be clear. Simply establish a government non-profit, allow legislators to appoint the governing board, administer it with the accountants and lawyers at their SC Department of Revenue, fund it with tax credits and require them do some minor "reporting" ... and all of a sudden the government can do ANYTHING it wants with zero transparency or accountability. FOIA has been a cornerstone of our Country and a tool of citizens to root out waste and corruption in government. Public policy demands we not allow FOIA to be so easily gutted and circumvented in this manner. Today it is $14 million scholarship program, tomorrow it is *(fill in the blank)*. The sky is the limit and the potential for corruption is limitless.

CONCLUSION

The Chamber of Commerce is an independent body. Defendant is a legislatively created entity administered by the SC Department of Revenue. Public funds ARE BEING EXPENDED by the SC Department of Revenue in fulfilment of its statutory responsibilities as outlined in the

respective annual budget provisos and now under the permanent law. As such Defendant is a "public body" as defined by S.C. Code Ann. § 30-4-20(a) and thus subject to FOIA.

THEREFORE, as set forth herein, Plaintiff respectfully submit that the Court reconsider its Order, reverse its rulings, and enter judgment in favor of Plaintiff on his Renewed Motion for Summary Judgment.

Plaintiff reserves the right to support this Motion with Memos and Affidavits which may be submitted at a later date.

Respectfully submitted,

Jefferson Davis, Jr.
403 McCarter Avenue
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843-901-8036 (cell)
jdavis@apogeetax.com
PLAINTIFF, *PRO SE*

December 31, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
	)	C.A. NO. 2017-CP-40-06976
Jefferson Davis, Jr., Plaintiff, vs. South Carolina Educational Credit for Exceptional Needs Children Fund, Defendant.	)	

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff does hereby certify that I have caused to be mailed and/or otherwise transmitted a copy of the below listed documents to the party shown below, postage prepaid, on the **31th day of December, 2018**, as follows:

PLEADINGS: **PLAINTIFFS' NOTICE AND MOTION FOR RECONSIDERATION OF FINAL ORDER**

PARTIES SERVED: Geoffrey K. Chambers, Esq.
CPER Law Group, LLC
411 Walnut Street #10646
Green Cove Springs, FL 32043-3443
g.k.chambers@gmail.com
geoffrey@cperlgroup.com

Jefferson Davis, Jr.
Plaintiff, *Pro Se*

ELECTRONICALLY FILED - 2019 Jan 17 11:07 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	)	Case No.: 2017-CP-40-06976 Defendant's Reply in Opposition to Plaintiffs SCRP Rule 59(e) Motion

The Defendant, by and through counsel, hereby replies to the Plaintiff's Motion to Alter or Amend the Judgment of this Court pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure. The Plaintiff's Motion should be denied for the reasons set forth herein.

BRIEF PROCEDURAL AND FACTUAL HISTORY

Plaintiff filed a lawsuit requesting compliance with the Freedom of Information Act based on several requests for information sent to the Defendant.

The Defendant is a 501(c)3 which grants scholarships to special needs students who may be better helped by the services of a private institution. The program was created by a budget proviso which outlined reporting requirements for the Defendant. Funding for the Defendant comes from private donations for which the donor receives a tax credit on their South Carolina taxes.

On January 24th 2017, Plaintiff filed a Motion for Summary Judgment which was denied.

Defendant filed a Motion for Judgment on the Pleadings and a Motion for Summary Judgment on August 17, 2018.

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Plaintiff filed a second Motion for Summary Judgment on September 10, 2018.

By Order dated December 21, 2018, Defendants Motions for Summary Judgment and Judgment on the Pleadings were granted and this action was dismissed. The Order was served on the Defendant by mail on December 21, 2018.

On January 7, 2018, Defendant filed the present Motion to Reconsider pursuant to SCRCP Rule 59(e).

REHASHING ARGUMENTS PREVIOUSLY BEFORE THE COURT IS IMPROPER USE OF SCRCP RULE 59(E)

Plaintiff stated a number of arguments in his Motion for Reconsideration, including:

a. DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018) was a one-time anomaly and not intended to set future legal precedent.
b. Hilton Head Island Chamber of Commerce and Defendant are distinguishable because Defendant was legislatively created and a state agency has statutory authority to step in and manage the entity.
c. Defendant is supported by public funds because the Department of Revenue is statutorily allowed to run the fund in conjunction with the Corporation's Board of Directors.
d. Past budget provisos did not have the exemption to FOIA contained in the current law.
e. FOIA has a provision for Executive Session
f. The ruling of this Court creates a path for a "shadow government" and is against public policy.

Items listed above in a, b, c and f were argued extensively in not one, but two virtually identical Motions for Summary Judgment filed by Plaintiff. These same points were argued extensively by

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Plaintiff in opposition to the Defendant's Motion for Judgment on the Pleadings and Defendant's Motion for Summary Judgment.

South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Department of Transportation, 602 SE 2d 772 (S. C. 2004).

Plaintiff has argued the points in items a, b, c, and f in support of or in opposition to four separate motions in front of two different Circuit Court Judges. It is unlikely the Court misunderstood or failed to fully consider these points raised by the Plaintiff.

To the extent Plaintiffs motion is proper, Defendant responds as follows:

a. DomainsNewMedia.Com v. Hilton Head Island Chamber of Commerce is Published

Plaintiff alleges that DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018) was a one-time anomaly and not intended to set future legal precedent. The Supreme Court can and does issue unpublished opinions when they do not intend to set precedent.

The Supreme Court denied a request for rehearing and published its Opinion. This indicates the opposite of Plaintiffs contention. The Supreme Court did intend precedential value.

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b. Defendant Fits the Material Elements of an Entity Not Subject to FOIA Pursuant to DomainsNewMedia.com v. Hilton Head Island Chamber of Commerce

The four key elements making Hilton Head Island Chamber of Commerce not subject to FOIA are 1) the Chamber is a corporation 2) that expends public funds, but 3) is expending public funds under a specific statutory reporting requirement that is meant to ensure accountability and 4) was enacted into law after the Freedom of Information Act. *Id.*

The South Carolina Freedom of Information Act was created forty-one years ago by 1978 Act No. 593. The laws governing the activities and extensive specific reporting requirements of Defendant were first passed in a 2016 Budget Proviso and made Permanent Law by South Carolina Code §12-6-3790 in May of 2018.

South Carolina Code §12-6-3790(B)(5) and §12-6-3790(E)(6) provide extensive reporting requirements, including an audit of Defendant by an independent CPA firm, extensive and detailed reports on Defendant's operations and a report on the impact and effectiveness of Defendant's scholarships.

Like the Chamber of Commerce, Defendant is a corporation. Specifically, Defendant is a 501(c)3 corporation and defined by Internal Revenue Code 509(a)1-4 as a Public Charity. As such, Defendant annually reports to the Secretary of State pursuant to the South Carolina Charitable Solicitations Act, South Carolina Code §33-56-10 *et seq.*

Defendant meets the same material requirements of DomainsNewMedia.com and as such is exempt from the Freedom of Information Act.

c. Defendant is not Supported by Public Funds.

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Defendant's funding is statutorily defined in South Carolina Code §12-6-3790(B)(5). "The Department and the Public Charity may not expend public funds to administer the program." Plaintiff's contention that the Department of Revenue expends state funds to support Defendant is not consistent with statutory law. The similarity but exact opposite position of language in §12-6-3790(B)(5) and the definition of a corporation qualifying as a 'Public Body' under §30-4-20(a) is evidence of legislative intent. The legislature does not intend for Defendant to qualify as a 'Public Body'.

d. The Legislature Routinely Creates Exemptions to the Freedom of Information Act

Plaintiff contends that a pathway should not be created for operating portions of the government outside of the reach of the Freedom of Information Act. This contention is not consistent with South Carolina Statutes or the history of the South Carolina Freedom of Information Act.

The Legislature created the Freedom of Information Act in 1978. The Freedom of Information act defines a procedure through which the public can obtain information about how their government is spending tax dollars. The legislature can and does create exceptions to the Freedom of Information Act. See §16-25-370(a) (Domestic Violence Committee records are not subject to FOIA.) See also §17-5-544(a) (The Child Fatality Review Team is not subject to FOIA.)

ISSUES THAT COULD HAVE BEEN RAISED BEFORE THE COURT BEFORE JUDGMENT CANNOT BE RAISED USING SCRCP RULE 59(E)

Plaintiff did not raise retroactivity and develop an argument prior to judgment.

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"A party cannot use a Rule 59 (e) motion to present to the court an issue the party could have raised to the circuit court prior to judgment, but did not." Stevens & Wilkinson of South Carolina, Inc. V. City of Columbia, 409 S.C. 568, 762 S.E. 2d 696 (2014). Issues not presented prior to judgment cannot be preserved for appeal by a rule 59(e) motion. Hickman v. Hickman, 392 SE 2d 481 (SC App 1990).

To the extent that Plaintiffs new arguments raised by Rule 59(e) may be considered by the Court, they are not compelling.

While a change in law is rarely applied retroactively, clarification of legislative intent is retroactive by nature. Hock RH, LLC v. S.C. Dep't of Revenue, 813 S.E.2d 540 (S.C. App., 2018). A subsequent statutory amendment may be interpreted as clarifying original legislative intent. Stuckey v. State Budget and Control Bd., 339 S.C. 397, 401, 529 S.E.2d 706, 708 (2000) (citing Cotty v. Yartzeff, 309 S.C. 259, 422 S.E.2d 100 (1992)).

The absence of explicit FOIA exclusion language in the prior budget provisos does not render Defendant subject to FOIA under those provisos. The definition of the Defendant in Provisos is materially the same definition of the permanent law. The Proviso description of Defendant is an entity not subject to FOIA because it does not meet the definition of a Public Body. Similarly the Defendant is not and never was subject to FOIA pursuant to DomainsNewMedia.com, LLC v. Hilton Head Island Chamber of Commerce, 814 S.E.2d 513(S.C., 2018).

FAILURE TO SERVE WITHIN 10 DAYS

Pursuant to the Form 4 filed with this Court on December 21, 2018, the Clerk of Court's Office mailed written notice of the December 21, 2018 Order to Plaintiff on December 21, 2018.

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Plaintiff should have received notice of the Court's Order on or about December 26, 2018 if we include 5 days pursuant to SCRCP Rule 6.

Plaintiff filed his Rule 59(e) motion on January 7, 2018.

Plaintiff mailed an alleged copy of the Motion to opposing counsel. The alleged copy received by Defendant's counsel was not time stamped by the court or filed with the Court at the time of its mailing.

Rule 59(e) requires a motion to be served not later than 10 days after receipt of written notice of the entry of the order. SCRCP Rule 59(e).

If no motion was filed until 12 days after notice of the Order, Plaintiff could not have served Defendant with a valid, filed and stamped Rule 59(e) motion within 10 days of receipt of the Court's Order.

Plaintiff's Rule 59(e) motion should be denied as untimely.

CONCLUSION

For the above stated reasons, Plaintiff respectfully requests this Court deny Plaintiff's Motion under SCRCP Rule 59(e).

Signatures on next page.

Respectfully Submitted:

s/Geoffrey K. Chambers

Geoffrey K. Chambers
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This 17th day of January, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jan 17 11:07 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

ELECTRONICALLY FILED - 2019 Jan 28 12:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP400976

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Jefferson Davis, Jr. Plaintiff, v. South Carolina Educational Credit for Exceptional Needs Children Fund Defendant	Case No.: 2017-CP-40-06976 Defendant's Supplemental Memo in Opposition to Plaintiffs SCRP Rule 59(e) Motion

The Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, by and through counsel, hereby supplements its reply to the Plaintiff's Motion to Alter or Amend the Judgment of this Court pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure. This supplement is for the limited purpose of correcting an error in Defendant's original reply regarding Plaintiffs untimeliness of filing his Rule 59(e) motion. Defendant withdraws objection to timeliness of Plaintiff filing his Rule 59(e) motion.

FAILURE TO SERVE WITHIN 10 DAYS IS WITHDRAWN

Upon further investigation, Defendant respectfully requests this Court notice Defendant's withdrawal of objection to timeliness of service and filing of the Plaintiff's Rule 59(e) motion.

Defendant was provided an unclocked copy of the Plaintiff's Rule 59(e) motion on December 31, 2018. The unclocked copy appears to be word for word the same as that filed with the Court on January 7, 2019.

Rule 5(d) SCRP and Rule 6(a) SCRP are applicable to filing and service of Plaintiff's motion.

"All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof." SCRCP Rule 5(d)

"When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation." SCRCP Rule 6(a)

Pursuant to SCRP Rule 5, Plaintiff is not required to serve Defendant with a clocked copy of the filed motion. If holidays and weekends are excluded from the five day time period as allowed by SCRP Rule 6, Plaintiff appears to have filed his Rule 59(e) motion in a timely manner.

Defendant therefore respectfully requests this Honorable Court to allow withdrawal of Defendant's objection to timeliness of filing. Defendant does not withdraw other items listed in its Response in Opposition.

CONCLUSION

For the above stated reasons, Defendant respectfully requests this Court allow Defendant's withdrawal of objection to timeliness of Plaintiff's filing of his Rule 59(e) motion. All other items in Defendant's Response in Opposition to Plaintiff's Rule 59(e) motion are not withdrawn.

Signatures on next page.

ELECTRONICALLY FILED - 2019 Jan 28 12:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

Respectfully Submitted:

s/Geoffrey K. Chambers

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This 27th day of January, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jan 28 12:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4006976

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. DeAndrea Gist Benjamin, Circuit Court Judge

C.A. No.: 2017-CP-40-06976

Jefferson Davis, Jr. .....Appellant,

v.

South Carolina Educational Credit for Exceptional Needs Children Fund, ...Respondent.

NOTICE OF APPEAL

Jefferson Davis, Jr. ("Davis") appeals the Order of the Honorable DeAndrea Gist Benjamin, electronically filed December 21, 2018. On December 31, 2018, Davis timely filed a "Motion to Reconsider" the existing Order. The Court denied Davis' Motion to Reconsider in a Form Four Order electronically filed on **July 8, 2019**. Davis now timely Appeals the original Order filed December 21, 2019. Attached are copies of said Orders.

Date: July 23, 2019

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jdavis@apogeetax.com

Other Counsel of Record:
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Attorney for Respondent
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Doyet A. Early, Circuit Court Judge

C.A. No.: 2018-CP-40-02425

Jefferson Davis, Jr. .....Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1–40 .....Respondents.

CERTIFICATE OF COUNSEL / APPELLANT

As required by Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Jefferson Davis, Jr.
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Appellant

February 27, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
FEB 27 2020
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Doyet A. Early, Circuit Court Judge

C.A. No.: 2018-CP-40-02425

Jefferson Davis, Jr. .....Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1–40 .....Respondents.

PROOF OF SERVICE

I certify that I have served the **RECORD ON APPEAL** on the below named parties at the addresses noted by depositing a copy of it in the United States Mail, postage prepaid, or by electronic mail on February 27, 2020.

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